

# English Law and Terminology.

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# Constitutional Law: the Unwritten Constitution.

- ▶ In addition to ordinary laws, most countries also have fundamental principles which govern the country.
- ▶ Usually these principles are referred to as a higher form of law and are condensed into a single document called the constitution.
- ▶ The United Kingdom greatly differs in this regard as it *does not have such a document*.
- ▶ The *Magna Carta 1215* and the *Bill of Rights 1689* both contain important principles however, there is no single document or group of documents which sets out the constitution.
- ▶ There is a historical explanation for this lack of a written constitution- countries typically create constitutions to mark a fresh start or a break with the past.
- ▶ Examples are: 1. the *American Constitution* marking their break from colonial ties & their independence. 2. The German *Grundgesetz* was drafted from a defeat in war.
- ▶ One of the UK's most significant features is that it has not dramatically changed its institutions of government over time despite its continued development; hence lack of need to draft a formal constitution.
- ▶ It is important to note that though the UK has no written constitution, does not mean that it has no constitution at all. In fact, it is unwritten with a number of sources. These are *legal sources- cases & statutes and non-legal- conventions*.

# Constitutional Law: Bill of Rights.

## The English Bill of Rights 1689

- The **English Bill of Rights** was a British Law, passed by the **Parliament** of Great Britain in 1689 that declared the rights and liberties of the people and settled the succession in **William III** and **Mary II** following the **Glorious Revolution of 1688** when **James II** was deposed.
- The **English Bill of Rights** had a massive influence on the colonies in North America and the **Constitution of the United States**.



- *Note: The date of the English Bill of Rights is referred to as either dated as March 1689 or as February 13, 1688 in Old Style dating.*

## Summary of Rights

- The most important Articles of the **English Bill of Rights** are as follows:
  - A frequently summoned **Parliament** and free elections.
  - Members should have freedom of speech in **Parliament**.
  - No armies should be raised in peacetime.
  - No taxes could be levied, without the authority of **Parliament**.
  - Laws should not be dispensed with, or suspended, without the consent of **Parliament**.
  - No excessive fines should imposed, nor cruel and unusual punishments inflicted.
- Are the Articles of the **English Bill of Rights** sounding familiar?

# Constitutional Conventions.

- ▶ Conventions are an important part of constitutional law- most important principles of government are based on conventions.
- ▶ No law dictates that there must be a Prime Minister or how a Prime Minister is to be chosen however a Prime Minister is always present and chosen in the same manner.
- ▶ Conventions are not included in Acts of Parliament or court decisions therefore the courts cannot enforce them.
- ▶ Nevertheless, they are followed as it is easier to follow an established practice than to face political issues from not adhering to existing principles.
- ▶ A major advantage of conventions is that they can easily change with time and can be adapted to suit changes in practice.
- ▶ This means the constitution is much more flexible than one contained in a written document.

## CONVENTIONS

- A convention is a regularly observed practice considered appropriate for a given set of circumstances.
- Constitutional conventions are, therefore, sets of rules established over time by custom and practice, which relate to the exercise of government powers.
- Conventions are not legally binding.



# Important Constitutional Principles.

## The Rule of Law.

- ▶ It is a difficult concept to grasp or define, as legal theorists all define it differently.
- ▶ Main Principles are: all men are subject to the law, no man is above it- *Equality before the law*.
- ▶ Only distinctive breaches of law should affect or restrict the liberty of persons, their goods or their rights.
- ▶ The law must be sufficiently certain, so that people can know the legal consequences of particular actions.
- ▶ The law must be non-retroactive.
- ▶ Laws against abuse of power by authorities, existence of an independent judiciary, equal access to justice & prohibition of unfair discrimination.

## The Royal Prerogative.

- ▶ This refers to a unique set of powers, rights, privileges & immunities which remain vested in the Crown- such as personal immunity of the Queen from being sued.
- ▶ Prerogative powers refer to all the above. The Queen exercises some of these powers personally such as appointing the PM & the summoning & dissolving of Parliament.
- ▶ The Queen exercises these powers within the constraint of *constitutional settlement*.
- ▶ Other prerogative powers are exercised by the government on the Crown's behalf- the executive makes and ratifies treaties, conducts diplomacy, deployment & use of the armed forces & organisation of the civil service.

