

Halsbury's Laws of England

(3) RELATIONSHIP BETWEEN THE CROWN AND THE JUDICIARY

133. The monarch as the source of justice.

The constitutional status of the judiciary is underpinned by its origins in the royal prerogative and its legal relationship with the Crown, dating from the medieval period when the prerogatives were exercised by the monarch personally. By virtue of the prerogative the monarch is the source and fountain of justice, and all jurisdiction is derived from her¹. Hence, in legal contemplation, the Sovereign's Majesty is deemed always to be present in court² and, by the terms of the coronation oath and by the maxims of the common law, as also by the ancient charters and statutes confirming the liberties of the subject, the monarch is bound to cause law and justice in mercy to be administered in all judgments³. This is, however, now a purely impersonal conception, for the monarch cannot personally execute any office relating to the administration of justice⁴ nor effect an arrest⁵.

1 Bac Abr, Prerogative, D1: see **COURTS AND TRIBUNALS** VOL 24 (2010) **PARA** 609.

2 1 BI Com (14th Edn) 269.

3 As to the duty to cause law and justice to be executed see **PARA** 36 head (2).

4 2 Co Inst 187; 4 Co Inst 71; *Prohibitions del Roy* (1607) 12 Co Rep 63. James I is said to have endeavoured to revive the ancient practice of sitting in court, but was informed by the judges that he could not deliver an opinion: *Prohibitions del Roy* (1607) 12 Co Rep 63; see 3 Stephen's Commentaries (4th Edn) 357n.

5 YB 1 Hen 7, Mich pl 5; Bac Abr, Prerogative, E1; 1 BI Com (14th Edn) 269; Bro Abr, Prerogative, 125; Co Litt 3 b.

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134. Legal process and the monarch.

All judges and magistrates are appointed by and derive their authority, either mediately or immediately, from the Crown¹. They must, however, exercise their authority in a lawful manner, without deviating from the known and stated forms². The laws are the birthright of the people³, and the monarch neither has power to change them apart from Parliament⁴, nor may she interfere with the due administration of justice⁵, and, although her person is above the reach of the law, it is her duty to obey it⁶.

1 Bac Abr, Prerogative, D1. As to the appointment of judges and magistrates see further **PARAS** 126, 130; and **COURTS AND TRIBUNALS** VOL 24 (2010) **PARA** 935 et seq; **MAGISTRATES** VOL 71 (2013) **PARA** 401 et seq.

- 2 Bac Abr, Prerogative, D1; and see PARA 615.
- 3 Act of Settlement s 4. See also PARA 36. As to the citation of the Act of Settlement see PARA 43 note 3.
- 4 *Re Grazebrook, ex p Chavassee* (1865) 4 De GJ & Sm 655 at 662. See also PARAS 36 note 3, 592.
- 5 As to freedom of justice see PARA 138.
- 6 As to the monarch's duty to obey the law see PARA 187 note 5.

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135. Counties palatine.

The prerogatives relating to the distribution of justice are, in general, inherent in and inseparable from the Crown¹, and although they formerly passed by way of franchise, along with the full jura regalia, to the grantees of the counties palatine of Durham, Chester and Lancaster, the prerogative rights relating to justice within those counties palatine are now in general revested in the Crown². The Courts of Chancery of the County Palatine of Durham and the County Palatine of Lancaster were merged with the High Court³, and the jurisdiction of the Chester palatine courts has been abolished⁴. It seems that grants of a like nature would now require the authority of an Act of Parliament⁵. In right of the Duchy of Lancaster the monarch retains the right to appoint high sheriffs throughout the counties of Greater Manchester, Merseyside and Lancashire⁶.

1 See Bac Abr, Prerogative, D1; *Christian v Corren* (1716) 1 P Wms 329 at 330.

2 Lancaster was created a county palatine by charter having the authority of Parliament: 4 Co Inst 205, 211. As to the creation and history of the franchise see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) PARA 219 et seq. Durham and Chester are counties palatine by prescription or custom at least as old as the Conquest (4 Co Inst 211, 216); they were created as a means of defence against the inroads of the Scots and Welsh (see 1 BI Com (14th Edn) 113–114). As to the county palatine of Durham see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) PARA 168. The Earldom and County Palatine of Chester were united to the Crown by Henry III and thence is derived the title of the monarch's eldest son as Earl of Chester: 1 BI Com (14th Edn) 117. In 1535 certain powers and privileges in relation to counties palatine and liberties were revested in the Crown: Jurisdiction in Liberties Act 1535 ss 1–3 (repealed). As to the abolition of the Chester palatine courts see the text and note 4. As to the appointment of officers in Chester on the demise of the Crown see **CROWN AND CROWN PROCEEDINGS**.

3 See the Courts Act 1971 s 41 (repealed).

4 Law Terms Act 1830 s 14 (repealed). The abolition did not affect the rights of the corporation of Chester: s 15 (repealed).

5 See 4 Co Inst 204; Bac Abr, Courts Palatinate.

6 Local Government Act 1972 s 219(3) (amended by the Statute Law (Repeals) Act 1993).

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136. No establishment of courts without statutory authority.

As the source and fountain of justice the Crown may issue such commissions to administer the law as are warranted by the common or statute law¹; but may not, without statutory authority, establish courts to administer any but the common law², and may not, it is said, grant the right to hold a court of equity³. The Crown may not issue commissions in time of peace to try civilians by martial law⁴.

1 Com Dig, Prerogative, D 29. As to the power to establish courts outside the United Kingdom see **COMMONWEALTH** VOL 13 (2017) **PARA** 712.

2 Com Dig, Prerogative, D 28; 4 Co Inst 200; *Re Lord Bishop of Natal* (1865) 3 Moo PCCNS 115. As to illegal courts see **PARA** 184.

3 Bac Abr, Prerogative, F1; Forsyth *Cases and Opinions on Constitutional Law* (1869) pp 172–174. In the counties palatine the right to hold a court of equity passed with the full jura regalia, but such franchise cannot, it seems, be created at the present day: see Bac Abr, Prerogative, F1; and **PARA** 135.

4 Petition of Right (1627) ss 7, 8. As to martial law see **ARMED CONFLICT AND EMERGENCY** VOL 3 (2011) **PARA** 185.

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137. The Crown as *parens patriae*.

As liege lord and protector of the subjects¹, the monarch enjoys the prerogative right of taking care of the persons and estates of minors and mentally disordered persons and of superintending charities, although the exercise of those powers has now been delegated by the monarch or assigned by statute to various authorities.

Jurisdiction in respect of wardships of minors and the care of their estates is expressly assigned to the Family Division of the High Court of Justice², whilst local authorities have duties in respect of children in need of care and control³.

