

***Systems of Government in Some Foreign Countries:
The United Kingdom***

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EXECUTIVE SUMMARY

1. The United Kingdom has no written Constitution. The Constitutional rules are derived from statute laws, common law, conventions, customs and traditions. The Head of State is the Monarch who performs largely ceremonial functions. Although she has prerogative powers derived from customary common law, she must exercise them on ministerial advice.
2. The Head of Government is the Prime Minister. He is elected as Member of Parliament and is normally the leader of the majority party. The Cabinet consists of the Prime Minister and other ministers who must also be Members of Parliament. The main function of the Cabinet is to formulate policy for submission to Parliament.
3. Parliament consists of the House of Commons and House of Lords. Members of the House of Commons are elected by universal suffrage for five-year terms. Members of the House of Lords are either elected from among the peers or appointed by the Monarch on the advice of ministers.
4. By convention, all Cabinet ministers are individually and collectively responsible to Parliament. They must be accountable for the actions of their departments to Parliament and if serious errors have occurred, they have to resign.
5. In 1997, a resolution was passed by Parliament to require ministers to provide accurate information to Parliament, failure of which would result in resignation of ministers. This was a written confirmation of ministerial responsibility to Parliament.
6. Legislative power is vested in Parliament. Bills may be introduced by Cabinet ministers or private Members of Parliament. There are not many Private Member's Bills receiving the Royal Assent in each session because there are restrictions on the scope of Private Member's Bill and limitation on the time allowed for introducing a Private Member's Bill.
7. Parliament uses a variety of means to monitor the executive, which include question time and select committees. It also controls taxation and public expenditure.
8. At the moment, the relevant legislation relating to political parties is the Registration of Political Parties Act 1998. Under the Act, registration of political parties and emblems is not compulsory. Issues such as registration of political parties, control of political donations, campaign finance and the administration of referendums will be covered by the Political Parties, Elections and Referendums Bill which has been passed by Parliament and is awaiting the Royal Assent.
9. Recent electoral reforms include the change of electoral systems in the European Parliamentary Election (from a first-past-the-post system to a proportional representation system), elections of the Scottish Parliament and the National Assembly for Wales (a combined system of direct voting and proportional representation).
10. As of to date, there was one national referendum and five regional referendums held in the United Kingdom.

SYSTEMS OF GOVERNMENT IN SOME FOREIGN COUNTRIES: THE UNITED KINGDOM

PART 1 - INTRODUCTION

1. Background

1.1 In January 2000, the Panel on Constitutional Affairs requested the Research and Library Services (RLS) Division of the Legislative Council (LegCo) Secretariat to conduct a study on systems of government in some foreign countries.

1.2 This report forms part of the series of studies discussing systems of government. There are seven separate research reports (RP03/99-00 to RP09/99-00) on this subject.

2. Scope

2.1 The scope of the research, as agreed by the Panel, covers

- the election or appointment of the Executive;
- the election or appointment of the Legislature;
- the structural and operational, formal and informal inter-relationships between the Executive and the Legislature; and
- other features of political participation, e.g. referendum, constitutional assembly or constitutional convention, political parties, etc.

2.2 This research studies the systems of government of the United States of America (the United States), the United Kingdom, Republic of France (France), Federal Republic of Germany (Germany), Japan, New Zealand and Singapore. The United States is chosen because it is a typical form of presidential government. The United Kingdom is chosen because its Executive ministers are all members of the Legislature. France is chosen because its Executive ministers are not allowed to be members of the Legislature. Germany is chosen because it allows but does not require Executive ministers to be members of the Legislature. Japan, New Zealand and Singapore are chosen because their electoral laws have been reformed in recent years.

3. Methodology

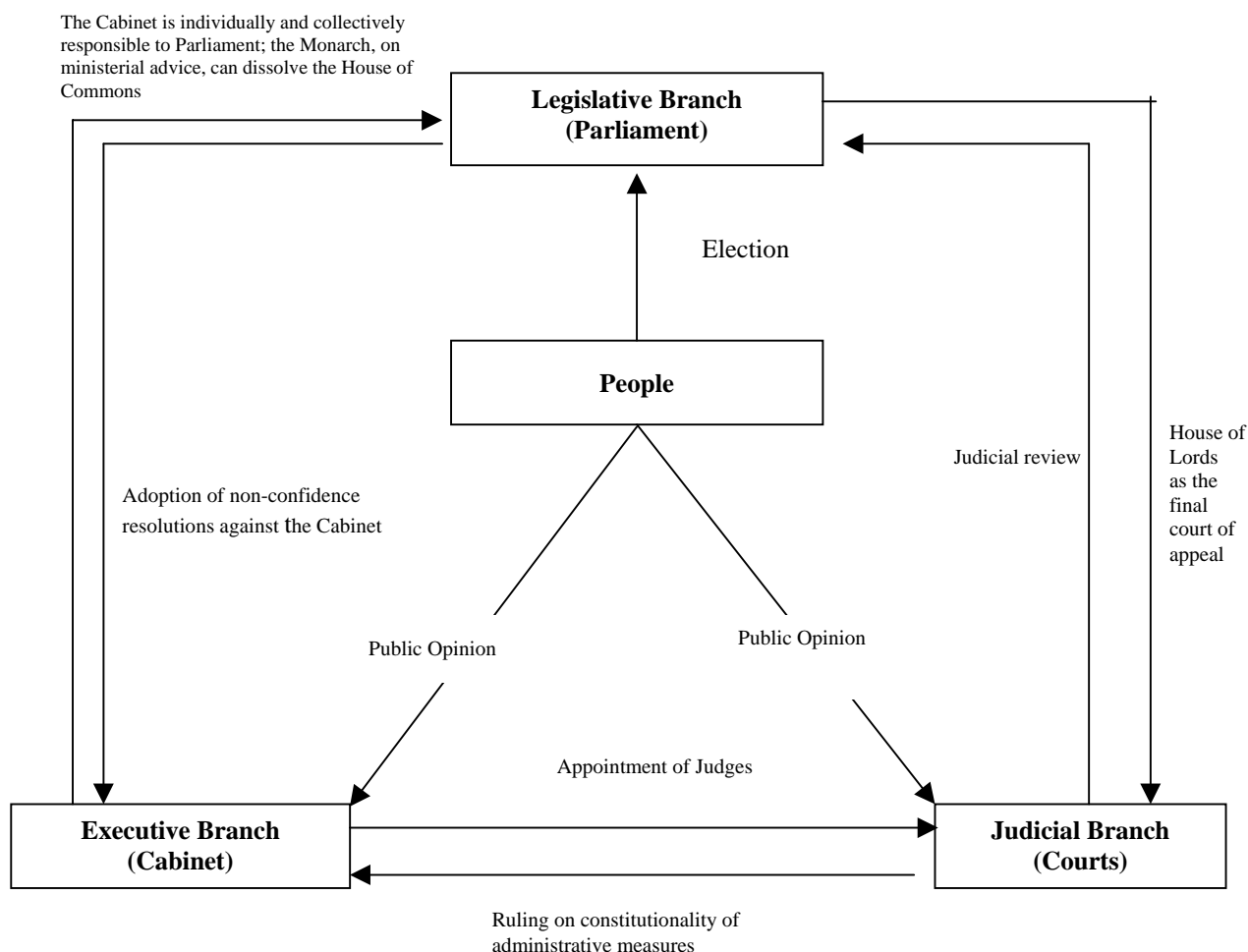
3.1 Information in this report is obtained from the Internet, government reports and relevant reference materials.

