



BRIEFING PAPER

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The Parliamentary Oath

By Michael Everett and
Danielle Nash

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Summary

Members of both Houses of Parliament are required by law to swear an oath of allegiance before they can take their seat in Parliament. The oath must be taken following a general election (even if the MP or Peer was a Member in the previous Parliament), by an MP elected at a by-election, and before taking a seat in the House of Lords. Any Member or Peer who objects to swearing an oath can make a solemn affirmation instead.

If the parliamentary oath or solemn affirmation is not taken by a Member or Peer then they cannot sit in either Chamber or take part in proceedings. They are also unable to table Questions or Motions.

Members of the House of Commons are not paid their salary until they have taken the oath. However, they can make use of the facilities of the House and the services of its departments; they can also claim the allowances permitted to engage in their constituency activities, including the employment of staff. Peers who have not taken the oath are unable to claim the daily allowance or reimbursement of expenses. New members of the Lords are also unable to use the facilities of the House before taking their seat for the first time.

The main statutory requirements regarding the Parliamentary Oath are set out in the following pieces of legislation:

- The *Parliamentary Oaths Act 1866* sets out the requirement to take the oath, the place in which it is to be administered and the penalties applicable to any Member who takes part in parliamentary proceedings without having taken the oath;
- the *Oaths Act 1978* prescribes the form and manner of administering the oath or solemn affirmation.

The briefing paper focuses primarily on the Parliamentary Oath in the House of Commons, although later sections briefly discuss the oath in the House of Lords, and provide information on the oath taken in devolved legislatures and in certain Commonwealth countries. It also sets out some key stages in the development of the form and manner of taking the oath since the seventeenth century.

1. Introduction

Members of both Houses of Parliament are required by law to swear an oath of allegiance before they can take their seat in either House. The oath must be taken by all Members of both Houses following a general election (even if the MP or Peer was a member in the previous Parliament), by an MP elected at a by-election, or before taking a seat in the House of Lords. Following a demise of the Crown it has been the practice for Members of the House of Commons to retake the oath or affirmation, though it is no longer a requirement since a demise of the Crown has ceased to trigger a dissolution, and there is no penalty attached if they decline to do so. The House of Lords, on the other hand, still considers it to be a requirement to reaffirm or take the oath again in such circumstances. Any Member or Peer who objects to swearing an oath can make a solemn affirmation instead.

The current wording of the Parliamentary Oath is prescribed by section 1 of the *Oaths Act 1978*. The usual wording of the oath is thus:

I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law. So help me God.¹

The wording of the solemn affirmation, as set out in the *Oaths Act 1978*, is:

I do solemnly, sincerely, and truly declare and affirm, That I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors, according to law.²

A Member, Peer or Bishop who has not taken the oath or made the affirmation cannot participate in any formal proceedings of either House and may not sit in the Chamber or vote in divisions.³

In addition to not being able to take part in proceedings, Members of the House of Commons are not paid their salary until they have taken the oath or affirmed. However, they can make use of the facilities of the House and the services of its departments. Peers who have not taken the oath cannot claim the daily allowance or reimbursement of expenses. New Members of the Lords are also unable to use the facilities of the House before taking their seat for the first time.

The remainder of this briefing paper focuses primarily on the Parliamentary Oath in the House of Commons. However, section 7 contains some information on the oath in the House of Lords, while section 8 and 9 provide information on the oath required in the devolved legislatures and in other countries.

¹ *Oaths Act 1978*, Section 1; *Promissory Oaths Act 1868*, Section 2. Members can choose to use the exact form of wording for the oath prescribed in the *Promissory Oaths Act 1868*, in which case the oath would begin: "I A.B. do swear that I will be faithful...".

² *Oaths Act 1978*, Section 6

³ *Erksine May*, 24th edition, p156 n64

Box 1: Oaths of Allegiance in the UK

The *Promissory Oaths Act 1868* requires the holders of a number of public offices, including secretaries of state, ministers and judicial offices, to take an oath of allegiance, oath of office or judicial oath.⁴ If an office holder who is required to take an oath refuses to take it or to take a solemn affirmation in its place, then they are disqualified from holding the office or must vacate the office if they have already entered it.

Members of the Armed Forces are required to take an oath of allegiance. Those serving in the Royal Navy are not required to do so, however, because the Royal Navy was established by the sovereign's prerogative. For that reason, recruits have never been required to swear allegiance, but they do sign an attestation or engagement form on entry.

Clergy of the Church of England are required to swear an oath of allegiance, under the *Clerical Subscription Act 1865*, section 4 (as amended).

Under the *Police Act 1996*, schedule 4, police officers are required to make a declaration that they will "well and truly serve the Queen in the office of constable [...]".

People who wish to become registered or naturalised as British citizens have to swear an oath of allegiance and pledge of loyalty under section 42 and schedule 5 of the *British Nationality Act 1981*, as amended.

⁴ A full list of those required to take an oath can be found in *Halsbury's Laws of England*, 4th ed reissue, Vol 8 (2) para 923

2. The Current Parliamentary Oath in Practice

Summary

The way in which the oath and affirmation are administered to MPs is the same, regardless of what point in the Parliament the Member is elected. However, practical arrangements differ for Members taking the oath or making an affirmation after a by-election and those doing so at the beginning of a Parliament.

The process of Members taking the oath or making an affirmation is collectively known as 'swearing in'.

2.1 Taking the oath and affirming at the beginning of a Parliament

The *Parliamentary Oaths Act 1866* states that the oath of allegiance must be taken:

by every member of the House of Commons at the table in the middle of the said House, and whilst a full House of Commons is there duly sitting, with their Speaker in his chair, at such hours and according to such regulations as each House may by its standing orders direct.⁵

In practice, at the beginning of a new Parliament all Members are offered the opportunity to take the Oath or affirm. A number of days are set aside exclusively for this purpose between the election of the Speaker and the Queen's Speech. These are known as "swearing in days". The exact times at which the Speaker is available to preside over the process is determined by the Speaker him or herself. The current practical arrangements for swearing in follow a recommendation made by the House of Commons Procedure Committee in 1996.⁶

Following the Speaker (who swears or affirms standing on the lower step of the Speaker's Chair) the first Member to swear in is the Father of the House (that is the Member with the longest continuous service in the House).⁷ Then follow members of the Cabinet, members of the shadow Cabinet, Privy Counsellors and other Ministers (i.e. Ministers who do not attend Cabinet and are not Privy Counsellors). The remaining Members then swear in approximately by Parliament of first entry (or for those with broken service, that of most recent entry).⁸

The process for Members swearing in on swearing in days is:

- Members enter the Chamber by the door at the far end of the Chamber (i.e. opposite the Speaker's Chair) and queue at the Bar of the House.

⁵ *Parliamentary Oaths Act 1866*, Section 3

⁶ Procedure Committee, *Proceedings at the Start of a Parliament*, 1996-97, HC 386

⁷ If two Members have been Members of the House for the same period of time the Father of the House is established by ascertaining which Member swore in first when they first entered Parliament.

⁸ Commons Briefing Note (No. 3), [Swearing in of Members at the Start of a Parliament: a note for Members](#), May 2015

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- Members proceed one-by-one to the Despatch Box where they are met by a Clerk who enquires whether the Member wishes to take the oath or make an affirmation. The Clerk provides an English version of the text of the oath or affirmation (as requested). If taking the oath the usual manner to do so is for the Member to hold the religious text in an uplifted hand and to say the words of the oath required by law (there are other ways that Members can take an oath: see Box 3).⁹ A large selection of religious texts are available to Members (including different versions of the Bible, the Torah, the Koran, the Granth and the Gita). If making an affirmation the Member simply reads the words required by law.
- After the Member has taken the oath or made an affirmation they proceed along the Table and sign the 'Test Roll' (once a roll of parchment which served as a record of those Members who had taken the Oath—their signatures were added beneath the text of the Oath—but now in the form of a book). Each Member writes their name and constituency and signs the Test Roll.
- Members then proceed to the end of the Table and the Clerk of the House introduces them to the Speaker.¹⁰

Box 2: How long does 'swearing in' take?

Swearing in normally takes place for three to four sitting days at the beginning of a Parliament but each sitting only lasts a couple of hours. The majority of Members swear in on the first day. At the beginning of the 2015 Parliament, for example, 420 Members swore in on the first swearing in day (nearly 65% of the 650 Members elected).¹¹

Box 3: How many MPs took the oath and how many chose to affirm at the beginning of the 2015 Parliament?

At the beginning of the 2015 Parliament 646 Members of the 650 Members elected swore in – that is, all but the Sein Fein Members. From observing the audio-visual record of those swearing in it appears that 478 Members (74%) took the oath and 168 Members (26%) made an Affirmation.¹²

Can the oath be taken in any language?

The Parliamentary Oath must be taken in English.¹³ However, Members are allowed to repeat the oath or affirmation in another language. Currently translations of the oath and affirmation are held by the House authorities in the following languages:

- Welsh;
- Scottish Gaelic;
- Irish Gaelic; and
- Cornish.