The prerogative of taking care of persons lacking mental capacity and their estates is no longer exercised, that function being now carried out under statute by the Court of Protection⁴. The prerogative in matters relating to charities is exercised largely by the Lord Chancellor⁵, and the administration of charities legislation is the function of the Charity Commission for England and Wales⁶.

1 As to the monarch as liege lord see **PARA** 37.

2 See the Senior Courts Act 1981 s 61(1), Sch 1 para 3(b)(ii) (Sch 1 para 3(b)(ii) substituted by the Children Act 1989 Sch 13 para 45(3), Sch 14 para 1). The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981: see **PARA** 8 note 2. As to limitations on the inherent jurisdiction see the Children Act 1989 s 100; and **CHILDREN AND YOUNG PERSONS** VOL 9 (2017) **PARA** 301 et seq.

3 See the Children Act 1989 s 33; and **CHILDREN AND YOUNG PERSONS** VOL 9 (2017) **PARAS** 357–358.

4 See the Mental Capacity Act 2005 Pt 2 (ss 45–61); and **MENTAL HEALTH AND CAPACITY** VOL 75 (2013) **PARA** 720 et seq.

5 The Chancery Division of the High Court has jurisdiction over trusts, including charitable trusts: see the Senior Courts Act 1981 Sch 1 para 1(c); and see note 2. See further **CHARITIES** VOL 8 (2015) **PARAS** 512 et seq, 534 et seq. As to the Lord Chancellor see **PARA** 255 et seq.

6 See **CHARITIES** VOL 8 (2015) **PARA** 543 et seq.

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138. Freedom of justice.

The Crown or its ministers may not interfere with the ordinary course of justice. Jurors must be duly summoned¹, and excessive bail or fines may not be required or imposed, nor cruel and unusual punishments inflicted². Moreover, all grants and promises of fines and forfeitures of particular persons before conviction are illegal and void. The Crown may not bring pressure to bear upon the judges of the High Court or the Court of Appeal, or upon the Justices of the Supreme Court, through fear of dismissal, since they hold office during good behaviour, subject to a power of removal by Her Majesty on an address presented to her by both Houses of Parliament³.

¹ See the Bill of Rights s 1. As to juries generally see **JURIES**. As to the history and citation of the Bill of Rights see **PARA 43** note 3.

² Bill of Rights s 1. Under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953); Cmd 8969) art 3, now incorporated into domestic law by the Human Rights Act 1998 Sch 1 Pt I art 3, no one may be subjected to torture or to inhuman or degrading treatment or punishment: see **RIGHTS AND FREEDOMS** VOL 88A (2018) **PARA 223**. As to the Convention generally see **RIGHTS AND FREEDOMS** VOL 88A (2018) **PARA 14**.

³ See **PARA 130**. It is for the Lord Chancellor to recommend to Her Majesty the exercise of the power of removal under the Senior Courts Act 1981 s 11(3): s 11(3A) (added by the Constitutional Reform Act 2005 Sch 4 para 123(3)). The Senior Courts Act 1981 was previously known as the Supreme Court Act 1981: see **PARA 8** note 2. As to the qualifications, appointment, tenure and dismissal of judges generally see **COURTS AND TRIBUNALS**. For an example of arguably unconstitutional pressure brought to bear upon a judge, and the consequent debate in the House of Lords, see 553 HL Official Report (5th series), 27 April 1994, col 751 et seq. See generally Brazier *Constitutional Practice* (3rd Edn, 1999), ch 12.

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4. THE EXECUTIVE

(1) LEGAL STATUS AND POWERS OF THE EXECUTIVE

(i) *The Monarch, the Crown and the Government*

148. The monarch; in general.

In law the monarchy, providing the nation's head of state, remains legally central to the powers of government. Such powers may be formally vested in the monarch (or the sovereign) or, latterly, the Crown¹. The monarch's personal functions in the actual administration of the executive are now restricted principally to attaching her signature to various executive documents, the nature and general policy of which have been previously determined by ministers either individually or collectively². In discharging her legal functions the monarch is bound by constitutional conventions which minimise the scope of her discretion³ but is held by convention also to have certain rights⁴. To a significant extent her role is conceived of as acting as a figure-head and performing ceremonial duties⁵.

1 See PARA 150.

2 As a matter of convention the monarch ought not to attempt to influence the actions of executive officers without seeking and acting upon the advice of the minister responsible to Parliament. This has been established principle since the nineteenth century: thus George IV wished to influence the Lord Lieutenant of Ireland in exercising the prerogative of mercy but Sir Robert Peel, then Home Secretary, insisted that the advice of the responsible minister ought first to be asked, and the Crown gave way (see 2 Anson's *Law and Custom of the Constitution* (4th Edn, 1935) Pt I p 57). This convention applies equally in foreign affairs as well as domestic affairs: thus the monarch's private correspondence with foreign sovereigns or ministers ought to be disclosed to the executive if it touches on political questions, and was habitually so disclosed by Queen Victoria and the Prince Consort (2 Anson's *Law and Custom of the Constitution* (4th Edn, 1935) Pt I p 56).

It is unconstitutional for the monarch to take independent action in domestic or foreign politics, and a minister cannot escape responsibility for any independent action which may be taken by the Crown: see Blackburn 'The Queen and Ministerial Responsibility' [1985] *Public Law* 361; and eg Lord Somers was impeached for causing the Great Seal to be affixed to the partition treaties concluded by William III in 1698 and 1699 without lawful warrant: Lord Somers' Case (1701) 14 *State Tr* 250 at 253–254. In case of the insistence of the monarch in defiance of prime ministerial advice, it seems that the constitutional procedure would be for the administration to tender its resignation.

3 As to constitutional conventions see PARAS 20–24.

4 The rights involving being consulted and being able to express views internally: see Cabinet Office *The Cabinet Manual* (2011) Introduction para 6. As to the prerogative powers and constitutional duties of the monarch generally see Brazier *Constitutional Practice* (3rd Edn, 1999) ch 9; Bogdanor *Monarchy and the Constitution* (1995).

5 Cabinet Office *The Cabinet Manual* (2011) Introduction para 6, ch 1 paras 1.1–1.4.

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149. The monarch as head of the executive.

The monarch is the head of the executive, and hence ministers are commonly referred to collectively as 'Her Majesty's government'. The monarch must, as a matter of convention, save in a few very exceptional instances¹ act through or with the co-operation of some other person, usually a servant of the Crown, but the acts which can be performed through or with the co-operation of any particular servant and by any particular mode are limited in number; and in the aggregate such powers do not cover the whole field of government².