PART 2 - SOME BASIC INFORMATION

4.1 In 1997, the population of the United Kingdom was 59 million¹. The United Kingdom has a parliamentary system with the Head of Government (i.e., the Prime Minister) separated from the Head of State (i.e., the Monarch), and the latter performs largely ceremonial functions. The Prime Minister leads a cabinet consisting of members of the legislature; they are responsible to the legislature.

4.2 The United Kingdom has no written Constitution: there is no single document to which reference of constitutional rules can be made. Instead, it is made up of statute law, common law, conventions (political practices), customs and traditions. The European Union and the European Convention on Human Rights also contribute to the recent development of the British Constitution. Figure 1 depicts the relationship of the executive, the legislature and the judiciary in the United Kingdom.

Figure 1 - Relationship of the Executive, the Legislature and the Judiciary



Source: Adapted from <http://www.jinjapan.org/>

¹ <http://www.statistics.gov.uk/stats/ukinfigs/pop.htm>

PART 3 - HEAD OF STATE

5. The Constitutional Monarchy

5.1 The United Kingdom is a constitutional monarchy.² The Head of State is the Monarch (the present Monarch is Queen Elizabeth II) who is distant from party politics. The Monarch may be said to reign, but she does not rule. Although she still holds prerogative powers such as appointments of ministers, summoning and dissolving Parliament, etc., the extent and scope of these powers are largely determined by convention. These powers are generally exercised on advice of ministers and the Monarch cannot constitutionally ignore the advice given.

Succession

5.2 Succession to the throne is based on inheritance.

Functions and Powers

5.3 By convention, the Monarch must maintain absolute impartiality. Like all aristocracy, she neither votes nor expresses partisan opinion. The functions and powers of the Monarch are both practical and symbolic but must be exercised on ministerial advice. Listed below are some major functions and powers of the Monarch:

- She summons, prorogues and dissolves Parliament;
- She gives Royal Assent to a bill which has passed through both Houses of Parliament, before it becomes law;
- She appoints or dismisses all important state officials, including judges, military officers, etc. and she confers honours and awards.
- She is head of the judiciary and head of the armed forces;
- Her formal consent is necessary before a minister can take up office or a cabinet be formed; and
- Her formal consent is necessary before a treaty may be concluded, war declared or peace made.

² 'The United Kingdom: Great Britain' *The Europe World Yearbook*, 1999 Vol. 2. p. 3632.

5.4 Prerogative powers are derived from customary common law. They are residual powers in the sense that they cannot be enlarged or broadened by the Monarch herself. Although the Monarch has a right to express her views on government matters to the Prime Minister, all communications between the Monarch and the Prime Minister remain strictly confidential. Having expressed her views, the Monarch must abide by the advice of her ministers.

PART 4 - THE EXECUTIVE

6. Prime Minister

6.1 The Prime Minister is the Head of Government.

Appointment

6.2 The Prime Minister is elected as Member of Parliament who is normally the leader of the majority party. He is the one asked by the Monarch to form a government on the basis of his ability to command a majority in the House of Commons. Sometimes the minority party could influence the choice. For example, in 1987, David Steel of the Alliance³ declared that serving the Thatcher-led coalition would be 'inconceivable' which resulted in a Major-led coalition.⁴

Removal / Resignation

6.3 By convention, the Prime Minister must resign if a vote of no-confidence is passed by the House of Commons. Moreover, if a government is defeated on any of its important bills such as the Finance Bill, that would be tantamount to a vote of no-confidence.

6.4 Since 1945, Prime Ministers have lost office in one of three ways⁵:

- Defeat in a general election. Examples are Clement Attlee, Jim Callaghan and John Major.
- Retirement from a mixture of choice, ill-health and party pressure. Examples are Stanley Baldwin and Winston Churchill.
- Loss of support from the parliamentary party. Examples are Lloyd George and Margaret Thatcher.

³ The Alliance was made up of two political parties, the Liberal Party and the Social Democratic Party.

⁴ Kingdom, John, *Government and Politics in Britain*, Polity Press, 1999, p.418.

⁵ Thomas, Graham P., *Prime Minister and Cabinet Today*, Manchester University Press, 1998, p.62.

Functions and Powers

6.5 There are no statutory provisions governing the functions and powers of the Prime Minister. Listed below are some functions and powers given to the Prime Minister by convention:

- The Monarch must act on the advice of the Prime Minister. This power is significant. For example, the Prime Minister can request a dissolution of Parliament from the Monarch and end the government by tendering his resignation. This might force the Cabinet to lend its support to him.
- The Prime Minister can appoint and dismiss ministers without parliamentary or party approval. Cabinet ministers are selected by the Prime Minister but his choice is restricted to Members of Parliament. Nonetheless, this gives him a powerful source of patronage over those who wish to attain or keep high office. Moreover, since he can influence appointments of members of House of Lords, this allows him to bring in anyone he likes to the Cabinet. For example, Tony Blair brought in Derry Irvine, his ex-head of chambers, as Lord Chancellor.
- The agenda for Cabinet discussions are set by the Prime Minister. This power permits him to avoid issues he does not wish to discuss by excluding them from the agenda.
- The Prime Minister controls the remit and membership of Cabinet committees. The Prime Minister can appoint members of Cabinet committees and keep their existence secret, even from other members of the Cabinet⁶.

