

# Rebuilding and renewing the constitution

Options for reform



# About this report

Political parties are beginning to focus their attention on manifesto preparation for a general election expected sometime in 2024. This joint report from the Institute for Government and the Constitution Unit at UCL is designed to inform such deliberations by drawing together a range of existing proposals.

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# Contents

Contents .....	3
Introduction.....	4
The executive.....	7
Parliament .....	13
The territorial constitution .....	18
Courts and the rule of law .....	23
Elections and public participation.....	28
Implementation.....	33
Further reading.....	36

# Introduction

In recent years, key events such as Brexit and the Covid pandemic have created political instability and brought constitutional controversies to the fore in UK politics. The less than four years since the 2019 general election have seen three prime ministers and a rapidly-changing cast of ministers. Arguments have arisen about constitutional standards, the role of regulators and the quality of parliamentary scrutiny. There have been marked pressures on the relationship between ministers and the civil service, between the different administrations across the UK, and between government, parliament and the courts. Questions have been raised about electoral integrity, and about the appropriate means through which citizens can engage in the political process.

Members of the public are anxious about these developments. Public opinion research by the Constitution Unit into constitutional arrangements post-Brexit has shown widespread concerns about integrity in politics, and found that ‘the health of democracy in the UK’ ranked as highly among citizens’ concerns as issues such as crime and immigration.<sup>1</sup> Participants favoured clear checks on government behaviour, and constraints such as a stronger parliament and strengthened roles for regulators and other independent officials.

As we approach the next general election, there is an opportunity to respond to this public demand, and to enhance the robustness and stability of our governing institutions. Giving effect to the proposals for reform set out in this report would improve the transparency and effectiveness of the core elements of our constitution, and allow politicians to visibly draw a line under recent years of political and constitutional turbulence.

## The purpose and structure of this report

Political parties are now increasingly focusing their attention on manifesto preparation for a general election expected sometime in 2024.<sup>2</sup> This report is designed to inform their deliberations, although Rishi Sunak’s government could equally choose to implement the ideas it contains ahead of the election. The main body of the report draws together a range of existing proposals for constitutional reform, into five short chapters in the following areas:

- The executive
- Parliament
- The territorial constitution
- Courts and the rule of law
- Elections and public participation

The report then ends with a chapter on how these ideas could be implemented.

Each chapter is deliberately short, and designed to be digestible – setting out a structured menu of possible proposals. In most cases, a fuller description of these proposals and their context has already been set out elsewhere, and such further reading is signalled in the footnotes. Key sources are then drawn together in a further reading section at the end of the report.

## The nature of the proposals included

Most of the proposals included are presented because we judge that they would be beneficial and achievable. Many are small-scale and incremental, but we also highlight some which are larger, more controversial and trickier to implement. We include ideas proposed by our two organisations – the Institute for Government and Constitution Unit at University College London – as well as by other non-partisan research organisations working in the constitutional field, plus public bodies (e.g. the Committee on Standards in Public Life – CSPL), and cross-party parliamentary committees. Our intention is to present proposals that have already been carefully thought through, with particular emphasis put on those supported by multiple organisations.

Each chapter structures proposals into three kinds:

- **‘Quick wins’:** these are suggestions that any government could implement very quickly and easily. They often refer to matters that are within the government’s own power, without the need for legislation or for significant consultation. Such changes would be relatively uncontroversial, but nonetheless allow the government to attract widespread support for its constitutional action. In the case of a newly elected government, these are the kinds of proposals that could be included within a plan for the first 100 days.
- **Moderate changes:** these make up the majority of proposals in the document. Such changes could not be achieved straightaway, requiring greater discussion, review, consultation, or in some cases legislation. Nonetheless, these are not hugely controversial proposals, or likely to result in large-scale and lengthy political arguments. In planning a programme for constitutional reform, a government might realistically expect to complete all of these changes within a single term of office. They would in themselves add up to a substantial programme, but exist independently and are presented essentially as a menu of desirable options. Because they go beyond ‘quick wins’ that can be implemented immediately, a government would wish to think through how it wanted to prioritise between them in terms of timing over the course of a parliament. These questions of implementation are discussed briefly in the closing chapter of the report.
- **Larger more controversial reforms:** the two preceding categories do not include all of the options for constitutional reform, and indeed they exclude some items which are most high profile. A third category in each chapter therefore sets out changes which would be more difficult to achieve – either because their full detail has not yet been worked through, and/or because they are likely to meet with significant political resistance. Some of these changes have been advocated within one political party (perhaps by a section of that party), rather than having obvious wider appeal. This does not necessarily make them bad ideas, but they enjoy less unified support among the expert community – indeed experts may be quite divided on such recommendations. Proposals in these sections are included in each chapter without particular endorsement, but to present a complete picture. Adopting such measures could take up considerable time and political capital, and different parties may judge such measures quite differently. In terms of implementation they should be approached with care, and a limited number of such changes is likely to be possible overall.

We do not claim that the options set out in this report represent an exhaustive list of all potential constitutional changes available. People could no doubt point towards additional ideas, particularly since the report focuses primarily on recommendations that have already been set out in fuller detail elsewhere. But it does offer a summary of many of the key proposals that expert bodies have so far made.

## How to read this report

Each of the five main chapters of the report has an identical format, setting out quick wins, moderate changes and larger more controversial reforms. The chapters should be usable independently, each providing a short guide to the policy options in that area. They may therefore be suitable as the basis for discussion within individual policy teams. Experts from the Institute for Government and Constitution Unit would be happy to contribute to such discussions, as would many of those who have contributed to the publications cited in each chapter. Read together, we hope that the report's chapters add up to a realistic roadmap to sensible constitutional reforms which will commend themselves to all parties. Implementing such changes would greatly help to alleviate some of the constitutional concerns and pressures that have arisen in recent years.

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<sup>1</sup> Renwick, A., Lauderdale, B., Russell, M. and Cleaver, J. (2023), [\*Public Preferences for Integrity and Accountability in Politics\*](#) (London: Constitution Unit). See also Renwick, A., Lauderdale, B., Russell, M. and Cleaver, J. (2022), [\*What Kind of Democracy do People Want?\*](#) (London: Constitution Unit); Renwick, A., Scott, K., Russell, M., Cleaver, J. and Osborne, F. (2022), [\*Report of the Citizens' Assembly on Democracy in the UK\*](#) (London: Constitution Unit).

<sup>2</sup> The Dissolution and Calling of Parliament Act 2022 returned the power to government to decide the timing of general elections. It states that parliament must be dissolved by the day after the fifth anniversary of the preceding general election, meaning the latest an election could be held is January 2025.

# The executive

In recent years there have been significant concerns about the functioning of central government, including but not confined to ethical standards. Perennial tensions in the relationship between ministers and the civil service have been exacerbated by the political stresses of the Brexit process and the Covid pandemic, culminating in some politicians' attacks on the civil service, and some high-profile removals of permanent secretaries under the Johnson and Truss premierships.<sup>1</sup> Since becoming Prime Minister, Rishi Sunak has repeatedly missed opportunities to match his actions to his widely welcomed assertion on the steps of Downing Street that he wanted to lead a government of 'integrity, professionalism and accountability'.<sup>2</sup> Various episodes have also raised questions about whether the UK's standards regulators have the status and powers required adequately to perform their roles.

Yet public opinion research by the Constitution Unit shows that people give great emphasis to the importance of honesty and integrity in their politicians, and want independent regulatory mechanisms that punish bad behaviour.<sup>3</sup> Reforms in these areas could help both to increase public trust in politics and promote good governance. The Committee on Standards in Public Life (CSPL), parliamentary committees and external experts have made various recommendations for specific changes. While these are partly targeted at stabilising the situation, experts also agree that there is scope to go further to strengthen constitutional regulators, and to clarify the role, duties and accountability of the civil service. Some changes in this area lie squarely in the government's power and could be quickly and easily implemented. Some others would require legislation, or benefit from wider consultation. There are also some larger questions which remain more controversial.

## Quick wins

- The Prime Minister should commit to **treating civil servants and constitutional regulators with respect and avoiding negative public briefing against them**, requiring members of the Cabinet and governing party to abide by the same principle. Impartial civil servants and other independent officials serve the public interest, and can rarely answer back. They should not be beyond constructive criticism, but undermining confidence in them risks damaging trust in the political system as a whole.
- The **Independent Adviser on Ministers' Interests should be given the power to open his or her own investigations** into alleged breaches of the Ministerial Code, and publish their findings, without requiring the Prime Minister's authorisation to do so. This has been recommended by CSPL and numerous other bodies.<sup>4</sup>
- The UK's **other constitutional regulators should be strengthened**. Partly this is a matter of legislation (discussed below) but some improvements could be made purely by ministers. For example, the recruitment processes for the heads of key watchdogs should require a majority of fully independent members on the appointments panel to minimise partisan influence over the appointment of ethical regulators.<sup>5</sup>

- Another matter that lies in the Prime Minister's power would be to **reduce ministerial turnover ('churn')** – which has long been identified as a challenge to effective policymaking.<sup>6</sup> The results would not be seen immediately, but a commitment to this principle would be welcome.

## Moderate changes

### The civil service

The civil service currently lacks a clearly defined remit and responsibilities, and faces managerial challenges which can contribute to tensions between ministers and officials – notably a lack of effective accountability mechanisms, and problems with churn.

- The Institute for Government has recommended that **the government should commit to passing a new Civil Service Act**.<sup>7</sup> This would underpin the permanence of the civil service, and more clearly lay out its objectives – to implement the government's programme and respond to events as directed by ministers, as well as maintaining the long-term capability of UK governments.
- A new Act would also provide an opportunity to establish clearer accountability mechanisms for the civil service. The Institute for Government recommends **a new Civil Service Board and more direct reporting to parliament** to fulfil these functions.
- As with ministers, it is desirable to **address the widely-recognised damaging effects of civil service 'churn'**.<sup>8</sup> The rapid movement of staff between teams and departments has got worse in recent years and threatens the ability of the civil service to act as a keeper of institutional memory, and to advise ministers effectively. The Head of the Civil Service should be required to address the perverse incentives in the current pay and promotion practices that incentivise civil servants to move rapidly between jobs and often departments for career progression.

### The Cabinet Manual and Ministerial Code

- The Cabinet Manual has not been revised since its original publication in 2011. As the Lords Constitution Committee has pointed out, numerous constitutional developments have taken place since that time – including further devolution, the repeal of the Fixed-term Parliaments Act, and the UK's exit from the European Union.<sup>9</sup> An incoming government should commit to **updating the Cabinet Manual at the beginning of the new parliament**, in consultation with parliamentary committees, external experts, and the wider public.
- The Ministerial Code – unlike the Codes of Conduct which govern MPs' and peers' behaviour – combines ethical expectations of ministers with more process-focused material on the workings of government. CSPL and the Institute for Government have recommended that, to **make the ethical standards expected of ministers clear and unambiguous**, these functions should be split, with the Ministerial Code becoming a purely standards-focused document.<sup>10</sup> This could be conducted alongside revision of the Cabinet

Manual. A revised Ministerial Code should emphasise ministers' need to respect, and not brief against, the civil service.

