

Research Briefing

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The Privy Council: history, functions and membership



Summary

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Summary

The Privy Council was originally the executive arm of English government from as early as the 13th century, although its powers declined as political authority shifted to the Cabinet in the late 17th and early 18th centuries. Formally, it remains an advisory body to the monarch and its members are known as Privy Counsellors. They can style themselves “the Right Honourable” and are required to take a special oath.

Counsellors are appointed for life by the King on the advice of the Prime Minister. They are individuals who hold or have held senior political, judicial or ecclesiastical office in the UK or in Commonwealth Realms. All Cabinet ministers are Privy Counsellors, as are others by custom, for example the Archbishops of Canterbury and York, the Speaker of the House of Commons, the Lord Chief Justice of England and Wales and, more recently, the First Ministers of Scotland, Wales and Northern Ireland.

Today, the main function of the Privy Council is to advise the King on giving formal effect to Proclamations and Orders in Council, legal instruments which are made under prerogative or statutory powers. Such instruments are formally enacted by the King “with the advice of His Majesty’s Privy Council”, although in reality the Crown acts on the advice of ministers.

Orders in Council – which have the force of law – may be legislative, executive or judicial, providing for everything from the constitution of an Overseas Territory to the setting up of a new government department or the outcome of an appeal to the Judicial Committee of the Privy Council.

Privy Council meetings take place, on average, once a month. Only those Privy Counsellors summonsed (usually Cabinet ministers) by the Lord President of the Council attend, the quorum being three. The King presides, and the meeting is attended by the Clerk of the Privy Council, who authenticates the monarch’s assent to measures with their own signature and records the names of those present. All stand during the meeting. The monarch says “approved” or “referred” in response to each item of business.

Only a meeting of Privy Counsellors attended by the monarch (or Counsellors of State) constitutes “a Council”, otherwise it is a committee, of which there are several. The most important of these is the Judicial Committee, while other standing committees advise on matters relating to the Channel Islands, universities and Royal Charters. Larger meetings of the Privy Council are rare. A fuller Council only convenes to proclaim a new monarch or upon the announcement of a reigning sovereign’s intention to marry.

1 What is the Privy Council?

The Privy Council is an advisory body to the monarch and its members are known as Privy Counsellors.¹ It is one of the oldest parts of the UK's constitutional arrangements, with origins dating back to at least the 13th century.² It operates under the royal prerogative.³ The [Interpretation Act 1978](#) defines statutory references to the Privy Council as to “the Lords and others of His Majesty’s Most Honourable Privy Council”.

In Walter Bagehot’s terminology, the King heads the “dignified” part of the UK constitution (which includes the Privy Council) and the Prime Minister its “efficient” part (which includes the government).⁴ And although its authority declined along with that of the monarch, by the late 20th century the Privy Council “was a dignified but still functional part of the constitution”.⁵ One former Lord President has described its continued existence as “more or less a constitutional and historical accident”.⁶

The Privy Council has no published standing orders,⁷ although it is given some functions by statute. It does not enjoy a high public profile. The constitutional academic Paul F. Scott has characterised the Privy Council as “a black hole at the centre of the British constitution”, with the consequence that any “attempt to explain its functions tends towards vacuity”.⁸

Originally, the Privy Council was the “executive instrument of the sovereign”, but as power was transferred to Ministers of the Crown and a Cabinet accountable to Parliament, its authority declined. As the historian Christopher Hibbert has observed, the “fiction” of the Privy Council’s authority has been preserved, its “theoretical authority” sustained by the requirement for all members of the Cabinet (sometimes referred to as the “executive committee” of the Privy Council) to be appointed Privy Counsellors.⁹

¹ “Councillor” and “Counsellor” are both correct, but the latter is the preferred usage.

² See Sir Almeric Fitzroy, *History of the Privy Council*, London: John Murray, 1928, for an historical account written by a former Clerk of the Council. For a more recent work see David Rogers, *By Royal Appointment: Tales from the Privy Council – the Unknown Arm of Government*, London: Biteback, 2015.

³ See Cabinet Office, [The Cabinet Manual](#), London: Cabinet Office, October 2011, para 1.10.

⁴ Walter Bagehot, *The English [sic] Constitution*, London: Collins, 1963, p66.

⁵ Kenneth O. Morgan, *Michael Foot: A Life*, London: HarperPress, 2007, p33.

⁶ [HL Deb 12 May 2009 Vol 710 c1010](#)

⁷ The Privy Council Office did produce an annual Departmental Report in April 2005 which set out its “aims and targets”. Since 1999 it has published annual Resource Accounts (see [Section 5.6](#)).

⁸ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), Northern Ireland Legal Quarterly 71:2, Summer 2020, p266.

⁹ Christopher Hibbert, *The Court of St James’s: The Monarch at Work from Victoria to Elizabeth II*, London: Weidenfeld and Nicolson, 1979, p4.

The present Privy Council of the United Kingdom dates from 1 January 1801.¹⁰ Before that date there existed a Privy Council for Great Britain and a separate Privy Council for Ireland.¹¹ Prior to 1708, meanwhile, there existed three distinct privy councils for England, Scotland and Ireland.¹² The Privy Council for Ireland continued to function until 1922,¹³ when it was succeeded by the Privy Council for Northern Ireland (PCNI).¹⁴ No further appointments have been made to the PCNI since 1973.¹⁵

The UK Privy Council advises the monarch on the carrying out of his duties, including the exercise of the royal prerogative and other functions assigned to the Sovereign by Acts of Parliament.¹⁶ These functions include:

- Legislating for the British Overseas Territories;
- Assenting to legislation from the Crown Dependencies;
- Transferring functions between, and creating new, government departments;
- Transferring functions from the UK Government and Parliament to devolved executives and legislatures;
- Issuing Royal Proclamations – for example, those declaring bank holidays, new coinage or dissolving Parliament;
- Granting and, if necessary, amending Royal Charters;
- Appointing members to certain professional bodies and approving the rules of those bodies;
- Acting, in the form of the Judicial Committee of the Privy Council, as the final court of appeal for the Crown Dependencies, Overseas Territories and certain Commonwealth countries.

In oral evidence to the Select Committee on Public Administration in 2003, the then Conservative MP William Hague described the Privy Council as “the cloak that covers” a variety of important activities.¹⁷

¹⁰ [The Edinburgh Gazette, Issue 785](#).

¹¹ The Privy Council for Ireland was subordinate to the Privy Council for England, and subsequently to the Privy Council for Great Britain.

¹² The [Union with Scotland \(Amendment\) Act 1707](#) created the new Privy Council of Great Britain, whose first members were [sworn on 10 May 1708](#).

¹³ See [Article Eight](#) of the Union with Ireland Act 1800.

¹⁴ See the [First Schedule](#) to the Irish Free State (Consequential Provisions) Act 1922.

¹⁵ See [Section 32\(3\)](#) of the Northern Ireland Constitution Act 1973.

¹⁶ It is important to state that not all prerogative acts involve the Privy Council, for example the granting of certain honours. For a full briefing on the royal prerogative and ministerial advice, see Commons Library Briefing Paper CBP9877, [The royal prerogative and ministerial advice](#).

¹⁷ [House of Commons - Public Administration - Minutes of Evidence](#), HC 642-1, 15 May 2003.

Many of the Privy Council's decisions are expressed through Orders in or of Council. These have the force of law. The ministerial head of the Privy Council Office is the Lord President of the Council. He or she usually attends Cabinet, whether as a full member or by invitation.

1.1

History of the Privy Council

The English Privy Council has its origins in the [Curia Regis](#), which was the court of English monarchs between the 11th and 13th centuries.¹⁸ It exercised legislative, judicial and executive functions with the king as its absolute ruler. Nevertheless, decisions were reached following consultation with members of the Curia, which included barons, members of the [Royal Household](#), great officers of state and bishops.¹⁹

Over time, different functions of the Curia began to separate, although the distinction between them “constantly blurred in practice”.²⁰ A separate Exchequer (or Treasury) emerged during the 12th century, while the Common Law Courts, Court of Chancery, House of Lords and the Privy Council became distinct institutions in the 13th and 14th centuries. The Privy Council is generally regarded as the successor body to the Curia Regis²¹ and emerged at the end of the 14th century.²²

As the constitutional lawyer A. V. Dicey observed in an essay written in 1860, the Privy Council was:

nothing else than the history of all the greatest institutions which make up our national constitution. Our Parliament and our Law Courts are but the outgrowth of our Council. In its history is seen how not only institutions but ideas assumed their modern form.²³

With the accession of King [Richard II](#) in 1377, the Privy Council (or King's Council) became a more defined body.²⁴ At this time, members were appointed on an annual basis, although later their tenure was extended to the duration of a monarch's life.²⁵ By the reign of [Henry VI](#) the Council usually

¹⁸ There had also existed the earlier Witenagemot or Witan, a forum comprising leading aristocrats and churchmen which had provided advice to Anglo-Saxon kings.

¹⁹ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, London: Cassell, 1961, p155

²⁰ Sir Almeric Fitzroy, *History of the Privy Council*, p10.

²¹ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, p156.

²² The historian William Stubbs identified the “formal beginnings of the Privy Council” to the earlier reign of Henry III (1216-72) (William Stubbs, *Constitutional History of England Vol II*, 1886, Oxford: Clarendon, p171).

²³ A. V. Dicey, *The Privy Council: The Arnold Prize Essay 1860*, London: Macmillan, 1887, pp146-47. Paul F. Scott agreed that “the Privy Council is the seed from which much, if not all, else grew” (Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), p269).

²⁴ The earliest Privy Council records date from 1386, when it was known as the King's Council (see National Archives website, [Privy Council since 1386](#)).

²⁵ A. V. Dicey, *The Privy Council*, p27.

consisted of the Chancellor, the Lord Treasurer, the Keeper of the Privy Seal, the Chamberlain, two archbishops and between 10 and 15 other members.²⁶

An oath bound members of the Privy Council to “advise the King according to the best of their cunning and discretion, to keep the King’s counsel secret, and to help in the execution of what should be resolved”.²⁷ This was not, however, required of all members. In 1386 the Archbishop of Canterbury was unwilling to be sworn, while the Prince of Wales was excused in 1410 “because of his highness and the excellence of his honourable person”.²⁸

The first Tudor monarch, [Henry VII](#) (1485-1509), reformed the Privy Council as an instrument of Crown authority and attended so regularly that it became reluctant to meet in his absence. The post of “President of the Council” was also created, as were the [Council of Wales and the Marches](#) (1473) and the [Council of the North](#) (1484), both “on the model of the Privy Council”.²⁹

1 Privy Council of Ireland

The [Privy Council of Ireland](#) evolved along similar lines as its English counterpart following the advent of colonial rule during the 12th century. Instead of advising the king in person, it advised the English monarch’s representative, usually a Lord Deputy or a Viceroy. Initially, the Privy Council of Ireland also served as a conduit for either the “suppression” of Irish Bills or their communication to the Privy Council of England/Great Britain.³⁰

The [Irish Constitution of 1782](#) removed the Irish Council from the legislative process but retained a right of veto (if not amendment) for what was now the Privy Council of Great Britain. Following the Union of Great Britain and Ireland in 1801, the Irish Privy Council and Viceroy remained.

Like its UK counterpart, Privy Counsellors were required to take an oath and could style themselves “the Right Honourable”.³¹ It was in the Council Chamber on 16 January 1922 that [Viscount FitzAlan](#) – the last Viceroy – handed over control of Dublin Castle to the Provisional Government of what was to become the Irish Free State. Its last Order in Council was made on 5 December 1922.³²

During the reign of [Henry VIII](#) (1509-47), a distinction was drawn between Privy Counsellors (the King’s “elite” advisers) and “Ordinary” Counsellors, lawyers and administrators of inferior rank who were chosen for their ability

²⁶ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, p504.

²⁷ A. V. Dicey, *The Privy Council*, p27.

²⁸ Sir Almeric Fitzroy, *History of the Privy Council*, p17. It remains the case that Royal members of the Privy Council are not required to take the oath (see **Section 4**).

²⁹ Sir Almeric Fitzroy, *History of the Privy Council*, p66. The Council of Wales and the Marches met in Ludlow, where it would receive orders and directives from the English Privy Council.

³⁰ J. L. McCracken, *The Irish Parliament in the Eighteenth Century*, Dundalk: Irish Historical Association, 1971, p14.

³¹ See the RTÉ website for a [photograph of Lord French with the Privy Council of Ireland in 1918](#).

³² Although it was never formally abolished, the Privy Council of Ireland did not have any role in the Free State. [Hugh O’Neill](#) was the last surviving Irish Privy Counsellor. He died in 1982.

but not accorded full status. This reflected a growing separation between the Privy Council's executive and judicial functions. The former was commonly known as the "council at court" (or Privy Council) while the latter was called "the King's Council in the Star Chamber" (or the [Court of the Star Chamber](#)).³³ The Star Chamber emerged from the Privy Council in the late 15th century.

The Clerk of the Privy Council, meanwhile, became a more concrete position in 1540.³⁴ He was later given custody of a Privy Council Seal created in 1555.³⁵

1.2 Territorial expansion

During the reign of Henry VIII Jersey and Guernsey as well as Ireland came under Privy Council control. The [Union of England and Wales](#) in the 1530s, meanwhile, divided the latter into 12 shires, the administration of which was placed in hands of local justices responsible to the Privy Council.³⁶

Following the [Union of the Crowns](#) in 1603, separate Privy Councils in Scotland and England continued to exist, although by the 1610s membership of the latter came to include figures such as the [Lord Chancellor of Scotland](#). A lion and a dragon were added to the design of the Privy Council Seal.³⁷

What A. V. Dicey called "government by Councils" declined between the death of Queen [Elizabeth I](#) in 1603 and the [Restoration of Charles II](#) in 1660.³⁸ Following the dismissal of the English Parliament in 1629, [Charles I](#) relied upon the Privy Council to govern England (and Wales), Scotland and Ireland.³⁹ [Oliver Cromwell](#), however, allowed the Privy Council to fall into abeyance.⁴⁰

By the time of the first [English Civil War](#) in 1642, the Star Chamber and Council of the North had been abolished, as was the Council of Wales following the [Glorious Revolution](#) of 1688, thus reducing the Privy Council's "functions to what we should now call the work of an enlarged Cabinet".⁴¹

It remained, however, "the only body of royal ministers known to the Constitution"⁴² and retained an influential role in international affairs. By 1675 the Councils of Trade and Plantations, essentially committees of the Privy Council, had become the [Board of Trade and Plantations](#).⁴³ Royal Charters

³³ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, p504.

³⁴ The earliest Privy Council registers also date from that year (1540).

³⁵ Sir Almeric Fitzroy, *History of the Privy Council*, p337.

³⁶ Sir Almeric Fitzroy, *History of the Privy Council*, p115.

³⁷ Sir Almeric Fitzroy, *History of the Privy Council*, p338.

³⁸ A. V. Dicey, *The Privy Council*, p123.

³⁹ See Ben Trowbridge, [King Charles I's most loyal Privy Council](#), gov.uk website, 21 December 2015.

⁴⁰ There were, however, analogous bodies during the Interregnum.

⁴¹ Sir Almeric Fitzroy, *History of the Privy Council*, p130.

⁴² Sir Almeric Fitzroy, *History of the Privy Council*, p205.

⁴³ Sir Almeric Fitzroy, *History of the Privy Council*, p213. "Plantation" was an early term for colony.

were important as the English (and later British) Empire expanded, not least that which established the Honourable [East India Company](#).

Under the dual monarchy of [William III and Mary II](#), meanwhile, the inner circle of the Privy Council became known as the “Cabinet Council”, although the [Act of Settlement](#) (1701) attempted to restore the Privy Council’s earlier pre-eminence. Fearing that a German monarch might be unduly influenced by foreign advisers, section 4 stated that:

All matters and things relating to the well-governing of this kingdom which are properly cognisable in the Privy Council by the laws and customs of this realm shall be transacted there, and all resolutions taken thereupon shall be signed by such of the Privy Council as shall advise and consent to the same.

This provision was repealed early in the reign of [Queen Anne](#) (1702-14) as many Counsellors stopped attending Councils and offering advice.

Article IX of the 1706 Treaty of Union provided that the Queen “may Continue a Privy Council in Scotland [...] until the Parliament of Great Britain shall think fit to alter it” (see **Box 2**). A new Privy Council of Great Britain was created on 1

May 1708. The Privy Council Seal was again altered so that a Scottish rose emerged from the same stem as the existing English rose.⁴⁴

2 Privy Council of Scotland

The [Privy Council of Scotland](#) emerged in the late 15th century to advise Scottish monarchs on public administration.⁴⁵

After 1532 much of its judicial business was transferred to the newly founded College of Justice, later the Court of Session. Following the 1603 Union of the Crowns, King [James VI and I](#) famously boasted to the English Parliament that he governed Scotland with his pen, a reference to his written instructions.

Until 1707 the Privy Council of Scotland met in what is now the West Drawing Room at the [Palace of Holyroodhouse](#) in Edinburgh. In May 1708 the Scottish Council was abolished. The [Union with Scotland \(Amendment\) Act 1707](#) provided that Queen Anne should have:

but one Privy Council in or for the Kingdom of Great Britain to be sworn to Her Majesty Her Heirs and Successors as Sovereigns of Great Britain and such Privy Council shall have the same Powers and Authorities as the Privy Council of England lawfully had used and exercised at the time of the Union.

According to A. V. Dicey and Robert S. Rait, abolition of the Privy Council “caused little or no irritation in Scotland” as it had been regarded as “the means by which the policy of the Sovereign’s English advisers was made effective in Scotland”.⁴⁶

1.3

The contemporary Privy Council

By the time the Hanoverian King [George I](#) succeeded to the Throne in 1714, the “Cabinet Council” (or, simply, “the Cabinet”) had “completely usurped the functions of the Privy Council”.⁴⁷ As A. V. Dicey observed, the Cabinet was in theory “nothing but a committee of the Privy Council”, yet:

with the [Privy] Council it [the Cabinet] has in reality no dealings; and thus the extraordinary result has taken place, that the Government of England [sic] is in the hands of men whose position is legally undefined: that while the Cabinet is a word of every-day use, no lawyer can say what a Cabinet is: that while no ordinary Englishman knows who the Lords of the Council are, the Church

⁴⁴ Sir Almeric Fitzroy, *History of the Privy Council*, p338.

⁴⁵ See the University of Stirling’s [Scottish Privy Council Project](#) for research into 1692-1708 records.

⁴⁶ A. V. Dicey and R. S. Rait, *Thoughts on the Scottish Union between Scotland and England*, London: Macmillan, 1920, pp251-52.

⁴⁷ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, p505.

of England prays, Sunday by Sunday, that these Lords may be ‘endued with wisdom and understanding!’⁴⁸

Following the Union of Great Britain and Ireland in 1801,⁴⁹ the Privy Council of Ireland continued to meet separately until 1922 (see **Box 1**), after which it was refashioned as the Privy Council of Northern Ireland (see **Box 3**).

As the functions of government expanded, Boards (of the UK Privy Council) to which a President (a minister) was responsible were created. Thus, the [Board of Trade](#) was revived in 1786, a [Local Government Board](#) established in 1871 and a [Board of Agriculture](#) in 1889. These Boards gradually evolved into modern government departments. For example, Board of Education for England and Wales (the [Scotch Education Department](#) was also a committee of the Privy Council) became the Ministry of Education in 1944.

By the early 20th century, according to Professor James Baldwin, the Privy Council had become “a large body of more than three hundred members”, with membership “mainly conferred as an honour”.⁵⁰ By then, others were allowed to hold meetings on the monarch’s behalf, usually the Prince of Wales. During the reign of King Edward VII, the usual practice (should the King and the Prince of Wales be absent from the realm) was for the creation of a commission comprising the Lord Chancellor, the Prime Minister and the Lord President. Any two of those three could hold a meeting on behalf of the King.⁵¹

Between 1914 and 1927 there were an average of 24 meetings of the Privy Council a year and it had 37 committees.⁵² Some of these had a statutory basis, others were ad hoc creations. A Privy Council committee established under the [Titles Deprivation Act 1917](#), for example, was charged with investigating “any persons enjoying any dignity or title as a peer or British prince who have, during the present war, borne arms against His Majesty or His Allies”.

Queen Victoria’s “time-honoured fiction” that the Queen’s (or King’s) Speech was approved at a meeting of the Privy Council persisted into the reign of her grandson George V. Monarchs would request (minor) changes and, once approved, the Speech would be locked in a box prior to its use at the State Opening of Parliament.⁵³ In 1921, the senior Conservative statesman A. J. Balfour said “such approval is no part of the business of the King in Council, and it appears probable that the practice is the result of convenience hardening into custom”.⁵⁴

⁴⁸ A. V. Dicey, *The Privy Council*, p143.

⁴⁹ In 1802 a shamrock was added to the Privy Council Seal with it, a rose and a thistle all branching from a common stem.

⁵⁰ James Baldwin, *The King’s Council in England during the Middle Ages*, Oxford: Oxford University Press, 1913, p102.

⁵¹ Sir Almeric Fitzroy, *Memoirs: Volume One*, New York: George H. Doran, 1930, pp58-59.

⁵² Sir Almeric Fitzroy, *History of the Privy Council*, p145.

⁵³ Sir Almeric FitzRoy, *Memoirs: Volume One*, pp31, 45 & 313.

⁵⁴ Sir Almeric FitzRoy, *Memoirs: Volume Two*, New York: George H. Doran, 1930, p756.

The Council also retained an international role. When Palestine was “mandated” to the UK by the League of Nations in 1922, its [constitution was granted via an Order in Council](#). The Judicial Committee of the Privy Council also dealt with a [border dispute between Canada and Newfoundland](#).⁵⁵

This aspect of the Privy Council’s work has sometimes caused controversy. A 1965 Order in Council, for example, formed the [British Indian Ocean Territory](#) shortly before Mauritius became independent in 1968. The Chagos Islanders were forcibly removed from Diego Garcia to Mauritius and the Island was leased to the United States to establish an air and naval base, a decision which was later subject to judicial review.⁵⁶

3 Privy Council of Northern Ireland

The [Privy Council of Northern Ireland](#) consisted of senior members of the devolved Government of Northern Ireland. Its members were appointed for life and could style themselves “The Right Honourable” or use the post-nominal letters “PC (NI)”. The Council formally advised the [Governor of Northern Ireland](#), who was the monarch’s vice-regal representative. The Governor-in-Council had powers akin to the Sovereign, for example the proclamation of bank holidays and dissolution of the bicameral [Parliament of Northern Ireland](#).

The Northern Irish Council last met on 29 March 1972.⁵⁷ When “Direct Rule” from London was introduced in 1973, no further appointments to the Privy Council of Northern Ireland were made.⁵⁸ Like the Privy Council of Ireland, it was not formally abolished. There are two surviving Northern Ireland Privy Counsellors, [Lord Kilclooney](#) (appointed 1970) and [Robin Bailie](#) (appointed 1971).

Another controversy concerned the use of a Prerogative Order in Council to make trade union membership incompatible with employment at [Government Communications Headquarters](#) in 1984. The Council of Civil Service Unions took legal action and, eventually, the Appellate Committee of the House of Lords held that prerogative acts were justiciable, albeit with exceptions, including for matters of national security.⁵⁹

As prerogative powers were progressively displaced by statute, the responsibilities of the Privy Council diminished accordingly. An example was the Home Civil Service. Rescinded in 2007 was the Civil Service (Amendment) Order 1997, under which three nominated “special advisers” had been given authority to direct civil servants. This caused concern about the

⁵⁵ Newfoundland was at that time a separate Dominion within the British Empire.

⁵⁶ See Patrick O’Connor, [The Constitutional Role of the Privy Council](#), pp30-34, for a full and critical discussion.

⁵⁷ See [Belfast Gazette, 7 April 1972](#).

⁵⁸ See [Section 32](#) of the Northern Ireland Constitution Act 1973.

⁵⁹ [Council of Civil Service Unions v Minister for the Civil Service \[1984\] UKHL 9](#)

“politicisation” of the Civil Service. The [Constitutional Reform and Governance Act 2010](#) put the Civil Service on a statutory footing for the first time.



The seal of the Privy Council of the United Kingdom.

2

Functions and powers of the Privy Council

The Privy Council has a broad range of executive and legislative functions which reflect its long history. The Council is not a deliberative body: it does not meet to discuss matters on which there is disagreement. Broadly speaking, it is concerned with the formal exercise of prerogative powers upon ministerial advice. As A. V. Dicey wrote in 1860, “the powers of the Crown are in a sense the powers of the Council”.⁶⁰ The Cabinet is more focussed on policy and administration.

[Decisions of the Privy Council](#) mainly exist in the form of Orders **in** or **of** Council, a form of delegated (or secondary) legislation.⁶¹ Orders **in** Council require the King’s personal approval at a meeting of the Privy Council, thus the “King in Council”. Orders **of** Council do not require the personal approval of the monarch and can be made by “The Lords of the Privy Council”, that is, by a certain number of Ministers of the Crown who are Privy Counsellors.

2.1

Orders in Council

There are three types of Order **in** Council:

- **Statutory Orders:** These involve the exercise of powers delegated by statute to the King in Council and have the same effect (and are published in the same way) as other delegated legislation.⁶² They are laid before Parliament and may be subject to the negative or affirmative procedure.⁶³ Examples include Orders transferring responsibilities between government departments.⁶⁴
- **Prerogative Orders:** These are made under the inherent power of the Crown to act on matters for which Parliament has not legislated. They become primary legislation without being laid before Parliament. Examples include Orders proroguing Parliament.

⁶⁰ A. V. Dicey, *The Privy Council*, p144.

⁶¹ These were known as statutory rules and orders before 1948. The courts may hold both statutory and prerogative instruments to be invalid if ultra vires.

⁶² See section 1 of the Statutory Instruments Act 1946.

⁶³ Under sections 4, 5 or 6 of the 1946 Act. See also Commons Library Briefing Paper SN06509, [Statutory Instruments](#).

⁶⁴ Under the [Ministers of the Crown Act 1975](#).

- **Judicial Orders:** These are the formal means by which decisions on appeals to the Judicial Committee of the Privy Council are promulgated in the form of advice to the sovereign (see **Section 8**).⁶⁵ Examples include appeals from a Commonwealth country or a Crown Dependency.

Orders in Council always say when and where they were made. If a Privy Council meeting is held at Buckingham Palace, then Orders generally begin “At the Court at Buckingham Palace”,⁶⁶ but Orders may also be made wherever the King happens to be in residence.

The drafting of Orders approved by the King in Council is undertaken by the relevant government department. They are then sent to the Privy Council Office (PCO) for checking and formatting. The PCO also checks any claimed statutory power for an Order or, if it is made under the royal prerogative, whether it falls within one of the traditional areas of the prerogative.⁶⁷ If relevant, written evidence of ministerial approval is also required.⁶⁸

Statutory Orders in Council

Section 1 of the [Statutory Instruments Act 1946](#) (“the 1946 Act”) applies where “power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown”, either “by this Act or any Act passed after the commencement of this Act”.

Some Statutory Orders are made under Acts which predate the 1946 Act and are not, therefore, necessarily Statutory Instruments. Examples are Orders made under the [Naval and Marine Pay and Pensions Act 1865](#) (which determine the pay of the Navy)⁶⁹ and the [Burial Act 1853](#) (which provide for the closure of churchyards which no longer have room for burials).⁷⁰

Prerogative Orders in Council

Prerogative Orders are used to dispatch business that Parliament might not want to concern itself with, or where there is no legislation allocating responsibility to a particular Minister of the Crown. Prerogative Orders do not require a minister to make a “statement of compatibility” with the European

⁶⁵ Judicial Committee judgments can be found at the [Judicial Committee website](#).

⁶⁶ “At the Court” is a reference to the Royal Court, which means the extended Royal Household, including all those who regularly attend on and advise the monarch.

⁶⁷ Patrick O’Connor, [The Constitutional Role of the Privy Council](#), p7.

⁶⁸ Privy Council Office, [Privy Council Office \(PCO\) Procedures](#), p1.

⁶⁹ Under section 3 naval and marine pay and pensions “shall be paid in such manner and subject to such restrictions, conditions and provisions as are from time to time directed by Order in Council”.

⁷⁰ The intention to discontinue burials take the form of a Notice Order followed by Final Closure Order once notice has been given in the relevant parish for one month. Exceptions can also be made by Order, as occurred [on 21 February 2024 retrospectively to permit the burial of Master William Brown](#) in the graveyard of St Eanswythe’s Church in Folkestone. Exceptionally, the King had provided “informal approval” several weeks ahead of “formal approval” (via Order).

Convention on Human Rights.⁷¹ They are published as annexes to the annual volume of Statutory Instruments, although they are neither numbered nor Statutory Instruments. As a 1932 report on ministers' powers observed:

The Royal Prerogative may be regarded for our purpose as what is left of the original sovereign power of the Crown to legislate without the authority of the Houses of Parliament. Thus the Crown can legislate by Order in Council for a newly conquered country and can regulate trade and commerce in time of war. The best known modern prerogative Order in Council is the Order dated the 16th of February, 1917, establishing a rigid blockade of enemy territory commonly called the Second Reprisals Order. The essence of this kind of legislation by the King in Council without the intervention of Parliament is that it is original and in no sense delegated. The fact – and in modern constitutional practice it is a fact – that the King in such legislation is advised by His Cabinet does not modify this view.⁷²

2.2 Orders of Council

Orders of Council do not require personal approval by the King but can be made by a specified number of “The Lords of the Privy Council” (that is, Ministers of the Crown). These can also be Statutory or Prerogative. Whether Statutory Orders of Council are also Statutory Instruments depends upon the wording of the parent Act (or Church Measure) under which they are made.

