



## Royal Commissions: Making a Comeback?

### Summary

Royal commissions have fallen out of use over recent decades, but they could be set to make a return.

There have been no new royal commissions since Tony Blair established the Royal Commission on the Reform of the House of Lords in 1999. However, the Conservative Party manifesto for the 2019 election promised to set up a royal commission on the criminal justice system within the first year of government. The manifesto also contained a separate commitment to establish a constitution, democracy and rights commission, although it is not yet clear what form this commission will take.

A royal commission is a type of committee appointed for a specific investigatory or advisory purpose. The Queen appoints its members on the Government's advice. Governments have often appointed royal commissions to address high-profile social concerns, issues that may be controversial, or matters of national importance. Royal commissions typically work by gathering evidence and producing a report. It is then up to the Government of the day to decide how to respond and whether to act on any of the recommendations.

Royal commissions have fewer powers than public inquiries established under the Inquiries Act 2005. The Act gives statutory inquiries explicit powers to compel witnesses to give evidence. In contrast, royal commissions in Australia and New Zealand have statutory powers similar to those under the Inquiries Act 2005.

Royal commissions have a long history, though their frequency has varied over time. Nearly 400 royal commissions were established between 1830 and 1900. This fell to 145 in the twentieth century. None were set up in the 1980s and only three in the 1990s. Commentators have suggested that over time, governments came to prefer other bodies or forms of public inquiry rather than royal commissions.

Some royal commissions have been successful in bringing about reform. However, royal commissions have also attracted criticism for taking too long, for failing to secure change and for not being representative. Although successive governments have not appointed royal commissions in the last twenty years, support for royal commissions has not disappeared altogether during this time. Politicians and others have regularly continued to call for royal commissions to examine matters of pressing policy concern such as drugs policy, the police or the NHS.

Nicola Newson | 23 April 2020

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## I. Conservative manifesto 2019

### ***Royal Commission on the Criminal Justice System***

The Conservative Party's manifesto for the 2019 general election included a commitment to establish a royal commission on the criminal justice process.<sup>1</sup> In the Queen's Speech, the Government said the royal commission would "review and improve the efficiency and effectiveness of the criminal justice process".<sup>2</sup> The Government was "committed to ensuring a fair justice system that works for the law-abiding majority and gives a second chance to those who wish to make a fair start". The royal commission would deliver "a fundamental review of the key issues affecting the system, both today and in the future". The Government said it would set out the terms of reference for the royal commission in due course, to include details of its scope, duration and membership. The Government has allocated £3 million for launching the royal commission.<sup>3</sup>

The Government has not yet published further details about the terms or membership of the royal commission. In answer to a parliamentary question, Priti Patel, the Home Secretary, suggested that its remit might include issues relating to access to justice.<sup>4</sup>

The Criminal Bar Association, the Law Society and the Police Federation all called for the royal commission to be backed up by more investment across the criminal justice system, implying that change could not happen without funding.<sup>5</sup>

A royal commission last looked at the criminal justice system in the early 1990s. The Royal Commission on Criminal Justice, also known as the Runciman Commission, was appointed in 1991 in the wake of several high-profile miscarriages of justice, including the cases of the Birmingham Six and the Guildford Four. Without examining individual cases, the royal commission looked at "the criminal justice system from the stage at which police are investigating an alleged or reported criminal offence, right through to the stage at which a defendant who has been found guilty of such an offence has exhausted his or her rights of appeal".<sup>6</sup> The commission published its report in 1993. It led to the establishment of the Criminal Cases Review Commission in 1995.<sup>7</sup>

### ***Constitution, Democracy and Rights Commission***

The Conservative manifesto also contained a separate commitment to establish a constitution, democracy and rights commission, although it is not yet clear what form this commission will take.

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<sup>1</sup> Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 19.

<sup>2</sup> Cabinet Office, [The Queen's Speech 2019](#), December 2019, p 89.

<sup>3</sup> Ministry of Justice, '[Ministry of Justice secures an extra £90 million to support victims and toughen community sentences](#)', 12 March 2020.

<sup>4</sup> [HC Hansard, 10 February 2020, col 573.](#)

<sup>5</sup> Lizzie Dearden, '[Government accused of ignoring 'calamitous failings' caused by its own budget cuts with justice review](#)', *Independent*, 19 December 2019.

<sup>6</sup> Royal Commission on Criminal Justice, [Report of the Royal Commission on Criminal Justice](#), 6 July 1993, Cm 2263, p 1.

<sup>7</sup> Cabinet Office, [The Queen's Speech 2019](#), December 2019, p 89.

The manifesto said that within its first year, a Conservative Government would establish a commission to look at “the broader aspects of our constitution: the relationship between the government, Parliament and the courts; the functioning of the royal prerogative, the role of the House of Lords; and access to justice for ordinary people”.<sup>8</sup> The Government would “ensure that judicial review is available to protect the rights of individuals against an overbearing state, while ensuring that it is not abused to conduct politics by another means or create needless delays”. The manifesto said the commission would “examine these issues in depth and come up with proposals to restore trust in our institutions and in how our democracy operates”.

