**The justice system and the constitution**

The United Kingdom has three separate legal systems; one each for England and Wales, Scotland and Northern Ireland. This reflects its historical origins and the fact that both Scotland and Ireland, and later Northern Ireland, retained their own legal systems and traditions under the Acts of Union 1707 and 1800. This website deals with the judiciary of England and Wales. We mention briefly the Tribunals Service, which extends to Scotland, and the Supreme Court of the United Kingdom, which has jurisdiction over the entire United Kingdom since it replaced the Judicial Committee of the House of Lords in October 2009.

The justice system is one of the three branches of the state. The other two branches are the executive, or the government, and the legislature, which is the two Houses of Parliament. In most democracies these three branches of the state are separate from each other. They have roles and functions that are defined within written constitutions, preventing the concentration of power in any one branch and enabling each branch to serve as a check on the other two branches. This is known as separation of powers.

The United Kingdom, famously and almost uniquely, does not have a constitution that is contained in a written constitutional instrument. Its constitution is to be found in the statutes passed by Parliament and in the common law, the law developed over the centuries in the decisions of the courts. Only two other countries, Israel and New Zealand, are like the United Kingdom in not having a written constitutional instrument. These three countries differ in this way from almost all other countries. Such constitutional instruments, for instance that of the United States, which has one of the most well known written constitutions, often have a higher status than ordinary legislation and constitutional provisions can only be enacted and repealed by a special procedure that differs from the procedure for making and repealing ordinary legislation.

Our lack of a written constitution is one of the consequences of the way the United Kingdom and its political and legal institutions have evolved since 1066. Another consequence is that our institutions did not separate the functions and powers of the three different branches of the state, the executive, the legislature, and the judiciary.

For example, the government (or executive) is made up of MPs and peers who are also members of the legislature (the House of Commons and the House of Lords). In the United States by contrast, the President and members of the Cabinet, (the executive), are entirely separate from the legislature, (the Senate and the House of Representatives).

Historically, there are many other examples of this mixing of roles in the United Kingdom. Until the end of the 19th Century judges could be elected as MPs, and in some rare cases, judges such as the Lord Chief Justice, would serve as members of the Cabinet, and thus be members of the government. This has happened only once in the last 100 years when Lord Reading, appointed Lord Chief Justice in 1913, served in numerous executive positions, including as High Commissioner to Washington in 1917. Notably, until October 2009 our highest court was a committee of the House of Lords. Although since the last quarter of the nineteenth century only judges appointed as Lords of Appeal in Ordinary (“Law Lords”) and other peers who have held high judicial office have been able to take part in the work of the Committee, Law Lords continued to contribute to debates, in particular on proposals for legislation about the courts and the administration of justice.

The overlap between the judicial branch of the state with the other branches was for the most part brought to an end in the 19th Century. There was, however, one significant exception to this: the office of Lord Chancellor. The Lord Chancellor’s office is one of the oldest in the United Kingdom, originating according to some in Anglo-Saxon times, but with a formal history beginning in 1068 after the Norman Conquest. Over the centuries many famous figures have served as Lord Chancellor. They include; Thomas á Becket, Cardinal Wolsey, Thomas More and Francis Bacon.

The Lord Chancellor’s office was the clearest example of how the British constitution did not separate and indeed mixed the three branches of the state. The Lord Chancellor was a senior Cabinet minister and therefore a member of the executive, a judge and the head of the judiciary of England and Wales, and a member of the legislature, indeed the person who presided over the deliberations of the House of Lords, in effect its Speaker. The one office involved and combined all three branches of government. This might have been acceptable when the office came into existence. Its continued existence in that form had however been questioned on a number of occasions in the last two hundred years. Most famously, it was criticised by Walter Bagehot in The English Constitution (1867) in the following terms:

“The whole office of the Lord Chancellor is a heap of anomalies. He is a judge, and it is contrary to obvious principle that any part of administration should be entrusted to a judge; it is of very grave moment that the administration of justice should be kept clear of any sinister temptations. Yet the Lord Chancellor, our chief judge, sits in the Cabinet, and makes party speeches in the Lords.”

Such concerns continued to be raised during the 20th Century. Although since the 1960s the Lord Chancellor sat as a judge less frequently, he continued to appoint judges. Moreover, the administrative responsibilities of the office for the court system increased significantly as a result of the reforms introduced by the Courts Act 1971 which transferred responsibility for many courts from cities and local authorities to central government and the Lord Chancellor.

The concerns were finally addressed in 2003 when the government proposed the abolition of the office of Lord Chancellor. The result of this clearer appreciation of the principles of the separation of powers in relation to judicial functions was, however, not abolition of the office but reform. The Constitutional Reform Act 2005 brought about a significant change in the nature of the office, essentially removing the Lord Chancellor’s position as a judge and head of the judiciary of England and Wales, and position as the Speaker of the House of Lords. The Lord Chancellor is now a Secretary of State and, like other Cabinet ministers, also a member of the legislature.