Acts of Parliament giving a power to the Privy Council to make an Order of Council will usually specify the quorum of Privy Counsellors required to exercise that power (usually two). Where the Act is silent on this point then the quorum is three. All Orders of Council are expressed to have been made at “The Council Chamber, Whitehall”, although in fact they are all approved in correspondence, and no actual meeting takes place.⁷³

Statutory Orders of Council

Statutory Orders of Council generally concern the approval of regulations or rules for (or lay appointments to) the following statutory regulatory bodies:

- [The General Medical Council](#)
- [The General Dental Council](#)
- [The General Osteopathic Council](#)
- [The General Optical Council](#)

⁷¹ Others have criticised the designation of Prerogative Orders in Council as “primary legislation” in the [Human Rights Act 1998](#) (see Peter Billings and Ben Pontin, Prerogative powers and the Human Rights Act: elevating the status of orders in council, Public Law, 2001, pp21, 26 & 27).

⁷² Committee on Ministers' Powers Report, Cmnd 4060, April 1932, pp24-25.

⁷³ Privy Council Office website, [Privy Council Meetings & Orders. Orders of Council made since January 2017](#) are available online.

- [The General Chiropractic Council](#)
- [The Architects Registration Board](#)
- [The Royal College of Veterinary Surgeons](#)
- [General Pharmaceutical Council](#)
- [The Health and Care Professions Council](#)
- [The Nursing and Midwifery Council](#)

Prerogative Orders of Council

Prerogative Orders of Council concern the approval of amendments to the By-laws or Statutes of [Chartered Bodies](#), that is organisations established under a Royal Charter. The Privy Council’s power to approve these Orders of Council is provided for in the organisation’s Charter.

This section will now examine particular aspects of the Privy Council’s legislative role.

2.3

British Overseas Territories

The academic Paul F. Scott has described the Privy Council as a “constitutional firewall” which allows the UK to “maintain two constitutions in operation simultaneously: one domestic and another imperial”.⁷⁴

Historically, English common law distinguished between territories which were settled, to which English (later British and UK) law applied without further action, and those which were ceded or conquered, in which existing laws applied until altered. The UK Parliament retains an unfettered right to legislate for the [British Overseas Territories](#) (BOTs) in any area. In practice, however, it does not often do so, instead laws are made for the BOTs not by the “King in Parliament” but by the “King in Council”.⁷⁵

The royal prerogative included the power to make constitutions for the BOTs. This has been augmented by statute. The relevant legislation for the Caribbean Overseas Territories (except Anguilla) is the [West Indies Act 1962](#); for Anguilla it is the [Anguilla Act 1980](#) and for Bermuda the [Bermuda Constitution Act 1967](#). Statutory powers to make Orders in Council for Ascension Island, the British Antarctic Territory, the Falkland Islands, Pitcairn, South Georgia and the South Sandwich Islands, and Tristan da Cunha are in the [British Settlements Acts 1887](#) and [1945](#). For St Helena the statutory basis is

⁷⁴ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), p274.

⁷⁵ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), p274.

the [St Helena Act 1833](#), and for the Sovereign Base Areas of Akrotiri and Dhekelia the [Cyprus Act 1960](#).

All constitutional Orders in Council are made under statutory powers, except those made under the Anguilla and Cyprus Acts, must be laid before both Houses of Parliament.⁷⁶ The constitutions of Gibraltar and the British Indian Ocean Territory, however, were made solely by Prerogative Order in Council, with the prerogative to make “ordinary” law explicitly reserved in the relevant Orders.⁷⁷

In 2002, the then Foreign and Commonwealth Office agreed to send draft constitutional Orders in Council to the Commons Foreign Affairs Committee before they were made, except on occasions it deemed “inappropriate”, ie “occasions of urgency or where confidentiality is imperative”.⁷⁸

The constitutional expert Rodney Brazier has argued that changes to the constitutions of Overseas Territories are better embodied in Orders in Council than in Acts of Parliament:

This is not because they are unimportant but because they are almost invariably the outcome of an intergovernmental negotiation, and if it were open to Parliament to delete or modify individual provisions of the constitution a delicate balance might be upset and the political consequences could then be very serious.⁷⁹

In June 2022 [The Virgin Islands Constitution \(Interim Amendment\) Order 2022](#) was laid before Parliament but not brought into force. However, should efforts to tackle local corruption prove ineffectual, the Foreign Secretary can “instruct the Governor to make a proclamation in the BVI Gazette appointing a day that the Order will come into force”.⁸⁰ This would place the British Virgin Islands under a form of “Direct Rule” from Westminster.

2.4 The Crown Dependencies

The Privy Council also has a role in extending UK legislation to Jersey, Guernsey, Alderney, Sark and the Isle of Man, as well as granting Royal Assent to legislation from those Crown Dependencies.⁸¹

⁷⁶ Commons Foreign Affairs Committee, [Overseas Territories](#), HC 147-1, 6 July 2008, paras 27-28.

⁷⁷ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), p277.

⁷⁸ Commons Foreign Affairs Committee, [Overseas Territories](#), para 29.

⁷⁹ Stanley de Smith and Rodney Brazier, *Constitutional and Administrative Law* (eighth edition), London: Penguin, 1998, pp340-41.

⁸⁰ [UJIN HCWS81_ECDO update, 8 June 2022](#)

⁸¹ See Commons Library Briefing Paper CBP8611, [The Crown Dependencies](#). The constitutional basis of the Crown Dependencies could be opaque. As Sir Almeric FitzRoy observed following a visit to Sark, such “political rights as the inhabitants of the island enjoy depend upon a Charter of Queen Elizabeth, Letters Patent of James I, and Orders in Council of Charles III!” (Sir Almeric FitzRoy, *Memoirs Volume One*, p380).

This is done via a Statutory Order in Council known as a Permissive Extent Clause, which is included in the relevant Act of Parliament (this allows extension at a future date). When, on rare occasions, it is agreed that a UK Act should apply directly, then a Prerogative Order in Council directs that the UK Act be registered in the Royal Courts of each Crown Dependency.⁸²

Primary legislation passed by legislatures in the Bailiwicks of Jersey and Guernsey and reserved Isle of Man legislation requires Royal Assent. This is usually given effect via a Prerogative Order in Council, following scrutiny by the relevant Privy Councillor (usually the Secretary of State for Justice).⁸³

The UK [Ministry of Justice](#) examines each piece of legislation to ensure there is no conflict with the UK's international obligations (including the [European Convention on Human Rights](#)) or with any “fundamental constitutional principles”. Having done so, it advises the King in Council to make an Assenting Order.⁸⁴ It does this by sending the Privy Council Office the sealed law together with confirmation of ministerial approval. Final approval is sought from the Committee for the Affairs of the Channel Islands (see [Section 3.2](#)).

A recommendation to withhold Assent is rare. In 2008, however, the then Justice Secretary Jack Straw rejected the first proposal for a new Sark legislature approved by the [Chief Pleas](#). This consisted of 16 elected deputies and 12 (rather than the original 40) feudal landholders. Straw declined to recommend the proposed law for Royal Assent on the basis that it was inconsistent with basic democratic principles. When a revised plan was resubmitted by the Chief Pleas, this time comprising 28 elected “Conseillers”, the Justice Secretary judged it to be acceptable and recommended it for Royal Assent, which it duly received.⁸⁵

A similar process applied to all Isle of Man legislation until the [Royal Assent to Legislation \(Isle of Man\) Order 1981](#). This provided for submission of Bills to the Lieutenant Governor for assent. Only “reserved” Bills, those dealing with defence, international affairs or the royal prerogative, still reach the Privy Council via the Ministry of Justice. That said, proposed legislation is still discussed in advance by the Isle of Man and Ministry of Justice. Before a Bill has received Royal Assent, “the House of Keys can consider suggestions made by the Privy Council and make such amendments as the House considers desirable in respect of such suggestions”.⁸⁶

⁸² Ministry of Justice, “[How To Note: Extension of UK primary legislation to the Crown Dependencies](#)”.

⁸³ There are [proposals that assent for Guernsey legislation be delegated to its Lieutenant Governor](#) as per the Isle of Man precedent.

⁸⁴ See Ministry of Justice, [Background briefing on the Crown Dependencies: Jersey, Guernsey and the Isle of Man](#).

⁸⁵ Commons Justice Committee, [Crown Dependencies](#), 23 March 2010, p18. Two Sark-based businessmen, Sir David and Sir Frederick Barclay, petitioned the Privy Council on the basis that even the revised scheme did not go far enough. They also took legal action, [but their application for judicial review was rejected by the High Court](#).

⁸⁶ [Standing Orders of the House of Keys](#), September 2021, para 4.16.

2.5 Civil Contingencies

Under the [Emergency Powers Acts 1920 and 1964](#), a state of emergency could be declared via Royal Proclamation (see **Section 2.9**), after which Statutory Orders in Council would delegate to Ministers of the Crown the necessary powers to preserve the peace and secure supplies. Twelve such Proclamations were made between 1920 and 1974, all in relation to industrial action.⁸⁷

Under the [Civil Contingencies Act 2004](#) there is no longer any requirement for a state of emergency to be proclaimed. Under section 1(4) it is for a minister to decide whether such a state exists. Under sections 20(1) and (2), meanwhile, emergency regulations may be enacted by Statutory Order in Council, and by senior ministers if that would involve harmful delay.⁸⁸

Separately, the [Armed Forces Act 2021](#) may be renewed annually by Statutory Order in Council but is not to have effect beyond the end of 2026.⁸⁹

2.6 Territorial governance

Statutory Orders in Council have long been used to transfer (or delegate) functions from the Crown, UK Parliament or government to devolved or newly independent legislatures.

Northern Ireland

Section 69 of the [Government of Ireland Act 1920](#) allowed the King to make “Irish Transfer Orders” to transfer functions from Westminster to the devolved Parliaments of Southern and Northern Ireland.⁹⁰

The Parliament of Southern Ireland did not function as intended and instead the other 26 counties of Ireland became an independent Dominion called the Irish Free State. The Irish Free State (Agreement) Act 1922 provided for the transfer via Order in Council of functions to the Provisional Government of the Free State.⁹¹ The Free State was later formally proclaimed by the King in Council, after which George V summonsed the Prime Minister, Lord Lieutenant

⁸⁷ On 9 January 1974, for example, the Queen Mother and Princess Margaret (as Counsellors of State) approved The Emergency Powers (No. 2) Regulations 1974.

⁸⁸ In the event of nuclear war, plans were in place for the Queen, Prince Philip and the Home Secretary to board the Royal Yacht Britannia and hide out “in the sea lochs of Scotland, dodging Soviet radar and issuing emergency Privy Council orders” (see Robert Hardman, *Queen of Our Times: The Life of Elizabeth II*, London: Macmillan, 2022, p192).

⁸⁹ This reflects the expectation in the 1688 [Bill of Rights](#) that regular Parliamentary consent is given to the maintenance of a standing army.

⁹⁰ See Commons Library Briefing Paper CBP8884, [Parliament and Northern Ireland, 1921-2021](#).

⁹¹ See Commons Library Briefing Paper CBP9260, [The Anglo-Irish Treaty, 1921](#).

of Ireland and other members of the Cabinet for a special Privy Council meeting to congratulate them “on having solved a problem that had baffled English statesmanship for 700 years”.⁹²

Following the prorogation (and then abolition) of the Parliament of Northern Ireland in 1972-73, the [Northern Ireland Act 1974](#) required that legislation on subjects formerly within the competence of Stormont would be laid before the UK Parliament in the form of draft or made affirmative Orders in Council. This reliance on Statutory Orders (intended as temporary) was criticised in that it did not allow for amendment or significant parliamentary scrutiny.⁹³

On 2 December 1999, the [Departments \(Transfer and Assignment of Functions\) Order \(Northern Ireland\) 1999](#) and [Departments \(Northern Ireland\) Order 1999](#) were made under the [Northern Ireland Act 1998](#) and thus restored devolved institutions in Northern Ireland. Similarly, Statutory Orders in Council transferred functions from Westminster to the devolved Scottish Parliament and then National Assembly for Wales.⁹⁴

Scotland

The [Scotland Act 1998](#) provides that certain delegated powers are to be made by Order in Council. In all cases, the Order in Council must still take the form of a Statutory Instrument, and therefore it will be subject to scrutiny by one or both legislatures in Edinburgh and London.

Section 30 and 63 Orders concern modifications to the legislative competence and the devolved functions of the Scottish Parliament and Scottish Government (respectively). These can be either permanent or temporary. Most notably, the [Scotland Act 1998 \(Modification of Schedule 5\) Order 2013](#) conferred upon Holyrood the explicit authority to hold an independence referendum until the end of 2014.⁹⁵

The type of legislative scrutiny for different Orders in Council is set out in [Schedule 7](#) of the 1998 Act. Section 30 and 63 Orders, for example, are made subject to “Type A” procedure. This requires that the instrument be laid in draft before both Houses of the UK Parliament **and** the Scottish Parliament for approval by MPs, peers and MSPs. Orders subject to the “Type B” procedure do not require any laying before or approval by the Scottish Parliament, while

⁹² Sir Almeric FitzRoy, *Memoirs Volume Two*, p769.

⁹³ See Commons Library Briefing Paper CBP8638, [Northern Ireland: Direct Rule](#).

⁹⁴ Statutory Orders in Council had been used to repeal the earlier Scotland and Wales Acts of 1978. These had attempted to establish devolved assemblies in Edinburgh and Cardiff respectively.

⁹⁵ See Commons Library Briefing Paper CBP8738, [Scottish Devolution: Section 30 Orders](#). Near-final drafts of this section 30 Order lacked any time limit, meaning that Holyrood could have accidentally been equipped with the power to legislate for a referendum in perpetuity (or until legislation provided otherwise). UK civil servants spotted the omission and sought Scottish Government agreement to a revised draft (see Ciaran Martin, [Resist, Reform or Re-run?](#), University of Oxford, April 2021, p16).

those made under “Type D” need only be laid before and approved by Holyrood.

Wales

Similar arrangements exist for analogous powers in the [Government of Wales Act 2006](#).

Before the Senedd (or Welsh Parliament) moved to a reserved powers model in 2018, “Measures” passed by the then National Assembly for Wales were granted Royal Assent via an Order in Council under [section 102](#) of the Government of Wales Act 2006.

Internationally

Internationally, the Privy Council was authorised to make Statutory Orders in Council in relation to European Union treaties⁹⁶ and still does so in relation to double taxation agreements.⁹⁷ International sanctions Orders can be made under [United Nations Act 1946](#), while under [section 3\(7\)](#) of the Immigration Act 1971, the King may by Statutory Order make provision “for prohibiting persons who are nationals or citizens of that country and are not British citizens from embarking in the United Kingdom”.⁹⁸

2.7

Church of England

The Privy Council has some residual functions in relation to the established Church of England.⁹⁹ Every five years, Prerogative Orders in Council dissolve the Convocations of the Provinces of Canterbury and York (thus triggering dissolution of the [General Synod](#)).¹⁰⁰ Another Prerogative Order directs the Lord Chancellor to issue writs calling together new Convocations.¹⁰¹

The King in Council is also involved in the sale of some church land, declaring a vacant Archbishopric¹⁰² or the reorganisation of a diocese. For example, the General Synod passed the [Church Islands Measure 2020](#), which made provision for a Statutory Order attaching the Channel Islands to the Salisbury diocese.¹⁰³

⁹⁶ See section 1(3) of the [European Communities Act 1972](#).

⁹⁷ See Commons Library Briefing Paper SN05855, [Parliament’s role in ratifying treaties](#).

⁹⁸ Any such Order is subject to annulment in pursuance of a resolution of either House of Parliament. Under [section 1\(1\)](#) of the Consular Fees Act 1980, “[His] Majesty may, by Order in Council, prescribe the fees to be levied by persons authorised by the Secretary of State to exercise consular functions”.

⁹⁹ The Church of England was disestablished in Wales in 1920 and received a Charter of Incorporation as the “Church in Wales”.

¹⁰⁰ Dissolution can be postponed by an Order in Council, as it was in 2020 due to the Covid pandemic (see [section 84](#) of the Coronavirus Act 2020).

¹⁰¹ See, for example, [Orders in Council dated 9 June 2010](#).

¹⁰² See [Privy Council meeting, 12 April 2012](#).

¹⁰³ [Privy Council meeting, 19 July 2022](#)

2.8

Parliamentary boundaries

Statutory Orders in Council are used to implement the recommendations of the UK's four Boundary Commissions.

Under section 4 of the [Parliamentary Constituencies Act 1986](#) (as amended), once the final four reports have been laid before Parliament, the Government is responsible for drawing up a single draft Order to implement the recommendations.¹⁰⁴ This must be submitted to “His Majesty in Council” for approval “as soon as reasonably practicable” and no later than four calendar months following the laying of the reports.¹⁰⁵ Neither the Government nor Parliament can make changes (previously, either House could veto the draft Order, but this is no longer the case). Once the Order is approved and made, the new constituency boundaries are used following the next dissolution of Parliament.¹⁰⁶ The validity of such an Order, once made, cannot be called into question in any legal proceedings.¹⁰⁷

Royal Proclamations are another means by which the King in Council can make decisions.

2.9

Royal Proclamations

Royal Proclamations are formal notices issued to the people of the UK by the Sovereign. Like Orders in or of Council, these have the force of law.

The drafting of Proclamations is the responsibility of the relevant government department. Once received by the Privy Council Office (PCO), draft Proclamations are checked for terminology. On receipt of the final version, the PCO prepares the Proclamation for the King's signature, arranges for the appropriate Gazette notice and enters it on to the list of business for a meeting of the Privy Council.¹⁰⁸

¹⁰⁴ In previous reviews, separate draft Orders had been required for each of the four Boundary Commission reports.

¹⁰⁵ In 2023, it appeared that the statutory deadline of 27-28 October was missed. In response to a Parliamentary Question, minister Jacob Young said the Department for Levelling Up, Housing and Communities had “submitted on 27 October a draft Order in Council, giving effect to the new parliamentary constituencies boundaries recommendations, **to the Privy Council Office**, so that the Order can be considered at the next Privy Council meeting thereafter” (UIN 754, [Boundary Commissions](#), 8 November 2023).

¹⁰⁶ See Commons Library Briefing Paper CBP8921, [The Parliamentary Constituencies Bill 2019-21](#).

¹⁰⁷ Under previous legislation, an attempt was made to prevent draft Orders already approved by both Houses from being presented to the Queen in Council (see *Harper v Home Secretary* [1955] Ch 238). [Section 4\(7\)](#) of the Parliamentary Constituencies Act 1986 guarded against future challenges.

¹⁰⁸ Privy Council Office, [Privy Council Office \(PCO\) Procedures](#), p1.

Proclamations cannot take effect until the Great Seal has been affixed. The authority for sealing a Proclamation is a Prerogative Order in Council, which is approved at the same Privy Council meeting as the Proclamation itself.¹⁰⁹

Historically, Proclamations included states of emergency (see **Section 2.5**), granted Dominion status to existing colonies (ie [New Zealand in September 1907](#)), created new territories under the Crown (the Irish Free State in December 1922) or terminated others (the Aden Protectorate in November 1967).¹¹⁰ Nowadays, they announce the dates of bank holidays,¹¹¹ determine new coinage and dissolve or summon Parliament.

For example, [on 11 November 2020 Queen Elizabeth II proclaimed in Council](#) that she would alter the date of one bank holiday in June 2022 while creating another on 3 June.¹¹² This “double” bank holiday formed part of the Queen’s Platinum Jubilee celebrations.

Under the [Coinage Act 1971](#), meanwhile, the King in Council has the power to determine by Proclamation “the denomination, the design and dimensions of coins to be made at Our Mint”.¹¹³ This is the case for general issues as well as for special and collectors’ coins.¹¹⁴ Under [section 8](#) of the same Act, an Order in Council sets the date and procedure for the annual Trial of the Pyx, which verifies that coins are being produced to the required specification.¹¹⁵

The most high profile use of Proclamations are those dissolving and summoning Parliament.¹¹⁶ Following the [Fixed-term Parliaments Act 2011](#), dissolution became automatic on a certain date, although the Queen in Council still had to issue a Proclamation summoning a new Parliament.

Section 2(1) of the [Dissolution and Calling of Parliament Act 2022](#), however, means that dissolution is once again exercisable by Proclamation. Parliament is prorogued by a Commission made in pursuance of a Prerogative Order in Council rather than by Proclamation.¹¹⁷

The Order proroguing Parliament in June 2019 was controversial and ultimately declared illegal by the Supreme Court.¹¹⁸ A note was subsequently

¹⁰⁹ Ronald Allison and Sarah Riddell (eds), *The Royal Encyclopedia: The authoritative book of the Royal Family*, London: Macmillan, 1991, p366.

¹¹⁰ See Barbara Castle, *The Castle Diaries 1964-70*, London: Weidenfeld & Nicolson, 1984, p330.

¹¹¹ See Commons Library Briefing Paper SNO6170, [Bank and public holidays](#).

¹¹² This was possible under [sections 1\(2\) and \(3\)](#) of the Banking and Financial Dealings Act 1971.

¹¹³ The issue of bank notes does not require a Proclamation.

¹¹⁴ Including one [“celebrating the literary character Paddington Bear”](#) (Privy Council meeting, 10 April 2019). In 1910-11, the Liberal politician David Lloyd George protested at the King in Council’s approval of new coinage which lacked Welsh representation in the Royal coat of arms (Sir Almeric FitzRoy, *Memoirs Volume Two*, pp429 & 433).

¹¹⁵ See The Goldsmiths’ Company website, [The Trial of the Pyx](#).

¹¹⁶ The last time Parliament was dissolved by the monarch in person was in 1818, by the then Prince Regent on behalf of King George III.

¹¹⁷ See, for example, [Privy Council meeting, 13 April 2022](#).

¹¹⁸ See Commons Library Briefing Papers CBP8589, [Prorogation of Parliament](#), and CBP9006, [The Prorogation dispute of 2019: one year on](#). One of those present, Baroness Evans, later said she had

added to the Order stating that: “Following the decision of the Supreme Court on Tuesday 24th September 2019 the above Order was quashed.”¹¹⁹

The devolved Scottish and Welsh Parliaments operate on fixed terms, although the date of their elections can be altered via a Proclamation, which is also the means for giving effect to an “extraordinary” election.¹²⁰ A prorogued UK Parliament can also be recalled via Proclamation.

Proclamations can also be made in relation to Royal Titles. Under the [Royal Titles Act 1953](#), Queen Elizabeth II proclaimed hers on 23 May 1953 as:

Elizabeth II, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith.¹²¹

Proclamations regarding the King’s Titles in the Commonwealth Realms are given effect by domestic legislation.¹²²

George V renounced his German titles and changed the family’s name to “Windsor” by means of a [Royal Proclamation dated 17 July 1917](#).¹²³

The Accession Council (see **Section 6**) proclaims a new sovereign, while a Coronation Council (see **Section 5.5**) has in the past proclaimed a coronation date.

2.10

Royal Charters

Royal Charters, which are granted by the Sovereign on the advice of the Privy Council, have a history dating back to the 13th century. Their original purpose was to create public or private corporations (including towns and cities).¹²⁴ Nowadays, new Charters are normally reserved for bodies that work in the public interest (professional institutions and charities) and which “can demonstrate pre-eminence, stability and permanence” in their field.¹²⁵

“sought and received confirmation that in the legal opinion of the Attorney General, the Prorogation was lawful and so I believed it was appropriate for me to do my duty as a Privy Counsellor as I was asked to do” ([HL Deb 25 Sep 2019 Vol 799 c1473](#)).

¹¹⁹ See [Privy Council meeting, 28 August 2019](#).

¹²⁰ See [sections 2](#) and [3](#) of the Scotland Act 1998 and [sections 4](#) and [5](#) of the Government of Wales Act. In each case, the respective Presiding Officers are required to propose a date.

¹²¹ Royal Proclamation dated 23 May 1953.

¹²² See, for example, the Australian [Royal Style and Titles Act 1973](#).

¹²³ For this “important Council”, the King summoned a “representative gathering” which included the Archbishop of Canterbury, the Prime Minister, “the three ex-Prime Ministers, Lord Rosebery, Mr. Asquith, and Mr. Balfour, Mr. Barnes representing Labour, and General [Jan Christian] Smuts, Messrs. [Andrew] Fisher and [William] Schreiner the Dominions beyond the seas” (Sir Almeric FitzRoy, *Memoirs Volume Two*, p656).

¹²⁴ The Privy Council is no longer involved in granting city status, which is provided via Letters Patent. See Commons Library Insight, [What makes a city?](#)

¹²⁵ Privy Council Office website, [Royal Charters](#). See also House of Lords Library Note, [Royal Charters and Parliamentary Scrutiny](#).

What is a Royal Charter?

A Royal Charter is a prerogative instrument of incorporation which confers independent legal personality on an organisation and defines its objectives. More than [1,000 Charters have been granted](#).¹²⁶ The grant of a Royal Charter can be subject to judicial review.¹²⁷ Once created, a Chartered Body is subject to general law and is generally self-regulating.

Non-chartered bodies can “pray” (Petition) for the grant of a **Charter of Incorporation** to the King in Council. Following consultation with advisers, such an application is then referred by the Privy Council (via an Order of Reference), together with any relevant petitions, to a Committee of the Privy Council for consideration and a report (see **Section 3.8**). Assuming no petitions are received against the grant of a Charter, then the Privy Council Office will draft an Order of Grant.¹²⁸

Existing Chartered Bodies can petition the Privy Council for changes to their governing arrangements in the form of a **Supplemental Charter**. These are also referred to a Committee for consideration and report.¹²⁹

Both involve the use of Prerogative Orders in Council. The Privy Council Office says it is not aware of any Charter having been revoked since the reign of Charles II.¹³⁰ Charters can, however, be surrendered.¹³¹

Borough Charters

Whilst most Royal Charters are granted under the royal prerogative, Borough Charters (which confer borough status) are granted under section 245 of the [Local Government Act 1972](#). These take the form of Orders of Grant. Statutory Orders may also govern the armorial bearings of local authorities.¹³²

British Broadcasting Corporation

The [British Broadcasting Corporation](#) (BBC) is governed by a Royal Charter, which is granted by Statutory Order in Council and renewed every decade or so.¹³³ Unlike most Royal Charters, it will usually be debated in both Houses of Parliament, although Parliamentary approval is not necessary.

¹²⁶ The Privy Council Office offers [guidance on how to apply for a Charter](#) on its website. Some Chartered organisations apply separately for permission (via the Cabinet Office) to use the word “Royal” in their title. A [list of all Charters granted since the 13th century](#) is available online.

¹²⁷ *R (Project Management Institute) v Minister for the Cabinet Office and others* [2016] EWCA Civ 21

¹²⁸ Privy Council Office, [Privy Council Office \(PCO\) Procedure](#), p2.

¹²⁹ Further [guidance on how to amend a Royal Charter](#) is available on the Privy Council Office website.

¹³⁰ Privy Council Office website, [Royal Charters](#).

¹³¹ See [Privy Council meeting, 12 December 2012](#), at which was accepted the surrender of the Charter of The Salvage Association.

¹³² See, for example, [The Local Authorities \(Arms and Bearings\) Order 2012](#).

¹³³ See [Copy of Royal Charter for the continuance of the British Broadcasting Corporation](#) (Cmnd 9365), December 2016.

Beyond the BBC, the [Royal Charter on Self-Regulation of the Press](#) was approved by the Privy Council in 2013 and is governed by two Acts of Parliament, the [Crime and Courts Act 2013](#) and the [Enterprise and Regulatory Reform Act 2013](#). In October 2016 [IMPRESS](#) became the UK's first approved press regulator following its recognition under the Royal Charter.¹³⁴

Higher education

According to the Privy Council Office's website:

Older (pre-1992) universities operate under a Royal Charter, which sets out their overall constitution, and statutes, which give more detail as to how the university should operate in practice. The Privy Council is responsible for advising His Majesty on universities' proposals to amend their Charter, and itself approving amendments to the statutes.¹³⁵

Proposals are normally approved by Orders in Council (for Charters) or Orders of Council (Statutes).¹³⁶ Amendments to Oxford or Cambridge University Statutes are laid before Parliament for a period of four weeks.¹³⁷

Most post-1992 universities and certain other higher education institutions operate under an Instrument of Government and Articles of Government. Although these are granted by a Statutory Order of Council, subsequent amendments to these documents for English institutions are not a matter for the Privy Council.¹³⁸ However, if the institution is located in Wales, amendments to these documents do require its approval.

Older universities in Scotland operate under Royal Charters, while certain newer higher education institutions have governance documents which are the subject of Statutory Instruments. The Privy Council approves changes to both types of constitution.¹³⁹ The "ancient" Scottish Universities have Ordinances which are approved by the Privy Council under the Universities (Scotland) Acts 1858 to [1966](#).¹⁴⁰

Applications for Degree Awarding Powers (DAPs) under [section 76](#) of the [Further and Higher Education Act 1992](#) are referred to the relevant UK

¹³⁴ See House of Lords Library Note, [Royal Charters and Parliamentary Scrutiny](#).

¹³⁵ Privy Council Office website, [Higher Education](#). Some English universities are also governed by statute. See, for example, the Universities of Durham and Newcastle Act 1963.

¹³⁶ Under the [Public Schools Act 1868](#), certain independent schools – Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby and Shrewsbury – are also governed by Statutes, although these [require Statutory Orders in Council to amend](#).

¹³⁷ Privy Council Office, [Privy Council Office \(PCO\) Procedures](#), p2.

¹³⁸ Under the Further and Higher Education Act 1992, the Privy Council was responsible for approving the use of the word "university" in the title of an institution, but this was transferred to the [Office for Students](#) by the [Higher Education and Research Act 2017](#).

¹³⁹ See, for example, [The Edinburgh Napier University Order of Council 2008](#).

¹⁴⁰ When in 1973 the "Court" of Edinburgh University tried to alter its Ordinances to remove Gordon Brown, the student rector, as its chairman, it was over-ruled by the Privy Council (see Gordon Brown, *My Life*, Our Times, London: The Bodley Head, 2017, p52).

department for advice (for English institutions), to the Wales Office (for Welsh institutions) or to the Scottish Government (for Scottish institutions).¹⁴¹

In addition to these responsibilities, the Lord President of the Council acts as a “Visitor” on behalf of the Sovereign for 15 universities and colleges.¹⁴² In certain cases academic staff may petition the Visitor for redress.¹⁴³ The [Higher Education Act 2004](#) removed the Visitor’s jurisdiction over complaints made by students or former students, or from members of the academic staff in relation to an employment dispute. Student complaints are now dealt with by the [Office of the Independent Adjudicator for Higher Education](#).