⁹ Section 1 of the *Oaths Act 1978* stipulates the usual manner for taking the Oath.

¹⁰ Commons Briefing Note (No. 3), [Swearing in of Members at the Start of a Parliament: a note for Members](#), May 2015

¹¹ HC Deb 19 May 2015 cc10-20

¹² These figures were supplied by the House of Commons Journal Office and were obtained by a member of staff observing the videos of the swearing in process. They are therefore susceptible to human error.

¹³ HC Deb, 21 July 1966, cols 879-80

Members who wish to repeat the oath or affirmation in a language for which no translation is held by the House authorities are likely to be allowed to do so. Braille cards are also available for Members.

Box 4: Scottish manner for taking the oath

Section 3 of the *Oaths Act 1978* provides for the oath to be taken in the Scottish manner (i.e. with an uplifted hand but not holding the sacred text):

If any person to whom an oath is administered desires to swear with uplifted hand, in the form and manner in which an oath is usually administered in Scotland, he shall be permitted so to do, and the oath shall be administered to him in such form and manner without further question.¹⁴

The 1866 Act requires the Oath or affirmation be administered within the House of Commons Chamber, specifically at the main Table of that Chamber.¹⁵ This restriction has meant that in practice some Members have been unable to take the oath soon after their election.¹⁶

2.2 Taking the Oath after a by-election

For a Member elected at a by-election the time for swearing in is set out in House of Commons Standing Order No. 6:

Members may take and subscribe the oath required by law at any time during the sitting of the House, before the orders of the day and notices of motions have been entered upon, or after they have been disposed of; but no debate or business shall be interrupted for that purpose.¹⁷

Mr Speaker Bercow, following consultations with the Procedure Committee, changed the former practice of delaying swearing in till the start of main business in 2013 so that the time for Members to swear in is now after Questions but before Urgent Questions and Statements on Mondays to Thursdays.¹⁸ On a Friday (or another day on which for some reason there is no Question Time) swearing in takes places immediately after prayers and before the day's main business commences.¹⁹

A notable difference to the swearing in process after a by-election is that there is a requirement for newly returned Members to be supported by two other Members of the House. This tradition originates in a Resolution from 23 February 1668:

¹⁴ *Oaths Act 1978*, Section 3

¹⁵ *Parliamentary Oaths Act 1866*, Section 3

¹⁶ For example, in June 1970 Bernadette Devlin was re-elected as the Member for Mid Ulster. Eight days after her re-election she was imprisoned for incitement to riot and for rioting in relation to 'The Troubles' in Northern Ireland. A request to administer the oath to Ms Devlin in prison was refused on the basis of the 1866 Act and she was unable to take the oath until October 1970 on her release. On the same grounds, a request received after the February 1974 election, to administer the oath to Mr Neil McBride, the Member for Swansea East, in hospital was refused.

¹⁷ *Standing Orders of the House of Commons: Public Business*, 11 May 2015

¹⁸ See for example proceedings on 8 December 2015 and 13 October 2014.

¹⁹ See for example proceedings on 21 November 2014.

in compliance with an ancient order and custom, they are introduced to the Table between two Members, making their obeisances as they go up, that they may be better known to the House.²⁰

On occasion this resolution has been dispensed with by the House. For example, on 18 February 1875 when Dr Edward Kenealy, the new Member for Stoke, came to the Table to be sworn in without the support of two Members of the House. The Speaker acquainted Dr Kenealy with the Resolution of the House, refused to hear any comments from him and directed him to withdraw. The House then resolved that the Resolution should be dispensed with on this occasion.²¹ However, such an approach has not always been taken by the House. On 17 April 1945, Mr Robert McIntyre, the new Member for Motherwell, came to the Table without the support of two Members. On this occasion, the House, on a division, refused to dispense with the Resolution, and he was unable to swear in until the following sitting day.²²

2.3 Demise of the Crown

On a demise of the Crown (the death of the Sovereign) Parliament must under the *Succession to the Crown Act 1707* meet immediately. Before 1707, a demise of the Crown triggered a dissolution and all Members (of both Houses) had to retake the oath or make the affirmation following their re-election (or new election).

The obligation to take the oath in these circumstances now rests merely upon the custom of Parliament: a view confirmed by the then Attorney General in the House of Commons on 26 January 1937:

The obligation to take a fresh Oath to the new Sovereign after a demise of the Crown in my opinion ceased to be statutory in the eighteenth century. Since then, however, it has been continued by custom of Parliament. Nothing has been suggested to me which would lead me to suppose that the House desires any change.²³

²⁰ CJ (1668-93) 34.

²¹ HC Deb 18 February 1875 Vol c486

²² HC Deb 17 April 1945 c410

²³ HC Deb 26 Jan 1937 Vol 319 c762

3. Penalties for not taking the Oath

There is no obligation for Members elected to take their seat in the House of Commons, and the practice of abstention has been adopted by certain Irish MPs as a matter of policy for nearly a century. However, the *Parliamentary Oaths Act 1866* makes it a legal obligation for Members to take an oath of allegiance or make an affirmation before they can participate in any formal proceedings of the House.

Penalties are applicable to Members who participate in proceedings before they have formally taken up their seat in the House. The *Parliamentary Oaths Act 1866* states:

if any member of the House of Commons votes as such in the said House, or sits during any debate after the Speaker has been chosen, without having made and subscribed the oath hereby appointed, he shall be subject to a...penalty for every such offence, and in addition to such penalty his seat shall be vacated in the same manner as if he were dead.²⁴

The legislation is clear therefore that any Member who participates in proceedings before having sworn in will be liable to a financial penalty (£500—the same level as was set in 1866 and indeed the same level as was first set in 1701 when it would have been a large fortune) and they will cease to be the Member.²⁵ Subsequently a Writ would be moved to declare the seat vacant and a by-election would be held—at which the same Member could, at least in theory, stand again for election, as Charles Bradlaugh did in the nineteenth century.

Box 5: When was the last time an MP inadvertently failed to take the oath?

On 6 March 1924 Major the honourable John Jacob Astor's seat was declared vacant because he had voted in the House of Commons without having taken the Oath or having made the Affirmation required by law. The House agreed that:

... Mr Speaker do issue his Warrant to the Clerk of the Crown to make out a New Writ for the electing of a Member to serve in this present Parliament for the County of Kent (Dover Division) in the room of Major the honourable John Jacob Astor, who since his election for the said county hath vacated his seat in Parliament by sitting and voting in this House without having taken the Oath or made the Affirmation required by law.²⁶

²⁴ *Parliamentary Oaths Act 1866*, Section 5. The situation appears historically to have been less clear cut for participation in select committee proceedings: there have been instances of unsworn Members serving on select committees in 'exceptional circumstances'. On 13 April 1715 the House resolved "that Sir Joseph Jekyll was capable of being chosen of a committee of secrecy, though he had not sworn at the Clerk's table", and on 11 May 1858 Baron Rothschild was appointed to a Reasons Committee on the Oaths Bill, without having taken the Oath (which he could not take as a Jewish person). The last example of this happening was John Bright, the Member for Birmingham, who was a Quaker and participated and voted during proceedings of the Parliamentary Oaths Committee in 1880 despite having not made an affirmation.

²⁵ *Parliamentary Oaths Act 1866*, Section 5 and *Bradlaugh v Clarke* [1883] 8 App Cas 354. It is notable that this is an example of the House ceding at least some of its exclusive cognisance to the courts.

²⁶ HC Deb, 6 March 1924 cc1563-1565

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Major Astor had voted in a division on a ten-minute rule bill – the *Safeguarding of Industries (Act) Amendment Bill 1921* – on 4 March.²⁷ In a letter to a local newspaper in Devon, quoted in *The Times*, Major Astor explained his actions:

I entered the House of Commons just as a division in which I intended to vote had begun. Some friends who spoke to me engaged my attention, and I almost mechanically accompanied them through the Division Lobby.²⁸

The by-election, caused by his voting without having taken the oath, was not contested and he was returned to the House of Commons on 12 March 1924, whereupon he took the oath.²⁹

²⁷ HC Deb, 4 March 1924 c1189

²⁸ 'Prospects of a Dover Election – Statement by Major Astor', *The Times*, 7 March 1924, p7

²⁹ FW Craig, *British Parliamentary Election Results 1918-1949*, p384

4. Sinn Féin and the Oath

The Sinn Féin party has since first having candidates elected to the House in 1918 maintained an abstentionist policy towards the Westminster Parliament on the grounds that it does not recognise the Crown's sovereignty over any part of Ireland.³⁰ Candidates standing successfully in Westminster elections on a Sinn Féin ticket have not formally taken the Oath and therefore have consciously relinquished their right to participate in the House's formal proceedings.

However, the decision not to take the Oath or to affirm has consequences on the services and facilities available to those Members. Exactly what services and funds Members who choose not to swear or affirm can access has varied and changed over time.

