



THE CROWN & THE UK

**...“To be or not to be?”
That is the question.**

**The answer lies in the hands of politicians.
But with so much fake news around, here
are some legal facts to help give better
understanding of the underlying issues.**

CHAPTER ONE: WHAT IS THE UK?

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1. The United Kingdom of Great Britain & Northern Ireland

The United Kingdom of Great Britain and Northern Ireland – or the ‘UK’ – comprises *three* legal jurisdictions:

- (1) ■ England + Wales
- (2) ■ Scotland
- (3) ■ Northern Ireland

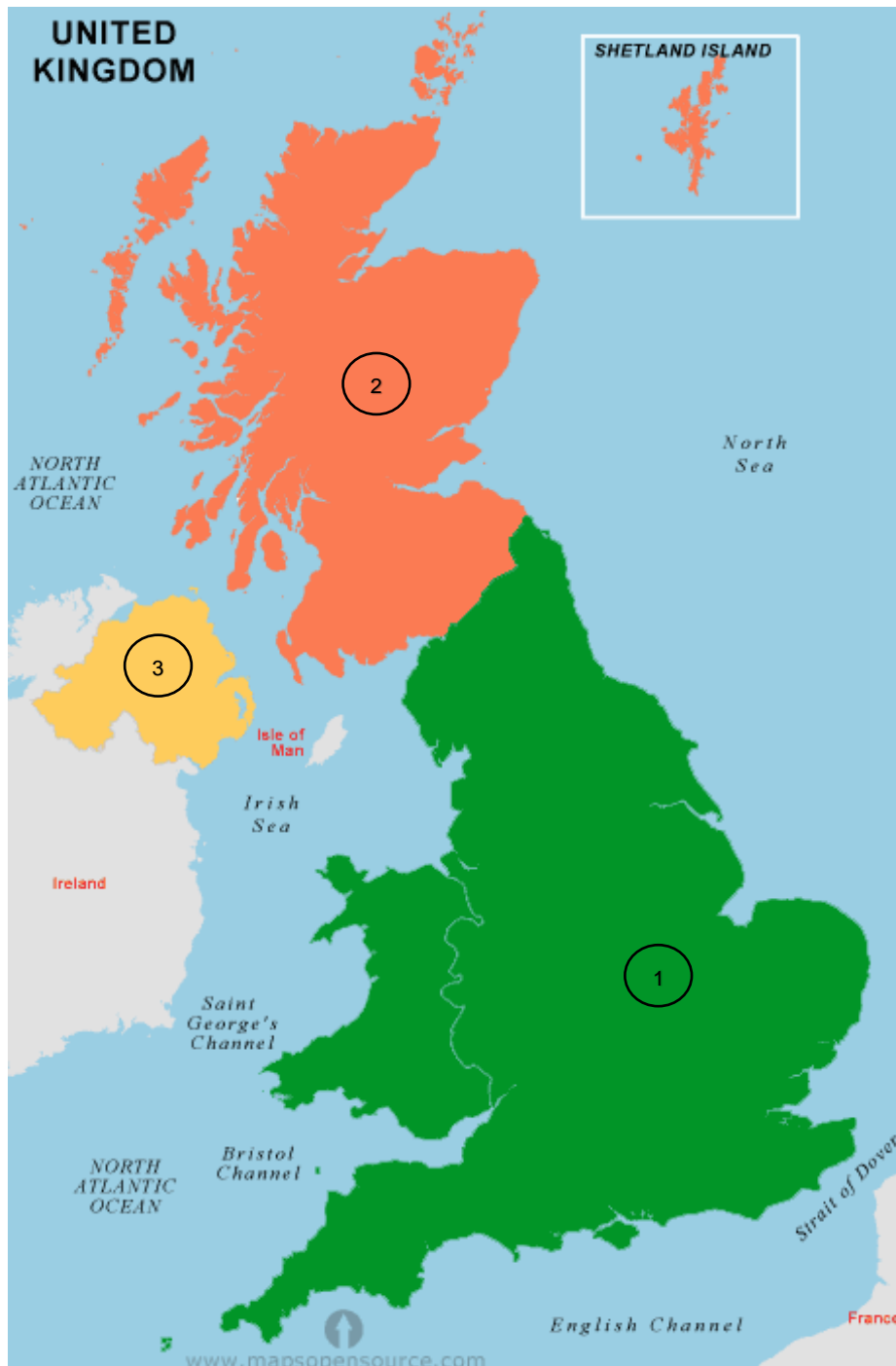


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To summarise the UK's creation:

1536: Wales was *incorporated* into **England**.

1707: England (with Wales incorporated) was *united* with Scotland to form **Great Britain**.

1801: Great Britain was *united* with the whole of Ireland to form the **United Kingdom of Great Britain and Ireland**.

1927: Southern Ireland became independent, so the UK was given its current official title of the **United Kingdom of Great Britain and Northern Ireland**.

The UK is a **realm**, because its territories are possessed by a sovereign Crown. However, 'realm' is now an outdated term and is not used to describe the UK in legislation. The monarch's 'Great Seal of the Realm'¹ is also called the 'Great Seal of the United Kingdom', or simply the 'Great Seal'².

The Charter of the United Nations 1945 sets out the **states** (not 'nations') that are eligible for membership³. The 'United Kingdom of Great Britain and Northern Ireland' is included under Article 3⁴.

The UK also falls within the definition of a **state** as set out in Article 1 of the Montevideo Convention 1933⁵:

'The State as a person of international law should possess the following qualifications:

a) a permanent population;

b) a defined territory;

c) government; and

d) capacity to enter into relations with the other states'

Since 1973, the UK has been a **Member State** of the European Union⁶. As widely publicised, it held a referendum on its membership in June 2016⁷.

The distinction between politics and the law helps explain why implementing the 2016 referendum result is facing huge difficulties.

The UK Supreme Court has confirmed that this 'Brexit' referendum was advisory only, with political but not *legal* force⁸.

¹ <https://www.royal.uk/great-seal-realm> retrieved 20-06-2018.

