

THE
CONSTITUTION
SOCIETY

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YOUR CONSTITUTION



Your Constitution

Constitutions are about political power. Where it is; who gets it; and what can – and should – be done with it.

Constitutions deal with people who hold public office, and the relationship between those offices, and with the rest of us. They tell us all about how we should be expected to be treated in society; and how we are allowed to behave.

Nearly all countries write down important parts of their constitutions in a single text. Such documents are likely to have a special legal status. Often courts can enforce them, and can even block new laws that do not fit with them. Constitutions can only be changed if special procedures, for instance heightened majorities in legislatures ('supermajorities'), are followed.

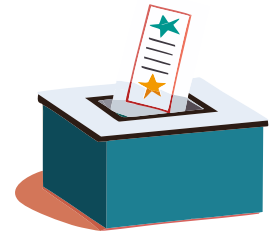
But here, in the United Kingdom of Great Britain and Northern Ireland (the UK), we do not have such a text. Instead, our constitution is spread across many different places. In ordinary laws (which judges might recognise as being 'constitutional statutes'), in decisions by courts, in official guidance notes, or just in shared understandings about how things are supposed to work ('convention').

The following pages set out some of the most important aspects of that constitution. Like a constitutional text in another country, it describes how things are *meant* to work. In the UK, as elsewhere, what actually happens in practice may sometimes differ from what is written down. But it is important to have a guide to what good practice is supposed to be, so we know it when we see it, and when we do not. This is an attempt to provide such a guide.

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Representative Democracy



The UK is a representative democracy. This means that people participate, through voting in elections, in choosing who holds power and exercises it on their behalf. But while voting is integral to representative democracy, it is about more than just elections, with ongoing activities taking place between these events. For instance, the UK government is not directly elected, but is responsible to the UK Parliament, the primary chamber of which, the House of Commons, is elected. Government can also be overseen by the courts; and held to account by people being able freely to participate in debate and other political activities. These various aspects of representative democracy are covered in the sections that follow.

To return to voting, British citizens (with some exceptions) and people from some other groups, aged 18 and above, are allowed to vote in elections to the House of Commons of the UK Parliament. For other elections, the right to vote (the 'franchise') is wider. For instance, anyone who is a legal resident aged 16 and above can take part in elections to the Senedd Cymru/Welsh Parliament and the Scottish Parliament; and in elections to local government in Wales and Scotland.

Voting takes place according to different rules across different types of election. Under the electoral system used for the House of Commons ('First Past the Post' or 'Single Member Plurality') the share of places ('seats') a particular party wins in the Commons differs, often substantially, from the proportion of votes they received in the election. A party, for instance, can win well over half the seats in the House of Commons while securing only 40 per cent (or perhaps less) of votes cast. Seats are won purely by securing the most votes (a 'plurality') for single candidates in individual constituencies, each of which returns a single member to the House of Commons. No account is taken of total votes cast for a party across the country. In other elections, such as those for the devolved legislatures in Scotland, Wales and Northern Ireland, or for local government in Scotland and Northern Ireland, the systems used are designed to ensure a more direct relationship ('proportional representation', PR) between votes secured by a particular party and the seats it wins.

Elections determine which individuals will hold public positions. But the people who stand for office in a representative democracy like the UK are usually attached to a particular political party. The party they belong to is likely to have important implications for their chances of being elected, and if they are, the way they behave in office. For instance, representatives nearly always vote in the House of Commons according to the position taken by their party; and governments are made up of people belonging to a particular party, or potentially (though only once since 1945, in 2010-2015) a group of parties that have reached an agreement (a 'coalition government').

Sometimes, rather than helping determine who holds power, voters are asked to answer a question about a specific decision: for instance, in 2016, whether the UK should remain a member of, or leave, the European Union. Its result may be made legally binding (though in theory Parliament could overrule it), as with, for example, the vote on the parliamentary electoral system of 2011; or be only advisory, as with the 2016 EU vote. This is known as a referendum. It is an example of direct democracy, a counterpart to representative democracy. But in the UK constitution, referendums take place in the wider context of a representative democratic system.