At the time of the Queen’s Speech in December 2019, the Government said careful consideration was needed on the composition and focus of the commission.<sup>9</sup> The Government repeated in January 2020 that it was still considering the composition, focus and remit of the commission. Further details about the commission have not yet been published. However, in February 2020, the *Financial Times* reported that Michael Gove, Minister for the Cabinet Office, would oversee the constitutional review, alongside Robert Buckland, the Justice Secretary, and Suella Braverman, the Attorney General.<sup>10</sup> An independent individual would formally lead the commission. According to the *Financial Times*, Lord Sumption was “tipped by officials to head up the review”. Lord Sumption was a justice of the UK Supreme Court between 2012 and his retirement in 2018.

During the Lords debate on the Queen’s Speech in January 2020, several members questioned whether this commission would be less independent from the executive than the royal commission on the criminal justice system. For example, Lord Judge (Crossbench), a former Lord Chief Justice of England and Wales, said:

I support the idea of a royal commission into the criminal justice system, but if it is a royal commission, why does the constitution commission, addressing the beating political heart of the nation, not merit being one, too. What sort of unroyal commission is intended to address the constitution? If we are talking about trust, a commission established to give the Government the answers that they want will strike a mortal, further blow to the public’s confidence and trust in their own institutions, and the abuse and misuse will continue.<sup>11</sup>

Earl Howe, Deputy Leader of the House of Lords, was later asked directly whether the constitution, democracy and rights commission could be appointed as a royal commission to “enhance its status”.<sup>12</sup> He repeated that no decisions had been taken on its precise form. He said the most important thing was for the commission and its work to command public confidence.

A separate Lords Library briefing looks in more detail at some of the issues this commission might cover.<sup>13</sup>

<sup>8</sup> Conservative Party, [Conservative Party Manifesto 2019](#), November 2019, p 48.

<sup>9</sup> Prime Minister’s Office, [The Queen’s Speech 2019](#), 19 December 2019, p 126.

<sup>10</sup> Sebastian Payne, Laura Hughes and George Parker, ‘[Michael Gove to oversee UK constitutional review](#)’, *Financial Times* (£), 14 February 2020.

<sup>11</sup> [HL Hansard, 8 January 2020, col 220](#). See also Lord Tyler (Liberal Democrat) at col 217, Lord Cormack (Conservative) at col 238, Lord Beith (Liberal Democrat) at col 239, and Lord Hennessy of Nympsfield (Crossbench) at col 264.

<sup>12</sup> [HL Hansard, 14 January 2020, col 561](#).

<sup>13</sup> House of Lords Library, [Constitution, Rights and Democracy Commission](#), 26 March 2020.

A royal commission last looked at the constitution between 1969 and 1973. This commission was established by Harold Wilson. It is also known as the Kilbrandon Commission after its second chair, Lord Kilbrandon. Its remit was to examine the “present functions of the central legislature and government in relation to the several countries, nations and regions of the UK” and to consider whether there should be changes to them.<sup>14</sup> The commission was unable to reach a unanimous view on what recommendations to make, and two members published a separate ‘memorandum of dissent’.<sup>15</sup>

Dr Gary Wilson of Liverpool John Moores University has assessed the lasting impact of the Kilbrandon Commission as follows:

While it is possible to overstate the significance of the Kilbrandon Commission within constitutional debates in the UK, its relegation to a mere historical footnote is regrettable. Its report gave the first significant consideration to the case for devolution and advanced proposals which do not diverge radically in the most part from the devolution settlement eventually implemented in 1998.

[...] The Kilbrandon Commission’s work should be not given disproportionate credit and, as has been noted, it could arguably have contributed more substantially to wider constitutional reform debates. However, it should be recalled for its importance in helping to get the ball rolling with the development of the devolution agenda in the 1970s which to some extent paved the way for the eventual successful introduction of Scottish and Welsh devolution [...]<sup>16</sup>

## 2. What is a royal commission?

A royal commission is a type of committee appointed for a specific investigatory or advisory purpose. The Queen appoints its members on the Government’s advice.<sup>17</sup> The formal process is that the Sovereign issues a royal warrant to the commissioners on the advice of the secretary of state.<sup>18</sup>

Bradley and Ewing, in their textbook on constitutional law, note that the decision to appoint a royal commission is an act of the executive, often taken in response to political demands.<sup>19</sup> They state that governments may decide to appoint a royal commission, rather than some other form of public inquiry, for “substantial matters where greater formality is considered appropriate and where time is not of the essence”.<sup>20</sup>

Royal commissions typically work by gathering evidence and then producing a report. The royal commission will usually call for evidence from individuals and organisations outside government, as

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<sup>14</sup> Royal Commission on the Constitution, [Report of the Royal Commission on the Constitution](#), October 1973, Cmnd 5460, p 5.

<sup>15</sup> Royal Commission on the Constitution, [Memorandum of Dissent](#), October 1973, Cmnd 5460-I.