## Longer-term strengthening of ethics regulators

Some regulators currently have no basis in primary legislation, leaving them vulnerable to abolition or significant weakening at the discretion of ministers. This particularly relates to the Independent Adviser on Ministers' Interests, the Commissioner for Public Appointments and the Advisory Committee on Business Appointments.

- There is widespread agreement – for example between CSPL, the Institute for Government and the Commons Public Administration and Constitutional Affairs Committee – that these **important ethical regulators should be put on a statutory footing**. This should also give a statutory basis to the codes that they oversee.<sup>11</sup> The House of Lords Appointments Commission also lacks a statutory basis, as indicated in the parliament chapter of this report – this might be rectified separately, or in the same legislation.
- Lobbying scandals have drawn attention to the need to **revise the processes governing the movement of former civil servants and ministers into other sectors**.<sup>12</sup> There are currently no sanctions for non-compliance with the Business Appointment Rules, or for failure to consult the Advisory Committee on Business Appointments (ACOPA). As well as putting ACOPA on a statutory basis, it needs to be given effective enforcement powers.<sup>13</sup>

## Public appointments

Public appointments are a perennial topic of controversy, and recent scandals – particularly surrounding Paul Dacre's candidacy for the chair of Ofcom and Richard Sharp's appointment as Chair of the BBC – have increased attention to this area.<sup>14</sup> There are a number of reforms that could strengthen and safeguard the system.

- The government should commit to **streamline and more tightly regulate public appointments**. Problems have included attempts to 'pack' appointment panels and influence the process by naming favoured candidates in advance; these practices have been strongly criticised by former Commissioner for Public Appointments, Peter Riddell.<sup>15</sup>
- **The government's ability to appoint candidates judged unappointable by appointment panels should be far more restricted**. Currently the Governance Code on Public Appointments allows ministers to do this, subject to an ill-defined requirement to justify their decision publicly.<sup>16</sup> At minimum, the Code should specify that in such instances ministers should appear before the relevant select committee to explain their decision. Alternatively, such power could be surrendered altogether.<sup>17</sup>
- There **should be greater transparency and parliamentary oversight about the number, nature and duration of so-called direct ministerial appointments** (i.e. those not subject to the Governance Code for Public Appointments, such as departmental Non-Executive Directors).<sup>18</sup> For example, the Institute for Government has recognised that some 'tsar' appointments offer useful speed and flexibility for the government, but has proposed greater transparency about their terms.<sup>19</sup>

## Larger more controversial reforms

- The most significant and controversial debates relating to the civil service concern the **continued requirement for civil service impartiality**, and whether a greater degree of politicisation at the top levels would be appropriate or desirable. Most experts would argue for the benefits of impartiality (but also that the civil service needs to do more to demonstrate its capability to deliver for ministers and the public), and recent public opinion research suggests far greater support for an independent than a politicised civil service.<sup>20</sup> The debate continues and the question has recently been raised again by former Conservative minister Francis Maude.<sup>21</sup>
- With respect to standards, there is a question of whether there should be significantly greater consolidation, with a possible merger of existing bodies into an **overarching Ethics and Integrity Commission**. CSPL has expressed scepticism about such a move, but Labour frontbencher Angela Rayner has laid out some initial thinking on the potential remit and powers of such a body, and the principle was endorsed by the commission chaired for the Labour Party by Gordon Brown.<sup>22</sup>

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<sup>1</sup> See for example Syal, R. (2020), [‘The Growing List of Civil Servants Frozen out While Johnson’s Ministers Remain’](#), *Guardian*, 26 August; Rutter, J. (2022), [‘Sacking Tom Scholar – a Move That Undermines the Treasury, the Civil Service and the Government’](#), *UK in a Changing Europe blog*, 13 September.

<sup>2</sup> Sunak, R. (2022), [‘Rishi Sunak’s First Speech as Prime Minister: 25 October 2022’](#), *Gov.UK website*, 25 October; White, H. (2023), [‘Rishi Sunak’s Response to Dominic Raab’s Resignation Won’t Improve Ministerial-Civil Service Relations’](#), *Institute for Government blog*, 21 April.

<sup>3</sup> Renwick, A., Lauderdale, B., Russell, M. and Cleaver, J. (2023), [‘Public Preferences for Integrity and Accountability in Politics’](#) (London: Constitution Unit).

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- <sup>4</sup> Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons); Durrant, T., Haddon, C., Thomas, A. and Pannell, J. (2021), [Improving Ethical Standards in Government](#) (London: Institute for Government).
- <sup>5</sup> Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Gill, M. and Dalton, G. (2022), [Reforming Public Appointments](#) (London: Institute for Government); Riddell, P. (2021), [‘Pre-Valedictory Speech to the UCL Constitution Unit on Public Appointments’](#), *Commissioner for Public Appointments website*, 29 April. Both Riddell and Gill and Dalton suggest that the relevant select committee might also have a veto over such appointments.
- <sup>6</sup> See for example Sasse, T., Durrant, T., Norris, E. and Zodgekar, K. (2020), [Government Reshuffles: The Case for Keeping Ministers in Post Longer](#) (London: Institute for Government).
- <sup>7</sup> Thomas, A., Clyne, R., Bishop, M. and Lilly, A. (2022), [A New Statutory Role for the Civil Service](#) (London: Institute for Government); Rutter, J. (2022), [Relationship Breakdown. Civil Service-Ministerial Relations: Time for a Reset](#) (London: Institute for Government and Bennett Institute for Public Policy).
- <sup>8</sup> See for example Sasse, T. and Norris, E. (2019), [Moving On: The Costs of High Staff Turnover in the Civil Service](#) (London: Institute for Government); HM Government (2012), [The Civil Service Reform Plan](#) (London: HM Government); Public Administration and Constitutional Affairs Committee (2018), [The Minister and the Official: The Fulcrum of Whitehall Effectiveness \(Fifth Report of Session 2017–19\)](#), HC 497 (London: House of Commons); Public Administration Select Committee (2013), [Truth to Power: How Civil Service Reform Can Succeed \(Eighth Report of Session 2013–14\)](#), HC74 (London: House of Commons).
- <sup>9</sup> Constitution Committee (2021), [Revision of the Cabinet Manual \(Sixth Report of Session 2021–22\)](#), HL Paper 34 (London: House of Lords).
- <sup>10</sup> Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Durrant, T., Pannell, J. and Haddon, C. (2021), [Updating the Ministerial Code](#) (London: Institute for Government); Durrant, T. (2022), [‘The New Ministerial Code Fails Again to Improve Standards’](#), *Institute for Government blog*, 30 May.
- <sup>11</sup> Lord Anderson’s current Public Service (Integrity and Ethics) Bill seeks to do this. See also: Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons); Durrant, T., Haddon, C., Thomas, A. and Pannell, J. (2021), [Improving Ethical Standards in Government](#) (London: Institute for Government).
- <sup>12</sup> See in particular: Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons).
- <sup>13</sup> One way to address this would be for civil service contracts to require consultation with ACOBA before leaving office, and to abide by its rulings. CSPL has suggested that the government should consider parallel legal arrangements for ministers; the Boardman Review into lobbying proposed that ministers should sign a legally enforceable ‘deed of undertaking’ that would commit them to abide by the Business Appointment Rules. CSPL also recommends that ACOBA should be given the powers and resources to investigate alleged breaches of the Business Appointment Rules. See: Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Boardman, N. (2021), [Review Into the Development and Use of Supply Chain Finance \(and Associated Schemes\) in Government. Part Two: Recommendations and Suggestions](#) (London: HM Government); Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons); Durrant, T. (2021), [The Boardman Review: What the Review into Standards in Public Life Got Right – and What It Missed](#) (London: Institute for Government).
- <sup>14</sup> BBC News (2021), [‘Paul Dacre: Ex-Daily Mail Editor Quits Race to Head Ofcom’](#), *BBC News*, 20 November; Guardian (2023), [‘Richard Sharp: Key Inquiry Findings on how He Was Appointed BBC Chair’](#), *Guardian*, 28 April.
- <sup>15</sup> Peter Riddell (2021), [‘Pre-Valedictory Speech to the UCL Constitution Unit on Public Appointments’](#), *Commissioner for Public Appointments website*, 29 April.
- <sup>16</sup> This power has never been used, although there was some speculation that ministers might use it to appoint Paul Dacre as chair of Ofcom after he was judged unappointable by the appointment panel. Ministers chose instead to rerun the competition; Dacre declined to reapply for the role.
- <sup>17</sup> Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons). For suggestions that the power might simply be removed, see: Gill, M. and Dalton, G. (2022), [Reforming Public Appointments](#) (London: Institute for Government); Riddell, P. (2021), [‘Pre-Valedictory Speech to the UCL Constitution Unit on Public Appointments’](#), *Commissioner for Public Appointments website*, 29 April.
- <sup>18</sup> CSPL, PACAC, the Institute for Government and Peter Riddell have all recommended that government departments should publish lists of unregulated appointments. In addition, CSPL recommends that departmental

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Non-Executive Director appointments should be regulated under the Governance Code for Public Appointments. See: Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Public Administration and Constitutional Affairs Committee (2022), [Propriety of Governance in Light of Greensill \(Fourth Report of Session 2022–23\)](#), HC 888 (London: House of Commons); Gill, M. and Dalton, G. (2022), [Reforming Public Appointments](#) (London: Institute for Government); Riddell, P. (2021), [‘The Public Appointments System is Under Strain: It Needs More Clarity and Transparency’](#), *Constitution Unit blog*, 16 May.

<sup>19</sup> Specifically, the Institute for Government recommends that at the start of such appointments ministers should write to the relevant select committee setting out their remit, length of appointment and its terms including pay. See Thomas, A. (2020), [‘Government Reaches for the Tsars in its Coronavirus Response’](#), *Institute for Government blog*, 22 May.

<sup>20</sup> Renwick, A., Lauderdale, B., Russell, M. and Cleaver, J. (2022), [What Kind of Democracy Do People Want?](#) (London: Constitution Unit).

<sup>21</sup> Maude, F. (2023), [‘Singapore and France Can Help us Right Balance Between Ministers and Officials’](#), *Guardian*, 22 April; White, H. (2023), [‘Civil Service Politicisation is the Wrong Answer to the Wrong Question’](#), *Institute for Government blog*, 3 May. See also HM Government (2012), [The Civil Service Reform Plan](#) (London: HM Government).

<sup>22</sup> Committee on Standards in Public Life (2021), [Upholding Standards in Public Life: Final Report of the Standards Matter 2 Review](#) (London: Committee on Standards in Public Life); Labour Party (2021), [‘Angela Rayner’s Speech Setting out Labour’s Plans to Clean up Politics’](#), *Labour Party website*, 29 November; Institute for Government (2023), [‘Keynote Speech: Angela Rayner MP, Labour’s Deputy Leader’](#), *Institute for Government website*, 13 July; Commission on the UK’s Future (2023), [A New Britain: Renewing Our Democracy and Rebuilding Our Economy](#) (Newcastle: Labour Party).