4.1 1997 and the move to 'active abstentionism'

Although Sinn Féin candidates have stood at elections in Northern Ireland since the 1921 partition, the first to be elected on an abstentionist policy were in the early 1980s. Following the start of the peace process, in the 1997 UK general election, Sinn Féin candidates indicated that they would adopt a new policy of active abstention by attending the Palace of Westminster to have access to the various facilities but would not take the Oath or Affirmation. The party had taken the view that they would still be entitled to benefit from the same services available to Members who had formally taken up their seat even if they did not take the Oath or make an Affirmation.

Speaker Boothroyd made a statement to the House on 14 May 1997:

those who choose not to take their seats should not have access to the many benefits and facilities that are now available in the House without also taking up their responsibilities as Members.³¹

This extended the 1924 Speaker's ruling from Speaker John Henry Whitely which announced that Members who did not swear in could not draw a salary:

I have arranged that, in the case of a General Election, Members after taking the Oath, shall be entitled to draw their salaries as from the date on which the Clerk of the Crown intimates to the Speaker that all the returns have been received by him [...]

A Member who has not taken the Oath within six months of the return of his writ to the Clerk of the Crown shall not be entitled to claim any salary prior to the date of his taking the Oath.³²

³⁰ The first woman elected to Parliament was the Sinn Féin candidate Countess Constance Markievicz (for Dublin St Patrick's) in 1918. She did not swear in and therefore Viscountess Nancy Astor, elected the Member for Plymouth Sutton in 1919, was the first woman elected to Parliament who took up her seat.

³¹ HC Deb 14 May 1997 cc35-6

³² HC Deb 13 March 1924 cc 2556

Therefore, the 1997 ruling extended the differences in services accessible to Members who had not sworn in (see Box 6 for list of all the services unavailable to such Members).

Box 6: Speaker's Ruling May 1997: Services not available between 1997 and 2001 to Members who had not taken the oath

Under the Speaker's ruling of 14 May 1997, the services which were not available to Members who do not take the Oath include:

- Legal services;
- Procedural services, including the tabling of questions, motions and amendments, and public petitions;
- Broadcasting services;
- Vote Office services;
- Services available from the Parliamentary Office of Science and Technology;
- The provision of passes, special permits and car parking facilities;
- Access to those areas within the parliamentary precincts which are open only to pass holders;
- The booking of Committee Rooms, conference rooms and interview rooms;
- Office accommodation services for Members and their staff;
- Computer services, except those available to the public;
- The allocation of Gallery tickets;
- The sponsoring of exhibitions in the Upper Waiting Hall;
- Members' medical services;
- Library and research services, except for those services of the Public Information Office generally available to the public;
- Services provided by the Official Report;
- Payroll and other financial services provided to Members and their staff;
- Insurance services;
- Catering services provided for Members and their staff, including the sponsoring of banqueting services;
- Police and security advice available within the precincts;
- Services in the Members' post offices; and
- Travel services.

Services still available to Members not taking the oath after the 1997 Speaker's ruling included the use of free stationery and postage so that those Members could still communicate with their constituents.

The 1997 ruling was met with a mixed response. Some commentators claimed that "it fatally undermine[d] the democratic principle", especially as those Sinn Féin Members had been elected on a ticket to not take the oath but to attend Westminster.³³ Speaker Boothroyd disputed such arguments noting that the rule "applies equally to any Members not taking their seats for any reason".³⁴

Sinn Féin, however, felt that they were being unfairly discriminated against. After corresponding with the Speaker (some detail on this correspondence is available in Research Paper 01/116) they brought about a legal challenge.

³³ *The Irish News*, "Party right to challenge Oath", 13 August 1999

³⁴ HC Deb 4 December 1997 c 487

4.2 The legal challenge

High Court of Justice of Northern Ireland

On 12 August 1997, Martin McGuinness (the Sinn Féin Member who had been elected to the Mid Ulster constituency) applied to the High Court of Justice of Northern Ireland for leave to apply for judicial review of the Speaker's ruling and for a declaration that the *Parliamentary Oaths Act 1866* was incompatible with his constitutional rights as it required him to swear or affirm allegiance to the British monarchy.

Mr Justice Kerr heard the application on 1 October 1997 and refused it on 3 October 1997 on the grounds that:

- The Speaker was acting as a delegate of the House and on behalf of the House.
- In 1965 the Government decided that the Speaker (on behalf of the House) should control the accommodation and services in the House of Commons and its precincts.
- The matters raised were internal arrangements of the House of Commons and is not amenable to judicial review.
- The courts did not have jurisdiction to review primary legislation.

On legal advice Mr McGuinness did not appeal this judgement at the Court of Appeal. Instead he made an application to the European Courts of Human Rights (ECHR).

European Court of Human Rights

Mr McGuinness made an application to the ECHR on the grounds that:

- The requirement to take an Oath of Allegiance to the British Monarch interfered with the right to freedom of expression under Article 10 of the European Convention on Human Rights.³⁵ The refusal to swear in on these grounds meant that he was denied access to facilities available to elected representatives and therefore his ability to express the views of his constituents and party were seriously impeded.
- The Oath was unacceptable to his religious belief as he had to swear allegiance to a monarch who is by law prohibited from being a Roman Catholic or from marrying a Roman Catholic (invoked Article 9).³⁶
- The lack of an effective remedy to see redress in respect of this complaints under Article 9 and 10 (invoked Article 13).³⁷
- The Speaker's statement from May 1997 statement violated Article 3 of Protocol No. 1 since it prevented him from properly representing the opinions of his constituents.³⁸
- The Speaker's statement was made two weeks after his election with the knowledge that the applicant did not intend to take the Oath (therefore it breached Articles 9, 10 and 13 and Article 3 of Protocol No.1 to the Convention).

The ECHR declared unanimously on 8 June 1999 that the application was inadmissible. A summary of their ruling is:

³⁵ Article 10 provides for freedom of expression.

³⁶ Article 9 provides for freedom of thought, conscience and religion.

³⁷ Article 13 provides for effective remedy.

³⁸ Article 3 of Protocol No. 1 provides for free elections.

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- Taking the Oath or making an Affirmation had a clear legal basis and was an established parliamentary practice.
- Taking an Oath of Allegiance to the monarch formed part of the UK's constitutional system and therefore the taking of the Oath was an affirmation of allegiance to the UK's constitutional principles.
- The applicant voluntarily renounced his rights to access the facilities which were now denied to him.
- There were other means (such as meetings outside the House of Commons) which would allow the applicant to express the views of his constituents and his party.
- The Oath did not require allegiance to be made to a particular religion.
- There were no restrictions on the causes that the applicant would be able to advocate in the House of Commons if he formally took up his seat.
- The applicant was elected with electors full well knowing that he would have to take an Oath.
- The applicant and his party were not directly discriminated as the terms of the Speaker's statement applied to all elected representatives without distinction.

Post-ECHR ruling

In the months and years after the 1999 ECHR ruling the debate has continued on what services and allowances should be available to Members who have not taken the Oath or made an Affirmation. These questions and conversations continue today (see section 8 of this paper).

The House held a debate on 18 December 2001 on the services that Members who had not taken the Oath or Affirmation could access. A resolution was passed which stated:

That with effect from 8th January 2002, those Members who have chosen not to take their seats and thus do not qualify to participate in the proceedings in Parliament may use the facilities within the precincts of the House and the services of departments of the House, and may claim support for their costs as set out in the Resolution of 5th July 2001, relating to Members' Allowances, Insurance &c., and the allowances relating to travel within the United Kingdom for Members, their families and staff.³⁹

There have been no significant developments since the December 2001 resolution. Therefore the situation now is that any Member who does not take the oath or make an affirmation can claim expenses and allowances and they can access many of the House's services but they do not receive a salary.

The 2001 position on pay and expenses has remained the same even when responsibility for Members' pay and expenses were assumed by an independent body, the Independent Parliamentary Standards Authority (IPSA), in 2010. IPSA guidance produced for Members at the 2015 general election stated:

³⁹ CJ (2001-02) 274

After the General Election, the House of Commons will notify us once you have taken the Oath, or affirmed, and this will trigger the salary payments.⁴⁰

No such requirement to take the oath was given to Members under the expenses section of IPSA guidance.

⁴⁰ IPSA, [My Salary & Expenses](#), available online.

5. Attempts to amend the Parliamentary Oath

Over the years there have been attempts to amend the Parliamentary Oath. A House of Commons Library Research Paper, [The parliamentary oath](#), sets out attempts by backbench Members since the *Oaths Act 1978* until November 2000 to amend the Parliamentary Oath through Private Members' Bills.⁴¹ These attempts did not succeed.

Since November 2000 there have been further unsuccessful attempts to amend the Parliamentary Oath.

5.1 *Treason Felony, Act of Settlement and Parliamentary Oath Bill, Session 2001-02*

Mr Kevin McNamara introduced a Private Members Bill, the *Treason Felony, Act of Settlement and Parliamentary Oath Bill*, on 19 December 2001.