6.6 The Prime Minister exercises the above powers with limitations. Although the Prime Minister can dismiss ministers, excessive use of this power may give the public an impression of a divided government and may affect the public's confidence in the ability of the Prime Minister in forming a united government.

6.7 Moreover, the Prime Minister's power of patronage might be overstated. The appointments of ministers might be constrained by the need to preserve party unity. A prudent Prime Minister will seek to choose a government which balances the various factions in the party and avoid rivalry and jealousy from those excluded.

⁶ Thomas, Graham P., *Prime Minister and Cabinet Today*, Manchester University Press, 1998 , p.74.

7. The Cabinet System

7.1 The cabinet system developed during the 18th century from the informal meetings of Privy Counsellors who were also ministers. Size of the Cabinet has varied between 16 members and 23 members since 1945. The Cabinet today has 22 members selected by the Prime Minister. Its main duty is to formulate policy for submission to Parliament.

Selection of Candidates

7.2 Cabinet ministers must be Members of Parliament. They are not independent of the legislature. The law allows 22 salaried Cabinet ministers.

Appointment / Removal

7.3 Cabinet ministers are appointed or dismissed by the Prime Minister.

Functions and Powers

7.4 Like the Prime Minister, the Cabinet has no identifiable legal source to delegate powers and responsibilities. The Cabinet is created by convention. As Cabinet members must come from the legislature, it is described as 'the hub of the legislative and executive arms of government'⁷: it is where government policies are formulated and refined.

7.5 The main functions fulfilled by the Cabinet include decision making, discussion of policy issues and the representation of different interests in the country and in the party⁸.

7.6 Cabinet meetings are closed meetings. Their proceedings are confidential although after 30 years, these Cabinet papers may be made available for public inspection.

7.7 The Cabinet ministers, again by convention, are individually and collectively responsible to the House of Commons.

⁷ Loveland, Ian, *Constitutional Law: A Critical Introduction*, London: Butterworths, 1996, p. 335.

⁸ Thomas, Graham P., *Prime Minister and Cabinet Today*, Manchester University Press, 1998, p.197.

Cabinet Committees

7.8 Cabinet committees are created to assist the Cabinet in its work. They can be created on an ad-hoc or on a standing basis. They serve two purposes.⁹ First they relieve the pressure on the Cabinet by settling as much business as possible or by clarifying issues and defining points of disagreements. Secondly, they support the principle of collective responsibility by ensuring that all decisions made have been fully considered and the final judgement is sufficiently authoritative such that the government as a whole can be properly expected to accept responsibility for them. They act by implied devolution of authority from the Cabinet and their decisions have the same status as the decisions of the Cabinet.

7.9 Membership of these Cabinet committees includes Cabinet ministers and non-Cabinet ministers such as junior ministers and civil servants.

7.10 Some committees have very high status, especially those chaired by the Prime Minister or senior Cabinet ministers. For example, the Committee on Constitutional Reform Policy was chaired by the Prime Minister, Tony Blair.

7.11 One academic opined¹⁰ that the role of the Cabinet committees seemed to be more important than that of the Cabinet and there was a fear that they reduced the Cabinet to a rubber stamp. Another opined¹¹ that the role of the Cabinet committees has expanded to the point where they take most decisions and the Cabinet has become a reporting and discursive body. Yet, details of the Cabinet committees system remain a secret. The Prime Minister and ministers have refused to divulge details of the system based on the principles laid down in the document entitled "Questions of Procedures for Ministers" prepared by the Prime Minister.

7.12 Paragraph 17 of the document "Questions of Procedures for Ministers"¹² requires that "*the privacy of opinions expressed in Cabinet and Ministerial Committees [Cabinet committees] should be maintained. ... Cabinet and Committee documents will often contain information which needs to be protected in the public interest. It is essential that, subject to the guidelines on the disclosure of information ..., ministers take the necessary steps to ensure that they and their staff preserve the privacy of Cabinet business and protect the security of government documents.*"

7.13 The importance of these Cabinet committees is made known only when there is leakage of information which reveals that some very important policies or decisions are determined by the Cabinet committees. For example, the 1944 Education Act was the product of the Cabinet committee led by Butler. Decisions on replacing the Polaris defence system and the future of Falklands were determined by the ad hoc Cabinet committees chaired by Thatcher.

⁹ <http://www.cabinet-office.gov.uk/central/1997/mcode/p02.htm>.

¹⁰ Kingdom, John, *Government and Politics in Britain*, Polity Press, 1999, p.413.

¹¹ James, Simon, *British Cabinet Government*, Routledge, 1999, p.3.

¹² <http://www.cabinet-office.gov.uk/central/1997/mcode/p02.htm>.

8. Ministers

8.1 Ministers are appointed and dismissed by the Prime Minister. They perform various important functions and are regarded as 'the machinery of the government'. They are responsible for the administration of their departments, the appointment and dismissal of their staff, the handling of public funds placed at their disposal for departmental services, etc.

8.2 Cabinet ministers are in charge of government departments. They are known as Secretaries of State or Ministers or may have a special title such as Chancellor of the Exchequer.

8.3 Some ministers may have few or no departmental duties. They are known as non-departmental ministers. They perform duties assigned by the Prime Minister. Examples are the President of the Council who is the Leader of the House of Commons and the Chancellor of the Duchy of Lancaster who is the Minister for the Cabinet Office.

8.4 Ministers of State are middle-ranking ministers. They normally have specific responsibilities. Examples are Minister for Energy and Industry.

8.5 Junior ministers are either ministers of state or under-secretaries of state. They are also appointed by the Prime Minister although the Prime Minister may consult the Secretary of State concerned on the appointment. Junior ministers have no formal powers. The conventional ministerial responsibility holds the Secretary of State responsible to Parliament and the junior ministers responsible to the Secretary of State¹³.

9. Privy Council

Composition

9.1 There are 400 Privy Councillors¹⁴ consisting of all Cabinet ministers, a number of middle-ranking government ministers, leaders of the opposition parties in both Houses of Parliament, senior judges and some personnel from the Commonwealth. They are appointed by the Monarch on ministerial advice. Meetings are chaired by the Monarch, and the responsible minister is the Lord President of the Council who is always a member of the majority party and a leading member of the Cabinet.

