

### CHECKS AND BALANCES: WHAT ARE THEY, AND WHY DO THEY MATTER?

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#### Summary

- Checks and balances are fundamental elements of constitutional democracy. They prevent any one individual or institution from holding unconstrained power, and ensure that a wide range of views and interests are represented in the democratic process.
- Checks and balances ensure that policy is carefully tested, helping to improve the quality of decision-making. They also ensure that mechanisms exist for preventing or penalising unethical behaviour.
- Checks and balances thereby play a vital role in maintaining public confidence in the political system. The government has a particular responsibility to uphold them.

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#### Background

The importance of checks and balances is often cited in debates about the health of democracy, and their erosion is widely considered a sign of democratic backsliding. But what are they, and why are they important?

Checks and balances are the mechanisms which distribute power throughout a political system – preventing any one institution or individual from exercising total control. The words ‘checks’ and ‘balances’ are typically used together, but can be thought of as referring to subtly different (though overlapping) things. Checks are the mechanisms which allow political institutions to limit one another’s power – for example by blocking, delaying or simply criticising decisions. Balances, meanwhile, ensure that a wide variety of views and interests are represented in the democratic process. This includes structures like federalism, or broader features of democratic functioning such as the existence of multiple political parties.

The term ‘checks and balances’ is given more prominence in some countries than others, and is often particularly associated with the United States. But the principle is [core to all modern democracies](#).

Checks and balances operate between and within most political institutions. However, the risks of unconstrained power are often considered particularly high with respect to the executive. This briefing hence focuses on the key institutions which check and balance executive power at UK level:

1. parliament
2. the courts
3. impartial officials, and
4. media and civil society.

## Why do checks and balances matter?

Checks and balances play two key roles. First, they limit the power of the majority to act without regard to the views or interests of others. They ensure that the perspectives of those who are in the minority on a given issue are represented – for example, by guaranteeing that opposition voices are heard in the process of law-making. Second, at a more practical level, they ensure that policy is tested and behaviour supervised. This helps to improve the quality of decision-making, and prevent behaviour which might threaten the integrity or reputation of the political system.

Nonetheless there can be drawbacks associated with checks and balances when they are particularly strong. Because they make unilateral action more difficult and allow a greater range of actors to participate in governing, strong checks and balances can increase the risk of gridlock. They can also make it easier for vested interests to protect themselves at others' expense, by creating multiple opportunities to exercise a veto over proposed changes. When designing checks and balances it may therefore be necessary to find a middle ground.

Healthy democracies weigh these competing considerations carefully, preserving effective checks and balances without preventing essential action. By contrast, in countries suffering [democratic backsliding](#), leaders weaken the checks on their power – generally citing the need for decisive government. This can happen gradually, and take subtler forms than the straightforward abolition of institutions. In Hungary, for example, Viktor Orbán's government enacted [constitutional reforms](#) which limited the power of the courts and increased state control over the regulators of elections and media. These left the institutions in place, but circumscribed their ability to constrain the executive.

## What are the key checks and balances?

There is no single definitive list of checks and balances, but there are several key institutions which operate at UK level as checks and balances on the executive. Similar arrangements operate at devolved level, and in many other democratic states – though these differ in their precise structures from place to place.

### 1. Parliament

- In the UK, parliament provides the core check on the executive. Most fundamentally, the House of Commons has the power to grant or withdraw confidence in the government. In addition, parliament has crucial roles in scrutinising and assenting to new laws, and in overseeing the activities of the executive more broadly.
- Parliamentary testing of the executive's proposed laws and policies can improve the quality of decision-making, and provides accountability. Scrutiny may identify errors or omissions in policy before it is finalised, and help to avert unintended consequences. Post-hoc scrutiny – as undertaken by select committees – may draw out lessons learned. A government with a majority in the House of Commons can usually rely on the support of its own party and thereby get its business through. But it is important that governments not abuse this power by, for example, setting rapid bill timetables or using parliamentary mechanisms which limit scrutiny.
- Checks and balances also operate within parliament itself, through the bicameral system. Second chambers whose members are chosen on a different system to the lower house – as in almost all bicameral countries – allow a different range of interests and views to be represented. The House of Lords functions as a 'revising chamber', with limited veto powers, but with the ability to request a rethink of proposals. It thereby provides a check on both the executive and the House of Commons.

