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The relationship between church and state in the United Kingdom

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1 Establishment
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Summary

The United Kingdom of Great Britain and Northern Ireland has two established churches, the Anglican Church of England and the Presbyterian Church of Scotland. In broad terms, "establishment" refers to a formal relationship between a church and the state it operates in.

Church and state

This relationship takes different forms in England and in Scotland. While the King is Supreme Governor of the Church of England, he is an ordinary member of the Church of Scotland. Anglican bishops are members of the House of Lords, but there is no place for the Moderator of the General Assembly of the Church of Scotland. And while Church of England Measures (laws) require parliamentary oversight, the Church of Scotland is entirely self-governing.

Historically, establishment was opposed in parts of the UK where most of the population were not Anglican. As a result of political and religious pressure, the church was disestablished in Ireland in 1871 and Wales in 1920.

Church of England

The Church of England took its current form in the 1530s when King Henry VIII renounced papal authority. Until 1919 the church was reliant on the UK Parliament for legislation to govern its affairs. Power was then devolved from Westminster to a new "National Assembly", which assumed greater control of church affairs. This was replaced with a General Synod in 1970. A Second Church Estates Commissioner represents the Church of England in the House of Commons. The Prime Minister (or another delegated Minister of the Crown) is responsible for advising the monarch on church appointments.

Church of Scotland

The Church of Scotland emerged later in the 16th century and on a different basis than the Church of England. The independence of "the Kirk" was protected in the 1707 Treaty of Union between Scotland and England and in subsequent legislation. The Church of Scotland Act 1921 recognised the church's autonomy in the spiritual sphere.

This briefing covers the historical background to and structural basis of the Churches of England and Scotland. It also explains how the Church of England intersects with the Crown and Parliament, as well as the Government's role in advising on church appointments. There are shorter sections on the Church of Ireland and Church in Wales, as well as a summary of proposals to reform the established church in England.

1 Establishment

In the context of church and state, the term "establishment" is ambiguous. In broad terms it refers to a formal relationship between a church and the state in which it operates. This can take a variety of forms. For example, the Church of England has statutory representation in the House of Lords, the Church of Scotland does not, although both are accepted as "established" churches.

Both the UK's established churches have a relationship with the monarch, who promised to protect them upon his Accession in September 2022 and Coronation in May 2023. But while the King is "Supreme Governor" of the Church of England, he is merely a "member" of the Church of Scotland, although he sends a representative to its annual General Assembly. Parliament has, however, legislated in relation to both churches, just as it did to "disestablish" the Church of Ireland (in 1869) and the Church in Wales (in 1914).

To the Church of England's Chadwick Commission in 1970, establishment meant "the laws which apply to the Church of England and not to other churches".[1] Maurice Gwyer, a Treasury Solicitor, also argued that on a continuum with state subjection at one end and only ceremonial recognition at the other, the Church of England was nearer the latter than the former.[2]

In both the English and Scottish cases, establishment dates from an era in which church and state were virtually indistinguishable. During the 16th century, each church was given a clearer statutory basis. In England, the Acts of Supremacy of 1534 and 1558 declared, respectively, the monarch to be "supreme head" and "Supreme Governor" of the church. In Scotland, the Papal Jurisdiction Act 1560 declared that the Pope had no jurisdiction in Scotland while the Church Jurisdiction Act 1567 confirmed the status of the Church of Scotland.

Establishment used to entail financial support from the state. However, not since the first half of the 19th century has the Church of England received any grant not equally available to other denominations. Two forms of taxation which used to benefit the Church of England no longer exist. The church tax

[1] Owen Chadwick, Church and State – Report of the Archbishops' Commission, London: Church Information Office, 1970, p2.

[2] Cecil of Chelwood, Church and State – Report of the Archbishops' Commission on the Relations between Church and State Volume 2, London: Church Assembly, 1935, p171.

(for the maintenance of church fabric and worship) was abolished on a compulsory basis in 1868, while the tithe was phased out from 1936.[3]

In the 2004 case of *Aston Cantlow v Wallbank*, Lord Hope concluded that “the Church of England as a whole has no legal status or personality”. He added:

> There is no Act of Parliament that purports to establish it as the Church of England […] What establishment in law means is that the state has incorporated its law into the law of the realm as a branch of its general law […] The relationship which the state has with the Church of England is one of recognition, not of the devolution to it of any of the powers or functions of government.[4]

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3 The abolition of tithes produced an anomaly under which a lay landowner could become liable for repairs to a chancel (the part of a church near the altar). The law was reformed in 2003. See Commons Library Standard Note, Chancel Repair Liability.

4 *Aston Cantlow v Wallbank* [2004] 1 AC 546.

2 Church of England

The Church of England is the established church of England. Until 1871 it was (in union with the Church of Ireland) also the established church in Ireland, and until 1920 the established church in Wales. The Church of England is the "mother church" of the international Anglican Communion. Of the UK's two established churches, it has the closest relationship with the state. The monarch is its "Supreme Governor", its senior clerics members of the House of Lords and many of its laws are approved by the UK Parliament.

2.1 Historical background

As a Christian church, the Church of England has a deep provenance.[5] A crucial development, however, was its renunciation of papal authority when King Henry VIII failed to secure an annulment of his marriage to Catherine of Aragon in 1534. Although there was a brief restoration of papal authority under Queen Mary I and King Philip, the English Reformation produced a Church of England independent from Rome and closely connected to the English state.

When Wales was incorporated with England between 1536 and 1543, the Church of England's remit expanded, although not when Scotland and England formed Great Britain in 1707. That settlement protected the Church of England and, separately, the Church of Scotland. In 1801, meanwhile, the "United Church of England and Ireland" was formed when Great Britain joined with Ireland to form the United Kingdom of Great Britain and Ireland.[6]

In 1852 and 1859 respectively, the Convocations of Canterbury and York were re-established as provincial assemblies of bishops and representatives of the Church of England clergy.[7] These bodies could, among other duties, enact or make the Canon Laws of the church, which were submitted to the Crown for Assent. A Royal Licence was issued to announce and exercise them. The Convocations generally met coterminously with Parliament.

All significant changes to the functioning of the Church of England, however, required legislation in the UK Parliament. Unlike the position in Scotland, the church had no separate (and national) assembly of its own.

[5] Legally, the Church of England is the direct descendant in England and Wales of the "one Holy and Catholic Church" but is also a Reformed (and therefore not Roman Catholic) church.
[6] See Article Fifth of the Union with Ireland Act 1800.
[7] Convocations were the historical assemblies of bishops and clergy, the first having been formed during the 7th century.

In 1919, the Convocations of Canterbury and York agreed Addresses to the King which sought, among other things, greater opportunities for the church to discuss its own affairs and to revise the legislative role of Parliament. It was proposed that "Measures" agreed by a representative Church Assembly might be submitted for a modified form of scrutiny rather than proceeding by a Bill from the outset.

These proposals were a response to the increasing difficulty of getting church legislation through Parliament through lack of parliamentary time. Speaking in the House of Lords in June 1919, the Archbishop of Canterbury cited the example of a Bill on patronage and tenure of benefices which took 12 years to progress. Only 33 out of 217 Church Bills introduced between 1880 and 1913 were successful.[8]

National Assembly Bill

Introducing the National Assembly Bill to the House of Lords, the Archbishop of Canterbury said its purpose was "to enable the Church of England to do its work properly [by] removing [...] hindrances which by a kind of accident [...] have been at present constantly across our way".[9]

The Church of England Assembly (Powers) Bill received Royal Assent as the Church of England Assembly (Powers) Act 1919, also known as the "Enabling Act" (or "the 1919 Act"). The system it established remains recognisable more than a century later.

The National Assembly of the Church of England (or "Church Assembly") was empowered to discuss any matter concerning the church, including the power to repeal or amend existing Acts of Parliament. The Church Assembly could also agree Measures, which were then presented to Parliament for approval before being submitted for Royal Assent. Doctrinal matters, however, were reserved to the Convocations of Canterbury and York, which continued to exist after 1919.

For the first time, the laity were represented in the government of the church through their membership of the National Assembly. Latterly, this consisted of 734 members: 387 from the bishops and clergy, 342 lay members (elected every five years) and five co-opted lay members. The Church Assembly met for three four-day sessions in most years.

Once the Church Assembly had approved a Measure, it was referred to its Legislative Committee, which then presented it, with any comment or explanation deemed necessary, to the Ecclesiastical Committee (comprising peers and Members of Parliament), which was also established under the 1919 Act.

8 Archbishops' Committee on Church and State Report, London: Society for Promoting Christian Knowledge, 1917, p29.

9 HL Deb 3 June 1919 [National Assembly Of The Church Of England (Powers) Bill]

The Enabling Act has been viewed as "an early exercise in devolution" from the UK Parliament to another legislature (the National Assembly).[10] The second was that which created the Parliament of Northern Ireland in 1921.[11]

In November 1963, the National Assembly approved resolutions suggesting the setting up of a General Synod, in which would be vested the legislative and other functions (with certain exceptions) of the Church Assembly and Convocations. This General Synod was set up by the Synodical Government Measure (CAM. No. 2 1969), which received Royal Assent on 25 July 1969. It was instituted in 1970.

2.2 Relationship with other aspects of the constitution

The Crown

The Sovereign holds the title "Defender of the Faith and Supreme Governor of the Church of England".[12] These titles date back to the reign of King Henry VIII, who was initially granted the title "Defender of the Faith" in 1521 by Pope Leo X. When Henry VIII renounced the spiritual authority of the Papacy in 1534, he was proclaimed "supreme head on earth" of the Church of England. This was repealed by Queen Mary I but reinstated during the reign of Queen Elizabeth I, who was proclaimed "Supreme Governor" of the Church of England.

The Church of England acknowledges that the King's Majesty, "acting under God and according to law, has supreme authority in both ecclesiastical and civil causes".[13]

A requirement for the monarch to be "in communion with the Church of England" does not mean the Sovereign necessarily has to be a member of the Church of England.[14] A baptised and communicant member of Protestant churches "which subscribe to the doctrine of the Holy Trinity, and who are in good standing in their own Church" would satisfy this requirement,[15] for example a member of the Church of Scotland.[16]

King Charles III's Coronation on 6 May 2023 included the following statutory oath:

> **Archbishop of Canterbury**: Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel? Will you to the utmost of your power maintain in the United Kingdom the Protestant Reformed Religion

[10] See David McClean, The Changing Legal Framework of Establishment, Ecclesiastical Law Journal 7:34, January 2004, p300.
[11] See Commons Library Briefing Paper CBP8884, Parliament and Northern Ireland, 1921-2021.
[12] See Commons Library Briefing Paper CBP8885, The Crown and the constitution.
[13] Canon 7, Church of England website.
[14] The first two Hanoverian monarchs were Lutherans.
[15] Which is the combined effect of the Admission to Holy Communion Measure 1972 and Canon B 15A.
[16] But not non-Trinitarians such as Unitarians or the non-eucharistic Quakers.