2.11

Declarations

[Section 2](#) of the Regency Act 1937 provides for a monarch becoming incapacitated or unavailable. Under both scenarios, a declaration “shall be made” to the Privy Council, after which “those functions shall be performed in the name and on behalf of the Sovereign by a Regent”.¹⁴⁴ Before entering office, the Regent is also required to “take and subscribe before the Privy Council” three oaths.¹⁴⁵ If, subsequently, the monarch recovers capacity or becomes available, then a declaration “in like manner” ends the Regency.¹⁴⁶

In 1952 and 1960, Queen Elizabeth II made declarations in relation to her family name. The latter stated that descendants other than Royal Highnesses and Princes or Princesses should bear the name [“Mountbatten-Windsor”](#).

The Privy Council once made declarations of peace, war or neutrality. On 4 August 1914, for example, George V held a small meeting of the Privy Council and at 23:00 declared the UK to be at war with Germany.¹⁴⁷ The UK has made no declaration of war since that against Siam (modern Thailand) in 1942, and it is unlikely that there will ever be another. Developments in international law since 1945, notably the [United Nations \(UN\) Charter](#), may well have made the declaration of war redundant as a formal international legal instrument.¹⁴⁸

¹⁴¹ Privy Council Office, [Privy Council Office \(PCO\) Procedures](#), p4.

¹⁴² A full list is available at the Privy Council Office website, [Higher Education](#). Prerogative Orders in Council also appoint clerics, judges and members of the Royal Family as Visitors at other universities throughout the UK.

¹⁴³ Only if the matter has been raised internally within the institution and the petitioner has been informed that a final decision has been made.

¹⁴⁴ See Section 2(1) of the Regency Act 1937.

¹⁴⁵ Section 4(1).

¹⁴⁶ Section 2(1).

¹⁴⁷ UK Parliament, [King George V](#). There was only one Privy Counsellor present, Lord Beauchamp, the First Commissioner of Works, who was declared Lord President the following day. In the view of the then Clerk of the Privy Council, Sir Almeric FitzRoy, “the object of a Proclamation was not the enforcement of the law, but to inform the public of their obligations and liabilities when a state of war arose” (Sir Almeric FitzRoy, *Memoirs Volume Two*, p494).

¹⁴⁸ See House of Lords Constitution Committee, [Waging war: Parliament’s role and responsibility Volume I: Report](#), HL Paper 236-I, July 2006, para 10.

Declarations of Consent for certain Royal marriages are also made by the King in Council (see [Section 5.5](#)).

2.12

Appointments

High Sheriffs

Finally, the Privy Council also has a role in making certain public appointments, the most substantial of which relates to High Sheriffs.¹⁴⁹ Nominations of three prospective High Sheriffs for each county in England and Wales are made during a meeting of “the Lords of the Council” (Privy Counsellors) in the King’s Bench Division of the High Court of Justice on 12 November each year. Subsequently, the selection of new High Sheriffs (whose functions are largely ceremonial) is made annually in March, when the Sovereign selects one of the three nominated Sheriffs to serve for the next 12 months literally by “pricking” a hole through his or her name on the Sheriffs’ Roll with the spike of a brass bodkin.¹⁵⁰ The Roll is inscribed on vellum wound around a wooden roller and tied with green ribbons.¹⁵¹

Following the “pricking” ceremony, a Warrant of Appointment is sent to each nominee by the Clerk of the Privy Council.¹⁵² High Sheriffs for the counties of the Duchy of Lancaster are pricked separately by the King during an audience with the Chancellor of the Duchy of Lancaster.¹⁵³ The Duke of Cornwall (the Prince of Wales) appoints the High Sheriff of Cornwall.¹⁵⁴

Commissioner for Public Appointments

Orders in Council make provision for the [Commissioner for Public Appointments](#) to monitor ministerial appointments. Orders include a list of all the public bodies that are to be regulated by the Commissioner.¹⁵⁵

Education Inspectors

Under section 114(1) of the [Education and Inspections Act 2006](#), the King in Council can appoint, via Order in Council, Inspectors of Education, Children’s

¹⁴⁹ For more information on High Sheriffs see the [High Sheriffs Association](#) website.

¹⁵⁰ An apocryphal tale has it that Queen Elizabeth I was asked to approve appointments while sewing and her bodkin was the only available marking instrument, but the practice predates her reign. The bodkin is embossed with the Privy Council arms.

¹⁵¹ Towards the end of her reign, Queen Victoria distinguished names with “growing difficulty” and once, having made a mistake, “pieced together the broken parchment and put the bodkin in a second time”. Officials developed a “mechanical contrivance” for unwinding the Sheriffs’ Roll, but Victoria was “afraid at the outset that it was intended to do away with the use of the time-honoured instrument she had wielded for more than sixty years” (see Sir Almeric FitzRoy, *Memoirs*: Volume One, pp36 & 12).

¹⁵² See [Schedule 1](#) to the Sheriffs Act 1887.

¹⁵³ See Court Circular, 16 March 2022. The most recent “pricking” took place via video link.

¹⁵⁴ See [The Duke appoints his new High Sheriff of Cornwall](#), Cornish Stuff website, 30 March 2022.

¹⁵⁵ The most recent [Public Appointments Order in Council](#) was made on 6 November 2019.

Services and Skills in England and Wales.¹⁵⁶ Scottish Inspectors are appointed, via Order in Council, under the [Education \(Scotland\) Act 1980](#).

BBC Board

The Chairman of the BBC Board is appointed by the King in Council on the advice of the Secretary of State for a four-year term.¹⁵⁷ “Nation” Board members for Scotland, Wales, Northern Ireland and England are also made via Order in Council.

Architects Registration Board

The Department for Levelling Up, Housing and Communities (DLUHC) requests the appointment of individuals as lay members of the [Architects Registration Board](#) (ARB) for three-year terms. After confirming ministerial approval, the Clerk of the Privy Council writes to invite prospective appointees to join the ARB. Once the appointment has been accepted, the Privy Council Office prepares a draft Order for approval by DLUHC.

¹⁵⁶ See, for example, [The Inspectors of Education, Children’s Services and Skills Order 2022](#). Orders also appoint members of the [National Citizen Service Trust](#).

¹⁵⁷ See [Privy Council meeting, 10 February 2021](#)

3 Committees of the Privy Council

Much of the Privy Council's work is done through various standing committees. Sir Almeric FitzRoy, a former Clerk of the Privy Council, called them "the constitutional modus operandi of the Privy Council in the discharge of its functions".¹⁵⁸ Business is usually conducted via ministerial correspondence, rather than at actual meetings.¹⁵⁹ Some "Committees of Council" are statutory, others are ad hoc.

3.1 Judicial Committee of the Privy Council

See **Section 8**.

3.2 Committee of Council for the Affairs of Jersey and Guernsey

The Committee for the Affairs of Jersey and Guernsey is the body which recommends approval of Channel Islands legislation. The Committee comprises the Secretary of State for Justice, the Minister of State with policy responsibility for Channel Island matters and the Lord President of the Council.

This Committee is reconstituted at the beginning of each reign, and thus business is currently conducted under the [Royal Assent to Legislation and Petitions \(Bailiwick of Guernsey\) and \(Bailiwick of Jersey\) Orders 2022](#).¹⁶⁰

Until 1981 there was a separate Committee of Council which dealt with the approval of legislation from the Isle of Man (see **Section 2.4**).

¹⁵⁸ Sir Almeric FitzRoy, *Memoirs Volume Two*, p600.

¹⁵⁹ Privy Council Office website, [Committees](#).

¹⁶⁰ These replaced a General Order of Reference dated 22 February 1952.

3.3 Committee for the purposes of the Crown Office Act 1877

The Committee for the purposes of the [Crown Office Act 1877](#) comprises the Lord Chancellor, the Lord Privy Seal and a Secretary of State. It is concerned with the design of wafer seals and their use. A wafer seal is a smaller representation of the obverse of the Great Seal embossed on coloured paper and attached to the document being sealed.

This Committee last met in 1988. The [Crown Office \(Preparation and Authentication of Documents Rules\) Order 1988](#) provides for which documents can be authenticated with a wafer seal.

3.4 Universities Committee

The Universities Committee, which considers petitions against statutes made by Oxford and Cambridge Universities and their colleges, was last activated in 1995. Its members are prescribed by section 44 of the [Universities of Oxford and Cambridge Act 1877](#). The quorum is three, one of whom shall be a member of the Judicial Committee of the Privy Council.

3.5 Scottish Universities Committee

The Scottish Universities Committee of the Privy Council regularly considers proposed statutory Ordinances for the four “ancient” Scottish universities.¹⁶¹

Its members are specified in section 9 of the [Universities \(Scotland\) Act 1889](#). The quorum is three and, in practice, consists of the First Minister for Scotland, the Lord President of the Court of Session and the Lord Advocate.

3.6 Baronetage Committee

The Baronetage Committee was established by Order in Council in 1910 to examine doubtful claims to be placed on the Roll of Baronets (an hereditary title awarded by the Crown). There are several ex-officio members, including the Lord President of the Council and the Home Secretary, plus other members appointed in their own right.

¹⁶¹ That is, Edinburgh, Glasgow, Aberdeen and St Andrews.

By a Royal Warrant of King Edward VII dated 8 February 1910, an [Official Roll](#) was established to be kept at the Home Office. In a further Warrant of King George V dated 10 March 1922, the Home Secretary was required to appoint a senior official as Registrar of the Baronetage. They were charged with the duty of keeping the Roll and making all necessary entries and deletions. This responsibility now resides with the Ministry of Justice.¹⁶²

In 2015 the Baronetage Committee met for the first time since 1927 and made a referral to the Judicial Committee under section 4 of the [Judicial Committee Act 1833](#).¹⁶³

The Political Honours Scrutiny Committee (PHSC) existed until 2005. This comprised three senior Privy Counsellors from the three largest political parties appointed by Order in Council for the duration of office of a particular government.¹⁶⁴ The PHSC's role concerning appointments to the House of Lords was taken over by the [House of Lords Appointments Commission](#) (HOLAC) in 2000. When HOLAC took over responsibility for the vetting of other honours in February 2005, the PHSC was wound up the same year.¹⁶⁵

3.7

Coronation Committee

At the beginning of a new reign, coronation committees have been formed to plan the ceremony for a new monarch. In 1952, a Prerogative Order in Council dated 6 June established the Coronation Committee of the Privy Council (chaired by the Duke of Norfolk), which met for the first time on 16 June and thereafter made any necessary Orders of Council. A later Council has generally been held to give formal sanction to the Order of Service and Form of Ceremonial. No Coronation Council was held prior to the coronation of King Charles III.

Separately, a [Court of Claims](#) has been formed, comprising Privy Counsellors (usually judges) commissioned by the King or Queen in Council.¹⁶⁶ This decided upon claims to perform special services at the coronation. A Court of Claims first appears to have been commissioned prior to the coronation of Richard II in 1377. No Court of Claims was constituted for King Charles. Instead, a [Coronation Claims Office](#) was formed within the Cabinet Office.

¹⁶² See Standing Council of the Baronetage website, [Succession to a baronetcy](#).

¹⁶³ See [In the matter of the Baronetcy of Pringle of Stichill \[2016\] UKPC 16](#)

¹⁶⁴ [HC Deb 23 Jan 1996 Vol 260 c141W](#). This Committee was a product of the Royal Commission on Honours (see [HC Deb 11 Feb 1937 Vol 320 cc575-76](#)).

¹⁶⁵ See House of Lords Library, [Vetting appointments to the House of Lords](#).

¹⁶⁶ See, for example, the [London Gazette, 23 December 1910](#).

3.8 Ad hoc committees

In addition to the standing committees, ad hoc Committees of Council are set up to consider and report on Petitions for Royal Charters of Incorporation and also to approve changes to the Bye-laws of Chartered Bodies. The normal quorum is two save when, in the case of statutory bodies, the relevant legislation prescribes a quorum of three (see **Section 2.10**).

3.9 Committees of Privy Counsellors

Non-statutory committees of Privy Counsellors are occasionally formed on an ad hoc basis to undertake a particular task and are then dissolved. Appointed by ministers or Parliament, such Committees are wholly independent of the Privy Council Office and do not report to the Lord President. The chair, membership and terms of reference vary according to the issue under consideration.¹⁶⁷ In more recent times, these have often been non-statutory public inquiries, where it was desirable that evidence be taken “on Privy Council terms”.¹⁶⁸ Examples of ad hoc Committees include:

- The Birkett committee: this was appointed to inquire into the use of telephone tapping as a detection technique.¹⁶⁹
- The Parker committee: this considered “authorised procedures for the interrogation of persons suspected of terrorism” in Northern Ireland.¹⁷⁰
- Committee of Privy Counsellors on Ministerial Memoirs: this considered the principles that ought to apply to former ministers who publish diaries or memoirs.¹⁷¹
- The Franks committee: this reviewed the events leading up to the invasion of the Falkland Islands in 1982.¹⁷²

¹⁶⁷ Cabinet Office, [The Cabinet Manual](#), para 1.19.

¹⁶⁸ See Commons Library Briefing Paper SN02599, [Public Inquiries: non-statutory public inquiries](#)

¹⁶⁹ [Report of the Committee of Privy Councillors appointed to inquire into the interception of communications](#) (Cmnd 283), London: HMSO, October 1957.

¹⁷⁰ [Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism](#) (Cmnd 4901), London: HMSO, March 1972.

¹⁷¹ Report of the Committee of Privy Counsellors on Ministerial Memoirs (Cmnd 6386), December 1975. This arose from the posthumous publication of Richard Crossman’s diaries, widely quoted in this briefing paper.

¹⁷² See [Falkland Islands Review: Report of a Committee of Privy Counsellors](#), London: HMSO, January 1983.

- A Privy Counsellor Review Committee reported in December 2003 on the [Anti-terrorism, Crime and Security Act 2001](#). This was a statutory review under section 122 of the Act.¹⁷³
- In 2004, a Committee of Privy Counsellors (chaired by former Cabinet Secretary Lord Butler) reviewed intelligence on weapons of mass destruction in the lead up to the Iraq war.¹⁷⁴
- The Iraq Inquiry, chaired by Sir John Chilcot, was set up in 2009 to look at decision-making in relation to the invasion of Iraq.¹⁷⁵
- The Gibson or Detainee Inquiry into UK involvement in detainees and retention.¹⁷⁶

Topics for inclusion in the Government’s [Official History Programme](#) are also considered by a group of Privy Counsellors, one from each major political party. The Privy Counsellors’ approval provides the necessary authority for an historian to have access to records of all previous administrations.¹⁷⁷

In 2003, the Conservative MP William Hague told the Select Committee on Public Administration that he saw little point in using what he called the Privy Council “cloak” to establish such groups:

I think those groups are groups of people with Executive responsibility who happen to be privy councillors, rather than needing to be privy councillors. They are a sub-group set up of the Privy Council as a separate institution. But Privy Council is the cloak that covers those activities.

Hague added that it would make “no practical difference” if such groups simply met as groups of ministers without such cover.¹⁷⁸

3.10 The Cabinet?

The Cabinet Manual states that the Cabinet “is the executive committee of the Privy Council”,¹⁷⁹ but it has never been formally constituted as such. The Cabinet Council, as it was originally known, did, however, emerge from the work of the Privy Council (see **Section 1.3**).

¹⁷³ See Privy Counsellor Review Committee, [Anti-terrorism, Crime and Security Act 2001 Review: Report](#) (HC381), London: HMSO, 2003.

¹⁷⁴ Report of a Committee of Privy Counsellors, [Review of Intelligence on Weapons of Mass Destruction](#) (HC898), London: HMSO, 2004. Four of this Committee’s members were sworn as Privy Counsellors so they could undertake the review.

¹⁷⁵ [The Report of the Iraq Inquiry: Report of a Committee of Privy Counsellors](#) (HC264), London: HMSO, July 2016.

¹⁷⁶ [The Report of the Detainee Inquiry](#), London: HMSO, December 2013. The journalist Peter Riddell was appointed a Privy Counsellor so he could serve on this inquiry.

¹⁷⁷ See House of Lords In Focus, [The UK Government’s Official History Programme](#).

¹⁷⁸ [House of Commons – Public Administration – Minutes of Evidence](#), HC 642-I, 15 May 2003.

¹⁷⁹ Cabinet Office, [The Cabinet Manual](#), para 1.14.

Rodney Brazier has stated that the Cabinet “is neither the Privy Council nor a committee of the Privy Council”.¹⁸⁰ He believes the contrary view to have arisen from an erroneous interpretation of the Privy Council Oath (see **Section 4.3**). Although, as Lord Radcliffe observed in 1975, the:

Elizabethan terms of the oath do not of course refer explicitly to the Cabinet, the tradition of free and frank discussion within the latter (as a body distinct from the Privy Council), under conditions of confidence owed to the Sovereign, is itself long established.¹⁸¹

Writing in 1935, the constitutional lawyer Sir William Anson observed that:

The Cabinet considers and determines how the King’s Government may best be carried on in all its important departments; the Privy Council meets to carry into effect advice given to the King by the Cabinet or by a minister, or to discharge duties cast upon it by custom or statute [...] But the Privy Council is essentially an executive, the Cabinet, a deliberative body. The policy settled in the Cabinet is carried out by Orders in Council, or by action taken in the various departments of government.¹⁸²

By contrast, the devolved Government of Northern Ireland that existed between 1921 and 1972 was explicitly the “Executive Committee” of the Privy Council of Northern Ireland. [Section 8\(5\)](#) of the Government of Ireland Act 1920 stated that:

The persons who are ministers of Northern Ireland for the time being shall be an executive committee of the Privy Council of Ireland (to be called the Executive Committee of Northern Ireland) to aid and advise the Lord Lieutenant in the exercise of his executive power in relation to Irish services in Northern Ireland.¹⁸³

¹⁸⁰ Stanley de Smith and Rodney Brazier, *Constitutional and Administrative Law*, p160.

¹⁸¹ Report of the Committee of Privy Counsellors on Ministerial Memoirs (Cmnd 6386), para 22.

¹⁸² Sir William Anson, *The Law and Custom of the Constitution Volume 2 Part 2: The Crown* (4th edition), London: Clarendon, 1935, p109.

¹⁸³ By virtue of [Schedule 1](#) to the Irish Free State (Consequential Provisions) Act 1922, the Privy Council of Ireland became the Privy Council of Northern Ireland and the Lord Lieutenant of Ireland the Governor of Northern Ireland.

4

Membership of the Privy Council

Privy Counsellors are appointed by the King on the advice of the Prime Minister. Recommendations are made on the basis that the individual concerned “is involved in affairs of state or has a close and confidential relationship with the Crown”.¹⁸⁴ There is no independent scrutiny of appointees.¹⁸⁵ Membership is for life,¹⁸⁶ although a request can be made for removal from the list of Privy Counsellors.

Privy Counsellors are entitled to be addressed as “The Right Honourable”. If an individual is already styled “The Rt Hon” by virtue of being a peer below the rank of Marquess, then the post-nominal letters “PC” can also be used.¹⁸⁷ According to Whittaker’s Almanac, Privy Counsellors “enjoy precedence following Knights of the Garter and of the Thistle, next after the eldest sons of barons”.¹⁸⁸

Halsbury’s Laws identifies 14 offices and positions as being “generally understood to have a claim to appointment”.¹⁸⁹ These include near relatives of the monarch, the Archbishops of Canterbury and York, Great Officers of State, members of the Royal Household and senior members of the judiciary. They are usually notified in advance by letter, which states that the Prime Minister is minded to recommend they be appointed a Privy Counsellor. The Prime Minister will then make a formal submission to the King advising him to make the appointment.

A Privy Counsellor is usually sworn at the first Council meeting following the King’s approval of the Prime Minister’s submission. In such cases, an Order in Council will record the fact that they swore or affirmed the Oath and “took [their] place at the Board accordingly”.¹⁹⁰ However, if they cannot be sworn right away, they are formally appointed by Order. They will then be sworn at a later meeting.

¹⁸⁴ [HL Deb 26 Oct 2009 Vol 713 cWA106](#)

¹⁸⁵ But like all “senior parliamentarians,” observed Lord Mandelson in 2009, Privy Counsellors “are directly accountable to Parliament for all their actions” ([HL Deb 26 Oct 2009 Vol 713 cWA106](#)).

¹⁸⁶ Until 1707 a Privy Counsellor held office for the duration of a reign. The Succession to the Crown Act of that year extended this to six months following a demise, and since the Demise of the Crown Act 1901 Privy Counsellors remain so for life, often across several reigns.

¹⁸⁷ The Lord Mayors of Belfast, Cardiff, Bristol, York and the City of London are also styled “The Right Honourable”, but without being members of the Privy Council. Similarly, the Lord Provosts of Edinburgh and Glasgow enjoy the style of before the title of their office, but not their names.

¹⁸⁸ Whittaker’s Scottish Almanac: Scotland in One Volume, London: A&C Black, 2003, p251.

¹⁸⁹ Halsbury’s Laws of England, Vol 8(2), para 522.

¹⁹⁰ Both the Privy Council and its Judicial Committee are sometimes referred to as “the Board”.

Privy Counsellors become such following appointment, as not everyone who is appointed to the Privy Council has been immediately sworn.¹⁹¹ There have been some significant gaps. Sir Samuel Griffith and Sir Edward Barton, Australia's first Chief Justice and first Prime Minister, were Privy Counsellors for, respectively, 12 and 14 years before they had an opportunity of being sworn at a Council meeting in London.

Historically, Privy Counsellors who were not normally resident in the UK were appointed via Prerogative Order in Council.¹⁹² An exception was made for Andrew Fisher, the then Prime Minister of Australia, in July 1911. He was summonsed to be sworn but pleaded an outstanding engagement ([he was to receive the freedom of Kilmarnock](#)). The Clerk of the Privy Council begged the King's "gracious indulgence to permit Mr. Fisher's being appointed by Order in Council" even though he was in the UK. "This the King agreed to."¹⁹³

Non-Cabinet appointments to the Privy Council used to be announced as part of the (King's) [Birthday and New Year honours lists](#), although this practice appears to have ceased in the early 2000s.¹⁹⁴

As of 1 December 2022, there were more than [743 members](#) of the Privy Council.¹⁹⁵ A full list of [Privy Council members](#) is available on the Privy Council Office website. There is no fixed number of Counsellors. Numbers have increased steadily over the last few decades, leading some to conclude that the Privy Council has become another form of government patronage.¹⁹⁶

Speaking in 2009, the then Lord President of the Council, Baroness Royall of Blaisdon, said there were "no senior or junior privy counsellors, so there are no privy counsellors who are more equal than others".¹⁹⁷

King Edward VII liked his Privy Counsellors to wear Civil Uniform of the 1st Class (a coatee with gold braid and breeches) to Council meetings, but this requirement lapsed long ago.¹⁹⁸ Sir Alan Duncan, a Privy Counsellor, wore levee dress to the funeral of Baroness Thatcher.¹⁹⁹

On learning that she was to perform a role at the coronation of King Charles III in May 2023, Penny Mordaunt, the then Lord President, went:

¹⁹¹ Early in the 20th century, this often applied to those appointed from distant parts of the then British Empire.

¹⁹² In 1904 King Edward VII took exception to this practice, believing "it implied some derogation from the time-honoured ceremony of swearing". Assured "that the method was exceptional to meet the exigencies of the colonial situation", the King asked that all those so appointed receive "a notification that they were to be sworn whenever they came to England" (see Sir Almeric FitzRoy, *Memoirs Volume One*, pp204-05).

¹⁹³ Sir Almeric FitzRoy, *Memoirs Volume Two*, p452.

¹⁹⁴ The 2011 Birthday Honours and 2019 New Year Honours lists being the exceptions.

¹⁹⁵ In [1952 there were 281 Privy Counsellors](#), in 1997 423, [rising to 554 in 2010](#) and [657 in 2016](#). Of the 114 members appointed between 2010 and 2014, [17 were women and none were BAME](#).

¹⁹⁶ See Patrick O'Connor, [The Constitutional Role of the Privy Council](#), p7.

¹⁹⁷ [HL Deb 12 May 2009 Vol 710 c1011](#)

¹⁹⁸ [According to a 1921 guide](#), Cabinet ministers could continue to do so even after relinquishing office.

¹⁹⁹ [Alan Duncan dresses to impress at Baroness Thatcher's funeral](#), Daily Telegraph (£), 18 April 2013.

to the privy council offices to see the court dress that my predecessors would have worn. It had a huge hat with it, but I knew it was not what the King really wanted. I didn't have direct instruction from him but I took my steer from the brief that it would be a modern coronation for a modern king. I took some advice from Savile Row, who were very helpful. I then found Hand & Lock, who do embroidery.

The final dress was designed by the London fashion house Safiyaa and inspired by traditional Court dress. Its embroidered oak leaves and ferns represented the traditional motifs of the Privy Council.²⁰⁰



The Australian politician John Forrest in the court uniform of a Privy Counsellor in 1901 (Johnstone, O'Shannessy and Co).

4.1

Categories of Privy Council membership

The Sovereign

The King presides over, but is not a member of, the Privy Council. Rather he is its Head. Similarly, even if a member of the Royal Family acting as Regent or

²⁰⁰ [The real Penny Mordaunt: 'a workaholic with four cats and no social life'](#), Sunday Times (£), 28 May 2023.

as Counsellor of State has not been introduced as a member, they can still preside on the monarch's behalf.

For example, the then Prince of Wales (acting as a Counsellor of State) presided at a meeting of the Privy Council on 28 April 1970. Prince Charles observed in his diary that although the business “was routine and dull” he was “amazed how much has to go through the Council”:

I daresay many politicians would like to do away with this particular institution and establish something more rational and modern but it is one of the very last remaining links between Crown and Parliament and does help to remind ministers that there is one final authority that is not themselves!²⁰¹

The Lord Chamberlain of the (Royal) Household and the Sovereign's Private Secretary are always appointed to the Privy Council shortly after their appointment.²⁰²

Royal members

Members of the Royal Family or “close kinsmen of the Crown” are “introduced” to the Privy Council but not sworn. This means they are not required to take the Oath of Allegiance or Privy Council Oath (see **Section 4.3**).

The precedent appears to have been established in 1410 (see **Section 1.1**) and followed when Prince Rupert was introduced to the Privy Council of Charles II in 1662. A minute stated that:

His Highness Prince Rupert was called in by His Majesty and declared to be of his Council, dispensing with his taking the usual Oaths of a Privy Councillor in regard of his near relation to His Majesty, and took his place at the Board.²⁰³

When the Prince of Wales (the future King Edward VIII) was introduced to the Privy Council in March 1920, there was media speculation that “Royal Princes are not sworn upon admission to the Privy Council because they are born Privy Councillors”, something the then Clerk of the Privy Council, Sir Almeric FitzRoy corrected in a letter to *The Times*.²⁰⁴

As Princess Elizabeth, Queen Elizabeth II and her husband, the Duke of Edinburgh, were introduced to the Privy Council on 4 December 1951.²⁰⁵ As a Counsellor of State, Princess Elizabeth had previously presided over Privy Council meetings. She ceased to be a Privy Counsellor upon her accession to

²⁰¹ Jonathan Dimpleby, *The Prince of Wales: A Biography*, London: Little, Brown, 1994, pp145-46. The then Prince of Wales mistakenly believed that most Acts of Parliament required Privy Council authorisation. The other Counsellor of State on this occasion was the Queen Mother.

²⁰² See Court Circular, 11 October 2017.

²⁰³ *The Times*, 5 March 1920.

²⁰⁴ See Sir Almeric FitzRoy, *Memoirs Volume Two*, pp411-12 & 722. Sir Almeric could not trace any record of what occurred when King George V was introduced as Duke of York in July 1894.

²⁰⁵ Court Circular, 4 December 1951.

the Throne on 6 February 1952. The Duke of Windsor, as Edward VIII became, did not re-join the Privy Council following his abdication in December 1936.²⁰⁶

The heir to the Throne is usually a member of the Privy Council. The [Prince of Wales \(then the Duke of Cambridge\) was introduced on 9 June 2016](#), as was the then Duchess of Cornwall, now Queen Camilla.

The Cabinet

If a new Prime Minister is not already a Privy Counsellor, then they must be sworn before they “kiss hands”. The last occasion on which this applied was the Labour leader Ramsay MacDonald in 1924. King George V admitted him to membership at a meeting of the Privy Council, and MacDonald returned to Buckingham Palace later the same day to accept the King’s invitation to form a government.²⁰⁷

Upon the formation of a new government or following a Cabinet reshuffle, the Privy Council Office liaises with Buckingham Palace to arrange a meeting at which new ministers can be sworn in.²⁰⁸ When there is a new Prime Minister, then s/he becomes First Lord of the Treasury.²⁰⁹

Under section 5 of the [Promissory Oaths Act 1868](#) and Article 1 of the [Promissory Oaths Order 1939](#), all Cabinet ministers must take an Oath of Office “in the presence of His Majesty in Council” (see **Section 4.3**).²¹⁰ Therefore, all members of the Cabinet must also be Privy Counsellors.

[Margaret Bondfield](#) became the first female Privy Counsellor in June 1929 by virtue of having also been appointed the first female Cabinet minister.²¹¹

There was once a legal distinction between Cabinet ministers, who would be sworn of the Privy Council, and other ministers, who were not. As Rodney Brazier has observed:

If the Sovereign were advised to admit an individual to the Privy Council, that was tantamount to his joining the Cabinet. That distinction is no longer helpful,

²⁰⁶ Although according to some accounts, he remained a Canadian Privy Counsellor (see **Section 7.2**).

