

Course Companion for A Level Edexcel

Component 2: UK Government

Relationships between Branches

2026 Edition

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Teacher's Introduction

This pack is designed to provide students with a comprehensive educational resource on the UK Government for AS and A Level Edexcel.

Understanding relationships between the branches of the UK government is essential for learning about politics in the United Kingdom. The debates surrounding the role of the Supreme Court, the relations between the executive and the legislature, the role of the European Union and the location of sovereignty in the UK today are significant debates arising from this topic that students will become familiar with in this course companion. This pack will give vital context to the rest of the students' learning about British politics. Students will be introduced to the concept of the constitution and how it applies in the United Kingdom today, as well as how it has developed over time.

Remember!

Always check the exam board website for new information, including changes to the specification and sample assessment material.

This module in the 2017 Edexcel specification covers four main topics: the Supreme Court and its interactions with and influence over the legislative and policymaking process; the relationship between the executive and the legislature; the aims, role and impact of the EU on UK government; and the location of sovereignty in the UK political system. The idea of this final section is to give students a basic understanding of what sovereignty means in the United Kingdom. The course companion is as comprehensive as possible, and covers key political developments up to and including the June 2017 general election.

This pack has been designed to be either worked through in order, or dipped in and out of to support your own lesson structures. Please use it in whichever way you prefer. The talking points and activities provided are designed to engage students while provoking the critical thought and analysis that will be required in the exam.

Each chapter contains:

- a brief overview and learning objectives for the chapter
- a list of key terms and keywords
- students' notes, and analysis of the key events
- 'talking point' questions designed to encourage discussion in class and develop key analysis skills

Second edition, April 2020

The second edition of this course companion has been updated to reflect recent developments, contemporary debates and new political contexts that have emerged since its initial publication. In relation to the Relationships between Branches, this includes (but is not limited to) the evolution of policy commitments, the advancement of debates around parliamentary sovereignty, executive dominance, the influence of European institutions and the role of the judiciary, and changes in the positions of prominent political figures.

Third edition, October 2022

The third edition of this course companion has been further updated to include developments such as the political context since the 2019 general election, the composition of the Supreme Court, and the UK's exit from the European Union.

Fourth edition, January 2026

New and updated information throughout, including detail on the UK's relationship with the EU (particularly Northern Ireland), the Committee of Privileges on Boris Johnson, and a new case study on the Rwanda asylum scheme.

4.1 The Supreme Court and its Interaction with the Executive and the Judiciary: Influence over the Legislative and Policy

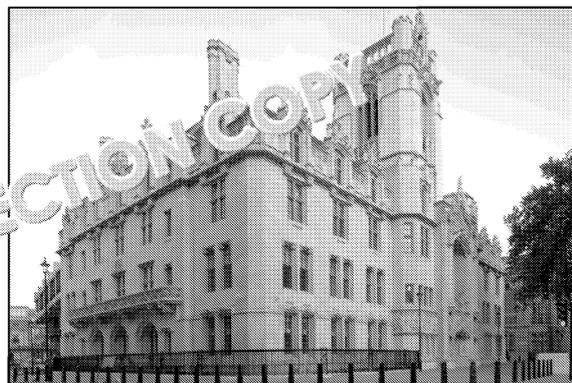
Learning Objectives

- ✓ Understand the implications of membership in the UK Supreme Court.
- ✓ Understand the importance of judicial independence.
- ✓ Understand the importance of judicial neutrality.
- ✓ Understand how far the judiciary can challenge the power of the Executive and Parliament.



Key Terms

The Supreme Court	The highest court in the UK and the highest part of the judiciary.
Judiciary	The branch of government made up of justices charged with interpreting the law.
Constitutional Reform Act	A law which changed the appointment process of the judges and paved the way for the establishment of the Supreme Court.
Judicial independence	The principle that judges should be free from political pressure.
Judicial neutrality	The principle that judges should perform tasks without bias.
Judicial review	The process whereby judges analyse the behaviour of public figures to determine whether they have acted lawfully.
Ultra vires	A product of judicial review whereby judges can deem public figures have acted 'beyond their power'.
European Court of Human Rights	A court established by the Council of Europe charged with enforcing the Human Rights Act.



Middlesex Guildhall, London. The UK Supreme Court works here.

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What is the Judiciary?