1 The monarch can open Parliament without the assistance of anyone else. She may also appoint certain of her ministers by merely giving the seals of office into their hands, and dismiss them by merely requiring them to return the seals to her. In exercising these powers, the monarch by convention acts on the advice of the Prime Minister for the time being: see PARAS 208–209. Dissolutions of Parliament now take place in accordance with the Fixed-term Parliaments Act 2011 s 3 (see PARA 95) though the monarch sets by proclamation the date of the meeting of the new Parliament (s 3(4)). Where an early dissolution, ahead of the regular five-year statutory term, is triggered by the House of Commons, the monarch by proclamation sets the date for the general election on the advice of the Prime Minister: see s 2(7); and PARA 95. Apparently the monarch need not

ask or accept advice on the question whom she is to call upon to form a new administration; but her choice has usually in recent decades been completely circumscribed by the practice of all parties to elect their leaders, and by the verdict of the House of Commons or of the country at a general election. There may, residually, be a function for the monarch to perform, however, in the event of an inconclusive general election or at any other time when the Prime Minister is, or appears to her to be, unable to command the confidence of the House over a matter of principle, but an early general election is not triggered by the House in accordance with the Fixed-term Parliaments Act 2011 s 2: see PARAS 22 note 5, 224. There is a lack of agreement as to whether in such circumstances the leader of the largest opposition party should automatically be appointed Prime Minister; or whether more than one individual who may be believed able to command the confidence of the House could be considered. Even amongst those who entertain the idea of a range of candidates there is an emphasis on the issue being resolved through negotiations between senior politicians and the involvement of the monarch being avoided. See Blackburn 'Monarchy and the Personal Prerogatives' [2004] Public Law p 546; Bogdanor *The Monarchy and the Constitution* (1995) chs 4, 5; Cabinet Office *The Cabinet Manual* (2011) ch 2.

2 Eg powers to do acts which interfere with the liberties of individuals or to raise taxation are excluded. See PARAS 7–8.

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150. The Crown; in general.

Much of the business of central government is carried on in the name of 'the Crown.' The term 'the Crown' has a number of meanings. Historically it referred to the monarch in whom were united executive, legislative and judicial functions¹. Thus it may be used to refer to the person of the monarch², although this is less commonly used in modern parlance. More frequently 'the Crown' refers to the executive or government. The Crown in this sense is in law a corporation sole or aggregate³. However, the term 'the Crown' may also be used to apply to an officer or servant of the Crown⁴, or to 'a minister acting in an official capacity'⁵. Some ministers also have separate corporate personality⁶.

1 See PARAS 14–17.

2 See *Re M* [1994] 1 AC 377 at 395, sub nom *M v Home Office* [1993] 3 All ER 537 at 540, HL, per Lord Templeman, and at 407 and 551 per Lord Woolf. See also PARAS 148–149.

3 See *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL; *Re M* [1994] 1 AC 377 at 424, sub nom *M v Home Office* [1993] 3 All ER 537 at 566, HL. See also 1 BI Com 292. As to corporations sole and aggregate see **CORPORATIONS** VOL 24 (2010) **PARA** 312 et seq.

4 *Re M* [1994] 1 AC 377 at 407, sub nom *M v Home Office* [1993] 3 All ER 537 at 551, HL, per Lord Woolf. Prerogative orders may be granted against ministers in their official capacity, but not against the Crown: see *Re M* [1994] 1 AC 377 at 416, 424, sub nom *M v Home Office* [1993] 3 All ER 537 at 558–559, 566, HL; and see *R v Powell* as reported in (1841) 113 ER 1166.

5 *Re M* [1994] 1 AC 377 at 424, sub nom *M v Home Office* [1993] 3 All ER 537 at 566, HL.

6 See **PARA** 162. As to the constitutional status of the Crown see further M Sunkin and S Payne (eds) *The Nature of the Crown* (1999).

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151. The government; in general.

The terms 'government' or 'Her Majesty's government' embrace the whole of central government, and they are generally coterminous with 'the Crown'¹. However, it is convenient to distinguish between the political arm of the executive (that is to say 'the ministry' or, in contemporary parlance, 'the administration') and the permanent professional non-political arm (that is to say the Civil Service²).

The term 'Minister of the Crown' may be used to denote the holder of an office in Her Majesty's government in the United Kingdom and includes the Treasury³ and the Defence Council⁴. It includes, therefore, Secretaries of State, Ministers of State, Parliamentary Under Secretaries of State, and Parliamentary Secretaries⁵.

The administration comprises in the first place the Prime Minister⁶ and the political heads⁷ of public departments. The heads of the major departments are of Cabinet⁸ rank, and according to the present practice, and with certain exceptions⁹, are Secretaries of State¹⁰. Each Secretary of State is supported by at least one Parliamentary Under Secretary of State¹¹. It is now common for a department to have one or more Ministers of State¹², and in some cases they are designated as ministers in charge of subordinate departments¹³. The Treasury has a complicated ministerial staff¹⁴.

Some government whips hold sinecure offices as Lords of the Treasury¹⁵, and other government whips hold sinecure offices in the royal household¹⁶.

Ministers may appoint unpaid Parliamentary Private Secretaries, who are not technically members of the administration, nor are they formally bound by the conventions of collective responsibility¹⁷. Prime Ministers sometimes appoint a Deputy Prime Minister¹⁸ and they may appoint a First Secretary of State¹⁹.

The Chancellor of the Duchy of Lancaster²⁰ has minimal departmental duties, and the Lord President of the Council²¹ and Lord Privy Seal²² have none at all; all three can therefore be assigned special tasks to perform, but otherwise serve as ministers without portfolio²³.

1 See PARA 150.

2 As to the Civil Service generally see PARAS 285–303.

3 As to the Treasury see PARA 262 et seq.

4 As to the Defence Council see PARA 562

5 See eg the Ministers of the Crown Act 1975 s 8(1).

6 As to the Prime Minister see PARAS 204–208.

7 Ie in contrast to the permanent heads, who are members of the Civil Service.

8 As to the Cabinet see PARAS 212–219.

9 The Lord Chancellor is a Minister of the Crown under the Ministers of the Crown Act 1975 s 8, and is now also the Secretary of State for Justice: see PARA 256. The Chancellor of the Exchequer heads up the Treasury: see PARA 265.

10 As to the office of Secretary of State PARA 153 et seq. See also Simcock 'One and many—the Office of Secretary of State' (1992) 70 Public Administration 535.

