

Parliamentary Oversight of the Executive Branch

Canada • Germany • Italy • Japan • Poland
Sweden • United Kingdom • United States

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Comparative Summary

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This report provides information on parliamentary oversight mechanisms of the executive branch in Canada, Germany, Italy, Japan, Poland, Sweden, the United Kingdom, and the United States. These countries represent different geographical regions and parliamentary systems. All but Sweden have bicameral legislatures.

The means by which the surveyed countries exercise parliamentary oversight of executive branch actions often include members' inquiries, interpellations, and votes of no confidence against the respective governments. Specialized permanent or ad hoc parliamentary committees tasked with oversight of government actions in specific areas operate in all the countries surveyed.

In addition to specialized committee review, Swedish parliamentary oversight is conducted by the Committee on the Constitution (Konstitutionsutskottet). Consisting of forty-four members representing all parties of Parliament, this Committee has the power to hold hearings, conduct investigations, and request classified materials from members of Parliament.

In Germany, in addition to the Defense Committee, the Parliamentary Commissioner for the Armed Forces assists the German Parliament (Bundestag) with oversight of the armed forces. The Commissioner is neither a member of the Bundestag nor a civil servant.

A Service for Parliamentary Control operates within the Italian Chamber of Deputies. The main functions of the Service are to provide technical verification of the implementation of parliamentary legislation and the respective implementing regulations by the executive branch; to verify and monitor the follow-up to nonlegislative parliamentary deliberations and initiatives; and to verify the government's compliance with parliamentary legislation. The Service operates in accordance with special regulations and under the supervision of the parliamentary Committee for the Supervision on Documentation Activity and the Library.

Both the United States and Canada have established special agencies dedicated to overseeing government activities.

In addition to delegating oversight powers to congressional committees through the committee system, in the United States congressional oversight traditionally involves the support of a number of offices, including the Council of the Inspectors General on Integrity and Efficiency (CIGIE), the Office of Management and Budget (OMB), the Government Accountability Office (GAO), the Congressional Research Service (CRS), and the Congressional Budget Office (CBO). Major congressional oversight processes include hearings on and other investigations of executive branch activities, impeachment of executive branch officials, Senate confirmation of high-level executive branch appointees, the appropriation of funds for agencies and programs, the authorization of agencies and programs, and the development of the federal budget.

In Canada there are nine permanent, specialized oversight offices that report to either the Senate or House of Commons or both. They consist of the Office of the Auditor General, Elections Canada, the Office of the Information Commissioner, the Office of the Privacy Commissioner, the Office of the Public Sector Integrity Commissioner, the Office of the Conflict of Interest and Ethics Commissioner, the Office of the Commissioner of Lobbying, and the Parliamentary Budget Officer.

Additional information and sources are included in the attached individual country surveys.

Canada

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SUMMARY The Canadian Parliament’s system for oversight of the executive branch consists of nine permanent, specialized offices called “Officers of Parliament,” whose mandates, powers, and limits have been established by parliamentary statute. In addition, the Parliament can appoint ad hoc commissioners to investigate specific matters.

I. Parliamentary Oversight System

Canada is a country with shared legislative and executive competences between the federal government and the provincial governments. This report discusses only the federal oversight offices, but each province has established its own parliamentary oversight offices.

A. Officers of Parliament

The Canadian Parliament’s system for oversight of the executive branch consists of nine permanent, specialized offices called “Officers of Parliament,” whose mandates, powers, and limits have been established by parliamentary statute.¹ The independence of the Officers of Parliament from the executive branch is crucial in guaranteeing the integrity of their oversight function and the research they conduct toward that end.

The Officers of Parliament report to either the Senate or House of Commons or both.² The nine offices comprising the Officers of Parliament and their responsibilities are as follows:

- The Office of the Auditor General supervises the government’s stewardship of public funds,³ including the Consolidated Revenue Fund,⁴ and examines the financial statements required by law to verify if the statements present information faithfully in accordance with stated accounting policies.⁵

* This report was prepared with the assistance of Law Library intern Marie-Philippe Lavoie.

¹ *Officers and Officials of Parliament*, PARLIAMENT OF CANADA: PALINFO, <https://lop.parl.ca/ParlInfo/compilations/officersandofficials/officersofparliament.aspx> (last updated Oct. 2, 2014).

² *Id.*

³ Auditor General Act, R.S.C. 1985, c A-17, <http://laws-lois.justice.gc.ca/PDF/A-17.pdf>; see also OFFICE OF THE AUDITOR GENERAL OF CANADA, http://www.oag-bvg.gc.ca/internet/English/admin_e_41.html (last visited July 26, 2017); Jamie Baxter, *From Integrity Agency to Accountability Network: The Political Economy of Public Sector Oversight*, 46(2) OTTAWA L. REV. 231, 237 (2014–15), available at <https://commonlaw.uottawa.ca/sites/commonlaw.uottawa.ca.ottawa-law-review/files/46-2-baxter.pdf>.

⁴ Auditor General Act art. 5.

⁵ *Id.* art. 6.

- Elections Canada is responsible for insuring the fairness and impartiality of federal elections.⁶
- The Office of the Commissioner of Official Languages ensures equality of status and equal rights and privileges regarding use of the French and English languages in all federal institutions.⁷ It is responsible for supporting and developing the French and English linguistic minority communities and promoting the equality of status and use of both languages in Canadian society.⁸
- The Office of the Information Commissioner is responsible for guaranteeing citizens' rights to access federal information permitted by law, and receives and investigates citizens' complaints regarding access to records under the Access to Information Act.⁹
- The Office of the Privacy Commissioner addresses complaints related to breaches of privacy, misuse of private data, and the refusal of access to personal information.¹⁰
- The Office of the Public Sector Integrity Commissioner is responsible for investigating public servants' complaints regarding professional wrongdoing and reprisals.¹¹
- The Office of the Conflict of Interest and Ethics Commissioner oversees the possible conflicts between private interests and the duties of public office holders.¹²
- The Office of the Commissioner of Lobbying examines complaints about wrongful lobbying activities and maintains a register of lobbyists.¹³
- The Parliamentary Budget Officer conducts independent analyses of national funds, government financial estimates, and trends in the economy; unlike other Officers of Parliament, it is part of the Library of Parliament.¹⁴

⁶ Fair Election Act, SC 2014, c 12, http://laws-lois.justice.gc.ca/PDF/2014_12.pdf; see also ELECTIONS CANADA, <http://www.elections.ca/home.aspx> (last updated July 20, 2017).

⁷ Official Languages Act, R.S.C. 1985, c 31, art. 2(a), <http://laws-lois.justice.gc.ca/PDF/O-3.01.pdf>; see also OFFICE OF THE COMMISSIONER OF OFFICIAL LANGUAGES, <http://www.officiallanguages.gc.ca/en> (last visited July 26, 2017).

⁸ *Id.* art. 2(b).

⁹ Access to Information Act, R.C.S. 1985, c A-1, art. 30, <http://laws-lois.justice.gc.ca/PDF/A-1.pdf>; see also OFFICE OF THE INFORMATION COMMISSIONER OF CANADA, <http://www.oic-ci.gc.ca/eng> (last updated May 25, 2017).

¹⁰ Privacy Act, R.S.C., 1985, c P-21, art. 30(1); see also OFFICE OF THE PRIVACY COMMISSIONER OF CANADA, <https://www.priv.gc.ca/en> (last visited July 26, 2017).

¹¹ Public Servant Disclosure Act, SC 2005, c 46, art. 19, <http://laws-lois.justice.gc.ca/PDF/P-31.9.pdf>; see also OFFICE OF THE PUBLIC SECTOR INTEGRITY COMMISSIONER OF CANADA, <http://www.psic.gc.ca/eng/home> (last visited July 26, 2017).

¹² Conflict of Interest Act, SC 2006, c 9, <http://laws-lois.justice.gc.ca/PDF/C-36.65.pdf>; see also OFFICE OF THE CONFLICT OF INTEREST AND ETHICS COMMISSIONER, <http://ciec-ccie.parl.gc.ca/EN/Pages/default.aspx> (last updated June 16, 2017).

¹³ Lobbying Act, RSC 1985, c 44, <http://laws.justice.gc.ca/PDF/L-12.4.pdf>; see also OFFICE OF THE COMMISSIONER OF LOBBYING OF CANADA, https://lobbycanada.gc.ca/eic/site/012.nsf/eng/h_00000.html (last updated May 19, 2017).