In political terms, the judiciary refers to a system of courts that is responsible for interpreting and applying state law. It is a branch of government that usually works independently from the executive and legislative authorities so as to carry out upholding the rule of law as effectively as possible. The judicial branch includes judges from common courts that deal with day-to-day family and community issues, all the way up to high courts of appeal or supreme courts, if present. The judiciary is also responsible for the creation of common law, which is not written but is sort of 'assumed' law based on common law precedents in one area. This is a secondary function of the judiciary, however, who are mainly charged with ensuring that statute law – law made by the legislature – is obeyed.

You may be familiar with how European legislation affects lawmaking in the UK. Now we're going to look at the connected question of civil liberties to see what problems there might be for citizens, even though the UK is a liberal democracy. It means that we're also going to discuss the judiciary, the third branch of government, to see what part it plays in upholding the law and protecting the freedom of those living in the UK. Remember that one of the functions of a constitution is to lay down the rules for the relationship between the government and the governed. That can be a problem in a pluralist state, as times change quickly, and where the population is so high.

The following statements are real legal cases and give an idea as to where courts conflict of law:

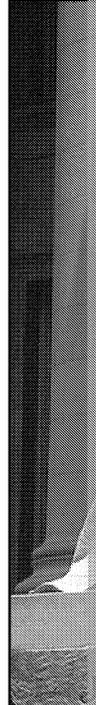
I want lots of flats built, but I don't want the one they're planning at the end of the road about it, and is it right that I do? If I get it moved, it could well end up at the end of the road that be all right?

I'm a Sikh, and I wear a turban for religious reasons. The law says I must wear a helmet on a scooter. Have I a right to break the law because of my religious beliefs?

You can see how hard it is for a government to pass laws, or make new decisions without infringing the rights of some sections of the population. If the law seems to be unfair, can the judiciary if they find me guilty of breaking it? Are they failing to uphold the law or working with the government?

Talking Point

Research a case of a conflict of law in the UK related to religious freedoms. What was the court rule? What were the justifications for the ruling?



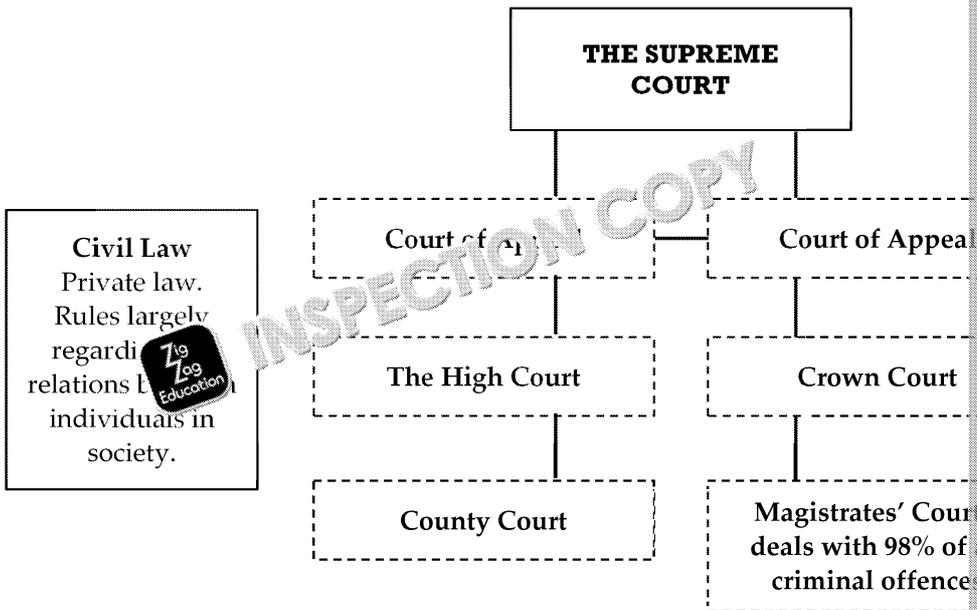
The Royal

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The System of Courts in England and Wales



This simplified diagram shows the set-up of the courts in England and Wales. The system is much more complicated than this, because appeals, for example, can go from the criminal system to the High Court (pictured above) as well as to the Court of Appeal. There are two branches of law – civil and criminal – each branch using its own set of rules. There are two main categories of law – statutory (made by Parliament) and common law (developed in the courts). To this we can add the growing body of administrative law which deals with how government policy is carried out at various levels. The key question for us is whether the courts remain independent and neutral. This is very important for protecting civil liberties and minorities. The concepts of independence and neutrality will be discussed later in the chapter.