> established by law? Will you maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England? And will you preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges, as by law do or shall appertain to them or any of them?
>
> **The King**: All this I promise to do.[17]

For most of her reign, Queen Elizabeth II distributed special "Maundy money" to local pensioners at a service which commemorates Jesus washing the feet of the Apostles at the Last Supper.[18]

Previously, British monarchs appointed a senior bishop Lord High Almoner to hand out the coins on the sovereign's behalf.[19] King George V revived the tradition of the monarch attending in person from time to time. After 1952, Queen Elizabeth II became the first monarch in centuries to turn up on an annual basis.[20] She also decided that it should become a national event, not tied exclusively to Westminster Abbey. King Charles III has continued this custom.[21]

Maundy money is specially minted and presented to an equal number of men and woman dependent upon the monarch's age. For example, when the Queen was 60 years old, 60 women and 60 men received 60 pence-worth of Maundy coins. In 2017, the Queen attended the Maundy service at Leicester Cathedral, the last cathedral in England she had yet to visit.[22] In 2020 and 2021, due to the Covid-19 pandemic, the Maundy money was blessed at the Chapel Royal, St James's Palace, and posted to recipients.

General Synod

Since 1970, the monarch has inaugurated and addressed the opening session of the General Synod of the Church of England every five years following diocesan elections.[23] In 2021, Queen Elizabeth II missed this engagement for

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17. The Accession Declaration Act 1910 had abolished the monarch's previously required declaration against transubstantiation and substituted a formula otherwise no longer intentionally hostile towards Catholics.
18. At one time the monarch would personally wash the feet of the poor (which the Yeoman of the Laundry had pre-washed) and kiss them on Maundy Thursday. This custom took place in England until 1689.
19. A Lord High Almoner is still appointed by Letters Patent under the Great Seal, and it is his duty to be in attendance upon, or represent, the Sovereign at the Maundy Service. He represented Queen Elizabeth II, for example, in 1954, as she was on a Commonwealth tour.
20. Queen Elizabeth II missed the service in 1954, 1960, 1964, 1970 and 2022.
21. Maundy Thursday: What is it, and how did King Charles mark his first one as monarch?, Sky News website, 6 April 2023.
22. Royal Family website, Royal Maundy Service. Outside England, the Queen has visited St David's Cathedral in Dyfed, Wales, in 1982, and St Patrick's (Church of Ireland) Cathedral in Armagh, Northern Ireland, in 2008. A full list of cathedrals which have hosted the Maundy service is available online.
23. See, for example, Royal Family website, A speech by The Queen at the Inauguration of the General Synod, 2015, 24 November 2015.

the first time since 1970. The Earl of Wessex and Forfar attended in her place.[24]

The General Synod makes legislative provisions for the Church of England by Measure in the same way as the National Assembly did after 1919. The Synod consists of the three Houses: Bishops, Clergy and Laity. Its Legislative Committee, similar to that appointed by the old Assembly, is drawn from all three Houses. It may also make Canons which are mainly to do with the work of the clergy, and which are not subject to parliamentary approval. Instead, they are submitted to the King for Royal Assent and Licence via the Lord Chancellor/Secretary of State for Justice.[25]

Synods last five years. The dissolution of the Convocations of Canterbury and of York triggers the dissolution of the General Synod.[26] Dissolution can be postponed by an Order in Council, as it was in 2020 due to the Covid pandemic.[27]

Parliament

The General Synod interacts with Parliament via the statutory Ecclesiastical Committee (as established under the 1919 Act). This is composed of 15 Members of the House of Lords nominated by the Lord Speaker and fifteen Members of the House of Commons nominated by the Speaker of that House. The Committee appoints its own chairman, who has always been a peer (usually one with legal or judicial experience). Members are appointed shortly after the beginning of each Parliament and serve for the whole of that Parliament.

Parliamentary consideration of a Church of England Measure begins when the Legislative Committee of the General Synod submits a draft Measure to the Ecclesiastical Committee for consideration and approval. The Ecclesiastical Committee generally invites General Synod representatives to discuss the proposals with the Committee, and then make a Report back to the General Synod.[28] The Ecclesiastical Committee does not have the power to take oral evidence in public from other individuals or bodies.

The 1919 Act requires the Ecclesiastical Committee to report on "the nature and legal effect of the measure and its views as to the expediency thereof,

24 Prince Edward to stand in for the Queen at General Synod inauguration, Church Times, 12 November 2021

25 Canons cannot generally contain anything "contrary or repugnant to the King's prerogative Royal or the customs, laws, or statutes" of the realm. However, this does not apply to canons made pursuant to the Church of England (Worship and Doctrine) Measure 1974.

26 Until the Church of England Convocations Act 1966, the Convocations were dissolved at the same time as Parliament (and upon the Demise of the Crown).

27 See Section 84 of the Coronavirus Act 2020.

28 The 1919 Act also provides that a conference may be arranged between the Legislative Committee and Ecclesiastical Committee at the request of either. Such conferences are held in public, and transcripts of the proceedings are published with the Committee's report.

especially with relation to the constitutional rights of all His Majesty's subjects".[29]

While the Committee's draft report may recommend the amendment of a draft Measure, the Committee itself has no power of amendment. A final Report is not laid before the two Houses until the Legislative Committee has signified its wish that it should be.[30] In the Lords, Measures are generally moved by a bishop or archbishop, and in the Commons by the Second Church Estates Commissioner (see below).[31]

By convention, Parliament does not legislate for the internal affairs of the Church of England without its consent (although it could technically do so). As a result, Measures receive little opposition in Parliament and controversy (resulting in a division) is rare.

One notable incident was the Prayer Book Measure of 1927. The motion to recommend this Measure for Royal Assent was negatived (or rejected) by 247 votes to 205 on 15 December 1927.[32] A similar measure was defeated in the Commons again on 13 June 1928.[33] Similarly, the Incumbents (Vacation of Benefices) Measure, was rejected by 33 votes to 19 on 15 October 1975, and the Appointment of Bishops Measure by 32 votes to 17 on 16 July 1984.[34] The Clergy (Ordination) Measure 1990 was initially rejected by the Commons by 51 votes to 45 on 17 July 1989, but subsequently agreed to by 228 votes to 106 on 20 February 1990.[35]

Parliamentary sovereignty

These examples demonstrate that, as with any other aspect of law-making in the UK, Parliament remains legislatively supreme despite power having been delegated to the General Synod. Parliament has the authority to pass laws affecting the Church of England without the church's involvement, but by

[29] See Section 3(3).

[30] For instance, the Legislative Committee twice withdrew drafts of the Churchwardens Measure from consideration before it was approved by the Ecclesiastical Committee and the House of Lords in April 2001.

[31] Due to pressure of parliamentary time in the House of Commons, minor Measures of a non-controversial nature are heard in a Delegated Legislation Committee. All significant Measures and those of a constitutional nature are considered on the floor of the House.

[32] In doing so, the House of Commons rejected a revised version of the Book of Common Prayer: 36 of 42 Scottish MPs voted against, 18 of 20 Welsh and all 11 Members from Northern Ireland.

[33] On this occasion, opposition to the revision was led by the Scottish Labour MP Edward Rosslyn Mitchell, who said it connoted "a journey [...] not from Lambeth to Bedford, but from St Paul's to St Peter's". Despite Parliament's objections, the revised prayer book made its way into most parish churches. With the Prayer Book (Versions of the Bible) Measure 1965, Parliament effectively relinquished control of subsequent revisions to the Church of England.

[34] The first passed in revised form following reconsideration by the General Synod in 1977, the second was not resubmitted.

[35] There is also provision in the 1919 Act for Measures to be "divided" into two or more separate Measures, so that different parts of the same Measure can be approved or rejected individually. This occurs very rarely.

convention it does not do so.[36] As a 2006 "mapping exercise" on church and state observed:

> In theory [...] there is no legal reason why legislation affecting the Church of England cannot be introduced by any member of either House [of Parliament] under the normal procedures. In practice, however, Parliament has so far ceded the right of initiative on matters wholly internal to the Church of England. What is in effect a convention has been established that the government will not itself seek to legislate in such areas other than under the 1919 Act procedure, or, in other words, without the Church of England's consent.[37]

In 1981 Viscount Cranbourne introduced (under the Ten-Minute Rule) a Prayer Book Protection Bill but was rebuked by the Bishop of Durham and the Lord Chancellor for breaking the convention that the initiative in legislative matters concerning the Church of England must come from the Synod and not from Parliament.[38]

An attempt was made to legislate for the ordination of female bishops when the Church of England did not pass a draft Measure in November 2012. Frank Field MP presented a Bill to the House of Commons on 22 November 2012, which sought to remove the Church of England's exemption from the Equality Act 2010 (which had been the basis for its ability to refuse to ordain women as bishops). Andy Reed MP had previously used his Bishops (Consecration of Women) Bill in 2005-06 to try and amend the relevant Church of England Measure to include the possibility of women bishops. Neither of these Bills made any progress.[39] In March 2023, Sir Ben Bradshaw introduced the Same Sex Marriage (Church of England) Bill, but it did not proceed.[40]

Despite the established nature of the Church of England, non-Anglican MPs and peers representing (or from) Wales, Scotland and Northern Ireland can vote on Measures or Bills on matters relating purely to the church in England.

The Lords Spiritual

The UK Parliament is one of the only national legislatures in Europe which has explicit religious representation.[41] These are known as the Lords Spiritual.

[36] This convention is similar to Parliament's self-denying ordinance in relation to other devolved legislatures, which is known as the Sewel Convention. It would also be possible for Parliament to repeal or amend the 1919 Act, although this would not be necessary for it to legislate on church matters.

[37] Frank Cranmer, John Lucas and Bob Morris, Church and State: A mapping exercise, The Constitution Unit, April 2006, p18.

[38] HC Deb 08 April 1981 Vol 2 cc959-64 [Prayer Book Protection]

[39] The General Synod later endorsed the Bishops and Priests (Consecration and Ordination of Women) Measure 2014.

[40] According to a report in the Guardian, around a dozen MPs met early in 2023 to consider options for compelling the church to approve same-sex marriage, either by repealing the 1919 Act or by removing the Church of England's exemption from the Equality Act 2010 (Same-sex marriage row looms over Church of England synod, Observer, 5 February 2023).

[41] Andorra and the Isle of Man also have religious representation. Beyond geographical Europe, Professor Alan Renwick found that the "only other chamber in a democratic country that comes

Given this representation, until 2001 Church of England clergy were ineligible for election to the House of Commons.[42]

The Church of England in Parliament website argues that "the continuing place of Anglican Bishops in the Lords reflects our enduring constitutional arrangement, with an established Church of England and its Supreme Governor as Monarch and Head of State".[43]

Since the Bishopric of Manchester Act 1847, the number of bishops in the House of Lords has been fixed at 26.[44] The Archbishops of Canterbury and York and the Bishops of London, Durham and Winchester are ex-officio members of the House of Lords. The remaining 21 places are occupied by a mixture of those who are longest-serving as bishops of English dioceses, and those who qualify under the Lords Spiritual (Women) Act 2015.[45]

When a bishop retires from his or her diocesan post (which is compulsory at 70) they also vacate their seat in the Lords. This means that the bishops are the only grouping in the House of Lords with a compulsory retirement age. Lords Spiritual are sometimes appointed as life peers following their retirement, and this is usually the case for former archbishops.