² Crown Office Act 1877, Section 7 Definitions: "Great Seal" means the Great Seal of the United Kingdom. <http://www.legislation.gov.uk/ukpga/Vict/40-41/41/section/7/enacted> retrieved 10-09-2017.

³ Charter of United Nations 1945, Articles 3 and 4 <http://www.un.org/en/charter-united-nations/> retrieved 12-09-2017.

⁴ Because it participated in the UN Conference at San Francisco and signed the 1 January 1942 agreement, both cited in Article 3.

⁵ Montevideo Convention On Rights And Duties Of States (inter-American); 26 December 1933 http://avalon.law.yale.edu/20th_century/intam03.asp retrieved 10-09-2017.

⁶ Since the 'Entry Date' of 1 January 1973, under the European Communities Act 1972 Schedule 1 Part II. <http://www.legislation.gov.uk/ukpga/1972/68/contents> retrieved 10-09-2017.

⁷ The United Kingdom European Union membership referendum, held on 23 June 2016.

⁸ R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5, paragraph 124.

Politically, the UK's government is abiding by the overall referendum result: 51.9% voted to leave the EU.⁹

Legal reality is that the UK is not one country.

No universally agreed definition of 'country' exists, but most presume that one country has one legal jurisdiction. Yet that is not the case with the UK, with its three jurisdictions. The **majority** of these *legal* jurisdictions, voted to remain:

- Scotland (62%¹⁰); and
- Northern Ireland (55.8%¹¹).

The only jurisdiction outside the UK allowed to take part in the referendum – the **UK Overseas Territory** (UKOT) of Gibraltar – also voted to remain, by 96%¹².

But, as the eminent constitutional lawyer, Professor A V Dicey confirmed in 1914¹³, the Parliament Act 1911¹⁴ (still in force today):

*“enables a majority of the House of Commons to resist or overrule the will of the electors or, in other words, of the nation”.*¹⁵

The example that Dicey gives, is of the UK Parliament's imposition of Home Rule in Ireland (see 5.5).

Dicey also analyses advantages and disadvantages of referendums. He states “*no effort has been made by me to exhaust the arguments*”¹⁶. But they are definitely worth reading!

⁹ “Analysis of the EU Referendum results 2016” Commons Briefing Paper CBP-7639 dated 29-06-2017 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7639#fullreport> retrieved 09-09-2017.

¹⁰ Ibid at page 5.

¹¹ Ibid at page 5.

¹² Statement by the Chief Minister to the Gibraltar Parliament, 24 June 2016 at page 1 <https://www.gibraltar.gov.gi/new/sites/default/files/press/2016/Topical%20Speeches/20160624%20Statement%20by%20The%20Chief%20Minister%20to%20the%20Gibraltar%20Parliament.pdf> retrieved 09-09-2017.

¹³ Professor Albert Venn DICEY, *Introduction to the study of the law of the constitution*, London: Macmillan and Co., Limited, 8th edition, p. liii. <https://archive.org/stream/cu31924030503720#page/n55/mode/2up/search/resist+or+overrule> retrieved 09-09-2017.

¹⁴ Parliament Act 2011, as amended by the Parliament Act 1949 <http://www.legislation.gov.uk/ukpga/Geo5/1-2/13/contents> retrieved 12-09-2017.

¹⁵ A.V. DICEY, *op. cit.*, p. liii <https://archive.org/stream/cu31924030503720#page/n55/mode/2up/search/will+of+the+electors> retrieved 09-09-2017.

¹⁶ Ibid pages xci - xcix <https://archive.org/stream/cu31924030503720#page/n93/mode/2up/search/exhaust+the+arguments> retrieved 09-09-2017.

2. English, Anglo-Saxon or British?

Just as there are no longer Gauls or Visigoths, 'Anglo-Saxon' does not describe any modern-day people. Nor their laws.

But that does not mean that we should forget the importance of the Angles or the Saxons... or the Jutes!

In the early 5th century, German and Danish people (including Saxons, Angles and Jutes) were invited to Britain by its then King. It was intended that they fight off the Scots (in Ireland) and Picts (in Scotland, then known as Pictland). But they proceeded to take over what is now known as **England** – then known as the land of the Angles: 'Aengla Land'.

As David Starkey explains:

*"We tend to think of the Norman Conquest as the turning point in the history of England. But the Saxon Conquest was even more important, since **it created both the reality and the idea of England itself** [emphasis added]. Indeed, it is scarcely possible to exaggerate the scale of the Saxon incursions. Perhaps 200,000 people flooded into a native population which by then had been reduced by raids, famine and disease to less than two million. Proportionately, it was the largest immigration that Britain has ever known".¹⁷*



But that is England only. When talking about the *United Kingdom*, references to the 'will of the *people*' are legally inaccurate (and politically dangerous). That is why Dicey instead referred to the 'will of the *electors*'¹⁵.

¹⁷ David STARKEY, *Crown and country: a history of England through the monarchy*, London: HarperPress, 2010, p.19.

So who are the UK's electors? Understanding the answer to this question is not easy because of unclear terminology:

- **Britain** once meant 'Great Britain'. Yet it is often used to mean 'the UK'.
- A citizen of the UK is called **British**. Did no one think to invent a new term when the UK came into existence in 1927... or maybe 'UKish' was not popular?

The definition of 'British subject' in the British Nationality and Status of Aliens Act 1914 included '*Any person born within His Majesty's dominions and allegiance*'.¹⁸

The word 'citizen' was first introduced into the law in 1949¹⁹. Under Part 1, Section 1 (entitled 'British nationality by virtue of citizenship'):

Section 1(1): '*...a **citizen of the United Kingdom and Colonies**... shall by virtue of that citizenship have the status of a British subject*'.

Section 1(2): '*...the expression "British subject" and "Commonwealth citizen" **shall have the same meaning***'.

A BBC article explains this new approach:

*"In the aftermath of World War Two, definitions of British nationality were re-defined, often to encourage colonial residents to come to Britain to help with post-war reconstruction"*²⁰.

Since 1983²¹, very few people fall into the category of '*British subjects*' (as defined in the 1981 Act)²². They include, for example, a person who was both a citizen of the Republic of Ireland and a British subject on 31 December 1948²³.