As part of the process which led to the Constitutional Reform Act, in January 2004 the Government and the judiciary entered into a “Concordat”. One essential purpose of this was to guarantee the continued independence of the judiciary. The Concordat also sets out which of the functions hitherto exercised by the Lord Chancellor were “judicial” and now the province of the judiciary, which were “administrative”, and remain the province of government, and which are “hybrid” and should be shared.

The 2005 Act did more than simply reform the office of Lord Chancellor. It made reference to two of the fundamental principles of our constitution, the rule of law and the independence of the judiciary. While the judiciary’s independence has long been an issue that has been referred to in statute, such as the Bill of Rights 1689 or the Act of Settlement 1701, this was the first time that the rule of law was specifically referred to in statute. Common understandings had grown up over the centuries about what these entailed, but in the light of the other changes made it was considered important for the Act to refer to them and thus to give them statutory force. Details of the key changes brought in by the Act include:

* An explicit statutory duty on government ministers to uphold the independence of the judiciary. Ministers are specifically barred from trying to influence judicial decisions through any special access to judges. The Lord Chancellor also has a specific statutory duty to defend the judiciary’s independence. For example, this duty requires the Lord Chancellor to defend members of the judiciary carrying out their judicial functions from adverse comment by other members of the government. The starkest example of this arose as a consequence of the Sweeney case in June 2006. Craig Sweeney was sentenced to life imprisonment. The sentencing judge was required to set a minimum period of imprisonment before which the Parole Board could not consider his release on licence and, in accordance with statutory provisions and the sentencing guidelines the judge set a minimum period of five years and 108 days. Both the Home Secretary and a junior minister in the Department of Constitutional Affairs, criticised this. The DCA minister went so far as to say on Radio 4 that the sentence was wrong, although she later withdrew her comments. The Lord Chancellor spoke out against both his governmental colleagues and publicly defended the sentencing judge. In doing so he acted consistently with the duty imposed on the Lord Chancellor to defend the judiciary;
* The transfer of the Lord Chancellor’s judicial functions to the Lord Chief Justice who became the President of the Courts of England and Wales. As a consequence of this transfer of responsibility the Lord Chief Justice gained responsibility for the training, guidance and deployment of Judges. He or she also has the responsibility for representing the views of the judiciary of England and Wales to Parliament and ministers;
* The creation of a United Kingdom Supreme Court which is separate from and independent of the House of Lords. The new court has its own independent appointments system, staff, budget, and building in the former Middlesex Guildhall, opposite the Houses of Parliament;
* The establishment of an independent Judicial Appointments Commission. The Commission has the effective responsibility for selecting judges, although formally the Commission makes recommendations to the Lord Chancellor. This seeks to ensure that, while merit remains the sole criterion for appointment, the appointments system is more open and transparent;
* The establishment of the Judicial Appointments and Conduct Ombudsman, responsible for investigating and making recommendations concerning complaints about the judicial appointments process, and the handling of complaints about judicial conduct.

The changes to the constitutional position since 2003 have also had important practical consequences. These relate to the day-to-day leadership of the judiciary, the way judges are appointed and the way in which complaints are dealt with. These changes have helped to clarify the independence of the judiciary and are designed to enhance accountability, public confidence and the effectiveness of the work of the judiciary. The creation of a Ministry of Justice in 2007 which brought together responsibility for criminal justice, prisons, and penal policy (previously the Home Secretary’s responsibility) and responsibility for the courts service and legal aid (previously the Lord Chancellor’s responsibility) led to a further agreement between government and the judiciary in January 2008. This recognises that the judiciary has a distinct responsibility to deliver justice independently.

**The Legal System of the United Kingdom**

**Introduction**

The United Kingdom of Great Britain and Northern Ireland (UK) consists of four countries: England, Wales, Scotland and Northern Ireland.

Some law applies throughout the whole of the UK; some applies in only one, two or three countries.
This webpage describes law that applies either to the whole of the UK, or to England and Wales. It does not cover law that applies only to Wales, Scotland or Northern Ireland.

**Sources of UK Law**

The four principal sources of UK law are legislation, common law, European Union law and the European Convention on Human Rights. There is no single series of documents that contains the whole of the law of the UK.

**Legislation**

Legislation is law that is created by the legislature. The most important pieces of legislation are Acts of Parliament.

The principal legislature is the UK Parliament, which is based in London. This is the only body that has the power to pass laws that apply in all four countries. The UK Parliament consists of the House of Commons and the House of Lords.

The House of Commons consists of 650 Members of Parliament (MPs). Each MP represents a defined geographic constituency, whose electors vote using a “first-past-the-post” system. Each elector has one vote, and the candidate with the highest number of votes is elected as MP for that constituency.

