Parliamentary sovereignty in the United Kingdom

[**Parliamentary sovereignty**](https://en.wikipedia.org/wiki/Parliamentary_sovereignty) in the [**United Kingdom**](https://en.wikipedia.org/wiki/United_Kingdom) is a concept central to the functioning of the [constitution of the United Kingdom](https://en.wikipedia.org/wiki/Constitution_of_the_United_Kingdom) but which is also not fully defined and has long been debated. Since the subordination of the [monarchy](https://en.wikipedia.org/wiki/Monarchy_of_the_United_Kingdom) under parliament, and the increasingly democratic methods of parliamentary government, there have been the questions of whether parliament holds a supreme ability to legislate and whether or not it should.

Parliamentary sovereignty is a description of to what extent the [Parliament of the United Kingdom](https://en.wikipedia.org/wiki/Parliament_of_the_United_Kingdom) does have absolute and unlimited power. It is framed in terms of the extent of authority that parliament holds, and whether there are any sorts of law that it cannot pass. In other countries, a [written constitution](https://en.wikipedia.org/wiki/Written_constitution) often binds the parliament to act in a certain way, but there is no [codified constitution](https://en.wikipedia.org/wiki/Codified_constitution) in the United Kingdom. In the United Kingdom, parliament is central to the institutions of state.

The traditional view put forward by [A. V. Dicey](https://en.wikipedia.org/wiki/A._V._Dicey) is that parliament had the power to make any law except any law that bound its successors. Formally speaking however, the present state that is the UK is descended from the international Treaty of Union between England and Scotland in 1706/7 which led to the creation of the “United Kingdom of Great Britain”. It is clear that the terms of that Treaty stated that certain of its provisions could not be altered, for example the separate existence of the Scottish legal system, and formally, these restrictions are a continuing limitation on the sovereignty of the UK Parliament. This has also been reconsidered by constitutional theorists including [Sir William Wade](https://en.wikipedia.org/wiki/Sir_William_Wade) and [Trevor Allan](https://en.wikipedia.org/wiki/Trevor_Allan_(legal_philosopher)) in light of the [European Communities Act 1972](https://en.wikipedia.org/wiki/European_Communities_Act_1972_(UK)) and other provisions relating to membership of the European Union, and the position of the [Human Rights Act 1998](https://en.wikipedia.org/wiki/Human_Rights_Act_1998) and any attempts to make this or other legislation [entrenched](https://en.wikipedia.org/wiki/Entrenched_legislation). These issues remain contested, although the United Kingdom has since ceased membership of the EU.

The terms "parliamentary sovereignty" and "parliamentary supremacy" are often used interchangeably. The term "sovereignty" implies a similarity to the question of [national sovereignty](https://en.wikipedia.org/wiki/National_sovereignty). While writer [John Austin](https://en.wikipedia.org/wiki/John_Austin_(legal_philosopher)) and others have looked to combine parliamentary and national sovereignty, this view is not universally held. Whichever term is used, it relates to the existence or non-existence of limits on parliament's power in its legislative role. Although the [House of Commons](https://en.wikipedia.org/wiki/House_of_Commons_(UK))' dominance within the [Houses of Parliament](https://en.wikipedia.org/wiki/Houses_of_Parliament) is well attested, "parliamentary sovereignty" refers to their joint power. Almost all legislation is passed with the support of the [House of Lords](https://en.wikipedia.org/wiki/House_of_Lords).



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**History**

The [Statute of Proclamations](https://en.wikipedia.org/wiki/Statute_of_Proclamations) of 1539 gave the King wide powers to legislate without reference to, or approval from, Parliament. At the same, it recognised the [common law](https://en.wikipedia.org/wiki/Common_law), existing statutory provisions, and excluded the breach of royal proclamations from the [death penalty](https://en.wikipedia.org/wiki/Death_penalty). It was repealed in 1547, but [Queen Mary](https://en.wikipedia.org/wiki/Mary_I_of_England) and [Queen Elizabeth](https://en.wikipedia.org/wiki/Elizabeth_I_of_England) both relied on royal proclamations. A review by [Chief Justice](https://en.wikipedia.org/wiki/Chief_Justice) [Edward Coke](https://en.wikipedia.org/wiki/Edward_Coke) in 1610, the [*Case of Proclamations*](https://en.wikipedia.org/wiki/Case_of_Proclamations), established that Parliament had the sole right to legislate, but the Crown could enforce it. The concept of parliamentary sovereignty was central to the [English Civil War](https://en.wikipedia.org/wiki/English_Civil_War): Royalists argued that power held by the King, and delegated to Parliament, challenged by the Parliamentarians. The issue of [taxation](https://en.wikipedia.org/wiki/Taxation) was a significant power struggle between Parliament and the King during the [Stuart period](https://en.wikipedia.org/wiki/Stuart_period). If Parliament had the ability to withhold funds from the monarch, then it could prevail. [Direct taxation](https://en.wikipedia.org/wiki/Direct_taxation) had been a matter for Parliament from the reign of [Edward I](https://en.wikipedia.org/wiki/Edward_I), but [indirect taxation](https://en.wikipedia.org/wiki/Indirect_taxation) continued to be a matter for the King.

