

Parliament and the Law

Second Edition

Edited by
Alexander Horne and Gavin Drewry



• H A R T •
PUBLISHING

OXFORD AND PORTLAND, OREGON

2018

Hart Publishing

An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd
Kemp House
Chawley Park
Cumnor Hill
Oxford OX2 9PH
UK

Bloomsbury Publishing Plc
50 Bedford Square
London
WC1B 3DP
UK

www.hartpub.co.uk
www.bloomsbury.com

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

www.isbs.com

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First published 2018

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British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-50990-871-4
ePDF: 978-1-50990-873-8
ePub: 978-1-50990-872-1

Library of Congress Cataloging-in-Publication Data

Names: Horne, Alexander, editor. | Drewry, Gavin, editor.

Title: Parliament and the law / edited by Alexander Horne and Gavin Drewry

Description: [Second edition]. | Oxford ; Portland, Oregon : Hart Publishing, 2018. |
Series: Hart studies in constitutional law | Includes bibliographical references and index.

Identifiers: LCCN 2017050496 (print) | LCCN 2017051675 (ebook) |
ISBN 9781509908721 (Epub) | ISBN 9781509908714 (hardback : alk. paper)

Subjects: LCSH: Great Britain. Parliament—Powers and duties. | Great Britain. Parliament—Privileges and immunities. | Legislative power—Great Britain.

Classification: LCC KD4210 (ebook) | LCC KD4210 .P369 2018 (print) | DDC 342.41/052—dc23

LC record available at <https://lcn.loc.gov/2017050496>

Typeset by Compuscript Ltd, Shannon

Printed and bound in Great Britain by CPI Group (UK) Ltd, Croydon CR0 4YY

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Introduction

ALEXANDER HORNE AND GAVIN DREWRY

THE GENESIS OF the *Parliament and the Law* project was a discussion between Dawn Oliver and the two current editors at the Study of Parliament Group's (SPG) annual conference at Worcester College, University of Oxford, in January 2011.

For those unfamiliar with the work of the SPG, it was originally founded in 1964 by the distinguished political scientist, Bernard Crick, and the senior House of Commons Clerk, Michael Ryle, as a forum in which scholars and officers of the two Houses of Parliament could meet to discuss (under the Chatham House rule) matters of mutual interest to do with parliamentary practice and reform. The SPG is a registered charity: as its name suggests, its core remit is the study of parliaments and parliamentary assemblies, though in practice its interests range much more widely than this, encompassing the broad agenda of government and politics and constitutional reform. It has, over more than 50 years since it was first established, published extensively in books, articles, its own series of papers, and in evidence by its academic members to parliamentary select committees. In 2017, the SPG is still going strong, with over 200 members and a website (www.studyofparliament.org.uk) where various lectures and papers are published. In addition to political scientists and parliamentary officials, the SPG also includes a number of prominent constitutional lawyers. Contributors to this book include members from each of these categories.

How did the present project begin? In 1998, the SPG had commissioned the publication of a collection of essays, entitled *The Law and Parliament* from Dawn Oliver and Gavin Drewry. This book formed part of Butterworth's *Law in Context* series. By 2011, the time seemed ripe to revisit the subject. Matters had moved on significantly—in particular, the parliamentary expenses scandal of 2009 had resulted in a new interest in issues relating to parliamentary privilege, freedom of information and Members' conduct. Accordingly, the first edition of *Parliament and the Law*, edited by Alexander Horne, Gavin Drewry and Dawn Oliver, was published by Hart as part of its *Studies in Constitutional Law* series in 2013. Both books also considered many other thought-provoking issues of the day, including devolution, human rights, sovereignty and wider issues around accountability and modernisation of Parliament. As noted below, events have continued to move, and

are still moving—to an extent and in directions that could not realistically have been foreseen when the first edition was commissioned.

What kind of book is this? As with the previous editions, it is important to note at the outset that it is neither a textbook, nor a comprehensive guide to Parliament, nor indeed is it a treatise on the law-making process. The book's title, containing the usefully versatile conjunction 'and', was carefully chosen to facilitate both flexibility and eclecticism—in approach and in content. Had we, for instance, used a form of words suggestive of a focus on the law 'of' Parliament, we would inevitably have found ourselves trespassing on the well-established territory of the hugely authoritative *Erskine May on Parliamentary Practice* (London, Lexis Nexis, 2011), now in its 24th edition and frequently cited in this volume. Two well-regarded textbooks on Parliament and the legislative process that may also be of particular interest to our readers are Robert Rogers and Rhodri Walters, *How Parliament Works*¹ and Michael Zander, *The Law Making Process*.² The present collection of essays offers expert commentary, on a range of subjects pertaining to Parliament and the law, written from a variety of different perspectives. It is designed as a collaborative and multi-disciplinary work, containing contributions from insiders including lawyers, Clerks and researchers from the House of Commons Parliament and Constitution Centre (based in the House of Commons Library) and critical academic perspectives.

