

Legislation of the United Kingdom: primary legislation

INTRODUCTION

Sources for the law in the United Kingdom are twofold. The deposit of law is interpreted as each case comes to trial and is decided in court. This applies equally to the common law of the land that has evolved over centuries and is not embodied in any legal enactments, and to statute law which still has to be interpreted by the courts as they apply it. Decisions and interpretations reached in each case bind courts of the same or lower level when applying the same law in future cases. This is termed case law and is not covered by this guide. The other source of law, explained here, is legislation - laws enacted by lawful lawmaking authorities, principally by the Westminster Parliament.

Originally Scotland and Wales were independent before their unions with England. Wales was united with England in 1284, and in 1536 and 1542 English common law and statute law were applied to it by acts which created its present boundaries (less Monmouthshire) and gave it representation in the English Parliament. No pre-union Welsh law remains in force. The Welsh Assembly created in 1999 did not have full legislative powers and could pass only secondary legislation on devolved issues until April 2007. Its powers were increased by the Government of Wales Act 2006 which created the Welsh Assembly Government as a separate entity. From May 2007, The Assembly has been able to pass primary legislation (Assembly Measures) for the "Matters" in the 20 "Fields" outlined in Schedule 5 of the Government of Wales Act 2006. Measure making competence is limited to specific Matters identified within each Field. Matters can be added to each field by Legislative Competency Orders (LCOs). An LCO is an Order in Council which transfers legislative authority from the UK Parliament to the National Assembly for Wales.

After sharing a common ruler for more than a century, Scotland and England formed a political union in 1707. The Scottish Parliament was abolished and Scotland was represented in the British Parliament. The separateness of Scottish law was guaranteed by the Treaty embodied in the acts of union and the statutes of the former Scottish Parliament remained in force until repealed by the British Parliament. A Scottish Parliament with power to pass primary legislation was reestablished in 1999.

The situation in Northern Ireland is extremely complicated. After the union of Ireland and Great Britain, pre-union Irish legislation remained in force until modified by the British Parliament. When Ireland was partitioned in 1921, the surviving pre-union legislation and all the British legislation applying to Ireland to that date remained in force. In Northern Ireland, a devolved Parliament modelled on that in Westminster was established with power to pass primary legislation. The Parliament of Northern Ireland was abolished in 1972 and, after a brief gap, an Assembly was created with legislative powers. This was abolished in 1974 and direct rule was imposed. At that time 'primary legislation' for Northern Ireland in continuation of its acts of Parliament took the form of

British Orders in Council 'having effect as Northern Irish statutes'. The current Northern Ireland Assembly was first elected on 25 June 1998 and first met on 1 July of that year; however, it existed only in 'shadow' form until 2 December 1999 when full powers were devolved to it. Since then the Assembly has operated only intermittently. It has been suspended and direct rule has been re-imposed on four occasions:

- 1 February – 30 May 2000
- 10 August 2001 (24 hour suspension)
- 22 September 2001 (24 hour suspension)
- 14 October 2002 – 7 May 2007

When in operation, the Assembly has powers to pass both primary and secondary legislation in a wide range of areas that are not explicitly "reserved" to the UK Parliament. Unlike laws enacted by the Westminster Parliament, Acts of the Northern Ireland Assembly are subject to judicial review. A law can be struck down if it is found to:

- exceed the competences of the Assembly;
- violate European Union law;
- violate the European Convention on Human Rights; or
- discriminate against individuals on the grounds of political opinion or religious belief.

While the Assembly is in suspension, its legislative powers are exercised by the UK government, which effectively has power to legislate by decree. Laws that would have normally been within the competence of the Assembly are passed by the UK government in the form of Orders-in-Council rather than legislative acts

The remainder of this guide focuses on acts of the British Parliament at Westminster.

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1. ACTS OF PARLIAMENT

The principal and supreme form of legislation in the United Kingdom is an act of Parliament, also called a statute. Subject to the increasingly important proviso that European Union law within its competence can override any domestic legislation of the United Kingdom, acts of Parliament can make new law and amend or overturn old law on any matter and can themselves be overturned only by another act of Parliament.

