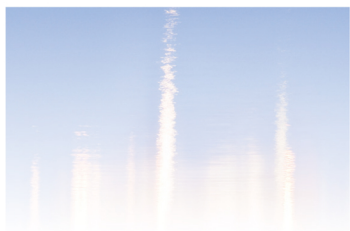
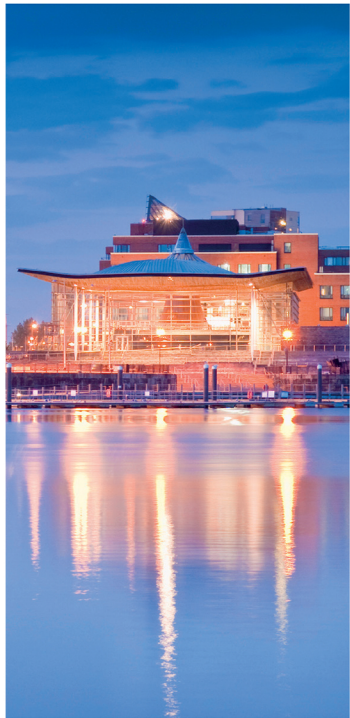


FOUNDATIONS SERIES

CONSTITUTIONAL AND ADMINISTRATIVE LAW

Alex Carroll



The top portion of the image features a decorative header with an abstract pattern of overlapping, rounded squares and rectangles in various shades of blue. A white rectangular box is superimposed on this pattern, containing the title text.

Constitutional and Administrative Law

the applicant is or would have been living in the United Kingdom or, if he/she cannot give any such address, an address in the United Kingdom at which he/she has lived (Representation of the People Act 1983, ss 14–16).

Service personnel who are qualifying Commonwealth citizens who were recruited in their country of origin or outside the United Kingdom without previously being resident in the United Kingdom but who were trained there may register at:

- 1 the barracks where they were enlisted or trained;
- 2 the barracks at which they would be resident if not posted overseas;
- 3 the regimental headquarters where they may have been resident;
- 4 an address in the UK where they would be resident if not required to be in barracks or no longer in the armed forces.

A Service Declaration is valid for five years. It should be sent to the Electoral Registration Officer for the constituency in which the serving member is, would have been or was resident.

Services voters not able to attend at the constituency in which they are registered may vote by post or proxy.

Crown servants

Similar provisions for electoral registration apply to Crown servants working overseas and to the staff of the British Council (Representation of the People Act 1998, s 14). Such persons may register as ordinary voters in the constituency in which they are normally resident or by submitting a Crown Servant Declaration. The declaration should contain the address where the person is or would be residing in the United Kingdom or, if such cannot be given, an address where he/she has resided previously. A Crown Servant Declaration remains valid for 12 months only. Persons in this category of voter, out of the United Kingdom, may vote by post or proxy.

Summary

The chapter explains the qualifications required to exercise the right to vote in UK parliamentary and local elections.

Further reading

Electoral Law, *The Law Commission*, HC145, Com 389, 16. 3 20, chs 4, 5, 6, and 7.

House of Commons Research Paper 97/26, *Voting Systems – The Alternatives*.

House of Commons Briefing Paper SN 04458, 2014, *Background to Voting Systems in the UK*.

House of Commons Library, *Individual Electoral Registration*, Briefing Paper no 6764, 1711.15.

Renwick (2011) *A Citizen's Guide to Electoral Reform*, Biteback Publishing.

The House of Commons: Members of Parliament

Objectives

After reading this chapter you should:

1. Know which categories of persons may and may not sit in the House of Commons and the reasons why certain categories of persons are disqualified from membership.
2. Be aware of the role of MPs and their principal functions and the nature of the relationship between MPs and their constituencies.
3. Understand the nature of the relationship between MPs and their political parties and the reasons for party discipline.
4. Know the conditions under which an electorate may recall their MP.
5. Be aware of gender, ethnicity, background and matters relating to the composition of MPs.

Disqualifications

Objective 1

The following categories of persons may not sit in the House of Commons.

Minors

For the purposes of membership of the House of Commons persons under 18 years are minors (Parliamentary Elections Act 1965, s 7) and are thus not eligible to take a seat in the House.

In *W, X, Y and Z v Belgium* (1975) 18 Yearbook 244, the European Commission of Human Rights concluded that Protocol 1, Art 3 of the Convention guarantees the right to stand for election, but did not consider that the minimum age of 25 years for candidacy of the Belgian Parliament was 'unreasonable or arbitrary . . . or . . . likely to interfere with the free expression of the people in the choice of legislature'.

Aliens

This exclusion does not apply to Commonwealth and Irish citizens, thus creating the anomalous situation in which Commonwealth citizens have no right of abode, but may be Members of the United Kingdom Parliament.