¹³ James, Simon, *British Cabinet Government*, Routledge, 1999.

¹⁴ <http://www.royal.gov.uk/today/privyc.htm>.

Functions and Powers

9.2 The power of the Privy Council has declined with the development of the Cabinet and its main function is to give effect to decisions made in the dependent territories of the United Kingdom. The Privy Council advises the Monarch on various issues such as approval of Orders in Council¹⁵. It has also various advisory functions which cover subjects like science, industries, medicine and agriculture. The most important organ of the Privy Council is the Judicial Committee which acts as the final court of appeal for dependent territories.

10. The Bureaucracy -- The Senior Public Officers

10.1 The Civil Service Management Code states that the constitutional and practical role of the civil service is, "with integrity, honesty, impartiality and objectivity, to assist the ... Government of the United Kingdom..., in formulating their policies, carrying out decisions and in administering public services for which they are responsible."

10.2 Civil servants, except in the role of Accounting Officer¹⁶, have no direct responsibility to Parliament. They are responsible to their ministers. There may be disciplinary proceedings taken against civil servants as provided for by the Civil Service Management Code, but such proceedings will not be initiated by the ministers nor Parliament. They are initiated by their own departments or agencies.

10.3 There is only one central grade of the Senior Civil Service which is Permanent Secretaries. Permanent Secretaries are appointed by the Prime Minister on the recommendation of the Head of Home Civil Service who in turn is advised by the Senior Appointments Selection Committee (SASC). The SASC is made up of a small number of Permanent Secretaries. It normally includes the Permanent Secretary to the Treasury and the First Civil Service Commissioner. The recruitment of the Senior Civil Servants is made either through open competition or internal appointment. The proportion of appointments going to open competition is about 30%¹⁷.

¹⁵ Orders in Council enact subordinate legislation ranging from constitutions of dependent territories to international pollution. (<http://www.royal.gov.uk/today/privyc.htm>)

¹⁶ An Accounting Officer is a Permanent Secretary appointed by the Treasury. He takes responsibility for the appropriation, trading and other accounts of the department and he has to ensure that the department has complied with parliamentary requirements in the control of expenditure. He may be called upon to explain all these issues before the House of Commons Public Accounts Committee.

¹⁷ Daintith, Terrance and Page, Alan, *The Executive in the Constitution: Structure, Autonomy, and Internal Control*, Oxford University Press, 1999, p.83.

PART 5 - THE LEGISLATURE

11. Introduction

11.1 The British Parliament consists of the House of Commons and the House of Lords. The work of one Parliament is not binding on its successors. Any one Parliament can add, revise or repeal any law and disown any convention that has constitutional significance.

12. House of Commons

Composition

12.1 The House of Commons has 659 members¹⁸, each elected for one geographical constituency. Of the 659 seats, 529 are for England, 40 for Wales, 72 for Scotland and 18 for Northern Ireland. Members of Parliament may be elected either at a general election or at a by-election (held in the event of the death, resignation or expulsion of a sitting member).

Election Method

12.2 Members are elected for a maximum of five years by direct suffrage by all citizens of 18 years and over, using single-member constituencies.

12.3 Anyone except clergymen who has the vote may stand as a candidate for election. Civil servants must resign from the service if they wish to stand for election for Parliament.

12.4 The government adopts the first-past-the-post system to determine who obtains the seat. Under this system, the candidate who obtains the highest number of votes in an election is elected.

Dissolution

12.5 The Prime Minister may ask the Monarch to dissolve Parliament and call for elections, usually some time before the five years are up or when the situation appears to favour the majority party.

¹⁸ <http://www.parliament.uk/parliament/guide/coelec.htm>

Functions and Powers

12.6 Since Parliament is supreme, it can determine its own rules and procedures when performing its functions. Listed below are the main functions of the House of Commons:

- Examine proposals for new laws;
- Provide the means of carrying on the work of government by voting for taxation;
- Scrutinize government policy and administration, including proposals for expenditure;
- Debate the major issues of the day; and
- Provide a government.

12.7 The House of Commons can force the government to resign by a resolution of 'no-confidence' or by rejecting an important proposal which the government considers that it is equivalent to a resolution of no-confidence.

12.8 Resolutions of no-confidence are rare. First, if the government has a majority in the House of Commons, such a resolution is unlikely to succeed. Secondly, opposition parties might fear that no-confidence resolutions might unite the ruling party. Consequently, such resolutions are relatively infrequent. The last successful no-confidence resolution was in March 1979 when the resolution was passed by just one vote - 311 to 310. The then Prime Minister Jim Callaghan and the government were then forced to resign.

13. House of Lords

Composition

13.1 Beginning 1 March 2000, there are 670 peers¹⁹ who have the right to a seat in the House of Lords. The peers include hereditary peers, life peers or peeresses created by the Monarch, Law Lords, archbishops and bishops. Table 1 shows the membership of the House of Lords.

¹⁹ <http://www.parliament.uk/parliament/guide/lords.htm>

Table 1 - Membership of the House of Lords

| Party | Life Peers | Hereditary Peers | | | Bishops | Total |
|--------------------------|------------|-----------------------------|----------------------------|-----------|-----------|------------------------|
| | | Elected by Hereditary Peers | Elected By the Whole House | Appointed | | |
| Conservative | 180 | 42 | 9 | 1 | | 232 |
| Labour | 178 | 2 | 2 | | | 182 |
| Liberal Democrat | 49 | 3 | 2 | | | 54 |
| Cross Bench ² | 130 | 28 | 2 | 1 | | 161 |
| Archbishops and Bishops | | | | | 26 | 26 |
| Other | 11 | | | | | 11 |
| Total | 548 | 75 | 15 | 2 | 26 | 666¹ |

Remarks: 1. Excludes four life peers on leave of absence.
2. Cross bench refers to members who do not wish to be associated with political parties.

Source: <http://www.publications.parliament.uk/pa/ld199798/ldbrieff.ldana1.htm>

Election / Appointment

13.2 Prior to the enactment of the House of Lords Act 1999, members of the House of Lords were not elected. They were hereditary peers, life peers and peeresses created by the monarch for outstanding public service or clergymen. As at 1 November 1999, the House of Lords was composed of 758 hereditary peers, 542 life peers and 26 Archbishops and Bishops.