It is more accurate to refer to the UK's electors as '*British nationals*', given the six current categories²⁴:

1. British citizenship.
2. British overseas territories citizen.
3. British overseas citizen.
4. British subject.
5. British national (overseas).
6. British protected person.

¹⁸ The British Nationality and Status of Aliens Act 1914, Section 1(1)(a) <http://www.legislation.gov.uk/ukpga/Geo5/4-5/17/contents/enacted> retrieved 02-09-2017.

¹⁹ British Nationality Act 1948; in force from 1 January 1949. Part I, Section 1 (2): <http://www.legislation.gov.uk/ukpga/Geo6/11-12/56/contents> retrieved 10-09-2017.

²⁰ http://www.bbc.co.uk/history/familyhistory/bloodlines/migration.shtml?entry=british_nationality_act&theme=migration

²¹ When the British Nationality Act 1981 came into force (except for Section 49); *ibid.* Sections 53(2) and (3).

²² *Ibid* Part IV section 30 to 35 and see <https://www.gov.uk/types-of-british-nationality/british-subject> retrieved 22-06-2018.

²³ *Ibid* Part IV section 31 (2).

²⁴ <https://www.gov.uk/types-of-british-nationality> retrieved 02-09-2017.

During her time in office as Home Secretary, from 2010 to 2016, Theresa May introduced a series of measures to reduce immigration numbers. As she stated in 2012: “*the aim is to create here in Britain a really hostile environment for illegal migration.*”²⁵

The Immigration Acts of 2014 and 2016 were passed to require additional paperwork to be produced to be able to work²⁶, rent²⁷ and drive²⁸. Those without proof of being in the UK legally, were deported²⁹.

The ‘Windrush’³⁰ scandal – that came to light at the beginning of 2018 – revealed that British nationals have been illegally detained and deported under this ‘hostile environment’ policy.³¹ The proof required by the 2014 and 2016 Acts for the Windrush generation – landing cards (‘registry slips’) – having been destroyed in 2010³².

Over 5,000 Windrush cases have been opened so far³³. Up to 57,000 could be.³⁴

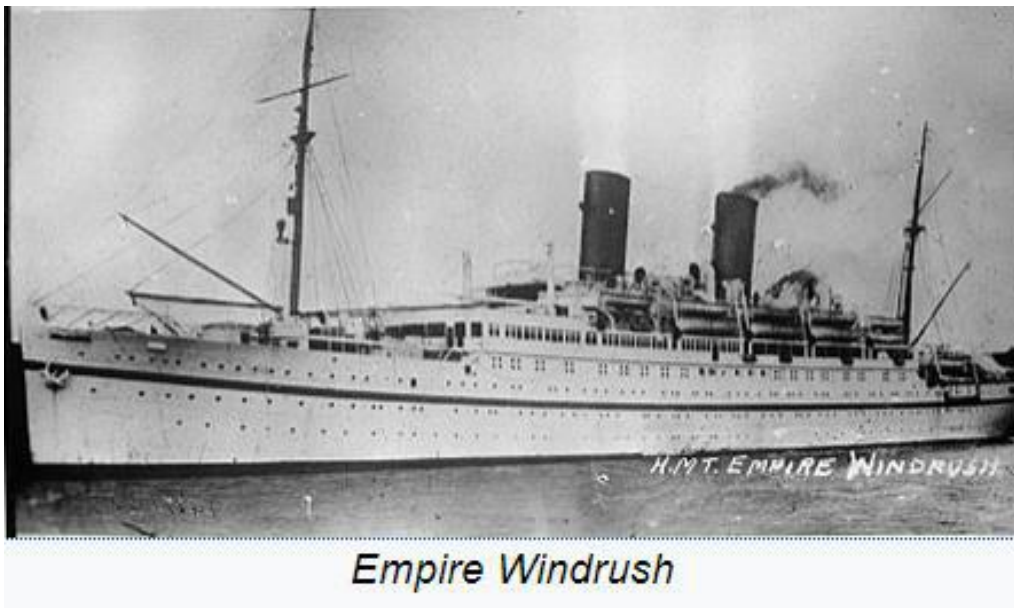


Photo taken by Royal Navy official photographer [Public domain], via Wikimedia Commons.

²⁵ Daily Telegraph article of 25-05-2018 by James Kirkup and Robert Winnett: <https://www.telegraph.co.uk/news/uknews/immigration/9291483/Theresa-May-interview-Were-going-to-give-illegal-migrants-a-really-hostile-reception.html> retrieved 06-07-2017.

²⁶ Immigration Act 2016, Section 34: <http://www.legislation.gov.uk/ukpga/2016/19/section/34/enacted> retrieved 06-07-2018.

²⁷ Immigration Act 2014, Section 22 “Persons disqualified by immigration status not to be leased premises”: <http://www.legislation.gov.uk/ukpga/2014/22/section/22/enacted> retrieved 06-07-2018.

²⁸ Ibid, Section 46 “Grant of driving licences: residence requirement”: <http://www.legislation.gov.uk/ukpga/2014/22/section/46/enacted> retrieved 06-07-2018.

²⁹ BBC interview referred to in BBC article by Home Affairs Correspondent, Dominic Casciani of 10 October 2013 <https://www.bbc.com/news/uk-politics-24469584> retrieved 19-06-2018.

³⁰ Named after the ship ‘HMT Empire Windrush’, that arrived in the UK on 22 June 1948.

³¹ Law Gazette article of 30-04-2018 by Zeena Luchowa, solicitor at Laura Devine Law who has given the author invaluable insight on this topic: <https://www.lawgazette.co.uk/commentary-and-opinion/time-to-end-the-hostility/5065890.article> retrieved 05-07-2018.

³² Channel 4 News ‘FactCheck’ article of 24-04-2018 C by Georgina Lee: ‘Who destroyed the Windrush landing cards?’ <https://www.channel4.com/news/factcheck/factcheck-who-destroyed-the-windrush-landing-cards> retrieved 06-07-2018.