Peers

Prior to the House of Lords Act 1999 all hereditary and life peers were excluded from the House of Commons. This prohibition continues to apply to all life peers but in relation to hereditary peers now affects only those who remain Members of the transitional upper House, viz. the 90 'elected' hereditary peers (75 from within the different party groupings, according to the scheme adopted in 1999, and 15 by the whole House. The current party allocation of the 75 seats is Conservatives 42, Crossbench 29, Liberal Democrats 3, Labour 2) and the holders of the offices of Earl Marshall and Lord Chamberlain (1999 Act, s 3).

Clerics

The 26 senior bishops of the Church of England who comprise the spiritual element of the House of Lords (**spiritual peers**) are disqualified from membership of the House of Commons (House of Commons (Disqualification) Act 1975).

Prior to the House of Commons (Removal of Clergy Disqualification) Act 2001 clerical exclusions from the lower chamber extended also to the:

- (a) priests and ministers of the Churches of England and Ireland (Anglican) and of the Church of Scotland (Presbyterian) (House of Commons (Disqualification) Act 1801);
- (b) priests of the Catholic Church (Roman Catholic Relief Act 1829).

No such restrictions applied, however, to the priests of the Anglican Church in Wales (Welsh Church Act 1914), to the ministers of other Christian churches or to the priests and teachers of other faiths.

This anomalous situation was rectified by the 2001 Act. The Act removed the disqualifications on the Anglican priests of England and Ireland, ministers of the Presbyterian Church in Scotland and on Catholic priests (s 1). Eligibility for the House of Commons now extends to the clergy of all Christian churches and of all other faiths.

Psychiatric patients

Under the Mental Health 1983, section 141, if a Member is ordered to be detained on the grounds of mental illness, the detention must be reported to the Speaker. If the Member is still detained six months later (after a second medical report to the Speaker), the Member's seat is declared vacant.

Bankrupts

A person may not sit in the House of Commons if they are subject to a bankruptcy restriction order (in England and Wales) or are adjudged bankrupt in Northern Ireland, or if their estate has been sequestrated in Scotland (Insolvency Act 1986, section 247, Enterprise Act 2002, s 266).

It appears, however, that, although declared bankrupt, a Member is under no duty to make this known to the Speaker and may continue to sit until ordered to withdraw.

Persons convicted of corrupt or illegal electoral practices

A person convicted of a corrupt electoral practice (the more serious type of electoral offence) is disqualified from election for five years and from election in the constituency in relation to which the offence was committed for ten years (seven years if not personally guilty but

guilty through their agent). A person guilty of an illegal electoral practice is disqualified from election for the constituency concerned for seven years (reduced to the duration of the Parliament for which the election was held if guilt is through their agent), but not, therefore, from election for an alternative constituency. The election of a successful candidate, guilty personally or through their agent is **void** (Representation of the People Act 1983, ss 159, 160, 173 and 174).

Following the General Election of 2010, an Election Court (usually two High Court judges) in the Oldham East and Saddleworth constituency found the winning candidate (Philip Woolas, Labour) guilty of making false statements against one of his competitors (Robert Watkins, Liberal Democrat) contrary to the Representation of the People Act 1983, s 106. Mr Woolas's election was, accordingly, declared void. The offending words in question were to the effect that Mr Watkins had sought to 'woo' certain extremist elements in the constituency and that he had received undeclared financial support from a wealthy Saudi Arabian Sheikh (*Watkins v Woolas*) [2010] EWHC 2702 (QB)).

Prisoners

Persons sentenced to imprisonment for more than one year or any indefinite sentence are disqualified during their term of imprisonment. Further, any nomination or election of such person as a candidate is void (Representation of the People Act 1981, s 1). If a sitting Member is so imprisoned their seat is vacated. These provisions were introduced as a response to the election of Bobby Sands in Fermanagh, South Tyrone in 1981. At the time Sands was a republican prisoner on hunger strike in the Maze prison near Belfast. His nomination and election aroused great passions and controversy on both sides of the Irish Sea. Subsequently Sands died after two months without food. Previously, if a Member was sentenced to imprisonment for any period, the Speaker was informed of the offence and sentence, but the prisoner remained a Member unless a motion was passed to exclude him.

If a sitting Member is imprisoned for less than twelve months, unless for treason, he/she is not automatically disqualified but the House could vote for expulsion. A prisoner serving a sentence of less than twelve months is not disqualified from nomination or election but, of course, could not sit until the sentence has been served. Persons convicted of treason (Treason Forfeiture Act 1870) and sentenced to less than twelve months would be disqualified. Whatever the period of sentence, such persons remain disqualified until pardoned or their sentence expires.

Excess Ministers

Not more than 95 holders of paid ministerial office may sit and vote in the House of Commons (House of Commons (Disqualification) Act 1975, s 2(1) and Sched 2). Hence if an MP is given a ministerial post in excess of the 95, they are disqualified unless and until another Minister is removed or put into the House of Lords.

Members of other legislatures

This disqualification applies to the members of the legislative assemblies of all states outside the Commonwealth with the exception of the Irish Republic (House of Commons (Disqualification) Act 1975 as amended by the Disqualification Act 2000). Although not dealt with in the 1975 Act, by a decision of the European Union in 2002, members of national legislatures may not, at the same time, take a seat in the European Parliament.