13.3 The House of Lords Act 1999 is the first part of the government's step-by-step approach to reform the House of Lords on a full-scale basis. A Royal Commission has been set up to consider further reforms. In the meantime, a new independent system for nominating peers is introduced.

13.4 Under the House of Lords Act 1999, no present or future holders of a hereditary peerage have the right to sit and vote in the House of Lords. Exception is granted to 90 hereditary peers provided for in the Standing Orders of the House of Lords. The election method of these 90 hereditary peers is also stipulated in the above Standing Orders. That is, 75 of them are elected from among the overall number of hereditary peers and the remaining 15 are elected by the whole House.

Dissolution

13.5 The House of Lords cannot be dissolved.

Functions and Powers

13.6 In general, the functions of the House of Lords are similar to those of the House of Commons in legislating, debating and questioning the executive. There are two important exceptions: members of the House of Lords do not represent constituencies, and are not involved in matters of taxation and finance. The role of the House of Lords is generally recognized to be complementary to that of the House of Commons.

13.7 Powers of the House of Lords are limited by the Parliament Acts. The House of Lords may delay, but cannot prevent, any bill from becoming law once it has been passed by the House of Commons. In particular, the House of Lords has no power over Money Bills or bills affecting the duration of Parliament. By the Parliament Act 1949, any other bill passed by the House of Commons in two successive sessions may be presented for the Royal Assent without the consent of the House of Lords.

13.8 One distinctive feature of the House of Lords is its judicial function. The House of Lords is the final court of appeal for civil cases in the United Kingdom and for criminal cases in England, Wales and Northern Ireland. However, this function is not performed by the House as such but by the salaried Law Lords headed by the Lord Chancellor.

14. Legislative Procedures

14.1 Bills may be introduced in either House by Members of Parliament or the government. A bill has to pass through several stages. First, consultation documents and white papers often precede major legislation to permit widespread discussion. After the policy is decided, bills are prepared and proceeded to the three Readings.

14.2 Suppose the bill is first presented to the House of Commons. The First Reading is a formality when the bill is introduced by the government or Member of Parliament. The Second Reading is the important one with serious debates held. Sometimes, Members might find it necessary to consider the bill clause by clause and hence they may form 'standing committees' to consider the bills. These standing committees are dissolved after the bills have been considered. The standing committees then report back to the full House which debates the clauses in detail. Amendments may be made at this stage. After the amendments, if any, have been considered, the bill proceeds to Third Reading.

14.3 The Third Reading is largely a formality. There is no debate and no amendment. If the bill is supported by the majority of the House of Commons, it will proceed to the House of Lords and will go through similar stages again. If there are amendments proposed by the House of Lords, the bill is returned to the House of Commons for re-consideration. Finally, the bill has to be approved by the Monarch. After the receipt of the Royal Assent, the bill becomes an Act of Parliament.

15. Voting Majority Requirements

15.1 Bills are considered passed if they obtain a simple majority of votes in each House.

PART 6 - EXECUTIVE-LEGISLATIVE RELATIONSHIP

16. Ministerial Responsibility

Legal Basis

16.1 By convention, the Cabinet is responsible to the House of Commons. Ministerial responsibility has a complex meaning. It includes the need for ministers to account for the actions of their departments to Parliament and the need for a minister to resign if serious errors had been committed in his department, whether or not the errors were committed by civil servants and there has been no ministerial involvement in them.

Ministerial Accountability

16.2 By convention, ministers are held accountable for the works of their departments. The parliamentary system contains many checks to ensure that a government remains accountable and does not abuse its powers. Ultimately, the government can only remain in office for as long as it has the support of a majority in the House of Commons.

16.3 Ministers fulfil this accountability during question time, adjournment debates, motion debates, debates on motions of no-confidence and the select committee system in the House of Commons.

16.4 In the House of Lords, similar opportunities for criticism and examination of government policy are provided at question time and during debates.

16.5 Ministerial accountability varies with the degree of control over the civil servants by the ministers. Where the minister has no control or supervisory authority, no accountability is expected of him²⁰. If ministers exert detailed control over the activities of the departments, they are expected to explain or account for the actions of the departments. Yet, the extent to which a minister is required to explain to Parliament is not clear. In many occasions, Parliament was not satisfied with the explanation and information given by ministers. This eventually led to a resolution passed by Parliament which laid down standards and expectations of ministers on how to discharge their duty of accountability to Parliament. Details are discussed in paragraphs 16.15 - 16.18.

²⁰ Woodhouse, Diana, *Ministers and Parliament*, Oxford University Press, 1994, p.26.

Ministerial Responsibility

16.6 Ministerial Responsibility can be sub-divided into two parts: first, individual ministerial responsibility and secondly, collective ministerial responsibility.

Individual Ministerial Responsibility

16.7 The modern form of individual ministerial responsibility has two parts. The first addresses the minister's political or administrative competence; the second is his personal morality.²¹

The Competence Rule

16.8 The competence rule originally held ministers answerable to Parliament for every action undertaken by their department's civil servants. Ministers took the credit or the blame depending upon the performance of their civil servants. If an error was sufficiently serious, a minister would be expected to resign. Individual civil servants would not face parliamentary scrutiny or public criticism for their own failures. All they had to face were managerial or disciplinary sanctions within their departments.

16.9 Two cases have redefined this rule to require a minister to have personal knowledge of the gross errors committed by their civil servants. They are Lord Carrington's resignation in 1982²² and James Prior's refusal to resign in 1983²³.

²¹ Loveland, Ian, *Constitutional Law: A Critical Introduction*, London: Butterworths, 1996, p. 362.

²² Lord Carrington resigned as Foreign Secretary due to the Argentinian invasion of the Falkland Islands in 1982. He considered he had underestimated the severity of the Argentinian threat. The Foreign Office at that time recognized the possibility of confrontation and of Argentina's taking of military action but Carrington still believed that Argentina would not invade.

²³ In 1983, IRA (Irish Republican Army) prisoners broke out of the Maze prison. James Prior, the then Secretary of State for Northern Ireland, refused to resign. He argued that first, he had not given instructions to relax prison security measures and secondly, an inquiry into this incident concluded that the escape had resulted from management errors made by the prison governor. James Prior sacked the prison governor instead.