³³ The Guardian article of 25-05-2018 by Jamie Grierson, Home Affairs Correspondent: <https://www.theguardian.com/uk-news/2018/may/25/number-of-windrush-cases-passes-5000-mark>; retrieved 05-07-2018

³⁴ <http://migrationobservatory.ox.ac.uk/commonwealth-migrants-arriving-1971-year-ending-june-2017/> retrieved 06-07-2018.

3. Wales: incorporated into England and not a principality

The current estimated population of Wales is 3.1 million³⁵.

Nearly 20% of the population (600,000 people) speak Welsh (Cymraeg) that dates back to the 6th century. The Welsh Language Act 1993, Government of Wales Act 1998 and Welsh Language (Wales) Measure 2011³⁶ provide that Welsh and English languages should be treated equally in Wales. English remains the official language³⁷.

For many purposes, Wales is treated as a country. However, Wales does not have an independent legal system³⁸. Does it need to have a legal system to be a country? No legal definition helps.

England and Wales as a jurisdiction can be better understood from a brief glimpse at history.

The territory of Wales once comprised various small kingdoms. In 1066, Norman 'Marcher Lords' or 'Marchers' (in Norman French 'marquis') invaded Wales. Their land, in the East and South of Wales, became known as "the Marches".

Welsh law was introduced by Hywel Dda (who reigned 942–950), when he ruled much of Wales. These laws continued in force until 1282³⁹. On 11 December of that year, the ruler of Wales, Llewelyn the Last – refusing to give Wales to Edward I of England (who reigned 1272–1307) – was killed at the Battle of Orewin Bridge⁴⁰. And Wales lost its independence.

Having conquered Wales, Edward I ruled it and applied English law. However, Wales was only legally incorporated into the jurisdiction of England during the reign of Henry VIII (who reigned 1509–1547):

- (1) **The Laws in Wales Act 1535**⁴¹: 'An Acte for Laws & Justice to be ministred in Wales in like fourme as it is in this Realme'.
- (2) **The Laws in Wales Act 1542**⁴²: 'An Acte for certaine Ordinaunces in the Kinges Majesties Domyinion and Principallitie of Wales'

These **Acts of Union**, as they are sometimes called, came into force [receiving Royal assent] in 1536 and 1543 respectively. The result was one legal jurisdiction: England and Wales.

Only part of Wales had ever been a principality. This was from 1216 until **1536**, when the 1535 Act of Union came into Force. The title 'Prince of Wales', which was used by the leader of this principality, was taken by Edward I of England, when he conquered Wales. He vested the title in his eldest son⁴³. This tradition of transferring the title 'Prince of Wales' to the English and then British monarch's eldest son has continued to this day (except in the case of Edward II, the eldest son of Edward I).

³⁵ <http://gov.wales/statistics-and-research/mid-year-estimates-population/?lang=en> retrieved 27-06-2018.

³⁶ Approved by 'Her Majesty in Council' on 9 February 2011. Gives Welsh 'official status' in Wales.

³⁷ European Charter for Regional or Minority Languages (ECRML) – adopted as a convention in 1992; in force on 1 March 1998 to promote historical regional or minority languages (RMLs) of Europe. The UK declared that Part III of the Charter applies to Welsh, Scottish-Gaelic and Irish ("Measures to promote the use of regional or minority languages in public life").

³⁸ See discussion in Committee State Report on the House of Commons Wales Bill 2016-17 <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7644#fullreport> retrieved 22-06-2018.

³⁹ <http://law.gov.wales/constitution-government/how-welsh-laws-made/timeline-welsh-law/?lang=en#/constitution-government/how-welsh-laws-made/timeline-welsh-law/?tab=overview&lang=en> retrieved 06.08.2017

⁴⁰ http://military.wikia.com/wiki/Battle_of_Orewin_Bridge retrieved 04-07-2018.

⁴¹ <http://www.legislation.gov.uk/aep/Hen8/27/26/contents> retrieved 26-06-2018.

⁴² <http://www.legislation.gov.uk/aep/Hen8/34-35/26/contents> retrieved 26-06-2018.

⁴³ http://www.bbc.co.uk/wales/history/sites/themes/guide/ch7_emergence_of_principality_of_wales.shtml retrieved 04-08-2017.

Through these Acts of Union, English common law became the only law of Wales. And the English language was the only one used in the Welsh courts. That is why there is now some confusion as to whether the territory of Wales is technically a separate country. To a non-lawyer, Wales is a country. But although it has its own language, it does not have its own legal jurisdiction.

The Laws in Wales Act 1542 divided Wales into shires (just like England at that time), with justices of the peace appointed to administer them. Wales became represented by 27 Members of Parliament in the English Parliament.

The Act also established the Court of Great Session, a distinct Welsh system of courts based upon four circuits with three shires (counties) in each⁴⁴. This Welsh Court was abolished by The Law Terms Act 1830⁴⁵.

The current territorial definition of 'Wales' in law, is the combined area of the counties which were created by section 20 of the Local Government Act 1972. Although these counties were re-organised by the Local Government (Wales) Act 1994, the territory of Wales remained unchanged.

Wales remained incorporated into England despite the repeal (revocation) of the remaining sections of the 1535 and 1542 Acts⁴⁶.

On 31 March 2017, Welsh law and tribunals were recognised for the first time since the 16th century⁴⁷. But it is limited:

- 'Welsh law' is made by the Welsh Assembly⁴⁸ – that has power devolved from the UK Parliament ; and
- Welsh law now forms '*part of the laws of England and Wales*'⁴⁹.

So the jurisdiction of England and Wales still remains⁵⁰, for now. However, the result of the 2017 Act is that foundations are now in place on which Wales could build its own independent jurisdiction, should it wish to do so.

In the UK's 'Union flag', Wales is represented by the flag of England, due to the Laws in Wales Act of 1535. However, Wales does have its own and commonly used flag:



Baner Cymru or Y Ddraig Goch
(The Red Dragon)

⁴⁴ John Davies "*The 1543 'Act of Union' between England and Wales*"
http://www.bbc.co.uk/wales/history/sites/themes/periods/tudors_05.shtml.

