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Fact sheets on Britain

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The Legal Systems

The law administered by courts in Britain derives from: legislation made by or under the authority of Parliament; unwritten or 'common' law which has been built up in the main from the numerous decisions of the courts; and, since Britain's accession to the European Community, Community law, the impact of which is essentially confined to economic and some social matters. Legislation takes precedence over common law, for Parliament is the supreme law-making body in Britain; Community law, in the event of conflict, takes precedence over domestic law.

Although Britain is a unitary State it does not have a single body of law applicable within its boundaries. England and Wales on the one hand and Scotland on the other have their own distinctive legal systems and, although the existence of a single Parliament for Great Britain since 1707, common opinions on broader issues, and a common court of appeal in civil cases have resulted in substantial identity at many points, differences in legal practice and procedure remain. In Northern Ireland the structure of the courts and legal practice and procedure have closely resembled those of England and Wales for centuries; enacted law, however, derives in certain spheres from a different source, and may differ in substance from that which operates in England and Wales. A large volume of modern legislation, particularly in the social field, nevertheless applies throughout Britain.

A feature common to all systems is the distinction drawn between criminal law (concerned with wrongs against the community as a whole) and civil law (concerned with the rights, duties and obligations of individual members of the community between themselves).

Criminal Law

Every individual in Britain has a right to his or her personal liberty and cannot be arrested except in pursuance of criminal justice or on certain other lawful grounds: for instance, for contempt of court, or in cases of proved insanity. Arrest may be either by warrant issued by a judicial authority on

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sworn information laid before it or, in more serious cases, without warrant, provided that the police officer making the arrest has good reason to suspect that a crime has been committed and that the person he is arresting committed it.

When anyone has been arrested he must be brought before a magistrate as soon as possible and publicly charged with the offence of which he is accused. Detention without a charge being preferred is unlawful, prohibited under the Habeas Corpus Act 1679, and under Scots law of similar effect. Unless the offence for which he was arrested is a serious one, the police must release the suspect on bail if his case cannot be heard within twenty-four hours. Magistrates also have the power to grant bail.

Prosecution is a discretionary matter which in practice normally rests with the police, except in Scotland where there are public prosecutors. All criminal trials are accusatorial: they take the form of a 'contest' between the Crown and the accused person.

The criminal law of Britain presumes the innocence of the accused until his guilt has been proved by the prosecution 'beyond reasonable doubt'. In the conduct of criminal cases, therefore, the prosecution is given no advantage, apparent or real, over the defence. A suspect cannot be compelled at any time to answer the questions of the police; when he has been charged with a specific offence he may no longer be questioned about it—save in exceptional circumstances, to prevent or minimise further harm or loss to anyone or to clear up some ambiguity in a previous statement. There is no private interrogation before an examining magistrate prior to public trial.

Anyone accused of an offence has the right to employ a legal adviser to conduct his defence. If he cannot afford to pay, he may be granted legal aid from public funds (free or on a contributory basis according to his means) at the discretion of the court. A defendant in a murder case must be granted legal aid if he cannot afford to pay. Those who are 'remanded in custody' to await trial may be visited in prison by their legal advisers to ensure that their defence is properly prepared. Under English law restrictions are placed on press reporting of committal proceedings.

Criminal trials are held in open court, and the rules of evidence (highly technical rules, concerned with the proof of facts) are strictly applied.

During a trial under English law, for example, the defendant has the right to hear and to cross-examine (normally through his lawyer) all witnesses for the prosecution, and to call witnesses on his own account. The defendant cannot himself be questioned during the trial unless he consents to be sworn as a witness in his own defence; even then the right to cross-examine him is limited by law to exclude inquiry into his character or into past offences not relevant to the charge on which he is being tried. Confessions by the accused are admissible as evidence if they have been made upon oath during the course of previous judicial proceedings; in any other circumstances they are inadmissible, unless it can be proved that they were made voluntarily. Answers given to police questions before trial are likewise inadmissible, unless the accused has been warned that what he says may be taken down and used in evidence.

In criminal trials by jury the judge determines questions of law, sums up the evidence for the jury, and acquits the accused or passes sentence; the jury determines the question of guilt or innocence. A defendant acquitted of a charge can never be tried on that charge again.

Civil Proceedings

Civil proceedings are initiated by the aggrieved party and no preliminary inquiry as to the authenticity of the grievance is required. Because a civil action is a private matter, it can usually be abandoned or settled before it comes to court (except, in England and Wales, for matrimonial cases which, whether defended or undefended, must be heard before a judge), and, in fact, most civil cases are settled in this way. When a civil action is heard before a judge, the judgment given is enforceable through the authority of the court.