Royal powers were finally removed by the [Bill of Rights 1689](https://en.wikipedia.org/wiki/Bill_of_Rights_1689). The Bill of Rights also removed the ability of the Crown to dispense with (ignore) legislation and statutes. Such a right had culminated in the [Declaration of Indulgence](https://en.wikipedia.org/wiki/Declaration_of_Indulgence) of 1687, which had ushered in the [Glorious Revolution](https://en.wikipedia.org/wiki/Glorious_Revolution). That led the [Earl of Shaftesbury](https://en.wikipedia.org/wiki/Anthony_Ashley-Cooper,_2nd_Earl_of_Shaftesbury) to declare in 1689, "The Parliament of England is that supreme and absolute power, which gives life and motion to the English government". The [Act of Settlement](https://en.wikipedia.org/wiki/Act_of_Settlement_1701) of 1700 removed royal power over the judiciary and defined a vote of both houses as the sole method of removing a judge.

**Core theory**

It was the view of [A. V. Dicey](https://en.wikipedia.org/wiki/A._V._Dicey), writing in the early twentieth century, that Parliament had "the right to make or unmake any law whatever; and, further, that no person or body is recognised by the law of England as having a right to override or set aside the legislation of Parliament". He refers to "England" but his view held for the other nations of the United Kingdom, with slightly different details. This view however side-steps the issue of the limitations formally placed on Parliament when the United Kingdom was first established in 1706/7 and the English and Scottish Parliaments surrendered, or perhaps more correctly pooled, their sovereignty into the new state.

There are at least three suggested sources for this sovereignty. The first is sovereignty by [Act of Parliament](https://en.wikipedia.org/wiki/Act_of_Parliament_(UK)) itself. One response, put forward by [John Salmond](https://en.wikipedia.org/wiki/John_Salmond_(judge)) was to reject this idea: he believed that "no statute can confer this power on Parliament for this would be to assume and act on the very power that is to be conferred". An alternative is to see sovereignty conferred by way of the repeated and unchallenged use of sovereignty through the promulgation of laws by Parliament. The second possible source are the courts, that in enforcing all Acts of Parliament without exception, they have conferred sovereignty upon Parliament. The third alternative is the complex relationship between all parts of government, and their historical development. This is then assumed to be continuous and the basis for the future. However, if sovereignty was built up over time, "freezing" it at the current time seems to run contrary to that.

A group of individuals cannot hold sovereignty, only the institution of Parliament; determining what does and does not constitute an Act of Parliament is important. This is considered a "manner and form" requirement. In the absence of a written constitution, it is a matter for the common law to make this determination.] The court does not consider any procedural defects of the bill if they are present; this is called the "enrolled Act" doctrine. For example, the case of *Pickin v British Railways Board* was dismissed because it relied on the [standing order](https://en.wikipedia.org/wiki/Rules_of_order) process not having been fulfilled.

However, the status of the [Regency Acts](https://en.wikipedia.org/wiki/Regency_Acts) is not so clear. In them, a regent acting during the infancy, incapacitation or absence of the monarch can assent to bills but cannot do so if they relate to changing the nature of monarchical inheritance or amending the [Protestant Religion and Presbyterian Church Act 1707](https://en.wikipedia.org/wiki/Protestant_Religion_and_Presbyterian_Church_Act_1707), which protected that church in [Scotland](https://en.wikipedia.org/wiki/Scotland). If a regent did assent to a bill of these kinds, it may not be held to be a valid law even if it gained the approval of both houses and [royal assent](https://en.wikipedia.org/wiki/Royal_assent).

Parliament may also bind successor parliaments as to their method of election and their constituent parts. For example, the [Reform Act 1832](https://en.wikipedia.org/wiki/Reform_Act_1832) radically altered the distribution of MPs and subsequent parliaments were bound to follow the new rules or secure the agreement of the new house to change them. Similarly, only a reconstituted House of Lords could pass a bill reversing the changes of the [House of Lords Act 1999](https://en.wikipedia.org/wiki/House_of_Lords_Act_1999) if its consent were required (unless the Parliament Acts were used). However, the whole system of government could be abolished, and the next parliament would not be bound if it were not considered a successor.

