CHAPTER 10

THE HOUSE OF COMMONS

I. MEMBERSHIP OF THE HOUSE OF COMMONS

Historical introduction[1]

10–001 Simon de Montfort, leader of the rebel forces against Henry III, may be called the founder of the House of Commons, though not the founder of Parliament. His innovation in 1265 was to summon not only the knights for each shire—there were precedents for this—but also two burgesses from each borough. This action was not based on any theory of representative government (which originated in ecclesiastical organisations before the thirteenth century), but in order to counteract the power of the King.

Edward I revived the idea of summoning the knights and burgesses in 1275 primarily, it is supposed, for financial purposes. Parliament was in a formative stage in his reign, and some of his most important statutes were passed in the absence of the Commons. There was still no clear distinction between Council and Parliament. The Commons became more regularly established during the reign of Edward III, although as a body they were not of much influence before the end of the fourteenth century. The division of Parliament into two Houses may be said to have taken place in the reign of Edward III. Petitions involving judicial decisions were dealt with by the Council and the courts. The elected knights and the burgesses were concerned with common petitions and requests by the King for aids. In time they came to form a House of Commons, meeting in the Chapter House of Westminster Abbey, appointing a Speaker to reply in the parliament chamber to the King's requests and demanding that their common petitions be made statutes.[2]

The knights were elected in the county court by the freeholders. The borough franchise varied according to the customs and privileges of the various boroughs. For centuries members of the House of Commons consisted of knights and burgesses so elected.

10–002 Since 1774 a candidate for a parliamentary election need not have any connection with his constituency. In 1858 the property qualification was abolished. From the time of Elizabeth I penal statutes against papists, Protestant dissenters and others, and the requirement of a parliamentary oath that could conscientiously be taken only by Anglicans, virtually excluded non-Anglicans from Parliament for many years. Civil disabilities against dissenters were removed in 1828, and Roman Catholics were admitted to Parliament by the Roman Catholic Relief Act 1829. The oath was later made acceptable to Jews.[3] Quakers and others who objected to taking an oath were allowed to make an

[1] For a survey and guide to the literature, see Taswell-Langmead, *English Constitutional History* (11th ed. Plucknett), Chap. 6.

[2] A. F. Pollard, *The Evolution of Parliament* (2nd ed.), pp. 117–128.

[3] Jews Relief Act 1858.

affirmation.[4] Women were admitted to the House of Commons in 1918.[5] There has never been a statute prescribing the legal requirements for eligibility to stand for Parliament or to be a M.P. Instead there are a range of provisions, statutory, common law and by the law and custom of Parliament, which provide a variety of disqualifications from membership of the House of Commons.[6] With one exception,[7] these disqualifications do not prevent an individual standing for election, but can be invoked to prevent him from taking his seat in the House.[8]

Offices or places of profit from or under the Crown, and pensions at the pleasure of the Crown

The Act of Settlement 1700, s.6, would have provided that "no person who has an office or place of profit under the King, or receives a pension from the crown, shall be capable of serving as a member of the House of Commons," but this provision was repealed before it came into force. The Succession to the Crown Act 1707, passed at the time of the union with Scotland, provided by section 24 that no person who held any office or place of profit under the Crown created after 1705,[9] and no person having any pension from the Crown during pleasure, should be capable of being elected or of sitting or voting as a member of the House of Commons. Section 25 provided that if a member of the House of Commons accepted any office of profit from the Crown, his election should become void but he should be capable of being re-elected. One who sat and voted as a member when disqualified was liable to pay a heavy fine at the suit of a common informer, although it seems that no common informer actions were ever brought for this purpose. Section 25, requiring re-election of a member on appointment to office, should probably be taken to apply only to offices existing in 1705.[10] By 1957 the disqualification in respect to those who held pensions from the Crown only applied to a very few persons, who held their pension "during pleasure", or (according to the Pensioners Civil Disabilities Relief Act 1869) for any term or number of years. **10–003**

By the end of the eighteenth century three principles were established:

(i) certain non-ministerial offices were incompatible with membership of the House of Commons;

(ii) the control of the government over the House through members who were office-holders must be limited; but

(iii) a certain number of Ministers must be members of the House in order that Parliament could control the executive.

[4] Promissory Oaths Act 1868; Oaths Act 1888 (atheists). *Cf. Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271. The current legislation is to be found in the Oaths Act 1978.
[5] Parliament (Qualification of Women) Act 1918.
[6] *post* para. 10–005.
[7] Representation of the People Act 1981, s.1.
[8] The disqualifications have to be compatible with Art. 3 E.C.H.R., but states have considerable latitude to establish rules for disqualifications: *Gitonas v. Greece* (1998) 26 E.H.R.R. 691.
[9] The date of an intervening Act, the Succession to the Crown Act 1705, which was repealed in order to take account of the Union.
[10] While s.24 refers to offices or places held under the Crown, s.25 specifies offices accepted from the Crown, which are probably limited to appointments made directly by the Crown and not through the medium of a Minister, *i.e.* senior ministerial offices and Household offices.

A series of statutes after 1707 therefore converted the distinction between the holders of "old" offices (qualified) and "new" offices (disqualified) into a distinction between the holders of political offices (qualified within limits) and non-political offices (disqualified), by disqualifying or suppressing many old offices of a non-ministerial nature and providing for the eligibility of the ministerial heads of newly created departments, subject to the necessity for re-election if already members.[11]

Number of Ministers in the House of Commons

10–004 A limit was set to the number of Ministers and Secretaries of State, respectively, who might sit in the House of Commons. The Ministers of the Crown Act 1937 abolished the distinction in this respect between Secretaries of State and other Ministers, but limited the total number who might sit in the Commons. There remained a residual number of Ministers who were excluded, and who therefore by convention had to sit in the House of Lords.[12]

Government contractors, i.e. persons who held contracts for or on account of the public service, were disqualified by the House of Commons (Disqualification) Acts 1782 and 1801, the purpose being to exclude those who contracted to supply goods to government departments and who might therefore be under the influence of the government. Actions by common informers were brought under these Acts for the penalty of £500 a day for sitting and voting while so disqualified. The House of Commons Disqualification (Declaration of Law) Act 1931 declared that the scope of the Acts was confined to contracts for furnishing or providing money to be remitted abroad, and wares and merchandise to be used in the service of the public.

The House of Commons Disqualification Act 1957[13] repealed the enactments disqualifying the holders of offices or places of profit under the Crown and of persons holding pensions from the Crown, and instead disqualified the holders of specified offices. The disqualification of government contractors was also removed by the Act of 1957, since there was no evidence of corruption in the previous 100 years and it was impracticable to remove anomalies. The right of common informers to sue was abolished and replaced with a right to seek a declaration from the Privy Council.

Miscellaneous existing disqualifications

10–005 There are several disqualifications from membership which are not affected by the House of Commons Disqualification Act:

1. *Aliens*,[14] *i.e.* persons who are not British subjects or Commonwealth citizens, and are not citizens of the Republic of Ireland.[15]

[11] Certain offices to which a member was appointed continued to vacate the seat but allowed re-election, until the requirement of re-election was finally abolished in 1926: Re-election of Ministers Act 1919 and 1926. Gladstone inadvertently vacated his seat in 1859 by accepting the post of Lord High Commissioner of the Ionian Islands: Sir Philip Magnus, *Gladstone*, p. 135.

[12] *cf.* later House of Commons Disqualification Acts and Ministers of the Crown Acts.

[13] Repealed and substantially re-enacted by the House of Commons Disqualification Act 1975: *post*, para. 10–006.

[14] *R. v. Cassel* [1916] 1 K.B. 595; *R. v. Speyer* [1916] 2 K.B. 858.

[15] Ireland Act 1949, British Nationality Act 1981, Sched. 7.

2. *Persons under 21 years of age.*[16]

3. *Persons suffering from mental illness.* "Lunatics" and "idiots" were disqualified at common law. The Mental Health Act 1983 s.141, now provides that the Speaker must be notified when a member is detained as a person suffering from mental illness. The Speaker must then obtain a medical report. If the detention is confirmed by this report, and the member is still detailed as a mental patient according to a second medical report six months later, his seat is vacated.

4. *Peers and peeresses*, were disqualified by the law and custom of Parliament.[17] Until the House of Lords Act 1999, the only exception were Irish peers[18]; those hereditary peers who are excluded from the House of Lords by the 1999 Act, are eligible for election to the Commons (section 3(1)).

5. *Clergy* Until the enactment of the House of Commons (Removal of Clergy) Disqualification Act 2001, a variety of clergy were disqualified from membership of the House of Commons.[19] The 2001 Act removes any disqualification from membership of the House of Commons as a consequence of a person having been ordained or being a Minister of a religious domination. The only disqualification that remains is if a person is a Lord Spiritual.[20]

6. *Treason.* A person convicted of treason is disqualified till the expiry of his sentence of imprisonment or the receipt of a royal pardon.[21]

7. *Other crimes.* A consequence of the Criminal Law Act 1967 was that convicted persons were not disqualified from membership of the House, but the House might pass a motion to expel such persons.[22] This gap in the law[23] was remedied by the Representation of the People Act 1981, s.1, which disqualifies for membership of the Commons anyone found guilty of an offence, whether before or after the passing of the Act, whether in

[16] Parliamentary Elections Act 1695; Family Law Reform Act 1969. It appears that before 1832 several infants sat in the Commons "by connivance," including Charles James Fox and Lord John Russell. See P. Norton "The Qualifying Age for Candidature in British Elections" [1980] P.L. 55.

[17] Report from the Committee of Privileges: *Petition concerning Mr Anthony Neil Wedgewood Benn* (1961) H.C. No. 142; *Re Parliamentary Election for Bristol South-East* [1964] 2 Q.B. 257. Wives and eldest sons of peers, who had courtesy titles, could sit.

[18] Peerage Act 1963, s.5 (non-representative Irish peers); *Re Earl of Antrim's Petition* [1967] 1 A.C. 691; Statute Law (Repeals) Act 1971.

[19] House of Commons (Clergy Disqualification) Act 1801, was passed to keep out the Rev. Horne Tooke. It disqualified clergy of the Church of England and the Church of Ireland, see *Re Macmanaway* [1951] A.C. 161, P.C.), and Ministers of the Church of Scotland. Clergy of the Church in Wales were not disqualified (Welsh Church Act 1914). The Roman Catholic Relief Act 1829 disqualified Roman Catholic priests.

[20] s.1(2), for the background see the Home Affairs Select Committee report, *Electoral Law and Administration* H.C. 768 (1997–98).

[21] Forfeiture Act 1870, as amended by the Criminal Law Act 1967, Sched. 3.

[22] This is rare now, but was used more frequently in the eighteenth and nineteenth centuries. Miss Bernadette Devlin M.P., who served six months' imprisonment in Northern Ireland in 1969 for encouraging petrol bomb attacks against the police was not expelled. No action was taken against Mr Terry Fields M.P. who in 1991 was imprisoned for 60 days for failing to pay his poll tax. See generally the report of the Select Committee of Privileges. *On the Rights of Honourable Members detained in Prison*, H.C. 185 (1970–71).

[23] Prior to 1967 those convicted of a felony and sentenced to more than 12 months imprisonment were statutorily disqualified from membership of the House.

the United Kingdom or elsewhere, and sentenced to be imprisoned or detained indefinitely or for more than one year.[24] If a member becomes disqualified under the terms of the Act his seat is vacated.

8. *Bankrupts.* Formerly, in England and Wales disqualification lasted for five years after discharge. Disqualification now ceases on discharge.[25]

9. *Corrupt and illegal practices.* Various statutes constituted certain kinds of conduct at parliamentary elections "corrupt" or "illegal" practices. These provisions are now to be found in the Representation of the People Act 1983.[26] The consequences so far as disqualification from sitting in the House of Commons is concerned are:

   (a) If a candidate who has been elected is reported by an election court personally guilty, or guilty by his agents, of any corrupt or illegal practice, his election is void (section 159(1)).

   (b) A candidate is also incapable of being elected for the constituency concerned: (i) for 10 years if reported personally guilty of a corrupt practice; (ii) for seven years if reported guilty by his agents of a corrupt practice or personally guilty of an illegal practice; and (iii) during the Parliament for which the election was held if reported guilty by his agents of an illegal practice (section 159(2)).

   (c) A candidate reported by an election court personally guilty of a corrupt or an illegal practice is incapable for five years of being elected to the House of Commons, and if already elected shall vacate his seat (section 160).

   (d) A person convicted of a corrupt or an illegal practice on indictment or by an election court is subject to the incapacities mentioned in (c) above (section 173).[27]

The House of Commons Disqualification Act 1975

10–006 From time to time Indemnity Acts were passed to indemnify members who had become disqualified unwittingly through holding certain offices or places of profit from or under the Crown,[28] and usually the election was validated also. Eventually the House of Commons Disqualification Act 1957 was passed, dealing with a particular range of problems, but not forming an exhaustive code of disqualification from membership.[29] There are a variety of grounds for the disqualifications: the impracticability of combining certain jobs, such as a member of the armed forces, with that of M.P.; a recognition of the need to keep certain functions separate and politically impartial, such as the judicial offices; the belief that it is incompatible to hold both a position of paid government employment and be a member of the House of Commons; and the fact that

[24] The statute was given retrospective effect to invalidate the election in April 1981 for the Constituency of Fermanagh and South Tyrone of a prisoner serving a long term of imprisonment for various firearms offences. See C.P. Walker, "Prisoners in Parliament: Another View," [1982] P.L. 389.

[25] Insolvency Act 1986, s.427.

[26] *post* para. 10–048.

[27] Section 136 of the Political Parties Elections and Referendums Act 2000, substituted a new s.173, and added illegal practice as a basis for requiring the vacation of a seat. It also provided for a stay of vacation of a seat pending an appeal: see *Attorney-General v. Jones* [2000] Q.B. 66 which illustrates the confusion in the previous law.

[28] See *ante*, para. 10–003

[29] See *ante*, para. 10–005 as to aliens, minors, etc.

certain positions of control in companies in receipt of government money are nominated by Ministers.[30]

The main provisions of the Consolidating Act of 1975 are as follows:

Section 1. Disqualification of holders of certain (non-ministerial) offices and places

A person is disqualified for membership of the House of Commons if he falls into any of the following categories: **10–007**

(1) (za) *Lords Spiritual.* As a consequence of the House of Commons (Removal of Clergy Disqualification) Act 2001, Lords Spiritual have been added to the list of those disqualified; a bishop who is not a Lords Spiritual member of the House of Lords is not disqualified.

(a) *Judicial offices.* The holders of the judicial offices specified in Part I of Schedule 1. These include judges of the Supreme Court, circuit judges and stipendiary magistrates, but not justices of the peace.

(b) *Civil service.* Civil servants, whether established or not, and whether whole or part time. Service regulations require that if a civil servant becomes a candidate for parliamentary election, he must resign his office.

(c) *Armed forces.* Members of the regular armed forces of the Crown. Service regulations forbid members of the regular forces from standing for Parliament. It was discovered that this regulation provided a means of getting service engagements terminated, so in 1963 the Home Secretary appointed an advisory committee. This committee reports to the appropriate Service Minister whether it is satisfied that an application to terminate a service agreement and stand for parliament is bona fide.

(d) *Police forces.* Members (*i.e.* full-time constables) of any police force maintained by a police authority.

(e) *Foreign legislatures.* Members of the legislature of any country outside the Commonwealth apart from members of the legislatures of the Republic of Ireland.[31] Members of such legislatures would generally be disqualified as aliens, but this provision disqualifies those with dual nationality.

(f) *Commissions and Tribunals*, etc. All the members of commissions, tribunals, and other bodies specified in Part II of Schedule 1. These include the boards of a variety of statutory bodies whose members are appointed by the Crown, *e.g.* the various electricity boards, the Development Agencies, the Gaming Board, the National Rivers Authority, the Lands Tribunal, the Council on Tribunals, and the Law Commissions. The list is constantly being extended or modified by statute.

[30] In contrast, the rules on paid employment for M.P.s by the private sector is regulated by Parliament itself, and not by statute, see *post* paras 13–028 to 13–034.

[31] See the Disqualification Act 2000 which amends the 1975 Act.

Certain other offices. The holders of various offices specified in Part III of Schedule 1, including British ambassadors and high commissioners, electoral commissioners, the Comptroller and Auditor-General, judge-advocates, Parliamentary Commissioner, chairmen of many statutory tribunals and councils, governors of the British Broadcasting Corporation, and registration officers at elections. These are disqualified either because they are appointed by the Crown or because their office is incompatible with membership of the House of Commons.

Section 1(2). Offices disqualifying for particular constituencies

10–008 The holder of any office described in Part IV of Schedule 1 is disqualified from membership for any constituency specified in the Schedule in relation to that office. A lord-lieutenant or sheriff, for example, is disqualified in relation to any constituency in the area for which he is appointed.

Section 1(4). Effect of section 1 (holders of certain offices)

10–009 A person is not disqualified for membership of the House of Commons by reason of holding any office or place of profit except as provided in the Act. Conversely, a person is not disqualified for appointment to any office or place by reason of his being a member of that House.[32]

Schedule 1 containing the list of offices mentioned above may be amended by Order in Council, following a resolution of the House of Commons—a remarkable example of delegated legislation which allows a government Minister in effect to enfranchise or disqualify the holders of a variety of officers on the basis of vague criteria. Her Majesty's printer is required to print copies of the Act with Schedule 1 as amended from time to time by Order in Council or other Acts (s.5).[33]

Section 2. Ministerial offices[34]

10–010 Not more than 95 holders of the ministerial offices specified in Schedule 2 may sit and vote at any one time in the House of Commons. It is now permissible for all senior Ministers, except the Lord Chancellor, to sit in the Commons.[35]

Section 4. Stewardship of the Chiltern Hundreds, etc

10–011 It was established by the early seventeenth century that a member could not resign his seat. If a member wished to relinquish his seat, therefore, it has been the practice since about 1750 to apply to the Chancellor of the Exchequer for the Stewardship of the Chiltern Hundreds. The office has for long been a sinecure, but it is technically an "office of profit under the Crown" and therefore under the previous law disqualified the holder from further membership of the Commons.

[32] The latter provision negatives what is called "reverse disqualification".

[33] The most recent reprint of the Act and schedules (the 15th) was in 1997, after the House agreed to government resolutions which disqualified an additional 3,400 office holders, and released 250 others. Acts of Parliament which create new official bodies usually make provision for the insertion of the new bodies into the relevant part of the schedule of the 1975 Act.

[34] These statutory provisions should be distinguished from the convention that Ministers shall disembarrass themselves of any company directorships or shareholdings which would be likely, or which might appear, to conflict with their official duties.

[35] The maximum number of persons whose salaries may be paid as holders of ministerial office is prescribed by the Ministers and other Salaries Act 1975.

In order to preserve this interesting historical relic, the Act provides that the Stewardship of the Chiltern Hundreds and three similar offices, for which application is made to the Chancellor of the Exchequer, shall be treated as included among the disqualifying offices listed in Part IV of Schedule 1.[36]

Section 6. Effect of disqualification, and provision for relief

If a person disqualified for membership is elected, his election is void: and if a member of the House becomes disqualified his seat is vacated. If, however, the disqualification has been removed the House may, if it appears proper to do so, direct that the disqualification shall be disregarded: but such order is not to affect proceedings on an election petition or the determination of an election court.[37] **10–012**

Section 7. Jurisdiction of Privy Council as to disqualification

Any person who claims that a person purporting to be a member of the House of Commons is disqualified by the Act may apply to Her Majesty in Council for a declaration to that effect. The application is referred to the Judicial Committee in the same way as an appeal from a court under the Judicial Committee Act 1833, s.3. As regards disqualification-under the Act, this is an alternative method to an election petition,[38] though without the time limit. The Judicial Committee may direct an issue of fact to be tried in the High Court,[39] whose decision shall be final. A declaration may not be made, however, if an election petition is pending or has been tried, or if the House of Commons has directed that the disqualification shall be disregarded. It should be noticed that the House itself may resolve that a case be referred by the Crown to the Judicial Committee under section 4 of the Judicial Committee Act 1833 for an advisory opinion on a point of law, and this could include any legal disqualification, whether arising under the House of Commons Disqualification Act or not.[40] **10–013**

Section 8. Relaxation of obligation to accept office

No member of the House of Commons or candidate for a parliamentary election may be *required* to accept any office which would disqualify him from membership. This relaxation does not apply to any obligation, statutory or otherwise, to serve in the armed forces of the Crown. It appears that the office of sheriff is the only other office which is by custom regarded as obligatory. Sheriffs were formerly required to remain in the county during this year of office, and therefore could not sit in the House.[41] In 1626 Charles I excluded Coke and four other members by "pricking" them sheriffs against their will,[42] but the Commons resolved in 1675 that it was a breach of privilege to appoint a member of the House as sheriff.[43] Section 8 was inserted *ex abundante cautela*, in case the **10–014**

[36] There are four offices, enabling four members to resign in quick succession, *viz.* Steward or Bailiff of the Chiltern Hundreds, and Steward or Bailiff of the Manor of Northstead. The Chancellor of the Exchequer usually grants them alternately.
[37] *Post* para. 10–061.
[38] *Post*, para. 10–062.
[39] Or the Court of Session or the High Court in Northern Ireland.
[40] *e.g. Re MacManaway* [1951] A.C. 161, PC.
[41] 4 Co.Inst.48.
[42] Holdsworth, *History of English Law*, 1923–64, V, pp. 448–449.
[43] Wittke, *Parliamentary Privilege*, p. 38.

government should be able to exclude members of the Opposition by appointing them to disqualifying offices.

A candidate's consent to nomination at a parliamentary election must contain a statement that he is aware of the provisions of the Act, and that, to the best of his knowledge and belief, he is not disqualified from membership of the House of Commons (section 10).

The Act of 1957 repealed all provisions whereby common informers could sue for penalties in respect of parliamentary disqualifications. Apart from the procedure laid down in section 7 (*supra*) the Courts will not examine whether a member of Parliament is disqualified from sitting.[44]

Payment of Members

10–015 In medieval times knights, citizens and burgesses received a few shillings a day from their constituencies. This right was balanced by statutory penalties for non-attendance, which are now obsolete. Although called wages, these payments were intended as expenses, and they too became obsolete with the fall in the value of money.

As a result of the decision in *Amalgamated Society of Railway Servants v. Osborne*[45] declaring that a "political levy" by trades unions on their members was illegal, so that trades unions could not pay salaries to M.P.s whom they sponsored, the House of Commons resolved that members who were not Ministers should receive a salary under the annual Appropriation Act payable out of the Consolidated Fund. In addition since 1967 members have been entitled to an Office Cost Allowance toward the cost of office expenses and secretarial and research expenditure. Since 1971 a Member may claim an additional cost allowance in respect of the need to stay overnight in London.[46]

In order to avoid, or minimise, the embarrassment of members of Parliament having to determine their own salaries, in 1970 that duty was entrusted to Top (now Senior) Salaries Review Body which conducts regular reviews of the salaries of those working in the higher levels of the public service. From 1983–1993 members' salaries were linked with those of Grade 6 civil servants, and updated in accordance with the linkage. In 1993 the House resolved that members should be paid a set yearly salary to be increased annually. In 1996 the government asked the Senior Salaries Review Body to conduct a full review of parliamentary pay and salaries,[47] and in the light of this report the House resolved in 1996 that annual salary should be £43,000 to be increased annually (without the need for parliamentary decision) from April 1997 by the average percentage by which senior civil servant pay had increased in the previous year.[48] Various

[44] *Martin v. O'Sullivan* [1984] S.T.C. 258. (Challenge to qualifications of the entire House of Commons).

[45] [1910] A.C. 87, HL.

[46] The maximum annual Office Cost Allowance in 1999 was £49,232, that for overnight expenses was £12,717; M.P.s for inner London seats get a London supplement of £1,406. All these figures are to be increased in subsequent years by the March Retail Price Index. Members are also entitled to claim travelling expenses, and since 1998 a bicycle allowance. After the 2001 election, Members voted to increase these allowances and their salaries (note 48).

[47] Cm. 3330.

[48] In 2000 the salary was £49,822, the Senior Salaries Review Body in 2001 recommended that the figure should be increased. Ministers and other office holders, such as the Leader of the Opposition and the Speaker receive an additional salary.

statutes, of which the latest is the Parliamentary and other Pensions Act 1987, provide for the payment of pensions to former members of Parliament.

The Speaker[49]

10–016 The practice of the Commons having a spokesman arose gradually in the Middle Ages. The first two members who may be regarded as holding a definite office as Speaker were Sir Peter de la Mere and Sir Thomas Hungerford in the years 1376 and 1377. The Commons appear always to have elected their Speaker. For some time he also attended the King's Council, and his position as liaison between the Commons and the King was for long a dangerous one.

The Speaker is elected by the Commons from their own number at the beginning of each new Parliament. The Speaker of the previous Parliament is usually re-elected unanimously, if he is still a member and willing to stand. Re-election by the House has not been opposed since 1835. Where a vacancy occurs there is consultation with government and opposition, including back benchers. The custom had been that the Speaker is always chosen from a Government supporter, but this custom was not followed with the election of Miss Betty Boothroyd M.P. as Speaker in 1992. To indicate more clearly that the Speaker is chosen by the House as a whole and is not a Government appointment, the election procedure was changed in 1972[50] to allow for the chair to be taken by the "Father of the House" (the senior Member in years of service), who calls on a senior Government back bench Members to propose the motion that some other Member "do take the Chair of the House as Speaker"; this is normally seconded by a senior Opposition back bench Member.[51] If the election of a new Speaker is opposed, this is done on the basis of an amendment to the motion namely to leave out the name of the first candidate and insert the name of another candidate; the House has to decide on all candidates whose names are put forward as amendments to the motion before it considers the candidate first proposed. The assumption behind this procedure was that the "usual channels" would operate behind the scenes to present the House with a single candidate, or at least no more than two candidates. The procedure was known to have "inherent weaknesses"[52] and, as became obvious in October 2000, it was not intended to deal with a situation in which a multiplicity of candidates stood for election. The Procedure Committee has recommended that the 1972 system for electing the Speaker should be replaced by a ballot-based system, and this was accepted by the House in March 2001.[53] It is a convention that the Sovereign should be asked for, and should give, consent to the choice of Speaker.

10–017 A Speaker takes no active part in a parliamentary election campaign and stands as "the Speaker seeking re-election", since he belongs to no party. On some occasions the Speaker is returned to Parliament unopposed, but this is not always the case.[54] In order that a constituency may not be virtually disfranchised, it has

[49] See Dasent, *Speakers of the House of Commons* (1911), Erskine May, *Parliamentary Practice* (22nd ed., 1997); Sir Ivor Jennings, *Parliament* (2nd ed.), pp. 63 *et seq.*; Selwyn Lloyd, *Mr Speaker, Sir* (1976).

[50] See H.C. 111 (1971–72) for the background to this change.

[51] Where a Speaker has indicated that he or she wishes to retire while still a member of the House, the retiring Speaker may remain in the chair until his successor has been selected.

[52] See H.C. 386 (1995–96) para. 22.

[53] H.C. 40 (2000–2001).

[54] In a return to previous practice no major party contested the election of the Speaker in the 1997 or 2001 general elections.

been suggested that the Speaker should have a fictitious constituency or none at all, so that on a member's election as Speaker there would be a by-election in the constituency which returned him to Parliament. On the other hand, it would be incorrect to say that the Speaker's constituency is disfranchised, because the member who fills that office continues to look after the interests of his constituents.

The Speaker is the channel of communication between the Commons and the Queen, and between the Commons and the Lords. Hence his title of "Speaker" or spokesman. On his appointment he claims from the Sovereign certain "ancient and undoubted" privileges of the House at the beginning of each Parliament.[55]

10–018 Rulings from the Chair rather than Standing Orders are of importance in the maintenance of parliamentary procedure and order. The Speaker has various discretionary powers for example to restrict debate by selecting amendments and, in certain circumstances to direct members to restrict the length of their speeches.

The Speaker presides over the House, except when it is in Committee. When in the chair he maintains order, and guides the House on all questions of privilege and practice. He is expected to be impartial between political parties, and especially to protect the rights of minorities in the House and to ensure that they have their say. The Speaker does not take part in debate. He does not vote unless there is a tie, in which case, according to the ruling of Speaker Addington (1796), "the Speaker should always vote for further discussion where this is possible." Thus he will usually give his casting vote in favour of the introduction of a Bill, against amendments to a Bill at the report stage, against Lords' amendments to a Bill sent up by the Commons and against a guillotine motion.

The Speaker gives advice and rulings on procedure; signs warrants of committal for contempt, and reprimands members and strangers for misconduct; and signs warrants for the issue of writs for by-elections. The Speaker has the duty under the Parliament Acts 1911 and 1949 of certifying "Money Bills," and giving his certificate that the procedure for overriding the House of Lords has been complied with. If it were doubtful which was the largest party in opposition to the government in the House of Commons, or who was the leader in the House of such party, the Speaker would issue a certificate for this purpose, which would be binding and conclusive.[56] The Speaker has other statutory powers and duties including Chairman of the Speaker's Committee,[57] and the certification of the mental illness of a member.

10–019 On behalf of the House the Speaker exercises its functions as owner of parliamentary copyright.[58] Other administrative duties include the control of the House's accommodation and services. In *R. v. The Speaker, Ex p. Mc Guinness*[59] judicial review of the Speaker's decision[60] that those who refused to take the oath of allegiance, or to affirm allegiance were not entitled access to the facilities and services for M.P.s was refused.

[55] *Post*, Chap. 13.
[56] Ministerial and other Salaries Act 1975, s.2.
[57] See s.2 and sched. 2 of the Political Parties, Elections and Referendums Act 2000. This committee reports to the House of Commons on the work of the Electoral Commission. *post* para. 10–042.
[58] Copyright, Designs and Patents Act 1988, s.167(2).
[59] [1997] N.I. 359.
[60] H.C. Deb. Vol. 294, col.35–36, (1997–98).

The Speaker has an official residence. His salary is charged on and payable out of the Consolidated Fund.[91] This means that it is payable by permanent legislation, and does not come up for annual review and perhaps debate. On a dissolution of Parliament the Speaker retains office until a Speaker is chosen by the new Parliament. In precedence he ranks next after the Lord President of the Council. When he retires, it is customary to bestow on him a peerage and a statutory pension.

The Clerk of the House is head of the Parliament Office and is appointed by the Crown by letters patent. He has custody of all the records of the House, makes entries of what takes place in the House, and from these materials prepares the Journals. He endorses Bills sent up to the Lords. Under the Parliamentary Corporate Bodies Act 1992 he is the Corporate Officer of the House and as such is empowered to hold property and make contracts on behalf of the House of Commons.[92] 10–020

The Serjeant-at-Arms is appointed by the Crown by letters patent under the Great Seal. The present practice is for the Queen to discuss the appointment informally with the Speaker, who sounds the feelings of the party leaders. The Lancastrian Kings first appointed one of the Sergeants-at-Arms (originally royal bodyguards) to attend the Commons, and the Commons came to use him to protect their privileges because through him they could arrest or imprison offenders without having to take proceedings in the courts. During session he attends, with the mace,[93] the Speaker when the latter enters and leaves the House. 10–021

It is the duty of the Serjeant-at-Arms to carry out directions for maintaining order, and to arrest strangers who have no business in the House. With the mace in his hands he can arrest without warrant anyone who obstructs the Speaker's procession. He executes the Speaker's warrants for contempt, and when ordered to do so brings persons in custody before the bar of the House. He or his assistants serve processes of the House. When a person is arrested by order of the House, the Serjeant-at-Arms keeps the prisoner in his custody until arrangements are made for his bestowal elsewhere. The Metropolitan Police on duty in the precincts come under his orders when the House is in session. As housekeeper of the House he has charge of its committee rooms and other buildings, and supervises amongst others the Communications Directory which provides services to the House.

