

Legislation



ELIZABETH II c.4



Criminal Justice and Immigration Act
2008

2008 CHAPTER 4

An Act to make further provision about criminal justice (including provision about the police) and dealing with offenders and defaulters; to make further provision about the management of offenders; to amend the criminal law; to make further provision for combating crime and disorder; to make provision about the mutual recognition of financial penalties; to amend the Rehabilitation of Prisoners Act 1984; to make provision for a new immigration status in certain cases involving criminality; to make provision about the automatic deportation of criminals under the UK Borders Act 2007; to amend section 127 of the Criminal Justice and Public Order Act 1994 and to confer power to suspend the operation of that section; and for connected purposes. [20 May 2008]

ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I
YOUTH REHABILITATION ORDERS
Youth rehabilitation orders

1 Youth rehabilitation orders
(1) Where a person aged under 18 is convicted of an offence, the court by or before which the person is convicted may in accordance with Schedule 1 make an order (in this Part referred to as a "youth rehabilitation order") imposing on the person any one or more of the following requirements:—

By the end of this unit, you will be able to:

- Describe how a bill becomes an Act of Parliament.
- Explain the different types of bill and when they might be used
- Describe what is meant by the terms 'separation of powers', 'sovereignty' and 'supremacy'
- Understand and explain the constitution of Parliament.

You will also be able to evaluate:

- The current process of law making in Parliament

Homework

Law has no coursework, and as such, the homework is an important assessment tool to evaluate your work in the subject. You are reminded that if a homework is not handed in on time, you will have **24 hours** to get it to your teacher; otherwise you will receive a **U** for your work, which may result in your withdrawal from the examination:

Describe the process by which a bill becomes an Act [15] *June 2006*

End of Unit Test

You will be assessed using a DRAG test at the end of the next unit of work (once we have looked at delegated legislation.) You will also plan and write up a response to June 2008's paper on the topic of legislation and delegated legislation. This will be planned in class time, and written up under timed circumstances.

- (a) Source A refers to statutory instruments
- (a) Describe and illustrate statutory instruments and two other types of delegated legislation [15]
- (b) Discuss whether the delegated legislation could be successfully challenged in the courts, in the following situations:
 - i. A local authority creates a byelaw banning singing near houses. It is designed to stop carol singers [5]
 - ii. A minister has been given power to make delegated legislation on legal funding. He introduces regulations concerning health care. [5]
 - iii. A minister brings a statutory instrument into force without consulting all the parties specified in the Enabling Act. [5]
- (c) (i) Describe the need for delegated legislation [15]
- (ii) Discuss the disadvantages of delegated legislation [12]

June 2008 OCR


A bit of background: The Composition Of Parliament

When we refer to Parliament, we actually mean **three** different institutions:

Keep this in mind! When you see the word Parliament in a text, it may be referring to all **three**. When we are talking about legislation and Parliament, we mean the institutions that make the law - **not** just the House of Commons.

To consolidate your knowledge, complete each section with the composition and role of that part of Parliament:

Part One:



How many are there?

How do they get their jobs?

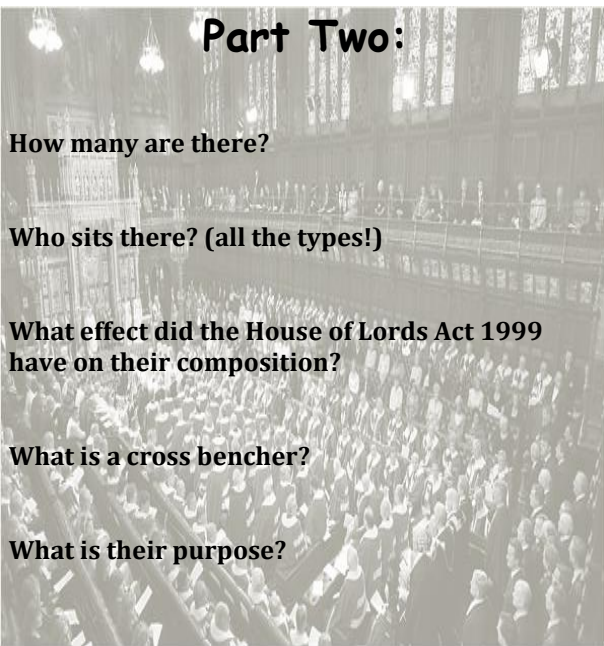
What do we call them?