**Application to Scotland**

*See also:*[*House of Lords Act 1999 § Bill*](https://en.wikipedia.org/wiki/House_of_Lords_Act_1999#Bill)

Some jurists have suggested that the [Acts of Union 1707](https://en.wikipedia.org/wiki/Acts_of_Union_1707) place limits on parliamentary sovereignty and its application to Scotland. Although no Scottish court has yet openly questioned the validity of an [Act of Parliament](https://en.wikipedia.org/wiki/Act_of_Parliament), certain judges have raised the possibility. Thus, in *[MacCormick v. Lord Advocate](https://en.wikipedia.org/wiki/MacCormick_v._Lord_Advocate" \o "MacCormick v. Lord Advocate)*, the [Lord President](https://en.wikipedia.org/wiki/Lord_President_of_the_Court_of_Session) ([Lord Cooper](https://en.wikipedia.org/wiki/Thomas_Cooper,_1st_Baron_Cooper_of_Culross)) stated that "the principle of the unlimited sovereignty of Parliament is a distinctively English principle which has no counterpart in Scottish Constitutional Law", and that legislation contrary to the Act of Union would not necessarily be regarded as constitutionally valid. Also, in *Gibson v Lord Advocate*, [Lord Keith](https://en.wikipedia.org/wiki/Henry_Keith,_Baron_Keith_of_Kinkel) was circumspect about how Scottish courts would deal with an Act, which would substantially alter or negate the essential provisions of the 1707 Act, such as the abolition of the [Court of Session](https://en.wikipedia.org/wiki/Court_of_Session) or the [Church of Scotland](https://en.wikipedia.org/wiki/Church_of_Scotland) or the substitution of [English law](https://en.wikipedia.org/wiki/English_law) for [Scots law](https://en.wikipedia.org/wiki/Scots_law).

The establishment of the [Scottish Parliament](https://en.wikipedia.org/wiki/Scottish_Parliament) in 1998 has implications for parliamentary supremacy. For example, although [nuclear power](https://en.wikipedia.org/wiki/Nuclear_power) is not within its competence, the [Scottish government](https://en.wikipedia.org/wiki/Scottish_government) successfully blocked the wishes of the [UK government](https://en.wikipedia.org/wiki/UK_government) to establish new nuclear power stations in Scotland using control over planning applications which is devolved. While it remains theoretically possible to dissolve the [Scottish Parliament](https://en.wikipedia.org/wiki/Scottish_Parliament) or legislate without its consent in relation to Scotland, in practice such a move would be politically difficult.

**Development[[edit](https://en.wikipedia.org/w/index.php?title=Parliamentary_sovereignty_in_the_United_Kingdom&action=edit&section=4" \o "Edit section: Development)]**

Parliament Acts

The accepted rule is that the bill must be signed by both Houses of Parliament and has been granted [royal assent](https://en.wikipedia.org/wiki/Royal_assent), unless the [Parliament Act procedure](https://en.wikipedia.org/wiki/Parliament_Acts_1911_and_1949) has been properly enacted. The Parliament Acts create a system of passing a bill without the consent of the Lords. That system does not however, extend to private or local bills, nor bills extending the length of a parliament beyond five years. However, despite the granting of the Speaker's Certificate, certifying the act to be valid, the validity of an act passed under the Parliament Acts may still be challenged in the courts.In [*Jackson v Attorney General*](https://en.wikipedia.org/wiki/Jackson_v_Attorney_General), the judges decided by a seven-to-two majority that an Act that extended the life of a parliament would be considered invalid by the courts if it had been passed under the Parliament Act procedure.

European Union

From 1973 to 2020, the United Kingdom was a member state of the [European Economic Community](https://en.wikipedia.org/wiki/European_Economic_Community) and its successors the European Community and the [European Union](https://en.wikipedia.org/wiki/European_Union).

The [European Communities Act 1972](https://en.wikipedia.org/wiki/European_Communities_Act_1972_(UK)) gave [Community legislation](https://en.wikipedia.org/wiki/European_Union_law) the force of law in the United Kingdom: section 2(1) reads: "All such rights, powers, liabilities, obligations and restrictions from time to time created or arising by or under the Treaties... are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced, allowed and followed".

The case of [*R v. Secretary of State for Transport ex parte Factortame*](https://en.wikipedia.org/wiki/Factortame_litigation) is considered decisive as to the superiority of EU law over British law. It judged that the [Merchant Shipping Act 1988](https://en.wikipedia.org/wiki/Merchant_Shipping_Act_1988) and section 21 of the [Crown Proceedings Act 1947](https://en.wikipedia.org/wiki/Crown_Proceedings_Act_1947) (which prevented an [injunction](https://en.wikipedia.org/wiki/Injunction) against the Crown) should be disapplied. Alongside *R v Employment Secretary, ex parte EOC*, these two cases establish that any national legislation, coming into force before or after the European Communities Act 1972, cannot be applied by British courts if it contradicts Community law.