As you can see from the diagram, in the UK we have a supreme court which is the highest court of appeal. It deals with the most high-profile court cases within the judiciary and those that cannot be solved in courts of appeal. In order, then, to understand the role and nature of the judiciary, it is beneficial and perhaps more useful to explore the works of the UK Supreme Court.



Baroness Hale of Richmond, served as the first female member of the UK Supreme Court in September 2017.

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What is the Supreme Court?

The Supreme Court in the UK, unlike that of the United States of America, is a relatively new institution. It was actually only created in 2009. In order to understand what the Court actually is, what it comprises and how it operates, it is useful to explore the context before this point. The most qualified and experienced judges in the UK can

The Lord Chancellor

It used to be that the Lord Chancellor was in charge of the judicial branch of government. The role of the Lord Chancellor is over 1,000 years old. The Lord Chancellor was formerly largely responsible for the UK judiciary. The holder of the office was automatically a key figure in all three branches of government. Lord Chancellors often used to argue that this was a good thing because it enabled them to uphold the interests of the judiciary within the legislature and the cabinet. In June 2003, the government attempted to abolish the office as part of a cabinet reshuffle. Lord Falconer was installed as a 'final' 259th Lord Chancellor with instructions to end his own role. The measure was seen as unconstitutional, and the government had to back down. In March 2004 a bill was rejected by the House of Lords attempting again to abolish the role of Chancellor and to establish a new Supreme Court instead of the Appeal Court in the House of Lords. Unusually, the Lords sent the bill back to the Commons for reconsideration, and the Constitutional Reform Act finally passed in 2005. This momentous Act reduced the judicial role of the Lord Chancellor from April 2006, handing the power to select senior judges over to an independent committee and also establishing a new Supreme Court based in the Middlesex Guildhall from October 2009.

The End of the Law Lords

On 30th July 2005 the role of the House of Lords as the highest appeal court in the UK ended. From 1st October 2009 a new Supreme Court took over the jurisdiction of the Law Lords in the UK and all criminal cases in England, Wales, and Northern Ireland. The most senior court in the UK had shared the same building as the legislature, the House of Lords of Appeal in Ordinary – had been part of Parliament, although with independence dates back to the Constitutional Reform Act 2005, which removed the judicial role from the House of Lords and reduced the judicial authority of the Lord Chancellor.

Those who worry about such matters seemed especially concerned that this new UK Supreme Court would assume some of the political strength of the US Supreme Court – the enormous power of judicial review in relation to the Constitution. It was true that the Law Lords did have some power to question parliamentary law, but only in relation to European law and the Human Rights Act. They could advise, but had no power to strike down parliamentary law.



The Law Lords faced criticism because they were part of Parliament.

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The Supreme Court – A Symbolic Move?

Many saw the move as **symbolic** rather than increasing the power of the judiciary. The new building would look more independent of the politicians, and that had become important. The Justices of the Ordinary are now known as Justices of the Supreme Court, with Lord Phillips of Wortham. Interestingly, it replaced the royal crest with its own emblem, which includes a scale of justice. The emblem is meant to show the independence of the Court from politicians.



The Middlesex Guildhall, near the Houses of Parliament, once the rundown home of the High Court, has since October 2009 the £56 million home of the UK's Supreme Court.

Complaints

As always there are critics, some of whom complained that the vast cost is not justified by the building, which has two courtrooms that are not much bigger than the old building of the House of Lords. Supporters point out that the difference lies in the welcome that the public will be able to watch the cases, and in the fact that much of the activity will be filled in the new court in England and Wales. Others worry about the £12 million annual running cost of the new court.

More important to us is the fact that the Court only chooses cases of real public importance. It is always a matter for dispute. Its very first case in October 2009 concerned 'Belmarsh v Secretary of State for the Home Department', whereby the government might choose to freeze the assets of a person suspected of terrorism. These orders have never been discussed in Parliament. It is argued that such orders might affect civil liberties, given that they are issued by the executive. In the case of the Privy Council cases. These are first heard from some Commonwealth countries. Lord Phillips was said to be concerned about the cost of these to the taxpayer.

In a recent survey, 70% of respondents doubted whether many people had ever heard of the Supreme Court. Hopefully, the more open nature of this court will help to increase its importance.