11 It is now common for a department to have more than one Parliamentary Under Secretary of State. Sometimes they are attached to specific subordinate departments; eg at the date at which this volume states the law the Ministry of Justice had a Parliamentary Under-Secretary of State who was Minister for Prisons and Rehabilitation and a Parliamentary Under-Secretary of State who was Minister for the Courts and Legal Aid.

12 Eg the Ministry of Justice.

13 Eg in the Ministry of Justice at the date at which this volume states the law there was a Minister of State for Justice and a Minister of State for Policing, Criminal Justice and Victims.

14 See PARA 265.

15 Eg the Parliamentary Secretary to the Treasury, who is the Chief Whip, and the Junior Lords Commissioners of the Treasury.

16 Whips in the House of Commons holding positions in the royal household are the Treasurer of the Household, who is the Deputy Chief Whip, the Comptroller of the Household, the Vice-Chamberlain of the Household. Government whips in the House of Lords are the Captain of the Honourable Corps of the Gentleman at Arms (the Chief Whip) and the Captain of the Queen's Bodyguard of the Yeoman of the Guard (the Deputy Chief Whip) and a number of Lords in Waiting. As to officers of the royal household see PARA 283.

17 As to collective responsibility of ministers see PARA 223.

18 The post may be given for political reasons, for instance to recognise the deputy leader of a party in a single-party government or the leader of a smaller party in a coalition government. It carries with it no specific duties, but may be combined with other functions, though there are no clearly established rules as to what they should be: see Cabinet Office *The Cabinet Manual* (2011) ch 3 para 3.11.

19 This may be done to indicate seniority. The appointment may be held with another office: see Cabinet Office *The Cabinet Manual* (2011) ch 3 para 3.12. Eg at the date at which this volume states the law Mr William Hague was First Secretary of State and also Secretary of State for Foreign and Commonwealth Affairs: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

20 As to the Chancellor of the Duchy of Lancaster see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) PARA 224. At the date at which this volume states the law the role was combined with that of Leader of the House of Lords see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

21 As to the appointment of the Lord President of the Council see PARA 272. At the date at which this volume states the law the Lord President of the Council was also Deputy Prime Minister: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012). The Lord President of the Council also shares certain functions concerning elections and referendums with the Secretary of State (see the Lord President of the Council Order 2010, SI 2010/1837, arts 3, 4(2); the Transfer of Functions (Elections and Referendums) Order 2013, SI 2013/2597, art 2; the Transfer of Functions (Elections) Order 2014, SI 2014/268, art 2); and exercises other miscellaneous statutory functions (see the Lord President of the Council Order 2010, SI 2010/1837, art 4(1)).

22 See PARA 267. At the date at which this volume states the law the Lord Privy Seal was Leader of the House of Commons see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

23 As a rule, the Paymaster General (as to whom see PARA 484) is a minister without portfolio, available for such special duties as the Prime Minister may assign to him. At the date at which this volume states the law the Paymaster General was also Minister for the Cabinet Office: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012). The Paymaster General has in the past been given a role in the Treasury: see Robinson *The Unconventional Minister* (2001). Occasionally there is a minister specifically designated Minister without Portfolio. It has been the practice for the chairman or co-chairman of the Conservative party, or the chair or deputy chair of the Labour party, to be appointed a minister without portfolio with Cabinet rank, a role filled at the date at which this volume states the law by Mr Grant Schapps: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

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152. Rules, practices and objectives of government.

Increasingly the business of government and its ministerial and official personnel have come to be the subject of publicly available documents of various kinds, which variously prescribe or seek to uphold norms, purport to describe existing practices and conventions, and set objectives¹. They include Acts of Parliament²; codes provided for by statute³; non-statutory codes⁴; and other texts such as performance management frameworks and targets⁵. Non-statutory codes can provide primary accounts of executive practice or of the view the executive takes of the operation of certain constitutional conventions⁶. But they may also have the

effect of promoting acceptance of particular interpretations of conventions about which there is disagreement, or of helping to bring conventions into being⁷. The existence of this body of statute law and other texts increases the range of options for the conduct of judicial review of a constitutional nature; and even in the case of non-statutory codes, there may be possibilities for claiming that a relevant consideration as defined in a particular document has not been taken into account by a minister⁸.

1 See A Blick and P Hennessy *The Hidden Wiring Emerges* (2011).

2 See eg the Constitutional Reform and Governance Act 2010, which amongst other provisions provides a statutory basis for the upholding of core values of the Civil Service: see Pt 1 (ss 1–19); and PARA 287 et seq.

3 Eg the Civil Service Code, provided for by the Constitutional Reform and Governance Act 2010 ss 5, 7 (see PARA 293); the Code of Conduct for Special Advisers, provided for by the Constitutional Reform and Governance Act 2010 s 8 (see PARA 292); the Civil Service Management Code, issued under authority provided by the Constitutional Reform and Governance Act 2010 s 3 (see PARA 289); and the Civil Service Commission Recruitment Principles, provided for by the Constitutional Reform and Governance Act 2010 s 11 (see PARA 290); and see Ministry of Justice *Lord Chancellor's Code of Practice on the management of records issued under section 46 of the Freedom of Information Act 2000* (2009).

4 Eg Cabinet Office *Directory of Civil Service Guidance* (2000), vols 1–2; Cabinet Office *Departmental Evidence and Response to Select Committees* (2005); HM Treasury *Corporate Governance in Central Government Departments* (2005); Cabinet Office *Guidance on the Management of Private Office Papers* (2009); Cabinet Office *Ministerial Code* (2010); Cabinet Office *Machinery of Government Changes* (2010); HM Treasury *Funding the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly* (2010); Cabinet Office *Code of Best Practice for Board Members of Public Bodies* (2011); Cabinet Office *Devolution: Memorandum of Understanding and Supplementary Agreements* (2011); Cabinet Office *The Cabinet Manual* (2011); HM Treasury *Government Financial Reporting Manual* (2011); HM Treasury *Managing Public Money* (2011); Cabinet Office *Guide to Cabinet and Cabinet Committees* (2012).

5 Such as the Departmental Business Plans introduced by the coalition government: see Stephen, Martin and Atkinson *See-through Whitehall* (2011). While the Departmental Business plans are non-statutory, there has also been an emerging practice for the enshrining of particular government targets in statute: see Rutter and Knighton *Legislated Policy Targets* (2012). As to Public Service Agreements under the governments of 1997–2010 see Barber *Instruction to Deliver* (2007).

6 As with the Cabinet Manual.

7 See Blick 'The Cabinet Manual and the codification of conventions' (2012) *Parliamentary Affairs*.

8 See eg *House of Lords Constitution Committee 12th Report: The Cabinet Manual* (HL Paper (2010–12) no 107) paras 44–45.