The Chairman of Ways and Means is a member elected at the beginning of each Parliament to preside over committees of the whole House. He maintains order in Committee and can "name" members, but where a suspension is necessary the Speaker reoccupies the chair. The closure can be applied by the Chairman in Committee. 10–022

The Chairman of Ways and Means also acts as Deputy Speaker, and by the Deputy Speaker Act 1855 he can exercise the Speaker's statutory functions. In both capacities he is expected to show the same political impartiality as the Speaker. He also has important duties in conjunction with the Chairman of

[91] Ministerial and other Salaries Act 1975, s.1. This is the culmination of a series of statutes going back to the Speaker of the House of Commons Act 1790.

[92] For the difficulties caused by this change to parliamentary law and practice see the evidence to the Parliamentary Privilege Joint Committee, H.L. Paper 50–i, ii, v, H.C. 401–i, ii, v, (1997–98).

[93] The mace, at first both a weapon and the Serjeant's emblem of office, has come to be regarded as the symbol of the authority of the House; but during prorogation the Serjeant-at-Arms reverts to being a member of the royal household, and the mace is returned to the Lord Chamberlain.

Committees of the House of Lords relating to private Bills. There are two Deputy Chairmen of Ways and Means, who may also act as Deputy Speaker. Neither the Chairman nor the Deputy Chairmen of Ways and Means speaks or votes except in an official capacity.

House of Commons staff

10–023 The appointment and terms of employment of the staff who work in the various departments of the House of Commons—for example, the Department of Administration and Finance, the Department of the Library, the Department of the Official Report of the House of Commons—is subject to the control of the House of Commons Commission, a body established by statute in 1978.[64] The Commission is the employer of all House departmental staff, with the exception of the Speaker's personal staff. Further administrative changes were made in 1991 in the light of the Ibbs Report.[65] The Commission now has responsibility for the personnel and financial management of the House for staff and Members of the House.[66] In 1999 a further review was carried out, and the Braithwaite Report[67] recommended further reforms.

In addition to staff appointed by the Commission the Speaker appoints his own personal staff. Staff appointed by the Commission and the Speaker's personal staff are entitled to the individual employment rights to which workers generally are entitled.[68]

Government and Opposition Whips[69]

10–024 The Government Whips consist of the Chief Whip (the Parliamentary Secretary to the Treasury), the Deputy Chief Whip (the first junior Lord of the Treasury) and the Junior Whips (the other four junior Lords of the Treasury, and the Treasurer, Comptroller and Vice-Chamberlain of the Household). The Government Chief Whip is responsible to the Prime Minister and Leader of the House for fitting the government's programme of business into the time available during the session. He and the Chief Whips of the other parties constitute the "usual channels" through which business communications pass between the parties.

It is the duty of the Whips, whether acting for the government or not, to see that their parties are fully represented at important divisions and to arrange "pairs." They also keep their leaders informed of the state of feeling in the party. Again, they act as intermediaries between the leaders of the party and the constituency organisations, and can often influence the local association in its choice of candidate. The Chief Opposition Whip and Assistant Opposition Whip, nominated by the Leader of the Opposition, and the Assistant Government Whip, have statutory salaries.[70]

[64] House of Commons (Administration) Act 1978. The Commission consists of the Speaker, the Leader of the House of Commons, a member of the House nominated by the Leader of the Opposition and three other members of the House, appointed by the House, not being Ministers of the Crown.

[65] Report on House of Commons Services H.C. 38 (1990–91).

[66] Excluding the salaries and allowances of Members.

[67] *House of Commons Review of Management and Services* H.C. 745 (1998–99).

[68] Employment Rights Act 1996, s.194. However the Health and Safety at Work Act 1974 does not apply to either House of Parliament, see Geoffrey Lock Chap. IV "Statute law and case law applicable to Parliament", in *The Law and Parliament* edited by Dawn Oliver and Gavin Drewry (1998).

[69] "Whip," originally "whipper-in," is a term derived from the hunting field.

[70] Ministerial and other Salaries Act 1975.

II. Parliamentary Franchise and Elections

Modern history of the parliamentary franchise[71]

10–025 The modern history of the parliamentary franchise begins with the Representation of the People Act 1832 ("the Reform Act") which extended the franchise by means of property qualifications from the landed gentry and borough caucuses to the middle classes. The indirect consequences of this Act and its successors were immense. The Commons became the predominant element in the government of the country, the Crown became detached from politics, and governments recognised that they depended on the will of the electorate.[72]

The Representation of the People Act 1867, by introducing certain occupation and lodger qualifications in the boroughs, gave the vote to many urban workers. The Representation of the People Act 1884 extended the lodger and householder qualifications to counties, thus giving the vote to many agricultural workers.

The Representation of the People Act 1918 introduced adult male suffrage, and for the first time gave the vote to women, but only at the age of 30.[73] The Act provided for both a residence and a business premises qualification. The Representation of the People Act 1945 assimilated the local government franchise to the parliamentary franchise in so far as every parliamentary elector was to have the local government franchise. The Representation of the People Act 1948 laid down that no elector should have more than one vote at a general election, abolished the business premises qualification and the university franchise and provided that each constituency should henceforth elect only one member.

The Representation of the People Act 1969, s.1, lowered the minimum age of voting from 21 to 18 years. The Representation of the People Acts 1985, 1989 extended voting rights to expatriates in certain circumstances. The Representation of the People Act 2000 (RPA 2000) reformed the system of registration of voters and made new provisions for voting at parliamentary and local elections. Further extensive reforms to many aspects of the law relating to elections are found in the Political Parties, Elections and Referendums Act 2000 (PPER Act 2000).

The following account is mainly concerned with the House of Commons.[74]

Qualifications for the franchise

10–026 The law and administration on the franchise and elections has to be looked at in the light of Article 10 (freedom of expression) and Protocol 1, Article 3 of the European Convention of Human Rights. The latter requires the holding of "free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the people in the choice of the legislature".[75]

[71] Sir Ivor Jennings, *Party Politics I: Appeal to the People* (1960); D.E. Butler, *The Electoral System in Britain since 1918* (2nd ed., 1963); Robert Blackburn, *The Electoral System in Britain* (1995).

[72] The proportion of the electorate to the population was raised from 3 to 4 per cent by the Act of 1832, from 18 to 47 per cent by the Act of 1918, and to 65 per cent by the Act of 1928.

[73] Women received the vote at the age of 21 by the Representation of the People (Equal Franchise) Act 1928.

[74] See Chap. 5 for elections to the Scottish Parliament and the Welsh and Northern Ireland Assemblies.

[75] The leading case is *Mathieu-Mohin v. Belgium* (1987) 10 E.H.R.R. 1, where the European Court of Human Rights stated that Protocol 1 required equal treatment of all citizens in the exercise of their right to vote and stand for election, but that this did not preclude the imposition of conditions on those rights. States had a wide margin of appreciation in this sphere.

The Representation of the People Act 1983, s.1[76] provides that a person, in order to qualify as a parliamentary elector in any constituency, must:

(a) be registered in the register of parliamentary electors for that constituency;

(b) not be subject to any legal incapacity to vote (age apart);

(c) be either a Commonwealth citizen[77] or a citizen of the Republic of Ireland; and

(d) be of voting age (that is, 18 years or over) on the date of the poll.[78]

No one may vote more than once in the same constituency at any parliamentary election or in more than one constituency.

Registration[79]

10–027 The RPA 2000 Act made fundamental changes to the system of electoral registration by introducing a scheme of a "rolling" electoral register to enable electors to be added to, and deleted from, the register at any time of the year. Registration is no longer dependant on residence on a single annual qualification date; a person may be eligible to be registered as an elector at any point in the year. Throughout the Act entitlement to register is based on the "relevant date", which is the date on which an application for registration is made. This reform should assist in keeping the register up to date.

Residence

10–028 Some guidance is given to the courts by section 5 of the 1983 Act[80] which provides, in particular, that regard shall be had to the purpose and other circumstances, as well as to the fact, of a person's presence at, or absence from, the address in question.[81] This guidance has been expanded by the RPA 2000 to take account of those who have no settled address. Section 5(2) provides that a person "staying at a place otherwise than on a permanent basis" may "in all the circumstances" be taken to be at that time resident there, if he has no home elsewhere. The Court of Appeal has adopted a broad matter of fact approach to residence which would seem to be in accordance with the requirements of Protocol 1, Article 3. In *Hipperstone v. Newbury Electoral Officer*[82] it held that the occupation of tents, vehicles and other makeshift accommodation by women in the vicinity of a United States Air force Base at Greenham Common was

[76] As substituted by the Representation of the People Act 2000, which made extensive alterations to the 1983 Act.

[77] British Nationality Act 1981, s.37.

[78] For the purposes of the Representation of the People Acts a person attains a given age at the commencement of the relevant anniversary of his birthday. Representation of the People Act 1983, s.202(1).

[79] s.4 of the 1983 Act, as substituted by the RPA 2000.

[80] As substituted by the RPA 2000, but virtually the same as that provided in the 1983 Act.

[81] s.5(3) expressly deals with various examples of temporary absence, and s.6 provides that a merchant seaman's absence shall not prevent him being regarded as resident at the address where, but for his duties, he would normally live or at any hostel or club which provides accommodation for merchant seamen at which he commonly stays in the course of his employment.

[82] [1985] Q.B. 1060. See also *Fox v. Stirk and Bristol Electoral Registration Officer; Ricketts v. Cambridge City Electoral Registration Officer* [1970] 2 Q.B. 463, CA (Students living in college or hall of residence—or, presumably, in lodgings—entitled to be registered in that constituency.)

sufficient to entitle the women to register as voters. It was irrelevant that their living accommodation was such that under other legislation they might be described as homeless: "To import considerations based upon the standard of accommodation into qualification for the franchise would be to put the clock back to the days when the franchise depended upon a property qualification."[83] The Court also held that for the purpose of qualifying for the franchise it was irrelevant that the women might be trespassers or even guilty of criminal offences as a result of living where they had chosen to.

In England, Wales and Scotland it is only necessary to establish residence on the relevant date. In Northern Ireland a voter must establish residence in Northern Ireland for the whole of the period of three months ending on the relevant date.[84]

Special rules have been laid down for five classes of voters:

10–029 (1) *Service voters* (sections 14–17) Until the RPA 2000 service voters could only vote if a "service declaration" had been made. Any of the following persons has the right, on making a service declaration, to be entered on the register as a service voter in the constituency in which he or she would have been residing if he were not abroad:

(a) a member of the forces;

(b) any other person employed in the service of the Crown in a post outside the United Kingdom;

(c) an employee of the British Council in a post outside the United Kingdom;

(d) the wife or husband of a member of the forces;

(e) the wife or husband of a person within (b) or (c) who is residing outside the United Kingdom to be with her husband (or his wife).

The RPA 2000 enables those with a service qualification to register in the same way as other voters (provided they meet the residence criterion) or as an overseas elector.

10–030 (2) *Overseas electors*[85] A British citizen, otherwise entitled to vote in a parliamentary election, may do so even though not resident in the United Kingdom provided that he satisfies the definition of overseas elector and has made an overseas elector's declaration. An overseas elector must:

(a) be resident outside the United Kingdom;

(b) have been included on a register in respect of residence in a particular constituency; and

[83] At p. 1072, *per* Sir John Donaldson. See the unreported decision of the County Court in *Lippiat v. Electoral Registration Officer*, March 21, 1996. (A homeless man was entitled to use a day centre as his address for residence.)

[84] Representation of the People Act 1983, s.4(2), as substituted by the 2000 Act.

[85] Representation of the People Act 1985, ss.1–3, as substituted by Sched. 2 of the RPA 2000, as amended by s.141 of the PPER 2000.

(c) the date by which residence was determined for inclusion in the register is not more than 15 years earlier than the relevant date of the register in which the elector wishes to be included as an overseas elector.

10–031 (3) *Mental patients* Section 3A of the 1993 Act (as inserted by the RPA 2000) disqualifies those who are detained in mental institutions as a result of criminal activity. Other patients (whether detained or voluntary) may register in relation to their residence in the mental institution, provided the period likely to be spent there is sufficient to satisfy the residence requirement.[86] Alternatively, a mental patient may register at an address where he is resident, other than the mental hospital in which he is a patient or, if there is no such place, make a declaration of local connection (see below).

10–032 (4) *Persons Remanded in Custody*[87] Provisions similar to those which apply to persons in mental hospitals apply to remand prisoners.

10–033 (5) *Those with a National Residence*[88] Patients in mental hospitals (other than those detained as a consequence of criminal activity) and remand prisoners who are not resident at some address other than the institution where they are being detained, may make a "*declaration of local connection*". This method of registration (which is also available to the homeless) enables a person to be registered as an elector either at an address where he would be residing if he was not detained, or at an address where he has resided. In the case of a homeless person "the address of, or which is nearest to, a place in the United Kingdom where he commonly spends a substantial part of his time (whether during the day or at night)" will suffice. A person who makes such a declaration will be regarded as resident at that address for the purpose of section 4.

Manner of voting

10–034 Voters who, for various reasons are unable to attend in person at the appropriate polling station may apply to be treated as "absent voters" and exercise their franchise by proxies. All registered electors are eligible to apply for a postal vote.[89] Special assistance has to be made to provide assistance with voting for persons with disabilities.

Disqualifications from the franchise

10–035 The following are subject to legal incapacity from voting, either under the Act of 1983 or under the pre-existing law:

(i) Aliens

(ii) Minors (under 18 years of age).

(iii) Peers, except Irish peers,[90] and those hereditary peers who are no longer entitled to sit in the House of Lords.[91]

[86] Representation of the People Act 1983, s.7, as substituted by the RPA 2000.
[87] Representation of the People Act 1983, s.7A, as inserted by the RPA 2000.
[88] s.7B, 7C of the 1983 Act as inserted by the RPA 2000.
[89] ss.5–9 of the 1985 Act as substituted by Schedule 4 of the RPA 2000.
[90] Peerage Act 1963, s.5.
[91] House of Lords Act 1999, s.3. There is little doubt that the Lords Spiritual are ineligible to vote; see P. Hughes and S. Palmer, "Voting Bishops", [1983] P.L. 393.

(iv) Convicted persons while detained in penal institutions or unlawfully at large, having escaped from confinement.[92]

(v) A person who has been reported by an election court personally guilty, or who has been convicted of a corrupt practice is disqualified for five years from voting at any parliamentary election. In the case of an illegal practice the five-year disqualification is limited to that constituency.[93]

Returning and registration officers

10–036 The returning officers are the sheriffs of counties, the chairmen of district councils and the mayors of London boroughs.[94] Most of their duties, however, are delegated to the registration officers of districts and London boroughs, who are disqualified from membership of the House of Commons.

The principal duty of the registration officer is to maintain a register of parliamentary electors for each constituency in his area, and a register of local government electors, and to publish a new version of the register at least once a year.[95] He must further keep lists of voters entitled to vote by post or proxy.[96] The duty to maintain an electoral register for each constituency is fulfilled by an annual canvass of the area for which he is responsible. It is his duty to determine any application by a person to be registered or any objection to any registration. Appeal lies to the County Court and then to the Court Appeal from whose decision there is no appeal.[97]

Returning officers, registration officers, presiding officers and others who commit breaches of their official duties are liable for penalties under section 63 of the Representation of the People Act 1983 but no action for damages now lies against them: *cf. Ashby v. White*.[98]

III. Political Parties, The Electoral Commission and Boundary Reviews

Reform of the law relating to political parties and election campaigns

10–037 In 1997 the Labour Government extended the terms of reference of the Committee on Standards in Public Life (the Neil Committee) to include political party funding. In March 1998 the Home Office sought the advise of the Neil Committee on several specific topics connected with elections including: foreign funding of political parties, rules on disclosure of donations to political parties,

[92] Representation of the People Act 1983, s.3, as amended by the Representation of the People Act 1985, Sched. 4. This section was unsuccessfully challenged as a breach of human rights in *R. (on the application of Pearson and another) v. Secretary of State for the Home Department and others* [2001] H.R.L.R. 39.

[93] Representation of the People Act 1983, ss.60, 61 and s.173 as substituted by s.136 of the PPER Act 2000. For corrupt and illegal practices, see *post* para. 10–048.

[94] Representation of the People Act 1983, s.24. Separate provisions apply to Scotland and Northern Ireland.

[95] Section 9 of the 1993 Act as inserted by the RPA 2000. These registers are to be combined, as far as practicable, with "L" marked against the names of persons registered as local government electors only.

[96] Representation of the People Act 1985, ss.5–9, as substituted by schedule 4 of the RPA 2000.

[97] Representation of the People Act 1983, s.10 and s.56 (see s.57 for Scottish Appeals). The procedure, in England, is exemplified by *Hipperson v. Newbury Electoral Officer* [1985] Q.B. 1060.

[98] (1703) 2 Ld. Raym. 938.

and rules on election expenditure. In 1998 the Neil Committee published its Fifth report, *The Funding of Political Parties*[99] in which it made wide ranging recommendations, not only on funding, but also on the regulation of electoral and referendum campaigns, and on the desirability of establishing of an Electoral Commission[1] to oversee aspects of electoral law and procedure. The Government responded positively in a White Paper[2] including a draft Bill, which became the Political Parties Elections and Referendums Act 2000 (PPER Act).

Political Parties

10–038 Political parties are voluntary organisations which play an important part in the democratic process: they enable citizens to play a role in policy-making, and are the principle means for the representation of electors in both national and local government. Until the PPER Act, the law played little part in regulating political parties. The Registration of Political Parties Act 1998 had introduced requirements for the registration of political parties, but there was little legal provision on the funding of political parties.[3] The Neil Committee[4] noted that the absence of any legal requirement on political parties to reveal the sources of their income raised concerns that powerful businesses could (anonymously) attempt to "buy" influence with a political party. It was concerned at the possibility that political parties were receiving anonymous and/or foreign donations, and recommended that such donations should be banned. It also recommended that details of donations should be recorded and reported to the Electoral Commission. These recommendations are implemented in Parts III and IV of the Act.

Funding of political parties

10–039 The new arrangements build on the existing requirements that political parties should be registered.[5] Before a party can be registered it must adopt a scheme, approved by the Electoral Commission, which sets out arrangements for regulating its financial affairs (section 26). Registered political parties are required to keep accounts showing income and expenditure and to provide the Commission with an annual statement of their accounts in accordance with regulations laid down by the Commission (sections 41–42). The Commission may prescribe different requirements according to the gross income of the party, allowing in effect for reduced regulation for parties with a small turnover. Where a registered party's annual income or expenditure exceeds £250,000, the accounts must be audited by a qualified auditor (section 43). A failure to comply with the statutory requirement for accounting is a criminal offence (section 47).

Donations are defined widely to include gifts of money or other property; subscriptions; loans, property or services at less than commercial value; sponsorship (sections 50–53). Certain payments and services are specifically excluded from the definition including grants for security at party conferences, party political broadcasts and services provided by an individual voluntarily in his own time (section 52). Donations may only be accepted if they are by "permissable

[99] Cm. 4057.
[1] *Post* para. 10–042.
[2] Cm 4413 (1999).
[3] The Companies Act 1985 had required companies making a donation to a party to declare this. The PPER Act s.139 and sched. 19 inserts a new Part XA into the Companies Act which imposes much stricter controls on political donations.
[4] See too H.C. 301, (1993–94).
[5] *Post* para. 10–041

donors" and the identity of the donor is known; a party has 30 days from receipt of a donation to be satisfied that the donation is one that it can accept within the rules, if not it must be returned to the donor (section 56). Permissable donors are defined so as to prevent the foreign funding of political parties and include: an individual registered on the electoral register; a company registered in the United Kingdom and incorporated in the European Union and which carries on business in the United Kingdom; a registered political party; a trade union (section 54). Parties have to keep details of all donations over £200,[6] and the party treasurer has to prepare a quarterly donation report for the Commission recording donations of £5,000 or more, or which over a period of time amounts to £5,000 or more. Where a donation has been recorded, any further donations from that source of over £1,000 must be recorded (section 62). During election periods weekly donation reports are required (section 63). These rules, which impose extensive responsibilities on party treasurers, are enforced by a combination of civil and criminal penalties. Section 36 allows the Commission to provide financial and other assistance for "existing registered parties"[7] to enable them to comply with Parts III and IV of the Act.

10–040 The Neill Committee recognised that its proposals could reduce the money available to political parties and also recommended that the existing scheme of state aid (Short money)[8] to opposition political parties in parliament[9] to assist them in carry out their parliamentary duties, should be reviewed with a view to substantially increasing the sums made available. The payment of Short money is governed by resolution of the House; in May 1999 the House agreed to increase the overall sum payable to a maximum of £5,012,182; a 270 per cent increase. It also altered the basis upon which payment was made; there is some concern that the use to which this money can be put, as the term "parliament business", is unclear.[9]

The Registration of Political Parties

10–041 Part II of the PPER Act 2000 re-enacts with modifications the Registration of Political Parties Act 1998. Section 22 requires political parties who wish to nominate candidates for a "relevant election"[10] to be registered with the Electoral Commission.[11] To register, a political party has to submit an application to the Commission specifying *inter alia*[12] the party's registered name and, if wished, up to three emblems to be used by the party on ballot papers. An application may be refused where, for example, the name (or emblem) is the same as that of a party already registered or would be likely to cause confusion with a party already registered (sections 28(4) and 29(2)). The requirement to register names and emblems was a response to a decision of an Election Court

[6] s.52(2)(b). Neill had suggested over £50. To avoid donors using multiple small donations to avoid s.50, s.68 requires a donor who makes small donations totalling more than £5,000 in a year, to report this to the Commission; a failure to do so is an offence.

[7] *i.e.* those already registered under the 1998 Act.

[8] Introduced into the House of Commons in 1975 and named after the then Leader of the House; introduced into the House of Lords in 1996, and known there as "Cranborne" money.

[9] See H.C. 293 (2000–2001), paras 40–53.

[10] *viz*: elections to Westminster; the European and Scottish Parliaments; the Welsh and Northern Irish Assemblies; local government elections (s.22(5)).

[11] Special provision is made for Independent candidates and the Speaker seeking re-election (s.22(3)).

[12] See sched. 4 PPER Act.

that the nomination and ballot papers of a candidate calling himself a "Literal Democrat" were valid.[13] The PPER Act imposes controls on the income and expenditure of political parties and in consequence the new rules on registration are more detailed than before. Each registered party has to have a registered leader, nominating officer and treasurer (section 24): the latter officer is responsible for ensuring that the party concerned complies with the statutory controls on income and expenditure found in Parts III and IV of the Act. A party will not be registered unless the Electoral Commission approves its scheme setting out arrangements regulating the financial affairs of the party (section 26). The Electoral Commission maintains two registers: a Great Britain register and a Northern Ireland register.

The Electoral Commission

10–042 Electoral law and administration had become increasingly complicated. The number of elected bodies had increased as had the type of voting system and the use being made of referendums. Another change in the last thirty years was in the nature and practice of election campaigning: there will continue to be changes with the use of electronic media. There was increasing support from academics,[14] and both the Neill Committee[15] and the Jenkins Commission[16] for the establishment of an independent Electoral Commission to oversee various aspects of the regulation of elections and political parties. Part I of the PPER Act provides for the appointment of an Electoral Commission for the United Kingdom. This is established as a body corporate, independent of government and accountable to Parliament, its members are appointed by the Queen, but with the agreement of the Speaker of the House of Commons and after consultation with the leaders of the parties represented in the Commons (section 3).

10–043 The general functions of the Electoral Commission are: to publish reports on all elections and referendums in the United Kingdom (section 5); to take over from the Home Office the practice of reviewing matters relating to elections etc including for, e.g. boundary changes and the registration of political parties (section 6); the right to be consulted by the Home Secretary before the exercise of certain delegated powers to change aspects of electoral law (section 7); the power to recommend to the Home Secretary that he should exercise certain functions (section 8); to be involved in decisions to establish and test pilot schemes for local elections, as provided by section 10 of the RPA 2000 (section 9); to provide advise and assistance to registration and returning officers with respect to their statutory functions (section 10); to promote public awareness about the electoral systems and the systems of national and local government and the E.U. institutions (section 13). The Electoral Commission is also responsible for maintaining registers of political parties, recognised third parties,[17] permitted

[13] *Sanders v. Chichester, The Times*, December 2, (1994).

[14] See David Butler *The Case for an Electoral Commission—Keeping Election Law Up-to-Date*. (Hansard Society, 1998); The Constitution Unit, *(Establishing an Electoral Commission* 1997); Robert Blackburn *The Electoral System in Britain*, (1995).

[15] Cm. 4057, Chap. 11.

[16] Set up to recommend an alternative voting system for the House of Commons, Cm. 4090 (1998). The Home Affairs Select Committee H.C. 768 (1997–98), also supported the establishment of an Electoral Commission

[17] See *post* para. 10–054.

participants in a referendum,[18] and those making political donations.[19] Broadcasters are required to have regard to the Commission's views on party political broadcasts before making rules on such broadcasts (section 11).

The Commission is to establish Boundary Committees for England, Scotland, Wales and Northern Ireland, and transfer to them the functions of the existing Boundary Commissions.[20] The Commission eventually will take over certain of the functions previously exercised by the Boundary Commissions (sections 14–17 and Schedule 3). This is unlikely to happen before 2005. The functions of the Local Government Commission for England—the body responsible for reviewing local electoral boundaries—should be transferred to the Electoral Commission by 2002 (section 18).[21] The Electoral Commission was established in October 2000.

Constituencies and boundaries

10–044 Four permanent and independent Boundary Commissions for England, Scotland, Wales and Northern Ireland were set up in 1944. By the Parliamentary Constituencies Act 1986[22] the Commissions were to keep under review the representation in the House of Commons[23] of the part of the United Kingdom with which they are concerned and to submit reports to the Home Secretary as to the redistribution of seats at intervals of not less than eight or more than twelve years.[24] The criteria to be applied as far as practicable include numerical equality of voters between constituencies, respect for the boundaries of natural local communities, the distance to be travelled between parts of a single constituency, and the balance between the several parts of the United Kingdom. The number of constituencies allotted is not substantially greater or less than 613 for Great Britain (including at least 71 for Scotland and 35 for Wales) and 17 for Northern Ireland. The number is 659 at present. Parliamentary constituencies are still divided into county and district constituencies. Every constituency is to return a single member. The electorate of each constituency is to be as near as practicable to its "electoral quota," which is about 60,000 at present; but Scotland and Wales, containing large rural areas, are over-represented. There is provision in the Scotland Act 1998 for a future reduction in the number of Scottish seats in the House of Commons.

Boundary Commission reports are to be laid before Parliament by the Secretary of State as soon as may be, together with a draft Order in Council giving effect (with or without modifications) to their recommendation. If the draft Order is approved by resolution of each House, the Secretary of State must submit it to Her Majesty in Council, and the Order will take effect on the dissolution of

[18] See *post* para. 10–063.

[19] See *post* para. 10–039.

[20] This was not one of the Neil's Committee's recommendations, it thought that to give it this responsibility would overload the Commission.

[21] Provision is also made for the Scottish Ministers (s.19) and the National Assembly for Wales (s.20) to transfer the functions of the relevant local government commissions to the Electoral Commission.

[22] As amended by the Boundaries Commissioners Act 1992.

[23] The Boundary Commissions are also responsible under devolution legislation for the review of the regional boundaries for the constituencies for the devolved legislatures.

[24] A failure to submit a report within the appropriate time limit will not invalidate the report for the purpose of any enactment, s.3(2A) Parliamentary constituencies Act 1986, as amended by the Boundary Commission Act 1992.

Parliament. Section 4 of the Act of 1986 provides that the validity of an Order in Council when made may not be called in question in any legal proceedings.

10–045 Once section 16 of the PPER 2000 is implemented, the functions of the Boundary Commissions will be absorbed by the Electoral Commission, which can require the relevant Boundary Committee[25] to carry out a review and submit it to the Commission. The Electoral Commission will make recommendations to Parliament based on those reviews; it will no longer be possible for the Secretary of State to modify recommendations on boundary reviews; he is required to lay before Parliament the draft of an Order in Council giving effect to the Commission's recommendations.[26] These reductions in the powers of the Secretary of State should be seen in the context of cases where Ministers have either attempted to avoid implementing Boundary Commission reports,[27] or attempted to prevent a report being submitted to the Home Secretary.[28]

IV The Election Campaign

Conduct of elections

10–046 The conduct of elections is governed mainly by the Representation of the People Acts 1983 and 1985, and the Political Parties, Elections and Referendums Act 2000. The latter Act makes extensive and fundamental changes to the conduct of elections and regulates aspects of the campaign that had not previously been regulated.

Candidates[29]

10–047 A candidate must submit a nomination paper to the returning officer within the prescribed time between a dissolution of Parliament and polling day. The nomination must be signed by the proposer and seconder, and eight other electors. The nomination paper may only include a description which associates the candidate with a political party where that party has been registered under Part II of the PPER Act 2000; the description has to be authorised by a certificate issued by or on behalf of the registered nominating officer of the party (section 22). To be valid the nomination form must be accompanied by the deposit of £500 which is forfeited if the candidate fails to obtain one twentieth of the votes cast (section 13 of the 1985 Act).

The returning officer may declare that a nomination paper is invalid if it fails to satisfy the rules relating to signatures and deposit, if the nomination paper is in breach of the rules on the registration of political parties, or if the candidate is disqualified by the Representation of the People Act 1981, (*i.e.* is serving a sentence of imprisonment of more than one year, or of an indefinite period).[30] A candidate disqualified from membership of the House of Commons, on any ground other than that contained in the 1981 Act, may be nominated and stand for election. The validity of his election must be subsequently challenged in the

[25] *ante* para. 10–043.
[26] ss. 3(5), 3A and 4 of 1986 Act, as amended by Sched. 3 of the PPER Act 2000.
[27] *R. v. Home Secretary, ex p. McWhirter, The Times*, October 21, 1969, DC.
[28] *R. v. Boundary Commission ex p. Foot* [1983] Q.B. 600.
[29] See s.118 of the 1983 Act as amended by s.135 of the PPER Act which amends the definition of candidate to ensure that it includes sitting M.P.s.
[30] Representation of the People Act 1983, Sched. 1, Pt. II, r. 12.

Election Court,[31] as for example, happened in the case of Viscount Stansgate (Tony Benn)[32] or by way of reference to the Privy Council under the House of Commons Disqualification Act 1975, s.7.