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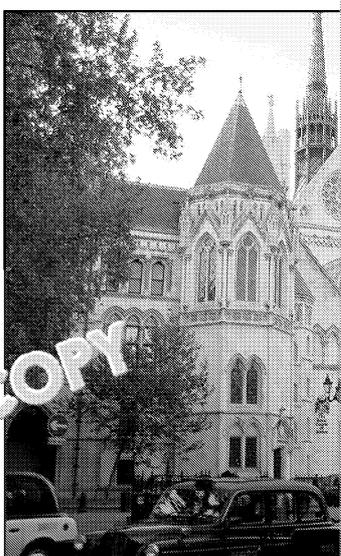


The Role of the Supreme Court

When we talk about the judiciary, we generally refer to the judges who are responsible for interpreting the laws made by Parliament and common law in order to maintain a fair and just system. At the head of the judiciary is the Lord Chief Justice, having oversight of the work in the civil and criminal courts of England and Wales. Judges have authority over all courts, their role is to have oversight of court cases to ensure that the case proceeds through the system and pass judgement at the conclusion of the case. They might also conduct hearings and come to a judgement. In criminal cases, the judge in a Crown Court will leave that to a jury. The judge will once again be responsible for ensuring that the trial is fair and for passing sentences to ensure that the accused be found guilty. In doing all this, they must follow strict rules of conduct and to make sure that other rules, such as rules of evidence, are applied correctly. In making decisions, they will usually be following the law in order to maintain fairness in the system. This is called following judicial precedent.

Other roles

Overall, the responsibility of the judicial branch of government is to ensure that the laws are applied correctly and with justice, but judges do have a number of other roles. They might, for example, be called on to conduct judicial reviews, to decide whether a particular public procedure or government act has been conducted correctly, or to give legal advice to governments or public bodies. Also, they might be called on to head a commission of enquiry, perhaps into the conduct of Members of Parliament. The important thing is that the judiciary should be independent of politicians and should always behave in a neutral fashion in order to safeguard the rights and liberties of the citizen. But this is not always straightforward.



The Appointment Process of the Supreme Court

The appointment of judges used to be a very secret process. Often, other judges were consulted and appointments were simply made in this way. It often meant that the process was not transparent, and the judiciary seemed to be a dangerously exclusive club without real training. For many of the posts, the vacancies are now advertised, and applications are often sifted by the Judicial Appointments Applications Service before a recommendation is passed on. Apart from the applications, the Judicial Appointments Commission will be consulted in the next stage about the better candidates. Those applying for a High Court judge must give at least three, and up to six, names of people who can be consulted. A panel of judges will be asked to attend an interview. One of the panel will always be a Circuit Judge. There will be somebody from the government's Department for Constitutional Affairs. They then discuss the candidates, and more interviews are held by the same or different panels. There are plans to make these assessments last for just one day. What happens then is that the Lord Chancellor, as head of the Department for Constitutional Affairs, will consider each of the candidates interviewed, taking the panel's recommendation into account. There is no minimum age limit (except to have been a lawyer for seven years), and the maximum age is 70 years old. Many vacancies for judges are advertised in the national press. New judges will undertake a period of intensive training and shadowing of a well-established judge.

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New Ways of Selecting Judges

The Constitutional Reform Act 2005 changed the appointment process. In 2005 the Judicial Appointments Commission began its work, but this had already been having enough checks on it. The Commission is answerable to Parliament and is to handle complaints about the way it works. In 2005 the Lord Chancellor called for diversity among judges and more independence for the judiciary. He called for women and members of ethnic minorities to be selected. He called for people from all backgrounds to be considered.

In 2005 17% of judges were women, and by 2014 this had reached 25%, implying there is even a reasonable improvement among women entering the profession and promotion to the lower levels of the judiciary. In 2021, non-white people represent 11% of the population, but only 11% of judges: progress among ethnic minorities has been slow. The Supreme Court composition, shown below, suggests that these improvements have not yet made it to the most senior level.

Judge and role	Gender	Born	Ethnicity	School
Lord Reed (President)	Male	1956	White British	Princes
Lord Sales (Deputy President)	Male	1962	White British	Princes
Lord Leggatt	Male	1957	White British	Princes
Lord Burrows	Male	1957	White British	Princes
Lord Stephens	Male	1954	White British	Princes
Lord Hamblen	Male	1957	White British	Princes
Lady Rose	Female	1963	British, Jewish	Princes
Lord Briggs	Male	1957	White British	Princes
Lady Simler	Female	1963	British, Jewish	State
Lord Lloyd-Jones	Male	1952	White British	State
Lord Charles	Male	1951	White British	Princes
Lord Koherty	Male	1958	White British	Princes

Supreme Court membership (January 2026).