The United Kingdom Parliament

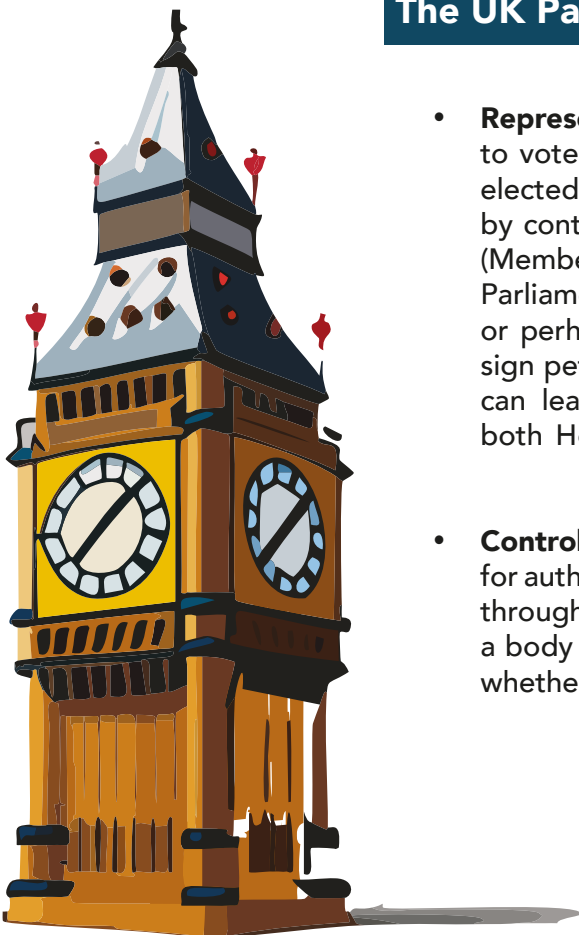
Parliament is made up of two Houses: the House of Commons and the House of Lords. All the members of the House of Commons are directly elected at least once roughly every five years, at a General Election. Nearly all Members of the House of Commons (Members of Parliament, MPs) belong to a political party. The present size of the House of Commons is 650.

The House of Lords is made up mainly of appointed members, on the recommendation of the Prime Minister, and none of its members are elected by the public. It includes members who belong to political parties, and others (crossbenchers) who do not, as well as 26 Church of England Bishops and Archbishops. All appointments, other than the Bishops and Archbishops, are for life, or until a member chooses to leave the House. The House of Lords has 92 members who have inherited their ability to sit there ('Hereditary Peers'). They are elected to the Lords from a larger pool of title holders by Hereditary Peers sitting in the House who are from the same party or other grouping as them. Their heirs can potentially become members of the House of Lords, if elected in this way. There is no limit on the size of the House of Lords. At present it has approaching 800 members.

The House of Commons is recognised as being the more powerful of the two Houses. This position, known as 'primacy' is established both in working practices and understandings ('convention'), and in legally defined powers. The Commons has sole responsibility for decisions about money, which the Lords is not allowed to get involved with. The Lords nonetheless plays a significant role in the legislative process, in particular through passing amendments to bills. However, when it disagrees with the Lords over a proposal for an Act of Parliament, if it is determined to do so and it has the time, the Commons can in nearly all possible circumstances bypass the Lords. But the Commons cannot legislate to postpone a General Election beyond the regular five-year limit without the consent of the Lords.