²⁰⁷ David Marquand, *Ramsay MacDonald*, London: Jonathan Cape, 1977, p304. In a memorandum on “Honours and Appointments”, the King urged his new Prime Minister to keep “a firm hand” on the distribution of honours, especially “with regard to appointments to the Privy Council” (Christopher Hibbert, *The Court of St James’s*, p200).

²⁰⁸ See, for example, [Privy Council meeting, 25 July 2019](#).

²⁰⁹ Rodney Brazier, *Choosing a Prime Minister: The Transfer of Power in Britain*, Oxford: Oxford University Press, 2020, p9. All Prime Ministers have been First Lord since Lord Salisbury in the 1880s.

²¹⁰ The Schedule to the 1868 Act also lists the Lord Steward, the Earl Marshal and the Master of the Horse, but given none of those office holders are currently Privy Counsellors, it seems likely their Oath of Allegiance was tendered “otherwise as Her Majesty shall direct”.

²¹¹ Court Circular, 8 June 1929. Breaking the customary silence during the oath taking, King George V told Bondfield he was “pleased to be the one to whom has come the opportunity to receive the first woman Privy Counsellor” (Margaret Bondfield, *A Life’s Work*, London: Hutchinson, 1948, p278).

because since the 1970s even some Ministers of State have been made Privy Counsellors.²¹²

In his memoirs, the former Conservative Chancellor Nigel Lawson recorded his belief that he, having been passed over for promotion to the Cabinet in 1981, was appointed to the Privy Council as “a consolation prize”.²¹³ Similarly, in 2010, when the Conservative Shadow Secretary of State for Scotland did not join the Cabinet because the post went to a Liberal Democrat, David Mundell, a Parliamentary Under Secretary at the Scotland Office, became a Privy Counsellor.²¹⁴ The Conservative MP Rhodes Boyson also joined the Privy Council after leaving the government in 1987.²¹⁵

According to the Cabinet Office “Precedent Book”, in the case of ministers in charge of government departments who are not in the Cabinet:

the practice has been to award Privy Counsellorships in almost every case [...] The Secretary of the Cabinet advised that it was necessary so as to ensure that the same oath of secrecy and acceptance of collective responsibility bound all Ministers in charge of departments.²¹⁶

Political members

Since 1961 every new leader of each of the main political parties in the House of Commons has been made a member of the Privy Council, if not one already, upon the Prime Minister’s advice.²¹⁷ The first Labour Party Privy Counsellor appears to have been Arthur Henderson, who was sworn after joining H. H. Asquith’s wartime government in 1915.²¹⁸

When Jeremy Corbyn, the then Labour leader, joined the Privy Council on 12 November 2015, he told ITV News he did not “expect to be kneeling [...] I expect to be nominated to the Privy Council and that’s it”.²¹⁹ In the event, Mr Corbyn was present, and the Court Circular recorded that:

This day Jeremy Corbyn was, by Her Majesty’s command, admitted, on affirmation, as a Member of Her Majesty’s Most Honourable Privy Council and took his place at the Board accordingly.²²⁰

²¹² Rodney Brazier, *Constitutional Practice: The Foundations of British Government* (3rd edition), Oxford: Oxford University Press, 1999, p313.

²¹³ Nigel Lawson, *The View From No. 11: Memoirs of a Tory Radical*, London: Bantam, 1992, p73.

²¹⁴ 10 Downing Street press release, [Peerages, honours and appointments](#), 28 May 2010.

²¹⁵ Antony Jay, *Elizabeth R: The Role of the Monarchy Today*, London: BBC Books, 1992, p45.

²¹⁶ [Precedent Book – Chapter 5 – Part 2](#), Cabinet Office, Confirm or Deny website, 1992, p53.

²¹⁷ Rodney Brazier, *Choosing a Prime Minister*, p10.

²¹⁸ *The Times*, 1 January 1915. After being sworn on 3 February, the King asked that Henderson be “summoned for the next Council, as he was anxious to talk to him on some of the problems touching labour brought into prominence by the war” (Sir Almeric FitzRoy, *Memoirs Volume Two*, p583). Henderson was attacked in the German socialist press for having been rendered “harmless” by the “princely income” of a Privy Counsellor. Counsellors had no such income.

²¹⁹ [Jeremy Corbyn sworn into Privy Council](#), BBC News online, 12 November 2015.

²²⁰ Court Circular, 11 November 2015. See also [Privy Council meeting, 11 November 2015](#). There was press speculation that Corbyn would not attend in person.

According to Robert Hardman, a biographer of Queen Elizabeth II, as Prime Minister Gordon Brown refused to recommend the appointment of the Conservative Shadow Chancellor, George Osborne, despite the custom of senior opposition politicians (as well as party leaders) being appointed Privy Counsellors.²²¹ Osborne, therefore, only joined the Privy Council on becoming Chancellor of the Exchequer in 2010.

After the SNP became the third largest party in the House of Commons at the 2015 general election, its Westminster leaders have routinely been appointed to the Privy Council. Previous SNP MPs had served as Privy Counsellors, but not on a consistent basis. Donald Stewart, for example, was appointed in 1977.

Since 1999, the First Ministers of Scotland, Wales and Northern Ireland have been appointed members of the Privy Council.²²² Robert Hardman recorded the reaction of someone who witnessed the admission of Nicola Sturgeon on 10 December 2014:

It was a fascinating Privy Council – quintessentially British. Every possible courtesy was extended to her by everyone, including the Queen. You’d never have known that this is a person who wants to rip up the whole constitution.²²³

The [Presiding Officer of the Scottish Parliament](#) is also sworn,²²⁴ as are the [Speaker of the House of Commons](#) and [Lord Speaker](#).

It has become a convention that most members of the statutory [Intelligence and Security Committee of Parliament](#) be appointed to, if not already members of, the Privy Council, although this practice is neither consistent nor obligatory.²²⁵

An individual can ask to become a member of the Privy Council but this is unlikely to be successful. In December 1983 the Conservative peer Lord Boothby wrote to Queen Elizabeth II asking to be admitted. Boothby’s biographer, Robert Rhodes James, recorded that:

he received a flattering and smooth reply from one of her private secretaries, which claimed that ‘The Queen was very interested to read the account you gave her of your own political career...As regards a Privy Councillorship, this is

²²¹ Robert Hardman, *Queen of Our Times*, p464.

²²² No member of Sinn Féin or the SDLP has been sworn of the Privy Council. Members of both parties have served as deputy First Minister of Northern Ireland.

²²³ Ms Sturgeon, observed Hardman, “was equally respectful and observed all the courtesies in return” (Robert Hardman, *Queen of Our Times*, p506). [The First Minister affirmed rather than swore the Privy Council Oath](#).

²²⁴ This is not true of Speakers of the Northern Ireland Assembly. The current Llywydd (Presiding Officer) of the Senedd was appointed, while the first, Lord Elis-Thomas, was already a member on assuming office in 1999.

²²⁵ Under the [Justice and Security Act 2013](#), committee members hold office for the duration of a Parliament and therefore vacate their posts upon a dissolution. See [Hosie’s the Right choice for the Privy Council honour](#), Daily Record, 26 April 2019). See also [The Intelligence and Security Committee and the Privy Council](#), Watching the Watchers blog, 25 June 2018.

of course something which is given by the Queen on the advice of her Prime Minister.’ No such advice was given.²²⁶

According to the former Defence Secretary Michael Portillo, membership of the Privy Council is highly prized among politicians. “Right Hon is a title we covet very much indeed”, he told the BBC in 2009, “partly because no one outside Parliament knows what it means.” He added:

They tend to think all MPs are right honourables but they are not – it’s only those who are admitted to the Privy Council. Not many people outside Parliament become right honourables and it’s what I wanted more than anything.²²⁷

Sir John Major agreed that it was “coveted more than any other recognition in the Commons”,²²⁸ although the Conservative MP Alan Clark worried that his (awarded as Margaret Thatcher resigned in late 1990) was “somewhat blighted by having acquired [...] the status of the Medaille militaire in the Charences hospital at Verdun”.²²⁹

The Labour MP Tony Benn, who had “always wanted to be a Privy Councillor because it is the greatest honour in the parliamentary field”, changed his mind on being appointed in 1964, as he found the experience “terrible”.²³⁰

Judicial members

In England and Wales, it is customary to appoint the [Master of the Rolls](#), [Lord Justices of Appeal](#),²³¹ the [Lord Chief Justice](#) and the [President of the Family Division](#) to the Privy Council.

In Scotland, [Senators of the College of Justice](#) (Inner House) are appointed, as is the [Lord Justice Clerk](#) and [Lord President](#), if s/he is not already a Privy Counsellor by virtue of having served as a Senator.

In Northern Ireland, [Lord Justices of Appeal](#) are also appointed, as is the Lord or Lady Chief Justice of Northern Ireland (again, if not already a Privy Counsellor by virtue of having served as a Court of Appeal judge).

²²⁶ Robert Rhodes James, *Bob Boothby: A Portrait*, London: Hodder & Stoughton, 1991, pp448-49. Rhodes James also records the “considerable reluctance” with which King George VI had agreed to Winston Churchill’s recommendation that Brendan Bracken, who became his Parliamentary Private Secretary in 1940, be appointed a Privy Counsellor.

²²⁷ [Do we need the Privy Council?](#), BBC News online, 13 May 2009.

²²⁸ John Major, *The Autobiography*, London: HarperCollins, 1999, p98.

²²⁹ This was awarded to those dying of their wounds (see Alan Clark, *Diaries*, London: Weidenfeld and Nicolson, 1993, pp378-79).

²³⁰ Tony Benn, *Out of the Wilderness: Diaries 1963-67*, London: Hutchinson, 1987, pp168-69.

²³¹ This convention was created at the formation of the new Supreme Court of Judicature in 1873, the new Lords Justices opting for that honour rather than to receive a salary higher than High Court judges. Appeal judges were often called upon to serve on the Judicial Committee.

When it comes to UK law officers, the [Attorney General](#) and [Solicitor General](#) for England and Wales and the [Lord Advocate](#) (in Scotland) are by custom appointed to the Privy Council.²³²

Ecclesiastical members

The three most senior bishops in the Church of England – the [Archbishops of Canterbury](#) and [York](#) and the [Bishop of London](#) – are appointed to the Privy Council.

Commonwealth Realm members

There are currently around 40 political and judicial members of the Privy Council from the [Commonwealth Realms](#). They were appointed on the advice of the relevant Commonwealth Realm government. This was a long-standing custom,²³³ but appears no longer to be the practice. As such, this category of membership could be regarded as “legacy” appointments.

As former UK colonies became independent realms in the 1950s, it became the practice to appoint their Prime Ministers to the Privy Council. The first was Dr [Kwame Nkrumah, the Prime Minister of Ghana, who made affirmation as a Privy Counsellor](#) during a Council meeting at Balmoral on 12 August 1959.²³⁴

Current Privy Counsellors include incumbent or former Prime Ministers of the Solomon Islands, New Zealand, Grenada, Tuvalu, Belize, Papua New Guinea, Saint Kitts & Nevis and The Bahamas.²³⁵ The Prime Minister of Jamaica was the most recent appointment in 2021.²³⁶ The decision of a Commonwealth Realm to become a republic (for example [Barbados in 2021](#)) does not affect the membership of existing Privy Counsellors appointed from the former Realm.

New Zealand (which has the [most members from any Commonwealth Realm](#)) ceased political and judicial nominations in 1999, although two pre-1999

²³² The Attorney General for Northern Ireland and the Counsel General for Wales are not.

²³³ Eleven colonial premiers were appointed UK Privy Counsellors in 1897, as were more during a Colonial Conference in London a decade later.

²³⁴ Court Circular, 12 August 1959. Ghana became a republic the following year. “Here was a man,” wrote Eleanor Roosevelt, “the hereditary chief of the Nzima tribe, who had lived in a mud village of the Gold Coast, had been in a British jail, but now was the Prime Minister of the new country of Ghana. It was a really great occasion [...] and we congratulate both the Prime Minister and the Queen” ([My Day by Eleanor Roosevelt](#), 17 August 1959).

²³⁵ This list suggests that Antigua & Barbuda, Saint Lucia and Saint Vincent & the Grenadines do not recommend appointments to the UK Privy Council. The practice ceased in Canada after 1968 and ended in Australia with John Howard in 1996 (although Labour Party leaders had declined to suggest appointments since 1967). A few serving Privy Counsellors also include current or former judges from the [Caribbean Court of Justice](#) or the [Court of Appeal of The Bahamas](#).

²³⁶ [Prime Minister Holness Appointed to Her Majesty’s Privy Council](#), Office of the Prime Minister, 8 July 2021.

appointments were sworn in the early 2000s. Australian appointments have also ceased, although one former government minister remains a member.²³⁷

The British Overseas Territories and Crown Dependencies are not represented among the members of the Privy Council. The constitutional academic Paul F. Scott has observed that this gives rise to an anomaly under which:

Independent countries which have chosen to retain the monarch as head of state are (mostly) represented on the Council, but territories for whom it makes law are not. They thus have neither direct nor indirect representation within the bodies, Parliament and Privy Council, which still in large part govern them.²³⁸

In May 2023, the States of Guernsey directed its Policy & Resources Committee to:

liaise with relevant parties, including the Lieutenant-Governor, the Ministry of Justice and the Government of Jersey in order to explore the viability of the Bailiwicks of Guernsey and Jersey having membership of the Privy Council and in due course representation on its Committee for the Affairs of Jersey and Guernsey.²³⁹

Members appointed for particular purposes

Some Privy Counsellors are appointed for specific purposes, usually to enable them to review a sensitive aspect of government policy (see **Section 3.9**).

According to Lord Hennessy, in the 1970s Len Murray, the then General Secretary of the Trades Union Congress, was made (“to the disgust of some Labour Ministers”) a Privy Counsellor so he could be consulted on industrial relations by the then Labour government.²⁴⁰

In 1974, Stanley Orme, then Minister of State at the Northern Ireland Office, was also sworn so he could answer supplementary questions following a statement by Harold Wilson regarding a planned IRA offensive.²⁴¹

4.2

The Lord President

The [Lord President of the Council](#) is “declared and sworn” at a meeting of the King in Council and their appointment is “effected by, and from the moment

²³⁷ See [Ian Sinclair AC reflects on meeting Her Majesty Queen Elizabeth II](#), The Examiner (£), 12 September 2022.

²³⁸ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), p268.

²³⁹ States of Guernsey Policy & Resources Committee, [Proposition No. 2023/20](#), 24 May 2023. This does not appear to have been acted upon.

²⁴⁰ Peter Hennessy, Whitehall, London: Pimlico, 2001, pp350-51.

²⁴¹ Harold Wilson, *The Governance of Britain*, London: Weidenfeld and Nicolson, 1976, pp43-44. The Secretary of State for Northern Ireland was not able to leave Belfast.

of, that declaration”.²⁴² The King says: “I think it proper to declare the Right Honourable [...] Lord President of the Council.”²⁴³ This is always the first item of business, even if a new Prime Minister is to take their Oath of Office as First Lord of the Treasury.²⁴⁴

When Queen Elizabeth II died on 8 September 2022, Penny Mordaunt had been appointed Lord President but not yet “declared” during a meeting of the Privy Council. As a result, when she presided at the Accession Council of King Charles III on 10 September, Ms Mordaunt was styled “Acting” Lord President, even though the individual she was apparently acting for, her predecessor Mark Spencer, was also present St James’s Palace.²⁴⁵

The Lord President (who need not be a peer) is usually concurrently the Leader of the House of Commons or of the House of Lords and thus attends the Cabinet. The position has also been held by the Deputy Prime Minister (for example, Nick Clegg between 2010-15).²⁴⁶ This has often been true during periods of “National” or coalition government.²⁴⁷

Until 1855, when a new post of Vice-President of the Council was created, the Lord President was responsible for education policy. The office holder was also responsible for the Council’s public health responsibilities, which were later transferred to the Local Government Board, and for agriculture, later transferred to the Board of Agriculture and Fisheries (see **Section 1.3**).²⁴⁸

In the modern era, the Lord President:

- attends meetings of the Privy Council, including any Emergency Privy Councils;
- considers for approval a number of Statutory Orders concerning health care, veterinary, and Scottish higher education matters;

²⁴² Privy Council Office, “The formal resignation and appointment of ministers: a memorandum by the Clerk of the Privy Council”, 10 September 1987 (Appendix A in Rodney Brazier, *Constitutional Practice*, pp310-15).

²⁴³ Wording provided by the Privy Council Office.

²⁴⁴ The Court Circular appears to suggest that a Prime Minister is simultaneously appointed First Lord of the Treasury under the royal prerogative, but in the case of Sir Keir Starmer the necessary [Letters Patent under the Great Seal were only authorised 11 days after he became premier](#).

²⁴⁵ Commons Library research briefing CBP9621, [The Accession of King Charles III](#), p13.

²⁴⁶ Lord Mandelson (2009-10) was an exception in being concurrently First Secretary of State and Secretary of State for Business, Innovation and Skills. This was the first non-Leader of the House coupling since Lord Hailsham in 1963.

²⁴⁷ See also Stanley Baldwin (1931-35), Ramsay MacDonald (1935-37) and Clement Attlee (1943-45). Of all the offices he held, Baldwin said he had “never had more work to do and had less pay than I have had as Lord President of the Council. It is one of the hardest posts that I have ever occupied” (H. Montgomery Hyde, *Baldwin: The Unexpected Prime Minister*, 1973, p361).

²⁴⁸ Between 1974 and 1979 there was a Minister of State for the Privy Council Office. John Smith, the future Labour Party leader, held this post between 1976 and 1978 and had responsibility for devolution policy.

- reviews laws and Orders as a member of the Committee for the Affairs of Jersey and Guernsey and makes recommendations to His Majesty concerning their approval;
- deals with ministerial correspondence and Parliamentary Questions relating to Privy Council business, such as the appointment of High Sheriffs;
- determines cases, where the Lord President acts as university Visitor, in a private capacity.²⁴⁹

When Lord Tweedmouth, who was made Lord President in 1908, suffered a nervous breakdown, Letters Patent were prepared enabling his duties to be carried out by other ministers. Tweedmouth resigned in October and was succeeded by Lord Wolverhampton, “the first time in its history that it has been filled by a Dissenter and a solicitor”.²⁵⁰

When the Council meets in a Commonwealth Realm, the position of Lord President may be temporarily filled by a Minister of the Crown from that Realm (see **Section 7.1**).

4.3 Privy Council Oath

Upon appointment to the Privy Council, Privy Counsellors are required to swear or affirm the statutory Oath of Allegiance and the non-statutory Privy Council Oath. By “custom and convention”, those “wishing to take an Oath are appointed first, followed by those wishing to make affirmation”.²⁵¹

This Privy Council Oath is administered (read to the appointee) as follows:

You do swear by Almighty God to be a true and faithful Servant unto The King’s Majesty as one of His Majesty’s Privy Council. You will not know or understand of any manner of thing to be attempted, done or spoken against His Majesty’s Person, Honour, Crown or Dignity Royal, but you will let and withstand the same to the uttermost of your power, and either cause it to be revealed to His Majesty Himself, or to such of His Privy Council as shall advertise His Majesty of the same. You will in all things to be moved, treated and debated in Council, faithfully and truly declare your Mind and Opinion, according to your Heart and Conscience; and will keep secret all matters committed and revealed unto you, or that shall be treated of secretly in Council. And if any of the said Treaties or Counsels shall touch any of the Counsellors you will not reveal it unto him but will keep the same until such time as, by the consent of His Majesty or of the Council, Publication shall be made thereof. You will to your uttermost bear Faith and Allegiance to the King’s Majesty; and will assist and

²⁴⁹ Privy Council Office website, [Lord President](#). This Visiting role is a residue from the Lord President’s 19th-century responsibility for education.

²⁵⁰ See Sir Almeric FitzRoy, *Memoirs Volume One*, pp352-53 & 363. Wolverhampton was a Methodist.

²⁵¹ Other than this distinction, the order of induction is alphabetical (see [UIN 24039, Privy Council, 25 January 2016](#)).

defend all civil and temporal Jurisdictions, Pre-eminences, and Authorities, granted to His Majesty and annexed to the Crown by Acts of Parliament, or otherwise, against all Foreign Princes, Persons, Prelates, States, or Potentates. And generally in all things you will do as a faithful and true Servant ought to do to His Majesty

SO HELP YOU GOD²⁵²

This Oath is often considered the basis for the confidentiality of Cabinet discussions, but this has been disputed.²⁵³ According to Roy Hattersley, as Prime Minister Harold Wilson “once assured [President] Richard Nixon that, because he was addressing ministers who had taken the privy council oath, he could speak freely about nuclear strategy”.²⁵⁴

New Privy Counsellors first attend a rehearsal, which the Labour MP and minister Richard Crossman found intolerable:

There we were, 16 grown men. For over an hour we were taught how to stand up, how to kneel on one knee on a cushion, how to raise the right hand with the bible in it, how to advance three paces towards the Queen, how to take the hand and kiss it, how to move back 10 paces without falling over the stools – which had been carefully arranged so that you did fall over them.²⁵⁵

Anthony Crosland (appointed Foreign Secretary in 1976) rehearsed at home with his children having received “a letter of archaic formality” providing him with detailed instructions.²⁵⁶ Paddy Ashdown found the “minute detail” of the rehearsal like a performance “straight out of Gilbert and Sullivan”.²⁵⁷

Oath ceremony

Several Privy Counsellors have provided accounts of the ceremony. “We all gather outside one of the reception rooms on the ground floor,” recalled the then new leader of the Liberal Democrats, Paddy Ashdown, of his swearing in 1989. “A bell is then rung for the start of the Privy Council meeting and the great mirrored doors open. Present Privy Council members go in first. Then those to be sworn in.”²⁵⁸

“The Councillors trooped in,” wrote the diarist and Conservative MP Alan Clark of his own experience two years later, “me last. Stop at the door. Bow.

²⁵² See Privy Council Office website, [The Oath of a Privy Counsellor](#) and [The Affirmation of a Privy Councillor](#).

²⁵³ The Privy Council Oath was not relied upon by the Attorney General in the Crossman diaries case (see [Attorney-General v Jonathan Cape Ltd \[1976\] QB 752](#)).

²⁵⁴ Roy Hattersley, [Let's abolish this absurdity](#), Guardian, 14 December 2000.

²⁵⁵ Richard Crossman, *The Diaries of a Cabinet Minister, Volume One: Minister of Housing 1964-66*, London: Hamish Hamilton and Jonathan Cape, 1975, p29. Tony Benn “chattered during the rehearsal and tried to look as if we were not taking it too seriously”, something that “profoundly shocked” Privy Council officials (Tony Benn, *Out of the Wilderness: Diaries 1963-67*, p168).

²⁵⁶ Susan Crosland, Tony Crosland, London: Jonathan Cape, 1982, p142.

²⁵⁷ Paddy Ashdown, *The Ashdown Diaries: Volume One 1988-1997*, London: Allen Lane, 2000, p25.

²⁵⁸ Paddy Ashdown, *The Ashdown Diaries*, p26. The [1993 ITV documentary Days of Majesty](#) includes footage of new Privy Counsellors entering a Privy Council meeting (at 24:24) in order to be sworn.

Approach the Monarch, bow again. Take the Hand, ultra lightly. Walk backwards or rather crabwise, into the line-up.”²⁵⁹ Then, recalled Ashdown:

The President of the Council [...] reads out the business for the Privy Council, which includes our swearing in. We then move forward and kneel (on the right knee, we were firmly instructed) on funny little red footstools in front of the Queen (who now reminded me of an impatient housewife in a shopping queue, sort of hopping from one foot to the other). A gilt table stands near by.²⁶⁰

Alan Clark found kneeling on the stool “bloody difficult” but “held up the Testament” in his right hand as a “dear old boy” (the Clerk of the Privy Council) “read out the oath”.²⁶¹ This was the statutory Oath of Allegiance, as set out in section 2 of the Promissory Oaths Act 1868:

I, [NAME], do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law. So help me God.²⁶²

Ashdown “felt, frankly, rather silly”,²⁶³ but he and Clark both said: “I do” as they “advanced about ten feet diagonally to another stool” in front of the Queen, where they bowed and knelt again to “kiss hands”.²⁶⁴ This involved “brushing” the back of one of the monarch’s right hand with their lips.²⁶⁵ According to the Royal Encyclopaedia, the monarch “proffers [their] right hand, palm downwards with fingers lightly closed”. The new Privy Counsellor or minister (see **Section 4.4**) will then “extend his or her right hand, palm upwards and, taking the [King’s] hand lightly, will kiss it with no more than a touch of the lips”.²⁶⁶

“It was a small, cool hand”, recalled another Conservative MP, Sir Wyn Roberts, “and I found the experience very moving.”²⁶⁷ The former Education Secretary Nicky Morgan said she “forgot to breathe”:

However experienced in life you are, that ceremony of kneeling and kissing your monarch’s hand is probably the most agonising kiss you will ever make in your lifetime.²⁶⁸

²⁵⁹ Alan Clark, *Diaries*, p400.

²⁶⁰ Paddy Ashdown, *The Ashdown Diaries*, p26.

²⁶¹ Alan Clark, *Diaries*, p400. In the early 20th century, the Testament was also kissed.

²⁶² Promissory Oaths Act 1868, [section 2](#). The Oath of Allegiance is applied to Privy Counsellors somewhat indirectly: by an exception to the saving provision in [section 14](#) of that Act. The Oath of Allegiance resembles, but is not identical to, the Parliamentary Oath taken by MPs upon their introduction to the House of Commons (see Commons Library Briefing Paper CBP7515, [The Parliamentary Oath](#)). In the Parliament of New Zealand, by contrast, the two oaths are the same.

²⁶³ Paddy Ashdown, *The Ashdown Diaries*, p26.

²⁶⁴ Paddy Ashdown, *The Ashdown Diaries*, p26.

²⁶⁵ Despite the plural, contemporary accounts suggest only a single hand is “kissed”.

²⁶⁶ Ronald Allison and Sarah Riddell (eds), *Royal Encyclopaedia: The authoritative book of the Royal Family*, London: Macmillan, 1991.

²⁶⁷ Sir Wyn Roberts, *Right from the Start*, Cardiff: University of Wales Press, 2005, p260

²⁶⁸ [What is 'kissing hands'? Old tradition King Charles used to make Keir Starmer PM](#), Mirror Online, 5 July 2024.

After kissing hands, Privy Counsellors rise to their feet, bow again and then move back into the line-up of those being sworn.

New members then raise the New Testament in their right hand, at which the long Privy Council Oath is read out by the Clerk. Those being sworn listen in silence and say “I do” at the end. Alan Clark “looked directly at the Queen” as he did so (“I bet many don’t”) and he “was glad to see that she was looking directly at me”.²⁶⁹ Now sworn, the Privy Counsellors shake hands with the monarch, the Lord President and the other, longer serving Counsellors present. Tony Benn “did the most miniature bow ever seen” and returned to the line-up.²⁷⁰

“At this,” recalled Paddy Ashdown, “the Queen put down her pen and came forward and we all had an engaging little chat. She talked about murders in Jamaica (she had to approve a court sentence there), insider trading – ‘Isn’t the Privy Council dealing with very modern things these days?’ – etc.”²⁷¹ At his swearing, Clark found the conversation “painfully, grotesquely, banal [...] loosely devoted to the various other Orders in Council that were on the business list. Inevitably, these were all concerned with Euro[pean]-legislation”.²⁷² Richard Crossman recalled that “at the end informality broke out” and the Queen “said, ‘You all moved backwards very nicely,’ and we all laughed.”²⁷³

Newly sworn Privy Counsellors are allowed to keep their copies of the New Testament, which have a “personal presentation slip” glued on the inside front cover, “commemorating the occasion and signed by the Lord President”.²⁷⁴ In 1974, however, Barbara Castle recalled “a moment’s fun with the Queen’s chaps when they asked those with a Bible if they would mind returning it this time if they had already had one. (More economy!)”²⁷⁵

In May 1997, Jack Straw records that after several new Labour ministers were sworn:

the Queen remarked that a dog (David Blunkett’s) had never attended this ceremony before. Donald Dewar, the new Scottish Secretary, quickly replied Ah, ma’am; every dog has its day.²⁷⁶

Difficulties at the ceremony

Political diaries and memoirs are full of swearings having gone wrong on account of old age or procedural confusion. In 1899, Lord Brampton (an English judge) “was so gone in the forelegs that he was excused from kneeling” and could only support himself “while stooping to kiss the Queen’s

²⁶⁹ Alan Clark, *Diaries*, p400

²⁷⁰ Tony Benn, *Out of the Wilderness: Diaries 1963-67*, p169

²⁷¹ Paddy Ashdown, *The Ashdown Diaries*, p26

²⁷² Alan Clark, *Diaries*, p400

²⁷³ Richard Crossman, *The Diaries of a Cabinet Minister, Volume One*, p29

²⁷⁴ Sir Wyn Roberts, *Right from the Start*, p261

²⁷⁵ Barbara Castle, *The Castle Diaries 1974-76*, London: Weidenfeld & Nicolson, 1980, p35

²⁷⁶ Jack Straw, *Last Man Standing: Memoirs of a Political Survivor*, London: Macmillan, 2012, p204.

hand [...] by laying tight hold of Her Majesty's fingers".²⁷⁷ Another judge, Sir Gainsford Bruce, fared little better in June 1904:

On arrival he was in a paralytic condition, and it was with the greatest difficulty he could be brought into the antechamber [...] While [...] the oath was being administered to Sir H[enri] Taschereau [a Canadian jurist] he [Bruce] suddenly reeled, and, but for the promptness and strength of Alfred Lyttelton [the Colonial Secretary], who held him up till I found a chair, would have fallen. For a few moments he looked as if he was in a state of collapse, and I feared the worst. The King looked very perturbed and signed to me to hurry matters, and we just managed to swear him, the King leaving his place and presenting his hand to be kissed while he seemed to retain some little consciousness.²⁷⁸

On other occasions the objections of Sir Almeric FitzRoy, the then Clerk of the Council, were sartorial and snobbish. When the publisher and theatre owner Henry Du Pré Labouchère was sworn in 1906, he:

comported himself with characteristic effrontery. He came in a cut-away coat, studiously refrained from kissing the Testament in connection with the oath of allegiance, and indulged throughout the ceremony in a series of sotto voce remarks which were distinctly audible to me standing on the left of the King.²⁷⁹

FitzRoy "expected better things" of Lord Justice Farwell but he "made a mess of it, throwing to the winds all the instructions he had received, and apparently losing his head completely":

I had a short audience of the King afterwards, and showed him the instructions which I had circulated, with which he expressed himself thoroughly satisfied: "But they lose their heads," he said, adding, "it is very amusing."²⁸⁰

According to two 1960s diarists, Queen Elizabeth II also found such mishaps amusing. Sir Godfrey Agnew, the then Clerk of the Council, talked of the "worst swearing-in I have ever seen". In Barbara Castle's telling, the:

five [Privy Counsellors] came streaming in and every one of them flopped on to one knee on the floor! He indicated that they should move nearer the Queen on to the stools and to his astonishment everyone moved towards the stools on his knees! 'It was an incredible sight.' When it came to kissing hands one unfortunate Privy Councillor lunged at the stool in front of the Queen, missed it and knelt there with one leg cocked in the air. He was only saved from toppling right over by clutching the Queen's hand.²⁸¹

In Richard Crossman's account, the Privy Counsellors:

knocked a book off the table and it had to be rescued by the Queen, who looked blackly furious. After the Privy Council had gone out [Sir Godfrey] crept back into the room and she said something very pleasant to him. He said how

²⁷⁷ Sir Almeric FitzRoy, *Memoirs Volume One*, p12

²⁷⁸ Sir Almeric FitzRoy, *Memoirs Volume One*, pp208-09

²⁷⁹ Sir Almeric FitzRoy, *Memoirs Volume One*, p282. A Labouchère-sponsored amendment to a 1885 Act of Parliament criminalised all male homosexual activity in the UK for the first time.