<sup>16</sup> Gary Wilson, ‘[Constitutional Reform in the UK: A Note on the Legacy of the Kilbrandon Commission](#)’, *Liverpool Law Review*, 2017, vol 38 no 3, p 353.

<sup>17</sup> AW Bradley and KD Ewing, *Constitutional and Administrative Law*, 14th edition, 2007, p 260.

<sup>18</sup> *ibid*, p 318.

<sup>19</sup> *ibid*.

<sup>20</sup> *ibid*.

well as from public bodies.<sup>21</sup> It may also undertake its own programme of research. Royal commissions usually hear the main evidence in public and publish copies of the written and oral evidence they receive. The resulting report is published and laid before Parliament. A royal commission usually disbands when it has reported, but some may be appointed on a more permanent basis and produce a series of reports.

Once a royal commission has reported, it is up to the government to decide how to respond and whether to act on any of its recommendations.<sup>22</sup>

Governments have often appointed royal commissions to address high-profile social concerns, issues that may be controversial, or matters of national importance, for example: divorce law, police powers and procedure, regulation of the press, and capital punishment.<sup>23</sup> However, royal commissions have also looked at more specialised topics, such as cross-river traffic in London or poisoning by arsenic in beer and “other articles of diet”. A list of royal commissions appointed since the end of the second world war is included at the end of this briefing.

Royal commissions have also been appointed in other Commonwealth jurisdictions, such as Australia, Canada and New Zealand.<sup>24</sup> For example, in New Zealand a royal commission is currently conducting an inquiry into the attack on Christchurch mosques in March 2019.<sup>25</sup> It is due to report at the end of April 2020.

### ***Other types of public inquiry***

Royal commissions are one type of public inquiry that governments can establish. Royal commissions are non-statutory inquiries, but not all non-statutory inquiries are royal commissions. The Government can also establish ad hoc inquiries or committees of privy counsellors to examine events or policy issues of public concern.<sup>26</sup>

The Government can also set up statutory inquiries under legislation that specifically allows for inquiries to be established. Principally this is the Inquiries Act 2005.<sup>27</sup> Statutory inquiries can also take place under subject-specific legislation, such as the Health and Safety at Work Act 1974.<sup>28</sup>

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<sup>21</sup> AW Bradley and KD Ewing, *Constitutional and Administrative Law*, 14th edition, 2007, pp 318–9.

<sup>22</sup> *ibid*, p 319.

<sup>23</sup> David Butler and Gareth Butler, *British Political Facts*, 2010, pp 353–7.

<sup>24</sup> Barbara Lauriat, “The Examination of Everything’: Royal Commissions in British Legal History’, *Statute Law Review*, April 2010, vol 31 no 1, p 27; and New Zealand Department of Internal Affairs, ‘[Public and Government Inquiries](#)’, accessed 17 April 2020.

<sup>25</sup> Royal Commission of Inquiry into the Attack on Christchurch Mosques, ‘[Terms of Reference](#)’, accessed 17 April 2020.

<sup>26</sup> For more information about ad hoc inquiries and committees of privy counsellors, see House of Commons Library, ‘[Public Inquiries: Non-statutory Commissions of Inquiry](#)’, November 2016.

<sup>27</sup> For more information about inquiries under the Inquiries Act 2005, see: House of Commons Library, ‘[Statutory Commissions of Inquiry: The Inquiries Act 2005](#)’, September 2018.

<sup>28</sup> House of Lords Inquiries Act 2005 Committee, ‘[The Inquiries Act 2005: Post-legislative Scrutiny](#)’, March 2014, HL Paper 143 of session 2013–14, pp 18–19.

The main differences between statutory and non-statutory inquiries are:<sup>29</sup>

- Non-statutory inquiries can provide greater flexibility over procedures.
- Non-statutory inquiries must rely on the voluntary compliance of witnesses and cannot take evidence on oath.
- Statutory inquiries held under the Inquiries Act 2005 operate under a presumption that hearings will take place in public. Non-statutory inquiries can examine evidence in private.

However, the differences between royal commissions and other types of non-statutory inquiry are less clear-cut. On this point, Barbara Lauriat, an academic legal researcher, has written:

What then distinguishes royal commissions from other governmental committees? Aside from the grandiose title, it is not immediately clear, and the secondary literature struggles to identify exactly which procedural elements are exclusive to royal commissions. Even their independence is not a unique feature of royal commissions since the government may appoint other ad hoc independent committees.<sup>30</sup>

When considering launching an inquiry, government departments are expected to seek the Cabinet Office's advice on the different forms of inquiry and the merits of the different possible options.<sup>31</sup>

### ***Another type of royal commission***

The term 'royal commission' also describes a group of five members of the House of Lords charged with representing the sovereign in Parliament when she is not present herself.<sup>32</sup> This type of royal commission takes part in the rituals of prorogation and the election of a new Commons speaker. They are also known as Lords Commissioners.<sup>33</sup> This briefing does not cover this type of royal commission.