As you can see, the UK Supreme Court while better than its predecessor is still unrepresentative of certain groups in society. If the intention of curbing the Lord Chancellor in the appointment process was to make access to and make-up of the court more representative, the fact that 10 of 12 current justices went to a fee-paying school shows that it is still not. 12, 11 are Oxbridge educated, and justices remain predominantly old, white, and male.

There are very good reasons to expect justices to be older (experience) and to have gone to the world's best universities (high level of scholarship), but it would be hard to expect the make-up of the court should be as they are. This makes it difficult to see how the process has become more accessible to marginalised groups – at least not yet. Women, working class, ethnic minorities and the educational non-elite continue to be under-represented, while older, middle-upper-class people are still over-represented.

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Key Point

Have the changes to the appointment process genuinely affected the composition of the court? Do we just need to be patient for the changes to filter through? How much does it really matter – is it possible to be impartial? How much different life experience to some of those you preside over?

Judicial Independence and Judicial Neutrality

One of the constitutional twin pillars recognised by A V Dicey, along with sovereignty, is the *rule of law* in Britain. This means that everyone is equal and should be no wrongful punishment if someone has not broken these laws. It is a principle to trial and the fact that no one should be above the law. As will be discussed, this is upheld by the judicial branch, and this is made possible by two key principles – judges operate – judicial independence and judicial neutrality.

Separation of powers

Now is a good time to remind ourselves about this idea – that all three branches of government should remain strictly separate and that no one should belong to more than one. The problem in the UK is that our parliamentary system makes this impossible given that much of the executive branch is chosen from members of the legislature. The Secretary of State for Justice too, who is also the Lord Chancellor and a member of the Executive and the Legislature, still has a certain amount of influence over the appointment of judges, and this has, in the past, led to problems.

The judiciary and other parts of government

This means that the judiciary does have strong connections with other branches although, as we'll see, this problem can sometimes be exaggerated. The judiciary works alongside the other branches to ensure a balanced government, but whether this has often been questioned. There have been moves to make this situation clearer, and we've already seen some of these. Remember that the judiciary is supposed to be made by the legislative branch and applied fairly but have very little influence. Nor can they refuse to apply them because they might disagree with the amount of influence over the ways they interpret those laws, but even here they can and by the way that courts have applied them in the past. What they can do is publicly, and exert their influence over other branches in this way.

Judicial independence and neutrality

As we've said, in a liberal democracy we hope that the judiciary will be independent and that really means 'separate'. If those who make the laws are the same as those who apply them that could be a recipe for a dictatorship. Let's distinguish between judicial independence and neutrality. The latter refers more to the attitude of the judges while performing their former to the way in which they are selected, and whether this might make them more like politicians.

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Judicial Independence

Yes – judges can be independent

Judges have often shown themselves to be independent of the government and have criticised politicians. Judges have fixed salaries, which means that they cannot be influenced by politicians to make decisions more beneficial for them. Judges cannot be paid wages (like bribes) for making certain decisions, and at the same time cannot be sacked or suspended by politicians if they do not behave in a particular way. As a result, a point can be made by politicians that they are threatened with this sort of punishment, which can influence outcomes.

Judicial independence is also guaranteed by the fact that the Constitutional Reform Act 2005 has limited the power of the Lord Chancellor and has attempted to shift away from the highest courts of the judiciary. The independent Judicial Appointments Commission selects judges, which removes any political bias. The removal of Law Lords and the separation of powers, meaning judges can challenge Parliament more independently. The creation of the UK Supreme Court has resulted in a clearly defined judicial branch, separate from the executive or Parliament and further ensures judicial independence for the future.

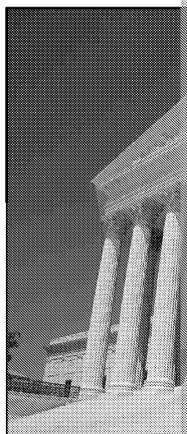
No – judges cannot be independent

This refers to the way that judges are selected, and whether this somehow reflects the interests and politics of the day. If they are independent, then they will be separate from the government and politics. For justice to be done, judges must be seen to be independent of the other branches of government. Judges may easily be seen as part of the 'establishment', whose interests may align with those of the government and of those with property. Examples have been cited, especially in the context of sentencing terrorists and trade unionists. The fact that the Lord Chancellor is a member of the government seems to confirm these fears, and that role still has some influence over the judiciary. Senior judges have also said that the similar background of judges may undermine the chances of judicial independence.