# Parliament

Recent years have seen significant tensions over the role of parliament, which came under particular pressure over Brexit and Covid. There have been concerns about declining standards of scrutiny, and parliament has yet to adapt fully to the new policy environment post-Brexit. There are long-standing concerns about the House of Lords, including over its size and the nature of prime ministerial appointments. Reforms could be very beneficial, to improve governmental accountability, to avoid the government advancing poorly thought-through policy, and thereby to build trust in political decision-making.

Numerous proposals have been made for change, both by external experts and by parliamentary committees. There are some long-running concerns which could be resolved quickly and easily by ministers as ‘quick wins’. Various other changes would necessarily require a little more time and consideration. Some of these are naturally subject to government initiative (e.g. legislation), but various others are formally within the purview of parliament itself and would be dependent, for example, on reviews by parliamentary committees. These would nonetheless greatly benefit from cooperation by the government. Large-scale House of Lords reform is the most obvious proposal which is more disputed, and would require further work – and potentially significant consultation and deliberation – before being ready to be implemented.

## Quick wins

- The government should publicly commit to allowing **sufficient time for parliamentary scrutiny of primary legislation**. In recent years (particularly after Covid) too many bills have been rushed through without adequate consideration by MPs, sometimes leading to reversals later.<sup>1</sup> Likewise, substantial government amendments to bills late in their passage through both the Commons and the Lords, restricting scrutiny, have become too frequent. Changing these bad habits requires a clear commitment from government, which might be affirmed in a statement to parliament, and include tightening of the rules for the government’s internal Parliamentary Business and Legislation (PBL) committee.
- There have been widespread concerns about the **overuse of delegated legislation**, which allows little opportunity for any parliamentary input.<sup>2</sup> A straightforward commitment to improve this, by scaling back the use of delegated legislation for significant policy changes, and avoiding unnecessary use of ‘skeleton bills’ granting broad additional powers, would be a widely-welcomed first step.
- Important changes can be achieved to **House of Lords appointments** via simple commitments from the Prime Minister, who retains significant personal power over the system. This should include a commitment to always respect the recommendations of the independent House of Lords Appointments Commission on propriety, and (in the first instance) to give it more powers to manage down the size of the chamber to no larger than the House of Commons, ensure that new seats are shared fairly between the parties, and exercise tighter control over the number and quality of appointments. There is clear public support for such changes.<sup>3</sup>

## Moderate changes

### Time in the House of Commons

The government's iron grip over the timetable of the House of Commons is unusual in international terms, and it caused major flashpoints both over Brexit and during the pandemic.<sup>4</sup>

- One key change would be to implement an outstanding recommendation from the 2009–10 'Wright Committee', to allow the **Commons to approve its own weekly agenda** on an amendable motion, while maintaining appropriate protections for non-government business.<sup>5</sup> Details have been set out in a recent Constitution Unit report.<sup>6</sup>
- The same report builds on proposals from various others in support of the idea that **House of Commons approval should be needed for dissolution and prorogation, and the chamber should be able to recall itself from recess.**

### The legislative process

Beyond the immediate 'quick wins' set out above, there is widespread support for further changes to cement and build further improvements in the legislative process:

- The government should **agree to parliament's creation of a legislative standards committee** – as suggested by the Hansard Society and Lords Constitution Committee, among others – so that parliamentarians themselves play a part in agreeing that legislation is ready for introduction.<sup>7</sup>
- The government should commit to **publishing more legislation in draft form**, for pre-legislative scrutiny and evidence-taking by expert select committees, as proposed by many bodies, including most recently the Institute for Government.<sup>8</sup>
- The government should **support improvements to House of Commons public bill committees**, which lag well behind the select committees in terms of permanence, expertise and evidence-taking. While merging the two sets of committees would be undesirable, the Constitution Unit and Institute for Government have made various suggestions.<sup>9</sup>
- Wider-ranging **reform of the delegated legislation process is overdue**. This should include agreement of a new concordat between government and parliament to reset the boundary between primary and secondary legislation, as recommended by the Hansard Society.<sup>10</sup> This might recognise a list of matters that should not be legislated for by delegated legislation, such as the creation of new criminal offences or public bodies.<sup>11</sup> The Hansard Society has also made further proposals for an overhaul of the system.
- Finance bills operate differently to other legislation, with guaranteed parliamentary time and, by convention, no Lords scrutiny. However, **Commons scrutiny of the annual Finance Bill can and should be improved**, for example – as the Institute for Government, Chartered Institute of Taxation and Institute for Fiscal Studies have recommended – by using bill committee sessions to take oral evidence, improving liaison between the Treasury Select Committee, House of Lords Economic Affairs Committee and the Finance Bill

Committee, and by increasing the specialist capacity on these committees to support members.<sup>12</sup>

- There have long been complaints about the Commons' private members' bill system, which fails to incentivise well-developed legislation that can command cross-party support. A sensible package of reforms has been proposed by the Procedure Committee, building on earlier recommendations by the Hansard Society.<sup>13</sup> This would, for example supplement the ballot scheme with a system allowing some PMBs to be selected on merit, possibly via the Backbench Business Committee. The government should **support improvements to the private members' bill process**.
- Impact assessments provide crucial information to support parliamentary scrutiny of primary and secondary legislation, but their timeliness and quality can be patchy – as highlighted by the Regulatory Policy Committee. As the Secondary Legislation Scrutiny Committee has suggested, the government should commit to **producing timely impact assessments of all kinds** (regulatory, economic, equality, human rights, environmental) and always making them available on publication of legislation.<sup>14</sup>

## Scrutiny of international agreements

There is a widespread view that existing scrutiny arrangements for international agreements are insufficient, in both their scope and their powers, in a post-Brexit environment.<sup>15</sup>

- Capacity for **treaty scrutiny should be increased in the House of Commons** – in particular, a dedicated treaty scrutiny committee should be created to fill the gap left when machinery of government changes led to abolition of the International Trade Committee earlier this year.<sup>16</sup>
- The current arrangements under the Constitutional Reform and Governance Act 2010 (CRAG) apply only to formal treaties, and allow MPs only to delay ratification. The Commons **power of delay over treaties should be upgraded to a power of veto and scrutiny should be extended to significant non-treaty international agreements**. These changes would be in line with recommendations by the Lords International Agreements Committee and Commons International Trade Committee.<sup>17</sup>

## House of Lords reform

Beyond the 'quick win' of immediate commitments on the quality, number and balance of House of Lords appointments, the following changes are desirable:

- The **House of Lords Appointments Commission should be put on a statutory footing**, to give it greater stability and enforceable powers.<sup>18</sup> This should cement in legislation the changes proposed above, to give the Commission oversight of the size of and party balance in the chamber (according to a fair formula), and strengthened powers over quality and propriety of new peers.
- The same or a different bill could **remove the remaining hereditary peers**, either by ending by-elections to those seats and allowing them to lapse over time,<sup>19</sup> or through

abolishing the remaining 92 seats altogether, instead giving some of the most active hereditary peers life peerages.<sup>20</sup> This would help enhance the public legitimacy of the chamber, as well as contributing to shrinking its size.

- Faster progress on the size of the chamber could be achieved through an **organised cross-party system of retirements**, which might be agreed on a voluntary basis between the parties, or set out in legislation.<sup>21</sup> The internal party elections to reduce the number of hereditary peers in 1999 provide a model.

## Larger more controversial reforms

- The most significant large-scale parliamentary reforms which have been under discussion for many years, but are disputed, relate to the House of Lords. Most recently a commission chaired for the Labour Party by Gordon Brown proposed moving to an **elected Assembly of the Nations and Regions**.<sup>22</sup> But these proposals do not amount to a detailed blueprint, and past experience over decades shows that wholesale Lords reform is extremely politically difficult. Such measures would require more consultation and negotiation before being ready to implement, particularly if they are to link convincingly to the devolved areas.

A number of other reforms – large and small – that would impact parliament are included in the Elections and Territorial constitution chapters of this report.

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<sup>1</sup> See for example White, H. (2023), '[Illegal Migration Bill Highlights How Expectations of Legislative Scrutiny Have Plummeted](#)', *Institute for Government blog*, 13 March; Fox, R., Russell, M., Tomlinson, J. and Cormacain, R. (2021), '[The Marginalisation of the House of Commons Under Covid Has Been Shocking: A Year on, Parliament's Role Must Urgently Be Restored](#)', *Hansard Society website*, 20 April; Russell, M. and James, L. (2023), *The Parliamentary Battle over Brexit* (Oxford: Oxford University Press); White, H. (2022), *Held in Contempt: What's Wrong with the House of Commons* (Manchester: Manchester University Press).

<sup>2</sup> Delegated Powers and Regulatory Reform Committee (2021), [Democracy Denied? The Urgent Need to Rebalance Power Between Parliament and the Executive \(Twelfth Report of Session 2021–22\)](#), HL Paper 106 (London, House of Lords); Secondary Legislation Scrutiny Committee (2021), [Government by Diktat: A Call to Return Power to Parliament \(Twentieth Report of Session 2021–22\)](#), HL Paper 105 (London, House of Lords). For a discussion of the delegated legislation scrutiny process see Hansard Society (2022), [Delegated Legislation: The Problems with the Process](#) (London: Hansard Society).

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Although members of the public cannot be expected to closely follow these questions, it is clear that public instincts are in favour of full parliamentary scrutiny, rather than the government being able to fast track legal change: see James, L. and Renwick, A. (2023), [‘The Public Wants Parliament to Have a Central Role in Legislation, So Why Does the Retained EU Law Bill Enhance the Legislative Power of Ministers?’](#), *Constitution Unit blog*, 12 February.

<sup>3</sup> Russell, M. (2023), [House of Lords Reform: Navigating the Obstacles](#) (London: Institute for Government and Bennett Institute for Public Policy). This would be in line with recommendations from the Lord Speaker’s Committee on the Size of the House (2017), [Report of the Lord Speaker’s Committee on the Size of the House](#) (London: House of Lords), most recent reiterated in its report of July 2023, [Fifth Report of the Lord Speaker’s Committee on the Size of the House](#) (London: House of Lords), and supported by the Public Administration and Constitutional Affairs Committee (2017), [A Smaller House of Lords: The Report of the Lord Speaker’s Committee on the Size of the House \(Thirteenth Report of Session 2017–19\)](#), HC 662 (London: House of Lords).

<sup>4</sup> Russell, M. and James, L. (2023), *The Parliamentary Battle over Brexit* (Oxford: Oxford University Press); White, H. (2022), *Held in Contempt: What’s Wrong with the House of Commons* (Manchester: Manchester University Press).

<sup>5</sup> Reform of the House of Commons Select Committee (2009), [Rebuilding the House \(First Report of Session 2008–09\)](#), HC 1117 (London: House of Commons).

<sup>6</sup> Russell, M. and Gover, D. (2021), [Taking Back Control: Why the House of Commons Should Govern its Own Time](#) (London: Constitution Unit).