# The Royal Prerogative cont.

- ▶ The courts recognise prerogative powers but are reluctant to interfere with the exercise of it- courts would determine its existence but not rule on its use.
- ▶ However recently, they would now make further rulings on RPs depending on whether their content & subject-matter in question is justiciable.
- ▶ The RP stems from long-standing constitutional settlement, new prerogative powers cannot be created, unless granted by statute.
- ▶ Established prerogative powers however can be abolished by an Act of Parliament due to the sovereignty of Parliament.



## Royal Prerogative

- The royal prerogative consists of a number of powers or privileges in the past performed by the monarch but now performed by ministers on his or her behalf.
- Their authority is derived from the Crown, not Parliament.
- Examples of these powers include the rights to; declare war, make treaties, give orders to the armed forces, dissolve parliament, appoint ministers and dispense honours.

# Important Constitutional Principles.

## Parliamentary Sovereignty.

- ▶ Originated in the 17th century when Parliament started reducing the powers of the Crown- also referred to as parliamentary supremacy is one of the most important documents of constitutional law.
- ▶ Traditionally it meant that Parliament can make or unmake any laws on any issue-regardless of how harsh, unfair or nonsensical a statute may be.
- ▶ Parliamentary Sovereignty also means that parliament cannot bind its successors- each parliament has full legislative powers.
- ▶ Where there is a conflict between a newer act of the present parliament and one of the old- the court will decide to use implied repeal to remove provisions of older statute.

## Parliamentary Sovereignty

- The 3 branches of government in the UK are not equal. The UK constitution is based on the principle that the legislature is supreme or “sovereign”.
- It is Parliament to which government ministers are accountable.
- Parliament is supreme in the sense that no court can declare an Act of Parliament unconstitutional.