Originally there was only one type of act of Parliament, but in 1539 a distinction was made between public acts and private acts which survives to this day. Public acts affect the law of the land and are of general application. Private acts do not alter the law but grant privileges or exemptions not otherwise legally available to individuals or corporate bodies. Up to 1539 most of these exemptions had not been treated as acts of Parliament at all, but rather as answers to petitions. From that date to 1814 they were numbered separately and listed but not published. From 1815 they were published selectively. Publication of all private acts dates only from 1924 by which time their numbers had decreased dramatically. Now they are very rare.

In the seventeenth century a third category of acts of Parliament began to evolve. Law courts recognise only 'law' which does not have to be proved and 'evidence' which does. Statutes (public acts) were law but unpublished private acts were 'evidence' and had to be proved by production of copies certified by Parliament as 'true copies'. Increasingly bodies were established to run certain public utilities, at first canals and turnpike roads, and later railways, which required private legislation. The inconvenience of having to constantly prove the legislation in litigation and the general nuisance created by the legislation being unpublished led to the practice of adding a clause to a private bill stating that the act was to be treated as a public act. By the mid-eighteenth century the size of the annual volumes was getting unwieldy and the 'public acts of a private character' were gathered numerically at the end of the sequence and issued in a separate volume of what were commonly called 'road acts', but which the British Library labels *Public Acts not Printed in the General Collection*. In 1798 these acts were numbered in their own sequence and were issued as 'local and personal acts' and the main sequence of public acts became 'public and general acts'. The terminology was changed again in 1870 when 'local and personal acts' became 'local acts'. Similarly in 1948 'private acts' became 'personal acts'. However the older terms are still used in practice.

To be valid, acts of Parliament need the royal assent, which explains the gap in the *Chronological Table of the Statutes* between 1642 and 1660. Parliamentary enactments during the Civil War were passed without royal assent and during the Commonwealth there was no king to give it. At the Restoration all were considered invalid and those considered useful were re-enacted. No edition of the statutes includes the acts of the Civil War and Commonwealth periods but early in the twentieth century an edition of *Acts and Ordinances of the Interregnum* edited by C. H. Firth and R. S. Rait was issued (London: HMSO, 1911). Although incomplete, it is still the only convenient compilation of legislation of this period.

To recapitulate: there are three types of act of Parliament: 1) public and general; 2) local and personal; and 3) private. However there are further ways of classifying acts, which may be worthwhile in evaluating the usefulness of an act to the researcher, but which do not affect identification and retrieval of acts from the Library's collections. Some categories you may come across are:

1. consolidation acts (which re-enact legislation scattered in earlier statutes without changing anything, the earlier legislation being repealed at the same time)

2. declaratory acts (which do not change the law but declare what it is in case of ambiguity)
3. amending acts (the act amended is called the principal act and the two can be referred to together as, for example, the Parliament Act 1911/49)
4. enabling acts (which empower the doing of something otherwise unlawful)
5. validating acts (which retrospectively make valid an action that had been unlawful).

There also used to be numerous classes of private acts - inclosure acts, estate acts, divorce acts, naturalisation acts, road acts, acts of attainder, etc.

2. CITATION

Acts of Parliament are nowadays commonly identified by their 'short title' which includes the date, e.g. *Copyright Act 1955*. This practice was not introduced until the mid-nineteenth century though many earlier acts were assigned short titles by later legislation. Many earlier and some later acts got popular names which were sometimes subsequently recognised as official short titles, e.g. *Bill of Rights 1688*. Dates of acts of Parliament until well into the eighteenth century are confusing. Royal assent at that time was always given at the end of a parliamentary session to all acts passed in that session, but acts were dated to the start of the session in which they were passed. If a session straddled a year, its acts would be dated to the earlier year. This happened regularly because until 1752, New Year's Day was officially 25 March and most parliamentary sessions started in February. The *Bill of Rights 1688*, for example, was actually passed in 1689.