Mr McNamara explained when introducing the Bill that its aim was to “demonstrate the will of the House to modernise the constitution and all its workings” by:

recognising where tradition [in the House] may directly or indirectly exclude a section of the community. It is about recognising those aspects of our traditions that may inadvertently cause offence and those that are in conflict with our commitment to a multi-ethnic future.⁴²

The Bill provided wording which would have allowed Members to pledge allegiance to their constituents (the Bill, as introduced, provided for the wording of an oath, with no reference to the monarch, but did not provide for a modern form of the affirmation).⁴³

The introduction of the Bill was agreed to on a division (Ayes: 170; Noes: 32). The Bill did not progress further than its First Reading.

5.2 *Recall of MPs Bill 2014-15*

The Government introduced the *Recall of MPs Bill* in to the House of Commons on 11 September 2014. The purpose of the Bill was:

to make provision about the recall of Members of the House of Commons; and for connected purposes.⁴⁴

At report stage of proceedings on the Bill, Mark Durkan MP tabled a new Clause to the Bill to introduce an MPs' pledge:

- (1) Each MP shall at the start of each Parliament subscribe to the Pledge set out in this section.
- (2) An MP subscribing to the Pledge may do so—

⁴¹ House of Commons Library Research Paper, [The parliamentary oath](#), 14 December 2001, pp30-49

⁴² HC Deb 19 December 2001 c319

⁴³ *Treason Felony, Act of Settlement and Parliamentary Oath Bill*, clause 3.

⁴⁴ HC Deb 11 September 2014 c1091

(a) in writing; or

(b) in person at the same time as taking the Oath required by the Parliamentary Oaths Act 1866.

(3) The Pledge shall be—

“I solemnly undertake that, in the course of my duties as a Member of Parliament and service to my constituency, I shall act in adherence with the Code of Conduct for Members of Parliament and uphold the standards of public life with selflessness, integrity, objectivity, accountability, openness, honesty and leadership.”⁴⁵

Mr Durkan's proposed new Clause did not seek to amend the oath, nor did it seek to remove the requirement for Members to take the oath.

Margaret Ritchie, the Member for South Down, however, tabled an amendment to Mr Durkan's new Clause to allow for the MPs' pledge to be an alternative to taking the Oath:

Line 4, leave out subsection (2) and insert—

“(2) An MP subscribing to the Pledge may do so—

(a) in writing, or

(b) in person at the same time as, or in the place of, taking the Oath required by the Parliamentary Oaths Act 1866 (“the 1866 Act”).

(2A) An MP who has subscribed to the Pledge in this section under the provisions of subsection (2)(b) shall be entitled to sit in the House of Commons as though they had taken the Oath required by the 1866 Act and shall not be subject to any penalty under section 5 of that Act.”

Mr Durkan's new Clause and Ms Ritchie's amendment were not selected, probably because they were judged to be outside the scope of the Bill. No debate was therefore held on them and the House was not asked to come to a view on the matters proposed within them.

The Recall of MPs Bill received Royal Assent on 26 March 2015, with no amendment to the Parliamentary Oath.⁴⁶

⁴⁵ [Recall of MPs' Bill Amendment Paper, 20 November 2014, NC4 and amendment \(a\).](#)

⁴⁶ House of Commons Votes and Proceedings, [26 March 2015](#)

6. History and Development of the Parliamentary Oath

Summary

The current Parliamentary Oath can be traced back to the religious and political context of the sixteenth and seventeenth centuries. By 1701, acts had been passed which required an MP to swear an oath acknowledging the sovereign's supremacy over the Church of England, an oath of allegiance and an oath of abjuration. Each of these oaths contained strong religious elements, which effectively prevented people who were not of the Anglican faith from taking their seat as an MP (hence the now archaic reference to the 'Test Roll' which persists although the religious test element has disappeared from the parliamentary oath).

In 1858 these three oaths were replaced by a simplified, single oath; and over the course of the nineteenth century many of the religious restrictions in place were removed in piecemeal fashion, often in response to MPs being elected who held beliefs that meant they were unable or unwilling to take the required oath. The general right to affirm became law in 1888. The *Oaths Act 1978* provides the current form of the oath and the manner for administering it.

Box 7: Timeline

- 1563 – Oath of Supremacy, the first specific oath that MPs were required to swear.
- 1605 – Oath of allegiance introduced through the *Popish Recusants Act 1605*.
- 1609 – *Oath of Allegiance Act 1609* required MPs to take the oath of allegiance, along with the oath of supremacy, before entering the Parliament House.
- 1678 – The Second Test Act required the oath of supremacy and oath of allegiance to be taken at the Table of the respective Houses of Parliament.
- 1689 – An Act for the Abrogating of the Oathes of Supremacy and Allegiance etc was passed which simplified and shortened the two oaths.
- 1701 – Oath of abjuration added, which required MPs to swear support for the Hanoverian succession. The oath was also taken "upon the true faith of a Christian".
- 1829 – *Roman Catholic Relief Act* removes the bar from those of the Catholic faith from holding office, by providing an alternative oath.
- 1831 – the *House of Commons Oath Act 1831* removed the requirement that MPs had to swear the oaths of supremacy and allegiance twice.
- 1833 – *Quakers and Moravians Act 1833* enabled Quakers and Moravians to make a solemn affirmation.
- 1858 – *Oaths of Allegiance etc and Relief of the Jews Act 1858* removes the bar from those of the Jewish faith from taken a seat in Parliament. It also prescribed a single oath in place of the three.
- 1866 – *Parliamentary Oaths Act 1866* provides a revised oath, the text of which did not contain a declaration relating to the Supremacy of the Sovereign or the phrase "upon the true faith of a Christian".
- 1868 – *Promissory Oaths Act 1868* established another revised oath.
- 1888 – *Oaths Act 1888* gave the general right to affirm.
- 1909 – *Oaths Act 1909* superseded the 1868 and 1888 Acts.
- 1961 – *Oaths Act 1961* extended the 1888 Act to apply to a person who it was not practicable to administer the oath in the manner appropriate to his religious belief.
- 1977 – *Administration of Justice Act 1977* replaced section 1 of the Oaths Act 1888 on the right

to affirm.

- *Oaths Act 1978* repealed much of the earlier legislation and prescribed the current form and manner of administering the oath, and the right to make an affirmation.

Early Oaths

A number of different oaths have been used in Parliament's history. Medieval kings required their magnates to take a feudal oath of allegiance; and these were sometimes taken or renewed when peers and bishops assembled in Parliament. There is no direct link, however, between these feudal oaths and the current Parliamentary Oath.⁴⁷ The origins of the modern Parliamentary Oath can be traced back to the religious and political context of the sixteenth and seventeenth centuries.

Oath of Supremacy

Following Henry VIII's break with Rome, Parliament passed an Act of Supremacy in 1534, which declared Henry VIII Supreme Head of the English Church.⁴⁸ In 1536 an Act was then passed which required a formal oath of supremacy to be taken by all newly appointed office-holders, both spiritual and lay, as well as by all men who sued livery of their lands or accepted a Crown fee.⁴⁹

Henry VIII's Act of Supremacy was repealed by Mary I in 1554, but a new Act of Supremacy was introduced during the first year of Elizabeth I's reign. This required an oath to be taken by the clergy, justices, mayors and other lay offices, recognising the Queen's position as 'Supreme Governor of the English Church'.⁵⁰

The first specific oath which Members of the House of Commons were required to swear was Elizabeth I's revised oath of supremacy in 1563.⁵¹ This was extended to not only include ecclesiastical and secular officials but also people in Holy Orders, university graduates, schoolmasters, lawyers and court officials, as well as all future Members of the House of Commons.

Temporal Members of the House of Lords, i.e. the nobility, were not required to swear the oath because:

[...] the Queen's Majesty is otherwise sufficiently assured of the Faith and Loyalty of the Temporal Lords of her High Court of Parliament [...]⁵²

⁴⁷ R W Perceval & P D G Hayter, 'The Oath of Allegiance', *The Table*, Vol XXXIII, 1964, p85

⁴⁸ *Act of Supremacy 1534*, 25 Henry VIII c. 1

⁴⁹ 28 Henry VIII c. 10, sections 6-8. No one had sworn explicitly to the Royal Supremacy before 1536 except new bishops and the corporate clergy. All subjects of the Crown, however, had to take an oath swearing to the succession as set out by an Act of Parliament in 1534.

