



Prifysgol Cymru
Y Drindod Dewi Sant
University of Wales
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BMCX3000: LEGAL SYSTEM

Unit 7: Executive Power

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LEARNING OUTCOMES

- Explain the roles of the Prime Minister, Cabinet ministers and junior ministers
- Describe the functions and legal status of civil servants and government agencies
- Explain the legal status of the Royal Prerogative, including its relationship with statutes and judicial controls
- Describe the political accountability of the executive including collective cabinet responsibility and individual ministerial responsibility
- Describe parliamentary controls on the executive including committees, questions and debates
- Outline the role of the Ministerial Code in ensuring the accountability of ministers, and
- Outline the role of the Parliamentary and Health Service Ombudsman.

SEPARATION OF POWERS

Legislature
(Parliament)

Executive
(Government)

Judiciary
(Courts)

WHO IS THE EXECUTIVE?

- Bodies that deal with government policy and its implementation
- The Government:
 - Prime Minister
 - Cabinet (Ministers)
 - Non-cabinet Ministers
- Civil Service
- Other bodies which implement gov policy





PRIME MINISTER

- Several responsibilities
- Appointment:
 - Monarch's choice
 - Convention dictates
- Leaving – Resign / then party choose next leader.

ACTIVITY 1: THE PRIME MINISTER

- What are the roles and functions of the prime minister?

THE CABINET

- Prime Ministers and senior ministers.
- Monarch appoints on the Prime ministers say so.
- All + Junior ministers and civil servants- help run the country.
- Convention – house of commons / house of lords- member.
- 18-23 ministers



WIDER GOVERNMENT

- Mp's
- Appointed by Crown.
- Limit is 95 in the House of commons.
- 109 can receive pay.
- Grades;
- 1. Cabinet
- 2. Secretaries of State
- 3. Parliamentary Undersecretaries of State



ACTIVITY 2: GRADES OF MINISTER

Match the minister grade with the definition:

- | | |
|--|---|
| <ul style="list-style-type: none">• A: Cabinet Minister• B: Secretary of State• C: Parliamentary Undersecretaries of State | <ul style="list-style-type: none">• 1: Who head major departments. Less important departments are headed by Ministers of State.• 2: Who assist with the parliamentary work of the department, and who retain some administrative responsibility. They are the lowest ranking “junior ministers”.• 3: Who may or may not hold departmental responsibility. They may be Secretaries of State or ordinary ministers. |
|--|---|

MINISTERS OUTSIDE PARLIAMENT

- Outside of parliament member-life peerage, e.g David Cameron
- Can be reshuffled.
- MAFF and DEFRA.
- New departments of the government created when needed.



CIVIL SERVICE



- Day to day functions of gov depts
- Staff employed by gov in civil capacity (not political)
- Administrative, professional, technical and public officials
- Not judges
- Senior Civil Servants Advise Gov Ministers on policy
- Designed to be politically neutral, does not change when Gov changes
- Officers of the Crown, governed by Orders in Council
- Crown vicariously responsible: Crown Proceedings Act 1947

OTHER PUBLIC BODIES

- Public Corporations
- Executive Agency
- Exist to perform regulatory/advisory roles (quangos)
 - quasi-autonomous non-governmental organisations
 - non-departmental public bodies
- Key debate over what should be in public hands



THE CROWN

- 'Not the actual crown, but the monarch who sits as the Head of State
- Each of the three branches of state linked:
 - Judges
 - Government
 - Legislature

PREROGATIVE POWERS

- Residual powers of the Crown
 - curtailed by statute
 - No new prerogative powers:
 - 'In the Case of Proclamations [1611] Chief Justice Coke confirmed that "the King hath no prerogative, but that which the law of the land allows him"
- Scope – Many powers exist:
 - Legislative
 - Executive
 - Judicial Prerogative- Operate in the Crowns name. Case examples R V R 1991.
- Historically the monarch personally: nowadays, most powers transferred to government ministers



CONTROLLING THE PREROGATIVE

- Powers derived from common law – can be displaced by statute, see. ***Attorney-General v De Keyser's Royal Hotel* [1920]**
- Legal control:
 - Prerogative powers highly discretionary and wide
 - Minister's acts subject to Parliamentary scrutiny
 - Judicial control increasing important: e.g. *R (on the application of Miller) v The Prime Minister; Cherry and Others v Advocate General for Scotland* [2019]
 - Some powers not justiciable: *Prime Minister and Others (Campaign for Nuclear Disarmament)* [2002]

THE MONARCH

- Right to be consulted, to encourage and warn government ministers
- In discharge of function, monarch receives cabinet papers and minutes and has weekly audience with PM
- May influence appointments made in his name, and may influence foreign office matters
- Influence difficult to evaluate because conversations between monarch and ministers are confidential



HOLDING THE EXECUTIVE TO ACCOUNT



COLLECTIVE CABINET
RESPONSIBILITY.



CABINET SOLIDARITY.



CABINET
CONFIDENTIALITY.

MINISTERIAL RESPONSIBILITY

- Minister personally responsible and accountable for actions of their departments (in their name)
- Must defend actions of departments:
 - in Parliament (questions)
 - Select committee
- Minister may resign as a mark of responsibility for errors
- Accountable but not responsible for wrongdoing of civil service
 - Not responsible where not aware of actions of civil service and which disapproves



RESIGNATION

- Rare for departmental failures.
- Reluctant to resign.
- Questioning individual responsibility.