¹⁴ Parliament of Canada Act, RSC 1985, c P-1, <http://laws-lois.justice.gc.ca/PDF/P-1.pdf>; see also OFFICE OF THE PARLIAMENTARY BUDGET OFFICER, <http://www.pbo-dpb.gc.ca/en> (last visited July 26, 2017).

To supplement the efforts of the Officers of Parliament, the Parliament can appoint ad hoc commissioners to investigate specific matters.

B. Appointment of Commissioners

Commissioners are appointed by the nomination of the Governor in Council “after consultation with the leader of every recognized party in the Senate and House of Commons and approval of the appointment by resolution of the Senate and House of Commons.”¹⁵ The two exceptions are the Election Canada Commissioner, who is appointed by the Chief of the House of Commons, and the Parliamentary Budget Officer, who is appointed by the Governor in Council alone.¹⁶ The statutory term of office of the Commissioners is seven years, except in the cases of the Auditor General and the Commissioner of Election Canada, who serve for ten years, and the Parliamentary Budget Officer, who is appointed for five years.¹⁷

C. Mandate of the Officers of Parliament

The Officers of Parliament conduct oversight of the day-to-day business of the government, with investigation powers arising from their own initiative, the law, Parliament’s requests, or private complaints. They also have a role in education, advocacy, and policy reforms within their mission. The Officers of the Parliament report directly to the Parliament or its committees, through speakers and annual or special reports.¹⁸

II. Recommended Sources for Further Research

The items cited in the footnotes are the most useful sources for research.

¹⁵ Baxter, *supra* note 3, at 243.

¹⁶ *Id.*

¹⁷ *Id.* at 242.

¹⁸ *Id.* at 237, 245.

Germany

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SUMMARY Parliamentary control over the executive branch in Germany is exercised mainly through the establishment of committees and the right of the Parliament and its committees to summon and question members of the executive or to present them with formalized written requests.

I. General Overview

The main legislative body in Germany is the German Bundestag (Parliament).¹ As Germany is a federation, its sixteen states (*Länder*) participate in the legislative process through another constitutional organ, the German Bundesrat (Federal Council).² Besides engaging in the legislative process, the Parliament monitors and scrutinizes the executive branch and its work. The executive branch is made up of the Federal President³ and the Federal Government (Cabinet),⁴ which consists of the Federal Chancellor⁵ and the Federal Ministers.⁶ Even though the German Basic Law (Constitution) awards the Federal Chancellor a strong position, the legislature retains control over him or her throughout his or her tenure. With an absolute majority the legislature can elect a successor to the current Federal Chancellor and require the Federal President to dismiss the current Federal Chancellor through a vote of no confidence.⁷

Generally, in order to exercise its oversight function of the executive branch, the legislature must be informed about the work of the Federal Government. The legislative branch can either gather the information itself or it can require the Federal Government to provide the necessary information.

¹ GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW], May 23, 1949, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 1, arts. 38–49, art. 77, para. 1, <http://www.gesetze-im-internet.de/gg/GG.pdf>, unofficial English translation available at http://www.gesetze-im-internet.de/englisch_gg/basic_law_for_the_federal_republic_of_germany.pdf.

² *Id.* arts. 50–53.

³ *Id.* art. 54.

⁴ *Id.* art. 62.

⁵ *Id.* art. 63.

⁶ *Id.* art. 64.

⁷ *Id.* art. 67.

II. Information Gathering by the Legislature

One important way in which the legislative branch acquires information is by forming permanent committees, committees of inquiry,⁸ and a parliamentary control panel.⁹ The Basic Law provides for the establishment of certain permanent committees,¹⁰ but the Bundestag is free to establish other permanent committees, in general one per ministry. The establishment of a permanent committee might also be required by ordinary legislation, such as the Budget Committee.¹¹ In the current eighteenth legislative period, the legislature has formed a total of twenty-three permanent committees.¹²

In addition to the Defense Committee, parliamentary control with regard to defense policy is exercised by the Parliamentary Commissioner for the Armed Forces.¹³

The Bundestag also has a limited right to access records and databases that are in the custody of the Federal Government.¹⁴

III. Information Provided by the Federal Government to the Legislature

In order to get information from the Federal Government, the Basic Law codifies a general right of the Bundestag and its committees to require by majority vote the presence of any member of the Federal Government at their public sessions.¹⁵ The same right is provided for the Bundesrat.¹⁶ If a federal minister does not comply with the summons, the Bundestag can enforce the request in the Federal Constitutional Court with a suit to define the extent of the rights and

⁸ *Id.* art. 44, art. 45a, para. 2.

⁹ *Id.* art. 45d.

¹⁰ The Basic Law provides for the establishment of a Committee on the Affairs of the European Union (art. 45), a Committee on Foreign Affairs (art. 45a), a Defense Committee (art. 45a), and a Petitions Committee (art. 45c).

¹¹ Geschäftsordnung des Deutschen Bundestages [BTGO] [Rules of Procedure of the Bundestag], June 25, 1980, BGBl. I at 1237, as amended, §§ 94–96, http://www.gesetze-im-internet.de/bundesrecht/btgo_1980/gesamt.pdf, English translation available at <https://www.btg-bestellservice.de/pdf/80060000.pdf>.

¹² *Permanent Committees*, DEUTSCHER BUNDESTAG, <http://www.bundestag.de/en/committees> (last visited July 25, 2017).

¹³ BASIC LAW art. 45b; Gesetz über den Wehrbeauftragten des Deutschen Bundestages] [WBeauftrG] [Act on the Parliamentary Commissioner for the Armed Forces of the German Bundestag], June 16, 1982, BGBl. I at 677, as amended, § 1, <http://www.gesetze-im-internet.de/bundesrecht/wehrbbtg/gesamt.pdf>.

¹⁴ This right is available only to certain Committees—for example, the Committee of Inquiry—according to art. 44, para. 2, sentence 1, and art. 45a, para. 2 of the Basic Law, and §§ 18, 34 of the Act on Committees of Inquiry [UNTERSUCHUNGS-AUSSCHUSSGESETZ] [PUAG], June 19, 2001, BGBl. I at 1142, as amended, <http://www.gesetze-im-internet.de/bundesrecht/puag/gesamt.pdf>. It is also available to the Parliamentary Commissioner for the Armed Forces, according to art. 45b of the Basic Law and § 3, no. 1, sentence 1 of the Act on the Parliamentary Commissioner for the Armed Forces of the German Bundestag.

¹⁵ BASIC LAW art. 43, para. 1; BTGO, *supra* note 11, § 42.

¹⁶ BASIC LAW art. 53; Geschäftsordnung des Deutschen Bundesrates [BRGO] [Rules of Procedure of the Bundesrat], Nov. 26, 1993, BGBl. I at 2007, as amended, http://www.gesetze-im-internet.de/bundesrecht/brgo_1966/gesamt.pdf.

duties of a supreme federal body or of other parties vested with rights of their own by the Basic Law.¹⁷

In addition, minority groupings and individual members of the Bundestag can address formalized requests (interpellations) to the Government as a whole or to individual ministers.¹⁸ A group representing at least 5% of the members of the Bundestag or a permanent group of Bundestag members from the same party who comprise at least 5% of the Bundestag (*Fraktion*)¹⁹ has the right to pose written questions to the Government. The answers to these questions are discussed in a plenary session of the Parliament (*Große Anfrage* (major interpellation)).²⁰ Another option is a request to which the Government must provide a written answer within fourteen days, but the answer is not discussed in Parliament (*Kleine Anfrage* (minor interpellation)).²¹ Furthermore, individual members of the Bundestag can address short oral or written inquiries to the Government.²² Minority groups can also address the Government in a debate on current issues, known as the “Current Affairs Hour” (*Aktuelle Stunde*),²³ in which the federal ministers outline the topics from their last session that fall within their area of competency, followed by questions from members of Parliament. To enforce these rights, minority groups and individual members of the Bundestag can call on the Federal Constitutional Court.²⁴

IV. Recommended Sources for Further Research

In addition to those items cited in the footnotes, the following item is a useful research source:

- SUSANNE LINN & FRANK SOBOLEWSKI, THE GERMAN BUNDESTAG: FUNCTIONS AND PROCEDURES (2015), available at <https://www.btg-bestellservice.de/pdf/80080000.pdf>.

¹⁷ BASIC LAW art. 93, para. 1, No. 1; Bundesverfassungsgerichtsgesetz [BVerfGG] [Act on the Federal Constitutional Court], Aug. 11, 1993, BGBl. I at 1473, as amended, § 13, no. 5 & § 63 *et seq.*, <http://www.gesetze-im-internet.de/bundesrecht/bverfgg/gesamt.pdf>, English translation available at http://www.bundesverfassungsgericht.de/SharedDocs/Downloads/EN/Gesetze/BVerfGG.pdf?__blob=publicationFile&v=6.