²⁸⁰ Sir Almeric FitzRoy, *Memoirs Volume One*, p295

²⁸¹ Barbara Castle, *The Castle Diaries 1964-70*, p333

terribly sorry he was and she said, ‘You know I nearly laughed.’ Then he realized that when she’d looked terribly angry it was merely because she was trying to stop herself laughing.²⁸²

During his swearing in, Alan Clark forgot that the Privy Council Oath followed the Oath of Allegiance: “The old Clerk, secretly delighted, rolled his eyes in mock resignation.”²⁸³ More recently, the then Chancellor, Gordon Brown, recalled a Saturday meeting of the Privy Council following the May 1997 general election, when:

Nick Brown, our new chief whip, was preparing to kneel on the first stool to take his oath when the Queen interrupted, saying: ‘Not yet.’ There followed what seemed an eternity. Was she, as Nick thought, about to refuse him membership? To his relief, the Queen explained that he had to wait until one of his colleagues had finished being sworn in.²⁸⁴

The Labour Cabinet minister Clare Short recalled once finding herself “very right for time” in attending a Privy Council meeting:

We drove at speed to the palace and I rushed up the stairs, causing a commotion as I entered because the meeting had already started. I apologised and the Queen was very gracious and then proceeded with the business. After a couple of minutes, my bleep [pager] went off and I caused another kerfuffle as I retrieved it and turned it off. At the end of the meeting, the Queen had a word with each of us, as she does, and said to me with a twinkle in her eye, ‘Well, my dear, I hope it wasn’t anyone important?’²⁸⁵

Religious variation

In the case of Jews and Quakers the ceremony is modified. When Lord Samuel, who became Chancellor of the Duchy of Lancaster in 1909, was sworn he not only took his Oath on the Pentateuch (the first five books of the Old Testament) “but took his hat into the Presence and held it over his head as he kissed the book”. Joseph Pease, meanwhile, the new Chief Whip and a Quaker, “made affirmation, which he read for himself in the usual way”.²⁸⁶

In the 1920s, [Sir Satyendra Sinha](#), an Indian lawyer and statesman, wanted to take his oaths “on the Upanishads, which constitute the mystic and philosophical section of the Vedic scriptures”, although the then Clerk of the Council feared the book was “of a somewhat inconvenient bulk”.²⁸⁷ Another Indian politician, [V. S. S. Sastry](#), appeared to Sir Almeric to have “travelled so far from his priestly status as a Brahmin that there are no sacred books within the range of his religious horizon upon which he could be sworn”.²⁸⁸

²⁸² Richard Crossman, *The Diaries of a Cabinet Minister, Volume Two: Lord President of the Council and Leader of the House of Common*, 1966-68, London: Hamish Hamilton and Jonathan Cape, 1977, p44

²⁸³ Alan Clark, *Diaries*, p400.

²⁸⁴ Gordon Brown, *My Life*, *Our Times*, pp197-98.

²⁸⁵ Clare Short, *An Honourable Deception? New Labour, Iraq, and the Misuse of Power*, London: Free Press, 2004, p63.

²⁸⁶ Sir Almeric FitzRoy, *Memoirs Volume One*, p367.

²⁸⁷ Sir Almeric FitzRoy, *Memoirs Volume Two*, p690.

²⁸⁸ Sir Almeric FitzRoy, *Memoirs Volume Two*, p770.

The former Labour minister Roy Hattersley recalled that at his introduction to the Privy Council, the Archbishop of York was to be sworn while two other ministers wished to use the Douay Bible and the Old Testament. Hattersley wished to affirm rather than swear his oath. After the ceremony:

Jim Callaghan – who had been on duty as one of the established Council members – walked out of the Audience Room with an avuncular arm around my shoulder. The Archbishop of York dressed like a character from *The Six Wives of Henry VIII* – was waiting outside. Jim steered me in his direction. ‘This, your Grace, is Roy Hattersley. Her Majesty had to keep you waiting because he wouldn’t swear on the Bible.’²⁸⁹

On being sworn in 2010, the Liberal Democrat MP David Laws found himself at the back of a queue alongside Liam Fox, the Defence Secretary:

Out of curiosity, the two men inquired how the order was drawn up. An official told them they were at the rear because of their Roman Catholicism. There is a ranking of the religions – and it puts Catholics and Muslims near the back.²⁹⁰

Political objections to the Oath

The Labour MP Tony Benn found the terms of the Privy Council Oath “degrading and distasteful”, an “attempt to impose tribal magic and personal loyalty on people whose real duty was only to their electors”.²⁹¹ He only agreed to take it for the sake of his party and so he could access Cabinet papers. Benn later claimed the Oath “was completely incompatible with the principle of Cabinet collective responsibility”.²⁹²

Tony Greenwood (appointed Colonial Secretary in 1964) agreed with Barbara Castle (Minister for Overseas Development) that it was “a lot of medieval mumbo jumbo and that only rogues need to swear an oath”.²⁹³ The historian Lord Hennessy, however, believed the Oath was “not some antiquarian residual kept for reasons of ceremony and no more. It has life and bite.”²⁹⁴

4.4

Oath of Office

New Cabinet ministers are also required to swear or affirm the statutory Oath of Office (or “Official Oath”) after they have been appointed to the Privy Council. They do so while kneeling. The oath is as follows:

²⁸⁹ Roy Hattersley, *Who Goes Home? Scenes from a Political Life*, London: Little, Brown, 1995, p139.

²⁹⁰ This is so that adherents to those religions can be sworn together, as a different text is required. See [How civil servants kept the Privy Council's secrets](#), BBC News online, 18 September 2015. Laws was asked to remove this account from a draft of his memoirs.

²⁹¹ Tony Benn, *Out of the Wilderness: Diaries 1963-67*, pp168-69. “I never knew until that moment the meaning of the administration of an oath”, Benn later told a Commons committee. “They injected me with it” (Public Administration Committee, [Minutes of Evidence](#), 10 April 2003, Q4).

²⁹² Tony Benn, *Against the Tide: Diaries 1973-76*, London: Hutchinson, 1990, pp271-72.

²⁹³ Barbara Castle, *The Castle Diaries 1964-70*, pxii.

²⁹⁴ Peter Hennessy, *Whitehall*, p351.

I, [NAME], do swear that I will well and truly serve His Majesty King Charles III in the office of [...] So help me God.²⁹⁵

Section 5 of the Promissory Oaths Act 1868 requires that the Oath of Office be tendered to and taken by each of the officers (ministers) named in the first part of the Schedule to the Act as soon as possible after their acceptance of office. This has been amended twice, first by an Order in Council dated 9 August 1872 (which now applies only to the Chancellor of the Duchy of Lancaster; see below) and second by the [Promissory Oaths Order 1939](#), which requires the Oath of Office to be taken by members of the Cabinet before the King in Council (see **Table 1**).²⁹⁶

Some “phantom” offices are included in the Schedule to the 1868 Act, including the President of the Board of Trade. Because the Board of Trade is still, technically, a Committee of the Privy Council, its President is appointed by an Order in Council approved at the same time as the holder of the substantive office receives their seal and takes the Oath of Office. As this office is now held in conjunction with another substantive Cabinet position, they must take the Oath of Office twice.²⁹⁷

The taking of the Oath of Office is “a consequence of an appointment and not the appointment itself”, the appointment being effective from the moment of the King’s approval of the Prime Minister’s list of recommendations or, in the case of offices which possess seals, from the moment those seals are delivered by the Sovereign (in Council) to the holder of the office.²⁹⁸

An exception is the Chancellor of the Duchy of Lancaster, who receives his or her seals in private audience with the King, usually immediately after the Privy Council at which other ministerial appointments are made. They take the Oath of Office and kiss hands during that audience.²⁹⁹

According to a 1987 Privy Council Office memorandum, the kissing of hands was:

a courtesy which follows the oath when that is taken before The [King] in Council. It is a practice which is invariably observed. It is not, however, a formality on which the appointment in any way depends.³⁰⁰

²⁹⁵ [section 3 Promissory Oaths Act 1868](#).

²⁹⁶ And by those ministers included in Part I of the Schedule to the 1868 Act but not in the Cabinet before another senior minister, usually the Lord President.

²⁹⁷ The same is true of the Lord High Chancellor of Great Britain (the Lord Chancellor) who is also Secretary of State for Justice. The Lord Chancellor is also required to take the statutory Lord Chancellor’s Oath under [section 17](#) of the Constitutional Reform Act 2005.

²⁹⁸ [Seals of office are stored in red leather boxes](#). In 2005 Sir Tony Blair, the then Prime Minister, stated that the “formalities associated with Ministerial appointments, such as the receipt of a seal of office, are not relevant to the making of statements in the House [of Commons]” ([HC Deb 10 January 2005 Vol 429 c95W \[Home Secretary\]](#)).

²⁹⁹ Rodney Brazier, *Constitutional Practice*, p315.

³⁰⁰ Privy Council Office, “The formal resignation and appointment of ministers: a memorandum by the Clerk of the Privy Council”.

The Court Circular refers to ministers as having “kissed hands upon appointment”, although this does not always take place.³⁰¹

The Oath of Office can give rise to anomalies. When Tony Benn became Minister of Power in addition to Minister of Technology in October 1969, he took his Oath of Office at Buckingham Palace and then, “forty-four seconds later [...] heard the Transfer of Functions Order being approved, so I was Minister of Power for forty-four seconds and then that Department was dissolved”.³⁰² And on joining the government in 1964, Barbara Castle could only take her Privy Council Oath as her new Ministry of Overseas Development did not yet exist. She only took her Oath of Office three months later (when the relevant Bill had become law) and did not receive any backdated pay.³⁰³

If a department changes its name, then its minister is required to retake their Oath of Office. For example, on 6 July 2024, the Rt Hon Angela Rayner was sworn as “Secretary of State for Levelling Up, Housing and Communities”,³⁰⁴ while on 10 July she was sworn as “Secretary of State for Housing, Communities and Local Government”.³⁰⁵ This flowed from the new Labour government’s decision to remove “Levelling Up” from that department’s name and revert to a previous formulation.³⁰⁶

Richard Crossman records in his diaries that when he was appointed as the first Secretary of State for Social Services in 1968, he was given the seals of the recently abolished Secretary of State for Commonwealth Affairs, with sticky tape used to alter the text.³⁰⁷

One former Secretary of State has denied receiving any seals. In his memoirs, Roy Hattersley wrote that although the Court Circular recorded that he had received them on kissing hands as Secretary of State for Prices and Consumer Protection, “if they existed outside constitutional fiction, they were always kept safely away”.³⁰⁸

³⁰¹ For example, if a Privy Council meeting takes place remotely, or if the monarch is unwell.

³⁰² Tony Benn, *Office Without Power: Diaries 1968-72*, London: Hutchinson, 1988, pp205-08. Benn had refused to travel to Balmoral to do so, which led to “a very sharp exchange with the Privy Council office”.

³⁰³ Barbara Castle, *The Castle Diaries 1964-70*, pxii.

³⁰⁴ Court Circular, 6 July 2024.

³⁰⁵ Court Circular, 10 July 2024.

³⁰⁶ Rayner later recalled: “I went to see the king to get the royal seal for my department as part of the government. But what I didn’t know was, when the next day I changed the name of that department, I had to go back to the king again to do it all over again. The king said ‘hmm, back again so soon’” ([Angela Rayner talks ‘chip on shoulder’ and meeting with King Charles III on her return to Ashton](#), Manchester Evening News, 13 July 2024).

³⁰⁷ Richard Crossman, *Diaries of a Cabinet Minister Vol 3: Secretary of State for Social Services 1968-70*, London: Hamish Hamilton, 1977, p233.

³⁰⁸ Roy Hattersley, *Who Goes Home? Scenes from a Political Life*, London: Little Brown, 1995, p212.

4.5

Surrender of seals of office

Seals of office were once surrendered by outgoing government ministers in private audience with the Monarch. The last time this occurred on any scale was after the 1997 general election,³⁰⁹ although farewell audiences continued until after the 2010 general election.³¹⁰ Most seals are now collected from outgoing ministers by the Privy Council Office.

The custom of the Lord Chancellor relinquishing the Great Seal in private audience with the monarch appears to have continued for. In his memoirs, Jack Straw records that on 13 May 2010:

a whole week after the general election itself, that I got to the Palace to hand back the Great Seal of my Office. The new ministers were arriving as I did. They were taken to the usual suite of rooms used for such formal occasions. I was ushered down an unfamiliar corridor to the 'Belgian Suite' to take my leave of the Queen. She made some very gracious remarks about my service as a minister. I took my leave, the last man standing from Labour's longest period in government.³¹¹

Robert Buckland appears to have been the last Lord Chancellor to "deliver up" the Great Seal in private audience. The Court Circular of 20 September 2021 records that:

The Rt. Hon. Robert Buckland MP had an audience of The Queen this afternoon via video link and delivered up the Great Seal and took leave upon relinquishing his appointment as Lord Chancellor and Secretary of State for Justice.³¹²

³⁰⁹ Court Circular, 2 May 1997. Charles Clarke personally delivered up his seals as Home Secretary in private audience on 14 June 2006. Whips with Household appointments also used to return their Wands of Office in person, but that custom also seems to have fallen into desuetude.

³¹⁰ Court Circular, 9 June 2010.

³¹¹ Jack Straw, *Last Man Standing*, p552.

³¹² Court Circular, 20 September 2021.

Table 1 Ministerial appointments and the Privy Council		
Office	Procedure	Documents (if any)
Prime Minister	Received in private Audience and kisses hands	
First Lord of the Treasury	Takes Oath of Office in Council as First Lord of the Treasury	Treasury Commission – a member of the Treasury Board – by Letters Patent
Lord President	Declared in Council, and thereupon takes Oath of Office and kisses hands	
Lord Chancellor	Takes Oath of Office in Council, kisses hands and receives the Great Seal	
Lord Privy Seal	Takes Oath of Office in Council, kisses hands & receives Privy Seal	
Secretaries of State	Take Oath of Office in Council, kiss hands and receive seals	
Chancellor of the Exchequer	Takes Oath of Office in Council, kisses hands and receives seals of office	Letters Patent Treasury Commission – as member of Treasury Board – by Letters Patent (distinct from above)
Chancellor of the Duchy of Lancaster	Takes of Oath of Office in private Audience (usually after the Council), kisses hands and receives the seal of office ³¹³	
Paymaster General	Sworn before the Lord President of the Council	Warrant under the Sign Manual
Law Officers		Letters Patent
Other Treasury Ministers and Lords of the Treasury		Treasury Commission – as members of the Treasury Board – by Letters Patent
President of the Board of Trade (a “phantom” office)	Appointee to substantive office, with which this is held, takes Oath in respect of both offices	Order in Council approved at time Oath of Office is taken
Other phantom offices	Oath of Office is taken by holder of substantive office if required by Promissory Oaths Act and in accordance with procedure stipulated	

Source: “The formal resignation and appointment of ministers: a memorandum by the Clerk of the Privy Council”, 1987 (with amendments)

³¹³ According to the Duchy of Lancaster, its Chancellor is appointed by Letters Patent under the seals of the Duchy and County Palatine.

4.6

“Privy Council terms”

Appointments to the Privy Council are also made to allow non-Cabinet ministers and senior members of opposition parties to be given briefings on a confidential basis known as “Privy Council terms”.³¹⁴

There is no formal guidance for briefings given in this way. Such an arrangement is entirely voluntary, and anyone not wishing to be briefed on such terms may decline the invitation. Having accepted a briefing on “Privy Council terms”, however, an individual is understood to have agreed to treat it as confidential.³¹⁵

According to the Privy Council Office website:

it is only in very special circumstances nowadays that matters will come to a Privy Counsellor on “Privy Council terms”. These will mostly concern matters of the national interest where it is important for senior members of Opposition parties to have access to Government information.³¹⁶

Whether or not to accept the offer of confidential information on Privy Council terms can become a matter of political judgement, not least because it could restrict an opposition politician’s agency. Rodney Brazier gives this example:

[Harold] Macmillan approached Hugh Gaitskell as Leader of the Opposition with a proposal that they should hold joint talks on defence policy [in 1958]. Gaitskell declined. Apart from the political difficulties which such discussions would almost certainly have caused him within his own party, it was also suggested (and possibly Gaitskell accepted the suggestion) that such an arrangement would be incompatible with the Opposition’s constitutional function of criticizing the government; for if Gaitskell had received secret information this would have inhibited him when his party pressed him to attack the government’s policy.³¹⁷

Similarly, during the 1980s James Molyneaux, the then leader of the Ulster Unionist Party, was offered a briefing on Privy Council terms but refused “since he could not have disclosed what he had learned while also sharing responsibility”.³¹⁸

In the 1950s, some Conservative MPs sought to have the Labour MP Aneurin Bevan prosecuted for violation of his Privy Council Oath, by reason of his opposition to the Suez invasion.³¹⁹ The Scottish Labour MP John Wheatley used

³¹⁴ Privy Council Office website, [FAQs](#).

³¹⁵ Cabinet Office, [The Cabinet Manual](#), para 1.12.

³¹⁶ Privy Council Office website, [History](#).

³¹⁷ Rodney Brazier, *Constitutional Practice*, p169.

³¹⁸ [Molyneaux, James Henry](#), Dictionary of Irish Biography website.

³¹⁹ Patrick O’Connor, [The Constitutional Role of the Privy Council](#), p13.

Privy Council terms to discuss his decision to accept the offer of a place on the Scottish bench with Clement Attlee, the then Prime Minister.³²⁰

More recently, briefings on Privy Council terms have occurred frequently, and at the discretion of the Prime Minister. For example, Tony Blair briefed Iain Duncan Smith, the then Conservative Party leader, and Charles Kennedy, the then Liberal Democrat leader, ahead of a recall of Parliament to discuss the Iraq crisis in 2002. When the National Security Council, a Cabinet Committee, was established in 2010, this became a means by which opposition politicians could be briefed on Privy Council terms. The then Labour leader Ed Miliband attended discussions regarding Libya in 2011 and Syria in 2013; Harriet Harman discussed Syria and ISIS in July 2015; and opposition leaders in April 2018, prior to military action in Syria.³²¹ There was also a briefing for opposition Privy Counsellors in March 2019 on “the impact of [a] No Deal” Brexit.³²²

This relationship between Privy Counsellors of different parties has occasionally influenced policy. One example was the [Weatherill Amendment](#) to the House of Lords Act 1999. This retained 92 hereditary peers and reflected, in the words of the then Lord Chancellor Lord Irvine of Lairg, “a compromise negotiated between Privy Councillors on Privy Council terms and binding in honour on all those who have come to give it their assent”.³²³

After the then Prime Minister (David Cameron), Deputy Prime Minister and Liberal Democrat leader (Nick Clegg) and Leader of the Opposition (Ed Miliband) agreed to devolve more powers to Scotland in the closing stages of the 2014 independence referendum campaign, Lord Forsyth was critical of what he called “three privy counsellors on the phone, cooking up a scheme”. That style of government, “where privy counsellors could consult each other and create legislative change of this kind, since the days of Wolf Hall”.³²⁴

4.7

Can a Privy Counsellor resign?

Technically, a Privy Counsellor cannot resign. As *The Times* observed in 1915:

[I]t would seem that the office [of Privy Counsellor] cannot be vacated by the holder [...] as the honour is conferred by the King he alone can take it away.³²⁵

Over the past century, however, an individual’s request to resign from the Privy Council has been construed as a request seeking the monarch’s agreement to the removal of that individual’s name from the list of Privy Counsellors. This request is usually made following a political scandal or a

³²⁰ Lord Wheatley, *One Man’s Judgment: An autobiography*, London: Butterworths, 1987, p139.

³²¹ [HC Deb 17 April 2018 Vol 639 c201](#)

³²² Alan Duncan, *In the Thick of It: The Private Diaries of a Minister* (kindle edition), London: William Collins, 2021, p437.

³²³ [HL Deb 30 March 1999 Vol 599 c207](#)

³²⁴ [HL Deb 26 Feb 2015 Vol 759 c1781](#)

³²⁵ *The Times*, 19 May 1915.

criminal conviction. The following Privy Counsellors were removed at their own request:

- John Profumo (1963)³²⁶
- John Stonehouse (1976)
- Jonathan Aitken (1997)
- Chris Huhne (2013)
- Denis McShane (2013)³²⁷

Others have asked to be removed on a point of principle. In 2013, Lord Prescott did so in protest at delays to changes in press regulation following the phone-hacking scandal.³²⁸ Percival Patterson, a former Prime Minister of Jamaica, on the basis that there was now a clear consensus for Jamaica to become a republic.³²⁹ Sir Seamus Treacy, a Northern Ireland Appeal Judge, resigned from the Privy Council a few months after his appointment in 2017.³³⁰ In such cases, the minutes of a Privy Council meeting will record an “Order directing that the name [...] be removed from the List of Privy Counsellors”.³³¹

“Enforced removal” is a matter for the Sovereign, “acting on the advice of Ministers”.³³² At a meeting on 8 June 2011, for example, an Order “striking out the name” of Elliot Morley from the list of Privy Counsellors was made following convictions for fraud in relation to his Parliamentary expenses.³³³

In June 2023, the Liberal Democrat MP Vera Hobhouse asked Penny Mordaunt, the then Lord President, if “she would recommend that Boris Johnson be stripped of his title as a right hon. Privy Counsellor” as his actions in office were “not right, and they were not honourable”. The Lord President replied that:

such a thing would be advice from the Prime Minister given to the King, and I would prefer His Majesty to be kept out of such matters. The threshold, for people who have been booted off the Privy Council previously—for example, having committed financial fraud—is much higher than the situation we were

³²⁶ “The House of Commons held him to have been guilty of contempt of the House,” observed Lord Denning in his report on the Profumo Affair. “His name was removed from the Privy Council. His disgrace is complete” (Lord Denning’s Report, Cmnd 2152, London: HMSO, October 1963, p72).

³²⁷ [Right honourable no more: The Privy Council quitters](#), BBC News online, 12 February 2013.

³²⁸ “The royal charter involves the monarchy in politics” explained Lord Prescott, which is “why I resigned as a privy counsellor” ([HL Deb 13 Dec 2017 Vol 787 c1606](#)).

³²⁹ [Patterson resigns as Privy Council member](#), Radio Jamaica website, 14 April 2022.

³³⁰ See [Privy Council meeting, 24 April 2018](#). As a QC in 2000, Treacy had successfully challenged the requirement that barristers in Northern Ireland swear an Oath of Allegiance to the Queen before being called to the Bar. He argued that it discriminated against his republican beliefs.

³³¹ See, for example, [Privy Council meeting, 9 October 2013](#).

³³² [HL Deb 26 Oct 2009 Vol 713 cWA106](#)

³³³ [Privy Council meeting, 8 June 2011](#)

discussing on Monday [the conduct of Mr Johnson] [and] I do not think it is an appropriate course of action in this instance.³³⁴

The earlier case of Sir Edgar Speyer, a United States-born financier, took years to resolve and highlighted contemporary prejudices (Sir Edgar was Jewish). Appointed to the Privy Council in 1909 for his philanthropic activity, Speyer offered to resign following press accusations that he had collaborated with the Germans during the First World War. This was refused by the Prime Minister, H. H. Asquith, who referenced the King's support. Following a Home Office investigation, Sir Edgar's naturalisation as a British citizen was revoked and at a meeting on 13 December 1921, the King in Council ordered that "the name of Sir Edgar Speyer, B.t., be struck out of the List".³³⁵

The only Prime Minister to have been struck off the list was the 4th Duke of Devonshire. When King George III suspected the former premier of plotting against him, he personally struck out Devonshire's name.³³⁶

Historically, the monarch could resist certain appointments. In 1859 Queen Victoria refused to consent to a Privy Councillorship for the Liberal politician John Bright because of his "systematic attacks upon the institutions of the country", while in 1906 King Edward VII objected to several appointments but gave way after being pressed by his ministers.³³⁷

4.8

Privileges of Privy Counsellors

Privy Counsellors have certain privileges if they are also members of either House of Parliament.³³⁸

House of Lords

Under House of Lords Standing Orders, Privy Counsellors are permitted to sit on the steps of the [Sovereign's Throne](#).³³⁹ This symbolises their status as

³³⁴ [HC Deb 22 June 2023 Vol 734 c947](#)

³³⁵ [London Gazette, 13 December 1921](#). By contrast, when anti-German sentiment forced Prince Louis of Battenburg to resign as First Sea Lord in 1914, he asked to be appointed to the Privy Council and King George V agreed in a public show of support (see Martin Gilbert, *Winston S. Churchill: The Challenge of War 1914–1916*, New York: Houghton Mifflin, 1971, p149).

³³⁶ John Brooke, *King George III*, London: Panther, 1974, pp170–71.

³³⁷ Ivor Jennings, *Cabinet Government* (3rd edition), Cambridge: Cambridge University Press, 1959, p463.

³³⁸ Peers who are Privy Counsellors possess the right of personal access to the Sovereign individually, and MPs collectively, though this is now more theoretical than real. There are no equivalent privileges for members of the Northern Ireland Assembly or Scottish and Welsh Parliaments who are also Privy Counsellors.

³³⁹ See [Companion to Standing Orders and Guide to Proceedings of the House of Lords](#), para 1.73. Ministers who are not Privy Counsellors, and Members of the House of Commons, may stand or sit below the Bar of the House of Lords.

advisers to the monarch. Theresa May did so as Prime Minister when peers were considering Brexit legislation.³⁴⁰

On the “spiritual” (government) side of the Chamber, life or hereditary Privy Counsellors who belong to the governing party customarily occupy the front bench closest to the bar. Lords spiritual who are Privy Counsellors tend to occupy the first of the two bishops’ benches. On the “temporal” side of the Chamber, life or hereditary peers who are Privy Counsellors and affiliated with the principal opposition party generally sit on the front bench closest to the Throne.³⁴¹

Privy Counsellors may present [Addresses to the Crown](#) from the House of Lords,³⁴² signify on third reading [King’s or Prince’s Consent](#) for legislation,³⁴³ or form a Royal Commission to perform certain functions on the King’s behalf, for example, the prorogation of Parliament.³⁴⁴

House of Commons

Following [a recommendation from the Select Committee on Modernisation of the House of Commons](#), the Speaker is no longer under any obligation to give precedence to Privy Counsellors in debate.³⁴⁵ Since the start of the 1997 Parliament, however, Privy Counsellors are called on to take the Parliamentary Oath before certain other Members.³⁴⁶

As in the House of Lords, Messages under the Royal Sign Manual are acknowledged by an Address, which may be presented from the Commons by Privy Counsellors.³⁴⁷ King’s or Prince’s Consent is usually signified by a Privy Counsellor who is also a serving Minister of the Crown.³⁴⁸

Until 1922, the convention was that seats on the front bench to the Speaker’s left were for opposition MPs who were also Privy Counsellors. As Rodney Brazier has written, this “presented no great difficulty”:

when the Conservative and Liberal Parties alternated in office, because the outgoing Cabinet would simply move to the Opposition front bench. When Labour formed the Opposition for the first time in 1922, however, very few of [Ramsay] MacDonald’s colleagues were Privy Counsellors: the Speaker ruled that in the circumstances his Shadow Cabinet could all occupy the Opposition front bench, thus resolving that technical difficulty.³⁴⁹

³⁴⁰ [Respect Brexit decision, peers urged](#), BBC News online, 21 February 2017.

³⁴¹ See Companion to Standing Orders, para 1.71.

³⁴² Companion to Standing Orders, para 2.22.

³⁴³ Companion to Standing Orders, para 8.196. The Privy Counsellor doing so must also be a minister.

³⁴⁴ Companion to Standing Orders, Appendix C.

³⁴⁵ [Erskine May, para 21.8](#). This had long been an “old custom” (see [HC Deb 5 March 1953 Vol 512 c567](#))

³⁴⁶ [Erskine May, para 8.23](#). See also [HC Deb 17 Dec 2019 Vol 669 c11](#).

³⁴⁷ [Erskine May, para 9.8](#).

