

Reforming the Prerogative in the UK

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Review of Prerogative Powers by Gordon Brown in 2007

- Prerogative should be put onto statutory basis
- Stronger parliamentary scrutiny and control
- Organisation of the civil service
- Ratification of Treaties
- Going to War
- Making senior public appointments

Organisation of the Civil Service

- Long campaign by parliamentary committees, CSPL, unions and Cabinet Secretary
- Put on statutory basis by Part 1 of Const Reform and Governance Act (CRAG) 2010
- Appointment on merit; four civil service values; independence of Civil Service Commission
- Important firewall against further politicisation of civil service

Ratification of Treaties

- UK subject to 12k Treaties, ratifies 30 new Treaties a year
- Convention that Treaties laid before Parliament for 21 days before ratification
- CRAG 2010 Part 2 codified Ponsonby Rule (1924)
- Commons can resolve against ratification; Lords can require further Explanatory Memorandum
- Parliament rarely scrutinises, debates or votes on Treaties
- Requires a dedicated committee: perhaps in the Lords?

War Making Power

- Commons debate and vote approving invasion of Iraq 2003
- Subsequent votes in 2011 (Libya), 2013 (Syria), 2014 (ISIS in Iraq), 2015 (ISIS in Syria)
- Established convention that govt will not deploy armed forces without prior approval by parliament
- Rely on convention; codify in Commons Resolution; enshrine in statute?
- Latest 2019 parliamentary report recommends Commons Resolution

Scrutiny of Public Appointments

- 50 senior public appointments subject to pre-appointment scrutiny hearings
- Commissioner for Public Appointments ensures open competition, independent panel sifts and interviews
- Select Committees test for independent mindedness, suitability for the post, initial priorities
- Almost 100 hearings 2007-2017. 9 appointments queried
- In 3 cases appointment went ahead; 4 candidates withdrew; 2 resigned

Appointment of Peers

- Appointed by the Queen on advice of PM
- Since 2000 HoLAC nominates independent cross benchers, vets nominations from political parties
- Screened out 17 nominations, mainly party donors
- New appointments to Lords should reflect party balance of votes cast at previous election
- Numbers increased to 800. Burns Committee scheme of voluntary retirement
- What if PM wanted to pack the Lords to correct pro-Remain bias?

Appointment of Judges

- Senior judicial appointments made by the Queen on advice of Lord Chancellor or PM
- Const Reform Act 2005 established independent Judicial Appointments Commission
- Advertisements, job descriptions, selection criteria, application forms, tests, interviews
- In practice JAC is appointing body: Lord Chancellor is presented with single name
- Judges have disproportionate influence, effectively appoint their own successors

Brown government's review of Executive's prerogative powers

- Comprehensive two year review of all prerogative powers
- Concluded that original plan to codify not practicable
- Difficult to disentangle prerogative from statutory powers
- Prerogative provided flexibility in exceptional circumstances
- No public interest, or political demands for change

Reduction of Monarch's reserve powers

- Reserve powers, constitutional powers, personal prerogatives
- To appoint and dismiss ministers
- To summon, prorogue and dissolve Parliament
- To give Royal Assent to bills

Appointment of the Prime Minister

- Conventions now codified in Cabinet Manual 2011
- Queen will appoint that person most likely to be able to command confidence of the Commons
- After an election, incumbent PM can meet the Commons to test confidence
- In a hung parliament, political parties must establish who can command confidence
- Hold investiture vote to determine who commands confidence of the new Parliament?

Power to summon and dissolve Parliament

- Prerogative power of dissolution abolished by Fixed Term Parliaments Act 2011
- Mid term dissolution only if two thirds of all MPs vote for early election
- Or formal vote of no confidence, no government formed within 14 days which can command confidence
- FTPA silent on how alternative government might be identified
- ‘Sack me if you dare, Boris Johnson will tell the Queen’
- Date of first meeting of new parliament by Proclamation, on advice of PM

Power to prorogue and recall Parliament

- Prorogation happens at end of parliamentary session, normally each year
- Uncontroversial in UK until Johnson sought 5 week prorogation 9 Sept to 14 Oct 2019
- Post Miller 2 future PMs will have to provide good reasons for lengthy or sudden prorogations
- Legislation may be introduced to require parliamentary consent to prorogation
- MPs should also be able to ;propose recall during recess, as well as the government?

Royal Assent to Bills

- Last refused in 1708, Scottish Militia Bill
- King Baudouin withheld Royal Assent to abortion bill in 1990, Grand Duke of Luxembourg euthanasia in 2008
- Brexit triggered academic debate on whether Queen could withhold Royal Assent
- Twomey: Queen must act on advice of responsible ministers
- Even if ministers can no longer command confidence, safer course is to follow ministerial advice

Conclusions: possible further reforms

- Dedicated parliamentary committee to scrutinise treaties
- Codify parliamentary approval of war making power in Commons resolution
- Investiture vote for selection of new Prime Minister
- Introduce term limits for appointments to the Lords
- Require JAC to submit 3 names to Lord Chancellor for judicial appointments
- Remove prorogation from control of government
- Give MPs right to request recall of parliament