¹⁸ BASIC LAW art. 38, para. 1; BTGO, *supra* note 11, §§ 100–106; Richtlinien für die Fragestunde und für die schriftlichen Einzelfragen (Annex 4 der Geschäftsordnung des Deutschen Bundestages) [Guidelines for “Question Time” and for Written Individual Questions (Annex 4 to the Rules of Procedure of the German Bundestag)], June 25, 1980, BGBl. I at 1259, as amended, http://www.gesetze-im-internet.de/btgo1980anl_4/BTGO1980Anl_4.pdf; Richtlinien für Aussprachen zu Themen von allgemeinem aktuellem Interesse (Anlage 5 der Geschäftsordnung des Deutschen Bundestages) [Guidelines for the “Current Affairs Hour” (Annex 5 of the Rules of Procedure of the German Bundestag)], June 25, 1980, BGBl. I at 1260, as amended, http://www.gesetze-im-internet.de/btgo1980anl_5/BTGO1980Anl_5.pdf.

¹⁹ BTGO, *supra* note 11, § 10.

²⁰ *Id.* §§ 100–103.

²¹ *Id.* §§ 104.

²² *Id.* § 105.

²³ *Id.* § 106.

²⁴ BASIC LAW art. 93, para. 1, No. 1; Act on the Federal Constitutional Court § 13, no. 5 & § 63 *et seq.*

Italy

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SUMMARY Italy’s Chamber of Deputies exercises oversight of the executive branch’s implementation of and compliance with parliamentary legislation and related regulations through its Service for Parliamentary Control unit. The Service—which has recently issued its first report—is also charged with producing sectorial reports to verify the compliance of the Chamber of Deputies Administration with legislation in different areas. The Service is supervised by a parliamentary committee.

I. General Structure of the Italian Parliament

The Italian Parliament is composed of two chambers: the Senate (*Senato della Repubblica*) and the Chamber of Deputies (*Camera dei deputati*).¹ Both chambers enjoy equal legislative power.²

The internal administrative organization of the Chamber of Deputies is governed by the Rules of Procedure of the Chamber of Deputies and other regulations adopted by the Bureau of the Chamber of Deputies, a body chaired by the President of the Chamber of Deputies that is empowered to make decisions affecting the functioning of the Chamber.³ In addition, the Chamber of Deputies Administration, with about 1,900 employees, provides assistance and support to Italian parliamentary activity.⁴

The legal sources for the activities of the Chamber of Deputies Administration consist of enactments (*deliberazione*) of the Office of the President of the Chamber of Deputies and circulars of the Secretary General of the Chamber of Deputies.⁵

¹ PARLAMENTO ITALIANO [ITALIAN PARLIAMENT], <http://www.parlamento.it/home> (last visited Aug. 3, 2017), archived at <https://perma.cc/J38Z-M4H3>.

² *Parliament*, SENATO DELLA REPUBBLICA, <https://www.senato.it/3801> (last visited Aug. 3, 2017), archived at <https://perma.cc/MQ7X-AQK6>.

³ *The Internal Organisation of the Chamber of Deputies*, CHAMBER OF DEPUTIES, http://en.camera.it/4?scheda_informazioni=33 (last visited Aug. 3, 2017), archived at <https://perma.cc/NX7W-YUJ7>; *The Bureau*, CHAMBER OF DEPUTIES, http://en.camera.it/4?scheda_informazioni=5, archived at <https://perma.cc/6X7A-G6X3>.

⁴ *La Struttura Amministrativa: Introduzione [The Administrative Structure: Introduction]*, LEGISLATURE PRECEDENTI [PREVIOUS LEGISLATION], <http://legislature.camera.it/frameset.asp?content=%2Famministrazione%2F315%2F595%2F636%2F1224%2F1243%2Fdocumentotesto%2Easp%3F> (click on “Introduzione” under “la Struttura Amministrativa: Guida” on the left) (last visited Aug. 3, 2017), archived at <https://perma.cc/4PTP-Y92R>.

⁵ CAMERA DEI DEPUTATI, SEGRETERIA GENERALE [CHAMBER OF DEPUTIES, GENERAL SECRETARY], L’AMMINISTRAZIONE DELLA CAMERA DEI DEPUTATI: ORGANIZZAZIONE INTERNA [CHAMBER OF DEPUTIES ADMINISTRATION: INTERNAL ORGANIZATION], May 31, 2004, http://legislature.camera.it/files/pdf/organizzazione_interna.pdf, archived at <https://perma.cc/QW4Y-6WKD>.

II. Structure and Responsibilities of the Service for Parliamentary Control

The Italian Chamber of Deputies issues Regolamento della Camera (Chamber's Regulations, hereinafter Regulations) and other *regolamenti interni* (internal regulations). Title II of the Chamber's Regulations (titled "Servizi ed uffici della Camera" (Services and Offices of the Chamber) establishes the norms for the eighteen "Services" created at the Chamber (including, for example, the Services and Offices of the General Secretariat, the Service of the Administration, the Service of the Assembly, Library Services, etc.). One of these Services is the Service for Parliamentary Control (Servizio per il Controllo parlamentare) (hereinafter the Service).⁶

The Regulations (Title II) set forth the main functions of the Service:

- To provide technical verification of the implementation of parliamentary legislation and the respective implementing regulations by the executive branch (*Governo*) on the basis of information provided by the concerned executive agencies
- To verify and monitor the follow-up of deliberations and nonlegislative parliamentary initiatives
- To verify the government's compliance with parliamentary legislation⁷

Together with the other services, the Service is supervised by a parliamentary committee called the Committee for the Supervision on Documentation Activity and the Library. This Committee is regulated by the Committee's Regulations on Documentation Activity and the Library.⁸

III. Compliance-Verification Reports

Recently, the Service for Parliamentary Control issued its first report on parliamentary oversight.⁹ In addition, the Service also produces regular reports about different issues ranging over a broad spectrum of legislative activity.¹⁰

⁶ *Id.*

⁷ Camera dei deputati, Regolamento dei Servizi e del Personale art. 25, <http://legislature.camera.it/frameset.asp?content=%2Famministrazione%2F315%2F595%2F636%2F1224%2F1243%2Fdocumentotesto%2Easp%3F>, archived at <https://perma.cc/XWE9-FSS5>; see also *La Struttura Amministrativa: Organizzazione Interna, Servizio per il Controllo parlamentare* [*The Administrative Structure: Internal Organization, Parliamentary Control Service*], <http://legislature.camera.it/amministrazione/315/592/677/648/documentotesto.asp> (last visited Aug. 3, 2017), archived at <https://perma.cc/GGQ5-FDHQ>.

⁸ Ufficio del Presidente della Camera dei Deputati [Office of the President of the Chamber of Deputies], Regolamento sull'Attività di Documentazione e della Biblioteca [Regulations on Documentation Activity and the Library], Oct. 26, 2004, arts. 1–6 (on file with author).

⁹ CAMERA DEI DEPUTATI, RAPPORTO SULL' ATTIVITÀ DI CONTROLLO PARLAMENTARE 2016 [REPORT ON PARLIAMENTARY OVERSIGHT ACTIVITY 2016] (Apr. 2017), http://www.camera.it/application/xmanager/projects/leg17/attachments/shadow_comunicatostampa/allegato_pdfs/000/011/290/CPRAPPOR2016.pdf, archived at <https://perma.cc/C893-FVPE>.

¹⁰ See, for e.g., Servizio per il Controllo parlamentare, *Monitoraggio di Nomine Governative Atti di Indirizzo e di Controllo Relazioni al Parlamento ed Altri Adempimenti* [*Parliamentary Oversight Activities: Monitoring of*

Government Appointments, Official Guidelines and Controlling Relations with the Parliament and Other Tasks], 36(17) NOTIZIARIO MENSILE (July 2016), <http://documenti.camera.it/Leg17/Dossier/Pdf/CP0616M.Pdf>, archived at <https://perma.cc/FQ22-Z8XL>.

Japan

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SUMMARY Japan's Constitution provides for a parliamentary Cabinet system with two Houses. Each House has the right to investigate government-related matters and require reports from government agencies, the presence and testimony of witnesses, and the production of records.