## **3. Powers**

### ***Royal warrant***

A royal commission's powers are set out in the royal warrant that establishes it. The warrant usually gives the commissioners the power to call witnesses, to call for information in writing and to call for, have access to and examine all such books, documents, registers and records as may assist them.<sup>34</sup>

<sup>29</sup> House of Commons Library, [Public Inquiries: Non-statutory Commissions of Inquiry](#), November 2016, p 3.

<sup>30</sup> Barbara Lauriat, "The Examination of Everything': Royal Commissions in British Legal History', *Statute Law Review*, April 2010, vol 31 no 1, p 29.

<sup>31</sup> Cabinet Office, [Inquiries Guidance](#), 2012, p 3 (published on the website of the House of Lords Committee on the Inquiries Act 2005).

<sup>32</sup> Nicolas Besly and Tom Goldsmith, *How Parliament Works*, 2018, p 421; and Parliament website, '[Prorogation: Modern practice](#)', accessed 8 April 2020.

<sup>33</sup> Nicolas Besly and Tom Goldsmith, *How Parliament Works*, 2018, p 232.

<sup>34</sup> [HL Hansard, 4 November 1975, col 983](#).

The commissioners may also be empowered to visit and personally inspect such places as they deem expedient.

### ***Lack of powers to compel witnesses***

Questions have been raised about what a royal commission could do if a witness refused to attend or give evidence.<sup>35</sup> In 1975, the Government accepted that a royal commission's lack of coercive powers could in theory present "a quite formidable difficulty".<sup>36</sup> In practice, though, the Home Office found no evidence that "in recent years there have been any difficulties in obtaining the assistance of witnesses before a royal commission".<sup>37</sup> Prior to this, a 1910 inquiry into the procedure of royal commissions found that a small number of witnesses had declined to give evidence:

As a general rule, it appears no difficulty was found in obtaining evidence. The exceptions are few in number. In one instance (the Trades Disputes Commission [1903–6]) no trade unionist was willing to give evidence; in another instance certain miners were unwilling to give evidence on the ground that it might injure their fellow workmen or themselves in their relationship with their employers; in another instance a Board of Trade official declined to give evidence on the ground that the subject would come before him officially for opinion; in another instance some suggested witnesses refused to give evidence for publication.<sup>38</sup>

In more recent times, the lack of powers to compel witnesses has discouraged the government, in at least one case, from appointing a royal commission. As Home Secretary, Theresa May considered establishing a royal commission on child sexual abuse. She rejected this idea because she wanted to ensure an inquiry into this subject would have sufficient powers. She explained:

Having taken in-depth legal advice and discussed the options with survivors, I have concluded a royal commission would not have the same robustness in law as a statutory inquiry. In particular, it would not have the same clarity over its powers to compel witnesses to give evidence.<sup>39</sup>

Instead of establishing a royal commission, the Government set up a statutory inquiry into child sexual abuse.<sup>40</sup>

Statutory inquiries established under the Inquiries Act 2005 have more explicit powers to compel witnesses to give evidence. Section 21 of the Act allows the chair of a statutory inquiry to require a person to give evidence, or to produce any documents. Section 35 of the Act makes it an offence to fail, without a reasonable excuse, to comply with a formal notice requiring attendance at the inquiry or the production of evidence, and an offence to deliberately distort or conceal relevant evidence. A person found guilty of an offence under this section is liable to a fine of up to £1,000 or imprisonment for up to 51 weeks in England and Wales or six months in Scotland and Northern Ireland. Only

<sup>35</sup> Eg, [HL Hansard, 4 November 1975, cols 983–6](#).

<sup>36</sup> *ibid*, col 984.

<sup>37</sup> *ibid*.

<sup>38</sup> Departmental Committee on the Procedure of Royal Commissions, [Report of the Departmental Committee on the Procedure of Royal Commissions](#), 1910, Cd 5235, p 2.

<sup>39</sup> [HC Hansard, 4 February 2015, cols 276–7](#).

<sup>40</sup> *ibid*, col 277.

inquiries established under the 2005 Act, or other Acts with similar powers such as the Health and Safety at Work Act 1975, can compel the production of documents, the attendance of witnesses and the giving of evidence on oath.<sup>41</sup>

### **Statutory powers in Australia and New Zealand**

In Australia and New Zealand, royal commissions have statutory powers more akin to those of statutory inquiries under the Inquiries Act 2005 in the UK.