A candidate is required to have an election agent, though he may be his own agent. Stringent limits are set on the permissible amount of election expenses, and the purposes for which they may be incurred.[33] Election expenses must be paid through the election agent, and they must be declared to the returning officer together with bills or receipts and published. The PPER Act introduces a new requirement, that returns to election expenses must include details of donations of £50 or more.[34] Every candidate is entitled for the purpose of holding public meetings to the use of a suitable room in a school within the constituency.[35] **10–048**

Corrupt practices include personation, bribery, treating and undue influence.[36] These were ill-defined offences at common law. Corrupt practices continued after the Reform Act 1832, and a significant improvement only came with the Parliamentary Elections Act 1868 and the Corrupt and Illegal Practices Act 1883.[37]

Illegal practices include false statements as to candidates (1983 Act, s.106); corruptly inducing a person's withdrawal from candidature (1983 Act, s.106); use of unauthorised premises; payment for exhibition of election notices, except to a commercial advertising agent; not printing the name and address of the printer on election publications; employment of paid canvassers; and any other payments contrary to, or in excess of, those allowed by the Acts.[38]

Election Expenses

Introduction

Until the enactment of the PPER Act, the legislation on election expenditure reflected the Corrupt and Illegal Practices Act 1833, which was passed at a time when elections were fought mainly at constituency level and national campaigns were rare. The 1833 Act had set a limit to election expenses, and it, and the Parliamentary Elections Act 1868 virtually eliminated bribery, treating and undue influence. Section 76 of the Representation of the People Act 1983 set stringent limits on the permissable amount of spending by individual candidates and the purposes for which expenditure may be incurred. The items that counted towards election expense were largely the same as those found in the 1833 Act.[39] **10–049**

[31] *post* paras 10–061 to 10–062.

[32] *Re Parliamentary Election for Bristol South East* [1964] 2 Q.B. 257.

[33] *Post* para. 10–049.

[34] s.130 and Sched. 16 of the PPER Act.

[35] Representation of the people Act 1983, s.95. *Webster v. Southwark L.B.C.* [1983] Q.B. 698 (Writ of sequestration to enforce right of National Front candidate).

[36] Representation of the People Act 1983, ss.60, 113–115.

[37] Cornelius O'Leary, *The Elimination of Corrupt Practices in British Elections*, 1868–1911 (1962). In Northern Ireland personation is still regarded as a problem that requires the taking of special measures. By the Election (Northern Ireland) Act 1985, an elector may not vote unless he is able to identify himself by production of one of the documents specified in the Act, *e.g.* a driving licence or passport. See the Second Report from the Northern Ireland Affairs Committee, "*Electoral Malpractice in Northern Ireland*", H.C. 316, (1997–98).

[38] Representation of the People Act 1983, ss 109–112. S.71A was added by s.130 PPER Act, it creates a new offence with respect to the giving of donations to persons other than the candidate or his agent.

[39] As defined by s.118 of the 1983 Act and sched. 3, where for example telegrams counted as an election expense, but mobile telephones were not listed. The PPER Act repeals this part of Sched. 3.

Confusion in the existing law as to what was an election expense was illustrated by *R. v. Jones*[40] where a successful candidate's conviction for falsifying election expenses was quashed; Lord Bingham referred to an "intermediate area, (where) questions of judgment may arise".

As a consequence of the decision in *R. v. Tronoh Mines Ltd.*,[41] general nation-wide advertising was not subject to statutory limits. Here advertisements had been issued by the sugar industry against nationalisation. McNair J. held that the relevant section of the Act of 1949[42] was not intended to prohibit expenditure on advertisements supporting the interests of a particular party generally in all constituencies.[43] The earlier case of *Grieve v. Douglas-Home*[44] also supported the distinction between national and constituency expenditure.

The law by not regulating national expenditure by the political parties failed to take account of the fact that general elections could only be won by extensive expenditure, mainly on advertisements. The Neill Committee in its Fifth report[45] noted that the total national expenditure by the Labour and Conservative parties at the 1997 general election was about £60m., 90 per cent of which was on national expenditure. It proposed widespread changes to the law on constituency and national expenditure on elections; it also proposed that third party expenditure, such as that in *Tronoh Mines*, should be limited and controlled.

Constituency spending

10–050 This is regulated by imposing a financial limit on a candidate's permitted election expenses at constituency level (section 76 of the 1983 Act as amended by section 132 PPER Act), and by defining what is covered by "electoral expenses". The PPER Act introduces new provisions to provide controls on donations to candidates for the purpose of meeting election expenses, breaches of this provision is an illegal practice (section 130 and Schedule 16).[46] The financial limit to election expenses can be varied by the Secretary of State by order to vary the figures to take account of a change in the value of money.[47] The absence of national expenditure by the parties at by-elections results in more constituency spending, which since 1989 has been recognised in higher limits for election expenses in by-elections.[48]

The definition of election expenses has been clarified and expanded by the PPER Act to include any expense incurred by or on behalf of a candidate in respect of the acquisition or use of any property or the provision of any goods, services or facilities for the purpose of a candidate's election. Provision is also made for the calculation of the value of property, services etc. provided free of charge or at a discount (section 134 which inserts new sections 90A, 90B and 90C into the 1983 Act).

[40] [1999] 2 Cr. App. Rep. 253.
[41] [1952] 1 All E.R. 697.
[42] Which for all material purposes is the same as s.75 of the 1983 Act.
[43] *Walker v. UNISON* 1995 S.L.T.
[44] 1965 S.L.T. 186 (Scottish Election Court).
[45] Cm 4057 (1998), Chap. 10.
[46] See *ante* para. 10–048.
[47] In 2001 the amount was set at £5,483 plus a capitation fee for the number of entries in the register of electors, this worked out at an average of about £9,000 per candidate.
[48] In 1997 the figure for by-elections was approximately £36,000 per candidate, s.132 of the PPER Act increases this to £100,000 maximum per candidate.

Third party constituency expenditure

Section 75 of the 1983 Act prohibits unauthorised expenditure,[49] *inter alia*, on account of advertisements or publications "with a view to promoting or procuring the election of a candidate at the parliamentary election in the constituency". The purpose of this section is to ensure equality between candidates by preventing the statutory limits laid down in section 76 being ignored by, for example, supporters of the candidate or pressure groups. Section 75 has also been used to prosecute those who incur expenditure by seeking to discourage voters from voting for particular candidates.[50] **10–051**

National campaign expenditure[51]

The PPER Act introduces for the first time controls on campaign expenditure by political parties. It does this by imposing financial limits on the total campaign expenditure permitted by registered political parties "for election purposes"[52] and by defining what is meant by campaign expenditure. It also imposes accounting and administrative responsibilities on the treasurer of a political party in connection with these rules and restrictions. **10–052**

Schedule 9 provides the total campaign expenditure permitted in a parliamentary general election.[53] The maximum amount a party may spend is based on the number of constituencies contested. An allowance of £30,000 is made for each constituency, up to a maximum in relation to England of £810,000, in relation to Scotland of £120,000 and in relation to Wales of £60,000.[54] Special provisions are made for different totals when the period during which a general election is pending overlaps with an election to the European Parliament or an election to a devolved legislature.

Campaign expenses includes direct expenditure such as party political broadcasts, advertisements, unsolicited materials addressed to electors, the party manifesto, market research, rallies, transport, etc. (schedule 8) and expenditure on benefits in kind—property, services and facilities (section 73). Campaign expenditure is calculated with reference to "the relevant campaign period" which is defined in Schedule 9.[55] With respect to general elections it is a period of 365 days before the date of the poll.[56] Apportionments are allowed to take account of a party's normal running costs in the campaign period. A Code of Practice to assist in identifying and calculating campaign expenditure is provided by the Electoral Commission. **10–053**

[49] That is expenditure in excess of £500 incurred by anyone other than the candidate, his agent or those authorised by the agent, s.75(1)(c)(ii). The sum was increased from £5 to £500 by s.131 of the PPER Act to comply with the decision of the E.C.H.R. in *Bowman v. United Kingdom* (1998) 26 E.H.R.R. 1.

[50] *D.P.P. v. Luft* [1977] A.C. 962; C. Munro, "Elections and Expenditure" [1976] P.L. 300.

[51] Pt V of the PPER Act.

[52] Which is defined by s.73(4) as "promoting or procuring electoral success for the party at any relevant election". It does not apply to expenses incurred with a view to enhancing a particular candidate as these are covered by the 1983 Act.

[53] It also provides for limits on campaign expenditure for elections to the European and Scottish Parliaments, and the Welsh and Northern Irish Assemblies.

[54] No maximum is provided in relation to Northern Ireland.

[55] Sched. 9 includes details of what is a "relevant period" for elections to the European Parliament, the Scottish Parliament, and the Welsh and Northern Irish Assemblies. It also provides guidance for when there are elections to more than one of these bodies at the same time, or close together.

[56] This part of the Act came into force on February 16, 2001; the Government promised that there would be "transitional limits" if a general election was called before February 2002.

The registered Treasurer of a party has responsibilities similar to that of a candidate's agent to ensure that the rules on national campaign expenditure are obeyed: no campaign expenditure can be incurred (section 75), or payment made in respect of such expenditure (section 76) without his authority. Section 82 requires him within four months of the election, to make a return to the Electoral Commission with details of campaign expenditure[57]: this return will be made available for public inspection. A variety of offences are created in relation to a failure to comply with these sections.

Third party campaign expenditure[58]

10–054 The PPER Act applies restriction to national election expenditure[59] by individuals and organisations other than by registered political parties. These controls have a similar purpose to those found in section 75 of the 1983 Act with respect to constituency expenditure by third parties.[60] This part of the Act applies to "controlled expenditure" by third parties, that is expenses in connection with election materials available to the public at large designed to promote or procure the election of a particular registered party or a particular category of candidate. The controls imposed also apply to expenditure in kind, that is property, goods and services (sections 85–87).

The Act makes different provisions for two types of third party: recognised third parties, and those that are not recognised. To become a recognised third party an individual, a registered company or an unincorporated association has to submit a notification to the Electoral Commission (section 88)[61]: this gives such parties higher limits for controlled expenditure, but increased responsibilities—similar to those imposed on political parties—to account for expenditure to the Commission (section 94 and schedules 10 and 11).[62] Third parties who are not recognised commit an offence if, during the regulated period before an election, they incur controlled expenditure in excess of £10,000 for England, and £5,000 for each of Scotland, Wales and Northern Ireland (section 94).

The Media and elections

10–055 The statutory restrictions on election expenses in individual constituencies do not apply to the publication of any matter relating to the election in newspapers or other periodicals or in broadcasts made by the BBC or any of the other specified broadcasters.[63] Section 93 of the 1983 Act had in effect allowed a candidate who did not wish to take part in a broadcast about a constituency pending a parliamentary or local election to prevent such a broadcast going ahead without his participation.[64] This has been repealed by section 144 of the PPER Act and replaced with a section requiring each broadcasting authority to adopt a code of practice on the broadcasting of local items during an election period. It is an illegal practice to broadcast from outside the United Kingdom in connection

[57] If such expenditure exceeds £250,000, there must be a report on the return by a qualified auditor (s.81).
[58] Pt VI PPER Act.
[59] The controls also apply to elections to the European and Scottish Parliaments, and the Welsh and Northern Irish Assemblies.
[60] *ante* para. 10–051.
[61] The Electoral Commission keeps a register of all third party notifications made to it under s.88.
[62] Donations to recognised third parties are controlled by s.95 and sched. 11.
[63] Representation of the People Act 1983, s.75(1)(c)(i), as amended by the Broadcasting Act 1990, 1996. Pts I and III of the 1990 Act, as amended by the 1996 Act, list those licensed to broadcast.
[64] See *McAliskey v. BBC* [1980] N.I. 44; *Marshall v. BBC* [1979] 1 W.L.R. 1071.

with a parliamentary or local election otherwise than as arranged by the BBC or one of the other licensed broadcasters.[65]

10–056 There is a statutory duty on the Independent Television Commission (ITC) to ensure that news programmes presented by licensed television services are accurate and impartial, and that due impartiality is preserved in political programmes. Rules on party political broadcasts have been drawn up by the relevant broadcasting authority.[66] The BBC accepts similar standards and makes provision for political broadcasts as part of its role as a public service broadcaster, although it has no statutory obligation to do so. At the time of elections in particular parties are sensitive to the possibility of partiality in programmes. The Court of Session in *Scottish National Party v. Scottish Television plc*[67] indicated that in deciding such issues impartiality had to be considered in the light of the service as a whole over a range of programmes and over a period of time. The courts would only interfere with the discretion of the broadcasters if the decision was unlawful.[68] Political parties, candidates and interest groups cannot advertise politically on radio or television, or buy air time for political purposes.[69] It is possible that this ban on political advertising could be regarded as a breach of Article 10(1) of the E.C.H.R., unless it can be justified under Article 10(2).[70] There are no such restrictions on press or poster advertising. Broadcasting authorities allocate free air-time to political parties for party political and election broadcasts.[71] For the majority of broadcasters this is a voluntary undertaking.[72] Up to the 1997 general election the allocation of broadcasting time between the political parties was undertaken by a non-statutory body, the Committee on Party Political Broadcasting,[73] which mediated between the parties and the broadcasters. In the 1997 election all parties which fielded 50 or more candidates were given air-time.[74] The BBC and ITC decided in June 1997 that in future they would deal directly with the political parties and not through the Committee on Party Broadcasting. The broadcasting authorities indicated a desire to reform party political broadcasting; there was particular concern that single issue parties

[65] s.92 as amended by the Broadcasting Act 1990.

[66] Broadcasting Act 1990 s.6(i)(b)(c), for radio see s.90(i)(b).

[67] 1997 G.W.D. 20-932. Outer House.

[68] *cf. Huston v. BBC* 1995 S.L.T. 1305 where the BBC in Scotland was barred from transmitting a long interview with the Prime Minister three days before local elections; and *Wilson v. Independent Broadcasting Authority* 1979 S.C. 351 where before the 1979 devolution referendum a series of party political broadcasts, three in favour and one against devolution, were barred.

[69] Broadcasting Act 1990, s.8(2) applies to television advertisements, s.92(2)(a)(i) to radio broadcasts. In *R. v. Radio Authority ex p. Bull* [1997] 2 All E.R. 561, the Court of Appeal held that decision of the Radio Authority to reject advertisements from Amnesty International was not unreasonable since its objects were "mainly political".

[70] *i.e.* the restriction would have to be shown to pursue a legitimate aim which is necessary in a democratic society. *cf. X and the Association of Z v. United Kingdom* a decision of the Commission in 1971, and the decision of the European Court of Human Rights in *Groppera Radio AG v. Switzerland* Series A vol. 173 (1990).

[71] Only those political parties registered under the Political Parties Registration Act 1998, are eligible for, but not entitled to, such broadcasts (s.14).

[72] Only Channels 3, 4, and 5 are required to do so, Broadcasting Act 1990, s.36.

[73] The committee consisted of officials from the broadcasting authorities and representatives of the various parties.

[74] The reasonableness of the allocation criteria was unsuccessfully challenged in *R. v. BBC and Independent Television Commission ex p. Referendum Party* [1997] E.M.L.S. 605, (1997) 9 Admin. L.R. 553.

would field candidates just to gain access to national television.[75] The broadcasters have agreed that in future the threshold for a party election broadcast would be that at least one sixth of all seats had to be contested.[76] The PPER Act s.11 requires broadcasters to consider any views put forward by the Electoral Commission before making any rules or determining a policy with respect to party political broadcasts. Party political broadcasting by any party not registered under the PPER Act is prohibited (section 37).

The ballot

10–057 The Parliamentary and Municipal Elections Act 1872, commonly known as the "Ballot Act," made the vitally important innovation of substituting a secret ballot (by placing a cross on a ballot paper in a polling booth) for open election at the hustings. These provisions are now contained in the Representation of the People Act 1983. Each voter's ballot paper has a number printed on the back, which number is also printed on the counterfoil as it may be necessary in later judicial proceedings to discover whether there has been personation or plural voting; but such strict precautions as are humanly possible are made to ensure that no unauthorised person can ascertain, by a comparison of the ballot paper with the counterfoil, for which candidate a given elector voted.[77]

A description of the candidate, not exceeding six words, is allowed if desired in the nomination paper and on the ballot paper to enable a candidate's party to be shown. The candidate's party emblem may also be included.[78]

The voting system[79]

10–058 The system of voting at parliamentary elections in the United Kingdom is commonly called "first past the post" (F.P.T.P.), whereby voting takes place in single-member constituencies and the candidate with the highest number of votes is declared elected. But,

(i) the successful candidate is often elected with fewer than 50 per cent of the votes cast;

(ii) the representation of the parties in the House of Commons does not accurately reflect their strength among the electorate, the party with most votes usually getting a disproportionably large number of seats, while small parties (*e.g.* the Liberals Democrats) are under-represented[80]; and

(iii) the result of general election usually depends on the results in a small number of marginal constituencies.

[75] See the Consultation Paper on the Reform of Party Political Broadcasting, 1998.

[76] For a general election this would be 110 candidates. Special arrangements apply where a broadcaster can separate transmission in England, Scotland and Wales, and a party meets the threshold for one part of Great Britain only. Northern Ireland has separate arrangements.

[77] It is arguable that this procedure is in breach of the requirement of a secret ballot as provided by Protocol 1, Art. 3, E.C.H.R..

[78] In both cases this is only permissable if the party and emblem have been registered with the Electoral Commission.

[79] See Enid Lakeman, *Twelve Democracies: Electoral Systems in the European Community*, (4th ed. 1991).

[80] In the 1997 General Election the Labour Party obtained 44.4% of the votes polled and 64.4% of the seats. The Liberal Democrats obtained 17.2% of the votes and 7.0% of the seats. The figures were similar in the 2001 election.

The British system is also adopted by India, the United States, Canada, and until recently, New Zealand.[81] There are a variety of proportional representation systems in European countries, many of which use a Regional List System (RLS) with multi-member constituencies. Article 3 of the First Protocol of the E.C.H.R. which requires free elections under conditions "which will ensure the free expression of the opinion of the people", does not require any particular voting system. A claim by the Liberal Party that the "first past the post" system used at United Kingdom parliamentary elections was unfair was rejected by the European Commission on Human Rights.[82]

10–059 For elections other than to the House of Commons, there are now a variety of different voting systems, most of which have been introduced since the 1997 election.[83] Elections to European Parliament are by R.L.S. based on multi-member electoral regions.[84] The parties determine the order of candidates on the list,[85] and each voter has one vote which may be cast for a party list or an independent candidate. Seats are allocated according to a formula which ensures some proportionality between the total votes cast for a party in an electoral region and the seats won.[86] The compilation of party lists for European and other elections which use this method of selection has required the parties to re-examine their selection procedure for candidates. It is unclear whether the adoption of a system of selection that positively discriminates in favour of women is in breach of the Sex Discrimination Act 1975 or the Equal Pay Directive.[87]

Elections to the Scottish Parliament and the Welsh National Assembly are by the Additional Member System (A.M.S.), a combination of F.P.T.P. and R.L.S.[88] The Supplemental Vote system, which allows voters two votes was used for elections for the Mayor of London, while elections to the Greater London Authority was by F.P.T.P. for constituency members and a constituency list using the A.M.S. system.[89] Finally, in Northern Ireland the Single Transferable Vote, which requires multi-member constituencies, is used for elections to the Assembly,[90] the European Parliament and for local government elections. A characteristic of several of these systems is that voters have a choice between parties rather than between candidates, which raises questions as to independence and local

[81] In 1996 New Zealand held its first elections under a Mixed Member Proportional (M.M.P.) system. Under this system F.P.T.P. is used for constituency seats, the remainder are settled by the M.M.P. system, which is a variation of the Party List System.

[82] *Liberal Party v. United Kingdom* (1980) 4 E.H.R.R. 106.

[83] Northern Ireland has had the Single Transferable Vote (STV) system for a variety of elections since 1972.

[84] The European Parliamentary Elections Act 1999, for the legislative history of this Act see *ante* para. 9–026. Scotland and Wales each form a single electoral region, with Scotland having eight M.E.P.s and Wales five. England is divided into nine regions having between four and 11 M.E.P.s. Northern Ireland is one region with three M.E.P.s, but using the STV system of voting.

[85] The list is described as "closed" as it cannot be altered by voters.

[86] The d'Hondt formula, which is said to favour larger parties. This formula is also to be used to calculate the additional seats for the Scottish Parliament and the Welsh National Assembly.

[87] Although an industrial tribunal in *Jepson and Dyas-Elliot v. The Labour Party and others* [1996] I.R.L.R. 116 decided that woman only shortlists were in breach of the 1975 Act, there remains doubt as to whether the 1975 Act applies to the selection of Parliamentary candidates. See Howard Davis, "All-Women Shortlists in the Labour Party", [1995] P.L. 207. The 2001 Queen's Speech promised legislation to allow political parties to make positive moves to increase the representation of women in public life.

[88] See *ante* Chap. 5.

[89] Greater London Authority Act 1999

[90] *Ante* Chap. 5.

commitment of elected members who owe their election to their position on the party list.

10–060 It is possible that there could be another type of voting system in the United Kingdom. Further to its 1997 manifesto promise, the Government set up the Jenkins Commission as an independent commission to recommend an alternative voting system for the House of Commons.[91] In its report[92] it reviewed several alternative systems, as well as the variety of voting systems now in existence in the United Kingdom. As an alternative to the F.P.T.P. system it proposed a new variation on proportional representation a: "two-vote mixed system, which can be described as either limited A.M.S. or A.V. Top-up". Under this system each elector would have two votes. One vote would be to elect, by A.V., a M.P. for an individual constituencies; 80 to 85 per cent of M.P.s would be elected in this way. The second vote would be used to vote for either a party or a candidate.[93] For this second vote the United Kingdom would be divided into top-up areas—"preserved" counties and equivalently sized metropolitan districts in England and the regions used for the additional members for the Scottish Parliament and the Welsh Assembly. A referendum may be held to determine whether to accept these proposals, or whether to continue with the F.P.T.F. scheme.

Disputed elections

10–061 The King and Council originally settled election disputes, but as early as the reign of Richard II the Commons began to remonstrate against this practice. James I in the proclamation summoning his first Parliament specifically forbad the choice of bankrupts and outlaws. Sir Francis Goodwin was elected (against his will) for Buckinghamshire, but the Clerk of the Crown refused to receive the return on the ground that Goodwin was an outlaw, and Sir John Fortescue, a Privy Councillor, was elected in his place. The case of *Goodwin v. Fortescue* (1604)[94] followed, the real struggle being in the background between the Commons and the King. The Commons disputed Goodwin's outlawry, and contended that in any event outlawry did not disqualify him. The King and the Commons consented to submit the dispute to the judges, but no such reference took place. Finally, James admitted the right of the Commons to judge disputed election returns.[95] The Commons' privilege was confirmed by the Court of Exchequer Chamber and the House of Lords during the protracted litigation in *Barnardiston v. Soame* (1674–1689).[96]

After *Goodwin v. Fortescue* disputed elections were tried first for a time by Select Committees of the House, then by a committee of the whole House, the decisions tending to be made on party lines, and from 1770 by Select Committees under the provisions of various statutes. Eventually the Parliamentary Elections Act 1868, passed after the very corrupt general election of 1865, handed jurisdiction in disputed elections over to the Court of Commons Pleas, proper safeguards being added to secure to the Commons their privileges. By the Parliamentary

[91] Previous reports on the electoral system include the Royal Commission on Electoral Systems 1910, Cd 5136, and Speaker's Conferences in 1944, Cmd 6534, and 1968, Cmnd 3550.
[92] *Independent Commission on the Voting System*, Cm 4090, 1998.
[93] *i.e.* it would be an open not a closed list system.
[94] 2 St.Tr. 91.
[95] The Commons later claimed the privilege of settling the rights of electors, and this gave rise to the celebrated cases of *Ashby v. White* (1703) 2 Ld. Raym. 938 and *Paty's Case* (1704) 2 Ld. Raym. 1105.
[96] (1674) 6 St.Tr. 1063, 1092; (1689) 6 St.Tr. 1119.

Elections and Corrupt Practices Act 1879 this jurisdiction was, with similar safeguards, committed to two judges of the High Court.

Election court

These provisions are now re-enacted in Part III of the Representation of the People Act 1983. An election petition[97] may be presented by: **10–062**

(a) a person who voted or had the right to vote;

(b) a person claiming to have had the right to be elected or returned; or

(c) a person alleging that he was a candidate.[98]

The election court consists, in England, of two judges of the Queen's Bench Division, acting without a jury. They have the powers of the High Court, and may sit in the constituency for which the election was held. Discovery and interrogatories are allowed. If the person elected is found to be disqualified, and if the electors knew the facts on which his disqualification was based, the election court may declare the candidate with the next highest number of votes to have been elected.[99] If the circumstances warrant, an election may simply be held to be void.[1]

Appeal lies on a question of law with the leave of the High Court to the Court of Appeal, whose decision is final, the Commons not being willing that such questions should be decided by the House of Lords.[2] The election court certifies its finding to the Speaker. Section 144 of the 1983 Act provides that the House shall order the certificate and report to be entered in their Journals, and shall give the necessary direction for confirming or altering the return, or for issuing a writ for a new election, as the case may be.[3]

Referendums[4]

The use of a referendum has become a more frequent feature of the British political system: from 1973–1998 there were eight referendums in the United Kingdom to which the new provisions would have applied had they been in force at the time. The Neil Committee recommended that referendums should be subject to statutory controls, and supervised by an Electoral Commission.[5] The PPER Act does not provide a statutory authority for the calling of a referendum: **10–063**

[97] Such petitions were common in Victorian times, but are rare today. A recent example of a successful petition was in respect of the election for Winchester in 1997. Here the Election Court held that there had been a breach of the Election Rules and declared the election void.

[98] *Cf.* application to the Judicial Committee of the Privy Council for a declaration under the House of Commons Disqualification Act 1975, s.7; *ante*, para. 10–015.

[99] See *Re Parliamentary Election for Bristol South-East* [1964] 2 Q.B. 247.

[1] It is uncertain whether it is possible to seek judicial review of a decision by an Election court *cf. R. v. Election Court ex p. Sheppard* [1975] 2 All E.R. 725 and *R. v. Cripps ex p. Muldoon* [1984] Q.B. 68.

[2] Corresponding provisions in the cases of Scotland and Northern Ireland confer jurisdiction on two judges of the Court of Session and the High Court or the Court of Appeal of Northern Ireland.

[3] The Commons have the privilege, however, of deciding whether a person who has been duly elected shall be allowed to sit in the House, *post*, para. 13–017.

[4] Pt VII of the PPER Act.

[5] In 1996, the Naire Commission on the Conduct of Referendums (Home Office) recommended the creation of an independent commission to regulate referendums.

primary legislation will be required on each occasion.[6] The Electoral Commission is to consider the proposed wording of a referendum question and publish a statement on the intelligibility of the question asked (section 104). Part VII and Schedule 13 introduce similar types of regulation with respect to "permitted participants" (section 105) in a referendum campaign as apply to political parties in an election campaign: controls on donations, expenditure, making of returns, etc. It also provides that a permitted participant may apply to the Commission to be designated as an organisation to whom financial assistance is available from the Commission (sections 108–110). This followed the Neil Committee recommendations that there should be core funding for "Yes" and "No" campaigns in each referendum. Section 125 restricts central and local government from publishing or distributing promotional materials in relation to a referendum for 28 days before the date of the poll. Referendum campaign broadcasting is limited to those organisations designated by the Commission under section 108.

[6] The only standing statutory authority for the holding of a referendum is found in Sched. 1 of the Northern Ireland Act 1998.

CHAPTER 11

PARLIAMENTARY PROCEDURE[1]

1. THE NATURE OF PARLIAMENTARY PROCEDURE

The functions of Members of Parliament are not only, or indeed primarily, legislation (including taxation) but cover the discussion of policy and current affairs, and—especially in the Commons—the supervision of national finance and scrutiny of the administration. This chapter deals with parliamentary procedure generally, and the ordinary legislative process; while the next chapter covers national finance and scrutiny of the administration. The emphasis, for obvious reasons, is on the House of Commons. **11–001**

Content

The content of parliamentary procedure may be divided into the following parts: **11–002**

1. *Forms of proceedings, e.g.* the various stages in the passing of a Bill the process of debate by motion, question and division; the methods by which the Commons control the administration in supply, questions to Ministers and motions for the adjournment.
2. *Machinery*, including the officers of each House (especially the Speaker of the Commons), committees and "Whips."
3. *Rules of procedure in the strict sense, i.e.* directions which govern the working of the forms of proceedings and the machinery of each House; *e.g.* the rule that a public Bill may be presented without an Order of the House; the rule that the principle of a Bill is decided on the second reading; and the rules regulating the powers and duties of the Speaker in the conduct of debate and the maintenance of order.
4. *Parliamentary conventions, i.e.* rules not enforced by the Chair but by the public opinion of the House; for example, the rule that the Government will reply to reports made by Select Committees which touch on the actions of a government department.

Rules of procedure vary considerably in importance, that is to say, in the extent to which they are essential or useful to the exercise of their functions by each House. At one end of the scale is the Standing Order of the House of Commons that expenditure must be proposed by the Crown, which is of great constitutional

[1] See Erskine May, *Parliamentary Practice* (22nd ed., 1997). See also K. Bradshaw and D. Pring, *Parliament and Congress* (1972); Bernard Crick, *The Reform of Parliament* (2nd ed., 1968); J.A.G. Griffith, *Parliamentary Scrutiny of Government Bills* (1974); Walkland and Ryle, *The Commons Today* (1981); Chap. 4, *Parliament in the 1980s* (Philip Norton ed., 1985); P. Riddell *Parliament under Pressure (2000)*; Griffith and Ryle, *Parliament, Functions Practice and Procedure* (2nd. ed. Blackburn and Kenyon ed., 2000). Report of the Hansard Society Commission on Parliamentary Scrutiny, *The Challenge for Parliament* (2001).

importance; at the other end come rules, such as that the "Ayes" divide to the right and the "Noes" to the left, where it does not matter what the rule is so long as there is one.

Historical development

11–003 The forms and rules show traces of their origin in various stages of historical development. So far as the development of the Commons procedure is concerned, Lord Campion (a former Clerk of the House of Commons) suggested the following periods:

(i) From the establishment of Parliament to the beginning of the Commons Journals, during which period constitutional forms came to be settled (c. 1300–1547).

(ii) The period of "ancient usage," from the beginning of the Journals to the Restoration (1547–1660).

(iii) The period of later "parliamentary practice," from the Restoration to the great Reform Act (1660–1832).

(iv) The period of modern Standing Orders (from 1833 to the present day).

Sources of parliamentary procedure

11–004 The sources of parliamentary procedure may be classified as follows:

(i) *Practice, i.e.* the unwritten part of procedure;

(ii) *Standing Orders*; also Sessional Orders and ad hoc resolutions;

(iii) *Rulings from the Chair, i.e.* by the Speaker or Chairman of Committees;

(iv) *Acts of Parliament* regulating certain aspects of the procedure of both Houses.

The greater part of the procedure of the House of Commons is unwritten and has to be collected from the Journal[2] (made from the Votes and Proceedings[3]), reports of debates and personal experience. Standing Orders are merely appendant to the unwritten part, which they presuppose.[4] The well-known rules that a Bill is "read" three times, and that certain kinds of amendments may be moved on the second or third reading, are not contained in Standing Orders but are part of unwritten practice. In ascertaining what is the practice of the House reliance is placed on precedents as recorded in the Journals. The practice before 1832 was evolved mainly in order to facilitate and encourage debate.

Standing Orders are passed in the ordinary way by resolution of the House; but it is expressly provided that they shall last beyond the end of the session, otherwise they would be terminated by prorogation. The main purpose of Standing Orders relating to public business is to enable more business to be done by

[2] The permanent official record of the proceedings of the House, compiled from the minute books of the Clerks at the table, and published annually.

[3] The daily record of the proceedings of the House.