Judicial Neutrality

Yes – judges can be neutral

Judges are guaranteed to maintain neutrality, that is, impartiality when making decisions, for a number of different reasons. There are precautions taken to ensure that judges do not have too much political activity. There are restrictions, for example, on judges' ability to campaign for a party. They have the right to vote in an election, as does any citizen, but, unlike US Supreme Court justices, they cannot share their political opinions or ideologies. As well as this, they must remain largely anonymous and are never well known as political figures. This avoids media pressure.



Their integrity is also ensured, which guarantees that they will make decisions upholding the rule of law. This is assured by judges being required to give reasons for their decisions. This means judges cannot simply make decisions based on their own views. As well as this, they are required to do a lot of training before taking on the role.

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No – judges cannot be neutral

This refers to the way that judges think and act while performing their duties in court. It's about whether judges can be unbiased while doing their jobs. Doubts have been raised about the neutrality of the judiciary because most judges are traditionally selected from public school and Oxbridge backgrounds. Griffith and Kingdon especially talked about the elitism of the role, and suggested that judges could not be neutral. It seems that, despite some reservations, the majority of judges are overwhelmingly from public schools and Oxbridge. This is likely to make the outlook. Judges are expected to go through what is essentially a system of law that dates back to the nineteenth century, where the accent is on the protection of property. It is expected, therefore, to understand the problems of those who have no property.

Judicial Review

By ensuring that there is a presence of judicial independence and judicial review can occur, which is the UK Supreme Court's most important power. Judicial review, put, refers to the power available to justices to deem the acts of public figures or government departments. It allows the Supreme Court to challenge these acts based on illegality or being incompatible with the Human Rights Act. Judicial review is what leads to common law. Remember, common law is not written but is established through common law. These are, in the UK, the Supreme Court and the High Court of Appeal. These are the courts that perform judicial review. Judicial review is used more frequently by citizens and groups in order to challenge the government.

Therefore, judicial review does not always refer to the application of the law in the UK. It can also refer to international law, which is significant particularly in the context of the Supreme Court. While it is a way of challenging the law in cases that concern political decisions, it is not a way of challenging the law in cases. *Ultra vires* translates loosely as 'beyond the powers'. The Supreme Court justices can use judicial review to determine whether political decisions are within the authority of the government. This can be an important power available to judges, but still the power is not as powerful as in the USA, for example. The US Supreme Court can declare laws unconstitutional with the use of judicial review, whereas in the UK acts can only be declared unlawful.

Case study – prorogation of Parliament (2019)

In August 2019, the Prime Minister Boris Johnson announced that Parliament was to be prorogued for five weeks. Prorogation means that all functions of Parliament are suspended, and all legislation currently active is discontinued. Johnson argued that this was a normal procedure for a new prime minister to implement; however, the move was controversial because of the length of the suspension, which was far longer than is normally the case. Critics accused Johnson of shutting down Parliament to avoid scrutiny and defeats over the issue of Brexit with the government for leaving the EU rapidly. The matter was taken to the courts, and the case quickly made its way to the Supreme Court.

On 24th September, the justices of the Supreme Court ruled unanimously that the prorogation was unlawful, and Parliament was reconvened the following day. The verdict was a landmark ruling for the role of judicial review and the Supreme Court. Although the court ruled against the government, it stated that it disagreed and considered prorogation a political decision. The subsequent Conservative manifesto has promised to review the role of the courts.



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Europe and the Supreme Court

The European Union

The European Union had a varying role in UK law from 1972, when the UK first joined the club of nations, until 2020 when it left as an EU member, the UK was subject to rulings from the EU's highest court – the European Court of Justice (ECJ). The role of the ECJ was to uphold EU rules within the UK and ensure that EU obligations were being followed.

The ECJ was often criticised due to the potential for conflicts of interest between EU member states. After all, an objective of the EU as a whole might not always be in the narrower national interest of the UK.



In 1990, this conflict of interest was tested in the *Factortame* case. The ECJ found that a UK law which required fishing boats to have British owners was breaching EU law. The ECJ ruled that the highest courts in the UK must have the authority to enforce EU law and ensure that the UK complies with its obligations.

This verdict was a direct repudiation of the UK's sovereignty, as it asserted the authority of the EU over UK law, as well as over the UK's courts. It helped to formalise what was already informally the case – that EU law was supreme over UK law.

Following the UK's European exit, the UK is no longer bound by either EU law nor the ECJ's rulings. The Supreme Court is no longer tasked with upholding EU law.