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153. Office of Secretary of State.

Traditionally it was the function of the Secretary¹ of State² to act as the ordinary method of communication between monarch and subject. There may be held from time to time the office of First Secretary of State³.

Other than the First Secretary of State, Her Majesty's Principal Secretaries of State are: (1) the Secretary of State for Foreign and Commonwealth Affairs (the Foreign Secretary)⁴; (2) the Secretary of State for the Home Department (the Home Secretary)⁵; (3) the Secretary of State for Defence; (4) the Secretary of State for Justice (who is also the Lord Chancellor)⁶; (5) the Secretary of State for Business, Innovation and Skills; (6) the Secretary of State for Work and Pensions; (7) the Secretary of State for Energy and Climate Change; (8) the Secretary of State for Health; (9) the Secretary of State for Education; (10) the Secretary of State for Communities and Local Government; (11) the Secretary of State for Transport; (12) the Secretary of State for Environment, Food and Rural Affairs; (13) the Secretary of State for International Development; (14) the

Secretary of State for Digital, Culture, Media and Sport; (15) the Secretary of State for Northern Ireland⁷; (16) the Secretary of State for Scotland⁸; and (17) the Secretary of State for Wales⁹.

Although the secretarial duties are divided among the persons presiding over their respective departments of government, the office of Secretary of State is one, and in law each Secretary of State is capable of performing the duties of all or any of the departments¹⁰. The appointment, which is during pleasure, is made by grant and delivery of the seals of office¹¹.

The Principal Secretaries of State are members of the Privy Council¹² and are normally members of the Cabinet¹³.

Legislation enacted following the establishment of the Welsh Assembly government which confers functions on the Secretary of State and the Welsh Ministers often refers to those bodies collectively as 'the appropriate national authority'¹⁴, and that expression is used throughout this work to cover any situation where the function in question is exercised in relation to England by the Secretary of State and in relation to Wales by the Welsh Ministers, and also where functions may be carried out by them jointly or concurrently.

1 For the history of the secretariat see Thomas *History of Public Departments* 23–36; 6 Proceedings and Ordinances of the Privy Council (ed Nicolas) (1837) p xcvi; Evans *The Principal Secretary of State (for the period 1558–1680)* (1923); Thomson *The Secretaries of State 1681–1782* (1968); *Harrison v Bush* (1855) 5 E & B 344 at 352; *Entick v Carrington* (1765) 19 State Tr 1029. See also Simcock 'One and many—the Office of Secretary of State' (1992) 70 Public Administration 535. The monarch's Private Secretary (see PARA 284) is not a means of expressing the official will of the Crown.

2 Where there was no indication to the contrary a reference to 'the Secretary of State' was formerly generally taken to import a reference to the Home Secretary: see PARA 239. However, the Interpretation Act 1978 s 5, Sch 1 provides that 'Secretary of State' means one of Her Majesty's Principal Secretaries of State, without further qualification, and in modern enactments 'Secretary of State' may be taken to refer to the Secretary of State exercising functions under the enactment in question. Where statutory functions in Wales have been transferred to the Welsh Ministers as a result of devolution but no amendment to that effect has been made in the relevant enactment, the practice in this work is to refer to the 'appropriate national authority' rather than the Secretary of State: see eg **FISHERIES AND AQUACULTURE** VOL 51 (2013) PARA 217. See also note 3; and the text and note 14. As to the transfer of functions generally see PARAS 162–164.

3 See PARA 151 text and note 19. It is to be presumed that when this office is held its holder takes precedence over other Secretaries of State. The Secretary of State for Justice is also listed second amongst Secretaries of State, after the Foreign Secretary and ahead of the Home Secretary, but the post is combined with that of Lord Chancellor, which may be the source of the precedence of its holder, with this title named before that of Secretary of State for Justice.

4 As to the Foreign and Commonwealth Office see PARAS 237–238.

5 As to the Home Office see PARA 239 et seq.

6 As to the Secretary of state for Justice see PARA 253; and as to the Lord Chancellor see PARA 255 et seq.

7 As to the Northern Ireland Office see PARA 89.

8 As to the Scotland Office see PARA 69.

9 As to the Wales Office see PARA 79.

10 33 Parliamentary History 976; *Harrison v Bush* (1855) 5 E & B 344 at 352. In some instances the authority of a Secretary of State derives from the Crown's common law prerogatives which he administers, but in many instances his powers are statutory, in which case the usual practice is for the statute to refer to 'one of Her Majesty's Principal Secretaries of State' or, more frequently, 'the Secretary of State'. Unless the contrary intention appears, 'the Secretary of State' means one of Her Majesty's Principal Secretaries of State for the time being: Interpretation Act 1978 ss 5, 22, 23, Sch 1, Sch 2 para 4(1). See also note 2. Where powers are conferred jointly upon or divided between two or more ministers a Secretary of State may be described by reference to his functions or by name: see eg the Education Act 1973 Sch 1 para 1(5) (substituted by SI 1995/2986). See also Simcock 'One and many—the Office of Secretary of State' (1992) 70 Public Administration 535.

Where functions are transferred by Order in Council from one minister to another a Secretary of State to whom a transfer is made is frequently described by his full title: see PARA 162.

Powers are occasionally given or transferred to 'a Secretary of State' or 'the Secretary of State', leaving it to be understood from the context or otherwise which Secretary of State is intended; eg the Ministry of Posts and Telecommunications (Dissolution) Order 1974, SI 1974/691, transferred all the functions of the Minister of Posts and Telecommunications to the Secretary of State. In fact, some of those functions were to be exercised by the Home Secretary and others by the Secretary of State for Industry. In practice the administration of each Secretary of State is confined to his own department, and the term 'Secretary of

State' in any particular statutory context accordingly refers to the Secretary of State whose department normally deals with the subject matter of the provision. Nevertheless, the principle that the office of Secretary of State is one and indivisible remains strictly correct. As to the transfer of functions see PARAS 162–164. As to consideration of the practicalities of the principle that the office of Secretary of State is indivisible see *R (on the application of BAPCO Action Ltd) v Secretary of State for the Home Department* [2008] UKHL 27, [2008] 1 AC 1003, [2009] 1 All ER 93.

11 33 Parliamentary History 976; *Harrison v Bush* (1855) 5 E & B 344. As to the oaths to be taken see PARA 597.

12 As to the Privy Council see PARA 268 et seq.

13 At the date at which this volume states the law, as has become the practice, all the Secretaries of State were members of the Cabinet. The government now asserts that the Cabinet will always include the Secretaries of State: see Cabinet Office *The Cabinet Manual* (2011) p 22. As to the salaries of Secretaries of State see PARA 230. As to the Cabinet see PARAS 212–219.