In addition to being identified by a short title or a popular name, all acts can be identified by their citation. This traditionally took the form of the regnal year of the sovereign and the chapter number of the act. The regnal year is the year of the sovereign's reign - Queen Elizabeth II ascended the throne on 6 February 1952 and the first year of her reign ran from then to 5 February 1953, the second year from 6 February 1953 to 5 February 1954, etc. The regnal year in the citation of an act refers to the parliamentary session in which it was passed. This seldom fell in a single regnal year and so the inclusive regnal years for the session are quoted. For example, the Reform Act of 1867 was passed in a session which fell partly in the 30th and partly in the 31st year of the reign of Queen Victoria - this is abbreviated as '30 & 31 Vic'.

Acts of Parliament used to be passed on the final day of the session. Originally all the enactments were considered to be the 'statute' of that session with the individual acts being considered as chapters of the whole statute. Today acts are passed throughout the session and 'acts' and 'statutes' are considered synonymous. However, in a legacy of the old system, acts are still numbered as 'chapters', which is abbreviated to cap (from Latin 'caput'), chap, ch, or c. To a lesser extent, there may be variants of abbreviations of the sovereign's name - James, Charles and William are usually abbreviated as Jac., Car. and Gul. (for Jacobus, Carolus and Gulielmus) but Jas., Chas. and Wm (or Will) can also be used. Since 1963 this complicated system has been abandoned in favour of calendar

year and chapter number, e.g. *Police Act 1997* (1997 cap. 50). It is best to quote both the short title and the citation for ease of identification.

The three different types of acts (public and general, local and personal, and private) are each numbered from 1 every session and so a given chapter number may refer to two or three different acts. To avoid ambiguity, the modern practice is to use:

1. Arabic numerals for public general acts, e.g. cap.23
2. Lower case Roman numerals for local and personal acts, e.g. cap. xxiii
3. Italic Arabic numerals for private acts, e.g. cap. 23. To make this more visible, the usual practice is to add 'Private' in brackets after the chapter number, e.g. cap. 23 (Private).

However, practice until well into the nineteenth century was almost the reverse of this. Public and general acts used upper case Roman numerals, e.g. cap. XXIII and local and personal used Arabic numerals, e.g. cap. 23. **For citation purposes only the modern system should be used**, even when this is at variance with contemporary practice.

3. SOURCES OF ACTS OF PARLIAMENT

The first printed form of an act of Parliament is now the 'Queen's Printer's copy', a separate issue of the act in pamphlet form issued shortly after the act receives royal assent and becomes law. After all the acts for a calendar year have been issued in this form, they are reprinted in bound volumes. This cumulative edition has covered a calendar year since 1940 but, until 1962, although the acts were those passed in the given calendar year, they were numbered according to the parliamentary session. Up to 1938/39 the cumulative volumes contained the acts of a parliamentary session. Thus the *Representation of the People Act 1918* is found in the bound volume for 1917, i.e. session 1917/18. These annual or sessional volumes of acts are the longest running continuous serial publication in the world. In 1484 (1483 Old Style) Richard III summoned his only Parliament and appointed a printer to publish the acts, which appear as *Statuta apd' Westmonasteriu edita Anno primo Regis Ricardi Tercii* (London: W Machlina, 1484). Since then there has always been a King's or Queen's Printer of acts of Parliament and there has always been a sessional or annual volume of printed acts whenever Parliament has sat and passed laws, which was not every year until the late seventeenth century.

Soon longer cumulations were being issued and also retrospective reprints of earlier statutes. The Library has a rich collection of these, but they are largely of antiquarian interest. They can be traced through the online or printed catalogue and consulted in the Rare Books and Music Reading Room. There is one composite run of the King's/Queen's Printer's editions of statutes, consisting of long cumulations to the early Stuart period and sessional volumes thereafter, in the Official Publications collections. This is on the open shelves from session 1797/98, when the public acts were split into 'public and general acts' and 'local and personal acts'.