Holders of public office

This restriction extends to those who must be seen to be politically impartial, e.g. judges (but not **lay magistrates**), police, members of the armed forces. It also applies to those paid and appointed by the Crown (government) and therefore susceptible to government influence or pressure – for example, civil servants, members of boards of public corporations and those with positions incompatible with attendance at Westminster, such as members of foreign legislatures, ambassadors and high commissioners (House of Commons (Disqualification) Act 1975, Pt II, Sched 1).

Self-disqualification

Members of Parliament may also disqualify themselves by applying for any of the ancient offices of **bailiff** or steward of the Chiltern Hundreds or the Manor of Northstead. This is the method by which MPs resign (1975 Act, s 4).

Expulsion

The House may declare a disqualified Member's seat vacant or may expel a Member for whatever reason it pleases. Tony Benn's Bristol South-East seat was declared vacant after he succeeded to his father's peerage in 1961. In the subsequent by-election Benn (by now Lord Stansgate) was re-elected. The beaten Conservative then presented a successful election petition (*Re Parliamentary Election for Bristol South-East* [1964] 2 QB 257) and was subsequently declared to have been elected. Benn later resigned his peerage under the provisions of the 1963 Peerage Act and regained the Bristol seat in a by-election in 1963.

The power of expulsion is very rarely exercised. Only three MPs were expelled from the House during the whole of the twentieth century. These were:

- 1 Hovratio Bottomley, expelled in 1922 after being convicted of fraud;
- 2 Gary Allingham, expelled in 1947 after making false allegations of corruption and drunkenness against fellow Members and lying to a parliamentary committee;
- 3 Peter Baker, expelled in 1954 after being convicted of uttering forged documents.

A Member may also lose his or her seat by virtue of a recall petition supported by over 10 per cent of the MP's local electorate on any of the grounds set out in the Recall of MPs Act 2015 (see below at p. 218).

Effects of disqualification

- (a) The House may declare the Member's seat vacant (Benn case, 1963).
- (b) The House may request an advisory opinion from the Privy Council on the law relating to a particular issue of disqualification (Judicial Committee Act 1833, section 4; see *Re MacManaway* [1951] AC 161).
- (c) The House may declare the seat vacant pursuant to the findings of an Election Court (two High Court judges) after consideration by the latter of an election petition (i.e. complaint by person aggrieved). This jurisdiction was given to the courts by virtue of the Parliamentary Elections Act 1868 and Parliamentary Elections and Corrupt Practices Act 1879. It is assumed that the House will comply with the court's findings.

- (d) The House may declare the seat vacant pursuant to a successful determination of an application alleging disqualification to the Privy Council (House of Commons (Disqualification) Act 1975, s 7).

Role and functions of MPs

Role

Objective 2

Members of Parliament each have at least four constituencies: their conscience, the party, their geographical constituency and, usually, an interest group. Perhaps a fifth constituency could be said to be in the public interest. Most MPs now appear to accept that their principal loyalty is to the party, but opinions have long differed concerning the extent to which (and how often) MPs should be free to voice their own opinions. It was once generally believed, prior to the advent of organised political parties (post-1832) that an MP's principal function was to speak for their constituents.

In the days when Parliament (or at least the Commons) existed largely to grant taxes to the monarch and occasionally, to present petitions for the redress of grievances, the primary loyalty of members was to those whom they represented. Members were seen as local representatives, living in the constituencies and often being maintained by them (Radice, Vallence and Willis, *Members of Parliament*).

Later views, however, sought to reject the opinion that MPs should see themselves as mere delegates of their constituency electorate.

It ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him, their opinion high respect, their business unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfaction to theirs; and above all, in all cases to prefer their interest to his own. But his unbiased opinion, his mature judgement, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living . . . Your representative owes you not his industry only, but his judgement, and he betrays instead of serving you, if he sacrifices it to your opinion (Edmund Burke, Speech to the Electors of Bristol (1774) – see Bell, *The Works of Edmund Burke*, 1889).

Burke perceived MPs to be a socially and intellectually superior group of people, well qualified to perform the functions of government.

Parliament is not a congress of ambassadors from different and hostile interests, which interests each must maintain as an agent and advocate against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole, where not local purposes, not local prejudices ought to guide, but the general good resulting from the general reason of the whole. You chose a member indeed but when you have chosen him he is not the member for Bristol, but he is a member of Parliament (*ibid*).

Sentiments of the Burkean tradition were evident in Churchill's famous exposition on the role of MPs.

What is the use of sending members to the House of Commons who say just the popular things of the moment and merely endeavour to give satisfaction to the government whips by walking through the lobbies oblivious to the criticism they hear. People talk about our parliamentary institutions and parliamentary democracy, but if these are to survive it will not be because the constituencies return tame, docile, subservient members, and try to stamp out every form of independent judgment.