<sup>7</sup> Constitution Committee (2017), [The Legislative Process: Preparing Legislation for Parliament \(Fourth Report of Session 2017–19\)](#), HL Paper 27 (London, House of Lords); Constitution Committee (2018), [The Legislative Process: The Passage of Bills Through Parliament \(Twenty-fourth Report of Session 2017–19\)](#), HL Paper 393 (London, House of Lords); Fowler, B. and Fox, R. (2019), [‘Evidence to the House of Commons Liaison Committee: The Effectiveness and Influence of the Select Committee System’](#), *Hansard Society website*, 25 April.

<sup>8</sup> Sargeant, J. and Pannell, J. (2022), [The Legislative Process: How to Empower Parliament](#) (London: Institute for Government).

<sup>9</sup> Russell, M., Morris, B. and Larkin, P. (2013), [Fitting the Bill: Bringing Commons Legislation Committees into Line with Best Practice](#) (London: Constitution Unit); Sargeant, J. and Pannell, J. (2022), [The Legislative Process: How to Empower Parliament](#) (London: Institute for Government).

<sup>10</sup> Hansard Society (2023), [Proposals for a New System for Delegated Legislation: A Working Paper](#) (London: Hansard Society).

<sup>11</sup> These topics have been generally recognised as inappropriate for delegated legislation, as noted in Constitution Committee (2018), [The Legislative Process: The Delegation of Powers \(Sixteenth Report of Session 2017–19\)](#), HL Paper 225 (London: House of Lords).

<sup>12</sup> Rutter, J., Dodwell, B., Johnson, P., Crozier, G., Cullinane, J., Lilly, A., McCarthy, E. (2017), [Better Budgets: Making Tax Policy Better](#) (London: Institute for Government).

<sup>13</sup> Procedure Committee (2016), [Private Members’ Bills: Volume I \(Second Report of Session 2013–14\)](#), HC 188-I (London: House of Commons); Brazier, A. and Fox, R. (2011), [Enhancing the Role of Backbench MPs: Proposals for Reform of Private Members’ Bills](#) (London: Hansard Society).

<sup>14</sup> Regulatory Policy Committee (2023), [Independent Verification Body Report: December 2021 to December 2022](#) (London: Regulatory Policy Committee); Secondary Legislation Scrutiny Committee (2023), [Losing Impact: Why the Government’s Impact Assessment System is Failing Parliament and the Public \(Twelfth Report of Session 2022–23\)](#), HL Paper 62 (London: House of Lords).

<sup>15</sup> Constitution Committee (2019), [Parliamentary Scrutiny of Treaties \(Twentieth Report of Session 2017–19\)](#), HL Paper 345 (London: House of Lords); European Union Committee (2019), [Scrutiny of International Agreements: Lessons Learned \(Forty-second Report of Session 2017–19\)](#), HL Paper 387 (London: House of Lords); Hansard Society (2023), [‘Windsor Framework Scrutiny Complaints: Why MPs Should Look to Themselves’](#), *Hansard Society blog*, 21 March; International Agreements Committee (2021), [Working Practices: One Year On \(Seventh Report of Session 2021–22\)](#), HL Paper 75 (London: House of Lords).

<sup>16</sup> Lang, A., Trade Justice Movement, Friends of the Earth and Green Alliance (2023), [‘Stifled in the Cradle: Commons Treaty Scrutiny Delivered a New Blow’](#), *Public Law Project blog*, 23 March.

<sup>17</sup> International Agreements Committee (2021), [Working Practices: One Year On \(Seventh Report of Session 2021–22\)](#), HL Paper 75 (London: House of Lords); International Trade Committee (2018), [UK Trade Policy Transparency and Scrutiny \(Sixth Report of Session 2017–19\)](#), HC 1043 (London: House of Commons). See also International Agreements Committee (2022), [Memorandum of Understanding Between the UK and Rwanda for the Provision of an Asylum Partnership Arrangement \(Seventh Report of Session 2022–23\)](#), HL Paper 71 (London: House of Lords).

<sup>18</sup> A version of this recommendation is currently being pursued via Lord Norton’s House of Lords (Peerage Nominations) Bill [HL]. Note that changes to other regulators are proposed in the Executive chapter of this report.

<sup>19</sup> Lord Grocott’s House of Lords (Hereditary Peers) (Abolition of By-Elections) (No.2) Bill [HL] would implement this change. It has also been called for by the cross-party Lord Speaker’s Committee on the Size of the House (2023), [Fifth Report of the Lord Speaker’s Committee on the Size of the House](#) (London: House of Lords).

<sup>20</sup> Russell, M. (2023), [House of Lords Reform: Navigating the Obstacles](#) (London: Institute for Government and Bennett Institute for Public Policy).

<sup>21</sup> Ibid.

<sup>22</sup> Commission on the UK’s Future (2023), [A New Britain: Renewing Our Democracy and Rebuilding Our Economy](#) (Newcastle: Labour Party).

# The territorial constitution

Recent years have been unsettled ones in UK territorial politics, with structural pressures following the Brexit vote, and other tensions between the centre and the devolved institutions. Meanwhile, the devolution arrangements for England remain an incomplete patchwork.

While wholesale reform may be complex and contentious, much can be done to mitigate the tensions that exist within the existing framework. There is widespread recognition that cooperation between the UK government and devolved institutions could be improved, and some positive steps in this direction have already been taken. With the fiercest battles about the implementation of Brexit now over, opportunities exist for strengthening interparliamentary arrangements. The governance arrangements for England could also be made more transparent and coherent.

Such issues have been considered by various parliamentary committees and external experts. Some of their proposed solutions are relatively uncontroversial and quickly achievable, whereas others may require rather more time and consideration. There are a significant number of larger-scale reforms proposed in this area, including changes that would require far more careful deliberation and extensive consultation. Some of these are things that the UK government itself may not actively pursue, but it may need to respond to pressures from other actors.

## Quick wins

- The first and most obvious action would be for the UK government to explicitly re-state its **determination to respect the devolved institutions and to uphold the agreed principles for intergovernmental relations** within the UK. In recent years there have been concerns about a lack of adequate consultation, and about what some have termed ‘muscular unionism’ – with accusations that the centre has strayed increasingly into areas of devolved responsibility.<sup>1</sup> A clear statement of cooperation would help to build goodwill.
- The UK government should **publicly commit to respecting the Sewel convention**, whereby the UK parliament does ‘not normally’ legislate with regard to devolved matters, or to amend the powers of devolved institutions, without devolved consent.<sup>2</sup>

## Moderate changes

### Intergovernmental relations and the Union

The government’s 2022 *Review of Intergovernmental Relations* led to the establishment of new intergovernmental structures and a renewed commitment to constructive joint working.<sup>3</sup> While these developments are welcome, further improvements can be made:

- The government should **implement the outstanding elements of the Intergovernmental Relations Review**, including the addition of inter-ministerial groups to encourage cooperation and resolve disagreements in areas such as health, welfare, transport and justice.<sup>4</sup>

- The UK government's 2021 Dunlop Review recommended that it should **establish a Secretary of State for Intergovernmental Relations and a single Permanent Secretary with responsibility for the Union** who would lead the offices of the Secretaries of State for Scotland, Wales, and Northern Ireland.<sup>5</sup> This was subsequently endorsed by the House of Lords Constitution Committee.<sup>6</sup>
- The Dunlop Review also recommended that **the UK government should prioritise improved understanding of devolution across Whitehall** – including via loans and secondments of officials between governments – and afford greater prominence to devolution teams working within Whitehall departments.
- It remains a major concern that the Stormont institutions are currently suspended. The UK government should **work as constructively as possible with the Irish government, civil society actors and political parties in Northern Ireland to encourage the re-establishment of devolved government** and to build confidence in Northern Ireland's governance arrangements.<sup>7</sup> Polling and election results indicate that its population is increasingly abandoning the traditional unionist and nationalist identities and wants more 'normal' politics.
- The Lords Constitution Committee has suggested various means to **strengthen UK parliamentary oversight of intergovernmental relations**, particularly for the House of Lords.<sup>8</sup> The Institute for Government has proposed establishment of a Devolution Committee either in the House of Commons or as a joint committee, which could fulfil this role.<sup>9</sup>

## The Sewel convention and interparliamentary relations

- While a declaratory commitment could be an immediate first step, more could be done to follow this up. The Institute for Government is among those who have proposed changes, including **far greater transparency regarding the operation of the Sewel convention**. Proposals include that the UK government should share draft legislation with its devolved counterparts within an agreed minimum period before introduction, lay a detailed 'devolution statement' before parliament for each new piece of legislation, and make a statement to parliament justifying any decision to proceed with legislation without consent.<sup>10</sup> Similar ideas have come from the House of Lords Constitution Committee.<sup>11</sup>
- While the Sewel convention does not technically apply in such cases, the UK government should **seek consent before pursuing secondary legislation in devolved areas of competence**, as the Lords Constitution Committee has recommended.<sup>12</sup>
- The UK government should also **support stronger interparliamentary relations between the UK parliament and devolved legislatures** (which fall properly within the competence of the legislatures concerned), including supporting and engaging with the existing interparliamentary forum. For example the Hansard Society has suggested more joint sessions between UK-level committees and their devolved counterparts, which would provide greater oversight of intergovernmental relations.<sup>13</sup> The Lords Constitution Committee has recommended incorporating an expectation for UK government ministers to appear before committees of the devolved legislatures into the Ministerial Code.<sup>14</sup>

## Funding and the Barnett formula

- This is a complex and contested area, but the Institute for Government has suggested that improvements could be made in the first instance through **greater transparency in devolution finance**. For example, the UK government could publish its annual analysis of comparative spending levels on public services in the devolved nations, and make clear alongside every spending decision whether and why it will produce additional resources for each devolved administration.<sup>15</sup>
- In addition, an independent body such as the National Audit Office could be asked to **report annually on how the Barnett formula has been used** to calculate changes in devolved budgets.<sup>16</sup>

## Governance arrangements for England

- In recent years the metro-mayor and combined authority model has been central to the government's devolution agenda. However, there are many ways in which it could be improved.<sup>17</sup> For example the **powers of metro mayors could be made more coherent**, with devolution of further powers in areas such as transport, skills and housing, building on the trailblazer devolution deals in Greater Manchester and the West Midlands. The government could commit to respond publicly to requests for devolution, and to explain its reasons if it declines to devolve to one area a power devolved elsewhere.<sup>18</sup>
- A new government could also **set out a clear routemap for how devolution will be extended to the half of England left out of the devolution process so far**. Such proposals were included in the report of the commission chaired for Labour by Gordon Brown.<sup>19</sup>
- More could be done to **improve communications between existing devolved bodies in England and the centre**. There are different proposals for how this could be achieved. The Institute for Government and Bennett Institute have suggested that the UK government should establish an English Devolution Council, comprised of England's elected mayors, to represent local government in the heart of the UK government.<sup>20</sup> Others have proposed similar arrangements also incorporating the leaders of local authorities.<sup>21</sup>
- It has also been suggested that **more could be done to deepen understanding of English devolution across Whitehall**, for example through secondments between UK government officials and Mayoral Combined Authorities.<sup>22</sup>
- The government has been encouraged to **establish an independent or cross-party commission on current and future governance arrangements for England** by bodies such as the Institute for Government and Bennett Institute, and the Public Administration and Constitutional Affairs Committee.<sup>23</sup>