There are more diocesan bishops in the Church of England (42) than there are places for Lords Spiritual (26), so those bishops awaiting seats join the House when a vacancy arises. The two dioceses that do not send bishops to the Lords are the Diocese of Europe and the Diocese of Sodor and Man (whose bishop sits in the Manx parliament, the Tynwald).

There is always at least one Lord Spiritual in the House of Lords when it is sitting, to read prayers at the start of the sitting. The official proceedings of the House cannot begin until prayers have been read.[46] Like other members, bishops are able to take part in all business of the House, including tabling and asking questions of ministers, leading or speaking in debates, scrutinising legislation, voting and serving on committees or all-party groups. Bishops have to combine their role as Members of the House with their full-time responsibilities as bishops in their dioceses.

anywhere close is the Belize Senate, one of whose twelve members is appointed by the President with the advice of the Belize Council of Churches and Evangelical Association of Churches" (Alan Renwick, Political Studies Association Briefings: House of Lords Reform, Political Studies Association, 2011, p44). Non-Anglican faith leaders (such as the Chief Rabbi) can be members of the Lords but are appointed as life peers (known as Lords Temporal).

42 This was ended by the House of Commons (Removal of Clergy Disqualification) Act 2001. This allowed a minister of "any religious denomination" to stand for election to the Commons, but not if s/he was a Lord Spiritual.

43 Church in Parliament website, Lords Spiritual.

44 See Lords Library Research Briefing, House of Lords: Lords Spiritual, for a detailed history of bishops in the House of Lords.

45 Under this Act, when a vacancy arises it is filled by a female English diocesan bishop (where there is one) ahead of any male. In the event there are two eligible women bishops, it would go to the woman whose appointment as a bishop was confirmed first. This legislation has effect until 2025.

46 The full calendar year is covered in advance, with each of the 21 Lords Spiritual (the five with reserved seats are exempt) selecting two or three weeks to cover Lords business (including the possibility of the recall of Parliament).

The Archbishop of Canterbury is the most senior member of the Lords, being the first member entitled to take the Oath of Allegiance at the start of a new Parliament (after the Lord Speaker). At the beginning of a new Parliament, the Archbishop also leads a service of blessing and gives an address to new members of the Commons and the Lords.[47] The Archbishop is also named as one of the Lords Commissioners (Privy Counsellors who can open or prorogue Parliament on the monarch's behalf) but does not usually participate.

Bishops sit as individual and independent members of the House of Lords, similar to the independent crossbench peers and those who are not party-affiliated.[48] There is no leader or chief whip for the bishops in the Lords, but a convenor represents the Lords Spiritual to the other parties and groupings in the House. The convenor (who is appointed by the Archbishop of Canterbury) calls and chairs meetings and ensures that the Bench is well resourced and organised. The current convenor is the Bishop of St Albans, Rt Rev Alan Gregory Clayton Smith.

The Lords Spiritual each take on a portfolio for one or two specific areas of policy on a voluntary basis, which is usually aligned with their expertise, interests or a formal position already held within the Church of England. Their diocesan role means they are in touch with geographical areas of the country, which often informs the contributions they make in the House. In 2012 the then Archbishop of Canterbury, Rowan Williams, argued that bishops are "in effect the only Members of the upper House who have something like constituencies".[49]

The passing of Measures in the Lords forms a small part of the duties of the Lords Spiritual. Bishops tabling amendments to government legislation is rare. During the passage of the coalition government's Welfare Reform Bill in the 2010-12 session, the Bishop of Ripon and Leeds, John Packer, tabled an amendment to exclude child benefit from the proposed household benefit cap. The amendment passed by 252 votes to 237 in the House of Lords at report stage on 23 January 2012 but was later overturned in the House of Commons.[50]

During a debate on bishops in the House of Lords, the SNP MP Tommy Sheppard said it was "clearly wrong that one Church and one institution in our country has guaranteed and automatic representation at the heart of our governing arrangements".[51]

47 This service usually takes place at St Margaret's Church, Westminster.
48 This was not true during the 19th century, when the Lords Spiritual often played an important role in the party politics of the period.
49 Joint Committee on the Draft House of Lords Reform Bill, Archbishop of Canterbury oral evidence, 28 November 2011.
50 See Commons Library Research Briefing SN06294, The Benefit Cap, p25.
51 HC Debs 6 July 2023 Vol 735 C384WH [Bishops in the House of Lords]

The Church Commissioners

The Church Commissioners exist to manage the Church of England's historic assets, today invested in stock market shares and property, to produce revenue to support the church's ministry.

The Church Commissioners were formed in 1948 by joining together two bodies: Queen Anne's Bounty (established in 1703) and the Ecclesiastical Commissioners (created in 1836).[52] The Church Commissioners Measure 1947 merged the two bodies to create the Church Commissioners. This legislation was amended by the National Institutions Measure 1998 which came into effect on 1 January 1999 and reduced the number of Commissioners from 95 to 33.[53]

Some of the 33 Church Commissioners are nominated and others elected. Those who are elected hold office for five years and those who are nominated for such period as the person nominating may determine. The Archbishop of Canterbury chairs the Church Commissioners.

The Church Commissioners publish an annual report and accounts. These are available on their website. Under Section 12 of the Church Commissioners Measure 1947 the Commissioners must lay their annual report and accounts before Parliament.

Church Commissioners

Under Schedule 1 of the Church Commissioners Measure 1947 (as amended) the 33 Church Commissioners are:

a) the First Lord of the Treasury (the Prime Minister);

b) the Lord President of the Council;

c) the Home Secretary;

d) the Speaker of the House of Commons;

e) the Speaker of the House of Lords (previously the Lord Chancellor);

f) the Secretary of State for the Department of Culture Media and Sport;

g) the Archbishops of Canterbury and York;

h) the three Church Estates Commissioners (who represent the Church Commissioners in General Synod; the Second Commissioner is a member of Parliament and answers to Parliament for the business of the Commissioners);

i) four bishops elected by and from among the House of Bishops;

j) two deans elected by and from among the cathedral deans;

52 See the Queen Anne's Bounty Act 1714 and the Ecclesiastical Commissioners Act 1836.
53 See Monica Furlong, C of E: The State It's In, 2000, pp168-175.

k) three other clergy elected by those members of the House of Clergy who are not deans;

l) four persons elected by the House of Laity;

m) three persons nominated by His Majesty;

n) three persons nominated by the Archbishops of Canterbury and York acting jointly;

o) three persons nominated by the Archbishops of Canterbury and York acting jointly after consultation with the Lord Mayors of the Cities of London and York, the Vice Chancellors of the Universities of Oxford and Cambridge and other such persons who appear to the Archbishops to be appropriate.

Church Commissioners and the House of Commons

By convention, the King appoints a senior backbench MP from the governing party as Second Church Estates Commissioner.[54] S/he is required to be an Anglican and is entitled to speak at any Committee of the Commissioners. They represent the Church of England in the House of Commons. The current Second Church Estates Commissioner is Andrew Selous MP.

In Church and State: A mapping exercise, published by the Constitution Unit, Cranmer et al wrote that:

> No government minister is responsible for the Church Commissioners. When the Ecclesiastical Commissioners were created in the 1830s, relations with Parliament were catered for because there were always Commissioners who were MPs. Increasingly from 1866, however, a convention became established that the government used its powers to appoint the second (unpaid) Church Estates Commissioner to give that post to a senior government backbencher in the House of Commons, also nowadays appointed to the Ecclesiastical Committee under the Enabling Act 1919. Gradually, and especially after 1926, the Second Church Estates Commissioner came to be regarded as the Parliamentary spokesman for the Ecclesiastical/Church Commissioners.[55]

The accountability of the Second Church Estates Commissioner to the House of Commons expanded upon the creation of the Archbishops Council under Sir Stuart Bell in 1999, and again under Sir Tony Baldry in 2012/3, when the Commons Speaker granted the ability for the Commissioner to make written and oral statements, and to be summoned to answer an urgent question. This has only occurred twice: for the first time in November 2012 and again in January 2023, when Ben Bradshaw MP asked the Second Church Estates Commissioner to make a statement "on the outcome of the meeting of Church of England bishops on equal marriage in the Church of England".[56]

[54] This role was created in 1850 when Sir John George Shaw-Lefevre managed the accountability of the then Ecclesiastical Commissioners to Parliament.

[55] Frank Cranmer, John Lucas and Bob Morris, pp19-20.

[56] See HC Deb 24 January 2023 Vol 726 cc878-85 [Equal Marriage: Church of England]

Government business managers ensure that parliamentary time is made available about eight times a year so that the Second Church Estates Commissioner can answer questions concerning the Church Commissioners' activities.[57] The MP is briefed by Church Commissioners for these purposes.

A Church of England Parliamentary Unit was established in 2008. This supports the work of the church in Parliament, including the Lords Spiritual and the Second Church Estates Commissioner in the House of Commons.

Speaker's Chaplain

The Speaker's Chaplain is an Anglican who says prayers in the House of Commons Chamber on every sitting day, after which formal business may begin. He or she also presides at the weekly services of Holy Communion that are celebrated in Parliament's chapel, St Mary Undercroft.[58]

2.3 Ecclesiastical appointments

Another manifestation of the Church of England's relationship with the state is the Prime Minister's role in ecclesiastical appointments. As the Constitution Unit explains:

> The constitutional relationship between the Church of England and the executive stems from the latter's position as advisers, and consequently conduit, to the Crown. Accordingly, all Crown patronage is exercised on the advice of ministers. The [King], advised by the Prime Minister, is the apex of the system. It is partly in recognition of the Prime Minister's role that the current Prime Minister [Tony Blair] normally meets with the Archbishop of Canterbury about twice a year. This relationship does not, of course, exclude contact with other religious leaders. However, the contact is less frequent and of a necessarily different character.[59]

The 2007 Governance of Britain Green Paper, which set out "the journey towards a new constitutional settlement", explained the extent of the Prime Minister's involvement in church appointments:

> Diocesan and Suffragan Bishops, as well as 28 Cathedral Deans, a small number of Cathedral Canons, some 200 parish priests and a number of other post-holders in the Church of England are appointed by The Queen on the advice of the Prime Minister.[60]

[57] There is no equivalent arrangement in the House of Lords.
[58] For an entertaining account of 20th-century battles over responsibility for the chapel, see Tales from the crypt: The controversies behind the Chapel of St Mary Undercroft, The House magazine, 6 December 2022.
[59] Frank Cranmer, John Lucas and Bob Morris, p21.
[60] Cmnd 7170, The Governance of Britain – Constitutional Renewal, London: HMSO, July 2007, para 58.

Development of appointments process

Under the Appointment of Bishops Act 1533, the Sovereign formally chose the archbishops and bishops of the Church of England but came to do so on the advice of ministers.

Until the mid-1970s the Prime Minister had "an unfettered right to advise on appointments, and the Church had no formal role in the appointing process at all, although it was invariably consulted, as a matter of courtesy".[61]

Following lengthy informal negotiations between the Church of England and Downing Street, the Church became more closely involved in Crown appointments through the creation of a Crown Appointments Commission (later the Crown Nominations Commission), a body of which a majority are members of the General Synod. This new procedure was implemented by the Church of England (Worship and Doctrine) Measure (1974 No 3).