I. Introduction

The Diet, Japan's Parliament, is composed of two Houses—the House of Representatives and the House of Councillors.¹ The Constitution provides for a parliamentary Cabinet system. The Prime Minister is chosen from among the members of the Diet by a resolution of the Diet.² The Prime Minister appoints the ministers of state, a majority of whom must be chosen from among the members of the Diet.³ If the House of Representatives passes a no-confidence resolution, either the House of Representatives must be dissolved or the Cabinet must resign en masse.⁴ The Prime Minister and other ministers of state may choose to appear in either House at any time for the purpose of speaking on bills, regardless of whether they are members of the House or not. Moreover, when either House requests the presence of the Prime Minister or ministers of state at a meeting, they must appear in order to give answers or explanations.⁵

II. Investigations of Government-Related Matters

Each House may conduct investigations of government-related matters and require the presence and testimony of witnesses, and the production of records.⁶ A House also may dispatch committee members to conduct investigations.⁷ Such investigations may be conducted at plenary sessions, but are usually conducted by committees.⁸ An investigation may be initiated by the request of a committee member or decision of a committee's board of directors.⁹ The

¹ CONSTITUTION OF JAPAN art. 42 (1946), http://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

² *Id.* art. 67.

³ *Id.* art. 68.

⁴ *Id.* art. 69.

⁵ *Id.* art. 63.

⁶ *Id.* art. 62.

⁷ Diet Act, Act No. 79 of 1947, amended by Act No. 86 of 2014, art. 103, <http://www.sangiin.go.jp/eng/law/diet>.

⁸ 参議院のあらし: 委員会の活動(2) 国政調査 [Summary of House of Councillors: Activities of Committees (2) Investigation in Relation to the Government], HOUSE OF COUNCILLORS, <http://www.sangiin.go.jp/japanese/aramashi/keyword/katudo02.html> (last visited Aug. 4, 2017).

⁹ *Id.*

subject matter of investigations may cover anything related to the government. As an example, the president of a private school was recently summoned to testify before the Budget Committees of both Houses in regard to a scandal surrounding the school's acquisition of public property and connections to politicians, including Prime Minister Abe.¹⁰

When a House or House committee requests a report or records from the Cabinet or a government agency, the Cabinet or a government agency must submit the requested item(s).¹¹ If the Cabinet or agency fails or refuses to comply with the request, it must give a plausible reason.¹² If the House or committee finds the reason to be unacceptable, the House or committee may ask the Cabinet to declare that the production of the reports and records would be gravely detrimental to the national interest.¹³ If the Cabinet does not make such a declaration, it must submit the requested report or records.¹⁴ When the head of the agency declines to provide reports or records because they contain specially designated national secrets,¹⁵ the requesting House or committee may request the Board of Oversight and Review of Specially Designated Secrets¹⁶ of the House to which it belongs to examine the refusal.¹⁷ A House or House committee may also request the Board of Audit to carry out an audit upon specified matters and to produce a report on the results.¹⁸

The Act on Oaths and Testimonies of Witnesses in a House has provisions to regulate the testimony of witnesses.¹⁹ If a House requests a person to attend a meeting and testify or submit a document, the person must comply.²⁰ A person who does not appear, does not submit a requested document, or refuses to take an oath or testify is punishable by imprisonment for up to one year and/or a fine of up to 100,000 yen (approximately US\$900).²¹ A witness who makes a false statement under oath at a House meeting is punishable by imprisonment for three months

¹⁰ Yoko Wakatsuki & Joshua Berlinger, *Japan PM Shinzo Abe Embroiled in Land-Sale Scandal*, CNN (Mar. 24, 2017), <http://www.cnn.com/2017/03/22/asia/japan-school-scandal/index.html>; *Gov't Spokesman Rebuts Moritomo Gakuen Chief's Abe Donation Claim*, MAINICHI (Mar. 23, 2017), <https://mainichi.jp/english/articles/20170323/p2a/00m/0na/008000c>.

¹¹ Diet Act art. 104, para. 1.

¹² *Id.* art. 104, para. 2.

¹³ *Id.* art. 104, para. 3.

¹⁴ *Id.* art. 104, para. 4.

¹⁵ Act on the Protection of Specially Designated Secrets, Act No. 108 of 2013, art. 3, para. 1.

¹⁶ The Board of Oversight and Review of Specially Designated Secrets was established in both Houses to review the appropriateness of refusals to provide reports or records. Diet Act art. 102-13.

¹⁷ *Id.* art. 104-2.

¹⁸ *Id.* art. 105.

¹⁹ Act on Oaths and Testimonies of Witnesses in a House, Act No. 225 of 1947, *amended by* Act No. 86 of 2014, <http://law.e-gov.go.jp/htmldata/S22/S22HO225.html> (in Japanese).

²⁰ *Id.* art. 1.

²¹ *Id.* art. 7.

to ten years.²² A witness may be accompanied by an attorney and consult with him/her while providing testimony.²³

In order to conduct long-term and comprehensive research relating to fundamental matters of government, the House of Councillors creates research committees.²⁴ Since 1986, three research committees have been established every three years.²⁵ The three current research committees are the Committees for International Economy and Diplomatic Relations, People's Daily Life and Economy, and Natural Resources and Energy.

III. Recommended Sources for Further Research

The items cited in the footnotes are the most useful sources for research.

²² *Id.* art. 6.

²³ *Id.* art. 1-4.

²⁴ Diet Act art. 54-2.

²⁵ 参議院の調査会 [*Research Committees of House of Councillors*], HOUSE OF COUNCILLORS, <http://www.sangiin.go.jp/japanese/chousakai/about.html> (last visited Aug. 4, 2017).

Poland

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I. Introduction

Relations between the Sejm (Polish Parliament) and the government—Poland’s Council of Ministers—are defined by the Constitution. Article 95.2 states that “[t]he Sejm shall control activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes.”¹ The Sejm performs general oversight by individual committees, which conduct investigations at the request of Sejm members.² The Sejm evaluates the activity of the executive through a vote of no confidence against the Council of Ministers.³

II. Committees

Each of the twenty-five Sejm committees has the authority to investigate the administration on issues within the legislative jurisdiction of the committee.⁴ Committee powers are defined by the Law on the Exercise of the Mandate of a Deputy or Senator⁵ and the Standing Orders of the Sejm of the Republic of Poland,⁶ and extend to examining reports and information provided to committees by ministers and heads of other highest state offices and institutions.⁷ Parliamentary committees may within the scope of their jurisdiction review the activities of government agencies.⁸ Ministers’ participation in committee meetings is mandatory when “matters relating to their activity are considered.”⁹

* This report was prepared with the assistance of Law Library Foreign Law consultant Olena Yatsunska.

¹ CONSTITUTION OF THE REPUBLIC OF POLAND, Apr. 2, 1997, art. 95.2, available on the official website of the Sejm, at <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

² *Id.* art. 95.

³ *Id.* art. 154.

⁴ David M. Olson, *Administrative Review and Oversight: The Experience of Post-Communist Legislatures*, in TRENDS IN PARLIAMENTARY OVERSIGHT 17 (Riccardo Pelizzo, Rick Stapenhurst & David Olson eds., The International Bank for Reconstruction and Development/The World Bank 2004), available at <http://siteresources.worldbank.org/WBI/Resources/TrendsInParliamentaryOversight-FINAL.pdf>.

⁵ Ustawa z dnia 9 maja 1996 r. o wykonywaniu mandatu posła i senatora [Law of May 9, 1996, on the Exercise of the Mandate of a Deputy or Senator], <http://www.sejm.gov.pl/prawo/mandat/kon6.htm>.

⁶ STANDING ORDERS OF THE SEJM OF THE REPUBLIC OF POLAND (consolidated text of the Resolution of July 30, 1992, with the latest amendments of Apr. 21, 2017), available on the OIDE website, at http://oide.sejm.gov.pl/oide/en/index.php?option=com_content&view=article&id=14798:the-standing-orders-of-the-sejm-of-the-republic-of-poland&catid=7&Itemid=361.

⁷ *Id.* art. 151.4.

⁸ *Id.* art. 151.5.

⁹ *Id.* art. 153.1.

