

**Lesson
Eleven**

Sources of English Law (1): Act of Parliament

Aims

The aims of this lesson are to enable you to have an outline understanding of

- the principle of Parliamentary supremacy, including the impact of European Union membership
- Green and White Papers, and the process of a Bill going through parliament to become an Act

Context

Lessons 1–10 have been looking at our legal system, how it is organized and how our laws are enforced. We now need to give thought to how law is made and where it comes from – the sources of English law.

Note

There are many cases, definitions and summaries given in this lesson which will be required knowledge for you. I suggest you take notes on a piece of paper, and then reduce these to a format which you can use for revision and learning. A good system would be to write a heading on one side of an index card with the detail on the other side. You could then keep your cards in alphabetical order. Another good way is to use a highlighter pen as you work through the text and highlight the case names, definitions and summaries for easy reference when you are revising.



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11.1 Introduction

This lesson, in giving you a clear idea of how laws are made, tells you what the different sorts of law are; why we have them; and who is responsible for making and interpreting them. Again, a genuine understanding of the topics mentioned in the lesson, will depend on a thorough grasp of certain other items. These include, in this lesson, an understanding of how the judiciary functions in the interpretation of statutory provision; and an understanding of the significance of the *ratio decidendi* of a case. Don't worry about this for now, it will become clearer as you work through the lesson.

11.2 Sources of Law

This lesson is concerned with the ways in which our law is made or comes into existence — that is with what are known as the **legal sources** of law. The major sources of English Law in this sense are precedent (judgments made in previous cases, for more details see Lesson Twelve) and legislation. However, the term, “sources of law” has various other meanings from which the one we are considering should be distinguished.

For instance, ‘sources of law’ may be used to refer to factors such as public policy, morality and justice, that have influenced the development of the law (**the historical or material sources**); to the written materials from which knowledge of the law is obtained namely, statutes, law reports and books of authority (**the literary sources**); to that which gives the law its validity (**the formal source**).

Most laws are made by Parliament which has two sections, the House of Commons and the House of Lords. The House of Commons (the ‘Commons’ or ‘Lower Chamber’) is where MPs who are elected by the electorate in a general election sit. The majority of MPs will usually be members of the political party that is in Government.

The House of Lords (the ‘Lords’ or ‘Upper Chamber’) consists mainly of members who have not been elected, but have been given a life peerage so that they can sit in the House of Lords. There are also some members who inherited their peerage and have been chosen by other members to sit in the Lords. In addition, there are 26 bishops who have the right to sit in the Lords.

Parliamentary Supremacy

There are no restrictions on what Parliament can legislate on and it cannot bind its successor. Any attempt to do so would be pointless, as the incoming Parliament can simply repeal (revoke, annul) any laws it is not happy with. This is known as Parliamentary supremacy. One principle of Parliamentary

supremacy is that no other body can override or set aside an Act of Parliament.

Acts of Parliament cannot be ignored by judges. They must apply them even if they do not agree with them and even where the Act has been made due to incorrect information (see case file below). However, the issue of EU law means that Parliament is not always the ultimate authority as EU law takes priority over English law – as we shall see.

Acts of Parliament are supposed to be compatible with the European Convention on Human Rights. You will read more about this in the section on ‘Rights and Responsibilities’ later in the course.



British Railway Board v Pickin [1974] AC 763

Pickin bought some land alongside a disused railway line in 1969. His intention appears to have been to gain ownership of part of the railway line when it ceased to be used by the railway company. An 1836 Act stated that in such circumstances the railway land reverted to the ownership of adjoining land owners; Mr Pickin had made himself such an owner. The British Railways Board subsequently claimed it owned the land by virtue of a private Act of Parliament passed in 1968, which cancelled the reversion clause of the 1836 Act. Pickin sought a declaration that the Act was ineffective on the grounds that the Board had fraudulently concealed information and misled Parliament in order to get the Act passed. His claim was rejected on the grounds that it is not for the court to look behind an Act once it has been passed. Lord Reid said:

‘the idea that a court is entitled to disregard a provision in an Act of Parliament on any ground must seem strange and startling to anyone with any knowledge of the history and law of our constitution.’

Are there any limits on Parliamentary Supremacy?

Yes, there are. The greatest and most important one being the UK’s membership of the European Union (EU). The UK has been a member of the EU since 1973 when Parliament passed the European Communities Act 1972. The majority of EU laws concern work and trade and they take priority over English law – even if the English law was passed after the EU law. The Treaty founding the EU is the Treaty of Rome; this sets out the rights and obligations of Member States and other treaties have added to it over the years.

What are the EU Institutions?

There are four of them. The **Council of the European Union** is the main decision-making body. Each member state has a seat on the Council. Twice a year the Council has a big meeting and all the heads of member states attend to discuss EU policy.