Professor Sir Vernon Bogdanor explains that after 1976 the Crown Appointments Commission drew:

> up a shortlist of two names for the prime minister which it may offer in order of preference. The prime minister is free to choose either of the two names, or indeed to seek other names from the Commission. Once the prime minister has made a decision, he or she submits it on to the sovereign, who, although required in the last resort to act on advice, can, nevertheless, through informal discussion at an earlier stage, secure some influence over the final choice. The advice given by the prime minister over Church appointments is personal advice, rather than advice on behalf of the government or the cabinet, and the prime minister cannot be questioned in parliament about the advice which he or she gives.[62]

Despite this enhanced role for the Church of England, many Anglicans still objected to the role allotted to the Prime Minister, who might not be a communicant of the Church of England.

At the time of the 1976 settlement, the then Prime Minister, James Callaghan, explained:

> There are […] cogent reasons why the State cannot divest itself from a concern with these appointments of the Established Church. The Sovereign must be able to look for advice on a matter of this kind and that must mean, for a constitutional Sovereign, advice from Ministers. The Archbishops and some of the bishops sit by right in the House of Lords, and their nomination must therefore remain a matter for the Prime Minister's concern.[63]

Professor Bogdanor gives examples where it has been suggested that advice was given by the Prime Minister on political rather than ecclesiastical grounds:

> [O]n three occasions Margaret Thatcher overrode the wishes of the Church and appointed the name that was second amongst the preferences of the church

61 Vernon Bogdanor, Monarchy and the Constitution, Oxford: Oxford University Press, 1995, p226.
62 Vernon Bogdanor, Monarchy and the Constitution, p227.
63 HC Deb 8 June 1976 [Ecclesiastical Appointments]

> rather than its first choice – in 1981 when she recommended Graham Leonard rather than John Habgood as Bishop of London, in 1987, when she recommended Mark Santer rather than Jim Thompson as Bishop of Birmingham, and in 1990, when she recommended George Carey rather than John Habgood as Archbishop of Canterbury. In 1987 it was alleged that Conservative MPs had lobbied against Thompson.[64]

In 1997 it was also reported that Tony Blair rejected both of the candidates put forward by the Church of England to succeed David Shephard as Bishop of Liverpool. The Sunday Times observed that while the "workings of the [Crown Appointments Commission] are shrouded in secrecy, it is thought to be the first time in its 20-year history that a prime minister has rejected its recommendations".[65] Blair's intervention was later confirmed by documents disclosed by the Cabinet Office.[66]

After 2007, the Prime Minister's role in the appointment of diocesan bishoprics was further narrowed. The Crown Nominations Commission (CNC) now puts only one name to the Prime Minister, which is then conveyed to the monarch.[67]

The appointment of archbishops and diocesan bishops

The CNC is a church-based body, with the Archbishop of Canterbury as chair and the Archbishop of York as vice-chair. The Prime Minister's Appointments Secretary is an ex-officio and non-voting member.[68]

Mark Hill's book Ecclesiastic Law explains the process for appointing bishops and archbishops in more detail:

> Each diocese is required to establish and maintain a Vacancy in See Committee. When a vacancy arises, it meets and after consultations prepares a Description of the Diocese and a Statement of Needs. On the basis of their own consultations, the appointments secretaries of the archbishops and the prime minister produce a Memorandum outlining their views on the requirements of the diocese and on the desired profile of the new bishop.[69]

When the CNC considers appointments for the Archbishop of Canterbury or York the chair is taken by an extra, fifteenth voting member. This person must be communicant lay member of the Church of England and is appointed by the Prime Minister (for Canterbury) or the Appointments Committee of the Church of England (for York). This lay chair is responsible for forwarding the CNC's nominee to the Prime Minister.

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64 Vernon Bogdanor, Monarchy and the Constitution, p228.
65 Blair blocks church choice for bishop, The Sunday Times, 14 September 1997.
66 See Jason Loch, Tony Blair And The Bishopric Of Liverpool, A Venerable Puzzle blog, 16 July 2020.
67 Cmnd 7170, The Governance of Britain – Constitutional Renewal, paras 62-63. No changes were proposed to Crown appointments to the Royal Peculiars such as Westminster Abbey and St George's Chapel, Windsor, which reflected "the personal nature of the relationship of these institutions with the Monarch" (para 66).
68 Cmnd 7170, The Governance of Britain – Constitutional Renewal, para 59.
69 Mark Hill, Ecclesiastical Law (third edition), Oxford: Oxford University Press, 2007, paras 4.57-58.

As of July 2019, General Synod standing orders state that the CNC must agree upon the name of one candidate for submission to the Prime Minister. It may also agree the name of a second candidate, which is automatically submitted should it become "impossible to appoint" the first. A name may not be submitted to the Prime Minister unless it has received the support of at least two thirds of the total number of voting members of the Commission.

The Prime Minister then asks the CNC's nominee if s/he is willing to become the new bishop. S/he may of course decline and then the Prime Minister has to ask the CNC for the name of its second choice. Once the Prime Minister has conveyed the CNC's recommendation to the King, the Crown grants to the relevant College of Canons a licence (congé d'elire) to elect a bishop and a letter missive naming the person to be elected. Once the King has assented to the election, it is confirmed by formal legal processes.[70]

Any individual appointed as Archbishop of Canterbury or York, as well as the Bishop of London, Durham or Winchester, automatically becomes an ex-officio member of the House of Lords. Any newly appointed diocesan bishop joins the list of those eligible to fill vacancies among the Lords Spiritual.

Further ecclesiastical appointments

The Governance of Britain Green Paper explained that:

> In the case of Deans appointed by the Crown, it is the practice for the Prime Minister to commend a name to the Queen, chosen from a shortlist provided by the Prime Minister's Secretary for Appointments and agreed with the Diocesan Bishop, and following consultations with the Cathedral, Bishop, Archbishop of the province concerned and others as appropriate. (The aim is to reach agreement with the Bishop on the preferred order of the list.) In the case of the Crown canonries and parishes, following consultations led by the Downing Street Appointments Secretariat, the Prime Minister recommends the appointment to The Queen.[71]

There are also some 450 parishes and a few canonries to which the Lord Chancellor advises the monarch on appointments.

The Prime Minister's current Appointments Secretary is Richard Tilbrook, who is also Clerk of the Privy Council. Helen Dimmock at the Cabinet Office is responsible for parochial appointments where the Crown or Lord Chancellor is patron.[72]

Oath of allegiance and paying homage

Clergy of the Church of England are required to swear an oath of allegiance under Section 4 of the Clerical Subscription Act 1865 (as amended). Canon 13

[70] Mark Hill, Ecclesiastical Law, paras 4.57-58

[71] Cmnd 7170, The Governance of Britain – Constitutional Renewal, paras 58-61.

[72] See Cabinet Office, Prime Minister announces Appointments Secretary, 13 August 2020. The Ecclesiastical Patronage Offices of the Lord Chancellor and the Prime Minister remained separate until 1964 when they were brought together at 10 Downing Street.

states that every person "to be instituted, installed, licensed or admitted to any office in the Church of England" shall take the "Oath of Allegiance in the form following":

> I, A B, do swear that I will be faithful and bear true allegiance to His Majesty King Charles III, his heirs and successors, according to law: So help me God.[73]

A new bishop or archbishop also makes Homage to the Crown following his or her appointment by kneeling before the King, who sits in a chair with the Lord Chancellor by his side. S/he places the palms of their hands together as if in prayer. The King takes them between his own. The bishop then repeats, after the Lord Chancellor, the words of the Homage:

> I [NAME] having been elected, confirmed and consecrated Bishop of [...] do hereby declare that Your Majesty is the only supreme governor of this your realm in spiritual and ecclesiastical things as well as in temporal and that no foreign prelate or potentate has any jurisdiction within this realm and I acknowledge that I hold the said bishopric as well the spiritualities as the temporalities thereof only of Your Majesty and for the same temporalities I do my homage presently to Your Majesty so help me God.
> God save [King Charles].[74]

The King then issues Letters Patent restoring the temporalities of the vacant See to the new bishop or archbishop.

Resignation of bishops and archbishops

Norman Doe's The Legal Framework of the Church of England states that:

> In the Church of England, a bishopric becomes vacant by the translation, retirement, resignation, death or deprivation of its holder [...] As for archbishops, not less than six months before the required date of vacating an archbishop must tender his resignation to the monarch who declares the archbishopric vacant. The monarch has statutory power to authorize an archbishop to continue in office after that date, for not more than one year, if she considers there are special circumstances, and as she may 'in her discretion determine'.[75]

Under the Bishops (Retirement) Measure 1986, a bishop submits his or her resignation to the Archbishop of Canterbury rather than to the monarch.

Certain penalties imposed under the Ecclesiastical Jurisdiction Measure 1963 and the Clergy Discipline Measure 2003 do not have an effect on an:

[73] A solemn affirmation may also be made under Section 5 of the Oaths Act 1978.

[74] See James Jones, Church of England Bishops as Religious and Civic Leaders in R. Standing and P. Goodliff (eds), Episkope: The Theory and Practice of Translocal Oversight, London: SCM Press.

[75] Norman Doe, The Legal Framework of the Church of England, Oxford: Oxford University Press, 1996, pp179-180.

> archbishop or bishop or on any person holding any preferment the right to appoint to which is vested in [His] Majesty (not being a parochial benefice) [...] unless and until [His] Majesty by Order in Council confirms the penalty.[76]

Certain penalties imposed upon a member of the clergy under the 1963 and 2003 Measures also cease if he or she receives a free pardon from the Crown.

Restrictions on advice regarding ecclesiastical appointments

The Roman Catholic Relief Act 1829 placed restrictions on who could offer advice to the monarch regarding Church of England appointments. Under that Act, it remains a "high misdemeanour" for a Catholic to do so.[77] This applies to the Prime Minister and the Prime Minister's Appointments Secretary.[78]

Under Section 4 of the Jews' Relief Act 1858, Jews are also barred from advising the Sovereign on ecclesiastical matters.

In either case, this particular aspect of the Prime Minister's duties can be delegated to another Minister of the Crown not similarly barred. Tony Blair converted to Catholicism after serving as Prime Minister, so was unaffected by the 1829 Act.

In May 2021, media reports suggested that Boris Johnson's role in Church of England appointments had been transferred to the then Lord Chancellor, Robert Buckland. These reports do not appear to have been accurate.

When the Chancellor of the Duchy of Lancaster is a Catholic or a Jew, the Clerk of the Council of the Duchy, who is a full-time Duchy official (and not a Minister of the Crown), takes his or her place in advising the King on certain benefices in the Church of England of which she is patron.[79]

2.4 Ecclesiastical courts

The Church of England's ecclesiastical courts are the only religious courts that operate within the legal framework of England and Wales. Each diocese has a court which is presided over by a judge appointed by the bishop.[80] These courts date back to the 11th century and traditionally held jurisdiction over defamation, probate and matrimonial causes, as well as over both

76 Russell Dewhurst, The King and the Law of the Church of England, Ecclesiastical Law Journal 25:2, May 2023, pp139-55.

77 See Section 18, "No Roman Catholic to advise the Crown in the appointment to offices in the established church".

78 The Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974 declared that in the event that position was held by a Catholic then the monarch could transfer, by Order in Council, the Lord Chancellor's ecclesiastical duties to another Minister of the Crown.