## Larger more controversial reforms

- One of the biggest questions facing a future government on the territorial constitution is the **future of Scotland**. The SNP has pressed for a further referendum on Scottish independence, which the UK government has so far refused. These pressures may continue. A new government may wish to consider the case for further devolution to Scotland, as well as seeking opportunities for closer cooperation with the Scottish government.
- Support for Irish unification could grow to the extent that a **referendum on Northern Ireland's future constitutional status** is legally required – though that is clearly not the case at present. The Constitution Unit's Working Group on Unification Referendums on the Island of Ireland has set out, in an objective manner, a series of considerations for politicians regarding such a poll.<sup>24</sup>
- Currently, the Independent Commission on the Constitutional Future of Wales is considering various options, including **federalism for the UK or alternatively Welsh independence**. The Commission is also examining the case for further devolution in areas such as justice, welfare and transport. The Welsh government has suggested a UK-wide constitutional convention.<sup>25</sup>
- A series of **larger-scale reforms for strengthening and developing devolution** have been proposed by the commission chaired for the Labour Party by Gordon Brown.<sup>26</sup> These include further devolution of power to the nations, regions and local level, and a constitutional statute to clarify the relationship between the constituent nations of the UK and how political power should be shared.
- In addition, bodies such as the Institute for Government have suggested that the Treasury and devolved administrations should jointly conduct or commission **a new assessment of the relative spending needs of each part of the UK**, including at the subnational level within England.<sup>27</sup> Many past reviews have also recommended that the Barnett formula should be replaced by a needs-based mechanism for allocating new government spending.<sup>28</sup>

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<sup>1</sup> Kenny, M., Rycroft, P. and Sheldon, J. (2021), *Union at the Crossroads: Can the British State Handle the Challenges of Devolution?* (London: Constitution Society).

<sup>2</sup> Paun, A. and Shuttleworth, K. (2020), *Legislating by Consent: How to Revive the Senel Convention* (London: Institute for Government).

<sup>3</sup> HM Government (2022), *Review of Intergovernmental Relations* (London: HM Government).

<sup>4</sup> Paun, A. and Henderson, D. (2022), 'Intergovernmental Relations', *Institute for Government website*, 4 November.

<sup>5</sup> Dunlop, A. (2021), *Review into UK Government Union Capability* (London: HM Government).

<sup>6</sup> Constitution Committee (2022), *Respect and Co-operation: Building a Stronger Union for the 21st Century (Tenth Report of Session 2021–22)*, HL Paper 142 (London: House of Lords).

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- <sup>7</sup> Whysall, A. (2023), [\*The Agreement at 25: A Time for Constitutional Change in Northern Ireland?\*](#) (London: Constitution Unit).
- <sup>8</sup> Constitution Committee (2022), [\*Respect and Co-operation: Building a Stronger Union for the 21st Century \(Tenth Report of Session 2021–22\)\*](#), HL Paper 142 (London: House of Lords).
- <sup>9</sup> Paun, A. and Shuttleworth, K. (2020), [\*Legislating by Consent: How to Revive the Sewel Convention\*](#) (London: Institute for Government).
- <sup>10</sup> Ibid.
- <sup>11</sup> Constitution Committee (2022), [\*Respect and Co-operation: Building a Stronger Union for the 21st Century \(Tenth Report of Session 2021–22\)\*](#), HL Paper 142 (London: House of Lords).
- <sup>12</sup> Ibid.
- <sup>13</sup> Silk, P. and Evans, P. (2023), [\*A New Structure for Interparliamentary Relations in a Devolved Great Britain and Northern Ireland\*](#) (London: Hansard Society).
- <sup>14</sup> Constitution Committee (2022), [\*Respect and Co-operation: Building a Stronger Union for the 21st Century \(Tenth Report of Session 2021–22\)\*](#), HL Paper 142 (London: House of Lords).
- <sup>15</sup> Paun, A., Cheung, A. and Nicholson, E. (2021), [\*Funding Devolution: The Barnett Formula in Theory and Practice\*](#) (London: Institute for Government).
- <sup>16</sup> Ibid.
- <sup>17</sup> Paun, A., Nice, A. and Rycroft, L. (2022), [\*How Metro Mayors Can Help Level Up England\*](#) (London: Institute for Government).
- <sup>18</sup> Ibid.
- <sup>19</sup> Commission on the UK's Future (2022), [\*A New Britain: Renewing Our Democracy and Rebuilding Our Economy\*](#) (Newcastle: Labour Party)
- <sup>20</sup> Newman, J. and Kenny, M. (2023), [\*Devolving English Government\*](#) (London: Institute for Government Bennett Institute for Public Policy).
- <sup>21</sup> Constitution Committee (2022), [\*Respect and Co-operation: Building a Stronger Union for the 21st Century \(Tenth Report of Session 2021–22\)\*](#), HL Paper 142 (London: House of Lords); Palese, M. (2022), [\*Democracy Made in England: Where Next for English Local Government?\*](#) (London: Electoral Reform Society); Commission on the UK's Future (2022), [\*A New Britain: Renewing Our Democracy and Rebuilding Our Economy\*](#) (Newcastle: Labour Party).
- <sup>22</sup> Paun, A., Nice, A. and Rycroft, L. (2022), [\*How Metro Mayors Can Help Level Up England\*](#) (London: Institute for Government).
- <sup>23</sup> Newman, J. and Kenny, M. (2023), [\*Devolving English Government\*](#) (London: Institute for Government and Bennett Institute for Public Policy); Public Administration and Constitutional Affairs Committee (2022), [\*Governing England \(Third Report of Session 2022–23\)\*](#), HC 463 (London: House of Commons).
- <sup>24</sup> Working Group on Unification Referendums on the Island of Ireland (2021), [\*Final Report\*](#) (London: Constitution Unit).
- <sup>25</sup> Welsh Government (2021), [\*Reforming Our Union: Shared Governance in the UK\*](#) (Cardiff: Welsh Government).
- <sup>26</sup> Commission on the UK's Future (2022), [\*A New Britain: Renewing Our Democracy and Rebuilding Our Economy\*](#) (Newcastle: Labour Party).
- <sup>27</sup> Paun, A., Cheung, A. and Nicholson, E. (2021), [\*Funding Devolution: The Barnett Formula in Theory and Practice\*](#) (London: Institute for Government).
- <sup>28</sup> These are briefly summarised in Keep, M. (2022), [\*The Barnett Formula and Fiscal Devolution\*](#), CBP-7386 (London: House of Commons Library).

# Courts and the rule of law

Recent years have seen growing scrutiny of the relationship between government, parliament and the courts, and the government's attitude to the rule of law. Politicians have increasingly tended to push back against courts – which are said to have become too powerful in our constitutional arrangements, leading to a 'democratic deficit'. Resistance to the European Court of Justice and the European Court of Human Rights seems to have evolved into a more general willingness to breach, or risk breaching, international law. Added to this have been disagreements over the appropriate bounds of legal scrutiny, with the government's increasing use of ouster clauses – which exempt certain decisions from judicial review – attracting particular attention. And legal funding and administrative challenges continue to fuel expert concerns about access to justice. In this climate, the role of the government's law officers, such as the Attorney General, in upholding the rule of law has come under increasing attention. These tensions have boiled over at times into very public attacks by ministers on the courts, judges and lawyers.

This is an area in which there could be significant 'quick wins' through communicating a change of attitude. Beyond this, various proposals for change have come from external expert bodies and parliamentary committees for improvements to the system. Such reforms – some of them quite minor – could help to settle the relationship between the political branches and the courts. This would help uphold the UK's reputation as a bastion of the rule of law – with all the international political and economic advantages that confers. There are also proposals for wider-reaching policy change.

## Quick wins

- The government should **express public support for the vital role played by the legal profession and the courts in a well-functioning democracy**. In recent years, ministers have used labels such as 'lefty lawyers' or 'activist lawyers' to attack those working on legal challenges brought against the government, particularly on migration.<sup>1</sup> As the Bar Council and Law Society have pointed out, such attacks fundamentally misunderstand lawyers' role in upholding the law.<sup>2</sup>
- Governments have recently shown a new willingness to breach, or threaten to breach, international law. The most overt such threats – in the Internal Market Bill and Northern Ireland Protocol Bill – were subsequently dropped, but the current government has been unable to certify that its Illegal Migration Bill is compatible with the rights in the European Convention on Human Rights (ECHR). Experts have identified breaches of international law in this and a number of other recent bills.<sup>3</sup> Such actions damage the UK's international standing and risk economic harm by deterring inward investment. **The government should make clear its commitment to respecting and upholding international law**. This could later be cemented by restoring the explicit reference to ministers' duty to uphold international law which was removed from the Ministerial Code.<sup>4</sup>
- It is welcome that Rishi Sunak's government has recently restated its commitment to the ECHR, in the Reykjavik Declaration<sup>5</sup>. Although exit from the ECHR has never been

government policy, it has been hinted at from time to time by individual ministers, and would place the UK alongside only two countries in Europe – Russia and Belarus.<sup>6</sup> The government should **firmly defend the ECHR, and reaffirm that the UK will respect all judgments and decisions of the European Court of Human Rights.**<sup>7</sup>

- In appointing a Cabinet, all Prime Ministers should be **mindful of the Lord Chancellor’s statutory obligation to defend the rule of law** in government, and ensure that they appoint an individual who is both able and supported to fulfil this role.

## Moderate changes

### Human rights

Human rights have been a major topic of debate and disagreement in recent years. Experts have criticised legislative changes which have threatened rights protection in the UK; there are opportunities to strengthen the current regime.

- The government should **confirm its commitment to the Human Rights Act** as the appropriate legal framework for giving effect in UK law to the rights in the ECHR. The evidence collected by the government’s own Independent Human Rights Act Review clearly shows that the HRA is working well and is internationally considered as a model of democratic rights protection.<sup>8</sup> Some provisions in recent bills (some now passed into law) have sought to disapply some key HRA provisions, and these should be reviewed.<sup>9</sup>
- **To build on the current model, parliament’s role in relation to human rights should be further enhanced.** This would not replace the important role of courts, but engage parliamentarians more directly in discussions and debates about what human rights mean in practice, and what effective protection of them requires.<sup>10</sup>
- As the government’s Human Rights Act Review recommended, ministers should seriously consider **developing a programme of civic and constitutional education** for delivery in schools, universities and adult education, including human rights education.<sup>11</sup>

### Judicial review

Judicial review has been subject to increasing restrictions in recent years – notably through the repeated use of ouster clauses.<sup>12</sup> There have also been concerns about various other restrictions imposed on judicial review. Though governments are understandably keen to enact their policies, it is also fundamental to the rule of law that government power should remain subject to legal controls.