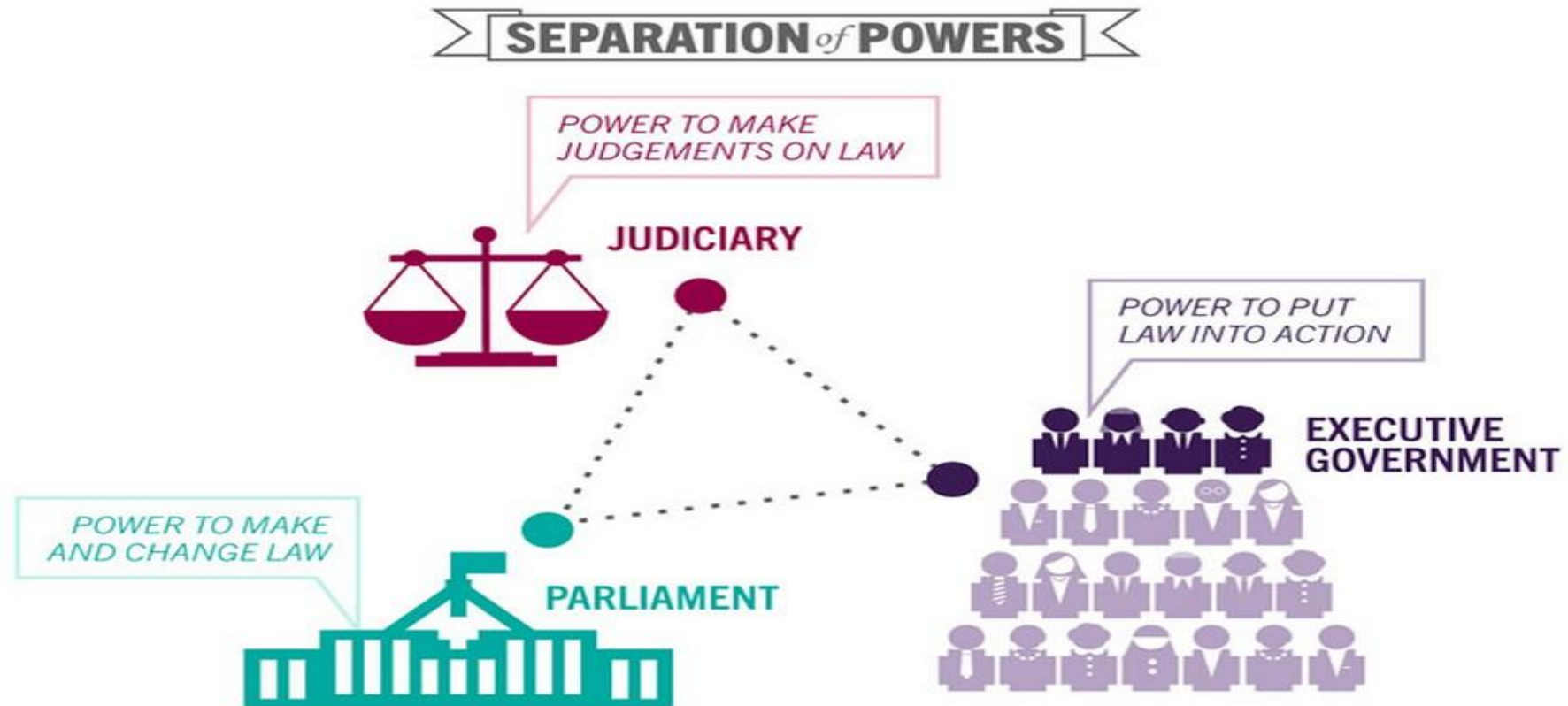


# Parliamentary Sovereignty cont.

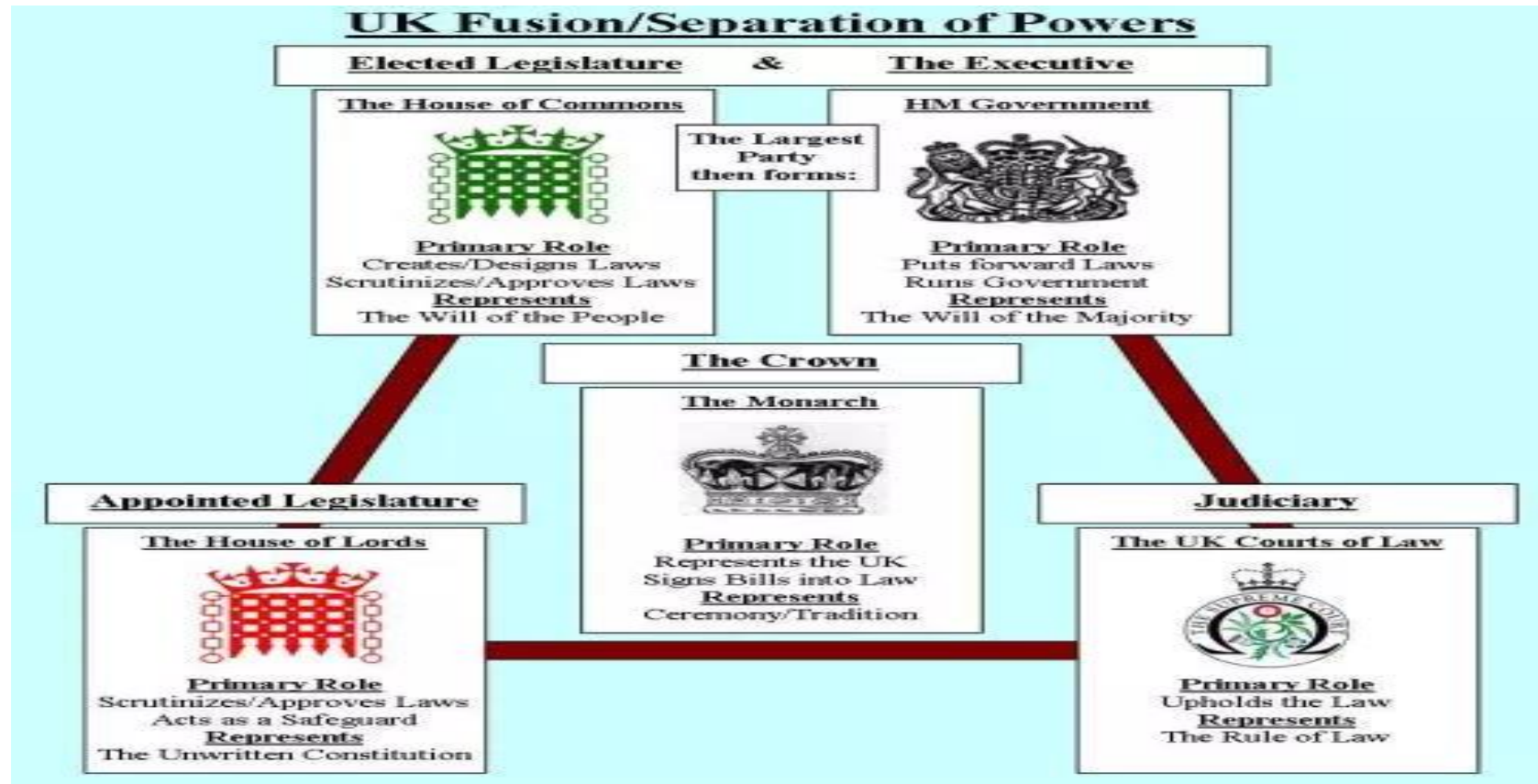
- ▶ Parliament is sovereign therefore UK courts cannot question the validity of an Act of Parliament- once the correct procedure was followed.
- ▶ This is a vital distinction from other countries which have special constitutional courts to prevent statutes conflicting with the constitution.
- ▶ No such court exists in the UK- where there is a conflict between common law & statute law or a constitutional principle & statute law, the latter will always prevail.
- ▶ One area where traditional Parliamentary sovereignty has been called into question relates to the EU. The EC Act 1972 gave effect to European law within the national legal system.
- ▶ Courts have accepted that in times of conflict they cannot use the implied repeal principle, rather *EU law would be given effect over national law.*
- ▶ The HRA 1998 brought parts of European HR law into national law- however courts observe the sovereignty of Parliament here-they would still apply an Act which is inconsistent with a HR provision & may make a *declaration of incompatibility.*
- ▶ Discussions on how absolute is PS are ongoing. The EU brought this to the forefront as well as questions about the rule of law, public opinion and opinions of powerful pressure groups, can all affect how or if Parliament passes a legislation.