79 See HC Deb 24 May 1976 [Ecclesiastical Patronage]

80 Each diocese has a diocesan chancellor who is the judge of the consistory court of the diocese.

clergy and laity in matters relating to church discipline and morality more generally. These powers were significantly curtailed during the 19th century to cover just church property and criminal conduct in relation to the clergy.

The most senior ecclesiastical judge in England is simultaneously Dean of the Arches (Province of Canterbury) and Auditor (Province of York) and, as Master of the Faculties, is responsible for the regulation of notaries public in England and Wales and in some overseas jurisdictions. The appointment is made jointly by the Archbishops of Canterbury and York with the approval of the King.

Although it is rare for these courts to rule on matters that are external to the church, they were put on a statutory footing by the Ecclesiastical Jurisdiction Measure 1963. That Measure also removed the role of the Judicial Committee of the Privy Council as the senior appellate (or appeals) court for the ecclesiastical courts.[81]

In the same way that ecclesiastical law forms part of the law of England and Wales, the courts and judges administering it are courts and judges of the King. This is reflected in the appointment of ecclesiastical judges (the appointments of whom involve Ministers of the Crown whether Royal approval is required or not) and the composition and structure of the ecclesiastical courts.

2.5 Proposals for reform

Over the past century there have been several proposals for the reform of the Church of England, many of which have emanated from the church itself. These often examined whether the Church of England should emulate the different form of establishment enjoyed by the Church of Scotland (see **Section 3.4**). Other proposed reforms focused on the number or existence of the Lords Spiritual.

Selborne Committee on Church and State

The Selborne Committee, which reported in 1916, concluded that the Church of England "does not represent the mind of the English people as fully as the established Church of Scotland represents the mind of Scotland".[82]

[81] This followed a 1952 recommendation from the Moberly Committee. The Judicial Committee retains appellate jurisdiction over non-doctrinal faculty appeals from the Court of Arches/Chancery Court of York, although this power is rarely used.

[82] Earl of Selborne, Report of the Archbishops' Committee on Church and State, London: SPCK, 1916, p39.

Cecil Committee

The Cecil Committee, which reported in 1935, also rejected the Scottish model, although it observed that the Church of Scotland Act 1921 (see **Section 3.4**) demonstrated "that a complete spiritual freedom of the Church is not incompatible with Establishment". Its final report added that:

> The Crown in Parliament has solemnly ratified the principles on which the Scottish settlement is explicitly based, and has accepted the relations between the spiritual and the civil power laid down in the Declaratory Articles. It is, therefore, neither illogical nor impractical to infer that the Crown in Parliament would be willing to consider and to grant to the Church of England what has been, with the full consent of England, freely granted or confirmed to the Church of Scotland.[83]

Nevertheless, the Cecil Committee did not think:

> The Scottish settlement could be an exact model for what should be done in England. The history and conditions of the two countries are not the same. In Scotland there was little or no difference on doctrine or ritual.[84]

Archbishops' Commission on Church and State

The Archbishops' Commission on Church and State, which was chaired by the Revd Professor Owen Chadwick, accepted the view, put forward in a 1968 government white paper on House of Lords reform, that the number of bishops seated in the House should be reduced in the context of a general reduction in the size of the House. The Commission suggested reducing the number of Lords Spiritual from 26 to 16.[85]

Van Straubenzee working party

A report from the Van Straubenzee working party, set up by the Standing Committee of the General Synod during the 1980s, recommended removing the Prime Minister from the appointments process altogether. Instead, advice would be given directly to the Sovereign by the Archbishops of Canterbury and York who, as Privy Counsellors, enjoy a right of audience with the Sovereign.[86] The recommendations of this working party were not implemented.

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83 Cecil of Chelwood, Vol 1, pp55-56.
84 Cecil of Chelwood, Vol 1, p5.
85 See Cmnd 3799, House of Lords Reform, London: HMSO, November 1968, and Owen Chadwick, Church and State – Report of the Archbishops' Commission, London: Church Information Office, 1970.
86 W. van Straubenzee, Senior Church Appointments, London: Church House, 1992.

Turnbull Commission

The Turnbull Commission was set up to address a situation where the Church of England possessed a legislature (the Synod) but lacked a single executive. It recommended certain changes to the church's internal governance.[87]

Crown Appointments Commission Review Group

Following the rejection of both names put forward to Tony Blair for the Bishop of Liverpool in 1997, the General Synod agreed to set up a working party to review the workings of the Crown Appointments Committee.[88] Its report, Working with the spirit: choosing diocesan bishops, was published in May 2001.[89] It concluded that:

> the overall shape of the Church of England's processes both for choosing diocesan bishops and for conferring the office on the person nominated is right. In each case, the process is one in which both the diocese and the wider Church need to be involved.[90]

In a vote in July 2002, the General Synod rejected proposals to remove the Prime Minister and the monarch from the appointments process.[91]

Royal Commission on the Reform of the House of Lords

The Royal Commission on the Reform of the House of Lords, which was chaired by Lord Wakeham and reported in 2000, recommended that the Church of England should continue to be represented in the Upper House but on a basis which also gave representation to other Christian denominations and other faiths.

It proposed reducing the Church of England's share of the Lords Spiritual from 26 to 16 seats in a reformed House of Lords. Of the 10 seats thus made available, five would go to other denominations in England and five to representatives of Christian denominations in Scotland, Wales and Northern Ireland. Over and above the 26 Christian representatives, the Commission recommended that a further five members of the Upper House should be "specifically selected to be broadly representative of the different non-Christian faith communities".[92] These proposals were not given effect.

The Royal Commission also observed that while:

> there is no direct or logical connection between the establishment of the Church of England and the presence of Church of England Bishops in the second chamber, their removal would be likely to raise the whole question of

87 M. Turnbull, Working as One Body – Report of the Archbishops' Commission on the Organisation of the Church of England, London: Church House, 1995.
88 Church to review how bishops are shortlisted, Guardian, 8 July 1998.
89 Perry et al, Working with the Spirit: choosing diocesan bishops, London: Church House, 9 May 2001.
90 Perry et al, Working with the Spirit: choosing diocesan bishops.
91 General Synod, 8 July 2002.
92 Cmnd 4534, A House for the Future, 2000, pp155-159.

> the relationship between Church, State and Monarchy, with unpredictable consequences.[93]

Governance of Britain Green Paper

In response to the 2007 Governance of Britain Green Paper, the archbishops published a consultation paper on Crown appointments in the Church of England.[94] This recommended that when "a suitable legislative opportunity presents itself [...] the 1534 [Suffragan Bishops] Act should be amended to remove the requirement for the submission of two names to the Crown".[95] In 2008, the Archbishops also proposed the creation of a Crown appointments adviser, something endorsed by the General Synod. The first proposal was given effect by the Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010; the second was not progressed.

The then Labour Government's 2008 White Paper, An elected second chamber: further reform of the House of Lords, did not propose any change to the Lords Spiritual. It stated that:

> The relationship between the Church and State is a core part of our constitutional framework that has evolved over centuries. The presence of Bishops in the House of Lords signals successive Governments' commitment to this fundamental constitutional principle and to an expression of the relationship between the Crown, Parliament and the Church that underpins the fabric of our nation.[96]

House of Lords Reform Bill

A House of Lords Reform Bill introduced during the 2012-13 session by the then Conservative-Liberal Democrat coalition government sought to reduce the number of bishops in the House of Lords from 26 to 12.[97] In oral evidence to a joint committee which examined a draft of the Bill, the then Archbishop of Canterbury, Rowan Williams, defended the contribution of the Lords Spiritual:

> The rooted presence of the Church of England in every community of England and the committed membership of nearly 1 million regular weekly attendees gives Bishops personal access to a very wide spread of civil organisation and experience [...] Their personal contribution to the work of the House of Lords therefore draws not on partisan policy but on that direct experience [...] They [bishops] visit and are known by hospitals, care homes, the Armed Forces, factories, prisons, universities and community projects. In prisons, they have a statutory right of visitation. Hundreds of primary and secondary schools are Church of England schools. In other words, diocesan Bishops belong in a web

93 Cmnd 4534, A House for the Future, p152.
94 Church of England, Consultation on Crown Appointments, 16 October 2007.
95 Church of England, Consultation on Crown Appointments.
96 Cmnd 7438, An elected second chamber: further reform of the House of Lords, July 2008, para 6.45.
97 See House of Lords Library Note, House of Lords Reform Draft Bill. The Bill drew a distinction between five "named Lords Spiritual" and seven "ordinary Lords Spiritual".

> of relationships in the communities that they serve and have direct lines of communication into those societies at every level.[98]

The House of Lords Reform Bill was abandoned on 3 September 2012 following opposition from backbench Conservative MPs.

Lord Speaker's Committee on the Size of the House

In January 2017, the Lord Speaker's committee on the size of the House was established by the House of Lords in December 2016. In its written submission to this committee, the Electoral Reform Society said:

> The place of the Lords Spiritual is anachronistic [...] The automatic inclusion of representatives of other faiths is an unacceptable solution due to the difficulty of deciding which faiths and denominations within faiths to include, how to include non-religious organisations, and the constantly changing demographics of the UK. The ERS would support an end to the automatic provision of legislative seats to Bishops.[99]

The removal of Lords Spiritual was also recommended by the National Secular Society in its submission to the committee.[100]

Other proposals

Writing in the Guardian, the journalist Simon Jenkins argued that the 2021 census for England and Wales, which revealed that Christianity had become a minority faith, meant the status of the Church of England ought to be reformed. Jenkins said: "The king in council should appoint a commission to advise on disestablishment in advance of his coronation."[101]

Since it was founded in 1866, the National Secular Society has campaigned for disestablishment. Its website states that:

> The Church of England has enjoyed significant privileges relating its established status for many centuries. These privileges have remained largely unchanged despite the massive and continuing reduction in support for the Church in the UK. It is highly likely that this trend will continue for the foreseeable future, making the Church of England's continuation as the established church unsustainable.[102]

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98 See Church of England website, The Archbishop and the Armed Forces; for the church's role in education see Church schools and academies; and for Church of England chaplains in prisons, see Section 7 of the Prison Act 1952.

99 Electoral Reform Society, The Inquiry on Cutting the Lords Risks Looking Like a Stitch Up, 14 February 2017.

100 National Secular Society, Abolish Bishops' Bench to Reduce the Size of the House of Lords, 21 February 2017.

101 Simon Jenkins, According to the census, we're now a land of many faiths. There is no place for an established church, Guardian, 30 November 2022.

102 Disestablish the Church of England, National Secular Society website.

3 Church of Scotland

The Presbyterian Church of Scotland is the established (or "national") church in Scotland.[103] While in England church and state are intertwined, in Scotland they are largely distinct.

The Church of Scotland is self-governing in all that concerns its own activities. Its supreme authority is the General Assembly of the Church of Scotland, which is presided over by a Moderator chosen each year by the Assembly itself.