For earlier acts there are several choices. The definitive edition of all acts up to the end of the reign of Queen Anne (1713 for acts of Parliament) is *Statutes of the Realm*, a scholarly compilation produced in the early nineteenth century by the Records Commissioners, the predecessor of the National Archives. The Library's principal copy is too fragile for general use but a microfilm version is kept in the Reading Room. For the eighteenth century, the preferred version is *Statutes at Large*, which can also be used for earlier periods. This is not the title of a single specific edition, but of a series of related editions which ultimately go back to the sixteenth century. The best eighteenth century edition was produced by Owen Ruffhead and the series is often referred to as 'Ruffhead'. The edition on the open shelves is Pickering's edition based on Ruffhead and continued down to 1800. 'At large' in the title means unabridged but some acts are summarised and more are omitted but for their title. Where *Statutes at Large* is deficient, it will be necessary to consult either *Statutes of the Realm* or the sessional volumes. It should be noted that there are some discrepancies in the chapter numbering of acts of Parliament, particularly in the late Stuart period, between *Statutes at Large*, based on copies of acts enrolled in Chancery, and *Statutes of the Realm*, based on original acts in the archives of Parliament in the House of Lords Record Office. A table of variances reconciling the two sets is included in the *Chronological Table of the Statutes*.

These editions between them should satisfy anyone needing to consult the original text of any act of Parliament from the earliest times to the present day. However most people, including practicing lawyers, need to access texts of acts as they are currently in force incorporating subsequent additions, amendments and partial repeals. The Library holds a range of commercially published consolidations that fulfil this need in print and electronic form. *Halsbury's Statutes* is available on the open shelves in the Social Sciences Reading Room; others can be identified in the online catalogue.

Researchers needing to know what law was in force at a given point of time in the past may find some limited help in the various editions of *Statutes Revised*, first published in 1870. This omitted acts wholly repealed and included the rest as amended up to that date. The project was lengthy and hopelessly out of date before it was finished. A new edition was begun in 1886 with updates in 1909 and 1928/29 and a third edition, much delayed, was begun in 1948, after which the attempt was abandoned.

4. ELECTRONIC VERSIONS

Electronic versions of UK statutes are available in a range of electronic sources, both free and fee-based:

Westlaw - offers versions of the statutes as currently in force and historic versions back to 1991. This resource is password protected. Please ask enquiry desk staff to log you on.

Statute Law Database (SLD) - SLD carries most (but not all) types of legislation, both primary and secondary and is available free online at www.statutelaw.gov.uk/. Most types of primary legislation are held in 'revised' form. This means that amendments

made to them by subsequent legislation are incorporated into the text. Most types of secondary legislation (statutory instruments) on SLD are not revised and are held only in the form in which they were originally made. Scottish Parliament, Welsh Assembly and Northern Ireland Assembly legislation is included. The originating text of SLD was derived from two earlier official editions of revised primary legislation, *Statutes in Force* (SIF) and *The Northern Ireland Statutes Revised* (NISR). The final text of SIF was revised to 1 February 1991, and that of NISR to 1 January 2006. These dates form the 'basedates' for SLD, which means the dates from which revision work has been taken forward. It is worth noting that only primary legislation that was at least partly in force at the relevant basedate was loaded onto SLD. Both primary and secondary legislation made since the first basedate has been added. Work on updating the primary legislation on SLD is continually in progress. For information about how to find out the date to which any piece of legislation has been revised and how to obtain details of any effects that have not yet been applied to it, you will need to consult the Update Status of Legislation notes on the site. The Statute Law Database retains historical versions of legislation. This means that every time a textual amendment is carried out a new version of the affected provision is created, starting on the in-force date of the amendment. The SLD also retains a version of the provision as it stood before the new amendment was applied. This allows users to search the database and find out how a provision stood at any point in time from 1991.

Office of Public Sector Information (OPSI) - Her Majesty's Stationery Office (HMSO) started to publish acts of Parliament and statutory instruments free on its website in 1996. Initially, legislation was only available from that year. In 2000 they took the decision to include older legislation for which they had electronic files.

By May 2010 the site included:

- Original versions of all UK Public and General Acts from 1988
- Original versions of selected UK Public and General Acts 1837-1987
- Original versions of all UK Local Acts from 1991
- Original versions of selected UK Local Acts 1857-1990
- Scottish Parliament, Welsh Assembly and Northern Ireland Assembly legislation as originally enacted
- Revised versions of Acts, 1267 to date, extracted from the Statute Law Database, including Acts of the old Scottish, old Irish and Northern Ireland Parliaments as well as the Westminster Parliament, the Welsh and Northern Ireland Assemblies and the current Scottish Parliament.