14 See eg the Marine and Coastal Access Act 2009 s 188(6).

UPDATE

153 Office of Secretary of State

TEXT AND NOTE 7—Now head (14) the Secretary of State for Digital, Culture, Media and Sport (see the Transfer of Functions (Secretary of State for Digital, Culture, Media and Sport) Order 2017, SI 2017/979).

Halsbury's Laws of England

154. Claims against a Secretary of State.

A claim will lie against a Secretary of State in his personal capacity in respect of unlawful acts, resulting in injury to an individual, done by him personally, or under his direct authority¹.

¹ *Wilkes v Lord Halifax* (1769) 19 State Tr 1406; *Cobbett v Grey* (1849) 4 Exch 729; *Sayre v Earl of Rochford* (1776) 20 State Tr 1286. Thus a claim will lie for damages for trespass and false imprisonment: *Wilkes v Lord Halifax* (1769) 19 State Tr 1406. In *Dickson v Viscount Combermere* (1863) 3 F & F 527, it was held that an action (now known as a 'claim') will not lie against the minister now known as the Secretary of State for Defence for causing the lieutenant-colonel of a regiment to be removed from his office by false charges, unless he has acted dishonestly; and it is probable that such a claim would not be maintainable in any case, since the dismissal is the act of the Crown, and he cannot be made liable for advice given by him to the Crown. Indeed a Secretary of State ought not to disclose the advice which he gives to the Crown: *Irwin v Grey* (1863) 1 New Rep 237. The only reported instances of a Secretary of State being held personally liable in tort appear to be *Wilkes v Lord Halifax* (1769) 19 State Tr 1406 and *Sayre v Earl of Rochford* (1776) 20 State Tr 1286; and cf *Cobbett v Grey* (1849) 4 Exch 729. As to the liability of Crown servants generally see *Re M* [1994] 1 AC 377, sub nom *M v Home Office* [1993] 3 All ER 537, HL; and PARAS 197–198. As to the procedure in instituting claims against officers of state see CROWN AND CROWN PROCEEDINGS VOL 29 (2019) PARA 104 et seq.

Halsbury's Laws of England

155. Secretarial seals and orders.

The seals which a Secretary of State controls are the signet, a second secretarial seal and the cachet¹. The signet is affixed in the Foreign and Commonwealth Office² to instruments which authorise the affixing of the Great Seal³ to powers to treat and to ratifications of treaties, and also to commissions and instructions to colonial governors. The second secretarial seal is affixed to royal warrants and to commissions, and is employed only in the Home Office⁴. The cachet is affixed to envelopes of letters addressed personally by the monarch to the head of a foreign state⁵.

Apart from his custody of the seals, a Secretary of State sometimes gives formal expression to the royal pleasure by affixing his signature to documents and orders. Instruments authorising the affixing of the Great Seal to powers to treat and ratifications of treaties are countersigned by a Secretary of State, as are also various royal orders, warrants, commissions and instructions under the sign manual⁶.

Proof of any order or regulation issued by or under the authority of a Secretary of State may be given in any legal proceedings in accordance with the Documentary Evidence Act 1868⁷.

1 See PARA 576.

2 As to the Foreign and Commonwealth Office see PARAS 237–238.

3 As to the use of the Great Seal see PARA 583.

4 As to the Home Office see PARA 239 et seq.

5 As to the use of the seals generally see 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 183. As to the doctrine of the seals with reference to ministerial responsibility see Maitland *Constitutional History of England* (1908) p 393.

6 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 64. Instructions to a colonial governor are exceptional, in as much as they are sealed with the signet, but not countersigned: see 2 Anson's Law and Custom of the Constitution (4th Edn, 1935) Pt I p 64. As to a sign manual warrant as authority for affixing the Great Seal see the Great Seal Act 1884 s 2(1); and PARA 586.

7 See the Documentary Evidence Act 1868 s 2, Schedule; and CIVIL PROCEDURE VOL 12 (2015) PARAS 950–952. In some instances this Act has been applied by Order in Council to documents issued by a named Secretary of State: see eg the Transfer of Functions (Education and Employment) Order 1995, SI 1995/2986, art 10(5).

Halsbury's Laws of England

156. Secretary of State as designated minister for the purposes of European Union law.

For the purposes of the European Communities Act 1972¹ the Secretary of State is a designated minister² in relation to certain matters³.

1 See the European Communities Act 1972 s 2(2) (amended by the Legislative and Regulatory Reform Act 2006 s 27(1)(a); the European Union (Amendment) Act 2008 s 3(3), Schedule Pt 1), under which, subject to certain restrictions, Her Majesty by

Order in Council, and any designated minister or department by order, rules, regulations or scheme, may provide for the implementation of EU obligations or the exercise of rights under the treaties. As to the restrictions subject to which the powers are exercisable and the exercise of the powers by statutory instrument see s 2(4), Sch 2.

2 'Designated minister' means such minister of the Crown as may from time to time be designated by Order in Council in relation to any matter as for any purpose, but subject to such restrictions or conditions, if any, as may be specified by the Order in Council: European Communities Act 1972 s 2(2). As to the designation of the Welsh Ministers see PARA 380.

3 Numerous designation orders have been made for these purposes, covering a wide variety of matters: see eg the European Communities (Designation) (No 2) Order 2010, SI 2010/1552, arts 2, 4 (designations in relation to the safety management of road infrastructure and the environmental aspects of product design); the European Communities (Designation) (No 2) Order 2012, SI 2012/2752, arts 2–3 (designations in relation to property interests in movable objects and in relation to criminal justice).

UPDATE

156 Secretary of State as designated minister for the purposes of European Union law

NOTE 3—SI 2010/1552, SI 2012/2752 revoked: SI 2018/1011 (in force on exit day (as defined in the European Union (Withdrawal) Act 2018 s 20(1)–(5) (see **EUROPEAN UNION** VOL 47A (2014) PARA 10B))).

Halsbury's Laws of England

157. Government departments.

Government is generally carried on by or through departments for which ministers are responsible to Parliament¹. In practice, the term 'government department' is used to refer to offices², departments³ and ministries⁴. These organisations owe their establishment and organisation partly to the exercise of the royal prerogative power to organise the administration as the Crown sees fit, and partly to statute⁵. The ease with which departments can be reorganised has been a subject of criticism; and the House of Commons Public Administration Select Committee has called for legislative modification to require the assent of both Houses of Parliament to major machinery of government changes⁶. The core government departments from a constitutional perspective are the Cabinet Office, Foreign Office, Home Office, Ministry of Justice and Treasury⁷.