⁴⁵ The Law Terms Act 1830 (Chapter 11 Geo 4 & 1 Will 4 c 70)
<http://discovery.nationalarchives.gov.uk/details/r/C257> retrieved 21-12-2015.

⁴⁶ Both the 1535 and 1542 Acts were repealed on 21.12.1993 by the Welsh Language Act 1993, except for Section 47 of the 1542 Act that was repealed on 3.1.1995 by the Sale of Goods (Amendment) Act 1994.

⁴⁷ Government of Wales Act 2006, Section A2 [introduced by the Wales Act 2017 Part 1, Section 1 that came into force on 31-03-2017 under Section 71(2)(a)].

⁴⁸ Ibid at Section A2(1).

⁴⁹ Ibid at Section A2(2).

⁵⁰ As confirmed in the Explanatory note to the Wales Act 2017, at paragraphs 21 and 54-60
<http://www.legislation.gov.uk/ukpga/2017/4/notes/division/6/index.htm> retrieved 22-06-2018.

4. Scotland: the creation, with England, of 'Great Britain'

Although Edward I of England conquered Wales in 1282, he failed in his attempts to gain sovereignty of Scotland. His repeated attacks earned him the name the Hammer of the Scots. And because of them, the then King of Scots John Balliol (who reigned 1292–1296) and Philip IV of France (who reigned 1285–1314) signed a treaty called the 'Auld Alliance' (meaning 'Old Alliance') in 1295. This gave French subjects the same rights as Scottish subjects and vice versa.

In 1314, Edward II tried to conquer Scotland at the Battle of Bannockburn. However, the Scottish people led by King Robert the Bruce (who reigned 1306–1329), managed to preserve their independence.

The Scottish people had a different monarch from the English until the death of Queen Elizabeth I of England in 1603. On 24 March of that year the Crowns of England and Scotland united when James VI of Scotland acceded to the English throne. By **Proclamation of 1604**, he declared himself "**King of Great Britain**"⁵¹.

However, the kingdoms of Scotland and England remained separate, each having their own parliament, official religion and systems of education *and law*. So the King's official titles were James VI of Scotland (who reigned 1567–1625) and James I of England (who reigned 1603–1625).

Their Royal coats of arms have remained different from 1603 to the present day:

Scotland:



England, Wales & N. Ireland:



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Despite being separate kingdoms, King James introduced the first 'Union Flag' in 1606, combining the crosses of England and Scotland:

England:



Cross of St. George



Scotland:



Cross of St. Andrew



1606

Union flag or King's flag:



1606–1707 (used at sea)
1707–1801 'Great Britain'

⁵¹ Proclamation of 1604.

But it was only on 1 May 1707 that Scotland and England became one sovereign State. This was achieved through the former Scottish and English Parliaments each passing an Act of Parliament⁵². These two Acts are together referred to as the **Treaty of Union**⁵³:

Article I (of each Act) states: “*That the Two Kingdoms of Scotland and England shall upon the first day of May next ensuing the date hereof and forever after be United into One Kingdom by the Name of **Great Britain** [writer’s emphasis]*”.

Article III (of each Act⁵⁴) simultaneously dissolved the two parliaments, to form the ‘Parliament of Great Britain’, at Westminster in London.

Article XIX (of each Act) provided for the continuation within Great Britain of Scotland’s legal system, with its own courts and judges. However, the Treaty of Union did not deal with the jurisdiction of appeals. This ultimately led to the current position of Scotland having its own Supreme Court for criminal matters (the High Court of Justiciary), with the final court of appeal in Scottish civil law cases being the UK’s Supreme Court.

The preamble to the Acts provided that Scotland keep its Presbyterian government of the Church of Scotland, known as the ‘Kirk’⁵⁵. As a result, the Scottish education system was preserved, because the parishes of the Kirk were like local governments and responsible for education.

Queen Elizabeth I (who reigned 1533–1603) was never Queen of Scotland. That the UK’s current monarch is known as Elizabeth II has, therefore, given rise to problems.

For example, demonstrations took place in Scotland after the Coronation in 1952. They led to the Royal Cypher – currently ‘EIIR’ (for ‘Elizabeth II Regina’) being replaced by the **Crown of Scotland** on the Royal Mail’s **Scottish** premises, vehicles and post boxes:



As can also be seen, the Crown of Scotland (used at the coronations of Scottish monarchs), *is not the same* as the Crown used for the rest of the UK.

Scotland’s current estimated population is 5.4 million⁵⁶.

⁵² The Union with England Act 1707 and the Union with Scotland Act 1706
<http://www.legislation.gov.uk/aosp/1707/7/introduction> and <http://www.legislation.gov.uk/aep/Ann/6/11/contents> retrieved 03-09-2017.

⁵³ The ‘*Treaty of Union*’ comprises The Old English Parliament’s Union with Scotland Act 1706 and The Old Scottish Parliament’s Union with England Act 1707.

⁵⁴ Ibid.

⁵⁵ Papal Jurisdiction Act 1560, Article I.

⁵⁶ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/scotlands-facts/population-of-scotland> retrieved 27-06-2018.

5. Northern Ireland: the creation of 'the UK' with Great Britain

5.1. Irish law became English law

The island of Ireland used to have its own "Brehon" law:

*"Brehons (or brithem) (...) were the successors to Celtic druids and while similar to judges; their role was closer to that of an arbitrator. Their task was to preserve and interpret the law rather than to expand it."*⁵⁷

English law was gradually extended into Ireland. This started in the 12th Century under the reign of Henry II (who reigned 1154–1189), who ruled as King of the England, Lord of Ireland, Duke of Normandy and Aquitaine, Count of Anjou and Maine. He was also known as "Curtmantle", Henry FitzEmpress and Henry Plantagenet. Henry II was personally interested in government and the law. He arranged for judges (then known as justices) to tour around his kingdom to determine cases on his behalf⁵⁸.