In Australia, the Royal Commissions Act 1902 empowers the governor general, the Queen's representative in Australia, to appoint royal commissions on the advice of ministers.<sup>42</sup> Royal commissions appointed under the Act have the power to summon witnesses to give evidence, to summon or require witnesses to produce documents or things and to require witnesses to give evidence under oath or affirmation.<sup>43</sup> The Act sets out penalties for those who fail to comply:

A person who fails to attend a hearing or produce requested documents or things, without reasonable excuse, commits an offence, punishable by a maximum payment of \$1,100 [approximately £550], or imprisonment for six months. A person who refuses to be sworn or make an affirmation, or to answer any relevant question asked by a royal commission, or legal practitioner assisting or appearing before a royal commission, or a person authorised to appear, also commits an offence punishable by the same maximum penalty.<sup>44</sup>

The Act also enables designated royal commissions to authorise a member of the commission or a member of the Australian federal, state or territory police to apply for a search warrant in relation to a matter into which the royal commission is inquiring.<sup>45</sup> All Australian royal commissions established under the Act can issue a warrant for the arrest of a witness for failing to attend in answer to a summons.

In New Zealand, royal commissions are one type of public inquiry that can be established under the Inquiries Act 2013.<sup>46</sup> They are appointed by the governor general on the advice of the executive council, and reserved for the most serious matters of public importance.<sup>47</sup> All inquiries established under the Act have the power to:

- take evidence on oath or affirmation;
- require any person to provide information to the inquiry; and
- summon witnesses.

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<sup>41</sup> House of Lords Inquiries Act 2005 Committee, [The Inquiries Act 2005: Post-legislative Scrutiny](#), March 2014, HL Paper 143 of session 2013–14, p 28.

<sup>42</sup> Australian Law Reform Commission, [Royal Commissions and Official Inquiries](#), August 2009, p 56.

<sup>43</sup> *ibid*, p 58.

<sup>44</sup> *ibid*.

<sup>45</sup> *ibid*.

<sup>46</sup> New Zealand Department of Internal Affairs, '[Different types of government reviews](#)', accessed 17 April 2020.

<sup>47</sup> *ibid*.

The Act makes it an offence to intentionally:<sup>48</sup>

- fail to attend in accordance with a notice of summons;
- refuse to be sworn or to affirm and give evidence;
- fail to produce any document or thing required by order of the inquiry
- destroy evidence or hinder any person authorised to examine, copy, or make a representation of a document or thing required by order of an inquiry;
- fail to comply with a procedural order or direction of an inquiry;
- disrupt the proceedings of an inquiry;
- prevent a witness from giving evidence or threaten or seek to influence a witness before an inquiry;
- provide false or misleading information to an inquiry; or
- threaten or intimidate an inquiry, a member of an inquiry or an officer of an inquiry.

Anyone found guilty of such an offence is liable to a fine of up to \$10,000 (approximately £4,780).

## 4. History

### *Pre-twentieth century*

Royal commissions have a long history, though their frequency has varied over time. In an article examining royal commissions in British legal history, Barbara Lauriat noted:

The royal commission is an ancient British institution; William I's 1085 royal mandate leading to the creation of the Domesday Book is usually cited as the first royal commission. Tudor monarchs frequently used them and subsequent governments continued to appoint them until they fell into disfavour after the revolution of 1688. They were revived with great enthusiasm in the 19th century, however. In their comprehensive study on royal commissions of enquiry, Clokie and Robinson reported that "in the seventy years from 1830 to 1900 there were created some 388 royal commissions of inquiry... an average over the whole period of a little more than five per annum".<sup>49</sup>

### *Twentieth century*

The changing pattern of royal commissions in the twentieth century is notable. A total of 145 royal commissions were appointed during this period.<sup>50</sup> Of these, only 34 were established after the second world war. No new royal commissions were set up at all in the 1980s, and only three in the 1990s. The last royal commission to be established in the UK was the Royal Commission on the Reform of the House of Lords (also known as the Wakeham Commission after its chair, Lord Wakeham). It was

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<sup>48</sup> Section 29 of the Inquiries Act 2013.

<sup>49</sup> Barbara Lauriat, "The Examination of Everything': Royal Commissions in British Legal History', *Statute Law Review*, April 2010, vol 31 no 1, p 26.

<sup>50</sup> David Butler and Gareth Butler, *British Political Facts*, 2010, pp 353–7.

set up by Tony Blair's Government in 1999 to examine the role, functions and composition of the second chamber. It reported in January 2000.<sup>51</sup>

### ***Falling out of favour?***

Commentators have suggested that over time, other bodies or forms of public inquiry have come to be preferred over royal commissions. For example, in 1999, Professor (now Lord) Hennessy noted a rise in the use of task forces.<sup>52</sup> He suggested that they had become “in many ways a surrogate for old royal commissions or departmental committees of inquiry”. Analysis by the House of Commons Public Administration Committee in 2005 suggested that in the first two decades of the twentieth century, parliamentary committees and royal commissions had primacy as the main form of public inquiry.<sup>53</sup> After that, inquiries held under the Tribunals of Inquiry (Evidence) Act 1921 dominated until the 1970s, followed by the predominance of ad hoc or subject-specific inquiries. In 2013, the Institute for Government suggested that prime ministers “now prefer to set up smaller, and more rapidly reporting, inquiries with a narrower remit under distinguished individuals to address tricky policy problems”.<sup>54</sup>