The UK Parliament performs a number of functions:

- **Representing the public.** Members of the public who are able to vote take part in determining the membership of the directly elected House of Commons. They can also interact with Parliament by contacting their local elected representative in the Commons (Member of Parliament, MP), or other members of either House of Parliament. They might ask, for instance, for help with a problem, or perhaps seek support for a particular cause. People can also sign petitions which are then presented to Parliament, and which can lead to action by the Commons. Much of the activity of both Houses of Parliament is visible to members of the public.
- **Controlling public finances.** The House of Commons is responsible for authorising government plans for how it is going to raise money, through taxation, and how it is going to spend it. Supported by a body called the National Audit Office, the Commons considers whether the government has made proper use of this money.



Functions of Parliament Continued

- **Producing laws** including Acts of Parliament – or ‘primary legislation’ – the most important forms of law there are. There are no clear limits on what Parliament can seek to achieve through primary legislation. This power of Parliament is known as parliamentary ‘supremacy’ or ‘sovereignty’. Courts in the UK, unlike in other countries with special constitutional texts, do not refuse to apply laws on the grounds that they conflict specifically with the constitution. Before agreeing to Acts of Parliament, both Houses of Parliament look at and discuss them in detail, and hold votes on whether to agree to them as a whole, and on particular parts of them. As already noted, the Commons can potentially override the Lords if it refuses to pass a measure. Sometimes, Parliament reports on legislation in draft form, before it is formally introduced (‘pre-legislative scrutiny’). Parliament can also consider how legislation it has previously passed is operating in practice (‘post-legislative scrutiny’). Most legislation that passes through Parliament is proposed by the (UK) government. Parliament can, through Acts of Parliament, place significant discretionary abilities in the hands of ministers and entities such as regulatory bodies. This is known as ‘secondary legislation’ or ‘delegated powers’. Delegated powers can allow those who possess them to introduce new laws on their own account, with little or no parliamentary oversight required. ‘Henry VIII powers’ make it possible, through secondary legislation, to alter primary legislation.
- **Being a basis for the government.** Governments have to possess what is known as the ‘confidence’ of the House of Commons. This means that a majority of members of the Commons have to be willing to accept that a particular group of parliamentarians should hold office. Usually the MPs supporting that group do so because it is wholly made up of people from the same political party as them. Otherwise, it might include people from another party as well as their own, as part of a coalition agreement. Or else MPs from one party might support a different party in forming a government in which their party is not participating, because their party has made a deal with the party making up the government to support it in Parliament. According to well-established convention, members of the government (‘ministers’) are supposed to be members of one of the two Houses of Parliament. The government is able to a large extent to set the agenda of Parliament, determining matters such as the legislation it considers and the debates it holds.
- **Holding the government to account.** Parliament tries to make the government explain what it is doing, why it is doing it, and find out what the outcomes are. It looks at the use it is making of public money, the policies it is pursuing, and how well organised it is. Members of the two Houses of Parliament have the opportunity to put questions to ministers, to debate policy and other matters, to praise or to criticise the government, and to vote on proposals, including laws. Smaller groups of members from each House of Parliament – parliamentary committees – also focus in on specific aspects of government work. Particularly important are the House of Commons departmentally-related select committees, each of which monitors the expenditure, policy and administration of a specific government department and bodies associated with it. They may also hold sessions in which they question a preferred candidate for certain senior public offices, before that individual takes up the role (‘pre-appointment hearings’). Committees can take a view on the suitability of the person for the post, though they do not have the formal power to block an appointment.
- **Being a focus for public discussion.** Parliament holds debates, and its committees produce reports on, issues of public interest. Its work is broadcast on television and can be accessed on the Internet. Individual members are active on social media. Some of its events, such as Prime Minister’s Question Time – held every Wednesday at noon when the House of Commons is working – can receive lots of coverage.

The Rule of Law and Rights

The concept of the 'rule of law' is central to the UK constitution. A key component of this principle is the idea that people who hold high office can only act in accordance the law. In order to realise this principle, the way in which public authorities exercise power can potentially be scrutinised in a court, to test whether it is lawful ('judicial review'). In a limited number of cases, laws are passed which seek to make some activities of public bodies immune to legal challenge ('ouster clauses'). The rule of law has a number of other features to it. They include that courts must be independent of external influences, such as government; that it must be possible for people to understand the law; that all of us must be equal before the law and have access to its protection; that the law should be applied fairly; and that a state should adhere to international law and treaty commitments.