The Morality Rule

16.10 Ministers might need to resign if they have done something morally unacceptable. Public opinion always associates ministerial competence with the way he conducts his personal life. If he commits an immoral activity, it reflects that he is unfit for office. Examples are the resignations of Cecil Parkinson in 1983²⁴ and David Mellor in 1992²⁵.

Collective Ministerial Responsibility

16.11 We can find three rules of convention governing collective ministerial responsibility. They are the confidence rule, the unanimity rule and the confidentiality rule.

The Confidence Rule

16.12 The confidence rule requires a government to resign if it cannot command majority support from the House of Commons. The rule applies if a government is defeated on an explicit no-confidence motion.

The Unanimity Rule

16.13 The unanimity rule requires all Cabinet ministers to offer whole hearted public support for all Cabinet decisions, even if a minister opposes the policy concerned in the Cabinet. If a minister finds a particular policy unacceptable, he will resign from the office. The convention demands collective loyalty to collective decisions.

²⁴ Cecil Parkinson, the Secretary of State for Trade and Industry, had an extra-marital affair with Miss Sara Keays. He initially planned to marry Miss Keays but when he found out that she was pregnant, he changed his mind and finally decided to stay with his wife. His affair reflected that he was indecisive and unreliable. The fact that he had broken his promise to Miss Keays questioned his suitability as a minister.

²⁵ The press first reported that David Mellor, the then Secretary of State for the National Heritage, had an extra-marital affair with an actress and later found out that he had accepted gifts and hospitality from a property developer. His acceptance of gifts and hospitality showed a lack of judgment on the part of a minister.

The Confidentiality Rule

16.14 Ministers often withhold information regarding Cabinet proceedings. They owe a duty of confidentiality to their Cabinet ministers. However, ministers do occasionally ignore this rule. One of the examples is the Crossman Diaries Case²⁶. Since the court in this case acknowledged the existence of the rule of confidentiality, the confidentiality rule therefore still binds Cabinet ministers and ministers can find justifications not to disclose everything to Parliament.

Recent Development

16.15 The convention governing ministerial accountability and responsibility seems to have lost its grip over ministers. In 1994, the Chief Executive of the Child Support Agency was blamed for the poor performance of the Agency and hence, the Chief Executive resigned. The relevant ministers deflected any suggestions of responsibility, despite the conclusion made by the Select Committee on the Parliamentary Commissioner for Administration that maladministration within the Child Support Agency "could not be divorced from the responsibility of Ministers for the framework".²⁷ In a similar way, the Director-General of the Prison Service was held responsible for prison breakouts which happened in 1995. He refused to resign and was dismissed from the office. The Home Secretary, in this case, denied any responsibility and he refused to resign.

16.16 In 1996, the Public Service Committee of the House of Commons made an enquiry into ministerial accountability and responsibility. The enquiry was prompted by the publication of the conclusions of Sir Richard Scott's Inquiry into the Export of Defence-Related Equipment and Dual-Use Goods to Iraq and Related Prosecutions. In this inquiry, Sir Richard Scott was also asked to determine whether ministers had acted according to the requirements of the convention of ministerial responsibility. In his report to the House of Commons, Sir Richard Scott stated that the essence of ministerial accountability lied not in the threat of resignation but in the obligation to inform Parliament.

²⁶ Richard Crossman was a Cabinet member between 1964 and 1970. He wanted to provide a first-hand account of Cabinet government in operation. Consequently he kept a comprehensive diary of Cabinet decisions. He died before his retirement to the Cabinet and his widow decided to publish the Diaries. The government sought an injunction preventing the publication. It argued that the courts should preserve the confidentiality of ministerial information. Crossman's publishers argued that the duty of Cabinet confidentiality had no legal basis; it was merely a moral obligation. The court did find for the rule of confidentiality but held that unless the disclosure threatened national security, the duty would disappear 10 years after the relevant events occurred. Since 10 years had already been passed, the Diaries could be published.

²⁷ Woodhouse, Diana, 'Ministerial Responsibility: Something Old, Something New' *Public Law*, p. 277.

16.17 Scott also in his report proposed to the House of Commons to adopt a resolution on accountability, the purpose of which would be to underline the obligation of ministers and civil servants 'to be open with the House and not to mislead it'.

16.18 The government counter-proposed a resolution which took out 'civil servants' from the resolution. It was agreed by Parliament and the resolution was passed in 1997. (Please see Appendix I for details). The resolution was a written confirmation of the obligation of ministers to provide accurate information to Parliament, failure of which would result in resignation of ministers. It enabled Parliament to claim its authority over the executive.

17. Initiation of Legislation

17.1 Although legislative power is vested in Parliament, legislation in the United Kingdom is primarily a function of government because a large number of government bills introduced by ministers are passed into law substantially in their original form. Therefore, a private member's bill represents one of the processes through which Members of Parliament can exercise an independent law-making function.

Private Member's Bill

17.2 From 1945 to 1998, only 681 private members' bills received the Royal Assent.²⁸ The average number of private members' bills receiving the Royal Assent in each session was 13. Two reasons are identified to explain the small number of private members' bills passed. They are, namely, the restriction on the scope of private member's bill and the limited time allowed for introducing a private member's bill.

17.3 The scope of a private member's bill is restricted. A private member's bill may not be introduced if its primary objective is to require additional government expenditure. Where such expenditure is necessarily incidental to the main purposes of a bill, a financial resolution moved by a government minister is required before the financial clauses can be considered in the standing committee. Therefore, without government support, a bill of this type cannot proceed. It is observed that private member's bills tend to concentrate on social, ethical or environmental issues. Examples are the Obscene Publications Act 1959, the Termination of Pregnancy Act 1968 and the Welfare of Animals at Slaughter Act 1991.

²⁸ House of Commons Information Office, *The Success of Private Members Bills*, January 2000.

17.4 Time to allow the introduction of private members' bills is limited. In each session only ten Fridays are reserved for private members' bills. Therefore, not many Members are allocated parliamentary time to introduce bills. There are three procedures under which private members may introduce bills. They are the Ballot, the Ten Minute Rule and the Ordinary Presentation Procedure. (Details are given in Appendix II.)

18. Monitoring of the Executive

Access to Information

18.1 If Parliament wishes to exert effective control over the executive, access to relevant information is very important. However, the Official Secrets Act 1989 gives the executives justification not to disclose information to Parliament and makes it difficult for Parliament to carry out inquiries into the government.