In Scotland, the King is a member rather than Supreme Governor of "the Kirk". Representatives of the Church of Scotland do not sit in the House of Lords and the UK Parliament has no authority over its affairs. The UK or Scottish Governments also do not advise on church appointments beyond the Lord High Commissioner to the General Assembly. The Kirk is, in the words of one scholar, neither established nor disestablished but "a Church both national and free".[104]

3.1 Historical background

In Scotland, the theology of the "two kingdoms" possessed particular importance. From this view, the state and the church were conceived as inhabiting simultaneous but separate spheres.

The Reformation in Scotland occurred later in the 16th century than in England and along different lines. While in England it sought to substitute monarchical for papal governance, in Scotland the changes had more popular support and followed less hierarchical Presbyterian principles of church government.

As an independent state, Scotland took some time to fully accept these changes. During the 17th century, the Stuart monarchs (who were kings of both Scotland and England) attempted to enforce Episcopal government (via bishops), and it was only following their exile in 1688 that Scottish legislation establishing Presbyterianism was reaffirmed (see **Section 1**).

[103] The Church of Scotland itself does not use the term "established", and understands the term "national" in terms of "service rather than status" (History, Church of Scotland website).

[104] Rolf Sjölinder, Presbyterian Reunion in Scotland 1907-21, Edinburgh: T and T Clark, 1962, p374.

3.2 Acts of Union

Article I of the 1706 Treaty of Union stated that "the Two Kingdoms of Scotland and England, shall upon the 1st May next ensuing the date hereof, and forever after, be United into One Kingdom by the Name of Great Britain".

The Parliament of Scotland sought to safeguard Scotland's distinctive church-state relationship in the event of a union with England. It therefore passed the Protestant Religion and Presbyterian Church Act 1707. That Act says that:

> [A]fter the Decease of the Present Majesty [...] the Sovereign succeeding to her in the Royal Government of the Kingdom of Great Britain shall in all time coming at His or Her Accession to the Crown swear and subscribe that they shall inviolably maintain and preserve the foresaid Settlement of the True Protestant Religion with the Government Worship Discipline Rights and Privileges of this Church as above established by the Laws of this Kingdom in Prosecution of the Claim of Right.

The Act is declared to be a "fundamental and essential condition" of any Treaty or Union between Scotland and England. Any implementing legislation would therefore have to "insert and repeat" the text of that Act. This is why the Act is quoted verbatim in both the Union with England Act 1707 and the Union with Scotland Act 1706, making clear that it forms part of the final agreement between the two kingdoms.[105]

The oath referred to in the 1707 Act is sworn at Part 2 of the Accession Council, which is the first official engagement of a new sovereign.[106]

3.3 Free Church of Scotland

The relationship between the Church of Scotland and the new state of Great Britain nevertheless proved contentious. The Church Patronage (Scotland) Act 1711 gave landowners (or patrons) the right to appoint a parish minister whenever a vacancy arose. The resulting disagreements between patrons and congregations led to several splits within the Church of Scotland, beginning with the secession of 1733 and culminating with the Disruption of 1843. Most notably, the General Assembly adopted the Veto Act in 1833, which purported to enable congregations to block the appointment of a patron-nominated minister.

The church's own courts initially upheld this veto, but this was overturned on appeal to the Appellate Committee of the House of Lords. That the civil judges

105 The Protestant Religion and Presbyterian Church Act 1707 is named in section 4(2) of the Regency Act 1937 as a statute which may not be amended during a regency. Equivalent legislation passed by the former Parliament of England regarding the Church of England is not similarly named.

106 See also Commons Library Briefing Paper CBP7460, The Privy Council: history, functions and membership.

applied the Act of the UK Parliament and disapplied the Act of the General Assembly prompted a large minority of Kirk ministers to secede and form the Free Church of Scotland.

The Free Church did not wish to sever the link between church and state in Scotland, but rather sought a renewed national church in which "The Crown Rights of the Redeemer" would be fully respected. As Thomas Chalmers, the leader of the Disruption, proclaimed in his moderatorial address to the first General Assembly of the Free Church:

> though we quit a vitiated establishment, we go out on the Establishment principle; we quit a vitiated establishment, but would rejoice in returning to a pure one. To express it otherwise: we are the advocates for a national recognition and national support of religion – and we are not Voluntaries.[107]

This period, known as "The Disruption", was a defining moment in 19th century Scotland. The Free Church raised funds and built new churches, not being entitled to any share of existing Church of Scotland property.[108]

The Church Patronage (Scotland) Act 1874 later transferred control over the appointment of church ministers to congregations. This meant Queen Victoria was unable to choose the new minister at Crathie Kirk in 1897. The congregation voted against her candidate, even though she had funded a new church building in 1893, the first one paid for by a monarch since the Reformation.[109]

In 1900, the majority of the Free Church joined with the United Presbyterian Church of Scotland (derived from groups which had seceded from the Kirk during the 18th century) to form the United Free Church of Scotland. The minority of the Free Church, which had resisted the union, argued that the majority had forfeited the right to its assets.

Churches (Scotland) Act 1905

This argument was tested at the Court of Session, where it was rejected by Lord Low. He argued that the Assembly of the original Free Church had a right to alter its position by joining with the United Presbyterian Church.[110] However, an appeal to the House of Lords reversed the Court of Session's decision in 1904. It was held that in abandoning its commitment to "the establishment principle" the majority of the Free Church had violated the conditions on which its property was held.

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107 See Lord Rodger of Earlsferry, The Courts, the Church and the Constitution: Aspects of the Disruption of 1843, Edinburgh: Edinburgh University Press, 2008, p2. "Voluntaries" supported disestablishment.

108 Like the Church of England, at one point the Church of Scotland was in receipt of state funding. There were church building grants in 1825 and money for the augmentation of stipends between 1812 and 1839, which amounted to nearly £370,000.

109 Catherine Pepinster, Defenders of the Faith: The British Monarchy, Religion and the Next Coronation, London: Hodder & Stoughton, 2022, p96.

110 *Bannatyne v Overtoun* [1904] AC 515

The United Free Church was determined to pursue legal means to restore its assets and sought the intervention of the UK Parliament. The Royal Commission on Churches (Scotland) later concluded that the remaining (minority) Free Church was unable to carry out the purposes of trusts which, under the ruling of the House of Lords, was a condition of retaining its property. At the same time, the Royal Commission observed that "it would be unjust that these endowments, or the greater part of them, should be handed over absolutely and without condition to the United Free Church".[111]

The consequent Churches (Scotland) Act 1905 implemented the Royal Commission's recommendations for a fair and workable distribution of assets. It established an executive commission in which the whole property of the Free Church, as at the date of its union, was vested. Some property was then allocated to the United Free Church where the Free Church was unable to carry out its trust purposes.

Article 5 of the Churches (Scotland) Act 1905 related to the Church of Scotland. It enabled the General Assembly to prescribe the formula of "subscription" to (or declaration of belief in) the Confession of Faith required from ministers and those appointed to chairs of theology at the Scottish Universities. This highlighted that at this point the UK Parliament legislated on certain matters relating to the Church of Scotland, just as it did in relation to the Church of England.

3.4 Church of Scotland Act 1921

In 1909 the Church of Scotland and United Free Church of Scotland began to discuss unification. This proved difficult as the United Free Church rejected the established basis of the Kirk.

The outcome was a compromise, as expressed in the 1919 Articles Declaratory of the Constitution of the Church of Scotland. These asserted the Church of Scotland's independence in spiritual matters.

Parliament then considered and passed the first of two statutes. First was the Church of Scotland Act 1921, which recognised as "lawful" this assertion of independence. The constitutional historian Vernon Bogdanor viewed it as "in effect a treaty between Church and State".[112]

It was also ambiguous when it came to the question of establishment. As the Labour MP Alexander Shaw observed during the Act's Second Reading:

> My friends of the Established Church are told this Bill is to establish the Church of Scotland more strongly than ever [...] The people who hold the old United Presbyterian view, or the Free Church view [...] are told that this Bill is really equivalent to disestablishing the Church of Scotland [...] It is unfortunate that

[111] Cmnd 2494, Royal Commission on Churches (Scotland) Report, Edinburgh: HSMO, 1905, p20.
[112] Vernon Bogdanor, Monarchy and the Constitution, p237.

> a Bill which is intended to promote union should depend for its support upon exhibitions of casuistry which would have been a credit to the Middle Ages.[113]

Article III of the Articles Declaratory contained in the Schedule to the Church of Scotland Act 1921 described it as the "national Church representative of the Christian Faith of the Scottish people".

The second statute was the Church of Scotland (Properties and Endowments) Act 1925, which transferred the secular endowment of the church to a new body called the General Trustees. Together, these measures satisfied the majority of the United Free Church that the causes of the 1843 Disruption had finally been resolved.

At a joint assembly on 2 October 1929 at the Exhibition Hall in Edinburgh, the Church of Scotland and United Free Church were merged. A small minority stayed out of the union, retaining the name of United Free Church.

As Ronald King Murray, a Scottish advocate (and later an MP), later observed of what he called the "remarkable" 1921 Act, the UK Parliament had admitted:

> the legislative sovereignty which the General Assembly has always claimed in the ecclesiastical sphere, and, by implication, it seems to have conceded that there is in at least one respect in which the UK Parliament is not sovereign. This power of ecclesiastical legislation is a very real mark of freedom, but not at all a mark of disestablishment. For what established church could ask for a greater measure of state association than to share with the civil authority the legislative power of the state?[114]

3.5 Structure of the Church of Scotland

As a result of the 1921 Act, the Church of Scotland became – unlike the Church of England – entirely self-governing. Structurally, it is managed on a local level by kirk sessions, at a district level by presbyteries and at a national level by the General Assembly, which comprises 850 commissioners and meets each May, generally in Edinburgh.

The General Assembly of the Church of Scotland is the church's supreme decision-making body. It is composed of ministers, deacons and elders of the church, and is presided over by a Moderator who is "elected" each year.[115] The General Assembly has mixed functions, acting as a legislature, a court and as an executive.

The ordinances of the church are known as Acts of Assembly. Most "overtures" (legislative proposals) can become Acts if they are supported by a majority of General Assembly commissioners. However, the Church of

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113 HC Deb 22 June 1921 [Church of Scotland Bill]

114 Ronald King Murray, The Constitutional Position of the Church of Scotland, Public Law, 1958, pp160-61.

115 It could be argued that the Moderator "emerges" each year. There is no formal election.

Scotland has a special process for adopting Acts if they have implications for its doctrine, worship, discipline or government.

Under the Assembly's Barrier Act of 1697, overtures "which are to be binding Rules and Constitutions to the Church" are referred for a process of approval and ratification to presbyteries (the regional subdivisions of the Kirk). If a majority of Presbyteries support a proposal under the Barrier Act, the subsequent General Assembly may then adopt the proposal, and it becomes an Act of the Assembly. Acts do not require Royal Assent.

Historically, one of the functions of the General Assembly was to act as the final court of appeal in disciplinary cases, but since 1988 such appeals have been heard by a Judicial Commission.