- The government should **as far as possible avoid the use of ouster clauses in legislation**, and carefully consider and justify the impact on the rule of law of any that they conclude are unavoidable. As experts at the Bingham Centre on the Rule of Law have suggested, ouster clauses ‘undermine the principle of legality, that we are all bound by the law’.<sup>13</sup>
- The government’s conduct in judicial reviews – in particular its failure to provide adequate information either to plaintiffs or to its own lawyers – was recently criticised by the

Divisional Court.<sup>14</sup> **The government should ensure that it follows the guidance on the ‘duty of candour’** set out in the Administrative Court Guide to Judicial Review and Guidance from the Treasury Solicitors Department. Its own Independent Review of Administrative Law also suggested that the scope of the duty requires clarification.<sup>15</sup>

- Changes can also be made at policy development stage to reduce the likelihood of clashes with the courts.<sup>16</sup> The government should **reverse former Attorney General Suella Braverman’s changes to the Guidance to Government Lawyers on Legal Risk**. As the Bingham Centre for the Rule of Law has pointed out, this changed the way in which government lawyers were required to present advice about risk to ministers, to downplay expert assessment of how policy would be treated by the courts.<sup>17</sup> Denying frank expert advice to ministers on whether a legal challenge is likely to succeed is unhelpful, and indeed potentially incompatible with the overarching duty in the Ministerial Code to comply with the law.

## Role of the law officers

High-profile clashes between governments and the judiciary have brought the role of the law officers under increasing attention.

- The Lords Constitution Committee has suggested that **the role of law officers should be codified and set out in the Ministerial Code and Cabinet Manual**, to improve public understanding of the roles.<sup>18</sup> This should include a clear commitment to the law officers’ duty to uphold the rule of law, clarification of where the line falls between collective accountability as a minister and independence from government as a law officer, and accountability to parliament.

## Access to justice

Bodies including the House of Commons Justice Committee have long raised concerns that underfunding of the justice system threatens access to justice – a key principle underpinning the rule of law.

- The government should **consider whether the current legal aid system is fit for purpose**, and in particular whether the fixed fee structure as it currently stands is adequate to ensure fairness, and to maintain the sustainability of the legal aid sector.<sup>19</sup>
- It should also **address the concerns raised by the Independent Review of Administrative Law about the current cost rules in judicial review** acting as a barrier to individuals seeking access to justice.<sup>20</sup> The recommendations put forward by Lord Justice Jackson offer a starting point for this.<sup>21</sup>
- The government should **ensure that it collects the data necessary to develop a thorough understanding of the state of access to justice**, and the impact of any reforms – following recommendations made by the Legal Education Foundation, Young Legal Aid Lawyers and the Public Law Project.<sup>22</sup>

## Larger more controversial reforms

- A **British Bill of Rights** has long been mooted, including by both main parties.<sup>23</sup> The term British Bill of Rights could cover a multitude of policy options, but experts have expressed concern that if such a policy is pursued, it should not diminish rights, or make it more difficult for individuals to claim them.<sup>24</sup>
- The commission chaired for the Labour Party by Gordon Brown recommended **greater legal protections for social and economic rights**. This is a complex area on which legal and political opinion is not decided – such proposals would need considerable thinking through before being ready for implementation.<sup>25</sup>
- Some have suggested that a **reconfiguration of the Ministry of Justice** to focus solely on justice, with the operational running of prisons moved elsewhere in government to facilitate this. This would represent a major machinery of government change, and should not be undertaken lightly given the significant loss of productivity such changes entail.<sup>26</sup>

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<sup>1</sup> Townsend, M. (2020), '[Top Ministers Urged Priti Patel to Stop Attacks on “Activist Lawyers”](#)', *Guardian*, 18 October.

<sup>2</sup> Bar Council and Law Society (2022), '[Prime Minister Must Stop Attacks on Legal Professionals, Say Bar Council and Law Society](#)', *Bar Council website*, 14 June.

<sup>3</sup> Bonavero Institute for Human Rights, Public Law Project, Amnesty International, Liberty and ILPA (Immigration Law Practitioners' Association) (2023), '[Five Ways the Illegal Migration Bill Threatens Our Constitution](#)', *Public Law Project blog*, 23 May. Other such examples include the Overseas Operations (Service Personnel and Veterans) Bill and the Northern Ireland Troubles (Legacy and Reconciliation) Bill. See Cormacain, R. (2021), '[Overseas Operations \(Service Personnel and Veterans\) Bill: A Rule of Law Analysis](#)' (London: Bingham Centre); Joint Committee on Human Rights

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- (2022), *Legislative Scrutiny: Northern Ireland Troubles (Legacy and Reconciliation) Bill (Sixth Report of Session 2022–23)*, HC311, HL Paper 79 (London: House of Commons and House of Lords).
- <sup>4</sup> Hunt, M. (2022), [‘Restoring the UK’s Economic Credibility Requires Rule of Law Leadership’](#), *Bingham Centre for the Rule of Law blog*, 17 November.
- <sup>5</sup> Council of Europe (2023), [Keyjanik Declaration: United Around our Values](#) (Strasbourg: Council of Europe).
- <sup>6</sup> Liberty (2022), [‘What is the ECHR and Why Does it Matter?’](#), *Liberty website*, 4 August; Sagoo, R. (2023), [‘The UK Must Not Sleepwalk Into Leaving the ECHR’](#), *Chatham House blog*, 17 March.
- <sup>7</sup> Joint Committee on Human Rights (2022), *Human Rights Act Reform (Thirteenth Report of Session 2021–22)*, HC 1033, HL Paper 191 (London: House of Commons and House of Lords).
- <sup>8</sup> Independent Human Rights Act Review (2021), *The Independent Human Rights Act Review* (London: HM Government).
- <sup>9</sup> Examples include the novel provisions in the Illegal Migration Bill and the Victims and Prisoners Bill to disapply the ‘interpretive obligation’ in Section 3 of the HRA – which requires the law to be interpreted compatibly with ECHR rights so far as it is possible to do so.
- <sup>10</sup> See e.g. Joint Committee on Human Rights (2022), *Oral Evidence: Parliament and Human Rights (Paul Evans and Murray Hunt)*, HC 550 (London: House of Commons and House of Lords).
- <sup>11</sup> Independent Human Rights Act Review (2021), *The Independent Human Rights Act Review* (London: HM Government).
- <sup>12</sup> Constitution Committee (2023), *Illegal Migration Bill (Sixteenth Report of Session 2022–23)*, HL Paper 200 (London: House of Lords).
- <sup>13</sup> Cormacain, R. (2021), *Judicial Review and Courts Bill: A Rule of Law Analysis* (London: Bingham Centre for the Rule of Law).
- <sup>14</sup> See O’Loughlin, E.A., Tan, G. and Somers-Joce, C. (2022), [‘The Duty of Candour in Judicial Review: The Case of the Lost Policy’](#), *UK Constitutional Law Association blog*, 7 December.
- <sup>15</sup> Faulks, E., Harlow, C., Sachdeva, V., Page, A., Colquhoun, C. and McBride, N. (2021), *The Independent Review of Administrative Law* (London: HM Government).
- <sup>16</sup> On opportunities to more effectively integrate policymaking and legal advice, see Haddon, C., Hogarth, R. and Nice, A. (2021), *Judicial Review and Policy Making* (London: Institute for Government).
- <sup>17</sup> Hunt, M. (2022), [‘Restoring the UK’s Economic Credibility Requires Rule of Law Leadership’](#), *Bingham Centre for the Rule of Law blog*, 17 November; Constitution Committee (2023), *The Roles of the Lord Chancellor and the Law Officers (Ninth Report of Session 2022–23)*, HL Paper 118 (London: House of Lords).
- <sup>18</sup> Constitution Committee (2023), *The Roles of the Lord Chancellor and the Law Officers (Ninth Report of Session 2022–23)*, HL Paper 118 (London: House of Lords).
- <sup>19</sup> Justice Committee (2021), *The Future of Legal Aid (Third Report of Session 2021–22)*, HC 70 (London: House of Commons); ILPA and Public Law Project (2023), [‘ILPA/PLP Joint Statement on the Government’s Response to the Recent Consultation on Immigration Legal Aid Fees’](#), *Public Law Project website*, 30 January; Public Law Project (2022), *Public Law Project Briefing on the Legal Aid Means Test Review Consultation (Civil Proposals)* (London: Public Law Project).
- <sup>20</sup> Faulks, E., Harlow, C., Sachdeva, V., Page, A., Colquhoun, C. and McBride, N. (2021), *The Independent Review of Administrative Law* (London: HM Government).
- <sup>21</sup> Lord Justice Jackson (2017), *Review of Civil Litigation Costs: Supplemental Report, Fixed Recoverable Costs* (London: Judiciary of England and Wales); Lord Justice Jackson (2009), *Review of Civil Litigation Costs: Final Report* (London: Judiciary of England and Wales).
- <sup>22</sup> Hynes, J. (2023), *Overstretched and Unsustainable: A Case Study of the Immigration and Asylum Legal Aid Sector* (London: Young Legal Aid Lawyers and Public Law Project); Byrom, N. (2019), *Digital Justice: HMCTS Data Strategy and Delivering Access to Justice. Report and Recommendations* (London: Legal Education Foundation).
- <sup>23</sup> See for example Dawson, J. (2021), *Reform of the Human Rights Act 1998*, CBP-9406 (London: House of Commons Library).
- <sup>24</sup> Hunt, M., Miller, A., O’Regan, K. and Rowland, E. (2023), *The Making of Bills of Rights: Relevant International Human Rights Law Obligations. An Analysis of the UK’s Obligations* (Oxford: Bonavero Institute of Human Rights); O’Regan, K., Dixon, R. and Aird, J. (2021), *The UK Human Rights Act: A Successful Innovation. A Submission to the United Kingdom Independent Human Rights Act Review Panel* (Oxford: Bonavero Institute of Human Rights); Willis, S., Marsons, L. and Leslie, M. (2022), *Bill of Rights: A Cure in Search of a Problem* (London: Public Law Project); Law Society (2022), [‘Human Rights Act Reforms and the Bill of Rights Bill’](#), *Law Society website*, 8 November.
- <sup>25</sup> Commission on the UK’s Future (2023), *A New Britain: Renewing Our Democracy and Rebuilding Our Economy* (Newcastle: Labour Party).
- <sup>26</sup> See Constitution Committee (2023), *The Roles of the Lord Chancellor and the Law Officers (Ninth Report of Session 2022–23)*, HL Paper 118 (London: House of Lords); Durrant, T. and Tetlow, G. (2019), *Creating and Dismantling Government Departments: How to Handle Machinery of Government Changes Well* (London: Institute for Government).

# Elections and public participation

Democracy rests ultimately on popular sovereignty. But the bond of trust between the public and their representatives – which is essential for healthy democratic governance – has become increasingly frayed. Public engagement with the political process has long been a cause for concern, and there is a desire to boost public trust and participation. In recent years, particular concerns have been voiced about the government’s attitudes towards the Electoral Commission, its policies on public protest and on voter ID, and a change in the electoral system for local mayors that appeared to be motivated by partisan gain. At a more mundane but nonetheless important level, there are also long-running challenges to the fair and effective administration of elections.