18.2 The Official Secrets Act makes it an offence for certain government employees to disclose without authorization any information learned at work. The claim that disclosure is in the public interest is no defence. Yet, the government always uses 'public interest' to justify its withholding of information.

18.3 The Scott enquiry commissioned by the House of Commons criticized the government for failing to give relevant information to Parliament and for misleading Parliament. The Scott Report aroused heated debates in Parliament and subsequently led to a resolution in 1997 which demanded the government to disclose all relevant information to Parliament.

Question Time

18.4 At each sitting (except that held on Wednesdays and Fridays) of the House of Commons, the first hour is reserved for Members to pose questions to ministers. Questions can be made orally or in writing. At sittings held on Fridays, the question time is extended to two hours. At sittings held on Wednesdays, Members are given half an hour to question the Prime Minister.

18.5 Parliamentary questions are often regarded as the best means of seeking information about the government's intentions. About 50 000 parliamentary questions are raised each year and most are replied to through written answers. However, there are some subjects on which ministers have consistently refused to answer questions. Examples are questions on the security services or on matters of commercial confidence.²⁹

²⁹ <http://www.parliament.uk/parliament/guide/acques.htm>.

Committees

18.6 Much of the work of Parliament is done by committees. Many of these are select committees which have the power to send for persons, papers and records and hold public meetings. These select committees are appointed to examine the expenditure, administration and policy of specified government departments and associated public bodies.

Ombudsman

18.7 The Parliamentary Commissioner for Administration (or known as the Ombudsman) was established by the Parliamentary Commissioner Act 1967 to investigate complaints of government activities made by the public. The Parliamentary Commissioner for Administration is only permitted to investigate complaints referred to by a Member of Parliament and the complaints must not be able to be pursued through legal actions.

18.8 The Parliamentary Commissioner for Administration is given extensive powers by the 1967 Act to examine government documents and ask for testimony from ministers and civil servants. The Commissioner is appointed by the Prime Minister and his dismissal can only be effected by consent of both Houses of Parliament.

19. Scrutiny of Public Expenditure

Budget Approval

19.1 The Budget is the annual financial statement and review of taxation. The Budget speech delivered by the Chancellor is normally held in Spring but there is also a "Pre-Budget Report" presented in November, allowing Members of Parliament to comment and scrutinize the Budget several months in advance of the Budget itself.

19.2 The Budget statement is followed by a general debate lasting about four days. The Leader of the Opposition, rather than the Shadow Chancellor, traditionally replies to the Chancellor's statement.

19.3 The budget proposals are embodied in the Finance Bill. The first opportunity for Members of Parliament to discuss the Finance Bill is at its Second Reading. A majority government would expect to win any vote on the Second Reading. If a government is defeated on the Second Reading of its Finance Bill, that would be tantamount to a vote of no-confidence.³⁰

³⁰ House of Commons, FAQ. (<http://www.parliament.uk/commons/lib/fin-bill.htm>)

19.4 After the approval of the principle of the Bill, the Bill proceeds to the Committee stage. The more controversial, important or novel provisions are dealt with in Committee of the Whole House, which all Members can attend, and the others in a Standing Committee.

19.5 There are usually a lot of amendments³¹ made to the Finance Bill proposed by Opposition parties, government backbenchers and sometimes by ministers themselves.

19.6 After obtaining the majority support from the House of Commons, the Finance Bill will be sent to the House of Lords. The financial powers of the House of Lords are limited by the Parliament Acts 1911 and 1949. Under the Acts, the House of Lords cannot amend Money Bills, including the Finance Bill. Therefore, the Bill can be presented for Royal Assent without the consent of the House of Lords.

Public Accounts Committee

19.7 The Public Accounts Committee (PAC), created in 1861, is considered as one of the most effective committees in Parliament. The PAC is responsible for examining the departmental accounts which includes examining the value for money reports made by the Comptroller and Auditor General in relation to government expenditure.

19.8 Membership of the PAC reflects party balance in the House of Commons but the chair is always a prominent member of the opposition party. The PAC is assisted by the Comptroller and Auditor General³², head of the National Audit Office (NAO). The NAO conducts financial audits of all government departments and many other public bodies and reports to Parliament on the value for money reports.

³¹ For the 1997-98 Finance Bill, 57 amendments were tabled and two new clauses were proposed.

³² The Comptroller and Auditor General is an Officer of the House of Commons.

PART 7 - SOME FEATURES OF POLITICAL PARTICIPATION

20. Political Parties

Legal Regulatory Framework

20.1 The relevant legislation relating to political parties is the Registration of Political Parties Act 1998. However, subject to its receiving of the Royal Assent, the Political Parties, Elections and Referendums Bill which has been passed by Parliament will replace the Registration of Political Parties Act 1998.

20.2 The Registration of Political Parties Act 1998 aims to provide a system of registration of political party names and emblems. It does not address wider political party or electoral issues such as internal party organization, party and electoral financing or electoral rules and procedures. All these issues will be addressed by the Political Parties, Elections and Referendums Bill.

20.3 The Bill covers the establishment of an Electoral Commission, registration of political parties, control of political donations, campaign finance and the administration of referendums.

Registration

20.4 At the moment, registration of political party names and emblems is not compulsory. However, the Political Parties, Elections and Referendums Bill will make registration compulsory before a party can field candidates in all types of election.

20.5 The Registration of Political Parties Act 1998 only aims to provide protection against electoral opponents using misleading descriptions which would easily confused voters with those of established parties. Examples are 'Conservative', 'Literal Democrat', 'New Labour' or 'The Tory Candidate'. There were a number of such candidates at the 1997 general election.

20.6 Under the Act, registered political parties are allowed to make party political broadcasts. Political parties would also be able to register an emblem to be printed on the ballot paper.

20.7 Registration of political party names and emblems shall be made with the Companies House which also handles company registration.

Electoral Commission

20.8 The Political Parties, Elections and Referendums Bill provides for the establishment of an Electoral Commission. The Electoral Commission will be responsible for registration of political parties, the scrutiny of political parties' income and expenditure, review of electoral law and the administration of referendums. It is expected that the Electoral Commission will be established by the end of 2000 subject to the Bill receiving the Royal Assent.

Income and Expenditure

20.9 The Political Parties, Elections and Referendums Bill requires registered political parties to maintain accounts of their income and expenditure. It also requires registered political parties to submit an annual statement of accounts to the Electoral Commission.