The **Commission** is responsible for the administration side of the EU and it also proposes policy for the Council. The Commissioners are chosen by all member states.

The **European Parliament**. MEPs are elected in the same way that House of Commons' MPs are elected, but the system of voting uses proportional representation rather than the 'first past the post' system used in national elections. However, the EU Parliament is not the principal law-making body of the EU. The Parliament discusses proposals made by the Commission and it can influence the Council. Parliament has the right to reject the Council's budget proposals and dismiss Commissioners.

The **European Court of Justice** settles disputes about EU laws. Each member state has a judge and the appointment lasts for six years. Judgments of the Court are binding on every member country.

What are the types of EU Law?

There are three main types, treaties, regulations and directives.

Treaties are signed by all the member states and automatically become law in every member state. They do not require any Act of Parliament to be passed by the member states. In the UK section 2(1) of the European Communities Act 1972 stated that EU Treaties would become part of our law without further enactment being necessary.

Regulations are issued by the Commission and Article 249 of the Treaty of Rome states that they are 'binding in every respect and directly applicable to in each member state'. So, like treaties, they do not require any further Act of Parliament to absorb them into our law.

Directives are issued by the Commission and they direct the member states as to what their law should be. They are not automatically part of our law and we have to pass an Act of Parliament in order to comply with the directive. Directives are issued with time limits and the member states must implement the directive within that time limit.

Could the UK leave the EU?

Yes, it could. A subsequent Parliament could pass an Act withdrawing from the EU. However, it is extremely unlikely that this will ever happen.

11.3 How does the English Law-Making process start?

Green and White Papers

Green Papers are consultation papers issued by government departments. When a government department wants to introduce a new law, or make considerable changes to an existing law, then it is usual to put the ideas for change into a draft document. The ideas will then be published (they are always on the department websites) and all interested parties, including the public, can read them and send in their comments. The Green Paper will state when the closing date for receiving comments is. For example, Defra, the Department for Environment, Food and Rural Affairs issued a Green Paper in June 2009 on the subject of adapting to climate change. All comments had to be in by 9 September 2009.

You can see the Green Paper at:

www.defra.gov.uk/environment/climatechange/adapt/pdf/adapting-to-climate-change.pdf

After the closing date for the consultation, the Government Department will consider all responses and make any changes it feels are necessary. It will then issue a White Paper.

A White Paper, or Draft Bill, is more detailed; it includes more information about the specifics of the proposed new law. As with the Green Paper, the White Paper will be published for consultation and again there will be a deadline set for receiving comments. Using Defra as an example again, it published the draft Flood and Water Management Bill in April 2009. The closing date for comments was 24 July 2009.

You can view the White Paper at:

www.official-documents.gov.uk/document/cm75/7582/7582.pdf

Bills

When all the responses to the White Paper have been received, the Government can move on to the next stage and produce a Bill that will become a statute. A statute is a law that has been passed by the House of Commons and the House of Lords and has received the assent of the Queen. There is a set procedure which has to be followed and until this has been completed the statute or act is known as a Bill.

There are different types of Bill:

A Public Bill is a Bill addressing matters that will affect the majority of people. For example, criminal statutes like the Theft Act 1968. Public Bills apply to everybody in the country. Public Bills are what we will be concerned with during this course.

A Private Bill is a proposal for a law that would apply to a particular individual or group of individuals, or corporate entity. They are promoted by organizations like local authorities or companies to give themselves powers that they do not have under the general law. The process that a private Bill goes through is broadly the same as a public Bill, except some stages can be missed out of the process if nobody objects to it.

A Private Members' Bill is introduced by an individual MP or Lord rather than a government department. It may be a Public Bill or it may be a Private Bill. Due to time restrictions in the Commons, Private Members' Bills rarely become law, but they draw attention to issues that the Government may be trying to avoid, so they do serve a useful purpose.

How does a Bill become an Act?

The usual starting point is the House of Commons but Bills can be started in the House of Lords. The only Bills that do not have to be passed by the Lords are Bills dealing with taxation.

The procedure involved the passage of a Public Bill through Parliament is as follows:

1. First Reading

This is purely formal and a sheet of paper with only the title of the Bill, and the name of the person introducing it, is read out by an official. The Bill is then ordered to be printed.

2. Second Reading

This involves a debate of the general principles of the Bill but not the details. If nobody opposes it, or if a vote is taken on the Bill and there is a majority in favour of it, the Bill will pass on to the committee stage.

3. Committee Stage

At the committee stage the Bill is examined in detail by a select committee of MPs. Select Committees comprise 20-50 members from across the political parties. Each clause is debated and may be amended or even excluded. For Bills dealing with taxation the whole House sits as a committee instead of a select committee.