A range of reforms to elections, the conduct of campaigns, and the wider role of the public in processes of policymaking have been proposed to tackle these concerns. Some improvements could be made immediately. A number of others would require legislation, but would be largely uncontroversial, or could be implemented fairly straightforwardly through other means. Proposals for more fundamental change – most obviously to the Westminster voting system, and party funding – would be much more contested.

## Quick wins

- The Elections Act 2022 empowered ministers to prepare a ‘strategy and policy statement’ for the Electoral Commission. Experts widely view the existence of such a statement as a threat to the Commission’s independence.<sup>1</sup> Three Commons committees sharply criticised the government’s first draft, leading to revisions.<sup>2</sup> Ministers should **not proceed further with designating a strategy and policy statement for the Electoral Commission**. Rather, they should simply affirm their commitment to the Commission’s independence and welcome its work. Should a statement be designated, a future government should withdraw it.

## Moderate changes

### Public participation and deliberation

Public participation and deliberation processes are increasingly and successfully being used in the democratic system in and outside the UK. Such processes bring members of the public into policymaking, enable more thoughtful policy dialogue, and bridge the gulf between citizens and their representatives. There are various positive steps that could be taken in this area:

- The government should **announce a review of how deliberative processes such as citizens’ assemblies could be embedded most effectively** in policymaking and governance in the UK.<sup>3</sup> Possible ideas include involving such bodies in pre-legislative scrutiny, to support the standards system, or as a more frequent part of select committee inquiries.<sup>4</sup>

- In the meantime, **the government should commit to holding citizens' assemblies on one or two specified issues.** These might be issues where a need for fresh thinking is widely accepted, but progress has proved elusive, such as assisted dying or house-building.
- Government and parliament should **build know-how and capacity for commissioning and/or delivering processes such as citizens' assemblies.** The Scottish Parliament has done this by creating a Participation & Communities Team, whose role is to enable wide participation in parliamentary work.<sup>5</sup>

## Voter ID

A new requirement for voters to show ID at polling stations for all non-devolved elections in Great Britain was first implemented in the May 2023 English local elections. Initial analysis by the Electoral Commission suggests that the change excluded at least 0.25% of eligible voters from participation, and probably significantly more.<sup>6</sup> Further evidence will be published by the Commission and others in the coming months.

- The government will need to **evaluate whether changes to the voter ID system are needed.** Depending on the evidence gathered, changes could be minor, such as extending the list of eligible forms of ID, or improving information. Or they could be major: abolishing the ID requirement, or introducing a national ID scheme for everyone.<sup>7</sup>

## The conduct of elections and referendums

The Law Commissions pointed in 2020 to an urgent need for simplification of electoral law, but action has not yet been taken. Other reforms are also widely seen as desirable.

- The government should **consolidate electoral law into a single, modern legislative framework**, as recommended by the Law Commissions.<sup>8</sup> This would cover matters including the franchise, voting system, electoral register, absent voting, regulation of electoral campaigns, electoral offences, and provisions on legal challenge to elections. Where possible, the approach should be coordinated across the four administrations in the UK. Careful consideration would need to be given to how far the law is modernised at the same time as it is consolidated. Updates are badly needed, but attempting too much in one step would be challenging. The Association of Electoral Administrators has proposed a royal commission or Speaker's conference to build cross-party support for modernisation, but either would take time.<sup>9</sup>
- There are currently no standing rules on the referendum franchise and many other aspects of referendum conduct. Concerns have been expressed about this both by the Law Commissions and the Constitution Unit's Independent Commission on Referendums.<sup>10</sup> **Election rules should, where relevant, extend to referendums.**
- As the Electoral Commission has argued, **electoral administrators should be adequately resourced** to carry out their democratic functions: at present, the system is threadbare. Legislators and government should also be mindful of the additional burdens that large changes place on administrators.<sup>11</sup>

- Beyond declining to issue one (see ‘Quick wins’), **ministers should act to repeal legislative provision for an Electoral Commission strategy and policy statement.** A recent Constitution Unit report has made further recommendations to enhance the Commission’s independence.<sup>12</sup>

## Election and referendum campaigns

Voters have long struggled to find the information that they want during election and referendum campaigns, from sources that they trust. Such problems have become more acute in the digital age, and problems of disinformation are widely acknowledged to be rampant.

- As the Commons Public Administration and Constitutional Affairs Committee (PACAC) and others have argued, **the regulation of online political advertising should not be left to social media companies.** Ofcom should be empowered to set minimum standards and obligations, working closely with the Electoral Commission. The operation of the new rules for ‘imprints’ on digital advertisements should be monitored. To aid transparency, a distinct spending reporting category should be created for digital campaign material.<sup>13</sup>
- **Information about candidates, issues, manifestos and other matters during campaigns should be improved.**<sup>14</sup> Ministers should allow the Electoral Commission the space to work with broadcasters and NGOs to develop a plan for delivering such information. Parties and campaigners have an important duty to support such efforts.

## Political finance

The current system of political finance is vulnerable to abuse. The simplification and consolidation of existing legislation, noted above, would help: current rules are sometimes unclear, making compliance and enforcement difficult. Further measures would not be controversial.

- The Committee on Standards in Public Life (CSPL) has recommended that **legislation should be updated to tighten requirements on parties and non-party campaigners around accepting donations.**<sup>15</sup>
- The Electoral Commission and Spotlight on Corruption have proposed that **political parties should be required to comply with anti-money-laundering regulations and due diligence checks,** as already required, for example, of charities and financial service providers.<sup>16</sup>
- CSPL and others have recommended that **the maximum fines that can be levied by the Electoral Commission should be increased,** as has already happened in relation to referendums in Scotland.<sup>17</sup>

## The right to protest

The limits of legitimate public protest have been much contested in recent years. Ministers have introduced new restrictions in the name of ensuring a fair balance between the rights of protestors and those of the wider public, but critics argue that these changes infringe upon fundamental democratic freedoms.<sup>18</sup>

- The government should **review the most contested recent changes regarding the right to protest**, and consider whether some rowing back of these constraints is necessary. But research suggests a sharp division of public opinion on this matter along partisan lines, and changes in this area are likely to be contested.<sup>19</sup>

## Larger, more controversial reforms

Major changes to voting systems should not be introduced without an appropriate degree of cross-party or public support: the basic rules of elections should never be the plaything of the party or parties in power alone. Bigger reforms should therefore be approached with caution. They are also likely to be contentious between parties, and quite possibly within parties as well.

- Survey evidence suggests that public support for **replacing the First Past the Post (FPTP) voting system at Westminster** with a more proportional alternative has risen in recent years.<sup>20</sup> No voting system is perfect, and there would be both pros and cons in any change. The 2011 referendum on the Alternative Vote system created a clear precedent for how decisions about basic electoral reform should be decided.
- The Elections Act 2022 replaced the Supplementary Vote (SV) **system for electing mayors and police and crime commissioners** with FPTP. SV had previously commanded cross-party support, and good arguments for using FPTP to elect single executive offices are hard to come by.<sup>21</sup> Labour opposed the change and may wish to propose reverting to the previous system.
- Several political parties now advocate **lowering the voting age to 16**. In Wales, the Expert Panel on Assembly Electoral Reform, whose work paved the way for the introduction of votes at 16 for Senedd elections, found evidence that the change can boost participation in elections. But it does so only when paired with education about politics in schools and the wider community – and, even then, the evidence is mixed.<sup>22</sup> Introducing votes at 16 should therefore not be regarded as a simple matter: it would need to be accompanied by wider reforms. Other aspects of the franchise – including for foreign nationals in the UK and for prisoners – have also long been vexed.<sup>23</sup>
- The introduction of **caps on donations to political causes** has long been debated, but has always foundered on inter-party disagreements. The role of big money in politics harms democratic equality and undermines public confidence. Equally, political parties perform important functions in the representative system and need to be able to finance their activities.<sup>24</sup>

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<sup>1</sup> See, e.g., Electoral Commission (2022), [‘Letter from Commissioners: Strategy and Policy Statement Measures in the Elections Bill’](#), *Electoral Commission website*, 21 February; Renwick, A. (2021), [‘The Elections Bill’s Proposals on Electoral Commission Governance: Risks to Electoral Integrity and Devolution’](#), *Constitution Unit blog*, 30 September; Power, S. (2021), [‘Eroding the Independence of the Electoral Commission: The Introduction of a Government Strategy and Policy Statement’](#), *Constitution Society blog*, 26 October.

<sup>2</sup> Levelling Up, Housing and Communities Committee (2022), [‘Draft Policy and Strategy Statement for the Electoral Commission \(Fourth Report of Session 2022–23\)’](#), HC 672 (London: House of Commons); Speaker’s Committee on the Electoral Commission (2022), [‘Response to the Government’s Consultation on the Draft Strategy and Policy Statement for the Electoral Commission \(Third Report 2022\)’](#), HC 967 (London: House of Commons); Public Administration and