# The Doctrine of the Separation of Powers.



# The Doctrine of the Separation of Powers cont.



# Separation of Powers cont.

- ▶ It is a constitutional principle found in many countries worldwide.
- ▶ The functions of governments are divided into three distinct categories- *legislative, executive & judicial*- functions of these are carried out by three corresponding organs of government- *Legislature, Executive & Judiciary*.
- ▶ If one organ performs more than one function, this threatens individual liberty.
- ▶ The UK has this clear distinction- the government is the executive, Parliament is the legislature & the courts are the judiciary.
- ▶ However due to how British constitutional law developed along with its unwritten constitution, there have been questions about the extent of separation of powers.
- ▶ One example of this is that up to 2009, the Law Lords were both judges of the highest court (*judiciary*) in the country and full members of the House of Lords as the Upper House of Parliament (*legislature*).
- ▶ This meant they could exercise both judicial and legislative functions- this has now changed with the establishment of the *Supreme Court*, whose judges may not sit in the House of Lords. Notably, even when Law Lords sat in Parliament & could partake in political debates, they did not- ensuring separation of powers existed in practice.
- ▶ The Lord Chancellor used to combine all three classes of functions- as a member of *Cabinet*- he was part of the executive, as *Speaker* of the House of Lords he played a legislative role and he was head of the English judiciary.
- ▶ The *CRA 2005* changed this- there is now a Lord Speaker-elected by the HL to chair debates, the head of the judiciary is the Lord Chief Justice, the Lord Chief Chancellor remains a member of Cabinet- responsible under the Act for upholding the rule of law & is the Secretary of State for Justice- responsible for the Ministry of Justice created in 2007.
- ▶ With the introduction of an independent *Judicial Appointments Commission*, the Lord Chancellor now only has limited role in judicial appointments. The recent changes have definitely strengthened the separation of powers though some overlap still exist- such as ministers being both members of government and of Parliament- so they belong to both the executive and the legislature.