Your rights

Individual rights are a further part of the rule of law. You have a number of legally protected rights. They include:

The right to life and the absolute prohibition of the death penalty;

Freedom from torture and inhuman or degrading treatment;

Freedom from slavery and forced labour;

The right to liberty and security, protecting you from arbitrary arrest and detention;

The right to a fair trial;

Freedom from punishment without the law;

The right to respect for your privacy and family life;

Freedom of thought, of belief and of religion;

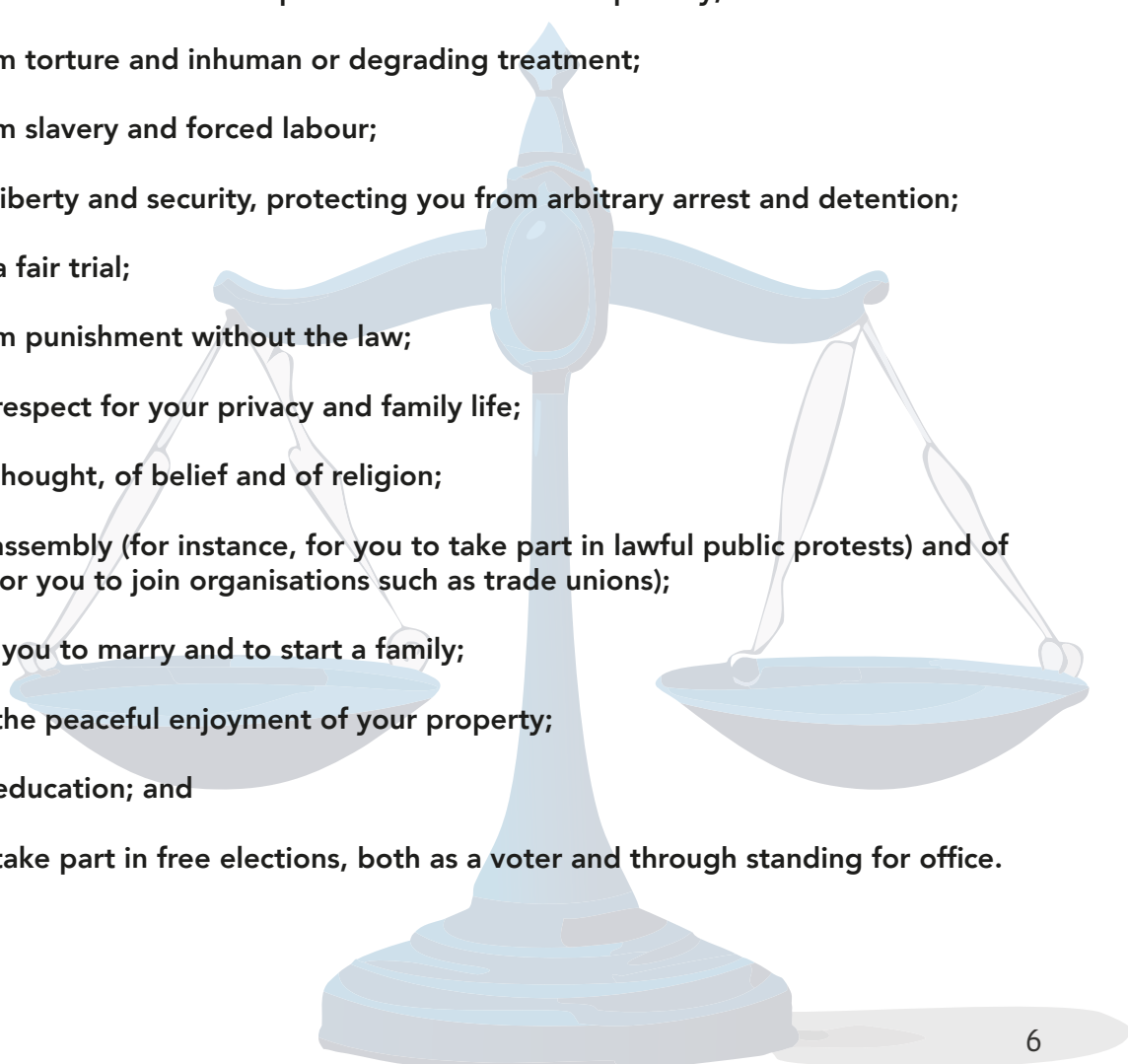
Freedom of assembly (for instance, for you to take part in lawful public protests) and of association (for you to join organisations such as trade unions);