### ***Royal commissions still in existence***

Although no new royal commissions have been appointed for more than 20 years, there are a handful of older royal commissions still operating today. Some royal commissions were appointed on a longer-term basis with an ongoing advisory role rather than an investigatory remit.<sup>55</sup> Of these, a few that were established many decades ago still exist in some form. For example:

- The Royal Commission for the Exhibition of 1851 was established in 1850 by Queen Victoria to organise the Great Exhibition, the world's first trade fair.<sup>56</sup> When the exhibition closed in October 1851, the royal commission was then established as a permanent body to spend the profits in realising Prince Albert's ambition to “increase the means of industrial education and extend the influence of science and art upon productive industry”. To this end, the commissioners purchased 87 acres of land in South Kensington. Here they aided the establishment of the Victoria and Albert Museum, the Science Museum, the Natural History Museum, the Royal Albert Hall, Imperial College, the Royal College of Art and the Royal College of Music. There remained enough funds for the commission to set up an educational trust to perpetuate its aims. Today the commission disburses nearly £4m a year, funding 35 postgraduate fellowships and scholarships and making special awards to support projects consistent with its overall aims.

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<sup>51</sup> Royal Commission on the Reform of the House of Lords, [A House for the Future: Royal Commission on the Reform of the House of Lords](#), January 2000, Cm 4534.

<sup>52</sup> Committee on Standards in Public Life, *Reinforcing Standards*, January 2000, Cm 4557-I, p 123.

<sup>53</sup> House of Commons Public Administration Committee, [Government by Inquiry](#), HC 51 of session 2004–5, 3 February 2005, p 12.

<sup>54</sup> Pepita Barlow, '[The lost world of royal commissions](#)', Institute for Government Blog, 19 June 2013.

<sup>55</sup> David Butler and Gareth Butler, *British Political Facts*, 2010, p 357.

<sup>56</sup> Royal Commission for the Exhibition of 1851, '[About us](#)', accessed 16 April 2020.

- The Royal Commission on Historical Manuscripts was set up in 1869 under the ex officio chairmanship of the Master of the Rolls.<sup>57</sup> It was reconstituted with extended powers in 1959. Its task is to advise and assist in the preservation of historical manuscripts and to publish them. It was merged in 2003 with the Public Record Office to form the National Archives.<sup>58</sup>
- The Royal Commission on the Ancient and Historical Monuments of Wales was set up in 1908.<sup>59</sup> Its role is to develop and promote understanding of the archaeological, built and maritime heritage of Wales.

## 5. Impact

Some royal commissions have been successful in bringing about reform. For example, the Royal Commission on Criminal Procedure directly influenced legislation governing police powers in the Police and Criminal Evidence Act 1984 and the establishment of an independent Crown Prosecution Service in the Prosecution of Offences Act 1985.<sup>60</sup> The process of holding a royal commission has been described as “a unique channel through which private individuals and interest groups can participate directly in the making of public policy”.<sup>61</sup>

The Institute for Government has suggested that royal commissions may be more suitable than other types of inquiry for investigating a broad policy area:<sup>62</sup>

Inquiries tend to be rooted in specific incidents, which might not be the most appropriate basis for considering wider policy change because the circumstances do not always generalise well. For example, an inquiry into one specific fatal police shooting might not be the best way to investigate policy options for police use of weapons more broadly.

In theory, royal commissions have the advantage of considering change beyond a single, potentially limiting incident.

However, the Institute for Government has also suggested that the evidence on the impact of royal commission is “mixed, depending largely on the political climate of the time and the degree of controversy of the proposals”.<sup>63</sup> It found that commissions had been “less influential in more highly disputed areas of social policy or constitutional reform”. It suggested that this was “one of the main reasons why they have fallen into disuse and prime ministers have preferred other forms of inquiry”.

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<sup>57</sup> David Butler and Gareth Butler, *British Political Facts*, 2010, p 357.

<sup>58</sup> National Archives, [‘Historical Manuscripts Commission’](#), accessed 16 April 2020.

<sup>59</sup> Royal Commission on the Ancient and Historical Monuments of Wales, [‘About us’](#), accessed 16 April 2020.

<sup>60</sup> Institute for Government, [How Public Inquiries Can Lead to Change](#), December 2017, p 11.

<sup>61</sup> TJ Cartwright, *Royal Commissions and Departmental Committees*, 1975, p 1, quoted in Philip Thomas, ‘Royal Commissions’, *Statute Law Review*, Spring 1982, vol 1982 no 1, p 43.

<sup>62</sup> Institute for Government, [How Public Inquiries Can Lead to Change](#), December 2017, p 11.

<sup>63</sup> Pepita Barlow, [‘The lost world of royal commissions’](#), Institute for Government Blog, 19 June 2013.

The Institute for Government noted that the recommendations of the two most recent royal commissions had failed to have “a real impact”.<sup>64</sup> The Government did not accept the recommendations of the Sutherland Commission on long-term care of the elderly (1997–9)—although they were partly adopted in Scotland. A second stage of reform of the House of Lords and the introduction of members elected by the public, as recommended by the Wakeham Commission (1999–2000), has not taken place.