[4] The Standing Orders referred to here, and elsewhere, are those of December 17, 1998, H.C. 7 (1998–99).

speeding up debate.[5] Sessional Orders are passed for the session only, and ad hoc Orders or resolutions for the particular occasion; the former are often experimental and both are used to regulate the order of business. A Standing Order or a Sessional Order can be set aside by an Order of the same kind, and either can be suspended by an ad hoc Order. An express Order of any kind overrides a rule of practice.

11–005 The function of the Speaker or Chairman in giving rulings is mainly interpretative and declaratory, and involves the application of practice and Standing Orders in particular circumstances as they arise.

Acts of Parliament modifying parliamentary procedure are few. They are passed in order to bind both Houses, so that one House cannot change the rule without the other. Some of the more important examples are the Exchequer and Audit Departments Act 1866, the Parliamentary Elections Act 1868,[6] the Parliament Acts 1911 and 1949, the Provisional Collection of Taxes Act 1968, the National Audit Act 1983, the Deregulation and Contracting Out Act 1994 and the Human Rights Act 1998. Acts of Parliament, of course, have overriding authority over the Orders of both Houses or either of them.

The House of Lords procedure contains a larger proportion of Standing Orders. Their purpose is rather to declare practice than to accelerate business. About a quarter of the Lords Standing Orders relate to privileges.

The rules relating to private business (*i.e.* private Bills) are mainly contained in a separate set of Standing Orders of each House.

II. Procedure in the Commons

Order of business

11–006 The working arrangements of the House have been altered in recent years in an attempt to make parliament more efficient and more effective.[7] The principle changes[8] have been: an increase in morning sittings[9]; an attempt to reduce sittings after 10.00p.m.[10]; a reduction in Friday sittings to enable M.P.s to return to their constituencies[11]; and the introduction, initially as an experiment, of additional sittings in Westminister Hall on the days when the House is sitting.[12]

[5] See Ilbert, *Parliament* (3rd ed., Carr), pp. 117–118. *Cf.* Lord Chorley, "Bringing the Legislative Process into Contempt" [1968] P.L. 52, 54: "the caterpillar speed of the legislative process is really one of its outstanding values."

[6] Now the Representation of the People Act 1983, Pt. III.

[7] The 2001 Hansard Society Report *op.cit.* note 1, suggested that recent reforms had made Parliament more efficient, but not more effective (at 1.52).

[8] Implementing recommendations from the Select Committee, *Sittings of the House* H.C. 20 (1991–92), (the Jopling Report), and aspects of the First Report from the Select Committee on Modernisation of the House of Commons, *The Parliamentary Calendar*, H.C. 60, (1998–99).

[9] For several years the House sat on a Wednesday morning at 9.30, and after a short adjournment at 2 p.m., met again at 2.30. This morning sitting was removed as part of the House's experiment with Westminister Hall sittings introduced in 1999, see *post* para. 11–017. As an experiment agreed in 1998, it meets on Thursday from 11.30 a.m. to 7.30 p.m.

[10] Since 1995 there has been much less use of S.O. No. 15, which allows a Minister to move to suspend the "ten o'clock rule" for any business.

[11] Ten Fridays are designated as "constituency Fridays", in addition three are dropped when the House rises on a Thursday for a recess.

[12] The House accepted the proposal for Westminister Hall sittings in May 1999, following a report from the Modernisation Committee, Second Report, *Sittings of the House in Westminister Hall* H.C. 194 (1998–99).

The usual order of business on Monday, Tuesday, Thursday[13] and Wednesday after 2.30p.m. is:

(1) prayers;

(2) business taken immediately after prayers, *e.g.* motions for new writs, and private business;

(3) questions for oral answer, and private notice questions[14];

(4) business taken after questions, *e.g.* ministerial statements, proposals to move the adjournment under S.O. No. 24 (urgency motions), consideration of Lords' amendments, raising matters of privilege;

(5) business taken "at the commencement of public business," *e.g.* presentation (first reading) of public Bills, and government motions regulating the business of the House;

(6) consideration of report of Committee of Standards and Privileges;

(7) public business, *i.e.* mainly "Orders of the Day" (including the stages of public Bills and Committees of the whole House) and notices of motion;

(8) certain business motions by Ministers;

(9) business exempted from the 10-o'clock rule (including Finance, Consolidated Fund, and Appropriation Bills);

(10) presentation of public petition[15];

(11) adjournment motions.

If the House has not previously adjourned, then for ordinary business it sits until half an hour after the motion for the adjournment has been proposed: 10.00pm on Monday, Tuesday and Wednesday, 7.00pm on Thursday and 2.30pm on Friday. For business exempted from the normal adjournment rule it will sit until the conclusion of exempted business. Sittings on Saturday are rare,[16] and on Sunday are confined to emergencies.

Rules of debate

11–007 The rules of debate that have been developed over the years are designed to ensure orderly conduct, the dignity of the House and the right of a minority to be heard. A debate is always on a motion, *e.g.* "that the Bill be read a second time"; and every matter is determined on a question put by the Speaker and resolved by the House in the affirmative or negative. A member who wishes to speak must rise in his place and "catch the Speaker's eye." The House leaves to the Speaker a broad discretion over whom to call in a debate, generally this means calling alternative members from either side of the House. The House agreed in 1998

[13] Some items are omitted on Thursdays and Fridays.

[14] See *post*, para. 12–022, Chap. 11

[15] It is an ancient liberty of the citizen to petition Parliament to remedy some grievance: *Chaffers v. Goldsmid* [1894] 1 Q.B. 186. However, few petitions are presented nowadays and they are no longer debated in the House, so that they have lost their importance. Their place may be said to have been taken by members' questions.

[16] The House met on a Saturday during the Falklands conflict, see H.C. Deb., Vol. 21, col. 633 (April 3, 1982).

that the Speaker no longer need observer the former practice whereby Privy Councillors[17] had priority in being called. A Member may only speak once in the House to the same question, except to raise points of order or to correct misrepresentations of fact. All remarks must be addressed to the Chair.[18]

There are rules to ensure relevancy and to avoid repetition. The House has agreed that in certain circumstances the Speaker has a discretion to limit back-bench speakers to a time limit, usually between eight and fifteen minutes (excluding interventions) either for an entire debate or between certain times during a debate.[19] This marks a change in the rules of the House and is designed to maximise the number of Members who may speak in a debate. The House has its own rules on the content of speeches. For example, no reference may be made to legal actions that fall under the House's *sub judice* convention,[20] nor may the name of the Queen be mentioned either disrespectfully or in order to influence the House.[21] No treasonable or seditious words are allowed, nor may a person speak to obstruct business. Members must not be referred to by name, but as "the Hon Member for Camford," etc.[22] nor may any offensive expressions against Members be used or personal charges made. If a Member refuses to withdraw an objectionable remark, he may be suspended. No allusion may be made to a debate of the same session on any question not at the time under discussion. A Member may refer to notes but must not read his speech. It is a rule of the House that a Member who has a relevant[23] pecuniary interest or benefit, whether direct or indirect, in a question must declare his interest if he speaks, and must not vote on it.[24] This rule applies to all proceedings of the House and Select Committees including communications between Members, and with Ministers or civil servants; tabling any written notice such as the asking of questions; Early Day Motions and introducing a "ten-minute rule bill".

Urgency motions

Under Standing Order No. 24 a Member who has given proper notice to the Speaker may, at the commencement of public business, propose in an application lasting not more than three minutes, to move the adjournment of the House on "a specified and important matter that should have urgent consideration." If the Speaker rules that the matter is proper to be discussed under the Standing Order—having regard to the extent to which it concerns the administrative **11–008**

[17] Who, as present and former Cabinet Ministers, had an advantage at the expense of back-benchers.

[18] In most assemblies this is an excellent rule as an aid in maintaining order. It is in contrast to the practice in the House of Lords, where it is evidently not needed and peers address the House.

[19] S.O. No. 47.

[20] Resolutions of July 23, 1963 and June 28, 1972.

[21] Disraeli when Prime Minister, with Queen Victoria's approval, obtained the permission of the House in 1876 to use the Queen's name in debate, in order to rebut a statement made in a public speech that the Queen had asked two previous Prime Ministers for the title of Empress of India: Robert Blake, *Disraeli* (1966), p. 563. Following a reference to the views of the Queen in the course of a debate in the Lords on succession to the Crown, the House of Lords Procedure Committee recommended, and the House accepted, that the rule should continue but that there could be exceptions, H.L. 106 (1997–98).

[22] To aid Members the annunciators now display both the constituency and the name of the Member who has the floor.

[23] The test is, if a pecuniary interest might reasonably be thought by others to influence a Member's speech.

[24] Members are also required to register their interests for inclusion in the Registrar of Members' Interests, and to comply with the Code of Conduct which includes a section on the declaration of interests, see *post* para. 13–034.

responsibilities of Ministers and the possibility of the matter being brought before the House in time by other means—and the House gives leave, the motion is usually debated at the commencement of public business next day, but exceptionally at 7 p.m. on the same day. The Speaker does not have to give reasons for his decision. The present content of this Standing Order dates mainly from 1967, when it was changed in an attempt to enable such debates to take place more frequently than had been the case. However in recent sessions applications have been unsuccessful, and there were no such debates from the 1992–93 session to the 2000–2001 session.[25]

Reform

The 2001 Hansard Society Report suggested that a Steering Committee composed of representatives of all parties, should be established to organise the business of the House of Commons and manage the parliamentary timetable.

Suspension of Member[26]

11–009 When a member contumaciously declines to accept a ruling of the Speaker, *e.g.* by refusing to "withdraw" an offensive remark, or is guilty of misbehaviour or flagrantly breaks the rules of the House, the Speaker may be asked to "name" him. The question is then put that the Member be suspended from the service of the House, and if the motion is carried he is suspended on the first occasion until the fifth day, on the second occasion in the same session until the twentieth day, and on a subsequent occasion until further order or until the end of the session. A suspended Member must withdraw from the precincts of the House, and since 1998, will lose his parliamentary salary for the period of suspension.[27]

Divisions

11–010 When the Speaker closes a debate by "putting the question," he first senses the feeling of the House by asking members to say "Aye" or "No," but in any important matter the Members challenge the Speaker's opinion and he orders a division. Electric bells are rung, the lobbies are cleared, and after two minutes the Speaker puts the question again. Unless the division is then "called off" the members now present divide by filing through the two lobbies, their names being checked and the numbers counted by two Members nominated to act as tellers for each lobby. The figures are then read out to the Speaker by the senior teller for the majority.

The quorum of 40 for a division, including the Speaker, was established in 1641. If a division reveals that fewer than that number of Members are present the business under discussion stands adjourned and the House proceeds to the next business.[28]

Limiting and organising debate

11–011 A government may expect its Bills to go through parliament in a reasonable time, but should also expect that legislation to have been properly discussed and

[25] The Select committee on Procedure, H.C. 282 (1966–67) thought about five emergency debates each session would be about right.

[26] S.O. Nos. 43, 44, 45.

[27] S.O. No. 45A.

[28] There is no requirement for a quorum for the transaction of the business of the House; the House may not be counted at any time (S.O. No. 41(2)).

where appropriate changed by parliament. To enable these often conflicting aims to be achieved a variety of devises and procedures are available.

Closure[29]

11–012 This is a device for bringing to an end a debate or a speech[30] at any time. A member moves "that the question be now put," and if the Speaker or Chairman accepts the motion and it is carried in a division, not fewer than 100 Members voting in its support, further debate on the subject must cease. The Speaker has a discretion to refuse the closure where he considers that the rights of the minority would be infringed, or that the motion is an abuse of the rules of the House. The closure appears to being used less frequently now than in the past.

Programming of Legislation[31]

11–013 There have always been attempts by government and opposition to agree an informal voluntary timetable for the parliamentary stages of a Bill.[32] The benefits of this have often been outweighed by the opposition fear that to do so will remove from it the weapon of delaying legislation. Where voluntary timetabling has not been possible, then the alternative has the use of allocation of time motions. In the 1997–8 session a new procedure was introduced whereby programme motions were agreed for some or all stages of 10 Bills.[33] These motions were moved after the second reading and provided details of the Committee to be used for the Committee stage, the date for the Committee to report[34] and the time for the remaining stages of the Bill.

These details were worked out by agreement between the Whips, but in the light of representations from all sides of the House, including backbenchers. This new procedure is regarded by the Modernisation Committee as a qualified success; the main defect has been inadequate discussion of aspects of some Bills, and the Committee has made proposals to improve the position.[35] A programmed Bill cannot be guillotined in respect of the stages which have been programmed.

Guillotine

11–014 The most extreme of the methods available to a government to curtail debate and ensure the passage of legislation is an "allocation of time" order (or Guillotine). To ensure that the remaining proceedings on a public Bill in the House or Committee are speeded up, a Minister may move either (a) that specified dates and days be allocated to the various stages of the Bill, or (b) that the Committee shall report the Bill to the House by a certain date, leaving the details to the Business Committee of the House or a business sub-committee of

[29] S.O. No. 36, 37.
[30] S.O. No. 29.
[31] The First Report of the Select Committee on Modernisation of the House of Commons, *The Legislative Process*, H.C. 190 (1997–98); the Chairmen's Panel Report H.C. 296 (1997–98).
[32] This is a closed process with details known only to the Whips concerned. From 1994 until 1997, following the Jopling Report, H.C. 20 (1991–92) voluntary timetabling became a regular practice. Its success was probably due to the uncontroversial legislation introduced in this period.
[33] Including the Scotland Bill, the Human Rights Bill and the Crime and Disorder Bill; a total of 15 bills were programmed in the period May 1997 to June 2000.
[34] The committee appoints a sub committee to decide how to allocate the available time to the various clauses of the Bill.
[35] Second Report from the Modernisation Committee, *Programming Legislation and Timing of Votes*, H.C. 589 (1999–2000).

the Committee. An allocation of time order is not usually moved until after the second reading of a Bill, and only when it appears that it is making little progress in Committee. Each guillotine motion is debated for a maximum of three hours, and is nearly always subject to a division.[36] A consequence of a guillotine motion is that when the "guillotine" falls large sections of a Bill may have received little or no scrutiny. Guillotine motions have been used on all types of Bills including those of constitutional importance.[37]

The working methods of the House

11–015 Much of the work of the House clearly is performed in the chamber of the House of Commons, but there are two additions important methods of working: committees, which have a long history in the House; and Westminister Hall sittings which were introduced as an experiment in 1999.

Committees of the Commons[38]

11–016 The Commons have long made use of committees for various purposes. Sometimes a matter was committed to a single Privy Councillor, more often the committee was a Committee of the whole House. The main function of Standing Committees has been to consider and amend public Bills, thus doing what the House could do if it had time. Select Committees do the kind of things that the House as a whole could not easily do. Committees of the Commons may be classified as follows:

1. *Committees of the whole House, i.e.* the House itself sitting with a Chairman instead of the Speaker.[39] This procedure is used for: Bills of "first class constitutional importance",[40] to ensure that all Members have the maximum opportunity to debate and move amendments to such bills; unopposed private members' bills; uncontroversial bills where the committee stage will be short[41]; and where an emergency situation requires the rapid enactment of legislation.[42]

2. *Standing Committees.* Standing Orders provide for the appointment of as many Standing Committees as may be necessary for the consideration of public Bills, and other business committee or referred to a Standing Committee. They consist of 16 to 50 members nominated by the Committee of Selection which is required to have regard to the qualifications of Members, and also to the composition of the House. Their most important function is to consider Bills which, having been read a second time, stand committed to a Standing Committee. It is possible to have a "Special Standing Committees" for the Committee

[36] The House accepted, without a division, a guillotine for the Scotland Bill 1998 since it was considered by a Committee of the Whole House.

[37] The Referendums (Scotland and Wales) Bill 1997, and the European Communities (Amendment) Bill 1997 were both guillotined, but they had their committee stage on a Committee of the Whole House. A total of 18 Bills were guillotined in the period May 1997 to June 2000.

[38] For a comparison with the committee system of the United States Congress, see K. Bradshaw and D. Pring, *Parliament and Congress* (1972) Chap. 5, especially pp. 258–262.

[39] The Serjeant-at-Arms places the mace on brackets beneath the table. The Chairman does not sit in the Speaker's chair, but on a chair "at the table" which is ordinarily occupied by the Clerk of the House.

[40] *e.g.*, Northern Ireland (Sentencing) Bill 1998, Scotland Bill 1998, Government of Wales Bill 1998. There is no definition of what this phrase means.

[41] *e.g.*, Landmines Bill 1998, also Consolidation Bills.

[42] *e.g.*, Criminal Justice (Terrorism and Conspiracy) Bill 1998; Parliament was recalled during the summer recess to pass this Bill, which went through all its parliamentary stages in two days.

stage of a Bill.[43] Other examples of Standing Committees are the European Standing Committees, Second Reading Committee, Regional Affairs,[44] and Delegated Legislation.

3. *Select Committees*. These are Committees composed of a number of Members specially named, and appointed from time to time or regularly re-appointed to consider or deal with particular matters. Select Committees have their powers and authority delegated to them by the House of Commons, including the power to send for "persons, papers and records."[45]

There are several types of Select Committee. They include:

(i) Select Committees for considering public Bills (rarely employed), or to make a detailed study of some topic before the preparation of legislation, *e.g.* direct elections to the European Assembly (1976)

(ii) Select Committees on private Bills;

(iii) Sessional Committees re-appointed at the beginning of every session, either under Standing Order or an Order renewed each session, to consider all subjects of a particular nature, or such of them as are referred to it, or to perform other functions of a permanent nature, *e.g.* the Selection Committee, the Standing Orders Committee, the Public Accounts Committee, the Committee on Standards and Privileges, the Select Committee on the Parliamentary Commissioner, Broadcasting, the Liaison Committee, the European Scrutiny Committee, The Deregulation Committee, the Finance and Services Committee and the Select Committee on Procedure.

(iv) Departmental Select Committees established for the first time in 1979. Their main purpose is to scrutinise the administration. The functions of these committees and the Committee of Public Accounts will be examined in the next chapter.

(v) *Ad hoc* Select Committees set up to consider specific matters of concern to the House, *e.g.* Select Committee on Standards in Public Life (1994), Select Committee on Modernisation of the House of Commons (1997).

4. *Joint Committees, i.e.* a Select Committee of the Commons sitting with a Select Committee of the Lords, an equal number being chosen from each House. The Chairman may be a Member of either House. Joint Committees are set up from time to time to deal with non-political questions that equally concern both Houses, *e.g.* since 1973 there has been a Joint Committee on Statutory Instruments which undertakes the technical scrutiny of Statutory Instruments, and some private Bills are dealt with in this way. There is also a joint Standing Committee to consider Consolidation Bills. This Committee reviews the form, drafting and amendment of such legislation, and the practice in preparation of legislation for presentation to Parliament.[46] In 1997 a Joint Committee on Tax

[43] S.O. No. 91; see *post* para. 11–026.

[44] A committee on Regional Affairs was established in 1975, but soon fell into disuse. In April 2000 a new committee based on the structure of the European Standing Committee was established. It is designed, in the aftermath of devolution, to provide a forum for M.P.s who sit for English constituencies. It met once in May 2001.

[45] For details see *post* para. 12–030.

[46] S.O. No. 140.

Simplification Bills (S.O. No. 60) was established to consider the committee stage of such Bills. There is also a Joint Standing Committee to consider Statute Law Revision Bills, Human Rights and Bills to give effect to Law Commission proposals. A Joint Committee on the next stage of the reform of the House of Lords had been promised, but now seems unlikely.

Westminster Hall Sittings

11–017 General agreement that there were matters which the House should debate, but did not have time to do so, lead to the experiment of Westminister Hall sittings. This refers to the House sitting in another location, on the same days as the House sits, but not necessarily at the same time.[47] For a trial period, the room in which these sittings take place is arranged as a wide hemicycle, to facilitate the non-confrontational style of debate that it is hoped to encourage. This experiment is seen primarily to provide additional time for private Members to raise matters on adjournment debates, the discussion of select committee reports, and for novel kinds of business to be debated in the House, *e.g.* regional affairs, Law Commission proposals, foreign affairs debates focussed on particular regions of the world.

III. Procedure on Legislation[48]

Introduction

11–018 For some time there has been concern about the way the legislative process works: how legislation is prepared, drafted, passed through Parliament and published; and of the final product—the statute.[49] Parliament and Government have responded to these concerns: the Inland Revenue and H.M. Customs have embarked on programmes to rewrite legislation and one of the early decisions of the new 1997 parliament was to establish a Select Committee on the Modernisation of the House of Commons. The first report of this committee was on the legislative process[50]; other reports connected with this followed,[51] and the House of Commons has implemented most aspects of these reports in an attempt to improve the legislative process. The Standing Orders of the House allow for a variety of different options to be adopted for the passage of legislation, but advantage has not always been taken of this flexibility.

Drafting of Bills

11–019 Nearly all government Bills are drafted by Parliamentary Counsel to the Treasury, a staff of barristers or solicitors in the Treasury whose office was constituted in 1869. Parliamentary Counsel also advise on amendments proposed during the passage of a Bill.

[47] It was envisaged that there would be a maximum of six sittings a week, in total about 18 hours. There is a quorum of four for these sittings. Average attendance is between 10 and 12.

[48] Miers and Page, *Legislation* (1990); Bennion, *Statute Law* (1990).

[49] See in particular, *Making The Law*, the Report of the Hansard Society Commission *The Legislative Process*, November 1992. Earlier reports included the Heap Report, *Statute Law Deficiencies* (1970), and the Renton Report *The Preparation of Legislation* Cmnd 6053 (1975). The Hon Dame Mary Arden, "Modernising Legislation", [1998] P.L. 65.

[50] H.C. 190 (1997–98)

[51] Fourth Report, *Conduct in the Chamber* H.C. (1997–98)

To enable better understanding of the content and purpose of proposed legislation, and to encourage pre legislative scrutiny, a recent practice has been for drafts of proposed Bills to be published for public consultation[52] and possible consideration by *ad hoc* select or joint committee or departmental select committee.[53] A further recent move has been to make publically available the Explanatory Notes prepared by Parliamentary Counsel on Bills and their clauses.

Classification of Bills

A project of law during its passage through Parliament is called a Bill, and its subdivisions are called clauses. Bills are classified into three kinds: **11–020**

1. *Public Bills, i.e.* measures affecting the community at large or altering the general law. A public Bill applies by description to all persons subject to the authority of Parliament or to certain classes of such persons. Strictly, all public Bills are introduced by Members in their capacity as members; but in ordinary language those introduced by Ministers are called "government Bills," and those introduced by private (or unofficial) members are called "private Members' Bills." Government Bills are far the most numerous, and are assured of the general support of the government's majority. Little time is allotted to private members' Bills,[54] which must be carefully distinguished from private Bills (*post*).

2. *Private Bills, i.e.* measures dealing with local or personal matters, such as a Bill giving special powers to a local authority or altering a settlement. They apply to particular persons or groups who are named or otherwise identified (*e.g.* by locality). They are promoted by petition by interested persons or bodies outside Parliament and are governed by special procedure under separate Standing Orders.[55]

3. *Hybrid Bills, i.e.* Bills which, although they are introduced as public Bills (mostly by the Government, but occasionally by private members), affect a particular private interest in a manner different from the private interest of other persons or bodies of the same category or class, in such a way that if they were private Bills preliminary notices to persons affected would have to be given under the Standing Orders. They are governed by a special procedure before second reading similar to that on private Bills, but which obviates the necessity of allowing objectors to appear one by one before the House. The classification is difficult in some cases[56]: thus the Bill to nationalise the Bank of England, the London Passenger Transport Bill and the Cable and Wireless Bill were held to be hybrid Bills; but the Bills to nationalise gas, electricity and the coal industry were regarded as public Bills. More recently Bills to provide for the construction of a Channel tunnel rail link and for Cardiff Bay barrage were introduced under the procedure for hybrid Bills.

[52] As already happened with the majority of Law Commission legislative proposals. A further reform has been to announce in the Queens' Speech legislative proposals for future parliamentary sessions.

[53] *e.g.* the draft Bill on freedom of information was considered by the Select Committee on Public Administration, the draft Bill on food standards was considered by an *ad hoc* select committee and the Social Security Committee conducted pre-legislative scrutiny on the draft Bill on pension sharing on divorce.

[54] *post*, para. 11–034.

[55] *post*, para. 11–038.

[56] The matter may be referred to the Examiners, two officials appointed by the House of Lords and the Speaker.

11–021 It appears that the Commons can suspend their Standing Orders relating to hybrid Bills, but that the Lords could still classify the Bill as hybrid.

Ordinary procedure on Public Bills[57]

11–022 Most kinds of public Bills may originate either in the Commons or the Lords, but there are certain classes of Bills, such as Money Bills and Bills dealing with the representation of the people, which by parliamentary custom or constitutional convention may originate only in the Commons. A relaxation of the privileges of the House of Commons in 1972 has made it possible for financial Bills to be introduced in the House of Lords.[58] In practice more Bills originate in the Commons than in the Lords, although the latter method is convenient for non-controversial topics that either require little discussion, such as the National Heritage Act 1996 or that require technical discussion on non-party lines, such as the Crown Proceedings Act 1947. Consolidation measures are another type of Bill which may originate in the House of Lords, for example the Justice of the Peace Act 1996. In recent years more controversial legislation such as the Human Rights Act 1998 and the Crime and Disorder Act 1998 were introduced in the House of Lords. Where an Act of Parliament is required urgently, Bills may be introduced concurrently in both Houses for example the Northern Ireland (Temporary Provisions) Act 1972.

Introduction of Bills

11–023 A member, whether a Minister or unofficial member, introduces a Bill by presenting it at the table or by motion for leave to introduce it, in either case after giving notice. The former method is usual, as the latter may lead to a debate.

The five stages through which a Bill passes in the legislative process in the Houses are: (i) first reading, (ii) second reading, (iii) committee stage, (iv) report (or consideration of amendments) stage, and (v) third reading.

(i) *First reading*

11–024 The Bill is ordinarily presented in "dummy," *i.e.* a sheet of paper on which is the name of the Member, and the title of the Bill. The "first reading" is purely formal. The Clerk at the table reads the title only. The Bill is then deemed to have been read a first time, and is ordered to be printed.[59]

(ii) *Second reading*

11–025 Section 19 of the Human Rights Act 1998[60] requires the Minister in charge of a Bill in either House before the second reading of a Bill to make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights, a written statement to this effect must also be published. If such a "statement of compatibility" is not possible, then a statement to this effect must be made and the Minister must explain why the government nevertheless

[57] For Money Bills and Financial clauses, see *post*, Chap. 12.
[58] S.O. No. 80.
[59] The Modernisation Committee has suggested that some Bills could be sent to an *ad hoc* First Reading Select Committee after the first reading (H.C. 90 (1997–98)). Departmental Select Committees can look at the implications of a Bill and make a report, see First Report from the Welsh Affairs Committee, H.C. 186 (1995–96) on the implications of the Nursery Education and Grant Maintained Schools Bill 1996, on nursery education in Wales.
[60] See *post*, para. 20–015.

wishes to proceed with the Bill. A negative statement should alert Parliament to the need for particular scrutiny of a Bill.

The member in charge of the Bill moves that it "be now read a second time." The Bill is not actually read, but its main principles are discussed. If no one objects to the Bill, it can be "read" a second time when unopposed business is taken. If it is opposed,[61] it can only come on on one of the days fixed for taking opposed Bills.

A Minister, having given 10 days' notice, may propose that a public Bill be referred to a Second Reading Committee[62] to make a recommendation to the House whether it should or should not be read a second time. If this committee so recommends, the formal question is put to the House without further debate. This procedure, designed to save time, has been little used, other than for Law Commission Bills which stand automatically referred to it, and minor Bills originating in the Lords. It is suitable for Bills which are not "measures involving large questions of policy nor likely to give rise to differences on party lines",[63] and may be used unless at least 20 members object.[64]

(iii) *Committee stage*

The great majority of Bills[65] which pass the second reading will stand committed to a particular Standing Committee, unless the House otherwise orders. The other options are: a Committee of the Whole House[66]; splitting the committee stage between a Committee of the Whole House and a Standing Committee[67]; a Joint Committee of the two Houses; an *ad hoc* Select Committee, which at present is only used for the quinquennial Armed Forces Bill; a Special Standing Committee. The latter is able to hold four select committee meetings during the 28 days from the date of the committal of a Bill, and to use up to three morning sittings to take oral evidence from affected outside interests, after which it will reverts to being a "normal" Standing Committee. Despite evidence that this procedure has been successful, it has been little used.[68] A Minister may move a motion that a Consolidation Bill be not committed, and if this is agreed, it will have no committee stage. **11–026**

The committee stage is the time for discussing details and proposing amendments. The Bill is taken clause by clause, and amendments are moved in the order in which they come in the clause. In the committee stage the procedure is less formal than in the House; a motion need not be seconded, and a member may speak more than once on the same question. When the clauses are finished new

[61] In 1772 a Bill was rejected, thrown about and kicked out of the House: Anson, *Law and Custom of the Constitution*, Vol. I (5th ed. 1922, Gwyer), p. 272.

[62] This is a Standing Committee nominated for the consideration of each Bill referred to it.

[63] H.C. Deb. Vol. 251, Col. 1464, December 19, 1994.

[64] It was used for two uncontroversial Bills in 1997: the Birds (Registration Charges) Bill, and the Policemen and Firemen Pensions Bill. Prior to devolution, Bills relating exclusively to Scotland, Wales or Northern Ireland could be referred to the appropriate Grand Committee.

[65] The exceptions are Consolidated Fund and Appropriation Bills (*post* Chap. 12), and tax simplification bills, which stand committed to the Joint Committee on Tax Simplification Bills.

[66] *ante* para. 11–016.

[67] *e.g.* six clauses of the Government of Wales Bill 1998 were taken on the floor of the House, the remainder in a Standing Committee.

[68] See H. J. Beynon [1982] P.L. 193. The Modernisation Committee in its first report (H.C. 190 (1997–98)) recommended procedural changes to encourage greater use of this type of committee, and the Immigration and Asylum Bill 1998 was referred to a special standing committee, the first Bill since 1994 to be so referred.

clauses and postponed clauses are considered. After that the schedules, if any, are taken.

11–027 *Selection of amendments.*[69] In order to save time, Standing Orders give to the Speaker on the report stage, or a Chairman of Committee, the power to select certain new clauses or amendments for discussion. The rest are voted on without debate. A previous announcement is made concerning the selection of amendments.

1–028 (iv) *Report stage.* The Bill as amended in Committee is then "reported" to the House. It may, with certain restrictions, be further amended as in Committee. It is not unusual for the Government to table numerous amendments at this stage, some representing undertakings given in Committee. If voluntary timetabling fails and the Speaker exercises his power of selection of amendments (*ante*); his reason for not "call ng" a particular amendment will often be that it has been fully discussed in Committee.[70] When a Bill has been dealt with by a Committee of the Whole House and has not been amended, there is no report stage, it will progress straight to the Third Reading.

11–029 (v) *Third reading.* After the Bill has been considered on report, it is put down for "third reading." If there is a debate on third reading, it is on general principles and only verbal amendments can be moved.[71] The Bill as a whole can be opposed in principle by the same method as at second reading. If the motion "that the Bill be now read a third time" is carried—which it almost certainly will be if it is a government Bill—the Bill is deemed to have passed the House. It is now sent up to the House of Lords, endorsed with the words "*Soit baille aux Seigneurs*" (let it be sent to the Lords).