Some departments include a number of offices or subordinate departments with ministers at their head⁸. Departments exercise powers derived from the common law (generally the royal prerogative) or from statute⁹.

Parliament alone can provide departments with the supplies of money necessary for their operations¹⁰. Their internal arrangements are generally¹¹ a matter for the royal prerogative or a general de facto power to make administrative dispositions, except in relation to the appointment of accounting officers¹².

The actual creation of an office, department, ministry or other body forming part of central government is often effected by Act of Parliament¹³, at other times by Orders in Council¹⁴. Old-established departments, such as the Treasury¹⁵ and the Home Office, which originally formed parts of the royal household, derive from the exercise of the prerogative, and were established by the independent action of the monarch¹⁶. When, from the nineteenth century onwards, it became necessary to set up new departments for the internal government

of the realm, parliamentary authority was usually obtained for the establishment of a board, such as the former Local Government Board¹⁷, or later for the establishment of a ministry such as the former Ministry of Labour¹⁸, with a minister at its head. In 1946 provision was made for the transfer of functions between ministers by Order in Council¹⁹.

Departments may be divided into ministerial and non-ministerial departments. The major government departments are ministerial, and civil servants in the departments exercise powers in the name of and on behalf of ministers²⁰. However, there are many non-ministerial departments which are Crown bodies, headed by a statutory office-holder or board and staffed by civil servants, and which have their own statutory powers and enjoy varying degrees of independence from the minister who is responsible for them to Parliament²¹. Government departments may be dissolved by Order in Council²².

Civil proceedings by the Crown may be instituted by an authorised government department in its own name or by the Attorney General, and civil proceedings against the Crown are to be instituted against the appropriate authorised government department, or if none is appropriate, against the Attorney General²³.

1 As to conventions relating to ministerial responsibility to Parliament see PARAS 222–223. As to government departments and ministerial responsibilities see PARA 234 et seq.

2 Government offices include the Cabinet Office (see PARAS 234–236), the Home Office (see PARA 239 et seq) and the Foreign and Commonwealth Office (see PARAS 237–238): see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

3 Government departments include the Department for Business, Innovation and Skills, the Department for Communities and Local Government, the Department for Culture, Media and Sport, the Department for Education and the Department for Energy and Climate Change: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

4 The Ministry of Defence and the Ministry of Justice: see Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

5 Eg the Commissioners for Her Majesty's Revenue and Customs are appointed by letters patent under the power conferred by the Commissioners for Revenue and Customs Act 2005 s 1(1).

6 House of Commons Public Administration Select Committee *Machinery of Government Changes* (HC Paper (2006-07) no 672).

7 See PARA 234 et seq.

8 Eg the Department for Culture, Media and Sport contains the Government Equalities Office: Cabinet Office *List of Ministerial Responsibilities including Executive Agencies and Non Ministerial Departments* (November 2012).

9 As to the royal prerogative see PARA 166 et seq.

10 See PARA 120.

11 Exceptions include statutory provisions for the constitution of the Commissioners for Revenue and Customs, and their relationship with the Treasury: see PARA 479.

12 See PARA 485.

13 Eg the former Ministries of Land and Natural Resources, Overseas Development and Technology were created by the Ministers of the Crown Act 1964 ss 1, 2(1)(a) (repealed). They were later dissolved by Order in Council.

14 Eg the former Departments of Energy, Industry, Trade, and Prices and Consumer Protection were created by Order in Council: see the Secretary of State (New Departments) Order 1974, SI 1974/692 (revoked). Her Majesty may in connection with any change in departments of the office of Secretary of State or in any change of functions of a Secretary of State make incidental, consequential and supplemental provisions by Order in Council as may be necessary or expedient in connection with the change: see the Ministers of the Crown Act 1975 s 2(1). It seems that statutory authority is required for the creation of departments headed by ministers (as opposed to Secretaries of State): see Brazier *Constitutional Practice* (3rd Edn, 1999) pp 138–141.

15 As to the Treasury see PARA 262 et seq.

16 As to the monarch see PARA 148 et seq.

17 See the Local Government Board Act 1871 s 2 (amended by the Statute Law Repeals (No 2) Act 1893; the Statute Law (Repeals) Act 1978).

18 See the New Ministries and Secretaries Act 1916 s 1 (repealed).

19 As to the transfer of functions between ministers see PARA 162. The Ministers of the Crown Act 1975 does not provide for the transfer of functions from non-ministerial departments since their powers are not exercisable by ministers. As to the transfer of functions exercisable in relation to Wales to the National Assembly for Wales, and thence to the Welsh Ministers, see PARA 380.

20 See *Carltona v Comrs of Works* [1943] 2 All ER 560, CA; and PARA 164.

21 See eg the relationship between Treasury ministers and the Commissioners for Revenue and Customs.

22 See the Ministers of the Crown Act 1975 s 1(1)(b); and PARA 162. No such Order in Council which provides for the dissolution of a government department may be made unless, after copies of the draft have been laid before Parliament, each House presents an Address to Her Majesty praying that the order be made: s 5(1).

23 See the Crown Proceedings Act 1947 s 17(2), (3). For the purposes of legal proceedings against the Crown a list of departments is maintained under the Crown Proceedings Act 1947 by the Minister for the Civil Service (as to whom see PARA 234): see **CROWN AND CROWN PROCEEDINGS** VOL 29 (2019) PARA 105. As to the offence of corporate manslaughter and its application to government departments see the Corporate Manslaughter and Corporate Homicide Act 2007 s 1, Sch 1; and **CRIMINAL LAW** VOL 25 (2016) PARA 115.

UPDATE

157 Government departments

NOTE 3—The Department for Business, Innovation and Skills and the Department of Energy and Climate Change have been merged to create the Department for Business, Energy and Industrial Strategy: Secretaries of State for Business, Energy and Industrial Strategy, for International Trade and for Exiting the European Union and the Transfer of Functions (Education and Skills) Order 2016, SI 2016/992.

Halsbury's Laws of England

158. Heads of ministerial departments.

The political heads, and Ministers of State and Parliamentary Under Secretaries of ministerial departments, are members of the administration, appointed by the Crown upon the advice of the Prime Minister¹. Unlike the head of the Civil Service and senior members of a department, they are, therefore, not permanent officers, but owe their official existence to the continuance in power of the political party to which they belong, and retire with every change of administration². They act as the spokespersons in Parliament of the departments which they represent, and determine the general nature of the executive policy which each department is to pursue. Moreover, being members of the administration, they are responsible as a whole for the policy of the principal legislative measures introduced in Parliament which, when they become law, will be the duty of the various departments to administer³.