Public Information Online (PIO) – offers full text of original versions of UK Public and General Acts and Explanatory Notes from 2007, Scottish Parliament Acts and Explanatory Notes from 2007, and Northern Ireland Assembly Acts and Explanatory Notes from 2008. This resource is subscription-based and can be accessed from the reading room only.

UK Statutes on CD-ROM, 1235-2003 - offers text of the public and general acts as passed based on *Statutes at large* from 1235 to 1866 and subsequently on the King's/Queen's Printer's version, with hot links to amending and amended legislation. Legislation which has been repealed is marked accordingly.

Statutes of the Realm - An online version is available in the Selden Society Publications and the History of Early English Law module of the Hein Online database. This resource is subscription-based and can be accessed from the reading room only

House of Commons Parliamentary Papers – This resource includes Private Bills and Acts 1695-1834 and Local and Personal Acts 1797-1834. It is available free in UK higher education institutions and in the British Library as we are a major contributor of texts

5. LOCATIONS

The Library offers many texts of acts of Parliament on the open shelves in the Social Sciences Reading Room. Many of the printed texts are too fragile to be photocopied. In such cases copies may be made from microform surrogates or through printouts from an electronic source. Pressmarks of both the original and the microforms are given except where the original is so fragile that it cannot normally be consulted; in these cases only the pressmark of the microform is given. Most of the microforms are held in cabinets in the Reading Room and can be retrieved at short notice.

<i>Public acts (to 1796/97)</i>	BS.Ref.3
-microform copy	SPR.Mic.P.27
<i>Public Acts not Printed in the General Collection</i>	
('Road acts' 1753/54-1796/97)	BS.Ref.4
-microform copy	SPR.Mic.P.14
<i>Public and general acts</i>	
(Sessional /annual volumes, 1797/98-)	BS.Ref.3
-microform copy (to 1800)	(open shelves) SPR.Mic.P.27
-microform copy (1801/1922)	SPR.Mic.E.392
<i>Public and general acts (recent unbound acts)</i>	BS.Ref.3
	(open shelves)
<i>Acts and Ordinances of the Interregnum</i>	BS.Ref.3a
	(open shelves)
<i>Local and personal acts (bound & unbound)</i>	BS.Ref.4
	(open shelves)
-microform copy (to 1910)	SPR.Mic.P.41
<i>Private acts (1815/75 & 1877)</i>	BS.Ref.2
	(open shelves)

<i>Private acts</i> (1876 & 1878-) bound with Local & personal acts	BS.Ref.4 (open shelves)
-microform copy (1876 & 1878-1910)	SPR.Mic.P.41
<i>Statutes of the Realm</i> (microform)	SPR.Mic.A.149
<i>Statutes at Large</i>	BS.Ref.20 (open shelves)
<i>The Statutes Revised</i> (1870/85 ed.) (1886/1901 ed.) (1950/51 ed.)	BS.24d/1 6126.r-s BS.24d/8
<i>Halsbury's Statutes</i>	OPL 344.42022
Indexes	
<i>Index to the Statutes</i> 2 vols., most recent edition	OPL Index
previous editions	BS.24d/7
<i>Chronological Table of the Statutes</i> 2 vols., most recent edition	OPL Index
previous editions	BS.24d/4
<i>Index to Local and Personal Acts</i> 1801/1947, Supplement 1948/66	OPL Index
<i>Index to Local and Personal Acts</i> 1850/1995, 4 vols.	OPL Index
<i>Chronological Table of Local Legislation</i> 1797/1994, 4 vols.	OPL Index
<i>Chronological Table of Private and Personal Acts</i> 1539/1997, 1 vol.	OPL Index
<i>Analytical Table of the Private Statutes</i> 1727/1834, by George Bramwell, 2 vols.	OPL Index
<i>Index to the Local and Personal and Private Acts</i> 1798/1839, by Thomas Vardon	OPL Index
<i>A Domesday of English Enclosure Acts and Awards</i> by W. E. Tate	2724.c.9