A committee has the power to issue *desiderata*, or opinions, containing a committee's suggestions regarding particular matters, and may be addressed to the Council of Ministers or its individual members, the President of the Supreme Audit Office, the President of the National Bank of Poland, the Prosecutor General, and the Chief Labor Inspector.¹⁰ The addressee is required to respond in writing no later than thirty days from the day of receiving a desideratum.¹¹ In the event of failure to respond in due time or if a committee finds the response unsatisfactory, the desideratum can be renewed or, per the committee's request, the Marshal of the Sejm may reject the answer as unsatisfactory and recommend the adoption of a relevant parliamentary resolution.¹²

In addition, Sejm committees may request information and explanations from local self-governmental bodies, social organizations, state-owned and self-government-owned enterprises and establishments, and commercial companies with state or communal participation.¹³

III. Interpellations

Individual members of the Sejm may exercise control through submission of interpellations to the ministers. This right is provided by the Constitution¹⁴ and is detailed in the Standing Orders of the Sejm.¹⁵ Members' interpellations must refer to problems related to state policy and be submitted in written form.¹⁶ They must be answered in writing within three weeks.¹⁷

IV. Vote of No Confidence

The Sejm may dissolve the Council of Ministers by passing a vote of no confidence.¹⁸ The motion to pass a vote of no confidence must be submitted by at least forty-six members.¹⁹ If the Sejm passes a vote of no confidence, the President accepts the resignation of the Council of Ministers and appoints the Prime Minister chosen by the Sejm.²⁰ If the Sejm fails to pass a vote of no confidence, a second motion of no confidence cannot be submitted earlier than three months following the first vote unless it is supported by at least 115 legislators.²¹

¹⁰ *Id.* art. 159.1.

¹¹ *Id.* art. 159.4.

¹² *Id.* art. 159.6.

¹³ Ustawa z dnia 9 maja 1996 r. art. 24.

¹⁴ CONSTITUTION art. 115.

¹⁵ STANDING ORDERS OF THE SEJM OF THE REPUBLIC OF POLAND art. 191.1.

¹⁶ *Id.* art. 192.

¹⁷ CONSTITUTION art. 115.1.

¹⁸ *Id.* art. 158.

¹⁹ *Id.* art. 158.1.

²⁰ *Id.* art. 158.1.

²¹ *Id.* art. 158.2.

The vote of no confidence may also be passed with respect to a minister or another member of the Council of Ministers.²² The President must dismiss a minister who has received a vote of no confidence passed by the majority of statutory members of the Sejm.²³

V. Additional Sources for Research

The materials listed in the footnotes are the most useful for research.

²² *Id.* art. 159.

²³ *Id.* art. 159.2.

Sweden

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SUMMARY The Swedish Parliament has four means of exercising review power over the Cabinet and its Ministers: the Konstitutionsutskottet (KU) (Committee on the Constitution), which holds hearings and can initiate prosecution of Ministers for illegal acts committed in office; the right of individual Members of Parliament to question the Ministers; the collective Parliament’s right to remove a sitting Minister for reasons of “no confidence”; and the independent parliamentary agency Parliamentary Ombudsmen, which prosecutes Ministers for illegal acts and reviews the legality of actions taken by government agencies and their staff. No Minister has ever been removed by Parliament, and no prosecution has been initiated by the KU.

I. Introduction

Sweden is a parliamentary kingdom—that is, the King is the head of state,¹ whereas the Prime Minister (PM) is the head of the government and forms a *Regering* (Cabinet, or government) with the other Ministers, which the PM appoints.² The government governs the country and is accountable to the Swedish Parliament.³ To exercise checks on the government is one of the main purposes of the Swedish Parliament.⁴ There are in principle three means by which the Parliament directly yields this power: the Konstitutionsutskottet (the Committee on the Constitution), the right of individual Members of Parliament (MPs) to question the Ministers, and the collective Parliament’s right to remove a sitting Minister for reasons of “no confidence.”⁵ The executive branch’s powers are also constrained by judicial review and efficiency review (i.e., by having other agencies review the courts and government agencies with regard to the legality of their actions and their fiscal responsibility).⁶ Only parliamentary review of the executive is discussed in this report.⁷

¹ 1 kap. 5 § [1:5] REGERINGSFORMEN [RF] [INSTRUMENT OF GOVERNMENT][CONSTITUTION], <https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/kungorelse-1974152-om-beslutad-ny-regeringsform-sfs-1974-152>, unofficial English translation available on the Swedish Parliament website, at <http://www.riksdagen.se/en/SysSiteAssets/07.-dokument--lagar/the-instrument-of-government-2015.pdf> (last visited July 11, 2017).

² 6:1 RF.

³ 1:4 RF, 1:6 RF.

⁴ 1:4 RF.

⁵ 13 kap. RF; for an overview of parliamentary oversight of the executive, see *Examines the Work of the Government*, SVERIGES RIKSDAG, <https://www.riksdagen.se/en/how-the-riksdag-works/what-does-the-riksdag-do/examines-the-work-of-the-government> (last reviewed Dec. 16, 2016).

⁶ Justitieombudsmannen (JO), or Riksdagens ombudsman (Parliamentary Ombudsmen) is a parliamentary agency that reviews actions taken by government agencies and the courts to determine whether they have followed the law. The JO may also, ex officio, initiate prosecution of officials who have violated the law in their capacity as government officials. The Swedish National Audit Office audits the government agencies. *A Parliamentary Agency*, JO, <http://www.jo.se/en/About-JO/The-Parliamentary-agency> (last updated Feb. 4, 2014). Sweden was reportedly

II. Parliamentary Review of the Executive

A. Konstitutionsutskottet (Committee on the Constitution)

It is the Konstitutionsutskottet (KU) (Constitution Committee) that is tasked with ensuring that the Swedish government follows the rules for the government—namely, the Swedish Constitution and Swedish law.⁸ The KU is a committee consisting of forty-four members representing all parties of Parliament.⁹ The KU has the power to hold hearings, conduct investigations, and request classified materials from MPs.¹⁰ The KU can act on its own (ex officio) or in response to complaints (*anmälningar*) from MPs.¹¹ Thus, citizens cannot directly lodge a complaint with the KU.¹² The KU is not a court; however, it can initiate the prosecution of crimes.¹³ Crimes committed by MPs in their capacity as MPs are prosecuted by the KU and decided by the Supreme Court.¹⁴ Typically the KU issues only a “critique” of certain actions, which are later debated in the parliamentary chamber.¹⁵ A severe critique may cause the Parliament to remove a Minister through a successful no-confidence vote but, to date, no Minister has been removed through a no-confidence vote.¹⁶ At least once a year the KU must report what it has investigated and what its findings are.¹⁷ During parliamentary year 2016/2017

among the first countries in the world to establish a parliamentary agency to review the work of government agencies when it established the JO in 1809. *Internationellt samarbete*, JO, <http://www.jo.se/sv/Om-JO/Internationellt-samarbete> (last updated Oct. 17, 2014); see also LAG MED INSTRUKTION FÖR RIKSDAGENS OMBUDSMAN [Act on Instruction for the Parliamentary Ombudsmen] (SVENSK FÖRFATTNINGSSAMLING [SFS] 1986:765), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1986765-med-instruktion-for-riksdagens_sfs-1986-765.

⁷ For more about judicial and efficiency review, see *About JO*, JO, <http://www.jo.se/en/About-JO> (last updated June 9, 2013) and *A Parliamentary Agency*, JO, <http://www.jo.se/en/About-JO/The-Parliamentary-agency> (last updated Feb. 4, 2014).

⁸ 13:1 RF. Only actions committed while one is a Minister and not as an MP can be scrutinized by the KU. 1994/95:KU30 bilaga B16 s.309. However, government office staff may be scrutinized. 1 KARNOV SVENSK LAGSMALING MED KOMMENTAR, note 336 at 23 (Cecila Bergman et al. eds., 16th ed. 2016/17).

⁹ A list of KU members is available on the Swedish Parliament website, at <http://www.riksdagen.se/sv/utskotten-eu-namnden/konstitutionsutskottet/#ledamoter>.

¹⁰ 13:1 RF. The right to material from MPs was broadened in the 2010 amendments to the Constitution to include other documents that the Committee found necessary for its job. Prop. 2009/10:80 at 42, <http://www.regeringen.se/49bb5e/contentassets/095135b9032c46afacf5e0a8a55389e1/en-reformerad-grundlag-prop.-20091080>.

¹¹ 13:1 st 2 RF.

¹² *Id. e contrario*.

¹³ 13:3 RF.

¹⁴ *Id.*

¹⁵ Johan Hirschfeldt, in KARNOV SVENSK LAGSMALING MED KOMMENTAR, *supra* note 8, comment 339, at 23–24.

¹⁶ See Part II(C) of this report.