HOLDING MINISTERS TO ACCOUNT

Select
committees

Debates

Parliament
questions

MINISTERIAL CODE

- Has to be followed by my ministers, but not legally binding
- Ministers who breach expected to resign
- Includes principles of collective and individual responsibility
- A minister who knowingly misleads Parliament is expected to resign: should disclose as much information to Parliament and the public as possible
- Addresses financial interests of ministers
- Enforced by the Independent Adviser on Minister's Interests

THE PARLIAMENTARY AND HEALTH SERVICE OMBUDSMAN

- PHSO role is to safeguard citizens against the abuse or misuse of administrative power.
- Failure to perform duties: maladministration not merits
 - bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness. *Local Commissioner for Administration, ex parte Bradford Metropolitan City Council* [1979]

ACTIVITY 3: HOLDING TO ACCOUNT

- In your groups, consider the different mechanisms available to hold ministers to account
 - Are the mechanisms which exist adequate?
 - Which of the mechanisms is the most effective in holding ministers to account?
 - Are other enforcement mechanisms needed?

KNOWLEDGE CHECK (1)

- Where a prerogative power and an Act of Parliament conflict, which statement below is correct?
 - a. The Act of Parliament must be followed because of the doctrine of parliamentary sovereignty.
 - b. The prerogative power must be followed because the royal prerogative prevails over statutes.
 - c. The courts may choose to apply the prerogative power or the Act of Parliament.

KNOWLEDGE CHECK (2)

- Which of the following statements about the Parliamentary and Health Service Ombudsman (PHSO) is correct?
 - a) The PHSO will only investigate complaints by individuals.
 - b) The PHSO will investigate complaints against central government departments and local authorities.
 - c) If the recommendations of the PHSO are not accepted, it can make a special report to Parliament.
 - d) The PHSO can investigate maladministration and, in limited circumstances, the merits of a decision.

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KNOWLEDGE CHECK (3)

- How are government ministers held to account?
 - a) Being fired
 - b) Debates
 - c) Questions
 - d) Select committees

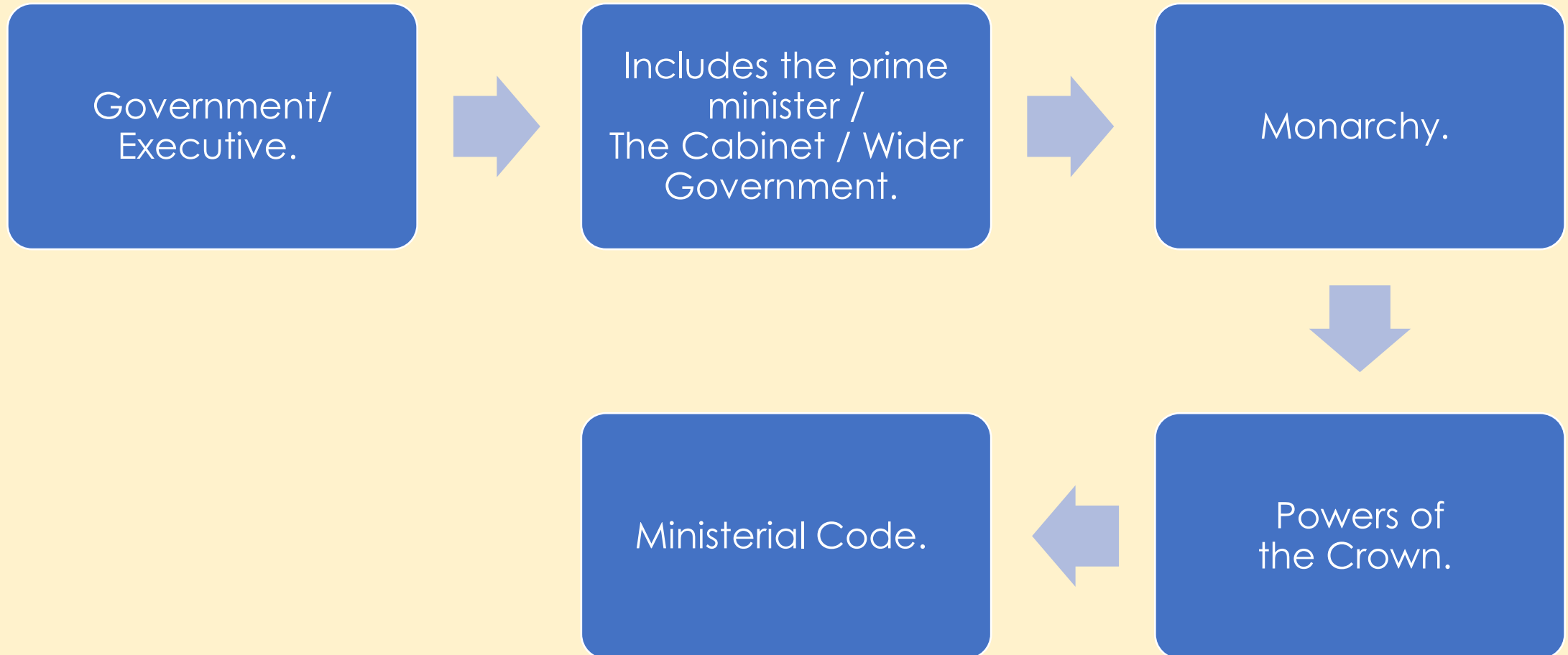
KNOWLEDGE CHECK (4)

- What does the government include?
 - a) The prime minister
 - b) The Cabinet
 - c) Wider government
 - d) Civil service
 - e) Public corporations
 - f) Executive agencies

KNOWLEDGE CHECK (5)

- Who is the crown?
 - a) The Prime minister
 - b) The Cabinet
 - c) The Monarchy
 - d) Parliament

SUMMARY



THANK YOU!

Any Questions?