Procedure in the Lords[72]

11–030 The procedure on legislation in the House of Lords resembles generally the procedure in the Commons, although it has greater flexibility.[73] As soon as possible after the first reading all Public Bills, except Consolidation and Supply Bills, are considered by the Delegated Powers and Deregulation Committee.[74] This committee considers whether any Bill inappropriately delegates legislative power, or whether there is an inappropriate degree of parliamentary scrutiny in respect of the exercise of a delegated power. After the second reading it is possible to refer any bill to a Special Public Bill Committee, however this procedure is virtually limited to Bills originating from the Law Commission. Special Public Bill Committees have 28 days in which to take oral and written evidence on bills before considering them in the usual way.[75] The committee

[69] S.O. No. 32.

[70] The criteria for the selection of amendments at Report stage were listed by Mr Speaker King in a memorandum to the Procedure Committee (1966–67) H.C. 539 p. 87.

[71] The Bill may, however, be recommended to a committee to allow the introduction of amendments, this is very rare.

[72] For the procedure under the Parliament Acts see *ante*, para. 8–034.

[73] The Lords debated its procedure on May 10, 2000, H.L.Deb. Col. 1574–1657; a review of its procedure seems likely in the near future.

[74] This committee had its origins in a committee set up in 1992; its terms of reference were expanded and it became an established sessional committee from the beginning of the 1994–95 session. C.M.G. Himsworth "The delegated powers scrutiny committee", [1995] P.L. 34.

[75] Henry Brooke, "Special Public Bill Committees", [1995] P.L. 351.

stage of most Public Bills is taken in a Committee of the Whole House, alternatively they may be committed to a Grand Committee of the House. The main difference is that no divisions can be taken in a Grand Committee and amendments may only be agreed to if there is no dissent.[76] The main legislative role of the Lords is revision, and the majority of amendments are moved by Ministers. An important difference between the two Houses is that no closure or guillotine is available in the House of Lords.

If the Lords propose amendments to a Bill sent up by the Commons, the Bill is endorsed "*A ceste bille avecque des amendemens les Seigneurs sont assentus*" and returned to the Commons for consideration. The Commons may assent to the amendments ("*A ces amendemens les Communes sont assentus*"), or dissent from them, or further amend them ("*Ceste bille est remise aux Seigneurs avecque des raisons*").

Royal Assent

When a Bill has been passed by both Houses, or passed by the Commons under the Parliament Acts, it is ready to receive the Royal Assent. The normal procedure is for Royal Assent by notification as provided by the Royal Assent Act 1967.[77] **11–031**

Carry Over of Bills

Until 1997, the normal requirement for public Bills was that they had to go through all their parliamentary stages in a single parliamentary session.[78] Any Bill which failed to do so had to be introduced as for the first time in the next session. Bills introduced late in a session, or which unexpectedly were more complicated or controversial that originally thought, could have their parliamentary stages rushed, and not receive proper scrutiny. In 1997 the House of Commons agreed[79] that where a Bill had not gone through the House in which it originated, and there was agreement through "the usual channels" that a Bill was suitable for carry over, then a specific *ad hoc* motion could be put forward to allow for this.[80] A Government guarantee was given that a Bill would only be carried over to meet the general convenience of the House, and that Special Standing Committees would be used when a Bill was carried over. **11–032**

Post Legislative Scrutiny

One of the criteria for a reformed legislative system identified by the Modernisation Committee was the monitoring of legislation that has come into force. To a limited extent this has been done by the departmentally related select committees.[81] The House has accepted that this type of activity could be further encouraged, and that in appropriate cases *ad hoc* Select Committees could be established to look at a particular piece of legislation. **11–033**

[76] From its introduction in 1995 to 1999, 18 Government Bills have had their committee stage in a Grand Committee, few agreed amendments were made on these Bills, see Minutes of Evidence p. 38–49, Second Report of the Modernisation Committee, H.C. 194 (1998–99).

[77] *See ante* para. 8–011

[78] Hybrid and private Bills may be carried over from one session to the next.

[79] Approving the Third Report of the Modernisation Report, H.C. 543 (1997–8). A similar suggestion had been made in 1929 by a Joint Committee *Suspension of Bills in Session*, H.C. 105 (1928–29).

[80] The first Bill to be carried over was the Financial Services and Markets Bill, which was carried over at committee stage.

[81] *e.g.* the Second Report from the National Heritage Committee, *The Future of the BBC*, H.C. 77 (1993–4), which looked at the Broadcasting Act 1990.

Private Members' Bills[82]

11–034 Public Bills may be introduced by private Members. Private Members do not introduce Bills authorising expenditure, because these require a financial resolution with a recommendation from the Crown. However where a Private Members' Bill proposes an incidental charge on the public revenue, and the Bill has Government support, a Minister may move the necessary resolution.[83] Otherwise private members are free as regards subject-matter. There are a number of procedures under which private Members may initiate Bills.

The Ballot[84]

There are always more private Members wishing to introduce Bills than there is Parliamentary time available. At the beginning of each session a Ballot is held and the 20 successful members have priority to introduce a Bill in the time made available.[85] Many of these Members have no particular subject in mind for a Bill and will have suggestions made to them by pressure groups and others. The Government may offer "Whips" Bills to such Members, that is Bills which for some reason the Government does not wish to include in its legislative programme, but would support if put through as a Private Members' Bill.[86]

Ten Minute Rule[87]

A private Member who has not won a place in the ballot can take advantage of the "Ten Minute Rule," whereby motions for leave to introduce Bills may be set down at the commencement of public business on Tuesdays and Wednesdays. Members must give three weeks' notice of such a motion. After the mover has briefly explained the objects of the Bill, another member is allowed to make a short speech in opposition, and the question is then put without further debate. This procedure gives early publicity to controversial measures. Bills under this rule are limited to one a day, and a member is limited to one such notice in a period of 15 sitting days.

Standing Order No. 57

This is the way the majority of Government Bills are presented, and it can be used by private Members.

11–035 The difficulty with Private Members' Bills is to find sufficient time to go through their various parliamentary stages. Private Members' Bills have precedence over Government Bills on 13 Fridays in the session.[88] Members who were successful in the ballot have priority on the first seven of these Fridays and for this reason success in the ballot is the most likely way to success with a Private Members' Bill. To assist members to get Private Members' Bills through their second reading, provided 10 days' notice is given, a sponsoring member can

[82] See Peter G. Richards *Private Members Legislation* in *The Commons Today* (Walkland and Ryle eds. 1981 Chap. 6).
[83] S.O. No. 50.
[84] S.O. No. 14.
[85] The Government agreed in 1972 to grant up to £200 towards drafting expenses of members gaining the first 10 places in the ballot. The sum of £200 has never been revised.
[86] In recent years there has been an increase in these types of Bills, which have the best chanch of success.
[87] S.O. No. 23.
[88] S.O. No. 14.

move a motion to refer a Bill to a Second Reading Committee.[89] This can only be done on or after the seventh private members' Friday and one objection can defeat the motion. A major hurdle to a Bill getting its second reading or completing its Report stage, is securing the Closure of the debate. If the debate is still progressing when it is time for the House to adjourn, the Closure has to be successfully moved and this will require 100 Members voting in favour of the motion. The chance of a Private Members' Bill reaching the final stage—or even an advanced stage—by the end of the session (when uncompleted Bills usually expire) is generally remote, unless the Government give it their active support.[90] About 15 Private Members' Bills become Acts each session.[91] Even Bills which fail to become law may have susceeded in drawing attention to a subject and even persuaded the Government to introduce legislation on the matter.

Procedure on Private Bills[92]

11–036 Private Bills are initiated not by Members of Parliament within the House, but by petition from persons or bodies ("promoters") outside Parliament. The procedure on private Bills is complicated and governed by a special set of Standing Orders; it is also slow and time consuming. Private Bills were common in the eighteenth and nineteenth centuries in respect of the construction of railways and canals (local Bills), and to provide for divorce, family estates and naturalisation of aliens (personal Bills). In modern times local authorities and statutory undertakers sought private Bills to increase their powers to enable them to better fulfil their functions. Until the 1980's, there had been a decline in private Bills, partly due to the increase in the areas covered by Public General Acts, and because new more convenient statutory procedures were introduced to enable the making of Provisional Orders which in turn were superseded by Special Procedure Orders.[93] A resurgence in private legislation in the 1980's in respect of "works" (railways, bridges, harbours and river barrages), with the consequent increase in pressure on parliamentary time, led to the establishment of a Joint Committee on Private Bill Procedure. This committee made extensive recommendations to effect changes to the way in which works projects should be authorised,[94] were enacted in the Transport and Works Act 1992. This in effect means that, except in highly exceptional circumstances, works projects no longer require a private Bill, but can be authorised by a ministerial order. In consequence there has been a considerable reduction in the number of private Bills coming before Parliament.

11–037 In respect of those private Bills that are still required Standing Orders require that full notice shall be given, so that persons affected may come in and oppose. A private Bill is usually introduced by being presented at the table by the Clerk

[89] Only one Bill, in 1989, has successfully used this procedure.

[90] See A.P. Herbert, *The Ayes Have it: Independent Members* (1937); P.A. Bromhead, *Private Members' Bills in the British Parliament* (1956). It has been suggested that there should be a steering committee, or that private members' Bills should be given priority according to the amount of support they obtain.

[91] *e.g.* Osteopaths Act 1993, British Nationality (Hong Kong) Act 1997, Public Interest Disclosure Act 1998.

[92] *op. cit.*, May, *Parliamentary Practice*, Part III. This sketch does not apply to Scottish Bills, for which a special procedure was provided by the Private Legislation Procedure (Scotland) Act 1936. Where the subject matter of a private Bill in within the competence of the Scottish Parliament, this will now be the appropriate forum.

[93] Statutory Orders (Special Procedure) Acts 1945, 1965. Special Procedure Orders are now only required where certain categories of land are subject to compulsory acquisition.

[94] H.L. Paper No. 97, H.C. 625 (1987–88).

of the Private Bill Office. It is then deemed to have been read a first time. Intricate questions frequently arise as to the *locus standi* of various parties to appear and be heard before the Select Committee. The second reading is the first opportunity the House has to discuss the general principles of the Bill. The Bill usually passes the second reading unopposed or with directions to the Committee to delete or insert certain provisions. When the Bill has passed the second reading it goes either to the Committee on Unopposed Bills or, if opposed at this stage, to a Select Committee. The Select Committee proceeds to hear counsel and witnesses for and against the objects of the Bill, and if it finds that a sufficient case for legislation has been made out, declares the preamble proved. The clauses are then gone through before the contending parties, evidence is taken and arguments of counsel heard, and amendments, if necessary, are made. The Bill, as amended in Committee, is then reported to the House. After third reading, the Bill is sent to the other House.

11–038 In *Pickin v. British Railways Board*[95] the House of Lords held unanimously that the plaintiff was not entitled to challenge the private Act obtained by the Railways Board on the ground that the House had been deceived by the preamble reciting that plans and a list of persons affected had been duly delivered to the appropriate local authority, so that the Bill went before the Committee on Unopposed Bills.

Although private Bills are by Standing Orders subject to a number of formalities that do not apply to other Bills, when they come before either House they are read the same number of times and treated at each stage in a similar way to public Bills. If passed by both Houses, a private Bill receives the Royal Assent in the same way as a public Bill, except that a different form of words is used: *Soit fait comme il est desire*.

[95] [1974] A.C. 765; approving *Edinburgh and Dalkeith Ry v. Wauchope* (1842) 8 Cl. & F. 710, HL; see P. Wallington (1974) 37 M.L.R. 686.

CHAPTER 12

NATIONAL FINANCE AND SCRUTINY OF THE ADMINISTRATION

I. NATIONAL FINANCE[1]

Introduction

Governments require powers of raising and spending money. In the British system the regulation of national finance is governed by rules of financial procedure concerning the relationship between the Crown and the House of Commons. The functions of the Commons are to authorise most types of public expenditure (supply services) and most taxation; and to satisfy itself that the expenditure it approved has been properly spent. **12–001**

The Crown and the Commons

Erskine May says: **12–002**

"It was a central feature in the historical development of parliamentary influence and power that the Sovereign was obliged to obtain the consent of Parliament . . . to the levying of taxes to meet the expenditure of the State. But the role of Parliament in respect of State expenditure and taxation has never been one of initiation: it was for the Sovereign to demand money and for the Commons to respond to the demand."[2] The basis constitutional principle remains that: "the Crown demands money, the Commons grant it, and the Lords assent to the grant."[3]

Five general principles should here be noticed: **12–003**

(1) A proposal affecting supply for the public service or a charge on the public revenue must be recommended by a Minister (royal recommendation) ("the Crown demands money"). This common law principle is now in part embodied in Standing Order No. 48 which dates back to 1713. It demonstrates the control which the Government has over expenditure and taxation since it prevents back-bench M.P.'s from proposing additional expenditure or taxation.

(2) A proposal to raise or spend public money must be introduced in the House of Commons ("the Commons grant it"). This is part of the custom of Parliament and one of the privileges of the Commons, asserted by resolutions of 1671 and 1678, confirmed in 1860 and 1910 and implied by the Parliament Act 1911. So in the Queen's Speech on the opening, prorogation or dissolution of Parliament, the Commons are separately

[1] Erskine May, *Parliamentary Practice* (22nd ed., 1997), Chaps. 29–33; K. Bradshaw and D. Pring, *Parliament and Congress* (1972); Griffiths and Ryle, *Parliament: Functions, Practice and Procedures* (2nd. ed, R. Blackburn and A. Kenyon eds., 2000) Report of the Hansard Society Commission on Parliamentary Scrutiny, *The Challenge for Parliament* (2001), Chap. 5 and Appendix 6.

[2] May, *op. cit.* p. 733

[3] *loc. cit.*

addressed when estimates or supply are mentioned; and the principle appears in the enacting formulae of the annual Finance and Appropriation Acts.

(3) Charges, whether for the raising[4] or spending of money, must be authorised by legislation originating in the Commons. This rule is subject to statutory modifications.[5]

(4) Charges for the raising or spending of money must first be considered by the Commons in the form of a resolution which, when passed, will authorise the charge to be included in a Bill. Consolidated Fund Bills are brought in upon supply resolutions; finance and other taxing bills are brought in upon Ways and Means resolutions.

(5) The Lords may not *alter* Bills of aids and supplies ("the Lords assent to the grant"), although in theory they may reject them, as any other kind of Bill (subject now to the Parliament Acts). Such Bills include (a) supply to the Crown, becoming a Consolidated Fund Bill, or (b) taxation (Finance Bill). This is similarly a privilege of the Commons, included in the resolutions of 1671 and 1668. Section 6 of the Parliament Act 1911, preserving the Commons' privileges, allows the Commons to choose whether to proceed on the Lords' amendments under the procedure of the Act[6] or under their privileges: in the latter case they may waive their privileges and accept the Lords' amendments.

The annual cycle of finance

12–004 Each financial year, which runs from April 1 to March 31, is treated separately, and money voted for one financial year cannot be applied to a subsequent year. Although, as will be seen, some expenditure and revenue is given permanent statutory authority, most is subject to annual control by Parliament. Since the financial year does not coincide with the parliamentary session, Parliament in any one session will consider provisions relating to more than one financial year. The annual cycle of finance will be considered first with regard to expenditure (supply) and then with regard to revenue (ways and means).

Public expenditure

12–005 Public expenditure may be of two types: supply services or Consolidated Fund services. The bulk of public expenditure is on the supply services which include the armed forces, the civil service and the general requirements of government departments. These services are described as charges paid out of "moneys provided by Parliament" and are subject to the annual control of Parliament under its supply procedure, and require statutory authorisation. Consolidated Fund services are charges on the "public revenue" or "public funds" and permanent Acts give continuing authorisation to pay these services out of the Consolidated Fund or National Loans Fund. This means that Parliament does not have to give annual authorisation for their payment. These services include

[4] Art. 4, Bill of Rights 1688 " . . . the levying of money for or to the use of the Crown without grant of Parliament is illegal."; *Att.-Gen. v. Wilts United Dairies* (1921) 37 T.L.R. 884; *Bowles v. Bank of England* [1913] 1 Ch. 57.

[5] Provisional Collection of Taxes Act 1968, *post*, para. 12–014; Finance Act 1972; Contingencies Fund Act 1974.

[6] The definition of "Money Bill" in the Parliament Act 1911 is narrower than that for the purposes of Commons procedure.

payment of interest on the national debt; the Queen's Civil List; the salaries of judges of the superior courts, the Speaker, the Comptroller and Auditor General and the Parliamentary Commissioner for Administration; and payments to meet European Community obligations.[7]

The estimates and other supply information for Parliament[8]

12–006 Every autumn government departments prepare estimates of their expenditure for the next financial year, based on the policy for each department which has been decided by the responsible Minister with the approval of the Cabinet. The overall Government plans for public spending will have been conduced earlier through the Public Expenditure Survey. The Estimates are submitted to the Treasury,[9] which scrutinises them in the interests of economy within the limits of government policy. In particular it will check that they are within the Government's "cash limits,"[10] which will have been published with the Budget. Cash limits set a limited amount of cash which the Government proposes to spend on certain services during the financial year. The Cabinet, which is the umpire in any dispute between the departments and the Treasury, finally settles the Estimates, which are presented to the Commons in the spring.[11] Since 1991 each government department has also published a Departmental Report on its expenditure plans and the policy objectives they are designed to meet; these contain much of the information formerly included in the Estimates.[12] At the same time the Treasury publishes a document entitled "Public Expenditure Statistical Analysis", which provides, for example tables on trends in public expenditure, central government and local authority expenditure and expenditure analysis. Details of public expenditure plans for several years ahead are published with Chancellor's Budget Report.[13] There is no definition of public expenditure agreed to by Parliament, and the figure given is to some extent an arbitrary total dependent on the definition adopted by the Government. However, whatever precise definition is used, it covers a much wider spectrum of public spending than that found in the annual supply estimates. In particular it will include[14] local authority expenditure,[15] the Consolidated Fund Standing Services, and National Insurance benefits, none of which is subject to the Estimates procedure. The House is aware of the long term context in which public expenditure is planned, but its role is limited to the approval of the annual estimates.

[7] European Community Act, s.2(3).

[8] The Finance Act 1998, s.156 places a statutory obligation on the Treasury to lay before Parliament four documents: a Financial Statement and Budget Report; an Economic and Financial Strategy Report; a Debt Management Report; and a Pre-Budget Report.

[9] *post*, para. 18–07.

[10] Cash limits are not subject to separate parliamentary approval, but they are assimilated in the estimates so that Parliament is aware whether or not an estimate is subject to a cash limit. In 1998–99 of 103 main estimates, 84 were cash limited.

[11] Although the form of the estimates is responsibility of the Treasury as the chief financial department, by established usage important changes in the customary form of the estimates should be first approved by the Committee of Public Accounts and the Treasury Select Committee, acting on behalf of the House.

[12] The justification for expenditure, and tables on long-term capital projects are also included in the Departmental Reports.

[13] A motion to approve the Government's public expenditure plans as outlined in the Budget is submitted to the House immediately after the Finance Bill has been brought in. This is political in content and has no legal effect.

[14] Expenditure from the Contingencies Fund is not included as public expenditure, since no expenditure from it is planned.

[15] The single largest item of non-supply expenditure, usually representing about 25 per cent.

12–007 At present the Estimates only set out the cash sums that it is calculated will be required during the forthcoming financial year to pay for the relevant public services; they do not show the value of assets held or the liabilities outstanding from the previous financial year or those to be spread over future years.[16] The Estimates are divided into "classes" each of which corresponds to a separate programme as laid down in the Government's annual Public Expenditure Survey. Classes are divided into units of appropriation known as "votes", one or two for each department, on which it is theoretically possible for the House to take a separate decision. The Estimates provide the basis for Parliament to authorise specific expenditure by Appropriation Act, and for audit by the Comptroller and Auditor-General.[17] The Estimates have an important role in the system by which the House exercises formal control over Government expenditure, but they are an inadequate basis for debate on the Government's expenditure plans.

The financial information available to the House of Commons has increased in recent years, but it is questionable if the House or its committees, are able to make the best use of this information.

Supply business

12–008 From the earliest days of Parliament the granting of supply was the basis of the power of the Commons over the executive. Gradually this control became formal only. Despite reforms in 1982 the Procedure Committee in 1999 said of the House's power over expenditure that: "if not a constitutional myth, (it is) very close to one."[18]

The House's consideration of the Estimates is divided into two categories: those that are debated on "Estimate Days", and the remainder (the majority) which are formally approved. Three full days are set aside each session for the consideration of such of the estimates as are selected for discussion by the Liaison Committee, which considers bids from individual Select Committees for discussion of the Estimates from its department.[19] In accordance with the constitutional requirement that it is for the Crown to initiate the financial work of the House, it will be for a Minister formally to move the motion on which the debate will take place. Amendments to the motion can only be to reduce and not to increase the total sum demanded, if such an amendment were to be passed it would be tantamount to a vote of no confidence. No estimate has been rejected for over a century. The House is not actually able to influence the Estimates and the Estimates selected by the Liaison Committee for discussion are more often chosen as vehicles for debates on select committee reports, than on the actual

[16] This is in the process of changing, with a move to a system of resource or accrual based accounting. The new system is designed "to give a more comprehensive picture of departments' programmes by linking resources consumed with outputs produced as far as possible, by covering all departmental spending, and by inclusion of information on assets and liabilities." Fourth Report of the Treasury and Civil Service Committee, H.C. 212 (1994–95) The first resource bases estimates should be presented for the year 2001–2. Legal provision is made for this change in the Government Resources and Accounts Act 2000; see Hollingsworth and White, "Public finance reform: The Government Resources and Accounts Act 2000", [2001] P.L. 50.

[17] See *post* para. 12–018

[18] Sixth Report, *Procedure for Debate on the Government's Expenditure Plans*, H.C. 295, (1998–99), p. vi.

[19] S.O.No. 54. The timing of the three days is flexible, the only requirement is that they are taken before August 5.

Estimates.[20] At 10.00 p.m. on each Estimate Day a vote is taken on the selected estimates and any proposed amendments.

12–009 Under S.O. 55 those estimates not selected for debate on an Estimates Day will be dealt with *en block* three times a year under the Supply guillotine, that is a vote will be taken without any prior debate. The deadlines set out in the S.O. for the House to vote on certain estimates ensures that the Government gets the money it needs when it needs it.[21]

In accordance with principle 4 (*supra*), the estimates once approved by the Commons must be embodied in legislation. This is finally provided for in the annual Appropriation Act which authorises the issue of money from the Consolidated Fund and appropriates in detail the application of the amounts voted to the departments. This is usually passed in July or August. However money is usually required by departments before this date. Interim statutes called Consolidated Fund Acts are therefore passed from time to time, providing votes on account to cover expenditure in the period from April 1 to the time when the Appropriation Act will be passed. These Acts also provide for supplementary estimates to cover unforeseen expenditure in the current financial year and even "excess votes" to provide for excess expenditure incurred by a department in the previous financial year. The Appropriation Act, which is itself a final Consolidated Fund Act, deals with the balances of money voted but so far undisposed of, and confirms retrospectively the appropriations made by the Consolidated Fund Acts. Proceedings on Consolidated Fund and Appropriation Bills is formal, that is without debate; if such a Bill is not certified as a "money bill" for the purposes of the Parliament Act 1911,[22] its proceedings through the Lords is also formal. The effect of passing these Acts is to authorise the Treasury to issue money out of the Consolidated Fund to pay for the various public services.

Despite the formal, legal significance of the Appropriation Act, it must be remembered that a great deal of public expenditure falls out-side its terms. Nor does it reflect governmental commitments for the future, so that it has been said that the figures contained in the Act are "in economic terms ... all but meaningless."[23]

The Contingencies Fund[24]

12–010 An exception to the rule that Parliament must vote money for a service before expenditure is incurred, is found in the Contingencies Fund. Money can be advanced out of this fund on the authority of the Treasury up to a total of two per cent of the previous year's total estimates provisions.[25] This fund can be used to finance urgent expenditure which is in the public interest, but there is no statutory

[20] The Procedure Committee in its report, *Resource Accounting and Budgeting* H.C. 438 (1997–98) noted that in the previous five years only two Estimate Days had been devoted to actual departmental estimates or expenditure plans, para. 11. In the same report the Clerk of the House stated that since 1987 only four amendments to reduce Estimates had been put to the House, p. 76.

[21] The Procedure Committee in its report, *Procedure for Debate on the Government's Expenditure Plans* H.C. 295 (1998–99), has proposed that in the light of the information now available to the House and in particular to departmental select committees, the range of motions to be debated on Estimate Days should be widened to allow debate on the long term expenditure plans of a department.

[22] See *ante* para. 8–034.

[23] Daintith, "The Law in Short Term Economic Policy" (1976) 92 L.Q.R. 62, 71.

[24] McEldowney, "The Contingencies Fund and the Parliament Scrutiny of Public Finance" [1988] P.L. 232.

[25] Contingencies Fund Act 1974.

definition of what this may be. The use of this fund is regulated by the Treasury. Any money paid from this fund has to be repaid, and Parliament will be asked to vote the necessary supply to enable this to happen.

The Role of Departmental Select Committees

12–011 As has been seen role of the Commons in Supply procedure is weak, but the constitutional requirement that the Crown must seek the authority of the Commons for Supply gives Parliament the authority to question and to demand information from government. One of the main ways this could be achieved is through the departmental select committees which are able to examine the expenditure, administration and policy of the principal government departments and associated public bodies.[26] However, there is no obligation on these committees to examine expenditure, or to take any action on the departmental estimates that are sent to them. Each committee also receives the relevant annual Departmental Reports which contain details of the performance of each department in the previous year, its future expenditure plans and the precise policy objectives these are designed to meet. The Departmental Reports are more likely to be examined by the departmental select committees than the estimates, and some committees take evidence and make reports on departmental expenditure plans.[27] The most significant examination of expenditure plans is by the Treasury Select Committee.

Public revenue

12–012 The national revenue is not solely derived from taxation. The Exchequer derives a certain revenue from the Crown lands, in respect of which and other hereditary Crown revenues Parliament pays over to the Queen a fixed annual sum called the Civil List. The Government will also raise money by borrowing which need only be approved by the Commons in a general way.[28] In modern times, however, the great bulk of revenue is supplied to the Crown by Parliament for the government of the country. It is the practice to impose some taxes by "permanent Acts" which remain in force until repealed or amended, *e.g.* stamp duties and capital transfer tax, value added tax,[29] and to impose others by annual Acts, which remain in force for one year only. Thus the annual Finance Act sets out the rates of income tax, customs and excise duties.[30] These taxes and duties are known as "charges upon the people." All the national revenue of whatever kind goes into the Bank of England, where it is credited to the Exchequer account and

[26] S.O. No. 152, see further *post* para. 12–029.

[27] The Procedure Committee H.C. 295 (1998–99) has proposed that a S.O. should provide that when laid the main estimates and other associated documentation should be automatically referred to the relevant select committee, which would have to report back to the House within a specified time. The increased work imposed on such committee would require additional resources and in particular specialist advisers for the select committees.

[28] The First Report from the Select Committee on Procedure (Finance) (1983) suggested that the House of Commons should concern itself with both the form and amount of public borrowing. (1972–83; H.C. 241); this has not been accepted by any government.

[29] Value Added Tax Act 1994. The Treasury may by order increase (by no more than 25%) or decrease the rate of VAT.

[30] These are also subject to E.C. law; see European Communities Act 1972 (ECA), s.5 which grants a power to the Treasury to use delegated legislation to alter customs duties in furtherance of a Community obligation.

is called the Consolidated Fund.[31] Withdrawals must be authorised by statute,[32] and are subject to control by the Comptroller and Auditor General.[33]

Ways and means business

12–013 Taxes which are authorised for one year only,[34] such as the rates of income tax and corporation tax, require annual Parliamentary approval for their continuation. This is also the case for an increase in a permanent tax, such as customs and excise duties, the imposition of a new tax or the extension of the incidence of an existing tax. Proposals for the rates of these taxes are contained in the Chancellor of the Exchequer's financial statement of the year, or Budget, which is presented near the beginning of the financial year.[35] A Pre-Budget Report stating the Government's assessment of the economy and outlining the aims of the forthcoming Budget will have been published in the previous autumn to encourage informed debate.[36] In addition to tax rates, the Budget contains a financial review of the previous year, an estimate of probable expenditure for the next year and a statement of the Government's general financial and economic policy.[37] The Budget is considered in some detail by the Treasury Select Committee; the other departmental committees may also do so. The Treasury Committee report on the Budget will be published in time for the second reading of the Finance Bill.

Budget resolutions

12–014 Before the Finance Bill which will give effect to Budget changes can be brought in, the House must approve the Ways and Means resolutions upon which the Bill will be founded.[38] In the case of the Budget this happens in two stages. Immediately after the Chancellor's speech the necessary detailed budget resolutions to allow the continued collection of income and capital transfer tax and for changes in the rates of these taxes or in the rates of any of the permanent taxes or duties, will be introduced. These resolutions will then be provisionally passed by the House. Since there will not at that stage have been an opportunity to debate these resolutions, they will have to be further approved by the House within ten days. This will be in the course of the subsequent four day general debate on all the budget resolutions, at the end of which the House will vote on the resolutions and, if agreed, the Finance Bill will be ordered to be brought in. For more than a century before the case of *Bowles v. Bank of England*[39] it had

[31] Established in 1787 by the younger Pitt. Before that date the various taxes were charged arbitrarily on particular sources of revenue. The National Loans Act 1968 established the National Loans Fund and some of the functions and revenues from the Consolidated Fund were transferred to it, in particular all government borrowing transactions go through the National Loans Fund.

[32] Either a Consolidated Fund Act or an Appropriation Act.

[33] See *post* para. 12–018.

[34] Permanent authority for the machinery for collecting these taxes is contained in, for example, Income and Corporation Taxes Act 1970 (as amended) and Taxes Management Act 1970 (as amended).

[35] The timing of the Budget has varied over the years, from 1993–96 it was in the autumn, the new Labour government reverted to the practice adopted prior to 1993 of a spring budget.

[36] This innovation was welcomed by the Treasury Committee. H.C., 647 (1997–98). The Environmental Audit Committee has taken evidence on each of the Government's Pre-Budget Reports and on the Budget itself, and issued reports, see, *e.g. The 1999 Budget: Environmental Implications* H.C. 325 (1998–99).

[37] One of the Budget papers is the *Financial Statement and Budget Report*, which is printed as a House of Commons Paper. As well as summarising the Budget tax measures, this contains an analysis of financial strategy and planned developments in the economy.

[38] Rule 4 *ante*. para. 12–003.

[39] [1913] 1 Ch. 57.

been the practice to anticipate the passing of legislation by collecting certain taxes on the authority of the resolutions. In that case Parker J. declared the practice of deducting tax without the authority of an Act of Parliament to be a violation of the Bill of Rights 1688. The decision resulted in immediate legislation[40] to give temporary statutory effect to the proposals contained in the resolutions. The position is now governed by the Provisional Collection of Taxes Act 1968.[41] This Act requires the resolutions to be confirmed by the second reading of the Bill relating to the tax within 25 days of the House approving the resolutions. It also provides that their statutory effect shall continue only until August 5, if passed in the previous March or April, or May 5, if passed in the previous November or December or for four months if passed at any other time. This then gives the Government a deadline for the passage of its Finance Act.