Which three main parties sit here?

What is the Cabinet?

Who makes up the government?

Part Two:



How many are there?

Who sits there? (all the types!)

What effect did the House of Lords Act 1999 have on their composition?

What is a cross bencher?

What is their purpose?

Part Three:



Who is this?






What is her role in Parliament?

What is her role in legislation?

Why is her 'speech' important?

What Acts shall we pass this year?

Before we recap how the Bill becomes an Act, you need to know how we get the 'ideas' for Bills in the first place

Idea from...	Means...	Example...	Problem?
Manifesto	Salsbury Convention		
European Union			
Public Campaigns or Pressure Groups			
Changes in society			
Queen's Speech			

Types of Bill

A bill is: _____

Student Task: Last Lesson you had the three main types of Bill explained, and were given a range of examples. You are going you use your memory and understanding to complete the table below, illustrating the different types with **at least** two examples

(There are some at the bottom to help you with this!)

Type of Bill	Means	Examples
Public		
Private Members		
Private		

Murder (Abolition of Death Penalty) Act 1965	Criminal Justice Act 2003	Abortion Act 1967
Universities of Manchester Act 2004	Human Rights Act 1998	Kent (filming on public highway) Bill 2011

Have you understood?

Apply the law to the following situations, explaining which types of Bill would be the most appropriate and why.

- i. James Little MP, and Minister for the Environment wants to introduce a law aimed at banning all plastic bags from shops.
- ii. Queensbury School is sponsoring a Bill which will allow it to become a university.
- iii. Sarah Rowe MP wants to introduce a law which requires that all people over the age of 70 move into an old people’s home, allowing others to buy their houses.

How a Bill becomes an Act

IN WHICH HOUSE CAN A BILL START?

During your independent study last term, you produced a flow chart outlining this process and the steps that are taken. Using the information that you were able to find out, what you have learnt by drafting your own Bill and the textbooks if necessary, complete the following table illustrating the process of turning a Bill into an Act.


1. Pre-Parliamentary Stages

Green Paper	
White Paper	



2. Parliamentary Stages (assume the Bill starts in the House of Commons)

Stage	Description	Key terms or Questions
First Reading		What is the purpose of this stage?
Second Reading		<ul style="list-style-type: none"> • Division • Three line whip • Reasoned amendment

Public Bill Committee		<ul style="list-style-type: none"> • Clause • What about finance bills? • What about the House of Lords?
Report stage		<ul style="list-style-type: none"> • What happens if there are no amendments from the Committee?
Third Reading		
Other Place		<ul style="list-style-type: none"> • What is the purpose of having the second chamber?
Ping Pong		
Royal Assent 		<ul style="list-style-type: none"> • Has a monarch ever refused consent?
Date of Commencement		<ul style="list-style-type: none"> • <u>Easter Day Act 1928</u>

AO2: Some issues with the Process

When Parliament is making laws, it can run into a number of difficulties...

1. The House of Lords refuse to pass it.

Parliament Acts of 1911 and 1949 say that the House of Lords can only delay legislation; they cannot refuse to pass it. Often, if they do refuse it will result in the House of Commons dropping the legislation, as it gives them a chance to think again!

The only exception to this, are money bills. They cannot delay these under any circumstances.

This power has only been used rarely.

Example	Why did the House of Lords Refuse?	Do you agree? Why/ why not?
<u>Hunting Act 2004</u>		
<u>War Crimes Act 1991</u>		

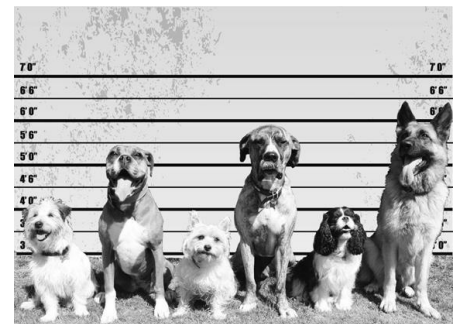
2. The Legislation is rushed through too quickly and doesn't receive proper scrutiny

Sometimes Parliament can rush through legislation. This might be in response to a decision of the courts, campaigns of newspapers etc.

Recent example from your independent study?

Another example of what can happen: **Dangerous Dogs Act 1991**

This was rushed through as result of a number of attacks on small children by dogs. But, it has proven quite a 'toothless' piece of legislation (ha ha!).