The Percy case

Even the Church of Scotland's special status under the Church of Scotland Act 1921 does not free it entirely from taking on board the consequences of action by the civil courts.

In 1997 an allegation of misconduct (an extra-marital affair) was made against Helen Percy and she was suspended from her duties as an associate minister at a Church of Scotland parish church. During mediation arranged by the church, she agreed to resign as an ordained minister, with the effect that her role as an associate minister came to an end. At an industrial tribunal in 1998, Percy alleged unfair dismissal and unlawful sex discrimination on the basis that the church had not taken similar action against male ministers known to have had extra-marital affairs.

The tribunal dismissed Percy's application on the basis that "matters spiritual" fell within the exclusive jurisdiction of the Church of Scotland courts under the 1921 Act. The tribunal also held that her contract was not one of employment as covered by Section 82(1) of the Sex Discrimination Act 1975. Ms Percy's appeal against this decision was dismissed in 1999. It was dismissed again in the First Division of the Court of Session in March 2001. The leading judgment was given by the Lord President, Lord Rodger of Earlsferry, who concluded that as the duties of a minister were essentially spiritual (under the 1921 Act), then the parties did not intend to create relations enforceable in the civil courts.[116]

When Percy appealed the Court of Session judgement to the House of Lords, it decided by a majority in her favour. The Law Lords ruled that Percy, as an "associate minister" rather than a parish minister, was an employed person rather than merely an office holder. Moreover, they held that the provisions of the 1921 Act privileged the jurisdiction of the Church of Scotland only in so far as exclusively spiritual, rather than civil, matters were concerned. The Church's internal disciplinary processes, therefore, were susceptible to legal

116 *Helen Percy v An Order and Judgment of the Employment Appeal Tribunal Dated 22 March 1999* [2001] SC 757

challenge in civil proceedings and the Law Lords remitted the case to an employment tribunal to determine her discrimination claim.[117]

3.6 The Crown and the Kirk

The Church of Scotland is a Presbyterian church and recognises only Jesus Christ as "King and Head of the Church". The King therefore does not hold the title "Supreme Governor" of the Church of Scotland, unlike in England. When attending church services in Scotland, His Majesty does so as an ordinary member.[118]

The monarch swears to protect the Church of Scotland; indeed it is the first oath taken by a new sovereign at their Accession Council:

> I, [INSERT TITLE] by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of My other Realms and Territories King, Defender of the Faith, do faithfully promise and swear that I shall inviolably maintain and preserve the Settlement of the true Protestant Religion as established by the Laws made in Scotland in prosecution of the Claim of Right and particularly by an Act intituled "An Act for securing the Protestant Religion and Presbyterian Church Government" and by the Acts passed in the Parliament of both Kingdoms for Union of the two Kingdoms, together with the Government, Worship, Discipline, Rights and Privileges of the Church of Scotland. So help me God.[119]

Monarchs have sworn to maintain the Church of Scotland since the 16th century, while the duty to "preserve the settlement of the true Protestant religion as established by the laws made in Scotland" was affirmed in the 1707 Acts of Union (see **Section 3.2**).

While the Church of England is heavily involved in the coronation ceremony following the Accession of a sovereign, the Church of Scotland has no formal role. At the 1953 Coronation of Queen Elizabeth II, however, this gave rise to disquiet in Scotland, and as a result the then Moderator was given some lines and the task of presenting the Queen with a bible.[120]

The late Queen's relationship with the Church of Scotland was also symbolised by a Service of Dedication at St Giles Cathedral in Edinburgh on 24 June 1953, three weeks after her coronation. During this ceremony Her Majesty was blessed by the Dean of the Chapel Royal in Scotland and the Moderator of the General Assembly of the Church of Scotland.

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117 *Percy (AP) (Apellant) v. Church of Scotland Board of National Mission (Respondent) (Scotland) [2005] UKHL 73*

118 This most likely began with Queen Victoria's visits to Scotland during the 1840s, when she would worship at Crathie Kirk near Balmoral. Chaplains of the Royal Household in Scotland are appointed from the Church of Scotland.

119 See The Privy Council Office, The Accession Council.

120 See David Torrance (ed), Whatever Happened to Tory Scotland?, Edinburgh: Edinburgh University Press, 2012, p233.

The Sovereign is represented at the General Assembly of the Church of Scotland by a Lord High Commissioner.[121] S/he attends as an observer and is appointed by His Majesty on the advice of the Prime Minister.[122] The Lord High Commissioner makes opening and closing addresses to the General Assembly and reports to His Majesty on its proceedings. Beyond that, they do not take part in Assembly proceedings.

In 1969 and 2002 Queen Elizabeth II was present in person. Members of the Royal Family have often acted as Lord High Commissioner. In 1996 and 2017, the role was undertaken by the Princess Royal, in 2000 by the then Duke of Rothesay (Prince Charles), in 2014 by the Earl of Wessex and Forfar, and in 2021 by the then Earl of Strathearn (Prince William).

Given they are not a "constituent member" of the General Assembly, neither the Sovereign nor a Lord High Commission can enter the Assembly chamber itself:

> This was made abundantly clear on the occasion of the General Assembly in October 1929 which saw the consummation of the Union between the Church of Scotland and the United Free Church. In view of the size of the gathering it was held not in the Assembly Hall but in a large building in Annandale Street, Edinburgh, which had to be specially prepared for the purpose. The Lord High Commissioner was a Prince of the blood royal, the then Duke of York, later King George VI. Dr. John White, the Moderator-Elect, contended that the Lord High Commissioner, in accordance with long-established rule, should not enter by the main door of the building, for that would involve his walking through the Assembly in order to reach the imposing platform where the Chairs of State were set.[123]

The Lord High Commissioner (Church of Scotland) Act 1974, an Act of the UK Parliament, empowered the Secretary of State for Scotland (now the devolved Scottish Ministers) to pay an allowance to the Lord High Commissioner.[124]

3.7 Parliament and the Church of Scotland

While both the Church of England and Church of Scotland are established, only the Church of England has representation in the UK Parliament. Nor does the Kirk have any representation in the devolved Scottish Parliament.[125]

In its evidence to the Royal Commission on Scottish Affairs in the early 1950s, the Church of Scotland was:

[121] A 1905 Royal Warrant placed the Lord High Commissioner next to the sovereign and before the Royal Family in the order of precedence.

[122] As with appointments to the Church of England, a Prime Minister advising on a Lord High Commissioner cannot be a Catholic or a Jew.

[123] Stewart Mechie, Office of Lord High Commissioner, Edinburgh: St Andrew Press, 1957, p49. Instead, the Duke of York had to take an elaborate (and largely external) route to the Chairs of State.

[124] This Act repealed the Lord High Commissioner (Church of Scotland) Acts of 1948 and 1959.

[125] Unlike in the House of Commons, meetings of the Scottish Parliament begin with an ecumenical Time for Reflection rather than Anglican prayers.

> of the opinion that for the adequate expression of the voice of the Christian Church in Great Britain a wider representation is necessary, and they specially advance the claim of the National Church of Scotland to an appropriate share in such representation.

In its final report, the Royal Commission commended "this claim to the notice of those who participate in the deliberation concerning the reform of the House of Lords".[126] The Scottish Unionist Members' Committee (a backbench group of Scottish Conservative MPs) also concluded that reform "would greatly please the Church of Scotland, which carries throughout Scotland a good deal more influence and prestige than does the Church of England throughout England".[127]

Nothing came of these proposals, although in 1999 a government White Paper, Modernising Parliament – Reforming the House of Lords, stated that there was "a case for examining the position of the Church of Scotland which is an established church but has never had representation as of right in the second chamber".[128]

The Moderator of the General Assembly of the Church of Scotland makes an annual visit to the UK Parliament, preaching at St Mary Undercroft in the Palace of Westminster and meeting with the Prime Minister, Secretary of State for Scotland and other party leaders, Scottish MPs and parliamentarians.

During his visit in November 2014, the Rt Rev John Chalmers said:

> This important annual engagement allows the Church of Scotland to refresh its dynamic relationship with those who represent Scotland's people in Westminster. It is also an opportunity for [us] to bring the greetings of the General Assembly and to assure you that the work you do in Westminster for the common good is remembered in the prayers of the Church of Scotland and it is work which is of great interest and concern to us.[129]

George MacLeod, who was Moderator in 1957-58, later joined the House of Lords as a life peer, Lord MacLeod of Fuinary. In 2021-22, Lord Wallace of Tankerness served as Moderator. He had previously served as a Scottish Liberal/Liberal Democrat MP and MSP, leader of his party and as a minister in the Scottish and UK Governments.

126 Cmnd 9212, Royal Commission on Scottish Affairs 1952-1954: Report, London: HMSO, July 1954, p38.
127 David Torrance, "Standing up for Scotland": Nationalist unionism and Scottish party politics, 1884-2014, Edinburgh: Edinburgh University Press, 2020, p79.
128 Cmnd 4183, Modernising Parliament - Reforming the House of Lords, London: HSMO, December 1998, para 22.
129 Church of Scotland press release, November 2014.

4 Church of Ireland

The Church of Ireland was founded in 1536 when the Irish Parliament followed the English Parliament in accepting King Henry VIII of England as head of the church rather than the Pope. It remained Ireland's official state church until it was disestablished in 1871. Today, the Church of Ireland is an independent Province of the Anglican Communion.

4.1 Historical background

Anglicanism in Ireland has always been a minority faith. Nevertheless, members of the Church of Ireland once possessed political and economic power, while owning the majority of Irish land.

Irish Anglicans were the descendants of predominantly English settlers from the 16th to early 18th centuries. This Protestant Ascendancy over Catholics in Ireland was supported in Ulster by Presbyterian Scots, who had settled in Ireland during the early 17th century. In return for their loyalty to William III during James VII and II's attempts to win back the British crowns, Presbyterians were awarded a grant called the Regium Donum to support their clergy.[130]

As well as creating the United Kingdom of Great Britain and Ireland, the Union with Ireland Act 1800 united the Churches of England and Ireland into one "Protestant Episcopal Church" to be called "The United Church of England and Ireland".[131] This meant one archbishop and three bishops from Ireland sat (on rotation) in the House of Lords as Lords Spiritual.

The Union was intended to be accompanied by emancipation legislation, Catholics having been barred from holding public office since the early 18th century. However, King George III refused to sanction this as he considered it a violation of his Coronation Oath.

The Roman Catholic Relief Act 1829 finally removed this bar from most public offices.[132] Catholic peers and MPs had to take an oath on assuming their seats swearing that they would not seek to harm the Church of England (or the Church of Scotland). This meant the UK Parliament ceased to be a wholly Protestant body.

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[130] The grant was discontinued in 1869.

[131] Article V also confirmed the independence of the Church of Scotland.

[132] Prominent exceptions were the Lord Chancellor, the Lord Lieutenant of Ireland and the Lord High Commissioner to the General Assembly of the Church of Scotland.

Emancipation was followed by the Irish Church (Temporalities) Act 1833. This reform acknowledged that the church was overstaffed relative to its size. It abolished church cess (an annual local tax), reduced the number of archbishops from four to two, the number of bishops from 18 to 10, and established a commission to administer the funds released by these changes.