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- <sup>3</sup> See, e.g., OECD (2021), [Eight Ways to Institutionalise Deliberative Democracy](#) (Paris: OECD).
- <sup>4</sup> Scottish Government (2022), [Report of the Institutionalising Participatory and Deliberative Democracy Working Group](#) (Edinburgh: Scottish Government); Renwick, A. and Palese, M. (2019), [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (London: Constitution Unit); Green, C. (2023), [Play by the Rules: Using Citizens' Juries to Improve and Enforce Rules for MPs](#) (London: Involve).
- <sup>5</sup> Scottish Government (2022), [Report of the Institutionalising Participatory and Deliberative Democracy Working Group](#) (Edinburgh: Scottish Government); Scottish Parliament (2022), [Participation and Communities Team](#), *Scottish Parliament website*.
- <sup>6</sup> Electoral Commission (2023), [Voter ID at the May 2023 Local Elections in England: Interim Analysis](#), *Electoral Commission website*, 23 June.
- <sup>7</sup> Palese, M. and Terry, C. (2018), [A Sledgehammer to Crack a Nut: The 2018 Voter ID Trials](#) (London: Electoral Reform Society).
- <sup>8</sup> Law Commission and Scottish Law Commission (2020), [Electoral Law: A Joint Final Report](#) (London: Law Commission and Scottish Law Commission); Public Administration and Constitutional Affairs Committee (2021), [The Elections Bill \(Fifth Report of Session 2021–22\)](#), HC 597 (London: House of Commons).
- <sup>9</sup> Association of Electoral Administrators (2023), [AEA 2023 Post Polls Review: Under Pressure: Increased Demand on the UK Electoral System](#) (Stafford: Association of Electoral Administrators).
- <sup>10</sup> Law Commission and Scottish Law Commission (2020), [Electoral Law: A Joint Final Report](#) (London: Law Commission and Scottish Law Commission); Constitution Unit (2018), [Report of the Independent Commission on Referendums](#) (London, Constitution Unit).
- <sup>11</sup> Association of Electoral Administrators (2023), [AEA 2023 Post Polls Review: Under Pressure: Increased Demand on the UK Electoral System](#) (Stafford: Association of Electoral Administrators).
- <sup>12</sup> Hazell, R., Boo, M., Pullar, Z. (2022), [Parliament's Watchdogs: Independence and Accountability of Five Constitutional Regulators](#) (London, Constitution Unit).
- <sup>13</sup> Electoral Commission (2018), [Report: Digital Campaigning – Increasing Transparency for Voters](#) (London: Electoral Commission); Public Administration and Constitutional Affairs Committee (2022), [The Work of the Electoral Commission \(Second Report of Session 2022–2023\)](#), HC 462 (London: House of Commons); Democracy and Digital Technologies Select Committee (2020), [Digital Technology and the Resurrection of Trust \(Report of Session 2019–2021\)](#), HL Paper 77 (London: House of Lords).
- <sup>14</sup> Constitution Unit (2018), [Report of the Independent Commission on Referendums](#) (London: Constitution Unit); Renwick, A. and Palese, M. (2019), [Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?](#) (London: Constitution Unit).
- <sup>15</sup> Committee on Standards in Public Life (2021), [Regulating Election Finance](#) (London: Committee on Standards in Public Life).
- <sup>16</sup> Spotlight on Corruption (2020), [Written Evidence in Response to PACAC's Inquiry into the Work of the Electoral Commission](#) (London: Spotlight on Corruption); Electoral Commission (2018), [Report: Digital Campaigning – Increasing Transparency for Voters](#) (London: Electoral Commission).
- <sup>17</sup> Committee on Standards in Public Life (2021), [Regulating Election Finance](#) (London: Committee on Standards in Public Life); Democracy and Digital Technologies Select Committee (2020), [Digital Technology and the Resurrection of Trust \(Report of Session 2019–2021\)](#), HL Paper 77 (London: House of Lords).
- <sup>18</sup> Joint Committee on Human Rights (2021), [Legislative Scrutiny: Police, Crime, Sentencing and Courts Bill, Part 3 \(Public Order\) \(Second Report of Session 2021–22\)](#), HC 331, HL Paper 23 (London: House of Commons and House of Lords); Joint Committee on Human Rights (2022), [Legislative Scrutiny: Public Order Bill \(First Report of Session 2022–23\)](#), HC 351, HL Paper 16 (London: House of Commons and House of Lords).
- <sup>19</sup> Renwick, A., Lauderdale, B., Russell, M., and Cleaver, J. (2023), [Public Preferences for Integrity and Accountability in Politics](#) (London: Constitution Unit).
- <sup>20</sup> Curtice, J. and Scholes, A. (2022), [Constitutional Reform](#), in S. Butt, E. Clery, and J. Curtice, eds., *British Social Attitudes: The 39th Report* (London: NatCen).
- <sup>21</sup> Renwick, A. and Castillo-Powell, A. (2021), [Reforming the Mayoral Voting System: Do Ministers' Arguments Stack Up?](#), *Constitution Unit blog*, 29 October.
- <sup>22</sup> Expert Panel on Assembly Electoral Reform (2017), [A Parliament That Works for Wales](#) (Cardiff: National Assembly for Wales). The evidence is reviewed in Eichhorn, J. and Bergh, J. (2021), [Lowering the Voting Age to 16 in Practice: Processes and Outcomes Compared?](#), *Parliamentary Affairs* 74(3), 507–21.
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- <sup>24</sup> Phillips, H. (2006), [Review of the Funding of Political Parties](#) (London: Stationery Office); Committee on Standards in Public Life (2011), [Political Party Finance: Ending the Big Donor Culture](#) (London: Committee on Standards in Public Life); Evans, J. (2021), [Reforming Party Funding Arrangements](#), *Committee on Standards in Public Life blog*, 13 October; Ipsos MORI (2006), [Public Perspectives: The Future of Party Funding in the UK](#) (London: Electoral Commission).

# Implementation

This report has set out a series of options for policy change on the constitution. Previous chapters identified three types of change – ‘quick wins’, moderate changes and larger-scale more controversial proposals – in five broad areas: the executive; parliament; the territorial constitution; courts and the rule of law; and elections and public participation. As indicated in the opening chapter, ‘quick wins’ could readily be delivered by the government now, or within the first 100 days of a new parliament. The more moderate changes listed could form a viable programme for implementation by the end of that parliament, though they provide a menu, rather than necessarily a full programme from the two organisations publishing this report. The larger and more controversial changes listed would take up more time and could almost certainly not all be delivered in the lifetime of a single government. Indeed, some of them are in conflict, and push in opposing directions.

This report’s context is the general election which is most likely to be held sometime in 2024, and political parties’ preparations of their plans for government. When putting these together, parties need to think not only about which policies are desirable, but which are feasible, and how they fit into a programme. This final chapter briefly reflects on that challenge.

## Quick wins

Each chapter has set out a small number of recommendations falling into this category. These are uncomplicated proposals, which the government could achieve very easily, without legislation or the need for lengthy negotiation and consultation. It is completely feasible that all of them could be achieved within a new government’s first 100 days, and indeed all could be put into practice very quickly by Rishi Sunak’s government now.

There is a good deal here that lies within the government’s immediate power. Some suggestions just amount to a change of tone, and a public commitment from government that things will be done differently. These include, for example, clear statements of support for the role of the civil service, regulators and the courts – following a period when these bodies have felt too often under attack. Likewise, public statements that the government will respect the need for full parliamentary scrutiny, desist from overusing delegated legislation, and respect international law and the UK’s membership of the European Convention on Human Rights (ECHR) would offer significant reassurance, including in the face of widespread public concerns.

Other quick wins would take advantage of the government’s ability to act independently. This applies, for example, to the Prime Minister’s powers over the issue of peerages, where an agreement to hand more powers to the House of Lords Appointments Commission and to respect its recommendations could be achieved without statute (albeit ideally backed up by statute later). Likewise, the government could drop the much-criticised idea of issuing a ‘strategy and policy statement’ for the Electoral Commission, and announce a review of the greater public use of deliberative processes.

## Moderate and larger changes

Beyond a programme of quick wins, greater planning is needed. The moderate and larger-scale proposals in this report require careful preparation. Some involve consultation, or legislation, or simply greater consideration of the detail (by civil servants or others) before being ready for implementation. Even the more moderate proposals could not all be pursued at once – consideration would need to be given to sequencing.

Of course, while policy on the constitution is fundamentally important, government also has many other priorities. There are myriad current concerns, including the cost of living crisis, the NHS, education, the environment and foreign affairs. Particularly where other policy areas are taking up civil service time, resources, and possibly space in the government's legislative programme, constitutional policy necessarily has to fit in alongside everything else.

When thinking through a programme for constitutional reform, there are two key dimensions that parties must consider:

- **Timing:** given the constraints just mentioned, prioritisation is needed between different constitutional policy goals. For example, which legislation might be most important to include in the first year's legislative programme, and which can wait until the second year or later? On which matters is consultation needed, and how should that be timed? In some cases, first consultation will be needed, and then legislation will need to be introduced. The Labour government of 1997 notably had a very ambitious programme of constitutional reform, and passed various important bills (including on devolution and the Human Rights Act) in its first year. Its bill on House of Lords reform awaited the second year, as did the Freedom of Information Bill, which had been published and consulted on in draft during the first year. Other key consultations were also pursued. How a new programme of reforms based on the ideas in this report could fit together in terms of time and resources therefore needs careful thought, particularly where more ambitious or controversial measures are under consideration. Among the more moderate proposals identified, relatively few actually require legislation. These include a statutory footing for regulators (including the House of Lords Appointments Commission), a Civil Service Act, and consolidation of electoral law. However, nearly all larger proposals listed would require bills to be passed, likely preceded by significant consultation and preparation.
- **Coordination of content:** it is also very important that a programme of constitutional reform fits together coherently. One of the criticisms sometimes levelled at the 1997 government was that insufficient consideration had been given to this point, particularly regarding the long-term effects of some reforms. Among those currently on the political agenda there are some obvious connections: for example, between the devolution proposals and the ideas for House of Lords reform in the report of the commission chaired for Labour by Gordon Brown.<sup>1</sup> Any programme therefore needs to be thought through as a whole in terms of its content, alongside thinking through the practical steps to its implementation.

These points may seem obvious, but it is also important to remember that responsibility for constitutional policy is quite scattered in government. Some policies considered in this report are under the control of the Ministry of Justice, others would lie with the Cabinet Office or the Department for Levelling Up, Housing and Communities. The territorial departments (Northern

Ireland, Scotland, Wales) have particularly strong interests in some issues, and key aspects of parliamentary reform are within the purview of the Leader of the House of Commons or Leader of the House of Lords. Unlike in some large delivery departments, coordination of such a disparate range of policy responsibilities may be far from straightforward.

Any political party approaching a programme of constitutional reform should think carefully about such questions. There are clearly ways in which coordination can be built in: most obviously through establishing a Cabinet Committee, chaired by a senior figure, who might or might not be designated as Minister for the Constitution.<sup>2</sup>

In addition, key actors not within the government's own control will play an essential part in delivering successful policy in some areas – this most obviously applies in the field of devolution and territorial politics, but also to the delivery of parliamentary reform. On the latter, the House of Commons Procedure Committee is likely to play a role. But it is worth recalling that the 1997 government established a Modernisation Committee in order to deliver an ambitious programme of Commons reform, and later the 'Wright Committee' was established to develop a one-off set of proposals. Similar models could be considered in future.

Some reforms (including in this latter group) will require a greater extent of cross party cooperation than other typical government policies, and of course that will be the case post-election for policy in general if no single party wins an overall House of Commons majority. But, whether or not that is the case, as a matter of principle, it is desirable for constitutional reform to have broad political support, and not be seen as the plaything of one particular political party. Achieving such broad support is more likely to result in institutions that are stable and long lasting, and are seen as fair.

Building the broadest possible public support for reform is also desirable, including through programmes of consultation and deliberation, and possibly through direct involvement of citizens in drawing up plans in certain areas.<sup>3</sup>

All of these matters require careful consideration by parties in putting together a programme for constitutional reform. The organisations publishing this report, and doubtless many others, would be happy to advise further.

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<sup>1</sup> Commission on the UK's Future (2023), *A New Britain: Renewing Our Democracy and Rebuilding Our Economy* (Newcastle: Labour Party).

<sup>2</sup> The need for a designated Minister for the Constitution with a coordinating role was suggested by both former Conservative Deputy Prime Minister Sir David Lidington and former Labour Lord Chancellor Lord (Charlie) Falconer of Thoroton at the closing session of the [Constitution Unit's annual conference in June 2023](#), which focussed on implementation. The other five sessions at the conference focussed on the five topics discussed in earlier chapters of this report. Recordings of all sessions are available in video and audio form.

<sup>3</sup> Desai, P. (2020), *Constitutional Conventions and Citizens' Assemblies: Power to the People?*, CBP-7143 (London: House of Commons Library).

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