¹⁷ 13:2 RF; see, for e.g., Press Release, Riksdagen, KU:s granskning av regeringen är klar (June 8, 2017), <http://www.riksdagen.se/sv/aktuellt/2017/jun/8/kus-granskning-av-regeringen-ar-klar>. In 2016, thirty-two complaints were made against Ministers. Konstitutionsutskottets betänkande 2016/17:KU20 Granskningsbetänkande [Committee on Constitution Report 2016/2017:KU20], http://www.riksdagen.se/sv/SysSiteAssets/01.-aktuellt/201617/ku20_pres_suppl_8_juni.pdf.

the KU received a total of thirty-two complaints from MPs,¹⁸ none of which resulted in the initiation of any prosecutions.¹⁹ The operation of the KU is further regulated in the Riksdagsordning (Work Instructions for the Parliament).²⁰

B. *Utfrågningar* (Questions from Members of Parliament)

Members of Parliament have the right to ask Ministers questions in the chamber (interpellation debates) as well as on-the-spot questions.²¹ Questions asked in the Parliament chamber must pertain to a certain issue and must be answered directly.²² The MPs also have the right to present written questions to a Minister; questions delivered before 10:00 a.m. Thursday must be answered by noon the following Wednesday.²³

C. *Misstroendeförklaring* (No-Confidence Declaration)

As previously mentioned, any Minister can be removed from his or her position through a “declaration of no confidence” (*misstroendeförklaring*) by the Parliament, whereby a majority of the MPs must vote in favor of impeaching the Minister.²⁴ Before a vote can take place, a minimum of thirty-five MPs (10% of the Members) must petition for a no-confidence vote to be held.²⁵ The most recent no-confidence votes occurred in 2015.²⁶ A total of seven no-confidence votes have been held, none of which have been successful. The one that came closest to passing was in 1980 against Prime Minister Torbjörn Fälldin, when 174 MPs voted for impeachment and 175 against.²⁷ One minister, Justice Minister Anna-Greta Leijon, decided to step down prior to a 1988 no-confidence vote.²⁸

¹⁸ Konstitutionsutskottets betänkande 2016/17:KU20, *supra* note 17.

¹⁹ *Id.*

²⁰ 8 § Riksdagsordningen [RO] [Work Instructions for Parliament] (SFS 2014:801), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/riksdagsordning-2014801_sfs-2014-801.

²¹ 13:5 RF. Examples of interpellation debates—for example, a question posed by an MP to the Minister of Justice on the number of police officers in Sweden—can be found on the Parliament website, at <http://www.riksdagen.se/sv/webb-tv/video/interpellationsdebatt/fortsatt-sjunkande-antal-poliser-i-sverige-H410552>.

²² 8:8 RO. These are typically held on Thursdays; *see* Tillägsbestämmelse 8.8.1 RO.

²³ 8:7 RO, Tillägsbestämmelse; 8.7.1. RO.

²⁴ 6:7 RF; 13:4 RF. Formally, the Speaker removes the Minister from his or her post following the no-confidence vote.

²⁵ 13:4 RF.

²⁶ *Prime Minister Survives Vote of No Confidence*, THE LOCAL (Jan. 20, 2015), <https://www.thelocal.se/2015/0120/lofven-survives-vote-of-no-confidence-in-swedish-parliament>.

²⁷ *Kontrollerar regeringen*, SVERIGES RIKSDAG, <https://www.riksdagen.se/sv/sa-funkar-riksdagen/riksdagens-uppgifter/kontrollerar-regeringen> (last reviewed Dec. 16, 2016).

²⁸ Reuters, *Swedish Justice Minister Quits over Secret Palme Death Probe*, LA TIMES (June 7, 1988), http://articles.latimes.com/1988-06-07/news/mn-4052_1_swedish-justice-minister.

D. Riksdagens ombudsmän (Parliamentary Ombudsmen)

The independent parliamentary review agency Riksdagens ombudsmän, also known as the Justititeombudsman (JO) (Parliamentary Ombudsmen) investigates all government agencies and employees to ensure that they follow the rule of law.²⁹ As created in the new Constitution of 1809, the JO was one of the first agencies of its kind in the world to conduct independent legal reviews of executive agencies.³⁰ The JO is directly responsible to Parliament, and the ombudsmen are chosen by Parliament, but the ombudsmen cannot be MPs (unlike the KU members, who must be MPs).³¹ The JO, ex officio, or upon request, may investigate the legality of the actions of all government agencies and employees.³² In addition, the JO must prosecute any criminal case against a Minister after receiving a prosecution recommendation from the KU.³³ Although the JO prosecutes Ministers, it does not investigate Ministers' actions, as this falls under the competency of the KU.³⁴ Any member of the public may ask the JO to investigate a breach of law committed by an agency or employee.³⁵ The complaint must be made in writing and cannot be anonymous.³⁶

III. Recommended Sources for Further Research

The items cited in the footnotes are the most useful sources for research.

²⁹ 13:6 RF.

³⁰ *Internationellt samarbete*, *supra* note 6; see also *The Office Was Established in 1809*, JO, <http://www.jo.se/en/About-JO/History> (last updated Sept. 18, 2013).

³¹ 13:6 RF. There should be, in total, four ombudsmen—one chief ombudsman and three ordinary ombudsmen. 13:2 RO.

³² 13:6 RF.

³³ 10 § Lag med instruktion för Riksdagens ombudsmän [Instructions for the Parliamentary Ombudsmen] (SFS 1986:765) (JO-instruktionen), https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-1986765-med-instruktion-for-riksdagens_sfs-1986-765, unofficial English translation available on the Parliamentary Ombudsmen website, at <http://www.jo.se/en/About-JO/Legal-basis/Instructions>.

³⁴ See Part II(A), above.

³⁵ 5 § JO-instruktionen.

³⁶ *Id.* 17 §.

United Kingdom

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I. Introduction

The United Kingdom (UK) does not have a formal written constitution; thus, there is no provision that specifically allocates responsibility for different areas of the law to the legislative or executive branches. Instead, the process of overseeing the work of the executive is governed by long-established custom and conventions. The role of the executive is not defined in legislation and, in response to a question in the House of Commons calling on the government to introduce legislation to clarify the boundaries of the executive, the Prime Minister responded that his role, “including the exercise of powers under the royal prerogative, have evolved over many years, drawing on convention and usage, and it is not possible precisely to define them.”¹

While there is no single body that has been created with the sole purpose of overseeing the work of the executive, there are many checks and balances on the operation of its powers and tools that are used to ensure its work is monitored and the public made aware of its actions.

II. Accountability

Ensuring the accountability of government ministers has been undertaken over the centuries through constitutional conventions. The primary convention providing for oversight of the executive is that of accountability—that government ministers are accountable to Parliament and the public for their actions:

Individual ministerial responsibility had its origins in the need for Parliament to act as a check on Ministers, without having to resort to their impeachment, and in the recognition by Ministers that they must ultimately rely on the support of the Commons for their policies.²

Ministerial responsibility and accountability has been set out in a Ministerial Code.³

One major area where concerns remain about the lack of parliamentary oversight and scrutiny is in the exercise of the royal prerogative. A government report in 2004 recommended that if

* This report was prepared with the assistance of Law Library intern Conleth Burns.

¹ 372 Parl. Deb HC (6th ser.) (2001) col. 818W, <https://publications.parliament.uk/pa/cm200102/cmhansrd/vo011015/text/11015w06.htm>. The “royal prerogative” refers to powers that are held by the Queen, typically exercised on her behalf by the government, that do not require parliamentary approval.

² PUBLIC SERVICE COMMITTEE, MINISTERIAL ACCOUNTABILITY AND RESPONSIBILITY, 1995–96, HC 313-II, at 56, available in the ProQuest UK Parliamentary Papers database, by subscription.

³ Cabinet Office, MINISTERIAL CODE, Dec. 2016, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/579752/ministerial_code_december_2016.pdf.

ministerial accountability was to be taken seriously, oversight of the exercise of the royal prerogative was necessary.⁴

III. Select Committees

At the heart of parliamentary oversight of executive power are select committees. These committees are appointed by either House and can perform a wide range of functions, which are specified in their remit (the scope of the committee's review).⁵ They examine the work of government departments, and ad hoc committees may be established to review a specific topic or area of concern. The leading treatise on the work of Parliament, Erskine May's *Parliamentary Practice*, notes that these committees "[m]ost notably . . . have become over recent years the principal mechanism by which the House discharges its responsibilities for the scrutiny of government policy and actions. Increasingly this scrutiny work has become the most widely recognized and public means by which Parliament holds government Ministers and their departments to account."⁶ Select committees can summon persons, papers, or records within the jurisdiction of the UK, but are limited by not having the power to compel members or officers of the House of Commons or the House of Lords to give oral or written evidence.⁷

IV. Question Time

Members of Parliament have the opportunity to question government ministers and the Prime Minister either directly on the floor of the House during regular oral question times or in writing.