⁵⁰ 1 Elizabeth I c.1

⁵¹ 5 Elizabeth I c.1, sections 5, 16; J E Neale, *Elizabeth I and her Parliaments, Volume I, 1559-1581*, 1965, pp116-118

⁵² 5 Elizabeth I c.1, section 17

Oath of allegiance

After the Gunpowder Plot of 1605, James I introduced another oath – an oath of allegiance – through the *Popish Recusants Act 1605*. The form of this oath included a declaration of allegiance to the king, and a renunciation of the Pope.⁵³

The oath of allegiance was administered to anyone convicted or indicted of recusancy – that is, those who refused to attend Anglican church services. The *Oath of Allegiance Act 1609* then extended the obligation to take the oath of allegiance, along with the oath of supremacy, to Members of Parliament. However, neither of these oaths could yet be considered “parliamentary oaths” because neither was taken in Parliament.⁵⁴ Members of the House of Commons were required to swear the oaths before the Lord Steward before entering Parliament, while Peers swore the oath before commissioners in the area in which they lived. Bishops swore the oath before the Lord Chancellor.⁵⁵

Members of both Houses of Parliament were first required to take an oath in Parliament in 1678. This followed widespread concern about rumours of a Catholic plot to assassinate Charles II. The *Parliament Act 1678*, more commonly referred to as the Second Test Act, required the oath of allegiance and the oath of supremacy to be taken by Members of the Lords and the Commons for a second time, at the Table of their respective Houses.⁵⁶ A requirement to make a declaration against the Catholic belief of transubstantiation was also added.

In 1689, during the first year of William and Mary’s reign, an Act was then passed which, amongst other things, replaced the oaths of allegiance and supremacy with simplified, shorter ones.⁵⁷ Notably, the religious content of the oath of allegiance was removed, although it was retained in the oath of supremacy which had to be taken with it. The simplified oath of allegiance from 1689 closely resembled the Parliamentary Oath’s modern form:

I A.B. do sincerely promise and swear, That I will be faithful, and bear true Allegiance to Their Majesties King William and Queen Mary, so help me God.⁵⁸

Oath of abjuration

In 1701, the exiled king James II died, and supporters of the Stuart claim to the throne proclaimed his son king. An act was passed in 1701 “for the further Security of His Majesties Person and the Succession of the Crown”.⁵⁹ This act extended the two oaths and added an oath of

⁵³ Perceval & Hayter, ‘Oath of Allegiance’, p87

⁵⁴ Perceval & Hayter, ‘Oath of Allegiance’, p87

⁵⁵ M MacDonagh, *Parliament: Its Romance, its Comedy, its Pathos*, 1902, p180; Perceval & Hayter, ‘Oath of Allegiance’, p87

⁵⁶ 30 Charles II St 2, c1

⁵⁷ William and Mary, 1688, [An Act for the Abrogating of the Oathes of Supremacy and Allegiance and Appointing other Oathes](#)

⁵⁸ Ibid

⁵⁹ William III, [An Act for the further Security of His Majesties Person and the Succession of the Crown in the Protestant Line and for extinguishing the Hopes of the pretended Prince of Wales and all other Pretenders and their open and secret Abettors](#), 1701

abjuration of the pretender's title. The oath of abjuration pledged support for the Hanoverian succession and for the exclusion of the Stuarts. It also had a strong religious dimension, requiring those taking it to support, maintain and defend the Protestant succession, while the oath was made "upon the true faith of a Christian".

The Act specified that MPs or Peers who had not taken the oath could not sit or vote in either House. Those who did were deemed "Popish" and would be fined £500.

Box 8: When was the requirement for MPs to the oath of supremacy and oath of allegiance twice removed?

The Oath of Allegiance Act 1609 required MPs and Peers to take the oaths of allegiance and supremacy before entering the Parliament House. Under the *Parliament Act 1678* (the Second Test Act), the two oaths had to be taken by both the Lords and Commons (for a second time) at the Table of their respective Houses. Under the provisions of the 1701 act "for the further Security of His Majesties Person and the Succession of the Crown", the oath of abjuration only had to be taken at the Table of either House.

The requirement on MPs to swear the oaths of supremacy and allegiance before entering "the Parliament House" was removed in 1831, meaning that MPs now only had to swear the oaths at the Table of the House.⁶⁰

6.1 Religious restrictions

The three oaths that a Member of Parliament was required to swear by 1701 contained strong religious elements linked to the Protestant succession. As a result, those of the Roman Catholic, Jewish and Quaker faith, and those of many other religious denominations, including Protestant dissenters, were effectively barred from membership of either House. During the nineteenth century many of these restrictions were removed.

Roman Catholic Relief Act 1829

The restriction on those of the Roman Catholic faith from entering Parliament was removed by the *Roman Catholic Relief Act 1829* (also known as the Catholic Emancipation Act). The Act's purpose was to allow Catholics to hold offices which they had previously been barred from holding, including that of Member of Parliament. Section 2 of the Act removed the requirement that a Roman Catholic must take the oaths of supremacy, allegiance and abjuration before taking their seat, and provided an alternate oath.

The *Roman Catholic Relief Bill* was introduced following the election of Daniel O'Connell, a Roman Catholic, as MP for Clare in 1828. However, despite the passage of the Act, O'Connell did not become the first Roman Catholic to be sworn as a Member of Parliament. Due to a Speaker's ruling, the new oath was only made available to Members elected since the passing of the Act on 4 April 1829.⁶¹ O'Connell was therefore unable to take his seat until a new writ was issued and he was re-elected in 1830. The first Roman Catholic Member of Parliament to

⁶⁰ *House of Commons Oaths Act 1831* (1 & 2 William IV c.9)

⁶¹ *Mirror of Parliament*, 6, p1647

swear the new oath was Henry Charles Howard, Earl of Surrey. He was elected as MP for Horsham, and took his seat on 6 May 1829.⁶²

Quakers and Moravians Act 1833

The religious beliefs of Quakers did not permit them to swear oaths. The *Affirmation Act of 1696* had granted them the right to make affirmations in place of most required oaths after it was alleged that criminals were going free because Quaker witnesses refused to give evidence, owing to the oath required in law courts.⁶³ However, these provisions were not thought to extend to the Parliamentary Oath, and so a Quaker named John Archdale, who was elected to Parliament in 1699, was unable to take his seat. He refused to take the oath and the option of affirmation was denied him.

The right for Quakers to make affirmations in place of most oaths was periodically renewed, before being made permanent in 1833, when it was also extended to Moravians via the *Quakers and Moravians Act 1833*.⁶⁴ It was in that year that the first Quaker entered the House (Joseph Pease). He claimed the right to affirm, and a select committee was appointed to examine the issue. It concluded that the relevant acts did apply to the Parliamentary Oath.⁶⁵ The *Quakers and Moravians Act 1833* enabled both Quakers and Moravians to make a solemn affirmation, omitting the phrase "So help me God".

Relief of the Jews Act 1858

Members of the Jewish faith (and members of any non-Christian faith) were effectively barred from taking a seat in Parliament because the oath of abjuration that they were required to take contained the words "on the true faith of a Christian", while the oath itself had to be sworn on the New Testament.⁶⁶

In 1847 Baron Lionel Nathan de Rothschild, who was returned as MP for the City of London, was unable to take his seat due to his Jewish faith. Nevertheless, in 1850 he decided to present himself at the Table of the House, and asked permission to be sworn on the Old Testament, with his head covered. This was allowed, but because he would not use the words "on the true faith of a Christian", it was resolved that he could not take his seat.⁶⁷ The following year David Salomons was returned as MP for Greenwich. Salomons took all three oaths but omitted the

⁶² HC Deb 6 May 1829, 2nd Series, Vol 21, c1105; M Stenton, *Who's Who of British Members of Parliament*, Volume I, 1832-1885, 1976, p370

⁶³ 'The difference between 'affirmation' and 'oath', [BBC News](#), 20 May 2015; M K Geiter, 'Affirmation, Assassination, and Association: The Quakers, Parliament and the Court in 1696', *Parliamentary History*, Vol 16, (1997), pp277-288

⁶⁴ 3 & 4 Will 4 c49

⁶⁵ *Report from the Select Committee appointed to search the Journals of the House, and to report to The House such Precedents, and such Acts or parts of Acts of Parliament as relate to the right of the people called Quakers to take their Seats in Parliament, and to the privilege conferred upon them to make their Solemn affirmation in Courts of Justice, and other places where by law an Oath is allowed, authorised or required to be taken*, 1833 (6) Vol XII, p137

⁶⁶ The phrase "on the true faith of a Christian" had first appeared in the Oath of Allegiance introduced by James I.