Administration of Justice

There is no Minister of Justice in Britain. In England and Wales responsibility for administrative matters rests partly with the courts themselves; partly with the Lord Chancellor who is concerned with the composition of all courts, with aspects of court procedure, and with everything relating to civil law; and partly with the Home Secretary who is concerned with the prevention of crime, the apprehension of offenders and virtually the whole of the penal system.

In Scotland responsibility for these matters is vested in the Secretary of State. In Northern Ireland the administration of the higher courts is a matter for the United Kingdom Parliament; the Northern Ireland Office is responsible for the staffing and general organisation of the county and petty sessions courts. The highest judicial appointments in Britain are made by the Crown on the recommendation of the Prime Minister.

Law Officers of the Crown

The Attorney General and the Solicitor General—the Law Officers of the Crown for England and Wales—are the Government's principal legal advisers and represent the Crown in appropriate domestic and international cases. Both are ministers and change with the Government. The Attorney General has a variety of civil law functions and ultimate responsibility for the enforcement of the criminal law; the Director of Public Prosecutions, a civil servant and an eminent lawyer, is subject to his superintendence.

The Law Officers of the Crown in Scotland are the Lord Advocate and the Solicitor General for Scotland, both also Government ministers. They are its chief advisers on Scots law questions and are the principal representatives of the Crown for the purposes of litigation in Scotland. The Lord Advocate is concerned with questions of legal policy and administration and is responsible for the public prosecution of crimes.

Personnel of the Law

The operation of the law requires the co-operation of judges with whom, aided in certain cases by juries, the decision of disputed cases rests; of the officers of the courts who have general or specialised functions of an administrative (and sometimes of a judicial) nature in the courts; and of the barristers and solicitors who represent the interests of the parties to a dispute.

Judges

Nearly all judges are appointed by the Crown, acting on the advice of Government Ministers. Lay magistrates are appointed on behalf of the Crown, in England and Wales, by the Lord Chancellor and in Scotland by the Secretary of State. In Northern Ireland county court judges and resident magistrates are appointed on the advice of the Lord Chancellor. Judges do not engage in politics (except for the Lord Chancellor who is a leading member of the Government as well as the head of the judiciary); apart from lay magistrates ('justices of the peace'), they are appointed mainly from practising barristers or advocates and neither their training nor their career is in any way dictated by the State. Lay magistrates need no legal qualifications, but undergo a course of basic training. Once appointed, judges normally hold office for life or until statutory retiring age.

Juries

Trial by jury is the normal procedure in Britain when serious crimes are being tried in a superior court. Civil actions, on the other hand, are more often heard without a jury, although those involving reparation for personal injury may be (and, in Scotland, usually are) heard with one if either party to the action insists.

Juries in criminal cases comprise 12 people (15 in Scotland), but they are usually smaller in civil proceedings.

A jury is completely independent of both the judiciary and the executive; once it has been sworn it is protected by law from outside interference of any kind. In criminal trials involving a jury, the jury alone decides the issue of innocence or guilt. In English law the jury's verdict ('guilty', 'not guilty' or 'not guilty by reason of insanity') need not be unanimous—in certain circumstances majority verdicts of (normally) ten to two may be accepted by the court. In Scotland a jury may return verdicts of 'not guilty' or 'not proven' (both result in acquittal) or 'guilty'; the verdict may be by a simple majority.

In civil actions involving a jury, the jury is responsible not only for deciding questions of fact but also the amount of damages to be awarded to the injured party.

Jury service in England, Wales and Northern Ireland is determined by a qualification based on the electoral register. Service in Scotland is based on a low property qualification. People following certain occupations are ineligible or entitled to claim excusal, and some people with criminal records are disqualified.

The Legal Profession

The legal profession is divided into two branches: solicitors and barristers (called advocates in Scotland). Each performs distinct duties—solicitors undertake legal business for lay clients, while barristers advise on legal problems submitted through solicitors and act as counsel in the higher courts—though certain functions are common to them both.

Royal Commissions are examining the provision of legal services.

Courts of Law

Criminal Courts in England and Wales

Courts which deal predominantly with criminal actions include:

1. Magistrates' courts, which try most of the lesser offences (about 98 per cent of all criminal cases) that may be tried without a jury, and also determine if there is sufficient evidence to justify the committal of the person charged with an offence for trial in a higher court.