V. Statutory Bodies

The expenditure of public money is overseen by the National Audit Office, a statutory body. This office "works on behalf of Parliament and the taxpayer to hold government to account for the use of public money and to help public services improve performance."⁸ It publishes reports to Parliament, audits accounts, and provides select committees with support.⁹

VI. Recommended Sources for Further Research

In addition to those items cited in the footnotes, the following items are useful research sources:

⁴ PUBLIC ADMINISTRATION SELECT COMMITTEE, FOURTH REPORT, TAMING THE PREROGATIVE: STRENGTHENING MINISTERIAL ACCOUNTABILITY TO PARLIAMENT, 2003–4, HC 422 at 3, <https://publications.parliament.uk/pa/cm200304/cmselect/cmpublicadm/422/422.pdf>.

⁵ *House of Commons Select Committees*, PARLIAMENT.UK, <http://www.parliament.uk/business/committees/committees-a-z/commons-select> (last visited July 25, 2017).

⁶ ERSKINE MAY, *PARLIAMENTARY PRACTICE* 799 (Sir Malcome Jack et al. eds., 24th ed. 2011).

⁷ House of Commons, *Standing Orders of the House of Commons – Public Business 2016*, Feb. 2016, HC 2 2015-16, Standing Order No. 148A(6).

⁸ *Resources for Parliament*, NATIONAL AUDIT OFFICE, <https://www.nao.org.uk/highlights/resources-for-parliament> (last visited July 24, 2017).

⁹ *Id.*

- OONAGH GAY, HOUSE OF COMMONS LIBRARY, INDIVIDUAL MINISTERIAL ACCOUNTABILITY, Nov. 8, 2012, SN/PC/06467, <http://researchbriefings.files.parliament.uk/documents/SN06467/SN06467.pdf>.
- ROBERT ROGERS & RHODRI WALTERS, HOW PARLIAMENT WORKS (7th ed. 2002).
- MATTHEW FLINDERS, THE POLITICS OF ACCOUNTABILITY IN THE MODERN STATE (2001).
- RICHARD KELLY, HOUSE OF COMMONS LIBRARY, SELECT COMMITTEES: EVIDENCE AND WITNESSES, June 2, 2016, Briefing Paper No. 6208, <http://researchbriefings.files.parliament.uk/documents/SN06208/SN06208.pdf>.
- HOUSE OF COMMONS LIBRARY, PARLIAMENTARY RESOLUTIONS ON MINISTERIAL ACCOUNTABILITY, last updated July 24, 2000, SN/00/608, <http://researchbriefings.files.parliament.uk/documents/SN00608/SN00608.pdf>.
- OONAGH GAY & THOMAS POWELL, HOUSE OF COMMONS LIBRARY, THE COLLECTIVE RESPONSIBILITY OF MINISTERS – AN OUTLINE OF THE ISSUES, Nov. 15, 2004, Research Paper 04/82, <http://researchbriefings.files.parliament.uk/documents/RP04-82/RP04-82.pdf>.

United States

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SUMMARY Congressional oversight of the executive branch is a critical part of the United States federal government's system of checks and balances. This report provides an overview of the major forms of congressional oversight as well as the organizations involved. Congressional oversight processes include those related to investigations, impeachment, confirmation of nominees, appropriations, authorization, and budget. Congress conducts much of its oversight through committees, with the support of a number of federal agencies and offices that investigate, audit, and provide information and analysis on executive branch activities.

I. Introduction

Under the United States Constitution, the federal government includes three branches:

- the legislative branch, consisting of a bicameral Congress with a House of Representatives and a Senate;
- the executive branch, consisting of the President, the Vice President, the Cabinet, and various agencies and other bodies; and,
- the judicial branch, consisting of the Supreme Court and the federal appellate and trial courts.¹

Although the branches of the government are distinct and, in broad terms, equal in power, the legislative branch constrains and checks the power of the executive in important ways, including by exercising oversight powers.²

* This report was prepared with the assistance of Law Library intern Brian Kaviar.

¹ See U.S. CONST. arts. I-III; see also *INS v. Chadha*, 462 U.S. 919, 951 (1983), which states that “[t]he Constitution sought to divide the delegated powers of the new Federal Government into three defined categories, Legislative, Executive, and Judicial, to assure, as nearly as possible, that each branch of government would confine itself to its assigned responsibility.”

² See *Bowsher v. Synar*, 478 U.S. 714, 722 (1986), which states as follows:

That this system of division and separation of powers produces conflicts, confusion, and discordance at times is inherent, but it was deliberately so structured to assure full, vigorous, and open debate on the great issues affecting the people and to provide avenues for the operation of checks on the exercise of governmental power.

II. Oversight Processes

Congressional oversight of the executive branch has existed since the earliest days of the United States Congress.³ Major processes related to congressional oversight include the investigative, impeachment, confirmation, appropriations, authorization, and budget processes.

A. Investigative Process

The Supreme Court has held that the power to investigate is implied in the Constitution's vesting of legislative powers in Congress.⁴ In furtherance of these powers, Congress may compel the disclosure of documents or require the attendance and testimony of witnesses at hearings through the issuance of subpoenas.⁵ Failure to comply with a valid subpoena or the provision of false statements to Congress may result in criminal liability.⁶ Investigatory hearings and reports published in conjunction with such hearings may receive extensive media attention and result in resignations, firings, or impeachment proceedings.⁷

B. Impeachment Process

The Constitution gives Congress the authority to impeach and remove the President, Vice President, and other federal civil officers after determining that the officers have engaged in treason, bribery, or other high crimes and misdemeanors.⁸ While this is a critical tool for holding government officers accountable, it is rarely used,⁹ and is considered a political mechanism for checking executive branch authority.¹⁰

C. Confirmation Process

The Constitution requires Senate confirmation for a number of high-ranking executive branch positions,¹¹ especially those “exercising significant authority pursuant to the laws of the United

³ ALISSA M. DOLAN ET AL., CONG. RESEARCH SERV., RL 30240, CONGRESSIONAL OVERSIGHT MANUAL 1 (2014), <https://ntrl.ntis.gov/NTRL/dashboard/searchResults/titleDetail/PB2015102393.xhtml>.

⁴ See *Watkins v. United States*, 354 U.S. 178, 187 (1957), which states that “[t]he power of the Congress to conduct investigations is inherent in the legislative process. That power is broad. It encompasses inquiries concerning the administration of existing laws. . . . It comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste.”

⁵ See *Eastland v. United States Servicemen’s Fund*, 421 U.S. 491, 504 (1975), which states that “[i]ssuance of subpoenas . . . has long been held to be a legitimate use by Congress of its power to investigate.”

⁶ 2 U.S.C. §§ 192, 194; 18 U.S.C. §§ 1001, 1621.

⁷ See DOLAN ET AL., *supra* note 3, at 68–69.

⁸ U.S. CONST. art. II, § 4; *see also id.* art. I, § 2, cl. 5 & § 3, cl. 6, 7.

⁹ JARED P. COLE, TODD GARVEY, CONG. RESEARCH SERV., R 44260, IMPEACHMENT AND REMOVAL 1 (2015), available at <https://judiciary.house.gov/wp-content/uploads/2016/06/Todd-Garvey-Written-Statement.pdf>.

¹⁰ See *Nixon v. United States*, 506 U.S. 224, 231 (1993), which states that “the Senate alone shall have authority to determine whether an individual should be acquitted or convicted.”

¹¹ U.S. CONST. art. II, § 2, cl. 2.

States.”¹² This process can be used by senators to provide policy directions to and obtain commitments from nominees seeking confirmation.¹³

D. Appropriations Process

The Constitution requires appropriations measures for general government operations and certain discretionary funding.¹⁴ Appropriations measures may include explicit statutory controls, including language constraining how the funding may be used.¹⁵ Nonstatutory controls also exist where agencies reliant on future appropriations risk receiving less funding and becoming subject to more stringent controls if they ignore the recommendations of Congress.¹⁶

E. Authorization Process

Authorizing measures are pieces of legislation that establish, continue, or modify an agency, program, or activity on a permanent, annual, or multiyear basis.¹⁷ Such measures may contain statutory controls in the form of explicit directions, as well as nonstatutory controls imposed by committees.¹⁸

F. Budget Process

Members of Congress can use the budget process to relate program priorities to financial claims on the national budget and incentivize the elimination of less-desirable programs in favor of more-desirable ones.¹⁹

III. Committees and Offices

Congressional oversight traditionally involves the delegation of powers through the committee system²⁰ and the support of a number of federal agencies and offices, including the Council of the Inspectors General on Integrity and Efficiency (CIGIE),²¹ the Office of Management and

¹² *Buckley v. Valeo*, 424 U.S. 1, 126 (1976).

¹³ DOLAN ET AL., *supra* note 3, at 21.