⁶⁷ MacDonagh, *Parliament*, pp198-199

offending phrase when doing so. Believing that he had been appropriately sworn, he then took his seat, spoke in a debate and took part in three divisions. He was prosecuted in the Court of Exchequer for the recovery of the penalties incurred for sitting and voting without having taken the oath.⁶⁸

Following several failed Jewish Relief Bills, the *Oaths of Allegiance etc and Relief of the Jews Act 1858* was subsequently passed. Through this a single oath was prescribed in place of the former three, which retained a declaration of allegiance and the promise to defend the Hanoverian succession. A declaration relating to the supremacy of the Sovereign was also included, and the oath continued to be made “upon the true faith of a Christian”. However, the Act allowed either House to permit by resolution a Jewish member to omit these words.⁶⁹

Following the Act’s passage, the Commons passed a resolution to this effect and, on 28 July 1858, Baron Lionel Nathan de Rothschild, took his seat in the House of Commons.⁷⁰

However, the resolution passed under the 1858 Act was sessional, and had to be renewed at the beginning of each Session. It became a Standing Order in 1860 (that is, an order of permanent character) and was finally made part of the law in 1866.⁷¹

6.2 The Modern Parliamentary Oath

Box 9: A single Parliamentary Oath

The *Oath of Allegiance etc and Relief of the Jews Act 1858* replaced the oaths of supremacy, allegiance and abjuration with a single oath. However, this still retained a declaration of allegiance and a promise to defend the succession. A declaration relating to the supremacy of the Sovereign was also included, and the oath continued to be made “upon the true faith of a Christian” (although this could be omitted for Members of the Jewish faith).⁷²

The *Parliamentary Oaths Act 1866* repealed much of the earlier pieces of legislation in so far as they related to oaths taken by Members of Parliament. It prescribed a new oath, the text of which did not contain a declaration relating to the supremacy of the Sovereign or the phrase “upon the true faith of a Christian”.⁷³ The 1866 act also removed many of the religious restrictions on swearing the parliamentary oath by providing for an affirmation to be made instead of an oath. However, this could only be taken by “People called Quakers”, and every other person “for the Time being by Law permitted to make a solemn Affirmation ... instead of taking an Oath”.⁷⁴ This meant that only people included in previous statutes relating to official and judicial oaths were entitled to affirm.

The *Parliamentary Oaths Act 1866* also set out the penalties that would be levied against any Member who took part in Parliamentary

⁶⁸ MacDonagh, *Parliament*, pp199-200

⁶⁹ 21 & 22 Victoria c 48; 21 & 22 Victoria c 49

⁷⁰ MacDonagh, *Parliament*, pp200-201

⁷¹ MacDonagh, *Parliament*, pp200-201

⁷² 21 & 22 Victoria c 48

⁷³ [Parliamentary Oaths Act 1866](#)

⁷⁴ [Parliamentary Oaths Act 1866](#), Section 4

proceedings without having taken the Oath. These included having to pay a fine of £500 and vacating their seat “in the same Manner as if he were dead”.⁷⁵

A further curtailment to the Parliamentary Oath was made two years later by the *Promissory Oaths Act 1868*. This provided a simplified and shorter oath of allegiance:

I, A.B, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her Heirs and Successors, according to Law. So help me God.⁷⁶

As two former House of Lords clerks have noted, this oath of allegiance required of MPs and Peers in the *Promissory Oaths Act 1868* conforms closely to the feudal oaths of allegiance exacted by medieval kings:

The circle is therefore complete: the old Oath of Allegiance which had disappeared was replaced by a series of religious Oaths; but the religious contents of those Oaths has been steadily purged away until nothing remains but an Oath of Allegiance very nearly in the ancient form.⁷⁷

The general right to affirm

The *Parliamentary Oaths Act 1866* gave people who had been included in previous statutes – such as members of the Roman Catholic and Jewish faith – the right to affirm instead of swearing the oath of allegiance. However, there was no provision for atheists.

The *Oaths Act 1888* was a Private Members Bill, passed in response to the case of the renowned atheist Charles Bradlaugh MP (see Box 10). It allowed a person who had no religious beliefs or for whom taking an oath was contrary to their religious beliefs the right to make a solemn affirmation.⁷⁸

Box 2: The case of Charles Bradlaugh MP

Charles Bradlaugh MP (1833-1891) had a significant impact on the development of the parliamentary oath. Bradlaugh was a renowned atheist, who was first elected to Parliament in 1880. Arriving to be sworn in on 3 May 1880, Bradlaugh asked to affirm rather than take the oath. Although the *Parliamentary Oaths Act 1866* provided for an affirmation to be made in lieu of an oath, it only did so for religious groups included in previous statutes, such as Quakers and Moravians. A difficulty therefore remained for people with no religious beliefs, who might object to an oath on the basis that it had no meaning for them.

When asked by the Clerk, Sir Thomas Erskine May, on what basis he wished to affirm, Bradlaugh cited the *Evidence Amendment Acts* of 1869 and 1870 that allowed the making of an affirmation in place of swearing an oath in courts of law. The Speaker sought advice on the matter from a veteran clerk, S.K. Richards, who concluded that because the *Evidence Amendment Acts* related to judicial oaths, they had not amended the *Parliamentary Oaths Act*, which related to promissory oaths.⁷⁹ A Select Committee of the House was also appointed to look at the matter, and narrowly rejected the question of whether Bradlaugh should be allowed to make an affirmation in place of the oath.

Bradlaugh subsequently decided to take the required oath. However, the House would not allow this because it was believed that he would not regard the oath as binding as he was not a Christian. Another Select Committee was established to look into the matter. It reported that Bradlaugh should

⁷⁵ [Parliamentary Oaths Act 1866](#), Section 5

⁷⁶ [Promissory Oaths Act 1868](#), Section 2

⁷⁷ Perceval & Hayter, 'Oath of Allegiance', p89

⁷⁸ *Oaths Act 1888*, 51 & 52 Victoria c. 46

⁷⁹ W L Arnstein, *The Bradlaugh Case*, 1965, p36

not be allowed to take the oath, but should not be prevented from making the affirmation (although he would affirm at his own risk at law).⁸⁰ The House subsequently rejected a motion to this effect and when Bradlaugh came to the Bar of the House to argue his case, and refused to withdraw, he was detained overnight by the Serjeant. He was held in a room in the lower third of the Clock Tower, now the Elizabeth Tower. Bradlaugh was the last MP to be detained by the Serjeant at Arms.⁸¹

For several years the battle then continued in Parliament and in the law courts. Twice Bradlaugh administered the oath to himself and was expelled. Three more times he was returned as a Member for Northampton: twice at a by-election when the seat was declared vacant, and again at the general election of 1885.

In 1886, however, Bradlaugh took the oath again, along with other Members of the new Parliament. The new Speaker (Viscount Peel) refused any objection or protest and Bradlaugh swore the oath and took his seat.

Two years later, in 1888, Bradlaugh succeeded in getting his Oaths Bill passed, with the support of the Government. This gave a general right to affirm, orally and in writing, to both atheists and to persons whose religious beliefs made the taking of oaths objectionable.⁸²

6.3 Legislative developments since 1888

After the general right to affirm became law in 1888, further changes to swearing the Parliamentary Oath have been made.

The *Oaths Act of 1909* introduced a change to the ordinary method of taking the oath, and provided for oaths to be sworn on the Bible. Those of the Christian faith could swear on the New Testament, while those of the Jewish faith could swear on the "Old Testament".⁸³ For any person "who is neither a Christian nor a Jew", the oath could be administered in any manner which is now lawful. The 1909 Act also established the usual form of taking the oath, prefixing the words set out in the *Promissory Oaths Act 1868* with the phrase "I swear by Almighty God".

The *Oaths Act 1961* extended the *Oaths Act 1888* to apply to "a person to whom it is not reasonably practicable to administer the oath in the manner appropriate to his religious belief".⁸⁴

The *Administration of Justice Act 1977* replaced section 1 of the *Oaths Act 1888* on the right to affirm.⁸⁵

The *Oaths Act 1978* then consolidated and repealed all of the provisions in the Oaths Acts of 1838, 1888, 1909, 1961 and section 8 of the *Administration of Justice Act 1977*.⁸⁶ The *Oaths Act 1978* prescribes the current form and manner of administering the Parliamentary Oath, and the right of a Member or Peer to make a solemn affirmation in its place.

Section 1 of the Oaths Act 1978 states:

(1) Any oath may be administered and taken in England, Wales or Northern Ireland in the following form and manner:—

⁸⁰ *Report from the Select Committee on Parliamentary Oath* (Mr Bradlaugh), 16 June 1880, HC 226 1880

⁸¹ House of Commons Library, [Disciplinary and Penal Powers of the House of Commons](#), 27 November 2012, p9

⁸² *Oaths Act 1888*, 51 & 52 Victoria c. 46

⁸³ *Oaths Act 1909*, Section 2

⁸⁴ *Oaths Act 1961*, Section 1

⁸⁵ *Administration of Justice Act 1977*, section 8

⁸⁶ *Oaths Act 1978*

27 The Parliamentary Oath

The person taking the oath shall hold the New Testament, or, in the case of a Jew, the Old Testament, in his uplifted hand, and shall say or repeat after the officer administering the oath the words "I swear by Almighty God that", followed by the words of the oath prescribed by law [that is, as set out in the *Promissory Oaths Act 1868*].

(2) The officer shall (unless the person about to take the oath voluntarily objects thereto, or is physically incapable of so taking the oath) administer the oath in the form and manner aforesaid without question...⁸⁷

For those not of the Christian or Jewish faith, the 1978 Act allows the oath to be administered "in any lawful manner", so, for example, a Koran or Granth could be substituted for a Bible.⁸⁸

Section 5 states that "Any person who objects to being sworn shall be permitted to make his solemn affirmation instead of taking an oath".⁸⁹ The form of the wording for the affirmation is also prescribed in this Act.