However, it was under Edward III (who reigned 1327–1377) that the English common law finally became the official law of Ireland. Famous constitutionalist, Sir William Blackstone (1723–1780), states that this occurred in 1366, the 40th year of Edward III's reign⁵⁹. This was through legislation referred to as the Statute of Kilkenny. This Statute, however, *"although marking an interesting stage in the history of Ireland, had very little practical effect."*⁶⁰

Edmund Burke (1729–1797), Irish politician and author regrets the abolition of Brehon law, stating it to be the fault of *"the narrow notions of our lawyers"*. He added that if the lawyers had kept a record of it, which they did not, *"there is no doubt"* that Brehon law would have been *"of great value towards determining many questions relative to the laws, antiquities and manners of this and other countries [...]"*⁶¹

While Henry VII (who reigned 1485–1509) was King of England, the Old Irish Parliament passed one statute that limited its own power. This Act still appears on the UK Government's website and is called **Poyning's Law** 1495⁶². Section I provides, in Old English, that if any Irish statute is contrary to an English statute, it will have no effect under Irish law.

5.2. The island of Ireland united with Great Britain in 1801

The Irish Constitution of 1782 removed the restrictions on the Irish Parliament that Poyning's Law had imposed. However, the union of the kingdoms of Ireland and Great Britain (being Scotland united with England & Wales) occurred soon after, in 1801⁶³.

The first article of the Act of Union 1801 calls this new kingdom the 'United Kingdom of Great Britain **and Ireland**'. Its preamble states that this was done *"to promote and secure the essential interests of Great Britain and Ireland, and to consolidate the strength, power and resources of the British Empire"*.

⁵⁷ <http://www.courts.ie/Courts.ie/Library3.nsf/pagecurrent/62421128B249FE9480257FC3005C7C67> - official website of the Courts Service, Ireland; retrieved 22-06-2018.

⁵⁸ <https://www.royal.uk/henry-ii-curtmantle-r-1154-1189> retrieved 06-08-2017.

⁵⁹ "[...] in a parliament held at Kilkenny, 40 Edw. III, under Lionel the duke of Clarence, then lieutenant of Ireland, the Brehon law was formally abolished, it being unanimously declared to be indeed no law, but a lewd custom crept in of later times"; Sir William Blackstone, Commentaries on the Laws of England (1765-1769), Volume 1, Introduction, Section IV, p. 99.

⁶⁰ Encyclopædia Britannica, 1911, Volume 15.

⁶¹ Edmund Burke, *An Essay towards an Abridgement of the English History 1757-? (1757)*: Ch. VII Of the Lams and Institutions of the Saxons, quoted from T. O. McLoughlin, James T. Boulton, and William B. Todd (eds), *The Writings and Speeches of Edmund Burke*, Vol. 1: The Early Writings, 1997.

⁶² Poyning's Law 1495 (the short title given by the Short Titles Act (Northern Ireland) 1951): '1495 Chapter 22 10 Hen 7' <http://www.legislation.gov.uk/aip/Hen7/10/22> retrieved 21-12-2015.

⁶³ Referred to either as the Act of Union (Ireland) 1800 or Act of Union 1801 (because it came into force on 1 January 1801).

The Act of Union 1801 refers to ‘two countries’ – those of Great Britain and Ireland⁶⁴. That Act does not define the term ‘country’.

The third article of the Act of Union 1801 abolished the Irish Parliament and replaced it with the ‘Parliament of the United Kingdom of Great Britain and Ireland’, at Westminster, London.

5.3. The British-Irish Treaty and Republic of Ireland

In April 1916, Irish Republicans seized parts of Dublin. They hoped to establish an independent Irish Republic for the entire island of Ireland, terminating Ireland’s union with Great Britain. The United Kingdom would therefore once again have been Great Britain. This **Easter Rising**, as it is known, was unsuccessful in its goal. The leaders of the rebellion were executed.

But in 1918, when Republicans won the last all-island election, an independent **Irish Republic** was declared for the whole of Ireland. The first meeting of its government was in January 1919⁶⁵.

However, the Irish Republic was not recognised by the UK Parliament, which wanted to impose what is known as **Home Rule**. This meant that the UK Parliament wanted to delegate power to parliaments in Northern and Southern Ireland, while retaining ultimate power⁶⁶.

Dicey gives the passing of the third Home Rule Bill on 18 September 1914⁶⁷, as an example of Parliament’s power to enact legislation *against* the will of the nation:

*“That the Home Rule Bill was strenuously opposed by a large number of the electorate is certain. That this Bill was hated by a powerful minority of Irishmen is also certain. That the rejection of a Home Rule Bill has twice within thirty years met with the approval of the electors is an admitted historical fact. No impartial observer can therefore deny the possibility that a fundamental change in our constitution may be carried out against [emphasis added] the will of the nation”.*⁶⁸

The result: the Irish War of Independence. This started in 1919 between the Irish Republican Party (IRA) seeking a united and independent Ireland and those supporting the United Kingdom⁶⁹.

In December 1920, the UK Parliament passed the Government of Ireland Act⁷⁰ – still trying to impose Home Rule – for the creation of two Parliaments in the North and South of Ireland. The Northern Ireland Parliament was established in June 1920. But due to the War of Independence, Home Rule for the rest of Ireland was not.

The War of Independence ended in December 1921, with the signing of the **British-Irish Treaty**. The term sometimes used, ‘Anglo-Irish Treaty’, is inaccurate; its official name is ‘the Articles of Agreement for a Treaty between **Great Britain and Ireland**’⁷¹.

⁶⁴ Act of Union (Ireland) Act 1800
<http://www.legislation.gov.uk/aip/Geo3/40/38> retrieved 03-09-2017.

⁶⁵ The official website of the Irish Parliament (‘Oireachtas’ in Irish) explains its history in detail:
<https://www.oireachtas.ie/> retrieved 03-09-2017.

⁶⁶ Government of Ireland Act 1920, Section 75.

⁶⁷ This Bill came into force as the Government of Ireland Act 1914.

⁶⁸ Professor A.V. DICEY, *op. cit.*
<https://archive.org/stream/cu31924030503720#page/n55/mode/2up/search/against+the+will> retrieved 22-06-2018.