Two problems:

1. It was badly worded: *“any dog of the type known as pit bull terrier”*

2. It only applied to public places

Developing your AO2

Evaluating the Legislative Process.

Home Secretary Charles Clarke is facing opposition to his latest anti-terror laws on many fronts - not least the fact he is attempting to rush them through parliament in a matter of days.

Conservative spokesman David Davis has expressed dismay at the speed with which Mr Clarke is planning to force through the controversial Bill, declaring: "Parliament needs more time to debate these issues. Our civil liberties and system of justice are worth more than two days of hurried decisions." 5

It is a view shared by the Liberal Democrats and many on the Labour backbenches, particularly those with long memories who recall other hurried laws that proved deeply flawed.

One of the most notorious rushed laws was introduced by the Tory government in 1991 after a spate of headline-grabbing attacks by the then latest fashion accessory - Pit Bull terriers. 10

Pictures of children who had been mauled or worse, by the pets were more than any government could stand and they rushed through laws to, in effect, ban a list of dogs deemed dangerous.

Howls of protest followed as owners claimed their harmless pets were being threatened, while breeders and dog lovers found ways around the laws.

And, needless to say, fashions changed and new, equally macho breeds which didn't fall under the laws appeared on what seemed to be an almost daily basis. 15

From BBC.co.uk

cii. With reference to the source, discuss the disadvantages of the current legislative process [15]

Introduction					
Main	Point	Because	Illustration/ And	However	LTS
Conclusion					

Finally...

A little legal theory

We are briefly going to look at three theories which we will come back to time and again during the course (they are especially useful for AO2 questions)

1. Separation of Powers

This is one of the **key political theories** which underpins the whole idea of government.

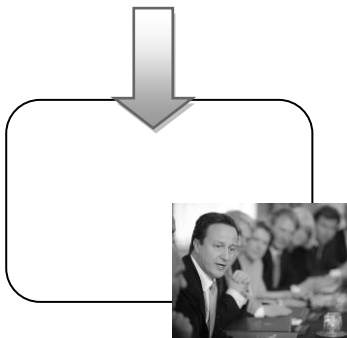


Montesquieu argued that the best way to set up a government was to divide it into three branches, and ensure that each branch could **check** and **balance** the power of the others. This meant that no one person or institution could dominate the system and form a _____.

EXECUTIVE

The day to day running of the government

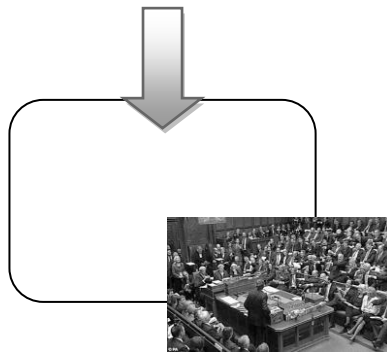
in our system...



LEGISLATIVE

Create the law

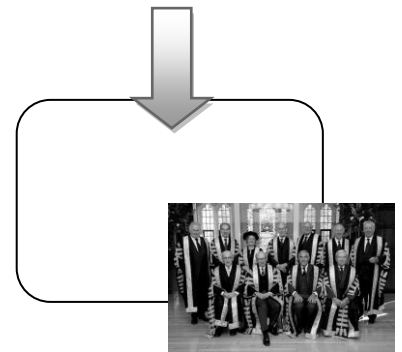
in our system...



JUDICIAL

Enforce the law

in our system...



2. Parliamentary Supremacy & Sovereignty

The most commonly accepted definition comes from Dicey in the 19th Century:

1. *Parliament can legislate on any subject matter*
2. *No Parliament can be bound by a previous Parliament, or bind a future one*
3. *No other body has the power to overrule Parliament or set aside an act of Parliament.*

This is **sovereignty**

This is **supremacy**

Sovereignty

Parliament can legislate on **anything**, including its own powers, and (in theory) cannot bind itself.

Parliament is given this power because they are directly elected by the people, and therefore supposed to represent the will of the people.

Supremacy

This means that any law passed by Parliament must be followed by the courts and they cannot overrule it.

This is because they are the democratically elected representatives, whereas judges are just appointed.

However, it appears that both of these concepts may now be limited...

European Communities Act 1972 s.2

Factortame

Human Rights Act 1998

"declaration of incompatibility"

Devolution 1998