The European Convention on Human Rights

In 1998, the Human Rights Act was introduced in the UK. The Act formalised the European Convention on Human Rights – a pre-existing non-EU treaty – into law. The 18 articles of the Convention are:

- **Article 1** – ensures protection of rights in the European Convention on Human Rights
- **Article 2** – the right to life
- **Article 3** – the outlaw of torture or any inhumane treatment
- **Article 4** – the outlaw of slavery and forced labour
- **Article 5** – protection from unlawful imprisonment
- **Article 6** – the right to fair trial
- **Article 7** – the protection against retrospective punishment based on new laws
- **Article 8** – ensures right to family and private life
- **Article 9** – the freedom of thought, conscience and religion
- **Article 10** – the freedom of expression
- **Article 11** – the freedom of assembly and association
- **Article 12** – the right to marry and found a family
- **Article 13** – the right to redress grievances
- **Article 14** – outlaws discrimination
- **Article 15** – allows rights to be overturned in cases of national emergency
- **Article 16** – allows restriction of these rights for foreign nationals
- **Article 17** – limits the extent to which ECHR rights can affect other rights
- **Article 18** – clauses within the ECHR that suspend or disallow rights

Did you know?
The European Convention on Human Rights is a separate treaty.

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Just from looking at the list of protections codified by the articles of the Human Rights Act, you might recognise a familiarity with the US Bill of Rights. However, there is a crucial difference. Whereas the US Supreme Court can veto legislation and override laws that interfere with these rights, the UK Supreme Court cannot. Due to parliamentary sovereignty, Supreme Court rulings in the UK simply cannot be authoritative over legislation.



Instead, the Supreme Court can declare certain decisions to be incompatible with the Human Rights Act, and in doing so place political pressure on the government and Parliament to act.

Case study – deportation of foreign criminals

In June 2017, the UK Supreme Court declared that the treatment of foreign criminals by the government was unlawful as it violated the Human Rights Act. The system had been to deport the criminals before they could appeal, but Lady Hale (right), then deputy president, observed that it was likely to obstruct their right to a fair trial and redress of grievances.

Even if the UK scrapped the Human Rights Act – a long-standing aim of some Party – the treaty commitment of the European Convention on Human Rights government still has an obligation to uphold these articles in all of its future

It would thus require the UK also leaving the ECHR in order to eliminate a UK law. However, this would be a highly contentious move – and no UK government has proposed doing so. Keir Starmer's Labour government has firmly ruled out instead advocating for reform to address concerns over its application, particularly immigration and criminal justice.

As we can see, Brexit has contributed to an already messy situation in which UK courts, devolved courts, local governments or the EU should deal with that the process of exiting the EU may present an opportunity for some of them more clearly defined. Any change to the functioning of the UK judiciary, however, is contested and controversial.

Is the Supreme Court too influential?

Yes

- As the highest court of appeal, it deals with only the highest profile cases given that its members are unelected.
- Declarations on government acts are undemocratic as they are less legitimate.
- Judicial activism is more commonplace, and this brings into question how unaccountable judges should have.
- Independence brings with it the difficulty of controlling the Supreme Court.

No

- Laws passed by Parliament decide how much power they should have.
- Declarations on government acts are not legally binding.
- The judiciary cannot initiate policy and must wait for cases to come to them.
- The questionable nature of their independence limits the extent to which they can influence the government.

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4.2 The Relationship between the Executive and Parliament

Learning Objectives

- ✓ Understand the extent to which parliament can carry out its functions in relation to the executive.
- ✓ Understand the resources and availability of the executive to dominate parliament.
- ✓ Be able to explain changing trends and shifting powers in the relationship between the executive and Parliament.



Key Terms

Executive	The branch of government responsible for making and implementing laws.
Legislature	The branch of government responsible for passing laws.
Elective dictatorship	The idea that an elected government wields an imbalance of power because checks and balances are not properly enforced or effective.
Parliamentary rebellion	When backbenchers from the governing party vote against the government.
Free vote	When a prime minister does not enforce the whip system and allows members to vote as they please.
Party whip	A member of a political party responsible for ensuring party discipline and aligned on voting decisions.
Vote of no confidence	A vote on a key issue that indicates the majority of the House of Commons do not support the executive.
Secondary legislation	A law that can be made by ministers which does not require approval by Parliament and does not need to go through the legislative process.

Talking Point



Look at the way the executive and legislative branches work together in the UK before reading this chapter. How are the systems different from those in other countries?