The *Factortame* case was considered to be revolutionary by [Sir William Wade](https://en.wikipedia.org/wiki/Sir_William_Wade), who cited in particular Lord Bridge's statement that "there is nothing in any way novel in according supremacy to rules of Community law in areas to which they apply and to insist that... national courts must not be prohibited by rules of national law from granting interim relief in appropriate cases is no more than a logical recognition of that supremacy", which Wade characterises a clear statement that parliament can bind its successors and is therefore a very significant break from traditional thinking. [Trevor Allan](https://en.wikipedia.org/wiki/Trevor_Allan_(legal_philosopher)), argued, however, that the change in rule was accepted by the existing order because of strong legal reasons. Since legal reasons existed, the House of Lords had, instead, determined what the current system suggested under new circumstances and so no revolution had occurred.

Section 18 of the [European Union Act 2011](https://en.wikipedia.org/wiki/European_Union_Act_2011) declared that EU law is directly applicable only through the European Communities Act or another act fulfilling the same role

Parliament [legislated in 2018](https://en.wikipedia.org/wiki/European_Union_(Withdrawal)_Act_2018) to repeal the 1972 Act, and in 2020 the United Kingdom ceased to be a member of the EU in accordance with and by virtue of that Act (albeit amended by further legislation of Parliament), demonstrating that the previous Parliament (of 1972) had not bound its successor with respect to leaving the EU.

The [European Union (Withdrawal Agreement) Act 2020](https://en.wikipedia.org/wiki/European_Union_(Withdrawal_Agreement)_Act_2020) further declared that "*It is recognised that the Parliament of the United Kingdom is sovereign*."

Human Rights Act

The [Human Rights Act 1998](https://en.wikipedia.org/wiki/Human_Rights_Act_1998) confirmed the UK's commitment to the [European Convention on Human Rights](https://en.wikipedia.org/wiki/European_Convention_on_Human_Rights).In a white paper, the government expressed that "to make provision in the Bill for the courts to set aside Acts of Parliament would confer on the judiciary a general power over the decisions of Parliament which under our present constitutional arrangements they do not possess, and would be likely on occasions to draw the judiciary into serious conflict with Parliament". According to the theory that a parliament cannot bind its successors, any form of a [Bill of Rights](https://en.wikipedia.org/wiki/Bill_of_Rights_1689) cannot be [entrenched](https://en.wikipedia.org/wiki/Entrenched_legislation), and a subsequent parliament could repeal the act. In the government's words, "[It is our tradition] to allow any Act of Parliament to be amended or repealed by a subsequent Act of Parliament." However, it would have been possible to apply human rights rules to previous (rather than future) legislation. The government also confirmed that it had no plans to devise a special [entrenchment] arrangement for the bill.

Instead, it would be for courts to interpret legislation consistently with the Convention, if such an interpretation were possible. This system confirmed the formal authority of Parliament, while allowing judicial oversight. A court cannot strike down primary legislation.

*Jackson v Attorney General*

In [*Jackson v Attorney General*](https://en.wikipedia.org/wiki/Jackson_v_Attorney_General), the appellants questioned the validity of the [Parliament Act 1949](https://en.wikipedia.org/wiki/Parliament_Act_1949). There were various arguments put forward by the appellants who were represented by [Sir Sydney Kentridge](https://en.wikipedia.org/wiki/Sir_Sydney_Kentridge) QC. All nine judges accepted that the court had jurisdiction to consider whether the 1949 Act was valid  They looked to distinguish the case from that of *Pickin v British Railways Board*, where the unequivocal belief of the judges had been that "the courts in this country have no power to declare enacted law to be invalid". The judges believed that whereas *Pickin* had challenged the inner workings of Parliament, which a court could not do, *Jackson* questioned the interpretation of a statute.

**See also**

[Separation of powers in the United Kingdom](https://en.wikipedia.org/wiki/Separation_of_powers_in_the_United_Kingdom)

[Rule of law in the United Kingdom](https://en.wikipedia.org/wiki/Rule_of_law_in_the_United_Kingdom)

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[**^**](https://en.wikipedia.org/wiki/Parliamentary_sovereignty_in_the_United_Kingdom#cite_ref-2) Bradley in Jowell, Oliver (eds). p. 26.

[**^**](https://en.wikipedia.org/wiki/Parliamentary_sovereignty_in_the_United_Kingdom#cite_ref-3) Articles 17 and 18 of the Treaty of Union

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[**^**](https://en.wikipedia.org/wiki/Parliamentary_sovereignty_in_the_United_Kingdom#cite_ref-5) Bradley in Jowell, Oliver (eds). pp. 26–27.

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