2. The Crown Court, which has jurisdiction throughout England and Wales, is served by High Court judges, Circuit judges and Recorders (the last being part-time), and is able to sit whenever it is needed, anywhere in the country. Court sittings take place at three kinds of centre: first-tier centres at which the full range of civil and criminal cases is taken by High Court and Circuit judges; second-tier centres which differ from the first only in that no civil High Court work is taken there; and third-tier centres which deal with criminal cases only and are normally served only by Circuit judges and Recorders. The allocation of cases among the different levels of judge in the Crown Court is governed by directions

issued by the Lord Chief Justice with the concurrence of the Lord Chancellor.

3. The Court of Appeal (Criminal Division) which hears appeals by persons convicted and sentenced by the Crown Court.

Civil Courts in England and Wales

The most important civil courts are:

1. Over 300 county courts, which deal with the great bulk of civil litigation (magistrates' courts also have some civil jurisdiction). Their jurisdiction includes nearly all common law actions within specified financial limits. For cases involving small claims there are special facilities for arbitration and simplified procedures.

2. The High Court of Justice, which sits in three divisions: the Chancery Division, the Family Division, and the Queen's Bench Division. The High Court's jurisdiction is vested in all the divisions but some matters are assigned to a particular division. Although the judges can sit in any division, they are, in fact, assigned to a particular one. The High Court hears both original cases and appeals in civil matters. (Nowadays it is rarely concerned with criminal trials in the first instance, but its divisional courts hear appeals on points of law from magistrates' courts).

3. The Court of Appeal (Civil Division), which hears civil appeals from the High Court and the county courts.

Courts in Scotland

The main Scottish courts are:

1. The lay district courts, where minor criminal cases are tried without a jury.

2. Sheriff courts, where both civil and criminal cases are heard. The latter may be heard with or without a jury, depending on the nature of the offence.

3. The Court of Session, which is the highest civil court in Scotland. It is divided into two parts: the Inner House, which is mainly an appeal court, and the Outer House, in which original cases are tried.

4. The High Court of Justiciary, which is the supreme criminal court and hears both original cases and appeals.

Courts in Northern Ireland

Both civil and criminal courts in Northern Ireland are similar to those in England and Wales, with minor modifications to suit a small community. The lower courts are the county courts which exercise both criminal and civil jurisdiction, and the courts of summary jurisdiction (petty sessions). The higher courts consist of the Supreme Court of Judicature (comprising the High Court and the Court of Appeal) and the Court of Criminal Appeal.

The House of Lords

The House of Lords is the final appeal court for all civil cases in Britain and for all criminal cases in England, Wales and Northern Ireland.

Special Courts

In England and Wales and in Northern Ireland there are juvenile courts to hear cases involving people under the age of 17 brought before them in criminal or care proceedings, and to deal with applications for the adoption of children. These courts are specially constituted magistrates' courts which sit either in a different room or building from that in which other courts are sitting, or at a different time. In Scotland, children in need of compulsory measures of care are dealt with at children's hearings—tribunals of unpaid lay men and women appointed by the Secretary of State for each local authority area.

Other special courts include administrative tribunals (about 2,000), usually set up under powers conferred by Act of Parliament to adjudicate in matters in which the individual finds himself at issue with the administration; courts martial, where members of the armed forces are tried for offences under military law; and coroners' courts (in England, Wales and Northern Ireland only), where inquests are held on people who have died in an apparently violent or unnatural way. The Criminal Injuries Compensation Board provides *ex-gratia* payments of compensation (some £6.4 million in 1975-76) to victims of crimes of violence in Great Britain or on a British vessel or aircraft.

by a solicitor on any legal matter, and aid in both criminal and civil court proceedings. Independent law and advice centres and Citizens' Advice Bureaux also help members of the public who have legal (and other) problems.

Law Reform

In England and Wales the Lord Chancellor's Law Reform Committee reviews those aspects of the civil law as are from time to time referred to it, and the Home Secretary's Criminal Law Revision Committee undertakes similar duties in the field of criminal law. There are also two Law Commissions—one for England and Wales and one for Scotland—consisting of members of the judiciary and the legal profession and academic lawyers at the universities. The commissions make proposals to the Government for the examination of the law and for its revision where necessary to bring up to date.

For fuller information see COI reference documents, *The Legal Systems of Britain*, R6000, *Criminal Justice in Britain*, R5984, and *Human Rights in the United Kingdom*, R5625.

Legal Aid

The State legal aid schemes help people of limited means to meet the cost of any work normally done by a lawyer. This includes advice and assistance

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