# Parliament.



# Parliament.

- ▶ It is the UK's legislative body- it is a *bicameral body*, consisting of two *Houses of Parliament*- both Houses meet in London in the Palace of Westminster. The 3<sup>rd</sup> part of Parliament is the *Crown* which has a limited, formal role. *The Crown in Parliament* refers to all three elements of the British legislature.
- ▶ Legislature makes law, hold the executive to account allowing the government to impose taxes & provides a forum for the debate of matters of national interest.
- ▶ *House of Commons*- the lower House of Parliament- referred to as *the Commons* made up of 650 MPs. The Speaker is the impartial chairman of the House who calls Members to speak and ensures order is kept during debates.
- ▶ Each MP represents *specific geographical districts- a constituency* & the people living in it. MPs are elected via general elections which must take place at least every five years. If a seat in Parliament goes empty between the 5 years due to an MP dying or retiring, a *by-election* would be held in the constituency in question.
- ▶ Voting takes place through the *first past the post system*. The candidate receiving the most votes in a constituency wins- no need for a specific percentage for a candidate to win.

# Parliament cont.

- ▶ The main advantage of this electoral system is that there is usually *a strong one party government*- the main disadvantage is that small parties tend to be *under-represented*.
- ▶ The general principles of *universal adult suffrage* governs the right to vote. A person can vote provided he/she is over *18, resident in a parliamentary constituency & listed on the official register*.
- ▶ In contrast he/she must also show that they are not qualified to vote- serving *time in prison, guilty of illegal election practices* or is an *alien*- those not British Citizens.
- ▶ Persons who want to stand as candidates for election are subject to similar disqualification as voters. Minimum age is 18- persons such as *aliens, bankrupts & convicted criminals serving a person sentence of more than a year cannot stand for election*. The same standards apply to judges, civil servants, police & armed forces.

# Parliament cont.

- ▶ The House of Lords, also referred to as the Lords is the upper house of Parliament- has close to 800 members. It is a non-elected chamber, a concept peculiar to the English system, which has gained a lot of criticism over the years. This had led to plans for a full-scale reform of the chamber beginning in 1999- however this is still an ongoing process.
- ▶ The members of the Lords- the *peers & peeresses* are divided into the *Lords Spiritual & the Lords Temporal*. There are *26 Lords Spiritual* who are members of the high clergy of the Church of England- Archbishops of Canterbury & York & the Bishops of Durham, London & Winchester.
- ▶ The Lords Temporal fall into two categories- *hereditary peers & life peers*. Hereditary peers are nobility- dukes, earls & barons who inherit their titles & traditionally their right to sit in the HL. The House of Lords Act 1999 abolished the automatic right of hereditary peers to sit & vote in the HL- ending several hundred years of constitutional history.
- ▶ 92 of the over 700 peers were elected to remain members as an interim measure- on their death or retirement, the sitting hereditary peers vote for a replacement.

# Parliament cont.

- ▶ Life peers are appointed by the Queen on advice of the Prime Minister.
- ▶ The majority of which are political peers whose names are put forward to the Prime Minister by the main political parties- the number of new political peers each year is determined by the Prime Minister.
- ▶ Life members who are independent of a political party are known as cross-benchers- after the 1999 reform, cross-benchers are selected by the HL Appointments Commission for their expertise & experience. The Commission also scrutinises all nominations made for political peers.
- ▶ The exclusion of hereditary peers was just the first step in the Labour Government plans (1997-2010) to reform the HL. Despite numerous committees & reports there has been little progress.
- ▶ The general agreements include that the Commons remain the dominant chamber & member so the second chamber should have a single, long term office.
- ▶ An important issue to be decided is the extent to which members of the Upper House should be elected or appointed.