¹⁴ *See* U.S. CONST. art. I, § 9, cl. 7.

¹⁵ 31 U.S.C. § 1301(a).

¹⁶ DOLAN ET AL., *supra* note 3, at 19.

¹⁷ Sandy Streeter, *The Congressional Appropriations Process: An Introduction*, in CONGRESS OF THE UNITED STATES: OVERSIGHT, PROCESSES AND PROCEDURES 150 (Carol S. Plessner ed., 2007).

¹⁸ DOLAN ET AL., *supra* note 3, at 18.

¹⁹ *Id.* at 17–18.

²⁰ Walter J. Oleszek, *Congressional Oversight: An Overview*, in CONGRESSIONAL OVERSIGHT: AN OVERVIEW, A MANUAL AND SELECT DEVELOPMENTS 5 (Jamie C. Howell ed., 2010).

²¹ DOLAN ET AL., *supra* note 3, at 98.

Budget (OMB),²² the Government Accountability Office (GAO), the Congressional Research Service (CRS), and the Congressional Budget Office (CBO).²³

A. Committees

Either chamber of Congress may delegate its oversight powers to committees composed of its members.²⁴ A committee's ability to investigate the executive branch is substantial and wide-ranging as long as the subject matter is within its jurisdiction²⁵ and the investigation is "related to, and in furtherance of, a legitimate task of the Congress."²⁶

B. Council of the Inspectors General on Integrity and Efficiency

Inspectors General (IGs) are executive branch positions created by statute with broad powers to audit and investigate their affiliated agencies, and with special protections to ensure their independence.²⁷ Violations of federal criminal law and other significant problems detected by IGs must be reported to Congress.²⁸ The CIGIE facilitates coordination among the various IGs, provides regular reports to Congress, and is in frequent communication with Congress on oversight matters.²⁹

C. Government Accountability Office

The GAO supports congressional oversight by auditing agency operations to determine whether federal funds are being spent efficiently, investigating allegations of improper activities, reporting on how well government programs are meeting their objectives, performing policy analyses, and issuing legal opinions and reports on agency rules.³⁰

²² *Id.* at 120–21.

²³ *Id.* at 15–16.

²⁴ See Legislative Reorganization Act of 1946, ch. 753, 60 Stat. 812 (codified as amended in scattered sections of 2 U.S.C.); Legislative Reorganization Act of 1970, Pub. L. No. 91-510, 84 Stat. 1140, 1156 (codified as amended in scattered sections of 2 U.S.C.).

²⁵ See House Rule X, 115th Cong. (2017); Senate Rule XXV, 115th Cong. (2017). An updated list of congressional committees can be found on Congress.gov at <https://www.congress.gov/committees>.

²⁶ *Watkins v. United States*, 354 U.S. 178, 187 (1957); see also *DOLAN ET AL.*, *supra* note 3, at 25.

²⁷ *DOLAN ET AL.*, *supra* note 3, at 91; see also Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (codified as amended at 5 U.S.C. App.); Inspector General Act Amendments of 1988, Pub. L. No. 100-504, 102 Stat. 2515 (codified as amended at 5 U.S.C. App.).

²⁸ *DOLAN ET AL.*, *supra* note 3, at 95–96.

²⁹ COUNCIL OF THE INSPECTORS GENERAL ON INTEGRITY AND EFFICIENCY, CONGRESSIONAL RELATIONS HANDBOOK 1 (2015), <https://www.ignet.gov/sites/default/files/CIGIE%20Congressional%20Relations%20Handbook%20January%202015.pdf>; see also Inspector General Reform Act of 2008, Pub. L. No. 110-409, 122 Stat. 4302 (codified as amended at 5 U.S.C. App.).

³⁰ *About GAO*, GAO, <http://www.gao.gov/about/index.html> (last visited July 7, 2017); see also Budget and Accounting Act of 1921, ch. 18, 42 Stat. 20 (codified as amended in scattered sections of 31 U.S.C.).

D. Congressional Research Service

The CRS provides objective, nonpartisan policy analysis and research services to members of Congress on a wide-range of issues, including congressional oversight.³¹ The CRS, however, cannot conduct audits or investigations.³²

E. Office of Management and Budget

While the OMB is mainly concerned with developing policy and budgets for the President,³³ it also serves as an information clearinghouse for executive agencies and is a useful source of information about agency activities for investigative and oversight committees.³⁴

F. Congressional Budget Office

The CBO works for Congress as a nonpartisan, objective source of analysis on budgetary matters.³⁵ Major CBO products include cost estimates and scorekeeping for legislation.³⁶

IV. Recommended Sources for Further Research

The statutes, cases, reports on federal government websites, and books cited in the footnotes, as well as the books, articles, and other such reports listed below, are suggested for further research.

Books

- ROBERT C. BOYD CENTER FOR LEGISLATIVE STUDIES, CONGRESS INVESTIGATES: A CRITICAL AND DOCUMENTARY HISTORY (Roger A. Bruns et al. eds., rev. ed. 2011).
- CHARLES L. BLACK JR., IMPEACHMENT: A HANDBOOK (1974).
- LANCE COLE & STANLEY M. BRAND, CONGRESSIONAL INVESTIGATIONS AND OVERSIGHT: CASE STUDIES AND ANALYSIS (2011).
- CQ PRESS, GUIDE TO CONGRESS (7th ed. 2013).
- LOUIS FISHER, CONSTITUTIONAL CONFLICTS BETWEEN CONGRESS AND THE PRESIDENT (6th ed. 2014).
- PHILIP G. JOYCE, THE CONGRESSIONAL BUDGET OFFICE: HONEST NUMBERS, POWER, AND POLICYMAKING (2011).

³¹ ABOUT CRS, THE LIBRARY OF CONGRESS: CONGRESSIONAL RESEARCH SERVICE, <https://www.loc.gov/crsinfo/about> (last updated Apr. 20, 2017).

³² DOLAN ET AL., *supra* note 3, at 107.

³³ *Office of Management and Budget*, THE WHITE HOUSE, <https://www.whitehouse.gov/omb> (last visited July 21, 2017).

³⁴ DOLAN ET AL., *supra* note 3, at 121.

³⁵ *Introduction to CBO*, CONGRESSIONAL BUDGET OFFICE, <https://www.cbo.gov/about/overview> (last visited July 21, 2017).

³⁶ *Products*, CONGRESSIONAL BUDGET OFFICE, <https://www.cbo.gov/about/products> (last visited July 21, 2017).

- PAUL C. LIGHT, *GOVERNMENT BY INVESTIGATION: CONGRESS, PRESIDENTS, AND THE SEARCH FOR ANSWERS, 1945–2012* (2014).
- WALTER J. OLESZEK, MARK J. OLESZEK, ELIZABETH RYBICKI & BILL HENIFF, JR., *CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS* (10th ed. 2016).
- ALLEN SCHICK, *THE FEDERAL BUDGET: POLITICS, POLICY, PROCESS* (3d ed. 2007).

Articles

- Josh Chafetz, *Executive Branch Contempt of Congress*, 76 U. CHI. L. REV. 1083 (2009).
- Matthew Mantel, *Congressional Investigations: A Bibliography*, 100 LAW LIBR. J. 323 (2008).
- Shirin Sinnar, *Protecting Rights from Within? Inspectors General and National Security Oversight*, 65 STAN. L. REV. 1027 (2013).
- Andrew McCause Wright, *Constitutional Conflict and Congressional Oversight*, 98 MARQ. L. REV. 881 (2014).

Reports

- BILL HENIFF, JR., CONG. RESEARCH SERV., RS 20371, *OVERVIEW OF THE AUTHORIZATION-APPROPRIATIONS PROCESS* (2012), available at <https://www.senate.gov/CRSpubs/d2b1dc6f-4ed2-46ae-83ae-1e13b3e24150.pdf>.
- BILL HENIFF, JR., MEGAN SUZANNE LYNCH & JESSICA TOLLESTRUP, CONG. RESEARCH SERV., 98-721, *INTRODUCTION TO THE FEDERAL BUDGET PROCESS* (2012), available at <https://democrats-budget.house.gov/sites/democrats.budget.house.gov/files/documents/Introduction%20to%20the%20Federal%20Budget%20Process.pdf>.
- JAMES V. SATURNO, BILL HENIFF, JR. & MEGAN S. LYNCH, CONG. RESEARCH SERV., R 42388, *THE CONGRESSIONAL APPROPRIATIONS PROCESS: AN INTRODUCTION* (2016), available at <https://www.senate.gov/CRSpubs/8013e37d-4a09-46f0-b1e2-c14915d498a6.pdf>.