1 As to the Prime Minister generally see PARAS 204–208.

2 As to the advantages said to be gained by the combination of a parliamentary head with a permanent staff see Bagehot *The English Constitution* (1963 Edn) ch 8.

3 See PARA 223.

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159. Departmental boards.

Departmental boards are chaired by the Secretary of State of a department. The boards are composed of other ministers, senior officials and non-executive board members, who are largely drawn from the commercial private sector. The remit of the board is performance and delivery and providing strategic leadership to the department¹. Boards do not have responsibility for policy development but can challenge policy on grounds of financial management or feasibility².

1 Cabinet Office *Ministerial Code* (2010) para 3.5.

2 Cabinet Office *The Cabinet Manual* (2011) ch 10 para 10.19. The boards advise on and supervise five main areas, described as: strategic clarity; commercial sense; talented people; results focus; and management information: see HM Treasury/Cabinet Office *Corporate Governance in Central Government Departments Code of Good Practice* (2011) pp 5-6; see also J McClory, V Quinlan and Z Gruhn *All Aboard? Whitehall's New Governance Challenge* (2011).

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160. Miscellaneous ministerial powers.

The Ministers of the Crown Act 1975 contains provisions applying to certain ministers and their departments¹.

The minister must take the oath of allegiance, and the official oath². He may appoint such secretaries, officers and servants as he may with the consent of the Minister for the Civil Service³ determine⁴. The secretaries (other than a Parliamentary Secretary), officers and servants appointed by the minister are paid such salaries or remuneration as the Minister for the Civil Service may determine⁵. The minister's expenses, including any such salaries or remuneration, are payable out of money provided by Parliament⁶.

The minister is for all purposes a corporation sole⁷, and has an official seal which is authenticated by the signature of the minister, a secretary to the ministry or any person authorised by the minister to act in that behalf⁸. The seal must be judicially noticed, and every document purporting to be an instrument made or issued by the minister and sealed with the minister's seal duly authenticated, or purporting to be signed or executed by a secretary to the ministry or any authorised person, must be received in evidence and deemed to be so made or issued without further proof unless the contrary is shown⁹. A certificate signed by the minister

that any instrument purporting to be made or issued by him was so made is conclusive evidence of that fact¹⁰.

1 The provisions of the Ministers of the Crown Act 1975 s 6, Sch 1 apply to (1) any minister eligible for a salary under the Ministerial and other Salaries Act 1975 s 1, Sch 1 Pt II head (2) (ie any minister in charge of a public department of Her Majesty's government in the United Kingdom who is not a member of the Cabinet, and whose office is not specified elsewhere in Sch 1 (see PARA 230 note 3)); and (2) the Minister for the Civil Service: see the Ministers of the Crown Act 1975 s 6(1), (2). Those provisions are also stated to apply to the Secretary of State for Social Services and the Minister of Aviation Supply but neither of those offices is still in existence.

2 Ministers of the Crown Act 1975 Sch 1 para 1. The Promissory Oaths Act 1868 has effect as if the name of the minister were included in Schedule Pt I to that Act: Ministers of the Crown Act 1975 Sch 1 para 1. As to the oath of allegiance and the official oath see PARA 597.

3 As to the Minister for the Civil Service see PARAS 205, 235.

4 Ministers of the Crown Act 1975 Sch 1 para 2.

5 Ministers of the Crown Act 1975 Sch 1 para 3.

6 Ministers of the Crown Act 1975 Sch 1 para 4.

7 As to corporations sole see CORPORATIONS VOL 24 (2010) PARA 314 et seq.

8 Ministers of the Crown Act 1975 Sch 1 para 5.

9 Ministers of the Crown Act 1975 Sch 1 para 6.

10 Ministers of the Crown Act 1975 Sch 1 para 7. The Documentary Evidence Act 1868 applies to the minister as if his name were included in the first column of the Schedule to that Act, and as if he or a secretary to the ministry or any person authorised by him to act on his behalf were mentioned in the second column of that Schedule, and as if the regulations referred to in that Act included any document issued by the minister: Ministers of the Crown Act 1975 Sch 1 para 8.

Halsbury's Laws of England

161. Emergency powers; in general.

A statutory framework exists requiring specified persons or bodies to undertake contingency planning to assess the risk of an emergency occurring, and enabling the government to issue regulations and take action to prevent, control or mitigate the effect of an emergency¹. An emergency is defined as an event or situation that threatens serious damage to human welfare or the environment, or war or terrorism which threatens serious damage to the security of the United Kingdom².

The emergency regulations may be made by Her Majesty by order in council³, or in certain circumstances by a senior Minister of the Crown⁴. There are defined purposes for which the regulations may be made, including such matters as (1) protecting human life, health or safety; (2) protecting or restoring a system of communications or facilities for transport; and (3) provision of health services⁵. They may make provision of any kind that could be made by Act of Parliament or by the exercise of the royal prerogative, such as to provide for the requisition or confiscation of property with or without compensation, the prohibition of movement to or from a specified place and the prohibition of other specified activities⁶.

These emergency orders are made by statutory instrument, and for the purposes of the Human Rights Act 1998 are to be treated as subordinate legislation⁷. The regulations must be laid before Parliament as soon as is reasonably practicable and will lapse at the end of seven days unless approved by each House of Parlia-

ment⁸. The duration of emergency regulations is limited to a period of 30 days beginning with the date on which they are made, but may be renewed for further periods of 30 days⁹.

1 See the Civil Contingencies Act 2004; and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 151** et seq. See also C Walker and J Broderick *The Civil Contingencies Act 2004: Risk, Resilience and the Law in the United Kingdom* (2006).

2 See the Civil Contingencies Act 2004 s 19(1); and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 151**.

3 See the Civil Contingencies Act 2004 s 20(1); and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 187**.

4 See the Civil Contingencies Act 2004 s 20(2); and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 187**. For these purposes, 'senior Minister of the Crown' means the Prime Minister, any Principal Secretary of State, and the Commissioners of the Treasury: see s 20(3).

5 See the Civil Contingencies Act 2004 s 22(2); and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 188**.

6 See the Civil Contingencies Act 2004 s 22(3); and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 189**.

7 See the Civil Contingencies Act 2004 s 30; and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 187**.

8 See the Civil Contingencies Act 2004 s 27; and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 193**.

9 See the Civil Contingencies Act 2004 s 26; and **ARMED CONFLICT AND EMERGENCY VOL 3 (2011) PARA 190**.