The right for you to marry and to start a family;

The right to the peaceful enjoyment of your property;

The right to education; and

The right to take part in free elections, both as a voter and through standing for office.



Rights Continued

You are protected from discrimination in the exercise of these rights; and from being discriminated against:

- ◇ because of your age;
- ◇ because your gender has been reassigned;
- ◇ because you are married or in a civil partnership;
- ◇ because you are pregnant or on maternity leave;
- ◇ because you have a disability;
- ◇ because of your race, colour, nationality, ethnicity or national origin;
- ◇ because of your religion or beliefs;
- ◇ because of your sex; or
- ◇ because of your sexual orientation.

Protections from discrimination apply in such areas as the workplace, in education, in using public services, or in buying or renting property.

Head of State

The Head of State in the UK is at the moment an hereditary monarch. This means that the office is passed down through a single family. The holder cannot not be a Roman Catholic; and is the Supreme Governor of the Church of England. An incoming monarch must swear to preserve the Church of Scotland and Church of England. A person becomes Queen or King the moment their immediate predecessor dies or – in exceptional circumstances – resigns ('abdicates'), as happened when Edward VIII stood down in 1936, to be replaced by his brother, George VI. They continue in the post until they die (or, unusually, abdicate), at which point the next person in line becomes monarch. There are arrangements in place to enable one or more relatives of the monarch to carry out the duties of the role, should the holder be unable to do so for some reason, or if they are under 18.

Monarchs are mainly figureheads. They perform ceremonial functions such as the State Opening of Parliament, and promote the UK on the world stage. They are officially the head of the Armed Forces, another official role that does not require them actually to make important decisions.

Many legal powers ('Royal Prerogatives') are in theory attached to monarchs, though nearly all are exercised in practice on the advice of ministers. Rulers are the formal source of the authority to deploy the armed forces in potential or actual conflict situations; and for giving approval ('Royal Assent') to laws, making them Acts of Parliament. Monarchs grant honours such as knighthoods and OBEs. They appoint the Prime Minister and other ministers; and authorise dissolutions of Parliament, which lead to General Elections. These powers are not derived from the UK Parliament in the same way as other powers, though Parliament can if it chooses abolish or replace them.

In nearly all cases, monarchs do not make their own choices about how to use these powers. Very often, it is ministers or the Prime Minister who make the actual decisions, for instance over armed conflict. In other circumstances, there may simply be no doubt about the way a power should be used, so in practice no decision has to be made. For example, if a party has won a majority in the House of Commons at a General Election, then it is inevitable that the monarch will appoint the leader of that party as Prime Minister (if they do not hold this post already).

The Head of State meets the Prime Minister weekly. Discussion of government business takes place at this private 'Audience'. But there is a clear constitutional principle that monarchs are supposed to avoid becoming publicly involved in matters of political controversy, for instance through making statements or using their powers in ways which suggest they are personally taking particular sides over contentious issues. Politicians are expected to make sure that the monarch is not put publicly in awkward positions. For instance, they should not ask the Head of State to authorise courses of action that might be contrary to law or to established standards. They should try and resolve difficult matters – like who should form the government when a General Election does not produce a clear single-party winner – between themselves, rather than involving the monarch.