The Finance Bill

12–015 Debates on the second reading of the Finance Bill usually cover a general review of national finance. Amendments may be put forward, but they may not increase the amount or extend the area of incidence of a tax as already authorised in the resolutions.[42] The Committee stage is divided between a committee of the whole House and a standing committee.[43] The Report stage is similar to that for other Bills, and the Third Reading is usually combined with the second day of the Report stage.

The Finance Bill is not usually a "Money Bill" for the purposes of the Parliament Act 1911 since it often includes provisions dealing with subjects other than those enumerated in section 1(2) of the Parliament Act. Therefore, subject to the special privileges of the Commons in relation to finance, it will proceed through the Lords in the usual way. Since the Lords do not seek to amend the Finance Bill it normally passes through all its stages in a single day.

The Royal Assent is given in the form: *La Reine remercie ses bons sujets, accepte leur be'ne'volence et ainsi le veult.*

The Bank of England

12–016 In 1997 the new Labour Chancellor of the Exchequer announced that the Bank of England would in future act independently of Government in the setting of interest rates, and that legislation would be introduced to provide for this. The Bank of England Act 1998 provides for the establishment of a committee of the Bank, the Monetary Policy Committee (MPC), which is to: "maintain price stability, and subject to that to support the economic policies of Her Majesty's Government, including its objectives for growth and employment" (section 11(a),(b)). The Treasury Select Committee has had particular responsibility for holding the MPC to account. This has included taking evidence from members of the MPC and although there is no statutory requirement to do so, it has conducted confirmation hearings for all the members of the MPC.

Securing the legality of public expenditure

12–017 In addition to approving the raising and spending of public money, Parliament must ensure that the sums of public money voted by it, and no more, have been

[40] Provisional Collection of Taxes Act 1913.

[41] Which has been amended by subsequent Finance Acts.

[42] It is possible to propose a decrease in a tax, and in 1994 the Government was forced to abandon its proposal to impose additional VAT on domestic fuel.

[43] This standing committee has between 30 to 40 members, compared to other standing committees on Bills which have 15 or 20 members.

spent for the purposes for which they were granted. This scrutiny of the legality of public expenditure is carried out by a Select Committee, the Committee of Public Accounts, which bases its work on reports made by the Comptroller and Auditor General (C. & A.G.). This structure for an external audit of public accounts was established at the end of the nineteenth century,[44] and in substance remained little changed until 1983 when the National Audit Act (NAA) was passed, which helped to ensure that the C. & A.G. was more independent of government.[45]

The Comptroller and Auditor General[46]

12–018 The C. & A.G. is an officer of the House of Commons, appointed by the Crown on an address by the House of Commons which is moved by the Prime Minister with the agreement of the Chairman of the Public Accounts Committee.[47] His independence of the executive and Parliament is ensured in several ways: his salary is charged on the Consolidated Fund[48]; he holds office during good behaviour, being removable only on an address from both Houses of Parliament[49]; and, subject to any statutory duties, he has complete discretion in the discharge of his functions, subject to the proviso that he takes into account proposals from the Committee of Public Accounts. The C. & A.G. is head of the National Audit Office (N.A.O.), and is responsible for the appointment and remuneration of such staff as he considers necessary.

The C. & A.G., as his title implies, has two main functions. First, as Comptroller, he controls the issue of money from the Consolidated Fund and the National Loans Fund. The Treasury sends an authority to the C. & A.G. requesting the payment of money to government departments. Before directing the Bank of England to pay, the C. & A.G. has to be satisfied that there is statutory authority for the payment and that all statutory requirements have been complied with.

Secondly, as Auditor General, through his staff at the N.A.O., he audits the appropriation accounts[50] of central government departments and various other public bodies, such as Regional Health Authorities and the universities. The extent and nature of this audit was reformed by the NAA. The C. & A.G. has statutory authority first to conduct a finance and regularity audit, that is to ensure that expenditure was made for the purposes authorised by Parliament, and report upon the accounts drawing attention to any irregularity that may have occurred. He is also able to conduct special investigations to examine "the economy, efficiency and effectiveness" of the use of resources to discharge the functions of any of the bodies to which the NAA applies, presenting the results as Value for

[44] The Committee of Public Accounts was established in 1861. The Exchequer and Audit Departments Act 1866 created the office of Comptroller and Auditor General.

[45] See Drewry [1983] P.L. 531.

[46] His full title is Comptroller General of the Exchequer and Auditor General of the Public Accounts.

[47] NAA s.1.

[48] Parliamentary and other Pensions and Salaries Act 1976, s.6.

[49] Exchequer and Audit Departments Act 1866.

[50] Until recently these accounts were based on cash sums, that is they recorded the cash to and from departments. A new system of accounting, resource accounting, has been phased in. This system requires account to be taken of all the economic cost of a service or activity, including the use of assets such as vehicles and properties. Department Resource Accounts should replace Appropriation Accounts from 2001–02. The Government Resources and Accounts Act 2000, s.6 gives the C. & A.G. powers to examine resource accounts.

Money (V.F.M.) reports.[51] In conducting V.F.M. inquiries the N.A.O. can not consider the merits of the policy objectives.[52] The question, over which bodies the C. & A.G. should have powers, has proved controversial, and the NAA did not greatly extend his jurisdiction.

12–019 To enable him to carry out his work the C. & A.G. has a statutory right of access to documents in the possession of any of the bodies concerned.[53] The reports from the C. & A.G. to the House of Commons forms the basis of the work of the Committee of Public Accounts.

The Committee of Public Accounts[54]

12–020 This Committee consists of not more than 16 members appointed at the beginning of each session to examine the accounts showing the appropriation of the money granted by Parliament to meet public expenditure and "such other accounts laid before Parliament as the Committee may think fit."[55] By tradition it is chaired by a member of the Opposition and the C. & A.G. attends all its meetings. It can propose to the C. & A.G. that he should conduct a V.F.M. audit into a body supervised by him.[56] In the light of reports by the C. & A.G. the Committee will examine whether Government policy has been carried out efficiently, effectively and economically. In carrying out these investigations it will examine the chief accounting and other senior officers of departments under investigation. It has identified fraud and corruption in the Property Services Agency[57] (the body responsible for building and maintaining government property); the extent of cost and time overruns in Ministry of Defence Major Projects[58] and the need for improvements in the working of the Further Education Funding Council for Wales.[59]

The Committee makes its reports to Parliament, and one day each session is devoted to debating its reports. The importance attached to these reports is shown by the Government undertaking to make a reply to the debate.

An additional function of the Committee is to look at "excess votes"—that is where a department has spent more upon a service in the financial year than the amount granted to it by Parliament. Before Parliament can approve an excess vote, a report will have been made to the Committee by the C. & A.G., which will have to report that it sees no objection to the sums being provided in this way.

[51] NAA s.6(1), s.7(1). See for *e.g.* the investigation into the administration of the Pergue Dam project, H.C. 908 (1992–93).

[52] NAA 1983 s.6(2).

[53] NAA s.8. The Pergau Dam affair revealed that the N.A.O. accepted limitations on its access to certain types of papers; see White, Harden and Donnelly, "Audit, accounting officers and accountability: the Pergue Dam affair", [1994] P.L. 526, for a discussion of the various issues raised by this affair.

[54] Flegmann, "The Public Accounts Committee; A Successful Select Committee?" XXXIII Parliamentary Affairs (1980), 166; Sheldon, "Public Sector Auditing and United Kingdom Committee of Public Accounts" LXV The Parliamentarian (1984), 91; *Holding Government to Account: Review of Audit and Accountability for Central Government*, Report by Lord Sharman, (2001).

[55] S.O. No. 148.

[56] The Public Accounts Committee is the only committee that has, in the shape of the N.A.O., a strong supporting bureaucracy.

[57] H.C. 295, (1983–84).

[58] H.C. 101 (1998–99). In this report it stated that the issues raised in the report had been identified by the Committee in many previous reports as far back as 1898.

[59] H.C. 641, (1998–99).

The P.A.C. and the NAO provide permanent oversight of Government expenditure, but the scope and extent of such spending means that it is not possible for them to track all such money. The 2001 Hansard Society Report suggested that each departmental select committees should establish a Finance and Audit subcommittee to consider departmental estimates, V.F.M. audits etc.

II. Scrutiny of the Administration[60]

12–021 Party organisation usually ensures that government proposals will be adopted by Parliament, and legislation passed to accord with the wishes of the Government. This increases the importance of Parliament's role in the scrutiny of the working of the administration. Parliament is assisted in this role by the law on parliamentary privilege,[61] which enables M.P.'s to criticise and comment freely on matters of public concern, and the rules whereby it is contempt for a witness to refuse to assist Parliament in carrying out this, and its various other functions.[62]

There are a several ways in which the Commons can participate in the scrutiny of the administration. A recent reform, Westminster Hall sittings,[63] is an example of how the House continues to try to reform its procedures so as to better perform this task. How effective Parliament is depends not only on the availability of suitable parliamentary proceedings, but also on the acceptance by Government of the authority and role of Parliament in the constitution.

Questions[64]

12–022 The device of parliamentary questions developed slowly in the eighteenth century, and became increasingly important after the Reform Act of 1832. In addition to the more traditional purpose of questions, namely to check the activities of the executive, there are several other possible objectives for parliamentary questions:

(i) for backbenchers to raise grievances of constituents;

(ii) to illuminate the differences between the political parties on policy on major issues;

(iii) to enable the Government to disseminate information about particular policy decisions[65];

(iv) to obtain information from the Government. As the Procedure Committee reported, "The relative prominence assumed by the different purposes of parliamentary questions has varied from era to era".[66]

[60] See Adam Tomkins, "A right to mislead Parliament?", (1996) 16 L.S. 63.
[61] *post*, Chap. 13.
[62] *post*, para. 13–022
[63] *ante* para. 11–017.
[64] See Select Committee on Procedure *Oral Questions* (1989–90) H.C. 379; *Parliamentary Questions* (1990–91) H.C. 178; *Parliamentary Questions* (1992–93) H.C. 687. D.N. Chester and N. Bowring, *Questions in Parliament* (1962); D.N. Chester in *The Commons Today* (S.A. Walkland and M. Ryle eds.), Chap. 8; *Parliamentary Questions* (Franklin and Norton eds., 1996). S.O. Nos. 21, 22.
[65] For example, the question which led to the naming of Anthony Blunt, H.C. Deb., Vol. 973, col. 679–681 (1979–80). The advantage of making announcements by written answer is that no further questions can be asked at that time on the subject matter on the answer.
[66] See H.C. 178 (1990–91) paras. 26–31.

Each year over 50,000 questions are tabled by M.P.'s. It is by asking questions that the private Member comes into his own, for he can put forward the grievances of individual citizens who have suffered at the hands of government departments, thereby reinforcing the convention of ministerial responsibility. It is also a useful tool for Members of the Opposition for, when used skilfully, the asking of questions may be made a source of considerable embarrassment to the Government.

12–023 Questions may be asked and answered orally or in writing. Oral answers are given at question time which lasts for about 55 minutes every sitting day except Friday. Three or four departments are allocated to each day, and the Ministers will answer questions according to a published rota, which means that each Minister will only have to answer oral questions about once every four weeks. The Prime Minister answers questions for thirty minutes on Wednesday. Unless the Speaker gives special leave, written notice of intention to ask a question must be delivered beforehand to the Clerk of the House at the Table.[67] Where an oral answer is required, an asterisk is affixed to the notice. A Member is limited to two oral questions a day but no more than one to any one Minister. Between 15 and 20 oral questions are answered each day, a ballot is used to determine the order in which questions will be asked.[68] There is no limit to the number of questions for written answer which a member may ask on the same day. If there is no asterisk, or the Member is not in the House, or the question is not reached by the time-limit, the Minister concerned has the answer printed in the Official Report. The Member may, however, postpone or withdraw his question. A Member who wishes to receive a written answer on a named day may indicate this by marking the question with the letter "N" and the specified date. Where a Member considers a Minister's reply to an oral question is unsatisfactory, supplementary questions may be asked. Unlike the original question, the Minister will not have advance notice of the supplementary question. "Originally, questions were asked in order to secure an answer," says Jennings[69]: "Today they often serve as pegs on which to hang a more insidious 'supplementary.'"

12–024 Questions addressed to a Minister[70] must relate to:

(i) public affairs with which he is officially connected,

(ii) proceedings pending in Parliament, or

(iii) matters of administration for which he is responsible, that is, which come within the work of his department or a Next Steps Agency,[71] or his official duties or powers.

[67] Private notice questions, which are not subject to the notice requirements for ordinary questions, may be allowed by the Speaker to enable urgent matters of public importance to be asked on the day on which they are raised.

[68] In 1990 the House agreed that only a specified number of oral questions put down would be drawn out of the ballot and printed.

[69] Jennings, *op. cit.* p. 106.

[70] Questions may be asked of non-official Members relating to Bills, motions or other matters concerned with the business of the House for which they are responsible, *e.g.* chairmen of certain Select Committees.

[71] See the House of Commons Resolution of March 19, 1997, H.C. Deb. vol. 292, cols. 1046–7. However when a question is on operational, as opposed to policy matters, Ministers will refer it to the Next Steps agency chief executive for reply, the question and letter in reply will be published in the Official Report, see Leopold [1994] P.L. 214.

An admissible question is one that asks for information or action, and not merely raises an interesting topic of the day. A question must relate to a matter within the Government's responsibility, or one that can be made so by legislation or administrative action.

The rules on the need for ministerial or government responsibility are amongst those that have been defined and redefined by the Speaker, and indeed by the House itself. An example is questions to Ministers relating to nationalised industries. For many years the tabling of questions to Ministers on the public corporations set up under various nationalisation Acts was limited on the grounds of constitutional propriety, rather than procedure. More recently because of the political interest in the remaining nationalised industries and the regulators of former nationalised industries, Ministers have been more inclined to exercise their discretion and answer a question rather than refer the Member to the public body concerned. In 1993 the House agreed that in this area, when applying the test of ministerial responsibility, the Table Office should give the benefit of doubt to Members especially when previous Ministerial answers revealed a lack of a regular pattern. A new area of uncertainty as to ministerial responsibility is with respect to the responsibilities of the Secretaries of State for Scotland, Wales and Northern Ireland. The Procedure Committee has recommended that rather than wait for a pattern to emerge from the territorial Secretaries of State, the House should adopt a resolution defining the extent to which questions could be put to these Ministers.[72]

A problem of responsibility also arises with regard to questions to the Prime Minister who has few direct departmental responsibilities.[73] To circumvent this problem Members use "open" questions in which they ask for a list of the Prime Minister's official engagements for a certain day. The purpose of this type of question is to ask a topical or unexpected question as a supplementary. Despite criticisms of this procedure, the House has decided that it should continue.[74] **12–025**

The Speaker is the final authority on the admissibility of questions, and in his decisions he implements the rules of the House on the form and content of questions.[75] For example, opinions must not be asked, and purely legal questions are not allowed, nor may a question refer to any debate that has occurred in either House in the current session. Questions may not be asked that bring the name of the Sovereign or the influence of the Crown directly before Parliament, or that cast reflections on the Sovereign or the Royal Family. The Prime Minister cannot be questioned on the date proposed for the dissolution of Parliament or on relations between himself and the Monarch. Imputations on private character are not permitted, but imputations on official character may be made with certain reservations. Questions may not be put on matters pending in a committee till the report of that committee is issued. A question must be a question: argument or statements of fact are not permitted. Following a recommendation from the

[72] Procedure Committee, *The Procedural consequences of Devolution*, H.C. 185 (1998–99). The committee recommended, and the House has agreed, a slight reduction in the time allocated for questions on Scotland, but not for Wales or Northern Ireland as the Ministers concerned had more extensive responsibilities.

[73] Select Committee on Procedure, *Questions to the Prime Minister* (H.C. 320; 1986–87).

[74] Report from the Procedure Committee: Prime Minister's Questions, H.C. 555 (1994–95).

[75] See Erskine May, *Parliamentary Practice* (22nd ed., 1997) pp. 297–303. In February 2001, the apparent abuse of Question Time by Members of both the Government and Opposition, led the Speaker to remind the House of its purpose, see H.C. Deb. Vol. 341, col. 315, February 14, 2001.

Select Committee on Procedure[76] the House agreed that while the Speaker should have regard to the rules on the form and content of questions, he should not consider himself bound, when interpreting these rules, to disallow a question solely on the ground that it conflicted with any previous individual ruling. Nor is it any longer the case that questions will automatically be disallowed on the grounds that successive administrations have refused to answer questions on that matter.

12–026 No Minister is obliged to answer a question, but the House in 1997 resolved that Ministers should be, "as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statute and the Government's Code of Practice on Access to Government Information."[77] This Code allows Ministers not to make information available where, for example, its disclosure would harm national security or the proper and efficient conduct of the operations of a Government department. The Government has agreed that if a Minister refuses to answer a question on grounds other than "disproportionate cost",[78] then reasons will be given and reference made to the relevant provision of the Code of Practice.[79]

The work required to answer questions is done by the civil servants in the department concerned. Guidance on answering parliamentary questions has been published.[80] This reminds officials of the obligations of Ministers to give as full information as possible about government policies and actions, and not to deceive Parliament or the public. Although the responsibilities of officials are to assist Ministers to fulfil those obligations, the Guidance also notes that Ministers are entitled to expect draft answers that will do full justice to the Government's position. However information should not be omitted merely because it could "lead to embarrassment or administrative inconvenience."

Debates[81]

12–027 There are a variety of occasions when private members in particular and the opposition in general, may use the technique of debate to scrutinise Government activities. The most frequent is the daily motion for adjournment of the House which provides a half-hour at the end of the day. In addition, from 1995 Wednesday morning adjournment debates of a total of five and a half hours were held on the floor of the House; these were transferred to Westminster Hall sittings in 1999,[82] and an extra three hours per week provided for such debates.[83] It is for

[76] H.C. 687 (1992–93), which was in fact endorsing a recommendation from the Select Committee on Parliamentary Questions H.C. 393 (1971–72).

[77] Resolution of March 19, 1997, H.C. Deb. Vol. 292, cols. 1046–7. The most recent Code of Practice is that of 1997. For discussion of the issues raised by the requirement of Ministers generally to account to Parliament see: Sir Richard Scott, "Ministerial Accountability," [1996] P.L. 416; Leigh and Lustgarten, "Five Volumes in Search of Accountability: The Scott Report", (1996) 59 M.L.R. 708; Oliver, "Freedom of information and Ministerial accountability," [1998] P.L. 172.

[78] The current figure of £550 for written answers was set in 2000, there is no advisory limit for oral answers. In a session the total annual cost of answering questions is about £4.5 m.

[79] See the Fourth Report from the Select Committee on Public Administration, *Ministerial Accountability and Parliamentary Questions*, H.C. 820 (1997–98). This includes a list of the questions blocked by government departments for the year 1996–97.

[80] See *Guidance to Officials on Drafting Answers to Parliamentary Questions*, H.C. 313, (1995–96).

[81] For the rules on debates see *ante*, para. 11–007.

[82] See *ante* para. 11–017.

[83] It was suggested that this will allow an additional 140 back-bench adjournments debates a year.

private members to choose the subject of and initiate adjournment debates and almost any matter not involving legislation may be discussed.[84] There is usually no division as adjournment is automatic when the time-limit is reached. A weekly ballot is held among those who wish to raise a matter on the daily or Westminster Hall adjournment debates. These debates are particularly valuable to private members who remain unsatisfied with answers to questions to Ministers. A Minister is obliged to attend an adjournment debate and to reply, but the member who has raised the issue cannot question or reply to the Minister's speech.

12–028 Each session there are 20 days *Opposition Days*, when the ters to be debated can be decided by the Opposition. Seventeen of these are a. .e disposal of the Leader of the Opposition and three at the disposal of the leader of th second largest opposition party.[85] Examples of subjects debated include t implications of devolution for Westminster, pensions and industrial relations. T Opposition may also choose topics for debate during the five or six days of debate on the Annual Address in reply to the Queen's speech.

There are other occasions for general debates. These may be on a specific motion on for example the budget, foreign affairs or the European Union, or on a more general motion moved by a Minister for the adjournment of the House to enable a debate on foreign affairs or the environment where no decision by the House is required.[86] Debates may not be the best means of inquiring in depth into government administration, but they do enable topics to be aired in public and may result in further action elsewhere.

Select Committees

12–029 Parliament uses select committees[87] for a wide variety of purposes including scrutinising the administration. We have already considered one such committee, the Committee of Public Accounts. The other committees which chiefly fulfil this function are the Departmental Select Committees established in 1979.[88] Each of these committees, as its name indicates, is concerned with a different government department. From 1997, until 2001 general election, there were the following committees: Agriculture; Culture, Media and Sport; Defence; Education and Employment; Environment Transport and Regional Affairs; Foreign Affairs; Health; Home Affairs; International Development; Northern Ireland Affairs; Science and Technology; Scottish Affairs; Social Security; Trade and Industry; Treasury; Welsh Affairs.[89] The existence of the committees is re- ed by

[84] Matters for which the Government has no administrative responsibility may not be raised; this will restrict the ability of members to raise matters devolved to Scotland, Wales or n Ireland in these debates.

[85] S.O. No. 14.

[86] The Modernisation Committee indicated that one of the purposes of sittings in Wes ains fall was to enable more of this type of general debate, and it has been suggested that Westmins sittings should enable an additional 17 or 18 extra general debates a year.

[87] *ante* para. 11–016.

[88] Following the First Report from the Select Committee on Procedure (1977–78; H.C. 588).

[89] After the 2001 election various departments were reorganised or renamed, and the following committees were established: Environment; Food and Rural Affairs; Culture, Media and Sport; Defence; Education and Skills; Environment, Food and Rural Affairs; Foreign Affairs; Health; Home Affairs; International Development; Northern Ireland Affairs; Science and Technology; Scottish Affairs; Trade and Industry; Transport, Local Government and the Regions; Treasury; Welsh Affairs; Work and Pensions.

standing order[90] and their continuation therefore is not dependent on the Government of the day. Although the selection of Members of the committees is by the Selection Committee (which is composed of private Members) and not by the party whips, it is clear that the composition is determined by the nominations made to the committee by the Whips.[91] This committee has refused to appoint to the select committees anyone with an official position in the political parties. Each committee elects its own chairmen,[92] has a permanent staff of three or four, and may recruit specialist advisers, such as professors and generals, who are paid on a *pro rata* daily basis. Most committees have 11 members and from the 2001 session all will be able to decide whether or not to appoint sub-committees, and decide whether to join with another committee for a particular enquiry.[93] There is also a *Liaison Committee* made up of most of the select committee chairmen, which considers general matters relating to the work of select committees, for example it can help to prevent more than one committee investigating the same subject. It also choices the select committee reports to be debated on three Wednesday mornings each session, and the estimates to be debated on Estimate Days. The Liaison Committee can express the joint views of the various select committees and from time to time makes reports to the House on the Select Committee system. It developed a higher profile in 2000–01, publishing three reports in which it indicated some of the concerns with the working of the select committee system.[94]

The powers of Select Committees

12–030 Each select committee is empowered "to examine the expenditure, administration and policy" of the department with which it is concerned, and also of "associated public bodies."[95] In common with all select committees, each committee has power delegated to it by the House to send for "persons, papers and records." Committees seldom need to rely on their formal powers, most witnesses attend or provide documents following an invitation to do so.[96] In the case of Members of either House, select committees do not have a power to summon, only to issue an invitation.[97] Governments have given repeated undertakings that Ministers will attend and answer questions from select committees. However this

[90] S.O. 152.

[91] See First Report, Liaison Committee, H.C. 323–I (1996–7). In July 2001 the House of Commons voted to refuse to accept some of the proposed nominations to select committees. A review of the procedure for nominations, to such committees was promised.

[92] By virtue of informal agreements between the parties a number of chairmen are members of the opposition; account is taken of the balance of the parties in the House in determining this.

[93] S.O. 152.

[94] See: H.C. 300 (1999–2000); H.C. 748 (1999–2000) H.C. 321 (2000–2001).

[95] Which is not defined. It is accepted that it applies to public bodies which exercise authority of their own, and over which Ministers do not have the same direct authority as they have over their own departments.

[96] In 1982 the Energy Select Committee made a formal order to summons Mr Arthur Scargill to attend, and in 1992 John and Kevin Maxwell were ordered to attend the Social Security Select Committee, but refused to answer most questions put to them. H.C. 353 (1991–92). See also: H.C. 421 (1996–97) where an order was made to require a lobbying company to produce papers to the Committee on Standards and Privileges; see H.C. 573 (1997–98) in respect of an order by the Home Affairs Select Committee for the production of a list of names of certain police officers and others who were freemasons.

[97] The House could order a Member to attend a select committee, but by convention, one House does not compel the attendance of a member of the other House before its committees. This means that a Minister or former Minister who is elevated to the Lords could not be required to attend a Commons select committee, whereas if he left Parliament he could be so ordered.

does not necessarily mean that Ministers who appear before such committees are fully co-operative.[98] Where named civil servants have been invited or summoned by a select committee, Ministers have on occasion substituted other civil servants,[99] or appeared themselves in place of the named civil servant.[1] Select committees may only request, or order, the production of papers and records relevant to its work from private or public bodies or individuals. The means whereby select committees obtain papers and records from government departments are subject to "historical restrictions of little relevance today".[2] Where documents are in the possession of a government department, a select committee may order the production if they are of a public and official nature and not private or confidential. However if a department is headed by a Secretary of State then only the House by moving a Humble Address to the Queen, can take the formal step of ordering the production of the document.

Civil servants give their evidence or produce documents on behalf of Ministers, and successive Governments have issued published guidance for civil servants appearing before select committees.[3] These guidelines, while reminding officials that they appear before such committees on behalf of their Minister and under their directions, instruct them to be "as helpful as possible", and "as forthcoming as they can in providing information." Information should only be withheld where this is necessary in the public interest which should be decided in accordance with the law and the exemptions set out in the *Code of Practice on Access to Government Information* (1997). Information that may be withheld from select committees includes advice by officials to Ministers, information whose disclosure would harm national security or defence and information supplied to the Government in confidence. Governments have promised that if there was widespread concern in the House with respect to a Minister's refusal to allow the disclosure of information to a select committee, time would be provided for the House to express its view.[4]

Although wilful failure to attend a committee, to produce documents when formally summoned or to alter suppress or destroy a document requested or to refuse to answer questions, could amount to contempt of parliament, this is **12–031**

[98] See for, *e.g.* the Westland affair in 1985–86, when Mr Leon Brittan refused to answer question from the Defence Select Committee on the leaking of a letter from the Solicitor General to another Minister, H.C. 519 (1985–86); the salmonella in eggs affair in 1988–89 where Mrs Currie initially refused to attend a meeting of the Agriculture Select Committee, when she reluctantly appeared, she refused to answer questions from the committee, H.C. 108 (1988–89).

[99] Or refused officials permission to attend as in the Supergun investigation in 1992, where it transpired that Ministers had prevented officials giving evidence to the Trade and Industry Select Committee, H.C. 86 (1991–92); see Phythian and Little, "Parliament and Arms Sales: Lessons of the Matrix Churchill Affair", (1993) 46 *Parliamentary Affairs* 293.

[1] Something that has been criticised by several select committees, Second Report of the Public Service Committee, H.C. (1995–96) 313, Liaison Committee *ante* note 94.

[2] D. Woodhouse, *Ministers and Parliament: Accountability in Theory and Practice* (1994), p. 189.

[3] These rules have which were know as the Osmotherly Rules have undergone several revisions and have progressively become less restrictive. The current edition, *Departmental Evidence and Response to Select Committees* (1999), is issued by the Cabinet Office.

[4] In 1998 the Foreign Affairs Select Committee successfully asked for the Government's repeated refusal to allow it to see copies of telegrams relating to breaches of the arms embargo to Sierra Leone to be debated, First and Second Special Report, Foreign Affairs Committee, H.C. 760, H.C. 852 (1997–98); H.C. Deb. vol. 315, col. 865–959, July 7, 1998. The motion to (debate on an Opposition Day, to criticise the Government for imposing conditions on the information sought by a Select Committee was defeated, the Government having agreed to provide the committee with a confidential summary of the telegrams.

unlikely to be enforced except in exceptional circumstances.[5] The Joint Committee on Parliamentary Privilege suggested that this type of contempt of Parliament should become a criminal offence, applicable to members and non-members alike.[6] Select committees have indicated that they are unhappy with their lack of formal powers with respect to Members, and the Liaison Committee has recommended that all select committees should have the power to order a Member to attend and give evidence[7]; something Governments continue to oppose.[8]

The work of Departmental Select Committees

12–032 The purpose of the departmental select committees is to assist the House of Commons to play an active role in the criticism and scrutiny of Government and to help enforce the accountability of Ministers to Parliament. In the early years of these committee there were some significant gaps in the fields of government activities covered: there was no committee for Northern Ireland affairs nor was there one for either the Lord Chancellor's or Law Officers' Departments. These gaps were eventually rectified.[9] In addition the Intelligence Services Act 1994, s.10 established a committee of members of both Houses to review the expenditure, administration and policy of the security and intelligence agencies,[10] and in 1997 a new select committee, the Environmental Audit Committee, was established to consider the extent to which the policies and programmes of governments and non-departmental bodies contribute to environmental protection and sustainable development.[11] This committee's work is cross-departmental and it can meet concurrently with other committees, in particular the departmental select committees.

The departmental select committees have a wide discretion as to how they do their work, but broadly speaking they are concerned with monitoring departments by taking evidence, questioning witnesses and making reports upon matters which they think should be investigated. They play an important role in helping to enforce the accountability of Ministers to Parliament. The committees normally meet to hear evidence in public, but meet in private to deliberate.[12] Witnesses before these committees can be questioned more thoroughly than would be possible on the floor of the House, and often by those with expertise in the matter under investigation. Evidence will be obtained not just from those in government, but also from those affected by government decision-making. Often

[5] *post* para. 13–020, see Patricia Leopold [1992] P.L. 541.

[6] H.L.Paper 43-I, H.C. 214-I (1998–99), para. 310–311. The legislation establishing the devolved Parliament and Assemblies provides that such actions are criminal offences triable in the courts.

[7] First Report, *The Work of Select Committees*, H.C. 323 (1996–97). At present only the Committee on Standards and Privileges has this power, S.O. No. 149(6), see *post* para. 13–023.

[8] The inability of a select committee to unearth all the available evidence in a matter can be see in a comparison between the report of the Foreign Affairs Select Committee into the Pergau Dam affair (H.C. 271 (1993–94)) and *R. v. Secretary of State for Foreign Affairs ex p. World Development Fund* [1995] 1 W.L.R. 386.

[9] The Northern Ireland Affairs Committee was established in 1994, and in 1991 the terms of reference for the Home Affairs Select Committee was extended to cover the work of the Law Officers, the Scottish Affairs Select Committee was given similar powers with respect to the Lord Advocate's functions.

[10] "A committee of Parliamentarians, but emphatically not a committee of Parliament." para. 90, H.C. 300 (1999–2000). The members are appointed by the Prime Minister in consultation with the Leader of the Opposition, so its independence from government is not as great as that of the departmental select committees.

[11] S.O. No. 152A. See Andrea Ross [1998] P.L. 190.