4. Report Stage

At this stage the committee which has considered the Bill will report back to the House on its discussions and proposed amendments. Each amendment is voted on and must receive a majority in favour before it will be accepted.

5. Third Reading

This constitutes the final debate on the general principles of the Bill, and a vote is taken. Assuming the Bill passes its third reading it then passes to the other House. If six MPs or more request it, then there will be a further debate on the general principles of the Bill.

6. The House of Lords

The procedure followed in the Commons is repeated in the Lords. If the Lords make any amendments, they must be returned to the Commons for further consideration. If the Lords refuse to pass a Bill, the Commons can reintroduce it in the next parliamentary session and pass it without the agreement of the Lords. However, this will bring bad publicity for the government and it is keen to avoid such a situation.

7. The Royal Assent

After a Bill has passed through both Houses of Parliament, it receives the Royal Assent (approval). This is just a formality and Royal Assent has not been refused since 1708 when Queen Anne (the last Stuart monarch) refused Assent for the Scottish Militia Bill as she feared that the proposed militia would be disloyal.

When does the Act become Law?

After the Royal Assent, unless the Act states otherwise, it immediately becomes law. Some Acts include provision for them not to become law until a later date.

Delegated Legislation

We have already looked at delegated legislation in Lesson Three. It is law that has been made by a body other than Parliament but with Parliament's authority. That authority usually comes from an Act (Primary legislation) called an Enabling or Parent Act. The main types of delegated legislation are **Statutory Instruments** and **Bylaws**. There are also **Orders in Council**, which can be made by the Queen and Privy Council in times of emergency, but these are very rare and hardly ever used.

Statutory Instruments

Statutory Instruments (SIs) are rules made by government ministers. They are very common; several thousand come into force each year. Ministers have the power to make rules that relate to their particular areas or responsibility, so, for example, the Environment Secretary can make rules that deal with climate change and the Secretary of State for Transport can make rules about transport. To see a good example of a draft statutory Instrument made by the Transport Secretary, see the Pedal Bicycles (Safety) Regulations 2009 at:

www.dft.gov.uk/consultations/closed/consulpedalbicycles/annexb.pdf

It is a good example as it is very brief (only three pages) and as it deals with pushbikes it is very simple to understand. SIs that deal with more technical vehicles, such as cars, are not always as straight forward.

Bylaws

Bylaws are a means by which a local authority can make laws specifically for its own area of responsibility. Bylaws can also be made by other organisations that deal with the public, for example railway authorities and airports. Common examples are bylaws that deal with alcohol consumption in the streets and parking restrictions. For a good example of a short and clear Bylaw, see Oxford City Council's Bylaw regarding tattooing at:

www.oxford.gov.uk/files/seealsodocs/1579/111.pdf

Activity 1

Describe the passage of a public bill through parliament.

**Activity 2**

True or false?

1. Parliament comprises the House of Commons and the House of Lords.
2. A Green paper is a consultation paper.
3. Green papers are issued by the monarch.
4. White papers are firm proposals for new law.
5. A Bill is the name for an Act of Parliament before it is passed as law.
6. The passage of a Bill always starts in the House of Commons.
7. The House of Lords decides whether a Bill becomes an Act.
8. The main debate takes place at the third reading.
9. The Royal Assent is often withheld.
10. An Act comes into force on the day it receives the Royal Assent.



Suggested Answer to Activity One

A Bill normally starts in the House of Commons, but it can start in the House of Lords. Whichever House it starts in, it will go through the following stages:

First Reading –this is when the main aims of the Bill are read out. There is not usually any further discussion or debate at this stage.

Second Reading – This is when the whole Bill is debated. At the end of the debate there will be a vote. If there is a majority vote against the Bill, it will not go any further.

Committee Stage – This is when the Bill is examined in detail by a committee of MPs. The Committee must go through each clause and suggest any amendments it considers necessary.

Report Stage – The Committee reports back to the House with its suggested amendments. Each amendment needs a majority vote if it is to be accepted.

Third Reading – This is the final vote on the Bill as a whole. There will only be a further debate if six or more MPs request it. If the vote favours the Bill, it will be passed to the other House and go through the same stages.

Royal Assent – the monarch (the queen) has to give her assent to the Bill. This is just a formality.

The Act will then come into force, unless there is a section in the Act that states that the commencement of the Act is to be at a future date.

Answers to Activity Two

1. True.
2. True.
3. False, they are issued by a minister.
4. True.
5. True.
6. False, it can start in either House.
7. False, the power of the House of Lords is limited.
8. False, the main debate takes place at the second reading.
9. False, the Royal Assent has not been withheld since 1707.
10. False, an Act can come into force at a later date if the Act makes a provision for that to happen.