The Royal Prerogative and External Policy

The UK government relies heavily on the Royal Prerogative for handling its relations with the outside world, in practice exercising on its own initiative powers that are formally attached to the monarch. Negotiations involving foreign states and international organisations, for example, are carried out using this authority. Sending UK armed forces into hostile action takes place under the Prerogative, without a strict legal requirement for parliamentary agreement (though there are some expectations about consultation). The UK government also enters into international agreements ('treaties') under the Royal Prerogative, generally with little scope for Parliament to exercise a veto over the government.

Some international agreements themselves have constitutional significance, such as the European Convention on Human Rights (ECHR) and the European Withdrawal Agreement. Treaties are binding under international law. But though it can enter into international agreements under the Royal Prerogative and without parliamentary authorisation, the government cannot use treaties to change the internal law of the UK. If a treaty requires a change in the law of the UK, then this has to be achieved through domestic legal authorisation. In this sense, international and domestic law are separate (a 'dualist', rather than 'monist' system). In theory, if it chooses to do so, the UK Parliament can pass legislation that breaches international law and treaty obligations. In practice, to do so is likely to be highly controversial.

The UK Government, Prime Minister and Cabinet

The UK government is organised into a series of departments responsible for performing particular functions. For instance, the Department for Education focuses particularly on schools; the Department for Work and Pensions on matters including benefits; and the Department for Business and Trade on domestic and external commercial activities. Each department has a single minister with overall political responsibility for it (often known as a Secretary of State), and a series of more junior ministers attached to it. At present, there are 24 ministerial departments. Up to 109 people can be employed as paid ministers, though unpaid ministers can also be given posts. A maximum of 95 ministers can sit in the House of Commons.

The Prime Minister is the most senior minister in the government. Prime Ministers make decisions about matters such as the hiring and firing of ministers; the timing of general elections; the organisation of the Civil Service; and the promotion of standards and good behaviour within government. Some of their most important powers exist as understandings ('convention') rather than being defined in law. Since 1902, all Prime Ministers have sat in the House of Commons, not of the House of Lords.

Cabinet is, according to constitutional tradition, the most powerful decision-making body within government. It is made up of senior ministers: that is, the political leaders of the government; normally ministers in charge of departments. Typically, its membership numbers in the low-20s. The Prime Minister decides who is part of Cabinet, and what their specific job is. The most senior members of Cabinet other than the Prime Minister include the Foreign Secretary (who deals with the outside world); the Chancellor of the Exchequer (responsible for finance and economic policy); and the Home Secretary (who handles matters including policing and immigration).

The UK Government, Prime Minister and Cabinet Continued

Cabinet has a central gathering and a series of sub-committees that deal with specific subject areas. The Prime Minister usually chairs main Cabinet meetings (held weekly when Parliament is sitting) sets their agenda, and summarises their conclusions. The Prime Minister can at times be very powerful in relation to Cabinet as a whole. But Cabinet, as a matter of principle, is supposed to take decisions as a group, not under the direction of the Prime Minister. The Prime Minister is by tradition first among equals (*'primus inter pares'*). Cabinet members are meant to have the chance to debate options and may express differing views. The details of Cabinet discussions, recorded in a written record or 'minute' by officials who are in attendance, are meant to remain secret. Publicly, Cabinet members – and all government ministers, whether or not they are part of the Cabinet – are supposed to present a united front about the choices made by Cabinet and its policies. (This principle is known as 'collective responsibility'.) In exceptional circumstances, collective responsibility may be suspended for a time-limited period in relation to specific subjects, such as which side to support in a referendum. Such cases apart, ministers who feel unable to associate themselves with any policy of the government they serve within, or who wish to promote a different approach, are required to resign from it.