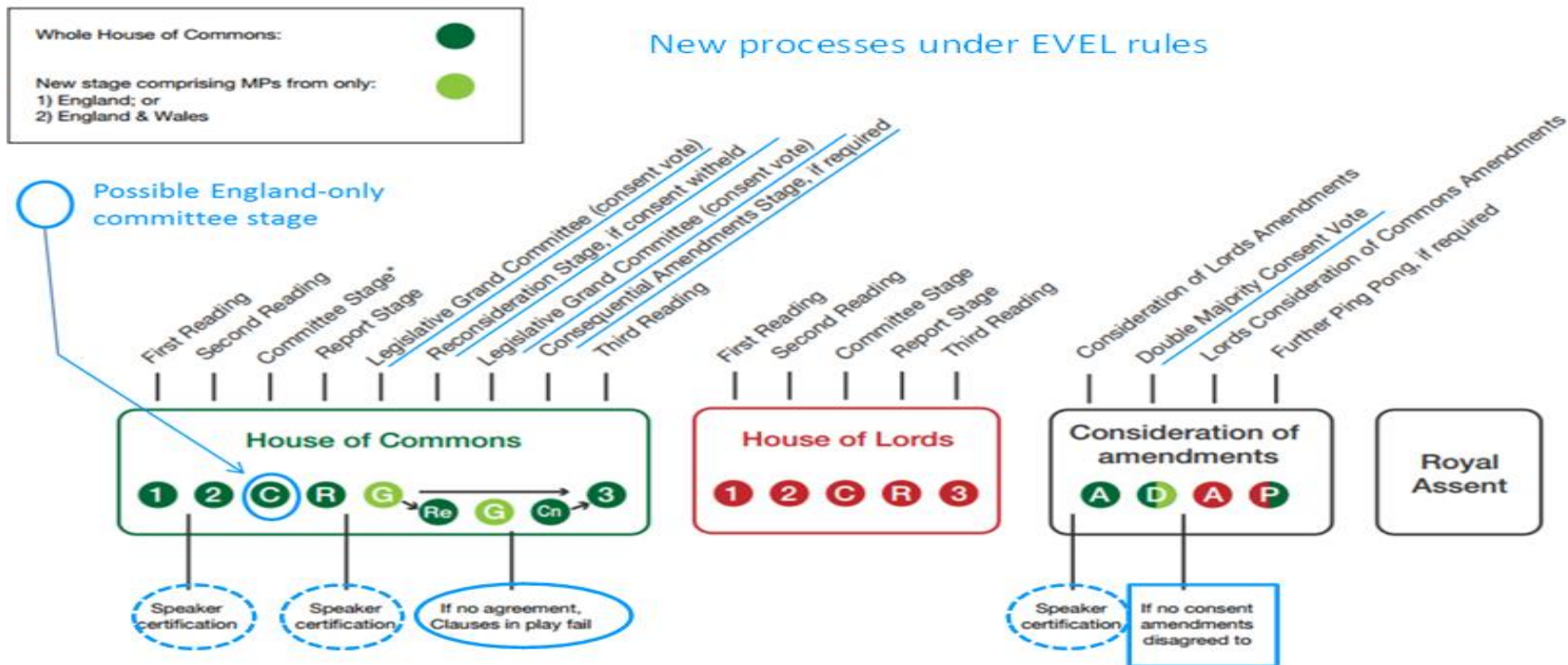


# Government.

- ▶ The government is the executive branch of the State. Its work is divided into government departments such as the Home Office; Department of Health, Department of Education & the Treasury. A minister of the Crown is the head of each department- chosen by the Prime Minister- leader of the government.
- ▶ Ministers in charge of a dept. are called *Secretary of State*- some of special titles such as the Chancellor of the Exchequer- head of the Treasury. Other ranks of ministers include- Ministers of State & junior ministers. It is a convention that all ministers are members of Parliament, which is important as there is a collective & individual ministerial responsibility to Parliament.
- ▶ The PM selects a group of senior ministers to form his cabinet. The cabinet ministers decide on government policy and co-ordinate the work of individual depts.
- ▶ *Whips* are appointed by each political party to facilitate communication between party leaders and members, and to maintain discipline within the parliamentary party- they ensure that MPs attend important dates and votes.
- ▶ The opposition leader will form their own *shadow cabinet* by appointing a counterpart for every member of the cabinet. In this way, the opposition has a specialist for each issue it may want to comment or challenge the government on.

# The Legislative Process.

## Outline of model - Bill starting in the House of Commons



# The Legislative Process cont.

- ▶ Both Houses take part in the legislative process- the general rule is that a measure must be passed, that is accepted by both Houses-must receive *Royal Assent* before it becomes law.
- ▶ Each Act of Parliament begins as a bill- the draft proposal for a new law. There are two types of bills- *public bills & private bills*. Public bills deal with matters of public policy which affect the public as a whole. Private bills are measures which only affect certain groups of persons- local authorities, universities & nationalised industries. The procedure for private bills is more complex than public bills- as it allows discussions from those affected.
- ▶ A public bill has to be sponsored by a MP- he/she introduces the draft bill into Parliament- these sponsored bills are called Government bills- & have a greater chance of success. Bills introduced by non-ministerial members are *Private Member's bills*- not to be confused with private bills.
- ▶ Bills can be introduced by both Houses- but *money bills*- authorising taxation must start in the Commons- the same procedure for Government & Private Member's bills- they all involve three readings, a Committee stage and a Report stage.