The House of Lords consists of nearly 800 peers, of whom 600 are formally appointed by the Queen on the recommendation of the Prime Minister. The other members of the House of Lords are people who have inherited aristocratic titles such as “Lord” or “Lady”, and senior bishops of the Church of England.

The Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales each have the power to pass laws on devolved matters: these laws apply only in the country in which they were passed. Each of these legislatures has its own website.

**Common law**

The legal system of England and Wales is a common law one, so the decisions of the senior appellate courts (see below) become part of the law.

**European Union Law**

The UK is a Member State of the European Union (EU), which means that EU law takes precedence over UK law.

**The European Convention on Human Rights**

As a Member State of the Council of Europe, the UK is a signatory to the European Convention on Human Rights (ECHR). The Human Rights Act 1998, which came into effect in October 2000, enables all the courts in the UK to protect the rights identified in the ECHR.

**How UK Law is classified**

A distinction is made between public law, which governs the relationship between individual citizens and the state, and private law, which governs relationships between individuals and private organisations.

For practical purposes, the most significant distinction is between civil law and criminal law.
Civil law covers such areas as contracts, negligence, family matters, employment, probate and land law.

Criminal law, which is a branch of public law, defines the boundaries of acceptable conduct. A person who breaks the criminal law is regarded as having committed an offence against society as a whole.

**How Civil Law is enforced in England and Wales**

A person who believes that another individual or organisation has committed a civil wrong can complete a claim form and send it to the appropriate court. The County Court, which is based at over 200 locations, deals with most claims involving less than £25,000 and claims for less than £50,000 that involve injury to a person. The High Court, which is in London, hears most higher-value cases. In the County and High Courts, each case is heard by a single judge.

The person who starts a civil case is called a claimant, and he or she has the burden of proving that, more probably than not, the other party (the defendant) committed a civil wrong. If the claimant is successful, the usual remedy is damages: a sum of money paid by the defendant to the claimant. Other remedies, such as a court order that prohibits a person from behaving in a certain way, are available in some circumstances.

Either party to a civil case may appeal to a higher court against the decision.

**How Criminal Law is enforced in England and Wales**

A person who believes that a crime has been committed contacts the police, who conduct an investigation. If, after arresting and interviewing a person, the police believe that he or she committed the crime, that individual is charged. A report of the case is then sent to the Crown Prosecution Service (CPS).

If the CPS believes that the case has a reasonable prospect of success, and that it would be in the public interest to do so, it will start criminal proceedings against the suspect, who becomes the defendant in the case. In court, the CPS bears the burden of proving, beyond reasonable doubt, that the defendant committed the crime.

Minor offences, such as speeding, are heard by Magistrates’ Courts. Many towns in England and Wales have their own Magistrates’ Court, where cases are heard by three magistrates. Magistrates do not need any legal qualifications, and they are advised by a Clerk, who is a qualified lawyer. Magistrates do not state reasons for their decisions.

Very serious offences, such as murder and rape, are heard in the Crown Court. The Crown Court is based in about 90 centres throughout England and Wales. A jury consisting of 12 people chosen at random from the local population will decide, without giving reasons, whether the defendant is guilty of the offence. Usually a jury’s decision will be unanimous, but the judge may decide that an 11:1 or 10:2 majority is sufficient. The jury is advised about the law by the judge, whose role also includes imposing a sentence if the defendant is found guilty.

Some intermediate offences, such as theft, may be tried in a Magistrates’ Court or the Crown Court.
The sentences available for criminal offences include fines (payment of a sum of money to the state), imprisonment and community punishments such as unpaid supervised work.

**The Senior Appellate Courts of the UK**

Appellate courts are those that only hear appeals from other courts. The two most senior appellate courts are the Court of Appeal and the Supreme Court.

The Court of Appeal, which encompasses only England and Wales, consists of a Civil Division and a Criminal Division. The Civil Division hears appeals against decisions of the High Court, while the Criminal Division hears appeals about alleged errors of law in the Magistrates’ and Crown Courts. Cases are heard by three Lords Justices of Appeal, each of whom reaches an individual decision that may consist of a lengthy speech. The Court’s decision may be reached either by unanimity or by a 2:1 majority.

Appeals from the Court of Appeal are heard by the Supreme Court, which is the highest court in the UK. It hears civil appeals from all four countries, and criminal appeals from England, Wales and Northern Ireland. Permission to appeal to the Supreme Court will be given only if a case raises a point of general public importance. Cases are heard by five, seven or nine of the 12 Justices of the Supreme Court, each of whom reaches an individual decision that may consist of a lengthy speech. The Court’s decision may be reached either by unanimity or by a simple majority.

Decisions made in the Court of Appeal and the Supreme Court – and the Supreme Court’s predecessor, the Appellate Committee of the House of Lords – become precedents that must be followed by courts in all future cases. This ensures that similar cases are treated similarly, which many people regard as one of the most important aspects of justice.