All ministers within government, both members of Cabinet and otherwise, are subject to certain expectations about their behaviour:



They must behave properly towards all those they come into contact with in their work;



They must cooperate with Parliament in its efforts to hold them to account for their decisions and for the activities of the bodies, such as their departments, for which they are responsible ('individual ministerial responsibility')



They must provide Parliament with information that is truthful and accurate. If they realise they have misled Parliament without meaning to, they need to correct the mistake as soon as possible. If they mislead Parliament deliberately, they are expected to offer to resign their post.



They should not abuse their public office for personal gain, or even appear to do so. They should make appropriate use of official resources.

In times of emergency, ministers might decide there is a need for them to be able to respond urgently with more discretion and without being subject to the usual level of parliamentary approval. Laws such as the *Civil Contingencies Act 2004* might be used for this purpose.

The Civil Service

Ministers in the UK government and in devolved executives (see below) are supported by civil servants. As compared with many other states, these officials are mainly non-partisan and required to support governments of differing party composition. With limited exceptions, civil servants are required to be recruited through open competition according to their own merit, rather than because they have political connections. They should also be promoted on the same basis. Civil servants are supposed to do their jobs with integrity, honesty, objectivity and impartiality. They tend to remain in post even when ministers move around government, or if different parties come to power; so they have to be able to work with different ministers and governments of different parties. The most significant exception to these principles involves special advisers, who are appointed directly by individual ministers (with the agreement of the Prime Minister) and by the Prime Minister. Special advisers do not need to be objective or impartial, and can engage in party political matters in a way that regular civil servants cannot. They can lose their jobs if their minister leaves their post, or if there is a change in the party of government. Cabinet ministers can appoint up to two special advisers each. There is no limit on the number that prime ministers can recruit.

Civil servants are responsible to ministers, who answer to Parliament. But civil servants do not report directly to Parliament, except in a very limited number of cases. An exception to this principle involves the use of public money, for which senior civil servants ('accounting officers') do answer to Parliament. Civil servants may also appear before parliamentary committees to support their ministers, rather than on their own behalf. Holders of public offices beyond the Civil Service may appear before parliamentary committees on their own account.

Civil servants are required to give honest advice to ministers, even if it may involve drawing attention to difficult facts and information that might be unwelcome to ministers. Ministers are required to give proper consideration to the views expressed by civil servants. But ultimately, ministers make the decisions, and civil servants are required loyally to implement those decisions once made.



The Territorial Constitution

The UK is made up of Wales, Scotland, Northern Ireland and England. The way in which the territorial constitution functions is asymmetrical, meaning that it varies across these different parts of the country:

- Different legal systems operate in Scotland, Northern Ireland, and England and Wales. Special rules apply to Northern Ireland to ensure that it maintains an open border with the Republic of Ireland, a member state of the European Union.
- In Scotland only, there is an Established or National Church, the (Presbyterian) Church of Scotland. In England only, there is an Established Church, the (Anglican) Church of England. There is no established church in Wales or Northern Ireland.
- The flag of the UK is the Union Flag. Wales, Scotland and England each has an official flag. The flag of Wales is also known as the Y Ddraig Goch/Red Dragon. The flag of Scotland is also known as the St. Andrew's Cross/Saltire. The flag of England is also known as the St. George's Cross. Northern Ireland does not have an official flag.
- Various indigenous languages, connected to the different territories, are in use in the UK. They include: Welsh, Ulster Scots, Scots, Irish, Scottish Gaelic, English, and Cornish. English is the most widely used. All the other languages are recognised by the Council of Europe in its European Charter for Regional or Minority Languages, which seeks to protect and promote these languages.