⁶⁹ As opposed to the Provisional IRA (also called the ‘IRA’) – for more information read the BBC article:
http://news.bbc.co.uk/1/hi/english/static/in_depth/northern_ireland/2001/provisional_ira/ retrieved 07-09-2017.

⁷⁰ Government of Ireland Act 1920, enacted on 23 December 1920
<http://www.legislation.gov.uk/ukpga/Geo5/10-11/67/enacted> retrieved 07-09-2017.

⁷¹ Articles of Agreement for a Treaty between Great Britain and Ireland (‘British-Irish Treaty’) dated 06-12-1921
<http://www.difp.ie/docs/1921/British-Irish-Treaty/214.htm> retrieved 07-09-2017.

This Treaty provided for the creation of **The Irish Free State**. This was to remain within the then British Empire, but with its own army⁷². However, the Treaty stated that within one month of this new State's creation, Northern Ireland could opt for its six counties not to be included⁷³. It could instead continue to be governed by the Parliament of Northern Ireland⁷⁴:



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The 26 counties of the island of Ireland had no jurisdiction over 'Northern Ireland'. They elected a Provisional Government in January 1922 which enacted a written constitution: '*The Constitution of the Irish Free State (Saorstát Éireann) Act 1922*'⁷⁵. This Constitution, signed on 6 December 1921, incorporated the terms of the Treaty. Paragraph 12 created the legislature of the Irish Free State, "known as the **Oireachtas**".

But meanwhile, another a **Civil War had broken out in June 1922**, between those in favour of the Treaty and its division of Ireland and those against. The war lasted one year and some 4,000 people were killed⁷⁶.

⁷² Ibid Articles 1 and 8.

⁷³ Under Article 11 of the Treaty, by application made to 'His Majesty' of the two Houses of Parliament of Northern Ireland.

⁷⁴ http://www.legislation.gov.uk/ukpga/1920/67/pdfs/ukpga_19200067_en.pdf retrieved 07-09-2017.

⁷⁵ Electronic Irish Statute Book http://www.irishstatutebook.ie/eli/1922/act/1/enacted/en/print_add.pdf retrieved 07-09-2017.

⁷⁶ <http://www.military.ie/en/info-centre/defence-forces-history/the-civil-war-1922-1923/> retrieved 07-09-2017.

Within one month of the Constitution being signed (6 December 1921), Northern Ireland applied (successfully) not to be included within the Irish Free State⁷⁷.

The Constitution of Ireland 1937 ('Bunreacht Na hÉireann' in Irish) renamed the Irish Free State: "*The name of the State 'Éire, or, in the English language, Ireland'*"⁷⁸. This is still the Constitution applied to the Republic of Ireland today. Under it, the national language is stated as Irish and English is recognised as the second official language⁷⁹.

Since 1945, Ireland has had its own Coat of Arms:



Ar ghorm cláirseach órga na sreanga airgidí
Azure a Celtic Harp Or stringed Argent
(A gold celtic harp with silver strings on a blue background)

Ireland makes its own laws, of which the highest in authority is the Constitution itself⁸⁰. The Prime Minister is called the **Taoiseach**⁸¹. His or her approval of an Act of Parliament gives legislation legal force⁸².

Eire ceased to be a constitutional monarchy on 18 April 1949⁸³, when it formally became the **Republic of Ireland**⁸⁴.

The Republic of Ireland has been a Member State of the European Union since 1973⁸⁵ and adopted the Euro on 1 January 1999⁸⁶. Its current estimated population is 4.8 million⁸⁷.

5.4. Northern Ireland and Great Britain unite

'Northern Ireland' came into existence as an entity separate from the rest of Ireland under the Government of Ireland Act 1920. It comprises six out of Ulster's nine counties⁸⁸. Ulster is one of four provinces of the island of Ireland (the others being Munster, Leinster and Connacht).

⁷⁷ Under Article 4 the Constitution of Ireland 1937 ('Bunreacht Na hÉireann' in Irish) that enacted Article 11 of the Treaty http://www.constitution.org/cons/ireland/constitution_ireland-en.pdf retrieved 07-09-2017.

⁷⁸ Article 4 the Constitution of Ireland 1937 ('Bunreacht Na hÉireann' in Irish) <http://www.irishstatutebook.ie/eli/cons/en/html> retrieved 07-09-2017.

⁷⁹ Ibid Article 8 paragraphs 1 and 2.

⁸⁰ Ibid Article 15(4).

⁸¹ Ibid Article 13 paragraph 1(1).

⁸² Ibid Article 13 paragraph 3(2).

⁸³ Ireland Act 1949 Section 1(1)

<http://www.legislation.gov.uk/ukpga/Geo5/10-11/67/enacted> retrieved 07-09-2017.

⁸⁴ Ibid section 1(3).

⁸⁵ <http://www.oireachtas.ie/parliament/about/europeanunion/> retrieved 11-01-2018.

⁸⁶ https://ec.europa.eu/info/business-economy-euro/euro-area/euro/eu-countries-and-euro/ireland-and-euro_en retrieved 11-01-2018.

⁸⁷ <https://www.cso.ie/en/releasesandpublications/er/pme/populationandmigrationestimatesapril2017/> retrieved 27-06-2018.

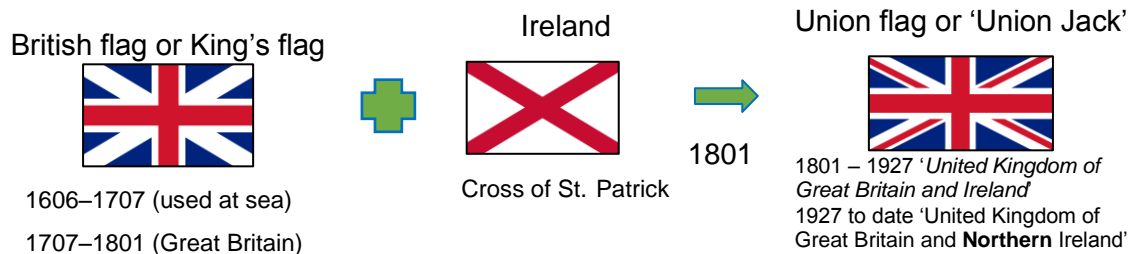
⁸⁸ Government of Ireland Act 1920 Section 1(2)

<http://www.legislation.gov.uk/ukpga/Geo5/10-11/67/enacted> retrieved 07-09-2017.