[12] Leaking of draft reports or the premature disclosure a report is a contempt of Parliament. See *post* para. 13–021.

a select committee report will be as important for the body of evidence it publishes, as its conclusions.[13] The committees attempt to achieve unanimous reports, which can make the report critical of government policy or administration more significant; alternatively there is a risk that a report will be bland. The desire for consensus may prevent committees considering politically controversial matters. Committee reports have been useful in giving the House background facts for particular debates, and so enable members to be better informed; this is assisted by the publication of White Papers by the Government in reply to committee reports. However fewer than ten per cent of the reports produced by select committees are debated[14] and less than a third are referred to in a motion as being relevant to a debate on something else. The proposal to hold debates on select committee reports at Westminster Hall sittings is expected to allow for an additional 36 such reports to be debated each session. Until now the vast majority of reports remained sources of information only.

12–033 There have been a variety of reports on the strengths and weakness of the Departmental Select Committees.[15] The overall view is that they have made a contribution to strengthening parliamentary scrutiny of Government, but there remains room for further improvement.[16] The Liaison Committee reviewed the operation of the Select Committees in 1999 to explore ways in which they could be made more effective and more independent of Government. It made a series of proposals, which did not meet with an enthusiastic response from the Government.[17] The 2001 Hansard Society Report found that the quality of scrutiny provided by the select committees was variable and unsystematic. It suggested a variety of reforms including: defining their duties and functions more closely; the development of new methods of working; better monitoring of their recommendations; more opportunities for debates and questions on reports from committees and an increase in staffing and resources.[18]

[13] For example it was said of the report from the Home Affairs Committee, *Judicial Appointments Procedures*, H.C. 52 (1995–96), that its substantive value lay "almost entirely in the voluminous oral and written evidence from an impressive array of . . . witnesses, rather than in (its generally) bland and uncritical conclusions." Drewry and Oliver Chap. 3 in *The Law and Parliament* (ed. by Oliver and Drewry 1998).

[14] Originally these were debated were on the floor of the House on various Wednesday mornings, but for the 1999–2000 session they were transferred to sittings in Westminster Hall.

[15] *The New Select Committees: a Study of the 1979 Reforms* (Drewery, ed. 2nd. ed, 1989); Giddings, "Select Committees and Parliamentary Scrutiny", (1994) 47 *Parliamentary Affairs* 669; Woodhouse, *Ministers and Parliament* (1994) Chap. 10; Hennessey *The Hidden Wiring*, (1995).

[16] See note 27 *ante* for a proposal from the Procedure Committee.

[17] H.C. 300 (1999–2000), Government response Cm. 4737.

[18] *op. cit.*, see Chap. 3 and Appendix 5 of the Report.

CHAPTER 13

PARLIAMENTARY PRIVILEGE[1]

The nature of parliamentary privilege

13–001 Privilege, notably freedom from arrest, was originally part of the King's peace. It ensured the attendance of Members of the Council, judicial and other public officers, and Members of the royal household. From the reign of Henry VIII the Commons as well as the Lords have been left to enforce their own privileges.

Each House exercises certain powers and privileges which are regarded as essential to the dignity and proper functioning of Parliament. The Members also have certain privileges, although these exist for the benefit of the House and not for the personal benefit of the Members. "As every Court of justice hath laws and customs for its direction," says Coke, "so the High Court of Parliament *suis propriis legibus et consuetudinibus subsistit.*"[2] Erskine May defines parliamentary privilege as "the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament,[3] and by Members of each House individually without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals.[4] Thus privilege, though part of the law of the land, is to a certain extent an exemption from the general law."[5]

13–002 Privilege is part of "the law and custom of Parliament"—to be collected, says Coke, "out of the rolls of Parliament and other records, and by precedents and continued experience." Some of it has the authority of statute, notably the provision of the Bill of Rights 1688 relating to freedom of speech and debates or proceedings in Parliament. A Bill that concerns the privileges of either House should commence in the House to which it relates. Neither House can create new privileges except by statute.[6]

Parliamentary privilege consists of the rights and immunities which Parliament, its Members and officers possess to enable them to carry out their parliamentary functions. Over the years some privileges have modified to reflect wider political and social changes.[7] There is a need to keep privileges under review to ensure that they are effective and remain necessary for the proper functioning of Parliament. A general review of the privileges of the Commons was carried out

[1] See Erskine May, *Parliamentary Practice* (22nd ed., 1997). See also Anson, *Law and Custom of the Constitution*, Vol. I (5th ed., Gwyer), pp. 153–189, 242–247; Wittke, *Parliamentary Privilege*; Holdsworth, *History of English Law* 1923–64, Vol. VI, pp. 92–100; Viscount Kilmuir, *The Law of Parliamentary Privilege* (Athlone Press, 1959).

[2] 4 Inst. 15.

[3] The House of Lords is a court of record, the House of Commons probably not.

[4] The power to commit for contempt, however, is not essential to the discharge of its functions; see *post*, para. 13–020.

[5] *op. cit.* p. 65.

[6] See, *e.g.* Parliamentary Commissioner Act 1967, s.10(5); Defamation Act 1996, s.13.

[7] *e.g.* the decision in 1971 by the Commons to waive its privilege in respect of the publication of its debates and proceedings, and the transfer in 1868 of election disputes from the Commons to the courts, *ante*, para. 10–061.

in 1967.[8] In 1997, a Joint Committee of both Houses was established to review privilege in both Houses; this committee reported in 1999.[9]

The relationship between the courts and Parliament

13–003 "After three and a half centuries, the boundary between the competence of the law courts and the jurisdiction of either House in matters of privilege is still not entirely determined."[10] Although true, there is today a large measure of agreement between Parliament and the courts as to the areas where Parliament reigns supreme. By the nineteenth century Parliament accepted that the law of Parliament was part of the general law and its limits could be determined by the courts; the courts in turn accepted that there was a sphere in which the jurisdiction of the House of Commons was absolute and exclusive.[11] As Lord Simon of Glaisdale stated: " . . . for many years Parliament and the courts have each been astute to respect the sphere of action and the privileges of the other."[12] Cases to be discussed in this chapter illustrate how the boundary between the jurisdiction of the courts and Parliament has been drawn, and where the problem areas remain.

A consideration particularly to the fore in the light of the Human Rights Act 1998, is the right of citizens to have access to the courts. Two decisions, both by the Judicial Committee of the Privy Council, illustrate an interpretation of privilege which could result in a breach of the European Convention on Human Rights. In *Re Parliamentary Privilege Act 1770*[13] the Judicial Committee advised that the Commons would not be regarded as being in breach of this statute if it treated the issue of a writ of libel in respect of a proceeding in Parliament as a breach of privilege.[14] In the opinion of the Joint Committee the possibility of the exercise of Parliament's penal jurisdiction in these circumstances could be in breach of Article 6(1) of the E.C.H.R. and it recommended that this should be altered.[15] In *Prebble v. Television New Zealand*[16] the Judicial Committee advised that where an action could only be defended by citing proceedings in Parliament in such a way as to question those proceedings, then the case would have to be stayed. In this case the Judicial Committee decided that the need to ensure that the legislature could exercise its powers freely on behalf of its electors prevailed over the both the need to protect freedom of speech generally and the interests of

[8] Select Committee on Parliamentary Privilege (1967–68) H.C. 34. Very few of recommendations made by it, or in subsequent reports by the Committee of Privileges, have been implemented.

[9] Joint Committee on Parliamentary Privilege (1998–99) H.L. 43, H.C. 214, hereafter referred to as the Joint Committee. See P. M. Leopold [1999] P.L. p. 604–616.

[10] Erskine May, *op. cit.* p. 153, and see generally Chap. 11, which includes an account of the historical background to this conflict. Two pairs of cases are particularly important—*Ashby v. White*, (1703–1704) 2 Ld.Raym.938; 3 Ld.Raym.320; 14 St.Tr. 695, and *Paty's Case* (1704) 2 Ld.Raym. 1105, 1113; 14 St.Tr. 849, at the beginning of the eighteenth century; and *Stockdale v. Hansard*, (1839) 9 Ad. & E.1, and the *Case of the Sheriff of Middlesex*, (1840) 11 Ad. & E. 273, in the first half of the nineteenth century.

[11] Erskine May, *op. cit.* p. 160.

[12] *Pickin v. British Railways Board* [1974] A.C. 765, at p. 799.

[13] [1958] A.C. 331. The House of Commons consulted the Privy Council on the meaning of the 1770 Act, which had been passed at a time when court proceedings unconnected with proceedings in Parliament, were often delayed by members claiming immunity. The 1770 Act was intended to prevent this.

[14] For the dissenting opinion of Lord Denning, not published at the time, see the annex to G. F. Lock, "Parliamentary Privilege and the courts: the Avoidance of Conflict" [1985] P.L.67.

[15] It would be possible, in appropriate circumstances, for a court to decline jurisdiction to hear an action, *e.g.* if it concerned proceedings in Parliament, see *post* para. 13–006.

[16] [1995] 1 A.C. 321, see *post* para. 13–015.

justice in ensuring that all relevant evidence was available to the courts. This decision resulted in the enactment of section 13 of the Defamation Act 1996, which will not necessarily prevent a breach of Article 6.[17]

I. The Privileges of the Commons

13–004 The privileges of the Commons have been described as "the sum of the fundamental rights of the House and of its individual Memberse as against the prerogatives of the Crown, the authority of the ordinary courts of law and the special rights of the House of Lords."[18] Some are available against the Crown, some against the House of Lords, and others against the citizen. They are much more important at the present day than the privileges of the Lords owing to the predominant position attained by the Commons, and there have been few disputes relating to the Lords' privileges (except in relation to the Commons) in modern times.

At the opening of a new Parliament the Speaker claims in the name and on behalf of the Commons their "ancient and undoubted" privileges, in particular to:

(i) freedom of speech in debate;

(ii) freedom from arrest;

(iii) access of the Commons to the Crown through the Speaker[19]; and

(iv) that the Crown will place the best construction on the deliberations of the Commons. (This last is not now important.)

The Lord Chancellor, on behalf of the Sovereign, declares that they are "most readily granted and confirmed." Additional privileges not specifically claimed by the Speaker are:

(i) the right of the House to regulate its own composition;

(ii) the right to take exclusive cognisance of matters arising within the House;

(iii) the right to punish Members and strangers for breach of privilege and contempt; and

(iv) the right to control finance and initiate financial legislation.[20]

1. Freedom of speech and debate[21]

13–005 Freedom of speech and debate is the essential attribute of every free legislature, and may be regarded as inherent in the constitution of Parliament. By the

[17] See *post* para. 13–015.

[18] Redlich and Ilbert, *Procedure of the House of Commons*, Vol. I, p. 46.

[19] Privy Councillors have a customary right of individual access, but modern convention requires that the Sovereign should take political advice from Ministers only.

[20] See *ante*, para. 12–003.

[21] See David R. Mummery "The Privilege of Freedom of Speech in Parliament" [1978] 94 L.Q.R. 276; Patricia M. Leopold "Freedom of Speech in Parliament—its Misuse and Proposals for Reform," [1981] P.L. 30; "The Application of the Civil and Criminal Law to Members of Parliament and Parliamentary Proceedings", Chap. V in *The Law and Parliament* (Dawn Oliver and Gavin Drewery eds, 1998).

end of the fifteenth century the Commons had an (undefined) right to freedom of speech, but only as a matter of tradition and not as of right.[22] From the beginning of Elizabeth I's reign freedom of speech has been regularly claimed as a right,[23] although the monarch did not always respect it. In *R. v. Eliot, Hollis and Valentine*[24] three Members were imprisoned and fined by the Court of King's Bench for "seditious words" spoken in the House. The Houses in 1641 and 1667 passed resolutions against this judgment, and it was reversed by the Lords on a writ of error in 1668. After this case no legal proceedings were ever taken by the Crown for words spoken in the House. The Bill of Rights (1688) declares that "the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament" (Article 9). The primary purpose of Article 9 was to allow the Commons to initiate business on its own and to protect its Members from legal action by the Crown. The effect of this today is that Members[25] enjoy complete civil and criminal immunity[26] in respect of things said by them in the course of proceedings in Parliament.[27] A citizen who regards himself as having been defamed will have no legal remedy, nor can someone who appears to say something which could be a contravention of the criminal law, be prosecuted.[28] However, Members are subject to the Houses' own internal rules of conduct and rules of order in debate,[29] breach of which can be punished by the House itself.[30]

Proceedings in Parliament

13–006 What is said or done by a Member is absolutely privileged provided it is part of a debate or "proceeding in Parliament." What this phrase means has not been comprehensively defined either by Parliament[31] or the courts. It is reasonably clear that certain activities are covered by this phrase including: speaking in a debate, voting, giving notice of a motion, presenting petitions or committee reports, taking part in committees nominated or appointed by either House, asking parliamentary questions.[32] It also includes actions taken by officers of the House in pursuance of its orders.[33] In *Rost v. Edwards*, Popplewell J. held that the Register of Members' Interests and related practice and procedure was not a

[22] Cases such as *Haxey's case* (397) Rot. Parl., iii, 434, and *Strode's Case* (1513) and the subsequent Strode's Act give some indication of the beginnings of a privilege of freedom of speech in debate. See Erskine May, *op. cit* pp. 69–72; Taswell-Langmead, *Constitutional History* (11th ed. Plucknett), pp. 174–175, 195, 247–249, 377–378.

[23] J. E. Neale, "The Commons' Privilege of Free Speech in Parliament", in *Tudor Studies* (ed. Selton-Watson, 1924).

[24] (1629) 3 St. Tr. 294. The members were also charged with an assault on the Speaker.

[25] It also applies to anyone who takes part in proceedings in Parliament for, *e.g.* an officer of the House or a witness.

[26] The immunity is absolute, it is not destroyed by malice or fraudulent purpose.

[27] *Wason v. Walter* (1868) L.R. 4 Q.B. 73; *Dillon v. Balfour* (1887) 20 L.R.Ir. 600.

[28] The Duncan Sandys case concerning the Official Secrets Act (1938–39; H.C. 101).

[29] For *example*, the *sub judice* rule, see P. M. Leopold Chap. 5 in *Legal Structures, Boundary Issues Between Legal Categories*, (Richard Buckley ed., 1996). There is also a Code of Conduct established to assist Members in the discharge of their obligations to the House, see *post*, para. 13–032. A variety of types of misuse of free speech may be regarded as contempt of Parliament.

[30] *Post*, para. 13–020.

[31] s.13(4) of the Defamation Act 1996 contains a partial definition of proceedings in Parliament for the specific purposes of that section.

[32] See Erskine May, *op. cit.* pp. 95–98.

[33] *Bradlaugh v. Gossett* (1884) 12 Q.B.D. 271.

proceeding in Parliament.[34] However, Lord Woolfe M.R. in *Hamilton v. Al Fayed*, decided that the inauguration, and subsequent inquiries and reports by the Parliamentary Commissioner for Standards (PCS) and the Committee on Standards and Privileges as well as the resolutions of the House, amounted individually and collectively to proceedings in Parliament.[35] What is unclear is at what point a complaint to the PCS becomes a proceeding in Parliament: when it is made or when it is taken up for investigation by the PCS; the latter is clearly the better view.

The House of Commons resolved in the *Strauss* case in 1958 (contrary to the recommendation of the Committee of Privileges[36]) that a letter from a Member to a Minister was not a proceeding in Parliament. Although this could be regarded as anomalous, since a member's question to a Minister on the same matter would be a proceeding in Parliament, the Joint Committee did not recommend a change in the law partly because that there was little evidence that the decision had caused problems.[37] Letters to and from Members, Ministers and constituents will be protected by qualified privilege in respect of an action for defamation, provided there is a common interest between the parties and an absence of malice.[38]

Proceedings, precincts and criminal acts

13–007 Erskine May says that "... not everything that is said or done within the precincts forms part of proceedings in Parliament."[39] There are dicta in *Burdett v. Abbot*[40] and *Bradlaugh v. Gossett*[41] to the effect that privilege does not cover crimes or breaches of the peace committed within the House. The answer may depend on whether the act would be regarded as part of the proceedings of the House.[42] Erskine May suggests that it would be "hard to show how a criminal act committed by a Member ... could form part of the proceedings of the House."[43] The Select Committee on the Official Secrets Act suggested that a member who disclosed secret information in the course of a casual conversation in the House was not doing so in the course of proceedings in Parliament.[44] In 1987 the Committee of Privileges was satisfied that private arrangements by a member to

[34] [1990] 2 Q.B. 460. The Joint Committee said it would not be appropriate for it to venture a view on the correctness of this decision, but suggested that if it was correct the law should be changed and legislation introduced to provide that the keeping of registers of the interests of members and others and the registers themselves were proceedings in Parliament.

[35] [1999] 3 All E.R. 317 at p. 330; [2001] A.C. 395.

[36] H.C. 305 (1956–57).

[37] Earlier reports, H.C. 34 (1966–67), H.C. 417 (1976–77), had suggested that legislation should be introduced to define proceedings in Parliament so as to cover such letters.

[38] *R. v. Rule* [1937] 2 K.B. 375 (letter from constituent to M.P. about conduct of police officer and magistrate); *Beach v. Freeson* [1972] 1 Q.B. 14 (letter from M.P. to Lord Chancellor and the Law Society); see Gatley, *Libel and Slander*, (9th ed, 1998) Chap. 14.

[39] *op. cit.* p. 98. Conversely parliamentary business conducted outside the precincts, such as select committee hearings, would amount to a proceeding in Parliament.

[40] (1811) 14 East 1.

[41] *op. cit.* note 33.

[42] Stephen J. suggested in *Bradlaugh v. Gossett op. cit.* that the accused in *R. v. Elliott, Hollis and Valentine* (1629) 3 St. Tr. 284, might have been properly charged in a separate indictment with assaulting the Speaker in the House.

[43] *op. cit.* p. 99.

[44] H.C. 101 (1938–39), and see *Coffin v. Coffin* (1808) 4 Mass. 1.

show a film about the Zircon defence project in a room within the precincts of the House would not be a proceeding in Parliament.[45]

A statutory definition

13–008 It may have been reasonably clear in 1688 what amounted to proceedings in Parliament, but developments in Parliament's methods of procedure and regulation have given rise to uncertainty. Several committees have proposed definitions, the latest is that from the Joint Committee, whose proposal is similar to that found in section 13(5) of the Defamation Act 1996, which is modeled on the Parliamentary Privileges Act 1987 (Australia). It also suggested that "court or place out of Parliament" should be defined, again in line with the Australian statute, to make it clear that the embargo on questioning proceedings in Parliament applied to courts and similar bodies and not elsewhere.

Bribery and Article 9 of the Bill of Rights 1688

13–009 It is a contempt of Parliament, punishable by Parliament to bribe a Member of either House and for a Member to accept such a bribe. However it is probably the case that the Prevention of Corruption Acts 1889–1916 do not apply to Members of Parliament in their capacity as such[46] and although it is possible that the common law offence of misuse of public office does apply to M.P.s this has yet to be determined by an appellate court.[47] The Salmon Report[48] and more recently the Nolan Report[49] recommended a clarification of the law. Any change in the law to bring the parliamentary activities of Members of either House within the law on bribery[50] would in certain circumstances have implications for parliamentary privilege. For example a court might have to decide whether a Member's action in respect of his parliamentary duties was corrupt, and either party in the case could seek to use parliamentary proceedings as evidence. Both these activities would require a court to question proceedings in Parliament contrary to Article 9. The Joint Committee has recommended that when the law on corruption is reformed it should apply to Members and that the legislation should include a provision permitting the admissibility of evidence notwithstanding Article 9.[51]

Right to exclude strangers[52]

13–010 The Commons has always exercised the right to exclude strangers, that is, persons who are not Members or officers of the House. This may be regarded

[45] H.C. 365 (1986–87), the Government had obtained an interim injunction to prevent a named individual from showing this film; an injunction preventing Members from showing the film in the precincts of the House was refused. The Speaker had ordered that the film should not be shown and the Committee of Privileges concluded that, on the basis of the information available to him, the Speaker had acted correctly. See A. W. Bradley [1987] P.L. 488.

[46] See the Royal Commission on Standards of Conduct in Public Life (1976) Cmnd 6524 (the Salmon Report); Graham Zellick, "Bribery of Members of Parliament and the Criminal Law" [1979] P.L. 31.

[47] See *per* Buckley, J. in *R. v. Greenway* reported in [1998] P.L. 357, contrary to the Salmon Report *op. cit.*

[48] *op. cit.*

[49] Cm. 2850 (1995).

[50] The Law Commission has issued a consultation paper and a final report on the general reform on the law on bribery and corruption, respectively Papers 145 (1997), and 248 (1998).

[51] *op. cit.* See Chap. 3 of the Report for a full discussion of the issues and proposals for additional protections for members.

[52] S.O. 163.

both as a corollary to the principle of freedom of speech, and as necessary for the orderly conduct of business where there is a danger of disorderly interruption. Since 1998 the procedure for this has been altered so that it is only the Speaker who has the power, whenever he think fit, to order the withdrawal of those other than Members or officers, from any part of the House.

It is possible for a member to move "That the House sit in private," this is put to the House, and if carried strangers (apart from Members of the House of Lords) must withdraw from proceedings for the rest of that day's sitting.[53] It would be a contempt of Parliament for a member to disclose anything said or done unless the House resolves otherwise.

Reporting Parliament and the publication of parliamentary papers

13–011 Another corollary of the privilege of freedom of speech and the right of Parliament to control its own affairs, was the right to restrain the publication of reports of proceedings. The publication of parliamentary debates was forbidden by the Commons in the sixteenth and seventeenth centuries.[54] Members initially desired secrecy of debate to protect themselves from the Crown; later they desired it to protect themselves from their constituents. However, from 1771 the Commons ceased to enforce their standing orders against the publication of reports of debates and, after the Reform Act 1832, reporters' galleries were provided.[55] However, it was not until 1971 that the House of Commons resolved to renounce their claim to treat such publication as a breach of privilege. Since 1980 the House has not regarded as a breach of privilege the publication of reports of evidence given at public sittings of Select Committees, before the evidence has been reported to the House.[56] The disclosure of the contents of a draft report is a contempt of Parliament.[57]

Parliamentary privilege does not provide any form of legal protection for the reports of parliamentary proceedings or the publication of papers or reports published on the authority of either House.[58] This was established in *Stockdale v. Hansard*[59] where it was held that an order of either House authorising the publication of papers outside Parliament did not render the publisher immune from liability for libel. The latter decision was correct but inconvenient, and it was nullified by the Parliamentary Papers Act 1840.[60] Section 1 provides that proceedings, criminal or civil, against persons for the publication of papers, reports, etc., printed *by order* of either House of Parliament are to be stayed. Section 2 provides that proceedings are to be stayed when commenced in respect of a correct *copy* of an authorised paper, report, etc. These provisions confer

[53] S.O. 163, which was amended in 1998 to alter the previous procedure in respect of strangers.

[54] In the Lords S.O. 13 (which dates from 1699) provides that the printing or publishing of anything relating to the proceedings of the House is subject to the privilege of the House.

[55] A series of unofficial reports of parliamentary debates began in 1803. It became known as *Hansard* after T. C. *Hansard* who was the printer and then the publisher of the first official series of debates. The present system, whereby official reports are prepared by staff employed by each House, was introduced in 1909.

[56] S.O. 136.

[57] See *post* para. 13–021.

[58] *cf. Lake v. King* (1668) 1 Wms. Saund. 131, which established that immunity from judicial proceedings attached to a petition containing defamatory matter and circulated only among Members of Parliament.

[59] (1839) 9 A. & E. 1.

[60] The Act declares and enacts that nothing therein affects the privileges of Parliament (s.4).

statutory absolute privilege, *i.e.* immunity from judicial proceedings, for Parliamentary reports such as Hansard, and for a variety of other types of papers and reports which Parliament has ordered to be printed.[61] Section 3 provides that in proceedings for printing any extract from or abstract of an authorised paper, report, etc., it is a defence to show that such extract or abstract was published *bona fide* and without malice.[62] This in effect confers "qualified privilege," *i.e.* immunity from judicial proceedings if the publisher can show that the publication was in good faith and without malice, such as spite or improper motive.

The Parliamentary Papers Act does not provide any assistance for those who publish unauthorised accounts of parliamentary papers or proceedings, such as newspaper reports which are not usually taken from *Hansard*. In these cases if an action for defamation were brought the publisher could rely on the common law defence of absolute privilege (when the whole of a debate or paper is reported) or qualified privilege (when less than the whole is published).[63] The report has to be fair and accurate and made without malice, and it is for the claimant to prove the contrary.[64] This defence does not apply to garbled or partial reports, but can apply to a parliamentary sketch[65] in which a reporter gives his impression of a debate. Section 15 of the Defamation Act 1996 provides a defence of qualified privilege in respect of fair and accurate reports of the proceedings of a legislature anywhere in the world.[66] It is doubtful whether there is a common law defence similar to that which was applied to defamation, in respect of the publication of criminal words, such as those that breach the Official Secrets Act, taken from a parliamentary paper or report.[67] An exception is the statutory defence in section 26 of the Public Order Act 1986 in respect of the publication of "fair and accurate reports of proceedings in Parliament", where those proceedings contain words that, if said elsewhere, could result in a prosecution. **13–012**

Broadcasting of Proceedings; the Internet

Regular sound broadcasting from both Houses started in 1978, television broadcasting from the House of Lords in 1986, and the Commons in 1989.[68] It is possible that such broadcasts could fall within the protection of sections 1 and **13–013**

[61] *e.g.* Act papers which are required by statute to be laid before Parliament and printed, many of which have little connection with the work of the House. If a Minister fears that a report of an inquiry into a matter of public concern could be the subject of a libel action, he can move a motion for an "unopposed return" which will ensure that the Commons will agree to print the report and it will fall within the protection of the 1840 Act, *e.g.* the Legg report on Sierra Leone H.C. 1016 (1997–98). See P. M. Leopold, "The Parliamentary Papers Act 1840 and its application today", [1990] P.L. 183; "The Publication of Controversial Parliamentary Papers", (1993) 56 M.L.R. 690.

[62] In *Dingle v. Associated Newspapers Ltd* [1960] 2 Q.B. 405, this defence was applied to an extract from the report of a Select Committee of the House of Commons. Section 3 has also been applied to broadcasting.

[63] *Wason v. Walter* (1868) L.R. 4 Q.B. 73.

[64] *cf.* s.3 of the 1840 Act where it is for the printer (or broadcaster) to prove that he was not actuated by an improper motive.

[65] A journalist's view or impression of a debate or other parliamentary proceeding started in the 1970s as an additional newspaper account of such proceedings; today it is likely to be the only account. *Cook v. Alexander* [1974] Q.B. 279.

[66] See also Sched. 1, paras 1 and 7. Fair and accurate copies of, or extracts from, material published by or on the authority of a government or legislature anywhere in the world will also be entitled to qualified privilege for defamation purposes.

[67] See H.C. 222 (1978–79), p. iv.

[68] For the arrangements and regulation of broadcasting, see Erskine May, *Parliamentary Practice* (22nd ed., 1997) p. 229–230.

2 of the 1840 Act.[69] Section 3 of the 1840 Act was extended in 1959[70] to include wireless telegraphy, and in 1990 to include any television or sound broadcasting service.[71] This means that the broadcasting of extracts, or abstracts of authorised papers, reports etc. has the protection of statutory qualified privilege. In addition in respect of defamation the common law defence of qualified privilege and section 15 of the Defamation Act 1996 would apply to the broadcasting of both live and recorded proceedings.[72] As with the publication of criminal words, the broadcaster is in an uncertain position. Since 1996 an increasing number of parliamentary reports and papers are available on the *Internet*, including the daily transcripts of the proceedings of each House. This type of publication is almost certainly covered by the 1840 Act.[73]

The uncertainty and variety of the law with respect to the publication and broadcasting of parliamentary papers and reports led the Joint Committee to recommend the replacement of the 1840 Act by a modern statute.

The use of Reports of proceedings in Parliament in Court proceedings: "ought not to be questioned"

13–014 In 1981 the House of Commons agreed that it was no longer necessary to seek its leave before referring to the official report of parliamentary proceedings in court. In consequence the use of *Hansard* in court proceedings increased. The use which can be made of reports is limited by Article 9 of the Bill of Rights in its requirement that proceedings in parliament "ought not to be questioned in any court or place out of parliament". In *Pepper v. Hart*[74] the House of Lords modified the rule whereby what was said in Parliament could not be cited in court as a direct evidence of the meaning of a statute. The Lords held that to use clear statements made concerning the purpose of legislation did not amount to a questioning of proceedings in Parliament. Nor in recent years have the courts regarded the use of parliamentary proceedings in judicial review proceedings as in breach of Article 9. In *R v. Home Secretary, ex p. Brind*[75] a ministerial statement was used as evidence that the Minister had properly used his power to impose broadcasting restrictions on terrorists; statements have also been used by applicants to support the argument that a government decision or policy statement was unlawful.[76] This use of parliamentary proceedings in the course of judicial review can be seen as complementary to ministerial accountability to Parliament. The Joint Committee accepted that both these developments should remain and that legislation should be introduced to make it clear that they were proper exceptions to Article 9.

[69] This interpretation would require the term "publication" in the 1840 Act to be interpreted as including radio and television broadcasting, even though these were unknown in 1840. See H.C. 146 (1965–66).

[70] Defamation Act 1959, s.9.

[71] Broadcasting Act 1990, s.203(1) and sched. 20, para. 1.

[72] s.1(3)(d) of the Defamation Act 1996 would appear to provide those who broadcast live proceedings in Parliament with an additional defence.

[73] But for a problem in respect to the uncorrected transcripts of witnesses before select committee see the Joint Committee Report paras 370–373.

[74] [1993] AC 593, see Geoffrey Marshall, "Hansard and the interpretation of statutes", Chap. IX in *The Law and Parliament op. cit.*

[75] [1991] 1 A.C. 696.

[76] *R. v. Secretary of State for Foreign Affairs, ex p. World Development Movement* [1995] 1 W.L.R. 386, *R. v. Home Secretary, ex p. Hindley* [1998] Q.B. 751.

A different situation arises with respect to the use of parliamentary proceedings in court even where to do so would not expose the speaker to legal liability. In *Church of Scientology of California v. Johnson-Smith*[77] it was held that reports of parliamentary debates could not be read in court to prove malice in an action against a member for libel uttered in the course of a television interview. In *Prebble v. Television New Zealand*,[78] a former government minister alleged that he had been defamed in a television broadcast. The television company sought to refer to statements made by the plaintiff, both outside and inside the New Zealand House of Representatives, to refute the allegations. The issue for the Judicial Committee of the Privy Council was whether it would be contrary to Article 9 to use things said in Parliament as part of a defence even if to do so would not expose the M.P. to any legal liability for those words. Lord Browne-Wilkinson expressly stated that there was no objection to a party in litigation referring to what has been said in parliamentary proceedings provided they did not allege impropriety.[79] The Judicial Committee was of the opinion that the correct statement of the effect of Article 9 was that found in section 16(3) of the Australian Federal Parliamentary Privileges Act 1987,[80] which in effect prohibits the use of parliamentary proceedings both to question the truth, motive, intention or good faith of anything that forms part of parliamentary proceedings and to draw inferences from those proceedings.[81] Consequently, a defamation action brought by the former M.P. Neil Hamilton against the *Guardian* was stayed, because the defence was precluded from using as evidence of justification things said or done by the Mr Hamilton in the course of proceedings in Parliament. In effect this prevented members and peers from using the courts to clear their names if they were alleged to have acted dishonestly in connection with their parliamentary duties.