Devolution

Under a system known as 'devolution', Wales, Scotland and Northern Ireland each has its own directly elected Parliament or Assembly, and executives or governments formed out of those bodies. These devolved institutions have the power to operate in any policy area which is not specifically kept at UK level. Responsibilities that are devolved include health and education, but some areas of policy are devolved to Scotland and Northern Ireland (particularly justice) but not to Wales. Policy areas kept out of the devolved remit include foreign policy; and intelligence and security. There are various ways in which the UK government and the UK Parliament can intervene in devolved business. But Parliament is not normally supposed to pass Acts that impact upon devolved matters without getting the agreement of the relevant devolved parliament or assembly (a 'legislative consent motion').

The devolved institutions of Wales and Scotland are defined in law as being permanent parts of the UK constitution, which can only be abolished subject to approval through a referendum. The UK Parliament, however, could in theory abolish either of them without a referendum, by passing an Act of Parliament to this effect, if it was determined to do so. Devolution in Northern Ireland is also a constitutional fixture. But, if the people of Northern Ireland vote in a referendum in favour of leaving the UK and becoming part of the Republic of Ireland, the UK government has to introduce legislation to the UK Parliament to make this possible. This requirement arises from the Belfast/Good Friday Agreement of 1998. The UK government has previously accepted that, in principle, Scotland can become independent from the UK, again subject to a referendum.

Devolution Continued

Devolved systems also exist in many parts of England. They do not have law-making powers as they do in Wales, Scotland and Northern Ireland; the UK Parliament is the source of all legislation applying to England. In nearly all cases, devolution in England involves a directly elected mayor and combined local authorities. The directly elected Mayor of London is attached to a single Greater London Authority. In Cornwall, devolution is to a single local authority, with no mayor.

Below devolved level, all people in the UK are represented by at least one tier of elected local government. The precise way in which it is elected, its form and its functions, and how many tiers there are in a given area, varies. Generally, local government has responsibility for local services such as schools, social care, roads maintenance, recreation, rubbish disposal, and libraries.

Enforcing the Constitution

Enforcement of the constitution partly depends upon people in positions of power recognising what the rules are, accepting that they apply to them, and choosing to obey them themselves, as well as trying to make sure others do so too.

Alongside voluntary self-enforcement, a variety of different institutions and offices can play a part in upholding the constitution. They include:

- Bodies and office holders such as the Civil Service Commission; the Committee on Standards in Public Life; the Electoral Commission; the Equality and Human Rights Commission; the Independent Adviser on Ministers' Interests; and the National Audit Office;
- Parliamentary committees and office holders, such as the House of Lords Select Committee on the Constitution; the House of Commons Public Administration and Constitutional Affairs Committee; parliamentary committees concerned with delegated legislation; the Speaker of each of the Houses of Parliament; and the Parliamentary Commissioner for Standards;
- The Prime Minister and other senior ministers, promoting standards within government; and civil servants, giving advice on constitutional matters to ministers;
- The legal system, including the UK Supreme Court, which hears cases of major constitutional significance for the whole UK; and the European Court of Human Rights.



Changing the Constitution

The UK constitution can change through a number of means, including:

- Developments in practice and in expectations about what is the appropriate way to behave;
- The publication of new or altered rules in non-legally binding documents;
- Changes in the enforceable rules of bodies such as the UK Parliament;
- Rulings made by courts, including domestic courts up to the Supreme Court, and the European Court of Human Rights;
- Changes in the law. Ultimately, there are no clear legal limits to the ability of the UK Parliament to alter, remove parts of, or add parts to, the constitution, through passing Acts, if it is determined to do so.

Political leaders who want to bring about constitutional changes may choose to seek authorisation for doing so, for instance through presenting proposals to voters at election time. There may be strong expectations that some kinds of change must be approved by, for instance, a referendum. As we have seen, there are stipulations in law that the abolition of Welsh or Scottish devolution would require approval by a referendum in the territory concerned. But trying to get such forms of consent is mainly a political choice. Securing parliamentary agreement to a change is the only absolute legal requirement.

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