³⁴⁸ [Erskine May, para 9.6](#). This is not an absolute requirement, as in the Lords. The Prime Minister also cannot be interrogated “with regard to [...] the appointment and dismissal of Privy Counsellors” ([Erskine May, para 22.16](#)).

³⁴⁹ Rodney Brazier, *Constitutional Practice*, p176.

5

Meetings of the Privy Council

The Privy Council meets on average about nine or ten times a year. It usually meets every month except in January, August and September.³⁵⁰

Meetings are held wherever the King is in residence, most commonly at Buckingham Palace, Windsor or Balmoral.³⁵¹ Meetings can also be held in the presence of a Regent (if a monarch is incapacitated) or Counsellors of State (if the monarch is ill or absent from the Realm).³⁵²

Business at meetings of the Privy Council “is transacted by those of His Majesty’s Ministers who are Privy Counsellors, that is all Cabinet Ministers and a number of junior Ministers”.³⁵³ As a former Lord President of the Council explained:

[O]nly ministers of the current Government attend scheduled meetings of Her Majesty’s Privy Council, and are notified or invited on a meeting by meeting basis. I attend each Privy Council meeting in my capacity of Lord President of the Council, together with a quorum of three further Government ministers. The quorum are invited on a rota basis, dependent on availability.³⁵⁴

Once a minister has accepted a summons to a meeting of the Privy Council, this takes precedence over all other engagements.³⁵⁵

The Clerk of the Council always prepares a short explanation of every item of business for the monarch in advance. As Alex Galloway, a former Clerk of the Council, said of his briefings for Queen Elizabeth II:

³⁵⁰ [HC Deb 28 June 1999 Vol 334 c17W](#)

³⁵¹ During previous reigns, meetings took place at country houses where the monarch was a guest (for example, Knowsley House and Arundel Castle) and even on board the Royal Yacht Britannia. Edward VII would use the Tapestry Drawing Room at Goodwood for meetings during race week. On 15 September 2023, King Charles III [held a Privy Council at Dumfries House](#).

³⁵² See Commons Library Briefing Paper CBP9374, [Regency and Counsellors of State](#). The first Privy Council of the modern era to take place without the monarch was on 4 April 1906. It was held “under the King’s Commission by the Lord Chancellor, the Prime Minister, and the Lord President”, although all business transacted had “previously been authorised under the sign-manual” (see Sir Almeric FitzRoy, *Memoirs Volume One*, p288).

³⁵³ Privy Council Office website, [History](#). In the early 20th century, usually the Lord President was the only Cabinet minister habitually present, with others summonsed for particular business.

³⁵⁴ [UIN 156454, Privy Council, 21 June 2018](#). Privy Counsellors who have left government do not attend Privy Council meetings, nor are they consulted on Privy Council business (see [UIN 68599, 20 March 2017](#)). The quorum of three dates from the reign of Queen Victoria. King Edward VII was in the habit of suggesting which Privy Counsellors would attend his meetings.

³⁵⁵ Cabinet Office, [The Cabinet Manual](#), para 1.15. When Michael Foot, Lord President between 1976 and 1979, was forced to miss a meeting to discuss far-left entryism at Labour’s National Executive Committee he wrote the Queen a three- or four-page letter explaining why (Kenneth O. Morgan, *Michael Foot: A Life*, p334). David Lloyd George had a habit of missing meetings to which he had been summonsed.

It might be a couple of sentences explaining the reasons for, say, amending the Charter of the University of Keele or freezing the assets of a terrorist suspect. There might be dozens of items but the Queen reads the lot. It's just like her Red Boxes. It's often dense, turgid stuff.

Nevertheless, Galloway told the journalist Robert Hardman that he “always had the sense that the Queen really enjoys every aspect of it”.³⁵⁶

Before a meeting, those Privy Counsellors in attendance line up and wait as the Lord President (or another minister acting on their behalf) has a private audience with the monarch. As Robert Hardman said of meetings with the late Queen Elizabeth: “When she is ready, she presses her buzzer and the rest of them file in, along with the Clerk, and they shake her hand.”³⁵⁷

By convention, the King and his Privy Counsellors remain standing during a meeting, which could last between 10 and 30 minutes.³⁵⁸ The Privy Council Office understands (though there is no documentary evidence to verify this) that the custom of conducting business while standing was initiated by Queen Victoria following the death of Prince Albert in 1861, “when she wished to reduce her public duties to the minimum necessary”:

We know that the Prince Consort always attended Councils until his death, and the Council may have stood at the first Council after his death as a mark of respect. All that Queen Victoria needed to do, of course, to ensure that the Council stood was to remain standing herself. Etiquette does not allow sitting while the Sovereign is standing.³⁵⁹

The Lord President stands to the right of the monarch, who stands beside a small round table upon which are arranged a silver inkstand, pen tray and candlestick.³⁶⁰ The candlestick is for melting sealing wax, though in reality “all sealing is now done elsewhere with longer-lasting plastic”.³⁶¹

The swearing in of new Privy Counsellors is the first item on the List of Business, followed by any Cabinet ministers who need to take the Oath of Office. Then follow Proclamations, Charters (or Charter Amendments), international Orders, domestic Orders and any Crown Dependency business. Last on the List are usually Orders (either Notice or Final) under the Burial Act 1853 and any Petitions.

³⁵⁶ Robert Hardman, *Our Queen*, London: Hutchinson, 2011, p158.

³⁵⁷ Robert Hardman, *Our Queen*, p158. Privy Council meetings at Buckingham Palace usually take place in [the 1844 Room](#).

³⁵⁸ There have been exceptions. When George V was injured during a visit to the frontline, he offered “to hold a Council from his bed” (this proved unnecessary) and, as he recovered, held one meeting “propped up on a short couch”. Eventually he was “with the aid of a stick [able] to stand throughout the proceedings” (Sir Almeric FitzRoy, *Memoirs Volume Two*, pp610-13).

³⁵⁹ Privy Council Office website, [FAQs](#).

³⁶⁰ Royal Collection Trust press release, [The Queen's Year – The special exhibition at the summer opening of Buckingham Palace](#), 20 May 2010.

³⁶¹ Robert Hardman, *Our Queen*, p158.

The Privy Council “has been described as the most prestigious rubber stamp in the kingdom”.³⁶² As a consequence, the recital that the Orders are made by His Majesty “by and with the advice of his Privy Council” is purely formal:

in reality the Privy Council plays no role beyond the placing by one of its members, a minister, of the instrument before the Monarch, who is called upon by constitutional convention to approve it.³⁶³

As another account stresses, these:

meetings are not about debate or discussion. There is no voting. The Lord President reads through the measures the Privy Council are presenting either on their own behalf or for the government as a whole or for individual (sometimes multi) government departments. Every so often the Lord President pauses and the Queen says, ‘Approved’, unless the subject is a petition for a new Charter, in which case she says, ‘Referred’.³⁶⁴

Robin Cook, Lord President between 2001 and 2003, complained that the business of some meetings was “big in length but as usual short in substance” with “a long agenda” only confirming “its inconsequential character”.³⁶⁵ A century earlier, Lord Cholmondeley “resolutely chewed his toothpick during the whole proceedings”, a habit which gave “umbrage to the King”.³⁶⁶

A BBC documentary captured the conclusion of business at a meeting filmed during 1991. “And that, Your Majesty, concludes the business of today’s Council,” said John MacGregor, the then Lord President of the Council. Queen Elizabeth II can be heard remarking on the “varied list” and observing that “Scotland is separate” when it came to the appointment of schools inspectors: “[It] always has things in a slightly different way.”³⁶⁷

At a meeting in July 2002, Robin Cook anticipated the Queen asking about an Order to regulate “electrically assisted pedal cycles” in Guernsey, as “she remains sharp about the business”. Cook replied as briefed: “I am advised that it assists in pedalling uphill, Ma’am.”³⁶⁸

³⁶² Antony Jay, *Elizabeth R: The Role of the Monarchy Today*, London: BBC Books, 1992, p43.

³⁶³ *SSECO v R (Bancoult)* [2007] EWCA Civ 498, at para 16. At a meeting in March 1903, however, King Edward VII initially refused to approve an Admiralty Order, believing “his assent was being asked to more than he had [previously] approved” (Sir Almeric FitzRoy, *Memoirs Volume One*, p125).

³⁶⁴ David Rogers, *By Royal Appointment: Tales from the Privy Council*, p305.

³⁶⁵ Robin Cook, *The Point of Departure*, London: Simon & Schuster, 2003, pp 179 & 67.

³⁶⁶ Sir Almeric FitzRoy, *Memoirs Volume One*, p58.

³⁶⁷ Antony Jay, *Elizabeth R documentary*, BBC, 1992 (at 1:19:55). Originally, the film crew was told they could only film the first and fourth items of business, which would have involved leaving and coming back in. A personal appeal was made to the Queen and she gave permission for the crew to remain throughout (Robert Hardman, *Our Queen*, p130). A Privy Council meeting was also filmed for a 2007 BBC documentary.

³⁶⁸ Robin Cook, *The Point of Departure*, p179. Cook harboured “the reservation that that won’t be much help in Guernsey”. Sir Geoffrey Howe’s presence at a Balmoral Privy Council as the UK joined the European Exchange Rate Mechanism in October 1990 proved awkward when the Queen asked him about the day’s events, “and I didn’t know what she was talking about because I hadn’t been informed about our entry” (Charles Moore, *Margaret Thatcher – The Authorized Biography, Volume Three: Herself Alone*, London: Allen Lane, 2019, p630).

Once any post-business conversation had concluded, Queen Elizabeth II would ring “her buzzer, the doors open and the ministers walk out”. Because those departing are all Privy Counsellors, “they are not expected to turn round on their way out and bow again like ordinary mortals [...] They just leave.”³⁶⁹

Orders in Council are then authenticated by the signature of the Clerk of the Council and the affixing of the Privy Council Seal.

As Antony Jay has observed, a Privy Council meeting “provides a convenient opportunity for the [monarch] to meet and talk to members of the government other than the Prime Minister”.³⁷⁰ Following business, the King may have another brief audience with one of those Privy Counsellors present. If a meeting had taken place at Windsor during the reign of Elizabeth II, then the Queen often provided lunch for those present.

This more informal style of Privy Council dates from 1968, when the then Lord President Richard Crossman lobbied for more “carefully chosen meetings [...] where she [the Queen] actually had a discussion with people, with lunch at least, and then all the other meetings cut down to the merest formality”. When he put this suggestion to the Queen personally, she listened “very attentively” (Crossman became “convinced” he “could have gone much further and proposed the abolition of the whole thing”). At the first of these “new-style Privy Councils”, Crossman found the Queen “in tremendous form”. Once the formalities were over, he and four other Privy Counsellors withdrew to the Caernarvon Room for drinks.³⁷¹

In his diary Sir Alan Duncan recorded one Windsor meeting during 2017:

The Council meeting took place (we of course remain standing) in HM’s private quarters. She was relaxed and unadorned, in a tartan skirt and cardigan. The rooms have a commanding view over the rose garden and its fountain, but are affected by the nuisance of Heathrow.³⁷²

Meetings of the Privy Council are reported in the Court Circular, along with the names of ministers attending. Some Privy Council proceedings are recorded in [The Gazette](#), formally the combination of three official journals of record: The London, Belfast and Edinburgh Gazettes.³⁷³

[Details of meetings](#) held from 2010 until present can be found on the Privy Council Office website. The left-hand column lists the type of instrument or

³⁶⁹ Robert Hardman, *Our Queen*, p158.

³⁷⁰ Antony Jay, *Elizabeth R*, p44.

³⁷¹ Richard Crossman, *The Diaries of a Cabinet Minister, Volume Three: Secretary of State for Social Services, 1968-1970*, London: Hamish Hamilton and Jonathan Cape, 1977, pp39, 52 & 132.

³⁷² Sir Alan Duncan, *In the Thick of It: The Private Diaries of a Minister* (Kindle edition), London: William Collins, 2021, p181.

³⁷³ There are equivalent Gazettes in each of the Commonwealth Realms, as well as in the Canadian Provinces and Australian States.

cites the parent Act of Parliament (or Church of England Measure) under which Statutory Orders in Council are made.

5.1 Meetings including devolved business

It has become the practice of the Privy Council to involve Scottish Privy Counsellors, in particular the First Minister of Scotland, in business including the making of Orders in Council required by the Scottish Government.³⁷⁴ In June 1999, Sir Tony Blair, the then Prime Minister, placed a paper in the Libraries of both Houses which described the “circumstances in which the First Minister will, from 1 July [1999], contribute to Privy Council business in the same manner as the Secretary of State for Scotland has done”.³⁷⁵

Baroness Royall of Blaisdon observed in 2009 that the Privy Council’s role:

has become more important since devolution, as it provides a way of ensuring that Ministers of the devolved Administrations are included in cross-border issues that fall to the Privy Council.³⁷⁶

As a Privy Council Office annual report put it, the Privy Council “alone, in liaison with the devolved administrations, can deal with certain prerogative matters relating to devolved functions”.³⁷⁷

Chris Himsworth and Christine O’Neill have observed, it “is an indication of the formality of these proceedings that Orders in Council promoted by either the UK or the Scottish government may be conducted in the presence of ministers from both administrations”.³⁷⁸

When an Order approving the new Welsh seal was made at a [Privy Council meeting on 14 December 2011](#), Cheryl Gillan, the then (Conservative) Secretary of State for Wales, and Carwyn Jones, the then (Labour) First Minister of Wales, were both in attendance.³⁷⁹

³⁷⁴ Many “Scottish” Orders in Council, however, are approved in the presence of UK ministers only.

³⁷⁵ [HC Deb 30 June 1999 Vol 334 cc215-6W \[Devolution \(Scotland\)\]](#)

³⁷⁶ [HL Deb 12 May 2009 Vol 710 c1010 \[Privy Counsellors\]](#)

³⁷⁷ [Privy Council Office Resource Accounts 2005-06](#), HC 1313, London: HMSO, 17 July 2006, p3

³⁷⁸ Chris Himsworth and Christine O’Neill, *Scotland’s Constitution: Law and Practice*, London: Bloomsbury, 2015, p194.

³⁷⁹ See [Signed, sealed, delivered: Queen approves Welsh seal](#), BBC Wales online, 15 December 2011.

5.2

Virtual Privy Council meetings

Queen Elizabeth II presided over her first “virtual” meeting of the Privy Council during the first phase of the Covid-19 pandemic on 3 April 2020.³⁸⁰ According to press reports, the monarch was at Windsor while four Privy Counsellors gathered in a secure Cabinet Office briefing room usually reserved for emergency COBRA meetings.³⁸¹ The meeting proceeded by video link.³⁸²

Occasional virtual meetings continued into 2022.³⁸³ “Fortunately for all concerned,” observed Robert Jenrick, a Conservative MP, in a Commons debate, “Her Majesty has proved adept at using Zoom.”³⁸⁴ Baroness Evans also recalled that:

When we moved to virtual Privy Council meetings due to the pandemic, it was sadly no longer possible to have those enjoyable informal conversations in person with Her Majesty after the official business. Instead, all of us attending were asked to update Her Majesty on our areas of responsibility. She was always very interested and, of course, extremely knowledgeable about what was happening in your Lordships’ House.³⁸⁵

On 7 September 2022, Queen Elizabeth II was scheduled to hold a virtual meeting at which new Cabinet ministers were to take their Oaths of Office and, if necessary, their Privy Council Oath.³⁸⁶ Nadhim Zahawi, who was due to be sworn in as Chancellor of the Duchy of Lancaster, later told GB News:

As a new cabinet, we were instructed that we would all be sworn in via video link at 5pm in the COBRA room. Then we were told she [the Queen] won’t be on video, it’ll be on the ‘spider phone’ [speaker phone]. Then literally a few minutes later we were told that the swearing-in was cancelled and was to be postponed until the next day.³⁸⁷

The meeting did not take place and on 8 September the Queen died at Balmoral. This meant several Cabinet ministers present at the Accession Council held on 10 September were not yet Privy Counsellors. A (physical) Privy Council meeting finally took place on 13 September, which allowed the

³⁸⁰ Minutes of the meeting made no reference to its virtual nature, simply stating “[at the Privy Council held by The Queen at Windsor Castle](#)”. The Court Circular, however, recorded that the Queen “held a Council via video link”.

³⁸¹ They were Michael Gove, the Chancellor of the Duchy of Lancaster, Baroness Evans, the Lord Privy Seal, Robert Buckland, the Lord Chancellor and Jacob Rees-Mogg, the Leader of the House of Commons. They reportedly sat two metres apart.

³⁸² [The Queen holds her first ‘virtual’ Privy Council](#), Daily Telegraph (£), 3 April 2020. “It was the first time in the history of the Privy Council that it has met virtually,” a source told the Daily Telegraph. “It was quite an extraordinary moment.”

³⁸³ See, for example, [Queen holds virtual Privy Council meeting today](#), Mail Online, 11 May 2022.

³⁸⁴ [HC Deb 26 May 2022 Vol 715 c490](#)

³⁸⁵ [HL Deb 9 September 2022 Vol 824 c382](#)

³⁸⁶ It is not clear from media reports how new ministers were to receive their seals.

³⁸⁷ [Queen news: What Queen Elizabeth II told Liz Truss in her final meeting at Balmoral](#), GB News website, 7 September 2023.

transaction of business which had been due to take place on the evening of Wednesday 7 September.³⁸⁸

5.3 Emergency meetings

Additional meetings of the King in Council are convened if urgent business requires it.³⁸⁹ The Lord President is usually present.

Before the passage of the Regency Act 1937, which made provision for the illness or indisposition of a monarch, Privy Counsellors twice assembled outside King George V's bedroom, in 1928 and 1936, so he could authorise Counsellors of State to act on his behalf.³⁹⁰

In 1967, the government of the Seychelles required emergency authorisation to prevent its collapse. The then Clerk to the Privy Council, [Sir Godfrey Agnew](#), had to get four Privy Counsellors from the Labour Party conference to Balmoral, where Queen Elizabeth II was in residence. This involved lengthy negotiations with the then Lord President, Richard Crossman.³⁹¹ Finally, a date was agreed, and four Cabinet ministers made their way to Aberdeen on the sleeper train. Following a private audience with the Queen, Crossman recorded that:

In came the rest of the Privy Council and four busy men stood there for a couple of minutes while I read aloud the usual collection of bits and pieces, including the prolongation of the Seychelles Legislature. Then we moved into the next room for drinks and here she explained (she didn't of course apologize) why she was twelve minutes late for the Council. When she was furthest from the house her horse had got a stone in its foot. 'One always carries one of those penknives, doesn't one, as an instrument for taking out stones, but today was the one day I didn't have it'.³⁹²

Crossman was mollified with "a magnificent ride around the [Balmoral] estate in the Queen's great big estate car".³⁹³

When the United States asked the UK government to close the London foreign exchange the following year, Harold Wilson's government complied by proclaiming an additional bank holiday at a hastily arranged 00:15 meeting of the Privy Council. At Buckingham Palace, the Prime Minister acted for the Lord President (Richard Crossman) and had a prior audience of the Queen.³⁹⁴ The Queen held a second Privy Council meeting at 17:30 the same day, at

³⁸⁸ Commons Library research briefing CBP9621, [The Accession of King Charles III](#), pp 5 & 38.

³⁸⁹ [HC Deb 28 June 1999 Vol 334 c17W](#)

³⁹⁰ The Times, 28 January 1936. Authorisation required an Order in Council.

³⁹¹ Richard Crossman, *The Diaries of a Cabinet Minister: Volume Two*, pp489-90.

³⁹² Richard Crossman, *The Diaries of a Cabinet Minister: Volume Two*, p510.

³⁹³ Richard Crossman, *The Diaries of a Cabinet Minister: Volume Two*, p511.

³⁹⁴ Court Circular, 15 March 1968. George Brown, the Foreign Secretary, resigned after not being informed of the meeting. The Prime Minister (and others) believed he was tired and emotional.

which Michael Stewart, the First Secretary of State, acted for the Lord President.³⁹⁵

An additional meeting of the Privy Council also proved necessary at Heathrow Airport in September 1998. “It’s the first time she has held court there,” Nigel Nicholls, the then Clerk of the Council, told *The Times*. “There was some important business before the Queen left for Brunei.”³⁹⁶

The meeting, which began “as soon as the Queen touched down from Balmoral”, was attended by Baroness Jay of Paddington (Lord Privy Seal, who was acting for the Lord President), Lord Hardie (the Lord Advocate), Lord Carter (Captain of Her Majesty’s Body Guard of the Honourable Corps of Gentlemen at Arms) and Robin Cook MP (Secretary of State for Foreign and Commonwealth Affairs). The Court Circular gave the impression the Council occurred at Balmoral but added that the Queen and the Duke of Edinburgh “afterwards left Heathrow Airport to visit Brunei Darussalam and Malaysia”.³⁹⁷

In the early 1970s, members of the Privy Council “travelling to attend meetings of the Council outside London” could, “upon Her Majesty’s invitation or consent, travel in aircraft of The Queen’s Flight”.³⁹⁸

5.4

The Great Seal

On occasion, usually at the beginning of a reign, a new [Great Seal of the Realm](#) (which is used to authorise Proclamations and other instruments) is presented to the Lord Chancellor during a meeting of the Privy Council. This also involves the ritual defacement of the old Seal at the end of that meeting.

In July 2001 Queen Elizabeth II received the second Great Seal of her reign (the original from 1953 had become worn). The then Lord Chancellor, Derry Irvine, chose not to hand each to the monarch on account of their weight, instead choosing to “graciously wave to indicate the old Seal, and then, after it has been ritually defaced, wave excitedly to indicate the pleasing new Seal”. According to the then Lord President, Robin Cook, the Queen carried out the “ritual defacing with aplomb by taking the approved silver hammer

³⁹⁵ A record had also been established on 19 October 1903 when King Edward VII held two Privy Councils on the same day, one at 11:00 and the other at 22:30, more than 250 miles apart. The first was in London and the second at [Wynyard](#), the Marquess of Londonderry’s country house in County Durham. This was also the first Privy Council held at a country house since Charles I’s at [Wilton](#) in October 1625. Lady Londonderry was pleased when the King asked that Council documents be headed “At the Court at Wynyard” (see Sir Almeric FitzRoy, *Memoirs Volume One*, p161).

³⁹⁶ *The Times*, 18 September 1998.

³⁹⁷ Court Circular, 16 September 1998. Baroness Jay had a prior audience with the Queen.

³⁹⁸ Report from the Select Committee on the Civil List, London: HMSO, 22 November 1971, p195.

and striking the silver mould. The net result is a rather pleasing tinkle, but not much evidence of defacement”.³⁹⁹

The same ceremony takes place for the [Scottish Seal](#) (which is often erroneously called the “Great Seal of Scotland”).

5.5

Full meetings of the Privy Council

Historically, there have only been two occasions on which every member of the Privy Council is invited to attend a meeting: the announcement of an unmarried Sovereign’s intention to marry and the Accession Council which follows the death of a monarch (for full details of the latter, see **Section 6**).

A full meeting of the Privy Council was also held on 6 February 1811, when the Prince of Wales was sworn in as Prince Regent.⁴⁰⁰

Engagement of an unmarried monarch

This last occurred in 1839. The Court Circular for 23 November of that year recorded that Queen Victoria:

held a Privy Council at half-past 1 o’clock on Saturday afternoon for the reception of Her Majesty’s declaration on the subject of her intended marriage with his Serene Highness Prince Albert of Saxe Coburg Gotha.

The Council was attended by 85 Privy Councillors, all of whom (with very few exceptions) appeared in naval, military or official costumes, or in their robes of office, the members of orders of knighthood wearing their respective ensigns [...]

The Privy Councillors were ushered on their arrival across the grand hall and sculpture gallery into the library, where the Council was held [...]

When the Council had assembled, the Queen entered the Chamber from an ante-room. Her Majesty retired after reading her declaration.⁴⁰¹

Other Royal marriages

Under section 1 of the [Royal Marriages Act 1772](#):

No descendant of his late Majesty, George [II] (other than the issue of princesses married, or who may marry into foreign families) shall be capable of contracting matrimony without the previous consent of his Majesty, his heirs, &c. signified under the great seal, declared in council, and entered in the

³⁹⁹ Robin Cook, *The Point of Departure*, p28. To mark the occasion, the ceremony was filmed for broadcast. For an account of the defacement of Queen Victoria’s Great Seals, see Sir Almeric FitzRoy, *Memoirs Volume One*, pp225 & 235.

⁴⁰⁰ [London Gazette, 7 February 1811](#)

⁴⁰¹ *The Times*, 25 November 1839.

Privy Council books. Every Marriage of any such descendant, without such consent, shall be null and void.⁴⁰²

If consent was refused to a Royal aged over 25, then a year's notice could be given to the Privy Council and the marriage could take place despite the absence of consent from the monarch, unless both Houses of Parliament declared their "disapproval".⁴⁰³

Although there was no requirement for a full (or fuller) meeting of the Privy Council to hear a Declaration of Consent under the 1772 Act, when Princess Anne announced her engagement on 29 May 1973 Queen Elizabeth II "made it known she wanted a special meeting". The Prime Minister and other party leaders attended, as did the Lord Chancellor and Archbishop of Canterbury.⁴⁰⁴

This precedent was repeated when the Queen granted her formal consent to the marriage of the Prince of Wales and Lady Diana Spencer on 27 March 1981. Following a brief meeting of the Privy Council, the Queen invited the 25 Privy Counsellors present, which included Prince Charles, Margaret Thatcher, the Archbishop of Canterbury, three former Prime Ministers (Sir Harold Macmillan, Lord Home and Sir Harold Wilson) and Commonwealth representatives, for lunch and [a rare group photograph](#).⁴⁰⁵

Around a dozen Privy Counsellors later attended the formal Declaration of Consent for the wedding of Prince Andrew and Sarah Ferguson in March 1986, an occasion the then Liberal leader David Steel described as "a time-consuming piece of harmless nonsense".⁴⁰⁶

The [Succession to the Crown Act 2013](#) repealed the 1772 Act.⁴⁰⁷ However, section 3 still requires the consent of the Sovereign for the marriage of "the 6 persons next in the line of succession to the Crown". As before, an "Instrument of Consent" has to be signified under the Great Seal, declared in Council and recorded in the Books of the Privy Council.

Consent for the wedding of Prince Henry of Wales (Prince Harry) and Ms Meghan Markle was [declared at a meeting of the Privy Council on 14 March 2018](#). The [Instrument of Consent](#) was hand-written and illuminated on vellum by a scrivener artist retained by the Crown Office. The design included motifs

⁴⁰² The law was passed at the request of King George III, who was outraged to learn that his younger brother, the Duke of Cumberland, had secretly married Lady Anne Horton, the widow of a "commoner".

⁴⁰³ See section 2 of the 1772 Act. Parliamentary disapproval having been intimated, Princess Margaret chose not to give this notice in 1955, thus ending her relationship with Peter Townsend.

⁴⁰⁴ Robert Hardman, *Queen of Our Times*, p223.

⁴⁰⁵ *The Times*, 28 March 1981. Diana was not present at the Council meeting as she was not a Privy Counsellor, nor was she included in the group photograph.

⁴⁰⁶ David Steel, *Against Goliath: David Steel's Story*, London: Weidenfeld & Nicolson, 1989, p264.

⁴⁰⁷ The 2013 Act commenced in 2015. The last Declaration of Consent under the 1772 Act was made at a [Privy Council meeting on 11 February 2015](#).

representing the United States as well as the different parts of the United Kingdom. Part of this Instrument reads:

NOW KNOW YE that We have consented and do by these Presents signify Our Consent to the contracting of Matrimony between Our Most Dearly Beloved Grandson Prince Henry Charles Albert David of Wales, K.C.V.O., and Rachel Meghan Markle.

Coronation Council

It has also been the custom for a larger-than-normal meeting of the Privy Council prior to the Proclamation of a new monarch's coronation.

The Lord President of the Council is responsible for preliminary coronation arrangements and the Earl Marshal (the Duke of Norfolk) for their execution on the day. The Lord President also appoints the relevant committees and commissions the Court of Claims.⁴⁰⁸

Queen Elizabeth II held a "Coronation Council" on 6 June 1952, at which she signed a Proclamation "Declaring Her Majesty's Pleasure touching Her Royal Coronation and the Solemnity thereof".⁴⁰⁹ This gave the date of the coronation as 2 June 1953 as well as the names of members of the Court of Claims and was to be "read with the usual ceremonies" on 7 June. As with the Accession Proclamation, the first took place at St James's Palace, followed by Charing Cross, Temple Bar and the Royal Exchange and, thereafter, at other locations across the UK and other Commonwealth Realms according to custom.⁴¹⁰

There was no Coronation Council for King Charles III. Instead, the date for his coronation (6 May 2023) was included in two Proclamations designating an additional bank holiday on 8 May.⁴¹¹

5.6 The Privy Council Office

The [Privy Council Office](#) (PCO) is the Secretariat to the Privy Council and is responsible for delivering all aspects of its business, including arrangements for the nine or ten scheduled Privy Council meetings each year as well as any ad hoc Emergency Councils.⁴¹² It is "an autonomous Government Department

⁴⁰⁸ See Lord Woolton, *The Memoirs of the Rt. Hon. The Earl of Woolton C.H., P.C., D.L., LL.D.*, London: Cassell, 1959, pp382-83.

⁴⁰⁹ *The Times*, 7 June 1952.