## 2. Courts

- The courts provide a check by applying the law as made by parliament. The relationship between courts, parliament and the executive is designed to uphold the doctrine of parliamentary sovereignty: the courts ensure that the executive acts within the law, but the law itself is set by parliament. Hence the courts interpret, but cannot overturn, primary legislation; and if the majority in parliament dislikes the law as interpreted by the courts, parliament can change the law. But beyond primary legislation, in areas where parliament has less opportunity for oversight of the executive – e.g. secondary legislation and prerogative powers – the courts play a more significant role as a check on the executive. This can be important to ensuring that it does not exceed its powers.
- Because UK courts apply the law as made by parliament, judges and external experts encourage parliament to be precise in its legislative wording, for example by clearly specifying the extent and purpose of powers granted to ministers in primary legislation. Vague wording risks throwing politically contentious questions of interpretation to the courts.
- This application of the law also means that the courts play a significant role in upholding certain standards of behaviour (those governed by laws rather than by norms). They therefore play a key role in, for example, preventing corruption.

## 3. Impartial officials

- A further balance is provided by impartial officials, either in the civil service or in the UK's various constitutional regulators.
- The impartial civil service, which serves the government of the day, operates as a balance within the executive. This is very different to the political civil service of systems like the US. UK civil servants are required to maintain impartiality, and the institution acts as a keeper of institutional memory, drawing on lessons from the successes or mistakes of previous governments which might not otherwise be obvious to ministers.
- Another check is provided by regulators. UK constitutional watchdogs do not always have decision-making powers, with the final decisions on many standards matters left to politicians. But they foster good practice and investigate and identify wrongdoing by those working in all parts of the system. Thus, for example, the [Advisory Committee on Business Appointments](#) limits the potential for corruption resulting from ministers or senior officials taking up new posts. Regulators also provide checks beyond the standards system itself, in particular by developing policies which have potential for impact on the democratic system, so that these are not directly controlled by ministers. For example, the [Boundary Commission for England](#) and its counterparts in [Scotland](#), [Wales](#) and [Northern Ireland](#) independently review parliamentary constituency boundaries.
- The important role played by regulators as a check means that any threats to their operation or independence raise concerns, and arguments are often made for strengthening their powers. In particular, the [Committee on Standards in Public Life](#) has argued that the Independent Adviser on Ministers' Interests should have greater powers to initiate their own investigations, in order to check ministerial behaviour effectively.

## 4. Media and civil society

- Checks and balances are also provided by other individuals and organisations that report, analyse, and comment upon political activity.

- The media scrutinises politicians and public officials, operating as a check not only on the executive but on the political system more widely. It also provides a balance, ensuring that a wide range of views are heard. The UK's tradition of public service broadcasting particularly reflects the importance of this role, with [broadcasting standards](#) intended to ensure that people have access to accurate and impartial sources of information, as well as establishing rules for the fair and balanced representation of different political views – particularly during election campaigns.
- Civil society also acts as a check and balance, allowing for politicians' actions and proposals to be scrutinised by expert groups outside government and parliament, and providing opportunities for broader groups within society to have input into the governing process. This includes, for example, charities which seek to represent their service users by providing feedback on policy proposals, or independent bodies which monitor and report on transparency and corruption.

## How can checks and balances be safeguarded?

Checks and balances play a vital role in a modern democracy. They prevent power from being concentrated too much in one part of the governing system, and help to avert the problems that can arise when decisions are taken without proper scrutiny or when high standards of behaviour are not enforced.

Checks and balances come under risk when the people working in the governing system disregard their importance, or seek to delegitimise them, or even to weaken and dismantle them. Impatience with checks and balances sometimes stems from an understandable desire to achieve policy goals; but undermining them risks compromising the health of the political system, and driving down public confidence in it.

The executive has a particularly important part to play in safeguarding checks and balances by engaging with parliamentary scrutiny, behaving appropriately toward the courts and the civil service, and respecting regulators. MPs should encourage the government to fulfil that role.

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