Section 13 of the Defamation Act 1996[82]

This section was introduced to remedy the perceived injustices of the Hamilton type of case.[83] Section 13 provides that in a defamation action where "the conduct of a person in or in relation to proceedings in Parliament is in issue," that person[84] may waive the protection whereby proceedings in Parliament may not be questioned in any court. The immunity from legal liability for things said or done in the course of, or for purposes incidental to, proceedings in Parliament is **13–015**

[77] [1972] 1 Q.B. 522; see also *Dingle v. Associated Newspapers Ltd* [1960] 2 Q.B. 405.
[78] [1995] 1 A.C. 321; see P. M. Leopold "Free Speech in Parliament and the Courts" (1995) 15 L.S. 204.
[79] *ibid.* at p. 321. It was also the opinion that the protection provided by Article 9 could not be waived by an individual or by the House.
[80] Passed to avoid the consequences of the interpretation of Article 9 in *R. v. Murphy* (1986) 5 N.S.W.L.R. 18.
[81] Since it was not possible for the defence to conduct its case without this evidence, the proceedings had to be stayed.
[82] Andrew Sharland and Ian Loveland, "The Defamation Act 1996 and Political Libels", [1997] P.L. 113; Enid Campbell, "Investigating the Truth of Statements made in Parliament. The Australian Experience", [1998] P.L. 125.
[83] The Commons' resolution of 1978 (*post* para. 13–020) was intended to encourage members to pursue defamation claims against the media through the courts rather than as contempt of Parliament.
[84] Which, in addition to members of either House, includes others such as witnesses before a House committee.

not affected (section 13(4)). Section 13 has been widely criticised[85]; it not only undermines the basis of privilege namely that it is the privilege of the House as a whole and not of individual members, it also creates uncertainty as to the position where more than one person is involved in the same action, and is anomalous as it is not possible to waive privilege in other civil actions or in criminal cases. The Joint Committee recommended the repeal of section 13 and its replacement by a statutory power for either House to waive Article 9 privilege in respect of any court action provided there was no question of the member, or the other person who made the statement, being exposed in consequence to a risk of legal liability.[86] This would enable either House to permit parliamentary proceedings to be examined in court when it is considered to be in the interests of justice to do so.

2. Freedom from arrest

13–016 Freedom from civil arrest[87] was in former times an important privilege necessary for the proper functioning of Parliament, because arrest was often part of the process for commencing civil proceedings by compelling the appearance of the defendant before the court, and also of distress, that is, enforcing a money judgment. Owing to reforms in civil procedure in the nineteenth century, and the abolition of imprisonment for debt by the Debtors Act 1869, this privilege has lost most of its importance and only applies to a few cases, *e.g.* attachment for disobeying a court order for the payment of money.[88] Those parts of the Insolvency Act 1986, which provides for bankruptcy and confers powers of arrest in connection with bankruptcy, also apply to those having privilege of Parliament.[89]

The privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice, emergency legislation or contempt of court where the sentence is of a quasi-criminal nature.[90] When a Member of Parliament commits a crime he may be arrested like anyone else,[91] and if he is convicted the court must notify the Speaker. The papers are then laid before the House at their request, and the member may be expelled. A member who is imprisoned by order of a court has no special privileges.

The abolition of this privilege was recommended in 1967, and again by the Joint Committee in 1999 on the ground that it is anomalous and of little value.[92]

[85] See generally the evidence to the Joint Committee, vols 2 and 3 and Report paras 67–90; see also, Lord Simon of Glaisdale, "A Question of Privilege: The crises of the Bill of Rights", *The Parliamentarian* April 1997, p. 121. In *Hamilton v. Al Fayed op. cit.* the House of Lords held that if Mr Hamilton waived his privilege, then in any subsequent court hearing it would be possible to question any proceeding in Parliament, including findings made about his conduct by the Standards and Privileges Committee. In consequence Mr Hamilton brought, and lost, an action for defamation against Mr Al Fayed in respect of remarks made by him in a television programme.

[86] *op. cit.* paras 72–90.

[87] Which applies in effect continuously, since it lasts during a session of Parliament and for 40 days before and after as well as where Parliament is dissolved or prorogued.

[88] See *Stourton v. Stourton* [1963] P. 302.

[89] With the exception of s.427.

[90] Erskine May, *op. cit.*, at p. 100. For a historical account of this privilege see Erskine May pp. 72–78; for the contemporary position see Erskine May, Chap. 7.

[91] But as to a crime committed in the House see *ante*, para. 13–007, *post*, para. 13–018.

[92] (1967–68) H.C. 34; (1998–99) H.L. 43, H.C. 214.

3. Right of the House to regulate its own composition

13–017 This privilege covers: (i) the filling of casual vacancies, (ii) the determination of disputed election returns, (iii) the determination of legal disqualifications of persons returned to Parliament, and (iv) expulsion of members who are unfit to sit. These powers are exercised within the limits left by statute.

(i) *Filling casual vacancies.* The Speaker issues a warrant for the issue of a writ for an election to fill a casual vacancy.

(ii) *Determination of disputed elections.* The right of the Commons to decide questions of disputed election returns established in 1604 was exercised until the Parliamentary Elections Act 1868.[93] The Representation of the People Act 1983, s.144, which re-enacts with amendments the provisions of the Act of 1868 relating to election petitions, leaves nominally intact the privileges of the Commons, who in practice give effect to the findings of election courts.

(iii) *Determination of legal disqualifications.* The House retains the right to determine of its own motion whether a person, who has otherwise been properly elected, is legally disqualified from sitting. If the House holds that the person is disqualified it will declare the seat vacant, and may refuse to admit him or may expel him if he has already been admitted.[94]

(iv) *Expulsion of members who are unfit to serve.* The House may also expel a member who, although not subject to any legal disability, is in its opinion unfit to serve as a member. Until the Representation of the People Act 1981, which provides for the disqualification of any member who is detained for more than a year for any offence, this was commonly done when a court notified the Speaker that a member had been convicted of a serious criminal offence. The House cannot prevent an expelled member from being re-elected, as happened several times in the case of John Wilkes between 1769 and 1774, but it can refuse to allow him to take his seat.[95] Similar principles apply to expulsion for breach of privilege or contempt.

4. Exclusive right to regulate its own proceedings

13–018 Free speech in Parliament is one aspect of a wider principle that what happens within Parliament is controlled by Parliament and is not reviewable by the courts. "... the courts will not challenge or assault, by any order of their own, an assertion of authority issued by Parliament pursuant to Parliament's own procedures."[96] This includes the right of Parliament to determine its own procedures and to be the sole judge of the lawfulness of those procedures. In *Prebble v. Television New Zealand* Lord Browne-Wilkinson states that: "So far as the courts

[93] *ante* para. 10–061.

[94] The House may seek the opinion of the Privy Council: *e.g. Re MacManaway* [1951] A.C. 161. See *A.G. v. Jones* [1999] 3 W.L.R. 444, where the A.G. on behalf of the Speaker and the authorities of the House of Commons successfully sought a declaration that a M.P. whose conviction for a corrupt practice was overturned, was entitled to resume her seat in Parliament which had remained unfilled.

[95] But under the R.P.A. 1981 the nomination of a person who is disqualified by virtue of this Act, is void.

[96] *per* Lord Woolf M.R. in *Hamilton v. Al Fayed op. cit.* at p. 334.

are concerned, they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges."[97] The case of *British Railways Board v. Pickin*[98] demonstrates that privilege is one of the main grounds on which the courts deny themselves jurisdiction to inquire into the legislative procedure in the House.

In *Bradlaugh v. Gossett*[99] the High Court declined to intervene when the Commons refused to allow Bradlaugh, an atheist who had been elected a member, to take the oath as required by the Parliamentary Oaths Act 1866. Stephen J. stated that the Commons was not "subject to the control of Her Majesty's Courts in the administration of that part of the statute law which has relation to its own internal proceedings."[1] In *R v. The Speaker ex p. McGuiness* the Northern Ireland High Court held that the decision of the Speaker that elected members who had refused to take the oath or affirm could not have access to the facilities available to members, was concerned with the internal arrangements of the House and was not amenable to judicial review.[2] Parliament's internal arrangements have also been held to include decisions of the Parliamentary Commissioner for Standards.[3] However the right to administer its own affairs does not give immunity from civil or criminal action within the precincts of Parliament (unless protected under Article 9 as proceedings in Parliament).[4]

13–019 As a consequence of *R. v. Graham-Campbell, ex p. Herbert*,[5] where the Divisional Court upheld the refusal of the Chief Metropolitan Magistrate for want of jurisdiction to try alleged breaches of a Licensing Act by the Kitchen Committee of the House, statutes on matters as diverse as the Prices and Incomes Act 1966, the Health and Safety at Work Act 1974, and the Food Safety Act 1990, have been regarded as not applying to the internal affairs of the House of Commons.[6] The activities covered by these statutes are not connected with the core activities of Parliament, and it is unsatisfactory that Parliament is not required to comply with its own laws on matters such as employment and the sale of alcohol. The Joint Committee has recommendation legislation to clarify those activities which fall within Parliament's exclusive jurisdiction, and a principle of statutory interpretation that in future, in the absence of a contrary intention, all legislation should bind both Houses of Parliament.

5. Parliament's disciplinary and penal powers

13–020 Each House has power to enforce its privileges and to punish those—whether members or strangers—who infringe them. Each House also has power (this is one of its privileges) to punish members or strangers for contempt. In 1978 the

[97] *op. cit.* at p. 332.
[98] [1974] A.C. 765 (H.L.); *ante*, para. 3–017.
[99] (1884) 12 Q.B.D. 271.
[1] *op. cit.* at p. 278.
[2] [1997] N.I. 359.
[3] *R. v. Parliamentary Commissioner for Standards ex p. Al Fayed* [1998] 1 All E.R. 93.
[4] Spencer Perceval, the Prime Minister, was shot dead in the lobby of the House of Commons in 1812 by John Bellingham, who had a grievance against the government. Bellingham was tried within four days of the assassination, convicted (although probably insane) and executed two days later. "The precincts of the House should not be treated as a sanctuary from the operation of the law." First Report from the Committee of Privileges H.C. 365 (1986–87) para. 30.
[5] [1935] 1 K.B. 594.
[6] From time to time legislation has been voluntarily applied to the activities of the House or the employment rights of its staff. See generally G.F. Lock, "Statute law and case law applicable to Parliament", Chap. IV in *The Law and Parliament op. cit.*

Commons resolved that it would exercise its penal jurisdiction as sparingly as possible and in particular " . . . only when the House is satisfied that to exercise it is essential in order to provide reasonable protection for the House, its members or its officers, from such improper obstruction or attempt at or threat of obstruction as is causing or is likely to cause substantial interference with the performance of their respective functions."[7] This has resulted in a reduction in the number of complaints of breach of privilege or contempt.

Strictly speaking, "privileges"—and therefore breaches of them—are specific, whereas what constitutes "contempt," is not defined but is determinable by the House. A breach of privilege is also a contempt, but a contempt is not necessarily a breach of privilege. Something may be treated as a contempt even though there is no precedent for the offence, the categories of contempt are not closed. The general term contempt will be used here as it "focuses on the underlying mischief: interfering with Parliament in carrying out its functions."[8] The power to punish for contempt (as distinct from the ejection of persons who interrupt the proceedings), which has been exercised at least since the middle of the sixteenth century, is a judicial rather have a legislative power and not necessary to enable a legislature to function. The power is inherent in the Houses of the British Parliament for the historical reason that they are part of the High Court of Parliament and have been regarded as superior courts.[9]

Examples of contempt

Erskine May defines contempt as: "any act or omission which obstructs or impedes either House of Parliament in the performance of its functions, or which obstructs or impedes (or has a tendency to obstruct or impede) any member or officer of such House in the discharge of his duties."[10] **13–021**

The following is a list of some types of contempt: **13–022**

(i) disorderly or disrespectful conduct by strangers, parties or witnesses in the presence of the House or one of its committees;

(ii) the refusal of a witness to answer questions from a committee,[11] to produce documents or to give false evidence[12];

(iii) disobedience to the rules or wishes of either House, for, *e.g.* to attend a committee when summoned to do so;

(iv) publication of false or perverted report of debates;

(v) molesting a member of the House while he is going to or from it;

(vi) bribery of a member (this would be contempt both by the member accepting and by the person giving the bribe);

[7] This had first been suggested in the 1967 Report, *op. cit.*, but no action was taken until after the proposal was made again in 1977 by the Committee of Privileges, H.C. 417 (1976–77).

[8] Joint Committee Report, *op. cit.* para. 263.

[9] *R. v. Richards, ex p. Fitzpatrick and Browne* (1955) 92 C.L.R. 157 (Australian House of Representatives has the same privileges by statute). *Cf. Kielley v. Carson* (1842) 4 Moo.P.C. 63 (although a colonial legislature can protect itself, *e.g.* by expelling those who disturb its proceedings, it cannot at common law punish for contempt).

[10] *op. cit.* p. 108, see generally Erskine May, Chap. 8.

[11] See H.C. 353 (1991–92) *The Conduct of Mr Ian Maxwell and Mr Kevin Maxwell*, and P. M. Leopold [1992] P.L. 541.

[12] The Perjury Act 1911 also applies to perjury before the House or its committees.

(vii) intimidation of members, or putting pressure on a member to execute his duties in a certain way;

(viii) molesting or taking judicial proceedings against officers of either House in connection with their official conduct;

(xi) obstructing or molesting witnesses summoned to either House or a committee thereof[13];

(x) the premature publication of committee papers either in breach of an embargo on publication or by the premature disclosure of a document not intended for publication, (a leaked document).[14]

The penal nature of contempt of Parliament makes it important that it should be clear and understandable by all: something the existing uncodified position is not. At present it could be a breach of Articles 6 and 7 of the E.C.H.R. to punish someone for a contempt where there was uncertainty prior to that case whether the particular conduct was contemptuous. The Joint Committee has proposed a statutory definition which would include as illustration a list of some of the types of contempt.[15]

Procedure on complaint of a matter of privilege

13–023 As soon as possible after the occurrence of the alleged breach of privilege or contempt a Member must give written notice to the Speaker, who will decide whether or not the matter should have precedence over other business of the House. The Speaker will inform the Member of his decision, and if it is in favour of giving the matter precedence, he will make an announcement in the House. This entitles the Member to table a motion the next day proposing that a reference should be made to the Committee on Standards and Privileges. The House will debate the motion and decide whether or not to approve it.

The Committee on Standards and Privileges is a Select Committee of 11 Members set up for the duration of Parliament with the power to send for persons, papers and records.[16] As with all committees with these powers, refusal to appear or to answer, or knowingly to give false answers, is itself a contempt. Unlike other such committees, this committee can order the attendance of any Member and require a Member to produce specified documents or records in his possession. Exceptionally, those who appear before this committee are allowed to be accompanied by an advisor. These additions powers and protections were introduced in consequence of the additional tasks assigned to the committee when it replaced the Committee of Privileges and the Select Committee on Standards in 1995.[17] Allegations of breach of privilege or contempt, are investigated by this committee.[18] The committee's recommendations are reported to the

[13] In addition, the Witnesses (Public Inquiries) Protection Act 1892 applies to witnesses before parliamentary committees.

[14] A special procedure for dealing with such publications was established in 1986 following a report from the Committee of Privileges (H.C. 555 (1984–85). See the 8th, 10th and 11th Reports from the Committee on Standards and Privileges, H.C. 607; H.C. 747 (1998–99).

[15] *op. cit.* para. 264.

[16] S.O. No. 149.

[17] *post* para. 13–031 for the other aspects of the work of this Committee.

[18] The Joint Committee considered that changes in the procedures of this committee in respect of this type of investigation were required to satisfy the requirements of fairness, *op. cit.* paras 280–285, 289, 292. The decision of the E.Ct.H.R. in *Demicoli v. Malta* (1992) 14 E.H.R.R., requires the deliberations of committees, such as that for Standards and Privileges, to comply with Art. 6 of the E.C.H.R. For the procedure of the committee in respect of its other functions see *post* para. 13–031.

House, which makes the ultimate decision, which may not necessarily be the same as that of the committee. At present the procedure is the same whether the complaint is against a Member or a non-Member, the Joint Committee has recommended that, with one exception, the House should continue to remain responsible for disciplining its own Members, but that it should transfer its jurisdiction for contempt of parliament over non-Members to the courts.[19] The exception would be to make it a criminal offence enforceable in the courts for Members and non-Members alike to willfully fail to attend before the House or a committee or to answer questions or produce documents.[20]

Penalties

13–024 (a) *Expulsion* of a Member is regarded rather as a declaration of unfitness than a punishment.[21] It causes a vacancy; but as we have said the Commons cannot prevent his re-election, although they can refuse to let him take his seat if re-elected. The Commons admitted John Wilkes in 1774 after he had been expelled and re-elected several times.

(b) *Suspension* of a Member is available to assist the House of Commons to enforce discipline,[22] as well as to punish particular offences laid down in Standing Orders. The salary of a Member is withheld for the duration of the suspension.[23]

(c) *Imprisonment* of a Member or a non-Member. Neither House has used this power since 1880, and the Joint Committee suggested that such a power was no longer appropriate or needed.

(d) *Reprimand* and

(e) *Admonition*, the mildest form. In both these forms the Speaker addresses the offender, who is at the bar of the House either in the custody of or attended by the Serjeant-at-Arms; except that a Member (unless he is in the custody of the Serjeant) is reprimanded or admonished standing in his place.

13–025 *Fine* The House of Commons has not imposed a fine since 1666, and it is doubtful whether it has the power to do so owing to the uncertainty whether it is a court of record. The power was denied by Lord Mansfield in *R. v. Pitt*.[24] The House of Lords has such a power, but it has not been exercised for nearly 200 years. The Joint Committee recommended that both Houses should have a statutory power to fine their Members and that this would be the penalty available to the courts in respect of contempt of parliament by non-Members.

[19] *op. cit.* paras 300–314; Parliament would retain a residual jurisdiction, for example to enable it to have summary powers to preserve security and good order.
[20] *op. cit.* paras 310–311. The penalty would be a fine not exceeding level 5 on the standard scale.
[21] The last time a Member was expelled, save following a criminal conviction and sentence of imprisonment of 12 months, was Garry Allingham in 1947.
[22] It is not clear whether the Lords have a power to suspend a peer within the life of a parliament, the Joint Committee recommended that it should have this power; it does not have the power to suspend a peer permanently. The Committee on Standards and Privileges recommended short suspensions for Members who either leaked or received copies of leaked Select Committee papers, see H.C. 607, 747 (1998–99).
[23] S.O. 45A.
[24] (1762) 3 Burr. 1335.

II. The Privileges of the Lords

Privileges of the House

13–026 The House of Lords has seldom come into conflict either with the Sovereign or with the courts in respect of its privileges. The juridical nature of the privileges of the House of Lords is similar to that of the privileges of the House of Commons, and strictly both are parts of the privileges of Parliament. The Lords passed a resolution in 1704 declaring that neither House has power to create for itself new privileges not warranted by the known laws and customs of Parliament, and the Commons assented.[25] Any matters as to privilege or contempt in the House of Lords, or as to a peerage claim is considered by its Committee for Privileges.[26]

(i) The power to declare the law with regard to its own composition, and to determine the validity of the creation of new peerages (*Wensleydale Peerage Case*),[27] and the succession to existing peerages.[28] This power will have limited application in the light of the House of Lords Act 1999.

(ii) The exclusive right to regulate its own internal proceedings, thought this probably does not include a power to suspend a peer within the life of a single Parliament.[29]

(iii) The power to commit for breach of privilege or contempt for a definite period and to fine.

(iv) The power to summon the judges for advice on points of law.

(v) The power to issue a warrant for the release of a peer who is improperly arrested.

Personal privileges of Peers

13–027 These include:

(i) Freedom from civil arrest, that is, except in cases of treason, felony (arrestable offence) or refusal to give security to keep the peace.[30] In addition the person of a peer (whether a Lord of Parliament or not) is by custom and statute[31] "for ever sacred and inviolable" during and for a period before and after a session. The privilege is not now of much importance since the abolition of arrest for debt.[32] It would appear to be uncertain whether or not the compulsory detention of a peer under the Mental Health Act 1983 would be a breach of the privileges of peerage

[25] 14. *Commons Journals* 555.
[26] A sub-committee of this committee has powers to investigate and advise on matters concerned with the registration of Lords' Interests, *post* paras 13–035 to 13–036.
[27] (1856) 5 H.L.C. 958.
[28] *Annandale and Hartfell Peerage Claim* [1986] A.C. 319.
[29] Unless available at common law (an underage peer) or by statute (bankruptcy). The Lords does not have a power to suspend a peer permanently.
[30] House of Lords S O. No. 79.
[31] Parliamentary Privilege Acts 1700 and 1703.
[32] See *Stourton v. Stourton* [1963] P. 302; *cf. Peden International Transport v. Lord Mancroft* (1989), see P. M. Leopold [1989] P.L. 398.

or freedom from arrest or detention.[33] The Joint Committee recommended the abolition of the privilege of peerage as well as that of freedom from arrest and the introduction of legislation to enable Members of the House of Lords to be detained under the mental health legislation and disqualified for sitting and voting in Parliament.

(ii) Freedom of speech in Parliament. This privilege is similar to that of the Commons.

III Members' Conduct and Members' Interests[34]

13–028 As has been seen, an aspect of Parliament's claim to regulate its own proceedings is its right to regulate the conduct of its Members. To prevent Members from prejudicing the privileges of freedom of speech, the House of Commons resolved in 1947 that they were prohibited from entering into contracts or agreements which could limit their independence and freedom of action in Parliament.[35] The longstanding practice whereby M.P.s were expected to declare a pecuniary interest relevant to the proceedings when taking part in certain proceedings of the House or a committee, was formalised into a resolution in 1974.[36] A second resolution authorised the establishment of a compulsory (though unenforceable) register of members' interests. Until 1995 the Commons exercised its jurisdiction in respect of conduct and interests through the Committee of Privileges and the Committee on Members' interests. Allegations of impropriety by M.P.s and Ministers during the 1990s, as well as a more general disquiet in respect of standards of conduct in public life, led to the establishment in 1994 of a standing Committee on Standards in Public Life[37] whose task is: "To examine current concerns about standards of conduct of all holders of public office . . . and to make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life."[38] Reports by this committee have resulted in significant changes to parliamentary procedures relating to the conduct of M.P.s and the registration of their pecuniary interests.[39] In its first report the committee stated its Seven Principles of Public Life which are now used as a touchstone to judge ethical behaviour in the public sector.[40]

[33] Report from the Committee of Privileges on Parliamentary Privilege and the Mental Health Legislation (1983–84: H.L. 254): see P. M. Leopold [1985] P.L. 9.

[34] Michael Rush, "The law relating to members' conduct," Chap. VII in *The Law and Parliament*, *op. cit.*

[35] See H.C. 118 (1946–47).

[36] The occasions when such a declaration is required were expanded in 1995 to include those circumstances when a member has to give written notice, *e.g.* questions, early day motions, presentation of a Bill. In 1996 it was further extended to applications for emergency debates and for adjournment debates.

[37] Initially chaired by Lord Nolan then by Lord Neill and since 2001 by Sir Nigel Wicks.

[38] In November 1997 additional terms of reference were announced, to enable the committee to review the funding of political parties, see *ante* para. 10–037.

[39] The committee has also dealt with Ministers and Civil Servants, appointments to Quangos, local government and local public spending bodies.

[40] *Standards in Public Life*, Cm. 2850 (1995). The seven principles are: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. See also the Government response to this report, Cm. 2931 (1995).

13–029 In November 1995 the Commons agreed to the following proposals[41]:

(i) the appointment by the House of a Parliamentary Commissioner for Standards (PCS)[42];

(ii) the replacement of the former Committees on Privileges and Members' Interests by a new Committee on Standards and Privileges[43];

(iii) the drawing up of a Code of Conduct for M.P.s;

(iv) a restatement of the 1947 resolution to incorporate a prohibition on paid advocacy[44];

(v) a requirement that members should deposit with the PCS for public record, all agreements with outside bodies for the provisions of services in their capacity as M.P.s and the annual remuneration received from such employment.

The Parliamentary Commissioner for Standards

13–030 The PCS is appointed by the House of Commons and can only be removed by a resolution of the House. The tasks of the PCS are: to maintain the register of members' interests and any other register of interests established by the House[45]; to advise on registrable interests, the Code of Conduct and general matters of propriety; to make recommendations to the Committee on Standards and Privileges on the code and the registers; and, if he thinks fit, to investigate any complaints about a member's conduct and make a report to the Committee on Standards and Privileges.[46] Such a report will include the findings of fact and the opinion of the PCS on whether there were any breaches of the code.

The Role of the Committee on Standards and Privileges in Misconduct Cases

13–031 If the PCS finds that there was a *prima facie* case then its report will normally form the basis for the committee's inquiry. The committee will decide if there was a breach of the code, assess its gravity, and recommend what penalty, if any, should be imposed. The final decision is with the House. It is possible for the committee to hear oral evidence, in particular if the member complained about wishes to challenge the findings of the PCS. It did this in the case of the complaints by Mohamed Al-Fayed against Neil Hamilton, (hearing only Mr Hamilton) and in so doing revealed weaknesses in its procedures. It subsequently recommended that new procedure should be instituted for serious cases with the appointment of a legally qualified assessor to assist the PCS, and the introduction of an appeal procedure to be used in cases deemed appropriate by the committee.

[41] Which were based on the recommendations of the newly created Commons Select Committee on Standards in Public Life, appointed to advise on the implementation of relevant proposals from the Committee on Standards in Public Life; H.C. 637, 816 (1995–6).

[42] S.O. 150.

[43] S.O. 149, see *ante* para. 13–023.

[44] This went further than had been recommended in the First Report from the Committee on Standards in Public Life, Cm. 2850.

[45] In 1985 the House established registers on the relevant pecuniary interests of parliamentary journalists, members' staff and all-party and parliamentary groups; these registers have been open to public inspection since 1998.

[46] The investigation will normally be on the basis of written evidence, but the PCS may conduct oral hearings, see, *e.g.* H.C. 261 (1997–98). Details of the procedure are set out in H.C. 403 (1999–2000).

which would involve an *ad hoc* tribunal (whose composition would not include serving members of the House) to inquire into disputed questions of fact, and report to the committee.[47]

The Code of Conduct

13–032 The code is a system of self-regulation for M.P.s, and is designed to increase members' awareness of their obligations as holders of public office. It was drawn up by the Committee on Standards and Privileges and consists of a short code of conduct setting out general principles, including the seven principles of public life, to guide members as well as more specific obligations, such as not to accept bribes, to register their interests, not to misuse confidential information, not to make improper use of their parliamentary allowances. There are then extensive guidelines on three areas: registration of interests; the declaration of interests; and paid advocacy. The code and the guidelines were adopted by resolution of the House in July 1996.[48] Any M.P. or member of the public may lay a complaint alleging breach of the code with the PCS.

The Advocacy Rule

13–033 The 1947 resolution was extended and reinforced to include a prohibition on paid advocacy. Members are prohibited from accepting any remuneration, fee, payment or other reward or benefit in kind, in return for advocating or initiating any cause or matter on behalf of any outside body or individual, or urging any other member of either House to do so. The rule applies more strictly to *initiating* a parliamentary proceeding than it does to *participating* in a debate or other proceedings initiated by another Member.[49] One of the problems is what exactly is covered by "paid advocacy"? A consequence of the change in the rules has been a transfer of trade union sponsorship from individual candidates to local party organisations.[50]

The Register of Members' Interests

13–034 The number of M.P.s whose outside employment arises directly out of their membership of the House of Commons has made the maintenance of such a register particularly important. Although there has been such a register since 1974 and its format was significantly improved in 1993, it was the view of the 1995 Nolan Report that the form of declaration failed to reflect the true nature of the interest being declared. Changes were made in 1996 to improve the position. The primary purpose of the register is: "to provide information of any pecuniary interest or other material benefit which a Member receives which might reasonably be thought to by others to influence his or her actions, speeches or votes in Parliament, or actions taken in his or her capacity as M.P.". Ten categories of registrable interest are specified on the registration form sent to all members at the beginning of each Parliament, and detailed guidance is issued to each member.[51] Members must also lodge copies of agreements with outside bodies,

[47] H.C. 1191 (1997–98). See also *Reinforcing Standards*, Cm. 4557 (2000); H.C. 267 (2000–01). None of the various proposals to reform investigations into the conduct of members had been debated by the House before the 2001 election.

[48] H.C. 688 (1995–96).

[49] See First Report from the Committee on Standards and Privileges H.C. 257 (1998–99).

[50] See Committee on Standards and Privileges, Fourth Report: Category 4, Sponsorship, H.C. 181 (1997–98). Members may still be paid to act as advisers to trade unions, companies, pressure groups etc.

[51] Register of Members' Interests, H.C. 291 (1997–98).

including remuneration, with the PCS. The collating of the returns is under the authority of the PCS and the register is published annually as a House of Commons paper. Complaints connected with the register have formed the bulk of complaints to the PCS and subsequently the Committee on Standards and Privileges.[52]

The Committee on Standards and Privileges and the Committee on Standards in Public Life keep the rules relating to conduct and registration under review, and it has proposed a variety of amendments to simplify and clarify the rules on the conduct of members and to reform the complaints procedure.[53]

The House of Lords

13–035 Lords speak on their personal honour, and it is a long-standing custom that members should declare any direct financial interest, or any non-financial interest, in a subject on which they speak. It was not until 1995 that the Lords accepted more formal rules.[54] The 1995 resolution restated both the principle that Lords speak on their personal honour and that Lords should never accept any financial inducement as an incentive or reward for exercising Parliamentary influence. The Lords also agreed to the establishment of a voluntary Register of Lords' interests covering three categories, registration is mandatory in the first two categories, and discretionary in the third. The categories were: (i) consultancies or similar arrangements, involving payment or other incentive or reward for providing Parliamentary advise or services; (ii) financial interests in business involved in Parliamentary lobbying on behalf of clients; (iii) other particulars relating to matters which Lords consider may affect the public perception of the way in which they discharge their Parliamentary duties. The operation of the register is overseen by the Committee on Lords' Interests, a subcommittee of its Committee for Privileges. In 2000, the Committee Standards in Public Life investigated and made recommendations in connection with standards of conduct in the House of Lords, which a House of Lords Working Group recommended should be accepted.[55]

13–036 In July 2001 the House agreed that it should have a Code of Conduct, *inter alia* to put in a more readily accessible form its existing standards. The Code of Conduct includes the seven general principles of public life,[56] and the principles stated in the 1995 resolution. The House has accepted that all *relevant interests*, both financial and non-financial, should be registered. The Code provides guidance as to what is covered, and a new *objective* test of relevance. The Register will continue to be overseen by the Committee on Lords' Interests, with an appeal to the Committee of Privileges. The Code requires the investigation and adjudication of complaints to be subject to safeguards "as rigorous as those applied in the courts and professional disciplinary bodies." It was agreed that there was no need for a PCS for the House of Lords. Members of the House have until 31, March 2001 to register their interests in accordance with the new Code.

[52] Between November 1995 when the new rules on conduct came into effect and July 2000 the Committee published 31 reports concerning complaints against 57 Members.
[53] H.C. 710 (1999–2000), and response by the Committee on Standards in Public Life, Cm. 4557 (2000); Fifth Report by the Committee on Standards and Privileges, H.C. 267 (2000–01).
[54] As a result of reports by the Procedure Committee, H.L. Papers 90, 98 (1994–95).
[55] *Standards of Conduct in the House of Lords* Cm. 4903–I; H.L. Paper 68 (2000–01).
[56] *op. cit.* note 40.