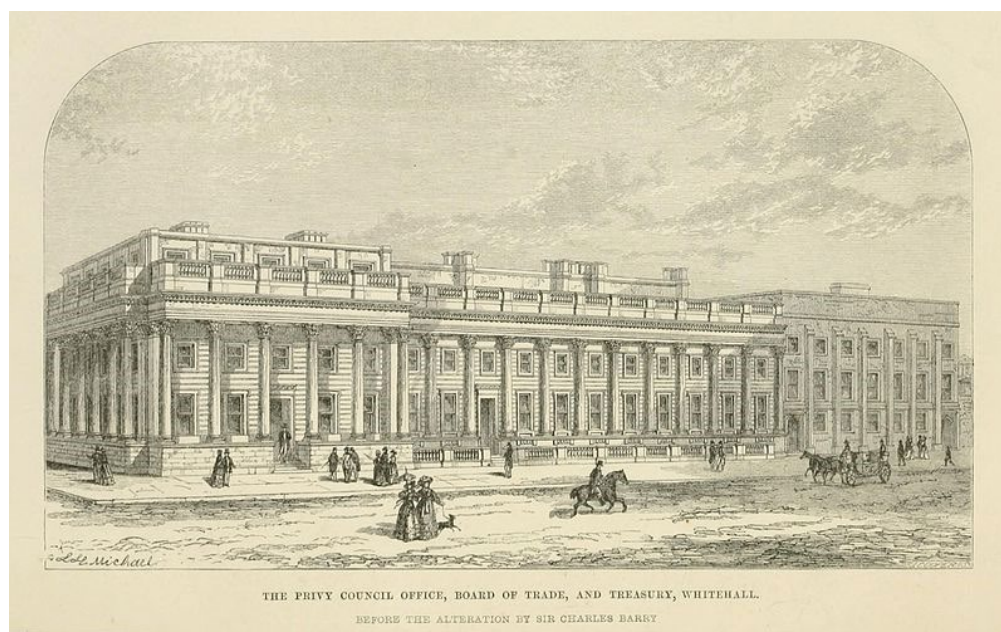
⁴¹⁰ Court Circular, 6 June 1952. Lord Woolton had an audience of the Queen before the Council and the Prime Minister after it.

⁴¹¹ See [Privy Council meeting, 9 November 2022](#).

⁴¹² The Privy Council Office was based at 2 Carlton Gardens in London (now the [Institute for Government](#)). It is presently based at the Treasury on [1 Horse Guards Road](#). During the second half of the 19th century, the PCO was housed in the Treasury Buildings remodelled by Sir Charles Barry in (today the Cabinet Office at 70 Whitehall).

whose ministerial head is the Lord President of the Council and whose Permanent Head is the Clerk of the Privy Council”.⁴¹³ Its key functions include:

- preparation of briefings for His Majesty and the Lord President;
- administrative formalities connected with all appointments of new Privy Counsellors;
- procedural formalities both preceding and following a general election and government reshuffles including the appointment of Secretaries of State and other Cabinet ministers;
- all Royal Proclamations;
- approving Channel Island legislation;
- the appointment of High Sheriffs in England and Wales;
- managing the process for appointments to a number of statutory bodies;
- co-ordinating the Privy Council’s role in higher education.⁴¹⁴



Sir Charles Barry’s Privy Council Office building (Alfred Barry).

Following a Machinery of Government review in 2006, the Privy Council Office was split between the Cabinet Office and the Constitution Directorate of the Ministry of Justice. Via the Cabinet Office the PCO gained the additional function of supporting the Leaders of – and government whips in – both Houses of Parliament.⁴¹⁵

⁴¹³ [Privy Council Office Resource Accounts 2006-07](#), HC 656, London: HMSO, 31 August 2007, p4.

⁴¹⁴ Privy Council Office website, [Work of the Privy Council Office](#).

⁴¹⁵ See [HL Deb 8 March 2007 Vol 690 cc322-23](#).

Clerk of the Privy Council

The present Clerk of the Privy Council is Richard Tilbrook, a senior civil servant at the Cabinet Office.⁴¹⁶ The “Clerk in Ordinary of His Majesty’s Most Honourable Privy Council” is chosen on a representation from the Lord President of the Council and appointed by Prerogative Order in Council.⁴¹⁷ The Clerk subscribes to an oath “very similar to that of the Privy Counsellors”.⁴¹⁸

There are also two Deputy Clerks and a Head of Casework/Parliamentary Clerk. If the Clerk of the Council is not available to attend a meeting, then an Order is required enabling a Deputy to exercise duties in their absence.⁴¹⁹

Following the 11 September terrorist attacks in 2001, Alex Galloway, the then Clerk of the Council, drafted an Order appointing a third Deputy Clerk as a precaution against “a terrorist attack taking out central London”. “As this particular administrator only works part-time,” Robin Cook observed in his diary, “there is a fifty-fifty chance she would survive and enable the Privy Council to function.”⁴²⁰

Alex Galloway also once admitted to the journalist Robert Hardman that the details of “some rituals are so complicated that they can fox the most experienced people in the room”. “The great thing about being Clerk of the Privy Council is that if anyone asks you a question,” he added, “it’s almost certain that no one knows the answer.”⁴²¹

When the Labour MP Tam Dalyell asked Sir Godfrey Agnew to define his role as Clerk of the Council, he replied that it was to “lubricate relations”:

between the Palace and Government and to make sure not so much that protocol prevails, as that relations go smoothly [...] I am [...] the physical embodiment of the usual channels between Palace and the governing party.⁴²²

When the diaries of Charles Greville, Clerk of the Privy Council between 1821 and 1859, were published in several volumes after his death, even the omission of more than 100,000 words did not prevent Disraeli describing them as “a social outrage” and Queen Victoria asking that it “be severely censored and discredited”.⁴²³ The diaries included what Victoria considered to be disrespectful language about the monarch and other members of the Royal Family.

⁴¹⁶ Richard Tilbrook is also the [Prime Minister’s Appointments Secretary](#).

⁴¹⁷ See Almeric FitzRoy’s appointment as announced in the [London Gazette, 12 August 1898](#).

⁴¹⁸ John F. Naylor, *A man and an institution: Sir Maurice Hankey, the Cabinet Secretariat and the custody of Cabinet secrecy*, Cambridge: Cambridge University Press, 1984, p105.

⁴¹⁹ A full list of staff, [contact details and responsibilities](#) are listed at the Privy Council Office website.

⁴²⁰ Robin Cook, *The Point of Departure*, pp67-68. “Personally I work full-time in London and am unlikely to survive such an historic event,” added Cook, “and cannot claim that my last thoughts will be ‘I wonder how the Privy Council will get on without us all’.”

⁴²¹ Robert Hardman, *Our Queen*, p159.

⁴²² Tam Dalyell, [Obituary: Sir Godfrey Agnew](#), *Independent*, 14 December 1995.

⁴²³ Oxford Dictionary of National Biography, [Charles Greville](#).

Sir Almeric FitzRoy, who served as Clerk between 1898 and 1923, also published two volumes of Memoirs (1925) and a History of the Privy Council (1928), the former being a detailed (and occasionally indiscreet) diary of Council meetings. He was encouraged to retire after being fined £5 at Marlborough Street magistrates' court for "wilfully interfering with and annoying persons using Hyde Park", even though his conviction was later dismissed on appeal.⁴²⁴ On stepping down he was pleased to be told:

that an enormous change for the better had been brought about in my time in the order and dignity of the proceedings; whereas, in the old days, no one seemed to have any instructions, and the whole thing was muddled though anyhow, Privy Councillors being sometimes seen crawling along on all fours.⁴²⁵

FitzRoy's successor, Sir Maurice Hankey, was also Secretary of the Cabinet and of the Committee of Imperial Defence but accepted being made Clerk of the Privy Council "as a virtual sinecure [and] as an embellishment of his office's prestige and his own standing".⁴²⁶ He stood down from both positions in 1938. On later becoming a member of the War Cabinet, Lord Hankey was sworn of the Privy Council he had once clerked.

Sir Neville Leigh served as Clerk of the Council between 1974 and 1984. His son is the Conservative MP Sir Edward Leigh, who recalled meeting Prince Philip when he was "a young councillor":

He came to County Hall, and of course one was shy and did not really know what to say, so I said to him quite proudly, "Sir, you might know my father: he's the clerk of the Privy Council." I was expecting some conventional remark, which by now would have been completely forgotten, but quick as a flash, he said, "The Privy Council—what a boring and pointless institution! Thank God the meetings do not go on too long."⁴²⁷

⁴²⁴ The Times, 9 October 1922 and 11 November 1922.

⁴²⁵ Sir Almeric FitzRoy, Memoirs Volume Two, p412.

⁴²⁶ Oxford Dictionary of National Biography, [Maurice Hankey](#).

⁴²⁷ [HC Deb 12 April 2021 Vol 692 c61](#)

6

The Accession Council

[Accession](#) is the term used to describe a new sovereign's succession to the Throne upon the death or abdication of the previous monarch. As soon as practicable after a monarch's death, the Cabinet meets. In the past, this has authorised the wording of the [Accession Proclamation](#) (usually drafted in advance) and determined the timetable for meetings of both Parliament and the Privy Council on, if possible, the same day.



Queen Victoria's first Privy Council meeting in 1837 (Sir David Wilkie).

6.1

History of the Accession Council

This meeting of the Privy Council, which is known as an [Accession Council](#), has its roots in the Anglo-Saxon councils which “elected” the monarch from among eligible Royal males. The first modern Accession Council, however, dates from the accession of James VI and I in 1603, when the new sovereign's presence in his Scottish kingdom required immediate action in England. The view of the Dominions Office in 1936 was that such a meeting remained necessary because, “partly owing to immemorial custom and partly owing to statute law, certain things had to be done at the Accession of a new King which could only be done by Order in Council”.⁴²⁸

⁴²⁸ See Dominions Office, “Papers relating to the Demise of the Crown”, London: National Archives, 1936, CAB21/4475, p24.

Section 10 of the [Succession to the Crown Act 1707](#) stated that the Privy Council should proclaim a new monarch “with all convenient speed”, a failure to do so being an offence of “high treason”. Both requirements were later repealed. This Act also provided that the Privy Council was no longer dissolved upon a demise.⁴²⁹

6.2 Arrangements for an Accession Council

An Accession Council is usually convened within 24 hours of the death or abdication of a sovereign and is held in private at [St James’s Palace](#).⁴³⁰ It takes place in two parts (see below) and before Parliament meets at any length.

The Privy Council Office is responsible for “[summoning or inviting](#)” Privy Counsellors “and certain other dignitaries”. Not all will necessarily be able to attend, although this does not affect what takes place. As Lord True stated in a written answer on 25 May 2022: “There is no constitutional understanding that all Privy Counsellors must be summonsed to an Accession Council.”

As is the custom for Privy Council meetings, all business at an Accession Council is conducted while standing up. Until January 1936 “levee dress” (a uniform with decorations) was worn with a black crepe band on the left arm, but in February 1952 this was replaced with morning dress or lounge suits.

By custom, the [Lord Mayor of London](#) and the [Court of Aldermen](#) are invited to part one of the Accession Council.⁴³¹ In 1936, invitations were also sent to the High Commissioners of Commonwealth Realms and in 1952 to those representing other Commonwealth countries.⁴³²

2022 review of operational arrangements

Following a routine review of operational arrangements in 2022, the Privy Council Office – with the agreement of Number 10 and the Lord President of the Council – advised the Royal Household that the number of attendees at King Charles III’s Accession Council would be limited to around 200 so that “the high presentational and safety standards required of the occasion” could

⁴²⁹ This meant references to “His late Majesty’s Privy Council” in 1952 were incorrect, which prompted one anonymous Privy Counsellor to write to The Times: “It looks as though the repetition of a form of words which ceased to be appropriate has gone on at Accession Councils on four occasions during the last 50 years because an early form has been slavishly followed without appreciating that the previous situation has been changed by statute” (The Times, 9 February 1952).

⁴³⁰ The Constitution Unit recommended that King Charles’ Accession Council be televised, which it was. See Robert Hazell and Bob Morris, [Swearing in the New King: The Accession Declarations and Coronation Oaths](#), London: Constitution, May 2018.

⁴³¹ The practice of summoning the Lord Mayor of London to the Accession Council dates from the accession of Queen Elizabeth I (The Times, 23 January 1901).

⁴³² The Privy Council Office planned until at least 1975 to invite all Commonwealth High Commissioners to the next Accession Council. However, the Privy Council Website now refers only to those from Commonwealth Realms.

be maintained.⁴³³ The revised attendee list comprised Privy Counsellors selected on an ex-officio basis,⁴³⁴ a small number of Privy Counsellors selected via an annual ballot, and certain other dignitaries.

This limitation of numbers prompted questions from Privy Counsellors in both Houses of Parliament. In response to a written question from Lord Blunkett on 17 May 2022, Lord True said the updated arrangements were “an equitable and proportionate response” to three key challenges identified during the review:

First, the number of Privy Counsellors potentially eligible to attend an Accession Council has increased exponentially since 1952.

Secondly, whilst it has long been agreed that St. James’s Palace is the most appropriate setting for the Accession Council, the historic nature of St. James’s Palace presents a number of significant challenges in terms of capacity, accessibility and crowd flow.

Thirdly, the pace at which an Accession Council must take place means that very limited additional infrastructure and provision can be put in place to support dignified delivery of such an important occasion.

Lord True added that attendance arrangements for previous Accession Councils had varied and, as with current planning, “took into account contemporary operational challenges”.⁴³⁵ Later he ruled out the use of Westminster Hall for the Accession Council, as some peers had proposed.⁴³⁶

Following the Accession Council for King Charles III,⁴³⁷ the Government was asked to provide more details regarding ex-officio eligibility for those who had been in attendance. The Cabinet Office minister Baroness Neville-Rolfe said it was “based primarily on whether Privy Counsellors were serving in a senior parliamentary, judicial or Church post at the time of Demise”. Additional criteria included:

- Privy Counsellors who were senior, full-time Members of the Royal Household at the time of Demise.
- Former office holders who had a close working relationship with the Sovereign (former Prime Ministers, Archbishops and Lord Presidents).

⁴³³ [500 Privy Counsellors are barred from the meeting that will confirm Prince Charles as King](#), Mail on Sunday, 3 April 2022.

⁴³⁴ These included serving Great Offices and Great Officers of State; Cabinet ministers; Shadow Cabinet ministers who are Privy Counsellors; the Archbishops of Canterbury and York; the leaders of the political parties in the House of Commons; the First Ministers of the devolved administrations; the Speakers of the national and devolved legislatures; representatives of the senior judiciary; former Prime Ministers; former Lord Presidents; Commonwealth Realm High Commissioners; and the Lord Mayor of London.

⁴³⁵ [UIN HL293, Privy Council, 17 May 2022](#)

⁴³⁶ [UIN HL1768, Privy Council, 14 July 2022](#)

⁴³⁷ For a full account, see Commons Library Briefing Paper CBP9621, [The Accession of King Charles III](#). For details of previous Accession Councils, see Commons Library Briefing Paper CBP9372, [The death of a monarch](#), pp57-65.

- Former opposition leaders (representing Privy Counsellors from all political parties who no longer have an active role in Privy Council business).⁴³⁸

Tables 3 and 4 set out the general Order of Business at an Accession Council.



Penny Mordaunt, Acting Lord President, arriving at the Accession Council on 10 September 2022 (Katie Chan, Creative Commons Attribution-Share Alike 4.0).

6.3

Part one

The Lord President of the Council presides over part one of the Accession Council. The new sovereign is not present, which makes this a meeting of “the Lords of the Council” rather than the King or Queen in Council. This takes place in the Banqueting Hall (or “The Picture Gallery”) at St James’s Palace.

When the meeting begins, the Lord President announces the death of the sovereign and calls upon the Clerk of the Privy Council to read the Accession Proclamation aloud. The Palace will have beforehand communicated the new monarch’s chosen regnal name.

The platform party (which comprises any members of the Royal Family present who are Privy Counsellors, the [Archbishop of Canterbury](#), the [Lord Chancellor](#), the [Archbishop of York](#), the Prime Minister, the [Lord Privy Seal](#), the [Lord Great Chamberlain](#) and the Earl Marshal,⁴³⁹ together with the Lord President) then sign the Accession Proclamation.

⁴³⁸ [UIN HL3308, King Charles III: Ceremonies, 9 November 2022](#)

⁴³⁹ The Earl Marshal and Lord Great Chamberlain are both hereditary officers of state and members of the House of Lords.

Table 3: Meeting of the Accession Council (part one)

[Doors to Picture Gallery closed] Lord President (at the head of the room)	(i) Announces the death of the monarch (ii) Proposes a Deputation to greet the new monarch once part one concludes (iii) Reads the first item on List of Business
Clerk of the Council	reads the Accession Proclamation
Members of the Royal Family who are Privy Counsellors, the Archbishops of Canterbury and York, the Lord Chancellor, the Prime Minister, the Lord Privy Seal, the Lord Great Chamberlain, the Earl Marshal and the Lord President	sign the Proclamation
Lord President	Reads the remaining items on List of Business: Draft Orders of Council directing the Lord Chancellor to affix the Great Seal to the Proclamation; directing the publication of the Proclamation; directing Heralds to read the Proclamation; directing the Lord Mayor and Court of Aldermen to read the Proclamation at the Royal Exchange; directing the firing of guns in Hyde Park and at the Tower of London; directing publication in Scotland; and for Circular Letters directing the Secretaries of State for Wales and Northern Ireland, Lord Warden of Cinque Ports, Lieutenant-Governors of the Isle of Man, Jersey and Guernsey, Lord Mayors or Mayors of all cities in England, Wales and Northern Ireland, and the High Sheriffs of all counties in England and Wales
Privy Counsellors	Proceed to the Throne Room
Deputation (Royals who are Privy Counsellors, the Archbishops of Canterbury and York, the Lord Chancellor, the Prime Minister, the Lord President and the Clerk to the Council)	Wait on the new monarch
Non-Privy Counsellors (including Realm High Commissioners and the City Civic Party)	Sign Proclamation and depart

Sources: Privy Council Office, "Demise of the Crown: Notes on Privy Council Practice and Procedure", London: National Archives, June 1975, HO290/95, and the Privy Council Office website, "Accession Council".

Table 4: The sovereign in Council (part two)

The monarch	enters the Throne Room
All present	bow
The monarch	makes their personal Declaration
Lord President	asks leave to publish the Declaration
The monarch	makes declaration regarding the Oath relating to the Church of Scotland
The monarch	reads aloud the Oath, with a Testament in uplifted hand, and signs two parchment copies of the Oath
Members of the Royal Family who are Privy Counsellors, the Lord Chancellor, the Secretary of State for Scotland, the First Minister of Scotland, the Lord Advocate, the Advocate General for Scotland (if a Privy Counsellor) and the Lord President of the Court of Session	witness the Oath, signing in parallel columns (both copies)
Lord President	reads List of Business: The monarch approves Orders in Council recording the Scottish Oath; a form of the Proclamation for use in the British Overseas Territories; allowing seals used by Great Officers of State and Secretaries of State to be used until new seals are prepared and authorised; and proclaiming the date of the state funeral to be a bank holiday
The monarch	withdraws
All present	bow
Remaining Privy Counsellors	sign the Proclamation as they depart St James's
Garter Principal King of Arms	reads Proclamation from the Balcony above Friary Court accompanied by gun salutes in Hyde Park

Sources: Privy Council Office, "Demise of the Crown: Notes on Privy Council Practice and Procedure", London: National Archives, June 1975, HO290/95, and the Privy Council Office website, "Accession Council".

Once the proclamation has been signed, the Lord President calls for silence and reads the remaining items of business. These deal with the dissemination of the Proclamation and various Prerogative Orders of Council giving directions for gun salutes in Hyde Park and at the Tower of London. Others present sign the Proclamation as they depart.

In 1994 the former Labour MP and Privy Counsellor Tony Benn, a republican, wrote to the then Lord President, Tony Newton, warning that he would not sign the Proclamation at the next Accession Council, something he believed would prevent a succession. Newton replied that such an objection would

have “no legal effect” in that a new monarch would already have succeeded “immediately and automatically” upon the death of the previous monarch.⁴⁴⁰

6.4 Part two

Part two of the Accession Council begins with the Lord President of the Council leading a small deputation, which includes the Archbishop of Canterbury, senior members of the Cabinet and the Leader of the Opposition, to wait by prior arrangement on the new sovereign,⁴⁴¹ who is then conducted to their first Privy Council meeting. This takes place in the Entrée Room of St James’s Palace and only members of the UK Privy Council can attend.⁴⁴²

The new sovereign makes a non-statutory personal Declaration and takes a statutory oath to protect the Church of Scotland (see **Section 6.2**). Privy Counsellors once re-took their Oath of Allegiance after the monarch had taken the Scottish Oath. This practice, which has not been required since passage of the [Demise of the Crown Act 1901](#), only ceased in January 1936.⁴⁴³

As the Privy Council Office website notes, part two of the Accession Council has not always immediately followed part one.⁴⁴⁴ In 1952, the death of [King George VI](#) occurred in the early hours of Wednesday 6 February. Part one of the Accession Council took place at 5pm the same day, but part two did not take place until 10am on Friday 8 February as the new Sovereign (Queen Elizabeth II) was in Kenya and it took some time for her to return to the UK.

⁴⁴⁰ Vernon Bogdanor, *The Monarchy and the Constitution*, Oxford: Clarendon, 1995, p45.

⁴⁴¹ In December 1936 and February 1952, the Prime Minister formed part of this deputation, although the Privy Council Office observed in 1975 that “this should not be regarded as a precedent” (“Demise of the Crown: Notes on Privy Council Practice and Procedure”, London: National Archives, 1975, HO290/95). Similarly, in 1952 Churchill insisted that Clement Attlee, the Leader of the Opposition, form part of the deputation. Again, this did not necessarily set a precedent.

⁴⁴² In 1936, misunderstanding the position, the Canadian High Commissioner Vincent Massey and Australian High Commissioner Stanley Bruce – who had Privy Counsellor status in their own countries – protested at their exclusion from part two of the Accession Council. Massey attended part two in 1952 as he was by then a UK as well as a Canadian Privy Counsellor.

⁴⁴³ The matter was referred to the Judicial Committee of the Privy Council, which confirmed in July 1910 that Privy Counsellors, judicial officers and other officers of the Crown were not required to re-take their Oath of Allegiance following a demise (see [Report on oaths following the King’s death \(JCPC\) \[1910\] UKPC 39](#)).

⁴⁴⁴ Privy Council Office website, [The Accession Council](#). This page also includes a chart of previous Accession Council timings.

6.1

Personal Declaration

The inaugural Declaration at the beginning of part two of the Accession Council is a personal statement delivered by a new sovereign.⁴⁴⁵ In 2022, the text used by King Charles III was:

My Lords, Ladies, and Gentlemen.

It is my most sorrowful duty to announce to you the death of my beloved Mother, The Queen.

I know how deeply you, the entire Nation – and I think I may say the whole world – sympathise with me in the irreparable loss we have all suffered. It is the greatest consolation to me to know of the sympathy expressed by so many to my Sister and Brothers and that such overwhelming affection and support should be extended to our whole family in our loss.

To all of us as a family, as to this kingdom and the wider family of nations of which it is a part, my Mother gave an example of lifelong love and of selfless service.

My Mother's reign was unequalled in its duration, its dedication and its devotion. Even as we grieve, we give thanks for this most faithful life.

I am deeply aware of this great inheritance and of the duties and heavy responsibilities of Sovereignty which have now passed to me. In taking up these responsibilities, I shall strive to follow the inspiring example I have been set in upholding constitutional government and to seek the peace, harmony and prosperity of the peoples of these Islands and of the Commonwealth Realms and Territories throughout the world.

In this purpose, I know that I shall be upheld by the affection and loyalty of the peoples whose Sovereign I have been called upon to be, and that in the discharge of these duties I will be guided by the counsel of their elected parliaments. In all this, I am profoundly encouraged by the constant support of my beloved wife.

I take this opportunity to confirm my willingness and intention to continue the tradition of surrendering the hereditary revenues including of the Crown Estate to my government for the benefit of all, in return for the Sovereign Grant, which supports my official duties as Head of State and Head of Nation.

And in carrying out the heavy task that has been laid upon me, and to which I now dedicate what remains to me of my life, I pray for the guidance and help of Almighty God.⁴⁴⁶

⁴⁴⁵ See Robert Hazell & Bob Morris, [Swearing in the New King: The Accession Declarations and Coronation Oaths](#), for an historical account of the personal Declaration.

⁴⁴⁶ Privy Council Office, [His Majesty's Declaration](#), 10 September 2022.

Until 1952, it was the responsibility of the Home Office (in consultation with the Dominions Office) to prepare in advance a draft outline of the Declaration for the approval of a new monarch.⁴⁴⁷

6.2 The Scottish Oath

The sovereign then takes and subscribes to an oath relating to the security of the Church of Scotland.⁴⁴⁸ This is required under the terms of the 1707 Anglo-Scottish Union and has been taken by every new monarch upon their accession since that of [King George I](#) in 1714.

First, the monarch declares an understanding that the law requires them to take and subscribe the oath at their accession and that they are ready to do so. A copy of the oath (on black-edged paper) is then handed by the Lord President to the monarch, who reads it aloud:

I, [INSERT TITLE] by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of My other Realms and Territories King, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the Settlement of the true Protestant Religion as established by the Laws made in Scotland in prosecution of the Claim of Right and particularly by an Act intituled ‘An Act for securing the Protestant Religion and Presbyterian Church Government’ and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland. So help me God.⁴⁴⁹

In Scots Law, an oath is usually administered with the right hand raised.⁴⁵⁰ However, in the context of the Scottish Oath at an accession “in practice” previous monarchs taking this oath have held a copy of the New Testament.⁴⁵¹

The sovereign then signs two identical documents recording the taking of the oath. The signature is witnessed by any members of the Royal Family present, the Lord Chancellor, the [Secretary of State for Scotland](#), the [First Minister of Scotland](#), the Lord Advocate, the [Advocate General for Scotland](#) (if a Privy Counsellor) and the Lord President of the Court of Session.⁴⁵²

One copy is sent to the [Court of Session](#) to be recorded in the Books of Sederunt (records of the Court of Session); the other is preserved in the Privy

⁴⁴⁷ It follows that the Ministry of Justice and the Foreign, Commonwealth & Development Office now possess this responsibility.

⁴⁴⁸ This is required, but the text as opposed to the content is not specified by [Article XXV\(II\)](#) of the [Union with Scotland Act 1706](#).

⁴⁴⁹ Privy Council Office website, [The Accession Council](#).

⁴⁵⁰ See [section 3](#) of the Oaths Act 1978.

⁴⁵¹ “Demise of the Crown: Notes on Privy Council Practice and Procedure”, HO290/95.

⁴⁵² Previous practice was that a Scottish Lord of Appeal in Ordinary and “representative” Scottish peers stood by the sovereign as the Scottish Oath was taken. Subsequent legislation ended the system of representative peers and the judicial functions of the House of Lords were transferred to the Supreme Court of the United Kingdom.

Council Register. A copy of Scottish Oath is later sent to the [Moderator of the General Assembly of the Church of Scotland](#).⁴⁵³

6.3 Other business

Once business relating to the Scottish Oath has been completed, the Lord President reads the remaining items on the List of Business. These are Orders in Council, mainly concerning the use of royal seals, which facilitate the continuity of government (see **Table 4** for a full list).⁴⁵⁴

Once the Accession Council is over, the signed parchments are brought back to the Privy Council Office where the signatures are transcribed for printing. Only once those of members of the Royal Family, the Archbishops, the Lord Chancellor, Prime Minister, Lord President, Speaker and the Earl Marshal have been listed (“not necessarily in order of precedence”) is the original order of signatures followed, those of Commonwealth High Commissioners appearing “after about 20 names, but not in strict sequence”.⁴⁵⁵

This augmented list of signatures and an official record of proceedings at the Accession Council are then published in a special Supplement to the London Gazette. Printed copies of the Proclamation are sent to the Commonwealth Realms, British Overseas Territories, Crown Dependencies, the Northern Ireland Office and the devolved governments. Copies are also distributed to High Sheriffs, mayors and “others concerned” in England and Wales.⁴⁵⁶

6.4 The Accession Proclamation

Following part two of an Accession Council, the Proclamation is read by [Garter King of Arms](#) from the balcony above Friary Court at St James’s Palace. On 10 September 2022, the Accession Proclamation was as follows:

Whereas it has pleased Almighty God to call to His Mercy our late Sovereign Lady Queen Elizabeth the Second of Blessed and Glorious Memory, by whose Decease the Crown of the United Kingdom of Great Britain and Northern Ireland is solely and rightfully come to The Prince Charles Philip Arthur George: We, therefore, the Lords Spiritual and Temporal of this Realm and Members of the House of Commons, together with other members of Her late Majesty’s Privy Council and representatives of the Realms and Territories, Aldermen and Citizens of London, and others, do now hereby with one voice and Consent of Tongue and Heart publish and proclaim that The Prince Charles Philip Arthur George is now, by the Death of our late Sovereign of Happy Memory, become

⁴⁵³ “Procedure of the Demise of the Crown”, London: National Archives, 1975, HO290/95.

⁴⁵⁴ Section 9 of the Succession to the Crown Act 1707 provided that existing seals would remain in use until a new sovereign ordered otherwise.

⁴⁵⁵ “Demise of the Crown: Notes on Privy Council Practice and Procedure”, HO290/95.

⁴⁵⁶ “Procedure on the Demise of the Crown”, HO290/95.

our only lawful and rightful Liege Lord Charles the Third, by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of His other Realms and Territories, King, Head of the Commonwealth, Defender of the Faith, to whom we do acknowledge all Faith and Obedience with humble Affection; beseeching God by whom Kings and Queens do reign to bless His Majesty with long and happy Years to reign over us.

Given at St. James's Palace this tenth day of September in the year of Our Lord two thousand and twenty-two.

GOD SAVE THE KING⁴⁵⁷

The Accession Proclamation is then read out, as directed by Orders of Council, at various locations around the United Kingdom and in the Crown Dependencies (see **Table 3**). The Proclamation itself does not “make” a new monarch or affect their accession, it merely publicizes the accession, which took place immediately upon the death of the previous monarch by law.⁴⁵⁸

6.5 Further Privy Council meeting

A further meeting of the Privy Council is usually held shortly after the Accession Council.