Following the Tithe War of 1830-38, the Irish Tithe Act 1838 converted tithes – a tenth of an individual's income paid in kind or money to the Church of Ireland – into a rent charge.

Another significant development was the formation of the Liberation Society by Edward Miall in 1853. This sought to disestablish and disendow churches throughout the United Kingdom. Given the weakness of Anglicanism in Ireland, the Society focused on the Church of Ireland.

The census of 1861 revealed that only 12% of the Irish population were Anglican, while Catholics constituted 78% and Presbyterians 9%.[133]

By the 1860s there was a Tory-Liberal consensus that the status of the church should be altered. In 1844, future Prime Minister Benjamin Disraeli had even referred to the Church of Ireland as "an alien church" and a central part of the "extreme distress" of Ireland.[134]

Conservatives favoured the concept of "concurrent endowment" rather than disestablishment and disendowment, but the Liberal politician W. E. Gladstone made disestablishment the centrepiece of his programme for reform in Ireland. In March 1868, Gladstone carried a motion against the Conservative government to this end.[135]

4.2 Irish Church Act 1869

The 1868 general election was largely fought on the issue of Irish disestablishment and disendowment. Gladstone's coalition of Radicals, Whigs, Catholics and dissenters under the Liberal banner won 387 seats to the Conservatives' 271. Now Prime Minister, Gladstone introduced his Irish Church Bill on 1 March 1869.[136]

The Bill was opposed by the Conservatives, but all amendments were defeated in the House of Commons. The House of Lords heavily amended the Bill to reduce its financial effects, but these were overturned in the Lower House. Only following mediation involving Queen Victoria and some mitigation of compensation terms was a major constitutional crisis averted. Royal Assent was granted on 28 July 1869.

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133 Church of Ireland website, Disestablishment.
134 HC Deb 16 February 1844 [State Of Ireland—Adjourned Debate (Fourth Night)]
135 HC Deb 30 March 1868 [Motion For A Committee]
136 HC Deb 1 March 1869 [Established Church (Ireland)]

The Church of Ireland was disestablished on 1 January 1871. At this point, the 1800 union of the churches of England and Ireland, crown patronage, appointments and lay patronage all ceased. The Irish bishops lost their places in the House of Lords, and the archbishops their ex-officio membership of the Privy Council of Ireland. The church's property was transferred to the government and the Irish ecclesiastical courts abolished.

4.3 The new Church of Ireland

Prior to its disestablishment, the Church of Ireland made arrangements for its internal governance. After 1871, this was to be led by a General Synod, with financial and administrative support from a Representative Church Body. Like the Church in Wales, the Church of Ireland also adopted its own constitution.

The head of the Church of Ireland is the Archbishop of Armagh, who is Primate of All Ireland. As with other churches in Ireland, the Church of Ireland did not divide when Ireland was partitioned in 1921-22. It continued to be governed on an all-Ireland basis, as was the Catholic Church in Ireland. Both are based in Armagh, a city in what is now Northern Ireland.

5 Church in Wales

Between the 16th century and 1920, the established Church in Wales was the Church of England. As a result of the Welsh Church Act 1914, most of the territory of the Welsh dioceses of the Church of England was disestablished as of March 1920. Today the Church in Wales is an independent Province of the Anglican Communion (as are the Church of Ireland and Scottish Episcopal Church).

5.1 Historical background

The Church of England became the established Church in Wales as a consequence of the Union between England and Wales during the 1530s.

This situation was not seriously challenged until the growth of nonconformity in Wales from the mid-18th century. Part of this was cultural. No Welsh-speaking bishop was consecrated after the reign of Queen Anne (1702-07) until Gladstone, the Liberal Prime Minister, appointed Joshua Hughes to St Asaph in 1870.

Henry Mann's census of religion in 1851 revealed that of the 52% of the Welsh population who attended services on 30 March 1851, 78% were dissenters and only 21% Anglicans.[137] By 1906 there had been a slight revival in the Church of England. A Royal Commission on the church in Wales found that 27% of active Christians belonged to the established church, while 73% attended dissenting chapels.[138]

During the later 19th and early 20th centuries, a campaign to disestablish the Church in Wales gathered strength not only on religious grounds but on the basis of increasing political enfranchisement and awareness of a Welsh national identity. Irish disestablishment in 1871 provided this campaign with a legislative blueprint and a clear precedent.

A myriad of motions and Bills presented to Parliament failed to progress due to a lack of support. However, the Local Government Act 1888 removed Anglican involvement in Welsh local government. Disestablishment became more important within the Liberal Party due to its strength in Wales, and in

137 Kenneth O. Morgan, Rebirth of a Nation: Wales 1880-1980, Oxford: Oxford University Press, 1980, p10.

138 Cmnd 5432, Royal Commission on the Church of England and Other Religious Bodies in Wales and Monmouthshire: Report, London: HMSO, 1910.

1891 the policy was placed second only to Irish Home Rule in the party's Newcastle Programme.[139]

In February 1893 a Welsh Church Suspensory Bill was introduced in preparation for disestablishment but it made no progress as preference was given to the Second (Irish) Home Rule Bill. A Welsh Disestablishment Bill was also introduced a few years later but fell with the Liberal government at the 1896 general election. The Conservative Party resisted such measures.[140]

The House of Lords also acted as a block on Welsh disestablishment. The Upper House twice failed to pass the Welsh Church Bill of 1912, but the terms of the Parliament Act 1911 were invoked upon its reintroduction in April 1914. This meant it did not required Lords' consent. The First World War then intervened, although the Welsh Church Act and associated suspensory legislation received Royal Assent on 18 September 1914. They were not to come into force until after the conclusion of hostilities.

5.2 Church of England border polls

During the War, the Church in Wales, led by the Bishop of St Asaph, Alfred George Edwards, prepared for disestablishment through organisational reform.

In 1915 and 1916, a series of border polls (or referendums) were held for residents living in 19 Church of England parishes whose boundaries straddled the Anglo-Welsh border.[141] Residents were asked if their parish should remain part of the Church of England or become part of the Church in Wales upon disestablishment.[142] The polls resulted in all but one border parish voting to remain with the Church of England.[143]

Following the armistice of 1918, Parliament passed the Church in Wales (Temporalities) Act 1919, which delayed the implementation of the 1914 Act. It set the date of disestablishment as 31 March 1920 and provided £1 million from the taxpayer to mitigate disendowment.[144] As the Church in Wales became independent of the state, tithes were no longer available to the church.

139 During the late 19th century, the Scottish Liberal Party was split between those who supported disestablishment and disendowment of the Church of Scotland and those who wanted to maintain the status quo.

140 See D. T. W. Price, A History of the Church in Wales in the Twentieth Century, Cardiff: Church in Wales Publications, 1990.

141 Section 9 of the Welsh Church Act 1914 required the Welsh Church Commissioners to ascertain "the general wishes of the parishioners" in these parishes.

142 Eligibility to vote was extended to all men and women aged over 21, an early example of universal suffrage in a UK election.

143 See HC Deb 2 March 1915 [Welsh Church Bill (Balloting)]

144 The Welsh Church Act 1914 provided that Church in Wales parishes would no longer retain private endowments granted before 1662. These were to be redistributed to the University of Wales and local authorities.

5.3 Disestablishment takes effect

Taken together, the Welsh Church Acts of 1914 and 1919 terminated the establishment of the Church of England in Wales and Monmouthshire, dissolved ecclesiastical corporations and abolished patronage. Welsh diocesan bishops also became ineligible for a writ of summons as one of the Lords Spiritual.[145] The ecclesiastical courts ceased to have jurisdiction in Wales, while ecclesiastical law no longer had force except as contract under regular civil law.

Parishes in a Welsh diocese which had voted to remain part of the Church of England in 1915-16, meanwhile, were transferred to nearby Church of England dioceses for episcopal oversight.

5.4 The Church in Wales

As the Welsh Church Act 1914 referred throughout to "the Church in Wales", the disestablished church became known by that name rather than "the Church of Wales" (as in Ireland after 1871). In 1922 the Church in Wales adopted a written constitution, which has since been revised several times. A Governing Body is the supreme legislature of the Church in Wales – this is "broadly speaking the Parliament of the Church in Wales". It usually meets twice a year to receive reports and make decisions on matters brought before it.

A Representative Body was established by Royal Charter in 1919 and is responsible for looking after the assets of the Church in Wales. Since disestablishment the Church in Wales has been led by the Archbishop of Wales. Nothing prevents this archbishop leading the Church of England. In July 2002, for example, Queen Elizabeth II appointed Rowan Williams, a former Archbishop of Wales, as Archbishop of Canterbury, his appointment having been proposed by the Crown Appointments Commission.[146]

5.5 Vestiges of establishment

Some ecclesiastical laws, however, continued to apply to the Church in Wales, so-called "vestiges of establishment". Examples include marriage and burials.

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145 On the other hand, the Acts meant Welsh clergy were now eligible for election to the House of Commons.

146 Following disestablishment in 1920, Church in Wales bishops continued to attend the bi-annual bishops' meetings at Lambeth Palace. Church of Ireland bishops were also occasionally invited, while Scottish Episcopal Church bishops became regular attendees after 1963.

Marriage law

Until 2008, if two people wished to get married in church, it had to be the church where they lived or attended regularly. The Church of England legislated to remove this "qualifying connection". The Church of England Marriage Measure 2008 was passed by the General Synod and approved by Parliament and therefore became law in the provinces of Canterbury and York, but not in Wales.

In order to bring the law in Wales into line with that in England, a Private Member's Bill was introduced in the House of Lords by Lord Rowe-Beddoe and taken through the House of Commons by the then MP for Cardiff South and Penarth, Alun Michael. The Bill passed in both Houses and became the Marriage (Wales) Act 2010. A Bill was necessary because, unlike the Church of England, the Church in Wales cannot make legislative changes relating to its own administration and organisation.

This produced another anomaly when the UK Parliament legislated for equal marriage in 2013. Section 8 of the Marriage (Same Sex Couples) Act 2013 states that should the Governing Body of the Church in Wales resolve to permit same-sex marriage in its churches then the Lord Chancellor must make an Order to amend legislation in England and Wales accordingly.

The Governing Body has made no such resolution and so same-sex marriages may not be solemnised by the Church in Wales.

Burials

Unlike the Church of England (via the Privy Council), the Church in Wales does not have the power to close graveyards.[147] The Welsh Church (Burial Grounds) Act 1945 provided for the transfer and maintenance of burial grounds to the Representative Body of the Church in Wales, subject to approval by the Senedd (the Welsh Parliament).

Also, no discrimination may be made between the burial of a member of the Church in Wales and that of other persons. This right to burial in the parish burial ground, if not closed by Order in Council, is understood as another vestige of establishment.

Proposals for reform

As a result of these anomalies, in 2013 the then National Assembly for Wales' Constitutional and Legislative Affairs Committee urged "full disestablishment of the Church in Wales, in line with the original intention of the 1914 Act" as "the most sensible solution to overcome the current difficulties with the uneven way in which law-making affects the Church in Wales".

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147 Section 215 of the Local Government Act 1972 enables a parochial church council in England to serve notice on the relevant local authority requiring it to take over responsibility for closed Church of England churchyards.

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