# The Legislative Process cont.

- ▶ The *1<sup>st</sup> reading* is more of a formality-the bill's title is read out & a date for the *2<sup>nd</sup> reading* is set. The 2<sup>nd</sup> reading- the general principles of the bill are debated by the House. The bill then proceeds to the *committee stage*.
- ▶ In the Commons, the bills will proceed to *Public Bill Committee* or to the *Committee of the entire House*. In the Lords, the bill is always considered by a *Committee of the whole House*. The individual clauses are discussed by the committee & amendments- changes to provisions, are suggested. The amended bill is then reported to the House. Members who were not on the Committee can also suggest amendments at this stage.
- ▶ *The 3<sup>rd</sup> reading* is usually a formality also- any debates are brief, then the bill is present to the other House. The procedure in the Lords is akin to that of Commons- formal 1<sup>st</sup> reading, debated 2<sup>nd</sup> reading, close scrutiny in the Committee & on Report, then a 3<sup>rd</sup> reading.
- ▶ When the 2 Houses cannot agree on a bill's drafting it may *ping pong* between them. Where there is a serious disagreement between the 2 Houses, when a public bill started in the Common, the Parliament Act procedure will be invoked which gives final say to the elected lower House.
- ▶ In such procedure, the HL can only delay the bill by one year once accepted by the Commons. Such procedure is not used for bills will may prolong the length of Parliament over 5 years. Money bills can only be delayed by the Lords by one month. A convention also stipulates that the Lords will not normally reject a Government bill contained in the Government's election manifesto.
- ▶ Royal Assent is the final stage of the legislative process- by convention the Queen does not refuse her assent & the procedure is a mere formality.

# Devolution.

## Centralisation & Decentralisation

- In a unitary form of government power is centralised in one body or institution (i.e. parliament).
- However, modifications of the unitary form of government came with the devolution of power to the Scottish Parliament, and the assemblies in Wales and Northern Ireland. There has also been consideration given to the idea of regional assemblies in England.
- This is known as the decentralisation of power.



# Devolution.

- ▶ From 1998 the UK Parliament has adopted legislation which transfers certain governmental powers to newly established bodies in Scotland, Wales & Northern Ireland. This is a form of decentralisation known as devolution.
- ▶ The UK's Parliamentary sovereignty is sustained and the exercise of the devolved powers is subject to control by the courts.
- ▶ The Scottish Parliament consists of 129 members of the Scottish Parliament elected on the basis of a form of *proportional representation* called the additional member system. The Scottish Government consists of the First Minister- nominated by Members of the Scottish Parliament.
- ▶ The SP can legislate in all areas not reserved by the UK Parliament. Acts of the SP can be adopted on numerous devolved matters- agriculture, education, environmental, health & housing. It has some financial power as it can, for instance vary the rate of income tax. Laws relating to constitutional matters, defence, employment, foreign affairs, social security & other reserved matters are still under the UK Parliament.

# Devolution.

- ▶ Devolution to the National Assembly for Wales has been less extensive. The Assembly consists of 60 members elected by the additional member system. The Welsh Government is led by the First Minister, nominated by the Assembly- who appoints the ministers and deputy ministers.
- ▶ The Assembly can adopt primary legislation, Assembly Acts in specific areas- agriculture, economic development, education, health and social welfare. The Assembly has limited taxation powers.
- ▶ The Northern Ireland Assembly was created as an important part of the region's peace process and the *Good Friday Agreement 1998*. The detailed rules ensure power sharing between the unionists and the nationalists. There are 108 Members of the Legislative Assembly- elected via a type of proportional representation- called single transferable vote.
- ▶ The Northern Ireland Executive is headed by the First Minister & the Deputy First Minister- each nominated respectively by the largest and second largest political parties in the Assembly. Ministers are nominated to reflect the political make up of the Assembly.
- ▶ The Assembly can adopt Acts in all areas which have not been expressly excluded, so that it may pass measures, for instance on education, the environment, health & social services. It may not make laws on excepted matters such as international relations and defence. Reserved matters are areas which it may not currently make laws on, but which may later be added to its competences- as happened with policing & justice powers which were transferred to the Assembly.