One common area of criticism is the length of time that royal commissions have typically taken to report.<sup>65</sup> Harold Wilson reportedly commented that they “make minutes and waste years”.<sup>66</sup> For royal commissions established after 1945, the most common timeframe taken to report was two to four years.<sup>67</sup> Four commissions set up during this time were wound up without producing a report. Of those that did report, four-fifths took at least one year to produce their first full report, and three fifths took at least two years to produce their first full report.

It has also been suggested that governments have used royal commissions as “a device in order to shelve awkward questions”, perhaps partly because of the length of time taken to report.<sup>68</sup> In her academic survey of royal commissions in British legal history, Barbara Lauriat suggests that this view is not entirely fair. She concludes that “not only are there many cases of resulting legislation, but there are also cases where the existence of a royal commission has popularised an otherwise fairly obscure issue, as with the antivivisection movement”.<sup>69</sup>

Barbara Lauriat also points out there are practical difficulties in trying to assess the policy impact of royal commissions.<sup>70</sup> For example, there may be a considerable time lapse before the government of the day makes any decisions or takes any action. When it does so, it may adopt a royal commission’s recommendations in a modified form, or without citing the royal commission’s report. She argues that these factors make it difficult to evaluate the impact or success of a royal commission.

Royal commissions have also been criticised for a lack of representativeness. Barbara Lauriat noted:

Unsurprisingly, chairmen and members of commissions have historically tended to be drawn from a fairly small pool of elite individuals; even the ‘representative’ commissions have not attempted to recruit cross-sections of society.<sup>71</sup>

Writing in the 1980s, Philip Thomas, a senior law lecturer, suggested that selecting commissioners from a pool “stocked with only the best bred fish” produced “a commission likely to receive evidence

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<sup>64</sup> Lucy Campbell, [‘A royal commission is not the only answer to challenges facing health and social care’](#), Institute for Government Blog, 19 February 2018.

<sup>65</sup> *ibid.*

<sup>66</sup> TJ Cartwright, *Royal Commissions and Departmental Committees*, 1975, p 211, quoted in Philip Thomas, ‘Royal Commissions’, *Statute Law Review*, Spring 1982, vol 1982 no 1, p 41.

<sup>67</sup> Pepita Barlow, [‘The lost world of royal commissions’](#), Institute for Government Blog, 19 June 2013.

<sup>68</sup> [HL Hansard, 4 November 1975, cols 983–6.](#)

<sup>69</sup> Barbara Lauriat, ‘The Examination of Everything’: Royal Commissions in British Legal History’, *Statute Law Review*, April 2010, vol 31 no 1, p 37.

<sup>70</sup> *ibid.*, pp 38–9.

<sup>71</sup> Barbara Lauriat, ‘The Examination of Everything’: Royal Commissions in British Legal History’, *Statute Law Review*, April 2010, vol 31 no 1, p 32.

from certain groups with greater sympathy and understanding than that received from less familiar sources”.<sup>72</sup> He argued that a “community of values between the commission and the ‘insiders’ giving evidence” were among the “institutional features” in royal commissions that undermined their claim to democratic pluralism.<sup>73</sup>

## 6. Recent proposals

Although successive governments have not appointed royal commissions in the last twenty years, support for royal commissions has not disappeared altogether during this time. Politicians and others have continued to call for royal commissions to examine matters of pressing policy concern. For example, in the last couple of years there have been calls in Parliament for royal commissions on subjects such as: local government funding, drugs policy, the Brexit referendum, police funding and the NHS.<sup>74</sup> In July 2019, eight former senior police officers, including Lord Condon, Lord Stevens of Kirkwhelpington, Lord Blair of Boughton and Lord Hogan-Howe (all former commissioners of the Metropolitan Police) called for a royal commission on policing.<sup>75</sup>

In 2017, Lord Saatchi and the Centre for Policy Studies published a report calling for a royal commission on the NHS.<sup>76</sup> This argued that a royal commission was the right format for examining how to make the NHS fit for the 21st century. Lord Saatchi argued that “the national apotheosis of a single-tier, free-at-point-of-use health service [...] has made it almost impossible for political parties to talk about serious reforms”, but “the non-partisanship, authority and expertise of a royal commission would go a long way toward detoxifying some of the best proposals for reform”.<sup>77</sup> He suggested that “the lengthy gestation period of a royal commission, so often a source of criticism” could be a “considerable strength”, because it would incentivise a royal commission to come up with proposals that could be taken forward no matter which party was in government.<sup>78</sup>

Lord Saatchi also believed that a royal commission would provide “an unparalleled national forum” to raise public awareness of “many of the thorniest problems confronting the NHS”.<sup>79</sup> He dismissed the notion that a public inquiry in a different format would necessarily be “shorter, cheaper and more manageable”, pointing out that the Saville Inquiry into Bloody Sunday had cost £195 million and the

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<sup>72</sup> Philip Thomas, ‘Royal Commissions’, *Statute Law Review*, Spring 1982, vol 1982 no 1, pp 46–7.