Our book is therefore quite different from and is intended to be complementary to other works like those mentioned above. Like its predecessors, it examines issues that are at the heart of concerns and debates about constitutional reform. It provides a wide-ranging overview of the ways in which the law applies to Parliament and considers how changes to our constitutional arrangements have impacted on Parliament as an institution.

This new edition of our book also follows on swiftly from a complementary title in Hart's *Studies in Constitutional Law* series: Alexander Horne and Andrew Le Sueur, *Parliament: Legislation and Accountability* (2016). That title contained two chapters on the relationship between the UK Parliament and European Union law and a significant amount of material on legislative scrutiny. This explains the omission from the present volume of specific chapters on these important and topical subjects.

The law in this field is fast-moving. Much changed between 1998 and 2013. And the editors of this new edition have again faced the challenge of accounting for further, significant, constitutional change, including: the Scottish referendum of 2014; 'Brexit'; and the unexpected election of 2017. As a consequence, while seven of the chapters in this volume essentially update chapters in the original work (namely the chapters on parliamentary privilege; Members' conduct; select committee powers; Devolution; Parliament and human rights; parliamentary

¹ 7th edn (London, Routledge, 2015).

² 7th edn (Oxford, Hart, 2015).

sovereignty; and, Parliament and the administration of justice); there are also six substantively new chapters on issues of current concern: the governance of Parliament; the relationships between the Houses; English Votes for English Laws (EVEL); Parliament and public legal information; financial control; and parliamentary scrutiny of delegated legislation.

We faced a particular editorial dilemma about what to do about the implications of Brexit, the dauntingly complex and rapidly shifting ramifications of which remain unresolved even as we are writing this Introduction. After much reflection, we came reluctantly to the conclusion that it would be imprudent and impracticable to commission a chapter, or chapters, on Brexit that would, perforce, be shooting at a constantly moving target—and that would inevitably have been overtaken by events by the time that the book went to press. But, at the same time, we could hardly ignore such a high-profile subject that raises so many key constitutional issues about parliamentary sovereignty and the legislative process. So we have encouraged all our contributors to refer in their chapters to any particularly pertinent Brexit-related events and issues, including matters relevantly pertaining to it (such as the *Miller* litigation). As can be seen from the index, there are many such references, scattered throughout the book. The editors of a third edition, a few years hence, may be in a position to tackle the subject more directly, but for the time being we must refer our readers to the continuing flow of blogs, articles and books about Brexit—of which there has been a super-abundance.

Although the chapters should be seen as self-standing essays, they have been cross-referenced where the editors thought that this would be of assistance to readers. The book has been divided into four substantive parts. The first part: ‘Privilege, Exclusive Cognisance and Conduct’ considers how the law (and other rules) apply to both Houses and contains chapters on the operation of parliamentary privilege and the conduct of Members (including electoral offences, lobbying, expenses, and parliamentary standards).

The second part of the book ‘Select Committees and Internal Arrangements’ also focuses on internal issues relating to Parliament. It includes chapters on the governance of the Houses; select committee powers and functions; relations between the two Houses; and, public legal information and law making in Parliament.

Part three of the book, ‘Devolution and the English Question’, contains two chapters looking at complementary matters: how devolution impacts on the UK Parliament and the introduction of a process for EVEL which was utilised in the 2015–17 Parliament. The former has become increasingly important following the referendum on Scottish independence in September 2014. It is rather too early to say what the consequences of Brexit and the 2017 election will be on these two subjects; but we envisage that (as both John McEldowney and Sir Paul Silk have dryly observed) ‘the devolution settlement will inevitably continue to evolve’.

The final part of the book ‘Rights, Justice and Scrutiny’ is wide-ranging and encompasses essays on Parliament and human rights (which focuses on the effectiveness of one of Parliament’s watchdog committees, the Joint Committee on Human Rights); parliamentary sovereignty, Parliament’s responsibility for the

administration of justice (at a time where we have seen three Lord Chancellors in three years); the difficult question of the effectiveness of Parliament's financial scrutiny of the Government; and, Parliament's role in scrutinising delegated legislation (a subject which is likely to prove particularly challenging following Brexit).

The editors have benefited from the kind and invaluable assistance of many members of the SPG—both as contributors and when editing the various chapters. We offer our thanks to all the colleagues who helped us with this task. Particular thanks is owed to Dawn Oliver, who was a previous editor of the original SPG volumes, and Jeff King, both of whom offered invaluable help in getting the project off the ground. We would also like to thank the UK Constitutional Law Group which assisted in organising a joint round table event with the SPG in February 2017, where a number of our authors presented draft papers which eventually became chapters in this volume. Finally, we would like to thank Bill Asquith, Francesca Sancarlo, Anne Flegel and Vicki Hillyard at Hart Publishing for their assistance and support throughout this project.

As with the previous edition, all the royalties from this book will be donated to the SPG to help fund further study of and research into methods of government through Parliament.