20.10 The Bill imposes restrictions on the sources of donations and prohibits foreign and anonymous donations to political parties. Political parties need to report to the Electoral Commission in respect of donations above a certain value.

20.11 The Bill also imposes limits on campaign expenditure incurred by political parties in respect of different levels of elections.

21. Recent Electoral Reforms

European Parliamentary Election

21.1 The European Parliamentary Election Act 1999 changed the electoral system from the first-past-the-post system into a proportional representation system. The Act requires the elections of British representatives to the European Parliament to be conducted using a regional list. Under the regional list system, England is divided into nine regions, Scotland and Wales each constitutes a single region. Each region returns four to eleven Members of European Parliament.

21.2 Under the new electoral system, each political party puts forward its list of candidates in its preferred order. Individual independent candidates are also able to stand. Voters cast only one vote. They can vote either for a party list (which will show the names of all the party's candidates) or for an individual candidate. Seats will be allocated broadly proportional to the shares of votes obtained by the parties or individual independent candidates in a region.

Scottish Parliament

21.3 In 1999, devolved legislative authorities were established in Scotland and Wales. In Scotland, a new elected parliament was established with powers to legislate on all domestic matters and with a mandate to vary taxes set by the Government of the United Kingdom by 3%. The Scottish Parliament has 129 members, elected every four years by a combined system of direct voting and proportional representation.

21.4 Under the combined system, there are 73 constituencies and each constituency returns one member of the Parliament under the first-past-the-post system and the remaining 56 additional members are returned under the system of proportional representation.

National Assembly for Wales

21.5 The Welsh Assembly undertakes responsibility for issues previously covered by the Welsh Office of the Government of the United Kingdom. The 60-member Assembly was elected under the same system as in Scotland.

22. Constitutional Amendments Related to Political Reform

22.1 The United Kingdom does not have a written constitution. Constitutional provisions are found in statutes, common law, conventions, customs and traditions. Hence, constitutional amendments can be made by a simple majority vote of the legislature, judgements by courts, by international agreements, and by accepted changes in customs and traditions.

22.2 The recent constitutional amendments are the devolution for Scotland and Wales and the change in the electoral system for the European Parliament. Please see Section 21 for details.

23. Referendums

23.1 As of to date, there was only one national referendum and five regional referendums held in the United Kingdom. Table 2 gives the details.

Table 2 - Referendums Held in the United Kingdom

| Year | Issue | National or Regional |
|------|--|----------------------|
| 1975 | Continued membership of the European Community | National |
| 1979 | Scottish devolution | Regional |
| 1979 | Welsh devolution | Regional |
| 1997 | Scottish devolution | Regional |
| 1997 | Welsh devolution | Regional |
| 1998 | Reforms of local government | Regional |

23.2 There are critics who argue that referendums, asking only 'yes' or 'no' have over-simplified issues as it is impossible for the voters to amend them. Voters might be unduly influenced by parties or organizations which had control of information. Some might argue that referendums would undermine representative government and parliamentary democracy.³³ Charles Kennedy, a Liberal Democrat, summarized the arguments as follows,

23.3 'Referendum provides a snapshot of public opinion on a particular day. It does not show the whole film; it shows one frame out of the reel. In any democracy, the campaigns and debates of both sides will go on. They will not end when the ballot boxes have closed on a particular day of a particular month in a particular year.'³⁴

23.4 Yet, there are promises of referendums on single European currency and the electoral system made by the Labour government. It seems that the Labour government is more willing to use referendums as a means of legitimizing its policies.

³³ Kingdom, John, *Government and Politics in Britain*, Polity Press, 1997, p.228.

³⁴ Gay, Oonagh and Winetrobe, Barry, *Referendum*, Research Paper No 93/80, House Of Commons Library 20 July 1993.

Appendix I

Parliamentary Resolution on Ministerial Accountability

Viscount Cranborne moved that, in the opinion of this House [House of Lords], the following principle should govern the conduct of Ministers of the Crown in relation to Parliament:

1. Ministers have a duty to Parliament to account, and be held to account, for the policies, decisions and actions of their Department and Next Steps Agencies;
2. It is of paramount importance that Ministers should give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister;
3. Ministers should be as open as possible with Parliament, refusing to provide information only when disclosure would not be in the public interest;
4. Ministers should require civil servants who give evidence before Parliamentary Committees on their behalf and under their directions to be as helpful as possible in providing accurate, truthful and full information;
5. The interpretation of "public interest" in paragraph (3) shall be decided in accordance with status and the Government's Code of Practice on Access to Government Information (Second Edition, January 1997); and compliance with the duty in paragraph (4) shall be in accordance with the duties and responsibilities of civil servants set out in Civil Service Code (January 1996).

Remark: The above resolution was passed by the House of Lords on 20 March 1997. The House of Commons also passed a similar resolution on 19 March 1997 with identical principles but slightly different format.

Sources: 1. House of Lords Hansard, 20 March 1997.
2. <http://www.leeds.ac.uk/law/teaching/law6cw/min-4.htm>

Appendix II

Procedures for Private Members' Bills

The Ballot

Since the time set aside by the House of Commons for consideration of private member's legislation is limited, there is pressure on the time available for debating bills introduced by backbenchers. Priority in the use of this time is established by a Ballot held shortly after the beginning of each session. By convention, ministers, government whips, opposition leaders and spokespersons may not participate in the Ballot. The ten members placed highest in the Ballot may claim up to £ 200 (or HK\$2,510³⁵) as drafting expenses.

Over 400 members normally enter the Ballot. It is reported that substantial proportions of these members have no particular subject for a bill in mind. Pressure groups and government whips will seek to induce a well-placed private member to introduce a bill of their own devising.

The Ten Minute Rule

Bills introduced by the means of the Ten Minute Rule are frequently not serious attempts at legislation. The purpose of the bill is to suggest a change in the law or to promote a particular cause.

Ordinary Presentation

Members are also allowed to introduce a bill after having given due notice. However, they cannot present such bills until after the Ballot bills have been presented and put down for Second Reading. Therefore, they are unlikely to be high up the list for discussion at sittings.

Source: House of Commons, Fact Sheet No.4: Private Members' Bill Procedure, February 1999

³⁵ £ 1=HK\$12.55, Census and Statistics Department, *Hong Kong Monthly Digest of Statistics*, February 2000, p. 117.

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