<sup>73</sup> *ibid*, p 48.

<sup>74</sup> [HC Hansard, 29 October 2019, col 61WH](#); [HC Hansard, 16 July 2019, col 343WH](#); [HL Hansard, 20 May 2019, col 1767](#); [HC Hansard, 26 March 2019, col 67WH](#); House of Lords, ‘[Written Question: Royal Commissions](#)’, 20 February 2018, HL5445.

<sup>75</sup> Lord Condon et al ‘Former Met chiefs lament ‘lawless’ UK’, in ‘[Times letters: Decline in support for Labour under Corbyn](#)’, *Times* (£), 5 July 2019.

<sup>76</sup> Maurice Saatchi, [An NHS Royal Commission: From Fighting Fires to Lasting Settlement](#), Centre for Policy Studies, February 2017; and Maurice Saatchi and Dominic Nutt, [A Royal Commission on the NHS: The Remit](#), Centre for Policy Studies, January 2018.

<sup>77</sup> Maurice Saatchi, [An NHS Royal Commission: From Fighting Fires to Lasting Settlement](#), Centre for Policy Studies, February 2017, 29.

<sup>78</sup> *ibid*.

<sup>79</sup> *ibid*, p 30.

Francis Inquiry into failings in care at the Mid Staffordshire NHS Foundation Trust had taken five years and produced 290 recommendations.<sup>80</sup>

The Government at the time said it had no plans for a royal commission on the NHS.<sup>81</sup> Jonathan Ashworth, Labour's shadow health secretary, suggested that a royal commission would simply "kick the problem into the long grass".<sup>82</sup>

However, Labour did propose the creation of two new royal commissions in its manifesto for the 2019 election: one on developing a public health approach to substance misuse, focusing on harm reduction rather than criminalisation, and one on bringing health (including mental health) and safety legislation up to date.<sup>83</sup>

In response to these proposals, the Institute for Government claimed the "time has passed" to "resurrect this more-or-less extinct process".<sup>84</sup> In addition to the recurrent criticisms that royal commissions take too long and have limited impact in changing policy, the Institute for Government also suggested that after twenty years, there was "scant institutional memory" of how a royal commission operates. It proposed that a parliamentary commission was "a better way to develop policy". It said the 2012 Parliamentary Commission on Banking Standards had demonstrated that a parliamentary commission could work at pace, make use of members' political experience while drawing on expertise from academia and elsewhere, and engage with the public.

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<sup>80</sup> Maurice Saatchi and Dominic Nutt, *A Royal Commission on the NHS: The Remit*, Centre for Policy Studies, January 2018, p 4. The Francis Inquiry was a statutory inquiry held under the Inquiries Act 2005; the Saville Inquiry was held under the Tribunals of Inquiry (Evidence) Act 1921, the predecessor to the 2005 Act (Institute for Government, [How Public Inquiries Can Lead to Change](#), December 2017, pp 37 and 42).

<sup>81</sup> House of Lords, '[Written Question: Royal Commissions](#)', 20 February 2018, HL5445.

<sup>82</sup> Jonathan Ashworth, '[Forget a cross-party approach—only Labour will deliver a long-term plan for the NHS](#)', *Independent*, 10 February 2018.

<sup>83</sup> Labour Party, *Labour Party Manifesto 2019*, November 2019, pp 44 and 62.

<sup>84</sup> Marcus Shephard, '[Royal commissions are outdated and will not deliver real change](#)', Institute for Government Blog, 22 November 2019.

## 7. Royal commissions appointed since 1945

<b>Title of Royal Commission</b>	<b>Date Appointed</b>
Justices of the Peace	June 1946
The Press	April 1947
Betting, Lotteries and Gaming	April 1949
Capital Punishment	May 1949
Taxation of Profits and Income	January 1951
University Education in Dundee	March 1951
Marriage and Divorce	September 1951
Scottish Affairs	July 1952
East Africa	January 1953
The Civil Service	November 1953
The Law Relating to Mental Illness and Mental Deficiency	February 1954
Common Land	December 1955
Doctors' and Dentists' Remuneration	March 1957
Local Government in Greater London	December 1957
The Police	January 1960
The Press	March 1961
The Penal System in England and Wales	July 1964
Reform of the Trade Unions and Employers' Associations	April 1965
Medical Education	June 1965
Tribunals of Inquiry	February 1966
Local Government, England	May 1966
Local Government, Scotland	May 1966
The Examination of Assizes and Quarter Sessions	November 1966
The Constitution	April 1969
Civil Liability and Compensation	March 1973
The Press	June 1974
Standards of Conduct in Government	July 1974
Gambling	February 1976
National Health Service	May 1976
Legal Services	July 1976
Criminal Procedures	December 1977
Criminal Justice	June 1991
Care of the Aged	December 1997
Reform of the House of Lords	February 1999

Source: David Butler and Gareth Butler, *British Political Facts*, 2010, pp 356–7.