Until 1952, business at this meeting included an Orders in Council approving alterations to the Church of England's Prayers for the Royal Family and also “exhorting” Scottish clergy to pray for the same.⁴⁵⁹

Other business at this meeting of the Privy Council includes Orders in Council reappointing the Committee for the Affairs of Jersey and Guernsey and the Scottish Universities. Further Privy Council meetings early in the reign of a new monarch will approve new seals and coinage.

⁴⁵⁷ Privy Council Office, [The Accession Proclamation](#), 10 September 2022.

⁴⁵⁸ The Accession Proclamation is unusual in not being made by the King or Queen in Council but by the Lords of the Privy Council (see **Section 2.9**).

⁴⁵⁹ See [London Gazette, 4 March 1952, Section 1\(7\)](#) of the [Church of England \(Worship and Doctrine\) Measure 1974](#) rendered the Church of England Order unnecessary.

7

The Privy Council internationally

Although the Privy Council is primarily a UK institution, senior figures from Commonwealth Realms (countries which retain the King as head of state) – for example Prime Ministers and judges – have been appointed to the Privy Council.

The New Zealand Government website, for example, lists [New Zealanders who are members of the UK Privy Council](#). The Commonwealth Realms also have equivalent bodies to the Privy Council, for example Australia’s [Federal Executive Council](#) in Canberra and the [Executive Council of New Zealand](#) in Wellington.

7.1

UK Privy Council meetings in Australasia

The first Privy Council meeting held outside the UK took place in Melbourne, Australia, on 12 May 1901, during inaugural celebrations for the Australian Commonwealth. The Duke of Cornwall and York (the future King George V) presided over the “special” meeting at which several Australian Privy Counsellors were sworn.⁴⁶⁰ King Edward VII had authorised this via a Prerogative Order in Council prepared by Sir Almeric FitzRoy, the then Clerk of the Privy Council, who thought it a:

a matter of signal importance as marking the evolution of some coherent idea of the British Empire, that the Heir Apparent should in this the first year of the twentieth century hold a Council on the King’s behalf in Melbourne and Sydney, in order to confirm in their relation to the Throne the Australian politicians who were made Privy Councillors by the Queen.⁴⁶¹

Another Privy Council meeting later took place at the Legislative Council in Brisbane, Queensland. Sir Hugh Muir Nelson, who had been appointed a Privy Counsellor during the Diamond Jubilee celebrations in London, “was formally sworn in, and took the oath of allegiance to the King”. A levee followed in Parliament House.⁴⁶²

In 1920, Edward, Prince of Wales (the future King Edward VIII) was “empowered by Royal Commission” to hold Councils in New Zealand and

⁴⁶⁰ The Times, 13 May 1901.

⁴⁶¹ Sir Almeric FitzRoy, *Memoirs Volume One*, p48.

⁴⁶² [A levee and Privy Council](#), *The Leader*, 25 May 1901. A Privy Council meeting might have taken place in Paris in 1908 when Edward VII requested that the new Cabinet receive their seals of office at the Hôtel Crillon. Lord Knollys, the King’s Private Secretary, persuaded him to “come home for the seals of office ceremony” (see Roy Jenkins, *Asquith*, London: Collins, 1964, p179).

Australia “for swearing those members of the Privy Council who have not had the opportunity to observe that form”.⁴⁶³ The Prince’s Private Secretary, Sir Godfrey Thomas, acted as Clerk. In Wellington, the Earl of Liverpool’s tenure as Governor-General of New Zealand was extended so that he could be sworn.⁴⁶⁴

Special meetings of the UK Privy Council also took place in Australia, New Zealand and Ceylon (now Sri Lanka) during Queen Elizabeth II’s post-coronation Commonwealth tour in 1954. These were the first outside the UK to be presided over by a reigning monarch.⁴⁶⁵ The meetings were attended by local politicians, with the relevant Prime Minister serving as “Acting” Lord President of the Council. The acting Clerk of the Privy Council was usually a local official.

In Wellington, New Zealand, on 13 February 1954, an announcement stated that: “The Queen held a Council at 11.30 o’clock this forenoon at which the Duke of Edinburgh was present.” The Prime Minister of New Zealand, the Rt Hon S. G. Holland, was Acting Lord President. Sworn of the Council were K. J. Holyoake (Deputy Prime Minister) and Sir Harold Barrowclough (Chief Justice of the Court of Appeal). The meeting took place at Government House.⁴⁶⁶

“Nothing could more clearly demonstrate the underlying unity of the Commonwealth,” observed *The Times*, “than this use of the royal prerogatives 12,000 miles from Westminster.”⁴⁶⁷ Immediately after the Privy Council meeting, continued the report, the Queen:

presided over a meeting of the [New Zealand] Executive Council and, exercising the functions normally performed in her name by the Governor-General, Sir Willoughby Norrie, she signed about 16 State documents, including a royal warrant – a routine procedure – for the issue of £100,000 from the public account.⁴⁶⁸

On 17 February 1954 the Queen also held a Privy Council at Government House in Canberra. Present were Robert Menzies, the Prime Minister of Australia, ministerial colleagues and the Leader of the Opposition. Three new members were sworn, a former Chief Judge of the High Court and two ministers.⁴⁶⁹

⁴⁶³ Sir Almeric FitzRoy, *Memoirs Volume Two*, p722.

⁴⁶⁴ *Encyclopaedia of New Zealand 1966*, [Royal Visits](#).

⁴⁶⁵ In Queen Elizabeth II’s absence, the Queen Mother and Princess Margaret, as Counsellors of State, presided over seven meetings of the UK Privy Council back in London.

⁴⁶⁶ Holyoake was erroneously described as having “[secured for himself a place in constitutional history by becoming the first member to be sworn of Her Majesty’s Council outside the United Kingdom](#)”.

⁴⁶⁷ *The Times*, 14 February 1954. The Prime Minister of New Zealand was received in private audience with the Queen before the others were called in.

⁴⁶⁸ The Duke of Edinburgh was not eligible to attend as he was not a member (or Head) of the Executive Council. He addressed a gathering of scientists instead.

⁴⁶⁹ *Sydney Morning Herald*, 18 February 1954. At this time, legislation passed by Australian States but “reserved” for Royal Assent by the monarch rather than the State Governor was processed at a meeting of the UK Privy Council. Certain States were reluctant to have this granted at the Canberra meeting so waited until the Queen had returned to the UK.

Finally, the Queen held a third Privy Council in Colombo, Ceylon (later Sri Lanka) on 21 April 1954, at which:

the Duke of Edinburgh was present, and the Prime Minister was sworn in as a member of the Privy Council. The Governor-General acted as Lord President and Colonel the Honourable M. Charteris was the acting clerk. These affairs of state were wound up with an investiture at Queen's House.⁴⁷⁰

Viscount Samuel, a Liberal peer, reflected upon the Queen's return to the UK that there had "been constitutional work done" during her tour:

[A]cts of State: the opening of Sessions of Parliament; Speeches from the Throne, spoken, as here, by the Sovereign in person; meetings of the Privy Council, an organ of the Constitution older than Parliament itself, for wherever the Sovereign is, and three Privy Counsellors are present, there may be meetings of the Council and Orders passed. So, during this tour there have been sessions of the Privy Council in Australia, in New Zealand and in Ceylon, with their own local Privy Council members—members of the one single Imperial Privy Council, but their own local members.⁴⁷¹

There was a further Privy Council meeting in Canberra on 19 February 1963, to which Australian Privy Counsellors were invited and six Justices of the High Court of Australia were sworn as members.⁴⁷²

There were also six further meetings in Wellington between 1970 and 1995.⁴⁷³ At that on 7 November 1995, James Bolger, the Prime Minister of New Zealand, was declared Acting Lord President in Council. Marie Shroff, Clerk of the Executive Council and Secretary of the Cabinet, acted as Clerk.⁴⁷⁴

After 2000, however, successive Prime Ministers of New Zealand decided not to recommend any further appointments (usually politicians and judges) to the UK Privy Council. New Zealand also established its own Supreme Court in 2004, thus severing any connection with the Judicial Committee of the Privy Council. In August 2010, Queen Elizabeth II agreed that New Zealand's Governor-General, Prime Minister, Speaker of the House of Representatives and Chief Justice could continue to style themselves "The Right Honourable" but without being members of the UK Privy Council.⁴⁷⁵

⁴⁷⁰ The Times, 22 April 1954.

⁴⁷¹ [HL Deb 18 May 1954 Vol 187 c645](#)

⁴⁷² Australian Government, [PM 13/1963 - Privy Council Meeting in Canberra](#), PM Transcripts website

⁴⁷³ In 1970, 1977, 1981, 1986, 1990 and 1995.

⁴⁷⁴ See Noel Cox, [The Dichotomy of Legal Theory and Political Reality: The Honours Prerogative and Imperial Unity](#), Australian Journal of Law and Society 1:14, 1998-99, pp15-42.

⁴⁷⁵ Department of the Prime Minister and Cabinet, [The Right Honourable](#). Previous appointees to the UK Privy Council were to add "PC" after their names to denote such membership.

7.2

Other Privy Councils

Canada and Jamaica are the only other Commonwealth Realms to possess their own Privy Councils.

Canada

Members of the [Privy Council of Canada](#) are sworn members by the Governor-General on the advice of the Prime Minister and retain their membership for life. Members are not entitled to the prefix “The Right Honourable” unless they are also members of the UK Council.⁴⁷⁶



Queen Elizabeth II and Prince Philip meeting with the Privy Council of Canada at Government House in Ottawa, 1957 (Unknown photographer).

The Privy Council of Canada rarely meets in full but,⁴⁷⁷ as in Australia and New Zealand, visits by Queen Elizabeth II occasioned special gatherings:

⁴⁷⁶ Norman Wilding and Philip Laundy, *An Encyclopaedia of Parliament*, p505.

⁴⁷⁷ It follows the UK Privy Council in only doing so following the death of a monarch or upon the engagement of an unmarried sovereign.

- 14 October 1957: The Queen presided at an “extraordinary” meeting of the Privy Council in Ottawa. The Duke of Edinburgh was sworn a member.⁴⁷⁸
- 1959: The Privy Council met in the presence of the Queen in Halifax to confirm the appointment of a new Governor-General of Canada.
- 1981: As in the UK, the Privy Council of Canada met to give its formal consent to the marriage of the Prince of Wales and Lady Diana Spencer.
- 17 April 1982: An informal gathering of the Privy Council took place at a luncheon on Parliament Hill with the Queen. This marked her signing of the proclamation of the [Constitution Act, 1982](#).
- 18 May 2014: The then Prince of Wales was [sworn a member of the Privy Council of Canada during a visit to Halifax](#).

Separately, Queen Elizabeth II appointed John Diefenbaker, the then Prime Minister of Canada, a member of the UK Privy Council on 23 September 1957. He was sworn at Buckingham Palace on 20 December 1957.⁴⁷⁹

The Canadian [Privy Council Office](#) is analogous to the UK Cabinet Office in that it supports the Prime Minister and Cabinet of Canada. It is led by the Clerk of the Privy Council.⁴⁸⁰ When its President sent an official to compare procedural notes with Sir Almeric FitzRoy, the UK Clerk of the Council, in the 1920s, he [FitzRoy] observed that Orders of Council “are unknown in the Dominions”, something which had led to “great congestion of business” in Canada:

I advised [the official] that a system of Orders of Council might be introduced under which matters of less importance need not go to the Governor-General, but be passed by the Cabinet or any other Committee of Council appointed thereto under an Order in Council limiting such process to certain clearly defined classes of business. This, he thought, would be a great improvement.⁴⁸¹

Jamaica

The Privy Council of Jamaica consists of six members who are appointed by the Governor-General following consultation with the Prime Minister of Jamaica. The functions of the Privy Council are usually limited to advising the Governor-General on the exercise of the Royal Prerogative of Mercy and the disciplining of civil servants, local government officers and the police in cases where appeals have been made.⁴⁸²

⁴⁷⁸ The Times, 15 October 1957. At this point, the only other living non-Canadian members were said to be Sir Winston Churchill, Lord Alexander of Tunis and the Duke of Windsor, although it seems likely that the last of those ceased to be a member upon becoming King of Canada in January 1936.

⁴⁷⁹ The Times, 21 December 1957.

⁴⁸⁰ For a comparison of the roles of the Clerk of the Canadian and UK Privy Councils, see S. L. Sutherland, [The Role of the Clerk of the Privy Council](#).

⁴⁸¹ Sir Almeric FitzRoy, *Memoirs Volume Two*, p677.

⁴⁸² [Privy Council of Jamaica](#), Jamaica Information Service website.

8 Judicial Committee of the Privy Council

The judicial functions of the Privy Council are exercised by a committee known as the Judicial Committee (JCPC). The JCPC is the court of final appeal for the Crown Dependencies, the UK's Overseas Territories and for those Commonwealth Realms that have retained the right of appeal to the King in Council or, in the case of Commonwealth republics, to the Judicial Committee. Its history mirrors, in many respects, the appellate jurisdiction of the House of Lords, in that it also emerged out of the Curia Regis (the King's Council). It similarly existed as part of a larger body that was far from exclusively judicial in character (the Privy Council).⁴⁸³



Court 3 in the UK Supreme Court building, as used by the Judicial Committee of the Privy Council (John Cross, Creative Commons Attribution-Share Alike 4.0).

8.1 Functions of the Judicial Committee

The JCPC was put on a statutory basis in 1833.⁴⁸⁴ Whereas the judicial House of Lords largely dealt with domestic legal appeals, the JCPC was principally concerned with colonial, and later certain Commonwealth, cases.

⁴⁸³ The courts of both common law and chancery were originally manifestations of the Privy Council until they were replaced by the High Court and the Court of Appeal following enactment of the [Supreme Court of Judicature Act 1873](#).

⁴⁸⁴ [Judicial Committee of the Privy Council Act 1833](#). The [Judicial Committee Act 1844](#) extended the JCPC's jurisdiction and powers. A Registrar is appointed by Royal Warrant under the 1833 Act.

International jurisdiction

The Judicial Committee hears appeals from:⁴⁸⁵

- Crown Dependencies (the Isle of Man, Guernsey and Jersey);
- British Overseas Territories (such as Gibraltar and Bermuda);⁴⁸⁶
- several Commonwealth Realms (such as The Bahamas and Grenada);
- some Commonwealth republics (such as Trinidad and Tobago); and
- Brunei (a Commonwealth monarchy).⁴⁸⁷

The largest Commonwealth Realms have abolished appeals to the JCPC, something first made possible by the [Statute of Westminster, 1931](#).⁴⁸⁸

Most judgments of the JCPC technically take the form of advice to the King, as the Court's decisions are given effect via Judicial Orders in Council (see **Section 2.1**). This is why judgments often end with the words “The Board will humbly advise His Majesty...”⁴⁸⁹ On rare occasions, observed Robert Hardman of the previous reign, “sober little gatherings” of the Privy Council can “effectively, send a man to his death”:

The Council doesn't carry out sentencing, it merely judges appeals. But if it rejects the appeal of a murderer on death row in the Caribbean, then a condemned man is on his way to the gallows once the Queen has uttered a single word: 'Approved.' And it is her constitutional duty to do so.⁴⁹⁰

Domestic jurisdiction

The JCPC still transacts, albeit very rarely, domestic judicial business. Several Acts of Parliament create a right of appeal from professional bodies directly to the Judicial Committee. These are from the:

- General Medical Council ([Medical Act 1983](#))
- General Dental Council ([Dentists Act 1984](#))
- General Optical Council ([Opticians Act 1989](#))

⁴⁸⁵ In most cases involving Commonwealth countries, appeals come “as of right” from citizens: they do not need to obtain permission to appeal from the lower court whose decision they are appealing. The judges of the JCPC apply the law of the country or territory from which the appeal has come.

⁴⁸⁶ These include the sovereign base areas in Cyprus (Akrotiri and Dhekelia).

⁴⁸⁷ See [The Brunei \(Appeals\) Order 1989](#). In civil cases parties can appeal to the JCPC [provided that both agree](#).

⁴⁸⁸ Of the current Commonwealth Realms, appeals from Australia ceased in 1975 (federal) and 1986 (State), from Canada in 1949, New Zealand in 2003 and Belize in 2010. In Australia it remains [“theoretically possible”](#) for some federal appeals to reach the JCPC.

⁴⁸⁹ A digital catalogue of Appeals to the Judicial Committee of the Privy Council (JCPC) between 1792-1998 are [available online](#).

⁴⁹⁰ Robert Hardman, *Our Queen*, p157.

- Council of the Royal College of Veterinary Surgeons ([Veterinary Surgeons Act 1966](#))
- General Osteopathic Council ([Osteopaths Act 1993](#))
- General Chiropractic Council ([Chiropractors Act 1994](#))
- and under the [Professions Supplementary to Medicine Act 1960](#) and/or, insofar as it is in force, the [Health Act 1999](#) (which provides for a new regime for the statutory regulation of certain professions)

The JCPC is also responsible at first instance for resolving disputes under the [House of Commons Disqualification Act 1975](#). Other more obscure domestic judicial business of the JCPC can potentially include appeals from:

- the [Court of Chivalry](#) (on heraldic disputes)
- the Prize Courts (relating typically to the seizure of ships)
- the [Court of Admiralty of the Cinque Ports](#) (dealing with piracy and collisions at sea) and
- certain ecclesiastical courts,⁴⁹¹ as well as certain pastoral schemes of the Church Commissioners under the [Mission and Pastoral Measure 2011](#)

The Judicial Committee's jurisdiction over "devolution issues" (that is, competence issues arising from the 1998 Scotland, Northern Ireland and Government of Wales Acts) was transferred to the Supreme Court in 2009.

Section 4 of the Judicial Committee of the Privy Council Act 1833 also allows the King to refer any other matter to the Judicial Committee of the Privy Council for its opinion.⁴⁹² This provides "a convenient method of ascertaining the law when no other jurisdiction is available".⁴⁹³

8.2

Judicial membership

The membership of the JCPC, though not identical to that of the judicial House of Lords, was invariably very similar. Historically, the JCPC was chaired by the Lord President of the Council, although the Lord Chancellor, as Keeper of the Great Seal, was also a member. Those who were (or were former) Law Lords or UK territorial judges, provided that they were also Privy Counsellors, could also participate in proceedings.

⁴⁹¹ Chiefly non-doctrinal faculty [appeals from the Court of Arches/Chancery Court of York](#), although this power is rarely used. The [Ecclesiastical Jurisdiction Measure 1963](#) removed the role of the JCPC as the senior appellate court for the ecclesiastical courts.

⁴⁹² Judicial Committee of the Privy Council, [Role of the JCPC](#).

⁴⁹³ [HL Deb 21 April 1971 Vol 317 c769](#)

The most significant difference between these two “apex” courts was that, in relation to colonial or Commonwealth appeals, other statutes might provide for non-UK judges also to preside over, and non-peers could be appointed to, the JCPC. In the early 20th century, therefore, three Indian judges – [Syed Ameer Ali](#), Shadi Lal and D.F Mulla – were appointed Privy Counsellors so they could serve on the Judicial Committee.⁴⁹⁴

The first, Ameer Ali, was appointed in 1909,⁴⁹⁵ although Sir Almeric FitzRoy noted that Cabinet ministers “had to use some tact in overcoming His Majesty’s scruples”. Ameer Ali was sworn on his own copy of the Koran, with FitzRoy recognising the “significance” of including “a follower of Mohammed in the body that grew out of the Curia Regis of crusading Kings”.⁴⁹⁶

Contemporary membership rules

The [Constitutional Reform Act 2005](#) updated the membership criteria of the JCPC, which are set out in section 1 of the Judicial Committee of the Privy Council Act 1833. The practical effect of the changes was to remove the Lord President of the Council and the Lord Chancellor as members.

Any person who is under 75 years old, a Privy Counsellor and who holds, or has held, high judicial office (as defined in the 2005 Act) is able to preside on the JCPC. This means, in theory, that any current or former senior UK territorial judge (whether appellate or first instance) could conceivably sit on JCPC cases if requested. In practice, however, the vast majority of JCPC panels consist almost exclusively of those who are also current Justices of the UK Supreme Court. In short, it is exceptionally rare for more than one JCPC panellist to be anyone other than a UK Supreme Court Justice.

8.3

Co-location with the UK Supreme Court

Prior to 2009, the JCPC would [typically meet in the Privy Council Chamber in Downing Street](#). It now shares the former Middlesex Guildhall with the UK Supreme Court and pools administrative resources. There are three main court rooms in the shared facility, two of which are usually used for Supreme Court business, and the other for JCPC cases. Sometimes the judges of the JCPC are invited to hear an appeal in the country from which it has arisen. For example, the [JCPC has sat in The Bahamas in 2006](#), 2007 and 2009.

⁴⁹⁴ The first black Privy Counsellor was the first Prime Minister of Ghana, Kwame Nkrumah (see [Section 4](#)), while the first UK-born black member was [Paul Boateng, who was appointed in 2002](#).

⁴⁹⁵ The Times, 23 November 1909.

⁴⁹⁶ Sir Almeric FitzRoy, *Memoirs Volume One*, pp386-87. India abolished appeals to the JCPC in 1949. Sir Almeric had earlier been involved in proposals for Imperial Court of Appeal “in which the functions of the House of Lords and the Judicial Committee of the Privy Council should be united”, but it “did not find favour with the Government” (p319).

8.4

Criticisms of the JCPC

At a special sitting of The Bahamas' Court of Appeal in January 2016, retired Justice Neville Smith QC said the Caribbean country ought to sever its connection with the JCPC and establish its own final court of appeal:

Should we not set up our own final court in our own deliberate time rather than to continue to perch on the doorstep of the foreign office in London or wait to be embarrassed by the British government doing away with the Privy Council and cause us here to run [...] to make up a replacement court? We should not allow ourselves to become a hostage.⁴⁹⁷

Lord Phillips, the first President of the Supreme Court, also expressed concerns in 2009 that UK Justices could end up spending as much as 40 per cent of their working hours on JCPC business: "It is a huge amount of time. I personally would like to see it reduced. It's disproportionate."⁴⁹⁸

⁴⁹⁷ [Abandon the Privy Council](#), Bahamas Local website, 28 January 2016.

⁴⁹⁸ [Privy Council hampers Supreme Court](#), Financial Times, 20 September 2009.

9 Proposals for reform

There have been various proposals to reform, or indeed abolish, the Privy Council.

In a 1957 pamphlet, *The Privy Council as a Second Chamber*, Anthony Wedgwood Benn (Tony Benn) argued that the Privy Council fulfilled “all the conditions required of the second chamber”, including that the “quality of Privy Councillors is higher than the quality of peers”.

Because, noted Benn, membership of the Privy Council was much more common amongst peers of first creation than among those in possession of inherited titles, turning the Council into the Second Chamber meant that “all but a very few peers now sitting by their inheritance would have been swept away, and the exceptions would all be men who had earned their Privy Councillorship by public service”.⁴⁹⁹

An aborted scheme for House of Lords reform in 1968 would also have included a committee of the Privy Council periodically reviewing the composition of a reformed Upper House.⁵⁰⁰

The constitutional lawyer J. D. B. Mitchell believed the Privy Council (“and I emphasise that I do not mean the Judicial Committee of the Privy Council”) ought to be given a new administrative jurisdiction, like that of the French Conseil d’Etat, in recognition of the weakness of parliamentary control of administration.⁵⁰¹

In the view of Richard Crossman, Lord President of the Council between 1966 and 1968, the Privy Council was an “absurd waste of time” and the “best example of pure mumbo-jumbo you can find”. He was particularly critical of the requirement for ministers (“busy men”) to travel to wherever Queen Elizabeth II was in residence for Privy Council meetings, often Balmoral in the north of Scotland. “It would be far simpler for the Queen to come down to Buckingham Palace”, observed Crossman in his diary, “but it’s *lèse-majesté* to suggest it.”⁵⁰²

⁴⁹⁹ Anthony Wedgwood Benn, *The Privy Council as a Second Chamber* (Fabian Tract 305), London: Fabian Society, January 1957, pp2 & 18.

⁵⁰⁰ See House of Lords reform (Cmnd 3799), London: HMSO, 1968.

⁵⁰¹ J. D. B. Mitchell, The constitutional implications of judicial control of the administration in the United Kingdom, *Cambridge Law Journal* 25, 1967, pp46 & 55.

⁵⁰² Richard Crossman, *The Diaries of a Cabinet Minister*, Volume Two, p44. “*Lèse-majesté*” is a French term meaning “to do wrong to majesty”.

Crossman also suggested in 1967 that if he were to remain Lord President then he “would make every effort to do away with it”:

She [the Queen] could have the pleasant old-fashioned Privy Council once or twice a year as an informal occasion with drinks served afterwards and then for the rest she and the Lord President could sign things together or there could be some other formal method of approval.

Crossman also considered talking to the Queen “about the possibility of having it all done by signature”.⁵⁰³ Later, Rodney Brazier agreed that it was “difficult to understand why Privy Council business could not be wholly conducted in writing during the Queen’s absence from London”.⁵⁰⁴

The former Labour MP and minister Roy Hattersley believed the Privy Council was “not just an anachronism” but an element of the UK constitution which existed “to prove that real power lies in places remote from everyday life”:

The privy council is part of the deferential society. A genuinely radical government – anxious to promote the idea either of equality or meritocracy – could politely suggest to the Queen that she confirmed her desire to modernise the monarchy by announcing that she no longer needed “privy” advisers.⁵⁰⁵

The QC Patrick O’Connor believed abolition ought to be considered on the basis that there could “be no consistent rationale” for the Privy Council’s “diverse functions”, which were “little more than a rag bag of historical accidents”.⁵⁰⁶

O’Connor was particularly critical of Prerogative Orders in Council, something he called “a loophole in our constitutional safety net: a way in which hard law can be created, affecting fundamental rights, whilst by-passing Parliament and any prior accountability”. He also questioned the “cosmetic” role of Statutory Orders, arguing that there was no real reason why Parliament could not reallocate the power to make them to government departments and have the business transacted through ordinary Statutory Instruments.⁵⁰⁷

In 2015, the chief executive of [Republic](#), Graham Smith, agreed that decisions made in Council “should instead be made either directly by ministers or in parliament, so that MPs can properly hold decision makers to account”.⁵⁰⁸

Proposals made during a House of Lords debate on 12 May 2009 were less radical. Lord Norton of Louth, who referred to the Privy Council as “arguably a somewhat shapeless body”, said there:

may be a case for a wider review of what use can be made of the Privy Council, but there is already a clear case for utilising it for what it is—a repository of

⁵⁰³ Richard Crossman, *The Diaries of a Cabinet Minister*, Volume Two, pp512 & 194.

⁵⁰⁴ Rodney Brazier, *Constitutional Practice*, pp187-88.

⁵⁰⁵ Roy Hattersley, [Let’s abolish this absurdity](#), *Guardian*, 14 December 2000.

⁵⁰⁶ Patrick O’Connor, [The Constitutional Role of the Privy Council and the Prerogative](#), *JUSTICE*, January 2009, p6.

⁵⁰⁷ Patrick O’Connor, [The Constitutional Role of the Privy Council](#), p15.

⁵⁰⁸ Republic press release, [Now is the time for Privy Council to be scrapped: Republic](#).

knowledge, drawing on senior public servants drawn from a wide range of backgrounds.⁵⁰⁹

The then Lord President, Baroness Royall of Blaisdon, said she was “much attracted” by Lord Kingsland’s suggestion that Select Committee chairmen “were always made privy counsellors”.⁵¹⁰ Lord Rodgers, who initiated the debate, said he did “not want to lose our little pleasures” but repeatedly asked: “what are privy counsellors for?”⁵¹¹

In a letter to The Times dated 30 October 2017, Lord Lexden (who as Alistair Cooke was the Conservative Party’s official historian) was critical of “another bloated institution that needs urgent attention”. He continued:

Today the Privy Council has more than 670 members, making it larger than the [House of] Commons. Part of the blame rests with David Cameron, who handed out privy councillorships to junior ministers and backbenchers in unprecedented fashion. The full Council is required to meet on the accession of a monarch. At its present size, the Albert Hall will be needed.⁵¹²

Writing in 2020, the constitutional academic Paul F. Scott echoed Patrick O’Connor’s criticism of Prerogative Orders, calling their use to legislate for the British Overseas Territories “deeply unsatisfactory”:

In most cases the relevant orders in council are not subject to the normal processes of parliamentary scrutiny, and so the requirement that they be printed is the sole obligation. Even in the case of orders in council creating constitutions for the territories, the usual obligation is solely to lay them before Parliament, and that does not apply in all cases [...] There should be scrutiny, guaranteed by law, and yet the forms of the Privy Council work, very often, to evade that requirement, obscuring a practice that would not be accepted in other circumstances.

Scott added that some constitutional Orders “are often not published in a form accessible to the public at large, or even in some cases at all”. “Prerogative orders in council”, he added, “therefore can and do come into force without having been published by Her Majesty’s Stationery Office and without Parliament having been given sight of them.”⁵¹³

Writing in Sunday Times in July 2022, the former Supreme Court Justice Lord Sumption suggested that the Privy Council be equipped with a constitutional committee, “chaired by a senior retired judge but otherwise consisting of elder statesmen, which could step in with authoritative constitutional advice independently of the government whenever it was needed”.⁵¹⁴

⁵⁰⁹ [HL Deb 12 May 2009 Vol 710 c1003](#)

⁵¹⁰ [HL Deb 12 May 2009 Vol 710 c1007](#)

⁵¹¹ [HL Deb 12 May 2009 Vol 710 c1001](#)

⁵¹² The Times, 30 October 2017. The full Council is no longer required to meet upon an accession.

⁵¹³ Paul F. Scott, [The Privy Council and the constitutional legacies of empire](#), pp275-76. The obligation for constitutional Orders to be laid before Parliament does not apply to Anguilla or the Sovereign Base Areas in Cyprus (see **Section 2.3**).


⁵¹⁴ Lord Sumption, [Our system of conventions won out this time. But if Johnson had been mad as well as bad, the whole edifice could have fallen](#), Sunday Times (£), 10 July 2022.

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