The current estimated population of Northern Ireland is 1.9 million⁸⁹. Two regional languages are spoken there: Ulster Scots ('Ullans') and Irish.

To reflect Southern Ireland's independence, the UK Parliament was renamed under section 2(1) of the Royal and Parliamentary Titles Act 1927: 'The Parliament of the United Kingdom of Great Britain **and Northern Ireland**'.

Section 2(2) of that Act adds that all references to the United Kingdom, in Acts and official documents, '*shall, unless the context otherwise requires, mean **Great Britain and Northern Ireland***'.



A retired Commander of the British Navy has written an interesting article on this subject, on the website of the UK's National Flag Charity⁹⁰. Cdr Bruce Nicolls OBE RN explains that a 'jack' was a small flag.

5.5. The Good Friday Agreement (Belfast Agreement)

The British-Irish agreement of 1921 was replaced in 1998 by the Belfast Agreement⁹¹. It is also known as the **Good Friday Agreement**, because it was signed on the Friday before Easter ('*Vendredi saint*' in French). It is an international treaty, having been agreed between the sovereign states of the UK and Irish Republic.

The Good Friday Agreement brought peace following 30 years of tragic civil war, known as the Northern Ireland Conflict, or 'The Troubles':



Photo: Two masked gunmen (Pacemaker Press Intl); see <http://www.bbc.co.uk/history/histories/troubles>

⁸⁹ <https://www.nisra.gov.uk/sites/nisra.gov.uk/files/publications/MYE16-Bulletin.pdf> retrieved 11-01-2018.

⁹⁰ <https://www.flaginstitute.org/wp/british-flags/the-union-jack-or-the-union-flag/> retrieved 11-01-2018.

⁹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/136652/agreement.pdf retrieved 22-06-2018.

This civil war was between Unionists (supporting the union with Great Britain) and Republicans (wanting one Irish State for the island of Ireland). The violence was so severe that in 1972 the UK Parliament suspended ('prorogued') Home Rule⁹², abolishing its Parliament in 1973⁹³. The Northern Ireland Assembly⁹⁴ and Direct Rule replaced it.

With its stated aim being a 'fresh start', the Good Friday Agreement mentions 'we must never forget those have died and their families'⁹⁵. It recognised that:

- the people of the island of Ireland may decide to form a united country in the future;
- the people of Northern Ireland can choose to be Irish or British or both⁹⁶;
- the UK government must exercise power in Northern Ireland 'with rigorous impartiality.' Including between the unionists and Irish nationalists.

The Agreement introduced the idea of a power-sharing executive committee⁹⁷ in Northern Ireland, to represent both unionists and nationalists.

Pursuant to the terms of the Good Friday Agreement the outstanding provisions of the Government of Ireland Act 1920 were repealed on 2 December 1999⁹⁸. This led to the creation of the new Northern Ireland Assembly⁹⁹.

The UK's current Prime Minister has signed a **Confidence and Supply Agreement**¹⁰⁰ with one of the Northern Irish political parties: the Democratic Unionist Party of Northern Ireland (**DUP**)¹⁰¹. Under its terms, the UK Government is to pay the Northern Ireland executive one billion pounds sterling over and above the 5 million that it had already agreed to pay each of the **devolved** governments of Wales, Northern Ireland and Scotland. In exchange, the DUP 'agrees to support the Government on all motions of confidence; and on the Queen's speech; the Budget; finance bills; money bills, supply and appropriate legislation and Estimates'.

On 26 January 2017, the Northern Ireland Assembly was dissolved. The government, being a separate institution, remains operative¹⁰².

Negotiations are ongoing to try to reinstate the Northern Ireland Assembly. Failing that, Direct Rule by the UK Parliament will return...and with it, some say, the return of the Troubles...

⁹² Under the Northern Ireland (Temporary Provisions) Act 1972
<http://www.legislation.gov.uk/ukpga/1972/22/section/1/enacted> retrieved 07-09-2017.

⁹³ The Northern Ireland Constitution Act 1973 Section 31
<http://www.legislation.gov.uk/ukpga/1973/36/contents> retrieved 09-09-2017.

⁹⁴ Northern Ireland Assembly Act 1973
<http://www.legislation.gov.uk/ukpga/1973/17/section/5/enacted> retrieved 11-01-2018.

⁹⁵ Declaration of support, paragraph 2 on page 2 of the Belfast Agreement 1998.
<https://www.gov.uk/government/publications/the-belfast-agreement> retrieved 11-01-2018.

⁹⁶ Article 1(vi).

⁹⁷ http://education.niassembly.gov.uk/post_16/snapshots_of_devolution/gfa/power_sharing retrieved 07-09-2017.

⁹⁸ Under the Northern Ireland Act 1998, section 2
<http://www.legislation.gov.uk/ukpga/1998/47/contents> retrieved 08-09-2017.

⁹⁹ Under the Northern Ireland Act 1998, section 4(5)
<http://www.legislation.gov.uk/ukpga/1998/47/contents> retrieved 08-09-2017; see also
<http://www.niassembly.gov.uk/about-the-assembly/general-information/history-of-the-assembly/#1> retrieved 09-09-2017.

¹⁰⁰ Confidence and supply agreement published on 26 June 2017:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/621794/Confidence_and_Supply_Agreement_between_the_Conservative_Party_and_the_DUP.pdf retrieved 11-01-2018.

¹⁰¹ <https://www.gov.uk/government/publications/conservative-and-dup-agreement-and-uk-government-financial-support-for-northern-ireland> retrieved 11-01-2018.

¹⁰² <http://blog.niassembly.gov.uk/2017/01/the-northern-ireland-assembly-is-now.html> retrieved on 11-01-2018 retrieved 11-01-2018.