The *Promissory Oaths Act 1868*, which is not restricted to parliamentary oaths but covers official oaths in general, remains in effect.

⁸⁷ *Oaths Act 1978*, Section 1

⁸⁸ *Oaths Act 1978*, Section 1

⁸⁹ *Oaths Act 1978*, Section 5

7. The Parliamentary Oath in the House of Lords

All Members of the House of Lords are required to take an oath of allegiance, as prescribed in the *Promissory Oaths Act 1868*, before they can sit or vote in the House. The form of the oath is the same as that taken by Members of Parliament, and must be taken by Peers:

- on their introduction to the Lords
- in every new Parliament
- after the death of the Monarch

Any Peer or Bishop who sits or votes without having taken the oath is subject to a fine of £500.⁹⁰

Although membership of the House of Lords is not salaried, Members are entitled to claim financial support in respect of their parliamentary work. However, no Member of the House of Lords can claim the daily allowance unless they have taken the oath of allegiance or affirmed and have signed an undertaking to abide by the Code of Conduct for Members.⁹¹ New Members of the House may also not use the facilities of the House, other than the right to sit on the steps of the Throne, before taking their seat for the first time.⁹²

However, the *Companion to the Standing Orders of the House of Lords* states that a Peer “may attend prayers or an introduction before taking the oath”.⁹³ It also states that on a swearing in day “it is convenient for Members to occupy their seats while they are waiting to take the oath”.⁹⁴

Administering the Oath in the Lords

The *Companion to the Standing Orders of the House of Lords* describes how the oath is taken in the Lords:

Before taking the oath members go to the Table, bringing their writ of summons (except on a demise of the Crown, when new writs are not issued). They then recite aloud the words of the oath, reading them from a card kept at the Table, and holding a New Testament in the right hand. The oath may also be taken in the Scottish form with uplifted hand. In the case of members of the House who are of the Jewish faith, the Old Testament is used; in the case of other faiths, the appropriate sacred text is used.⁹⁵

Members must swear the oath or take the solemn affirmation in English, but it may be repeated in Gaelic or Welsh.⁹⁶

⁹⁰ *Parliamentary Oaths Act 1866*, section 5

⁹¹ House of Lords, [Guide to Financial Support for Members](#), February 2012, para 2.1.2

⁹² House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 1.15

⁹³ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 1.25

⁹⁴ *Ibid.*, para 1.25

⁹⁵ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 1.21

⁹⁶ House of Lords, [Companion to the Standing Orders and Guide to the Proceedings of the House of Lords](#), 2015, para 1.20

8. Declarations taken by the Clerk and Under Clerk of the Parliaments

Summary

In addition to the parliamentary oath that MPs and Members of the House of Lords are required to take, both the Clerk of the House of Commons (referred to in legislation as the Under Clerk of the Parliaments), and the Clerk of the Parliaments (House of Lords), are required to make a declaration on entering their office.

8.1 Clerk of the House of Commons (Under Clerk of the Parliaments)

On appointment, the Clerk of the House of Commons makes a declaration, the wording of which is:

I, [insert name], do declare that I will be true and faithful and troth I will bear to Our Sovereign Lady the Queen and Her Heirs and Successors I will nothing know that shall be prejudicial to her Highness Her Crown Estate and Dignity Royal, but that I will resist it to my power and with all speed I will advertise Her Grace thereof, or at least some of Her Counsel in such wise as the same may come to Her Knowledge I will also well and truly serve Her Highness in the office of Under Clerk of Her Parliaments to attend to the Commons of this Realm making entries Remembrances and Journals of the things done and passed in the same I will keep secret all such matters as shall be treated in Her said Parliaments and not disclose the same before they shall be published but to such as it ought to be disclosed unto and generally I will well and truly do and execute all things belonging to me to be done appertaining to the said Office of Under Clerk of the Parliaments.

By taking the declaration the Clerk of the House of Commons is able to fulfil his or her duties, which include signing addresses to Her Majesty and endorsing Bills sent to the Lords.

The Clerk's declaration was previously an oath, the origins of which probably date to the medieval period. The oath was converted to a declaration by virtue of Section 12 of the Promissory Oath's Act 1868.⁹⁷

8.2 Clerk of the Parliaments (House of Lords)

On appointment, the Clerk of the Parliaments makes a declaration at the Table of the House of Lords upon entering office 'to make true entries and records of the things done and passed' in the Parliaments and to 'keep secret all such matters as shall be treated therein and not to disclose the same before they shall be published but to such as it ought to be disclosed unto'.⁹⁸

⁹⁷ *Promissory Oaths Act 1868*, Section 12; *Erskine May*, 8th Edition, p239

⁹⁸ *Erskine May*, 24th edition, p115

31 The Parliamentary Oath

The declaration made by the current Clerk of the Parliaments, David Beamish, was recorded in Hansard on 26 April 2011:

3.10 pm

The letters of appointment for Mr David Richard Beamish as the next Clerk of the Parliaments were read and he made the prescribed declaration:

"I, David Richard Beamish, do declare that I will be true and faithful and troth I will bear to Our Sovereign Lady the Queen and to Her Heirs and Successors. I will nothing know that shall be prejudicial to Her Highness Her Crown Estate and Dignity Royal, but that I will resist it to my power and with all speed I will advertise Her Grace thereof, or at the least some of Her Counsel in such wise as the same may come to Her knowledge. I will also well and truly serve Her Highness in the Office of Clerk of Her Parliaments making true Entries and Records of the things done and passed in the same. I will keep secret all such matters as shall be treated in Her said Parliaments and not disclose the same before they shall be published, but to such as it ought to be disclosed unto, and generally I will well and truly do and execute all things belonging to me to be done appertaining to the Office of Clerk of the Parliaments

After which he took his seat at the Table.⁹⁹

The earliest known oath which the Clerk of the Parliaments was required to take dates to 1531 and can be found in the formulary book kept by William Porter, Clerk of the Crown.¹⁰⁰

⁹⁹ [HL Deb 26 April 2011 c10](#)

¹⁰⁰ The National Archives, Public Record Office, C193/143

9. The Parliamentary Oath in Devolved Legislatures

Summary

Provisions of the *Promissory Oaths Act 1868* are not restricted to MPs or Peers; they cover official oaths in general.

Members of the Scottish Parliament and the National Assembly for Wales are also required to swear the oath of allegiance or make a solemn affirmation before they can take their seat, and in those two bodies there is effectively a statutory bar on the practice of “abstentionism”. Members of the Northern Ireland Assembly, however, are not required to swear the oath.

9.1 Scotland

Under the terms of the *Scotland Act 1998*, sections 84(1) and 84(2), a person who is returned as a Member of the Scottish Parliament (MSP) cannot take part in parliamentary proceedings until he or she has taken the oath of allegiance or made a solemn affirmation.¹⁰¹

The Act allows MSPs two months from the date of their election to take the oath or make an affirmation. If an MSP fails to take the oath within this two-month period then they cease to be an MSP.¹⁰² However, under section 84(3) of the *Scotland Act 1998*, the Scottish Parliament can decide – before the end of the two month period – to allow an MSP who has not taken the oath a longer period to do so.¹⁰³ This power is exercisable only on a motion of an MSP and is valid only if seconded by another MSP.¹⁰⁴

The oath of allegiance or solemn affirmation must be taken in English in the Scottish Parliament but an MSP may, after taking the oath, repeat the oath in a language “other than English”.¹⁰⁵

Objections to taking the Oath

During the passage of the Scotland Bill 1997-98, Dennis Canavan MP objected to the requirement that Members of the Scottish Parliament would be required to take the Oath. He argued that no other oath or affirmation should be required of MSPs other than an acknowledgment of the sovereign right of the Scottish people and a pledge that their interests would be paramount.¹⁰⁶

Similarly, while MSPs were being sworn in for the first session of the Scottish Parliament in 1999, the then leader of the Scottish Nationalist Party, Alex Salmond, prefaced his oath with the declaration that:

¹⁰¹ [Scotland Act 1998](#), sections 84 (1) and 84 (2)

¹⁰² [Scotland Act 1998](#), section 84 (3)

¹⁰³ [Scotland Act 1998](#), section 84 (3)

¹⁰⁴ Scottish Parliament, [Standing Orders of the Scottish Parliament](#), Edition 4.9, October 2015, Rule 1.2

¹⁰⁵ Scottish Parliament, [Standing Orders of the Scottish Parliament](#), Edition 4.9, October 2015, Rule 1.2

¹⁰⁶ HC Deb 12 May 1998 Vol 312 c 231

For the Scottish National Party parliamentary group loyalty is with the people of Scotland in line with the sovereignty of the people.¹⁰⁷

The then leader of the Scottish Socialist Party, Tommy Sheridan, also prefaced his oath with the declaration that “supreme sovereignty lies with the people of Scotland and not an unelected monarch”. He then swore to the required oath with his right arm raised and his fist clenched.¹⁰⁸ Afterwards, he claimed that regulations on disbaring those who refuse to take the oath were tighter in Scotland than Westminster:

I feel that we have imposed the Royal Prerogative even deeper into the Scottish Parliament [...] if you refuse to take the oath your seat remains vacant until the next election. In the Scottish Parliament, if you don't take the oath within two months of being elected there is an immediate by-election.¹⁰⁹

9.2 Wales

Members of the National Assembly for Wales are also required to swear the oath of allegiance. A member cannot take part in the proceedings of the Assembly and will not receive their salary or allowances, until they have taken the oath.¹¹⁰

Section 23(1) of the *Government of Wales Act 2006* requires that a member of the National Assembly for Wales must take the oath of allegiance or an affirmation “as soon as is reasonably practicable after being returned as an Assembly member”.¹¹¹ If the oath or affirmation is not taken within two months of their election, the member ceases to be an Assembly member.¹¹² As in the Scottish Parliament, the Act allows for the National Assembly to extend the period for taking the oath.¹¹³

Unlike in the Scottish Parliament, however, where an MSP must take the oath or affirmation in English but can then repeat it in another language, members of the National Assembly for Wales can choose whether to use the Welsh or English form of the oath.¹¹⁴

9.3 Northern Ireland

Members of the Northern Ireland Assembly are not required to take an oath of allegiance. The Standing Orders of the Assembly state that members take their seats “by signing the Assembly’s Roll of Membership”.¹¹⁵ A member cannot take part in Assembly proceedings or have title to the privileges of office until they have signed the Roll of Membership.¹¹⁶ After signing the Roll, a member may also enter into the

¹⁰⁷ ‘MSPs pledge allegiance to “Scottish People”’, [BBC News](#), 12 May 1999

¹⁰⁸ ‘MSPs pledge allegiance to “Scottish People”’, [BBC News](#), 12 May 1999

¹⁰⁹ ‘MSPs pledge allegiance to “Scottish People”’, [BBC News](#), 12 May 1999

¹¹⁰ [Government of Wales Act 2006](#), Section 23 (6)

¹¹¹ [Government of Wales Act 2006](#), Section 23 (1)

¹¹² [Government of Wales Act 2006](#), Section 23 (5)

¹¹³ [Government of Wales Act 2006](#), Section 23 (5b)

¹¹⁴ Welsh Forms of Oaths and Affirmations (Government of Wales Act 2006) Order 2007 (S.I. 2007/2044, W. 169). Amended by the [Welsh Forms of Oaths and Affirmations \(Government of Wales Act 2006\) \(Amendment\) Order 2011 \(S.I. 2011/594, W. 87\)](#)

¹¹⁵ Northern Ireland Assembly, [Standing Orders](#), February 2015, para 3 (3)

¹¹⁶ Northern Ireland Assembly, [Standing Orders](#), February 2015, para 3 (6)

Roll a designation of identity – Nationalist, Unionist or Other. A member who does not register a designation of identity is designated “Other” for the purposes of these Standing Orders and the *Northern Ireland Act 1998*.¹¹⁷

Section 21 of the *Northern Ireland Constitution Act 1973* made it unlawful for a public body to require any person to make an oath or affirmation “as a condition of his being appointed to or acting as a member of that authority or body, or of serving with or being employed under that authority or body”.¹¹⁸ Section 21(4) stated that the provisions applied to the Assembly itself.¹¹⁹

¹¹⁷ Northern Ireland Assembly, [Standing Orders](#), February 2015, para 3 (7)

¹¹⁸ [Northern Ireland Constitution Act 1973](#), section 21

¹¹⁹ [Northern Ireland Constitution Act 1973](#), section 21 (4)

10. Parliamentary Oaths in other Countries

Many other countries require the members of their legislatures to swear an oath or take an affirmation in some form. In several European Parliaments, for instance, including those of Austria, Belgium, Denmark and the Netherlands, members are required to take an oath to be faithful to the constitution. A number of Commonwealth countries, however, require members of their legislatures to swear an oath of allegiance to the British monarch. This includes Australia, Canada and New Zealand.

10.1 Australia

Members of the Australian Parliament (both the Senate and the House of Representatives) are required to make and subscribe to an oath of allegiance or affirmation to the reigning Monarch before they are allowed to take their seat in Parliament.¹²⁰

The form of the oath is similar to the UK's Parliamentary Oath and is set out in the Schedule to the *Commonwealth of Australia Constitutional Act 1900* :

I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law. SO HELP ME GOD!

AFFIRMATION

I, A.B., do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to Her Majesty Queen Victoria, Her heirs and successors according to law.

(NOTE.—*The name of the King or Queen of the United Kingdom of Great Britain and Ireland for the time being is to be substituted from time to time.*)¹²¹

In the Australian Senate, a senator must take the oath or affirmation before taking their seat or participating in Senate proceedings. However, not taking the Oath does not prevent a senator from performing other functions. For instance, the Senate can appoint senators "to committees, and senators may participate in the proceedings of those committees, before they have been sworn".¹²²

By contrast, in the House of Representatives, a member cannot take part in any proceedings until they have taken the oath – including committee work.¹²³

¹²⁰ [Commonwealth of Australia Constitutional Act 1900](#), Section 42

¹²¹ [Commonwealth of Australia Constitutional Act 1900](#), Schedule

¹²² Parliamentary Library, [Oaths and affirmations made by the executive and members of federal parliament](#), 24 October 2013, p12

¹²³ *Ibid.*, p13

10.2 Canada

Members of the Canadian House of Commons are required to take an oath of allegiance or a solemn affirmation to the reigning Monarch before they are allowed to take their seat or draw their salary. Members of the Senate and the provisional legislative assemblies (though not members of territorial legislative assemblies) are also required to take the oath.

Section 128 of the Canadian *Constitution Act, 1867* states that:

Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; [...]¹²⁴

The Canadian Parliamentary Oath is similar to the UK Parliament's oath of allegiance, and is as follows:

I A.B. do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

Note. — *The Name of the King or Queen of the United Kingdom of Great Britain and Ireland for the Time being is to be substituted from Time to Time, with proper Terms of Reference thereto.*¹²⁵

Canadian MPs have been able to make a solemn affirmation in place of the oath of allegiance since 1905.¹²⁶

There have been repeated attempts over the last twenty years to change the Canadian Parliamentary Oath. A Canadian Library of Parliament Research Paper describes some of these attempts.¹²⁷

10.3 New Zealand

Members of Parliament in New Zealand are required to swear an oath or make an affirmation to the reigning Monarch. Section 11 of the *Constitution Act 1986* states that a Member of Parliament will not be permitted to sit or vote in the House of Representatives until the Member has taken the Oath of Allegiance prescribed in the *Oaths and Declarations Act 1957*.¹²⁸ The Standing Orders of the House of Representatives also states that a Member is unable to serve on a committee until they have taken either the oath or affirmation.¹²⁹

The form of the oath of allegiance taken by Members of the New Zealand Parliament is similar to the UK Parliament's oath of allegiance.

¹²⁴ [Constitution Act, 1867](#), section 128

¹²⁵ [Constitution Act, 1867](#), Fifth Schedule

¹²⁶ Library of Parliament, [Oaths of Allegiance and the Canadian House of Commons](#), October 2008, p2

¹²⁷ A Canadian Library of Parliament Research Paper describes some of these attempts. See Library of Parliament, [Oaths of Allegiance and the Canadian House of Commons](#), October 2008.

¹²⁸ [Constitution Act 1986](#), Section 11

¹²⁹ New Zealand Parliament, [Standing Order of the House of Representatives 2014](#), 22 September 2014, para 13 (1)

The Oath, which is set out in section 17 of the *Oaths and Declarations Act 1957*, is as follows:

I, [specify], swear that I will be faithful and bear true allegiance to Her [or His] Majesty [specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second], Her [or His] heirs and successors, according to law. So help me God.¹³⁰

The Act also allows a Member to make an affirmation instead of the oath,¹³¹ and the Oath or affirmation can be taken in either English or Maori.¹³²

Oaths Modernisation Bill (2005)

Attempts have been made to amend the New Zealand Oath of Allegiance. In 2005 the *Oaths (Modernisation) Bill* was introduced in the Parliament. The Bill was intended to amend a range of oaths and affirmations set out in the *Oaths and Declarations Act 1957*. Section 21 of the Bill proposed a new Parliamentary oath which retained the oath of allegiance but incorporated "additional elements of loyalty to New Zealand, respect for New Zealand's democratic values and respect for the rights and freedoms of the people of New Zealand".¹³³

The Bill was not successful. It was later reintroduced in a subsequent Parliament, but did not become law.¹³⁴

¹³⁰ [Oaths and Declarations Act 1957](#), Section 17

¹³¹ [Oaths and Declarations Act 1957](#), Section 4

¹³² *Oaths and Declarations Act 1957*, Section 4a

¹³³ Report of the Government Administration Committee, [Oaths Modernisation Bill](#) (264-1), 24 March 2006, p3

¹³⁴ New Zealand Parliament, [Legislation: Oaths Modernisation Bill](#)

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