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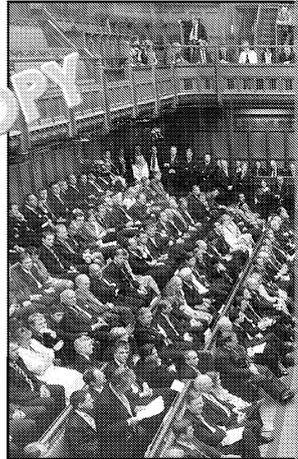


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The Battle between Parliament and the Executive

Having discussed the judicial branch in section 4.1 of this course companion, the relationship between the other two branches will now be assessed. The two other traditional branches of government are the executive and the legislature.

The executive is responsible for making policy and the implementation of this policy. The legislature, on the other hand, is mainly responsible for passing laws in the legislative process. In the UK, the executive is the government, comprising senior and junior ministers, government officials and the civil service. The legislature is UK Parliament, made of MPs in the House of Commons and peers in the House of Lords, who work collaboratively to turn bills into law.

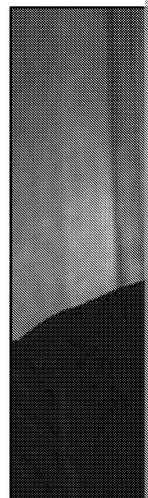


Separating the two branches like this may seem arbitrary, but it is more difficult in other political systems. What is complicated about tracking the relations between the executive and legislature in UK politics is that they both make up Parliament. Whereas in the US, the president (the executive) is elected entirely separately from Congress (the legislature), and a seat in the Senate or the House of Representatives, the British political system has the leading figures in the executive, including the prime minister and other senior ministers, sitting in the House of Commons and are MPs just as members of the legislature are. Moreover, the executive and legislature are therefore, the same, and this should be taken into account.

However, it remains an important function of the legislature to scrutinise the executive and hold them to account. Historically, this has had a mixed consistency. It has been considered that Parliament is always an effective check on the government, but there are significant changes to the relationship over time that have affected this ability. In the post-war era, Parliament is said to have been dominated by the executive. We shall explore the truth of this pattern below.

Elective Dictatorship

The idea of Parliament being dominated by the government stretches back over a century, though it has become particularly popular in the last 40 years in the UK. The term 'elective dictatorship' directly refers to this relationship – as its name suggests, it proposes that the elected body that is the government holds a disproportional and potentially undemocratic amount of power, with specific regard to the lack of ability of Parliament to exert influence and challenge the work of the government. Elective dictatorship is considered to be a phenomenon of increasing concern in British politics, though it became less pronounced during the 2010s due to small parliamentary majorities. With the larger majority secured by the Conservatives after the 2019 general election, the issue can be expected to become more prominent once again.



Lord Hailsham
Chancellor

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There are a number of reasons why this situation has unfolded:

- Government dominates the legislative process. It has control over the agenda, and the opportunity that Parliament has to initiate debate is significantly weakened. With a working majority, government is at a numerical advantage and is often victorious over legislation.
- There are structural advantages that limit the ability of the legislature to check the work of the government. For instance, the Senior Ministers Convention prohibits ministers from interfering with manifesto policy. In practice, this is what the government implements, so it is assumed that a large part of its policies will be in some way supported. The strong civil service and the time and expertise this brings is also significant. Ministers, junior ministers and parliamentary private secretaries (and these are not elected) who cannot vote against the government is another structural advantage.
- The electoral system favours dominant parties. Specifically, the first-past-the-post system has a tendency to produce a single party in government which has a large numerical advantage and a natural advantage of numbers over the rest of Parliament.

There are clearly structural differences between the power of the executive and the power of the legislature. However, as discussed, there have been changes in recent times, and there are many reasons why Parliament may actually be a more effective check on the power of the government today.

The Influence of Parliament on the Government

Parliament is becoming increasingly effective at being able to influence the agenda of the government from doing as it pleases. This has been evident with regard to different aspects of political life:

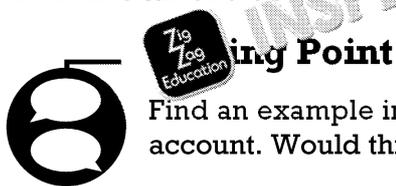
- **Legislation** – Government policies are becoming increasingly susceptible to legislative challenge. Powers that were once in the hands of Parliament, particularly when they were unclear, have been taken back. This was evident in 2019, when the Conservative government, weakened by a fragile majority and internal divisions, was defeated 455-19 in the Commons – eventually leading to Theresa May's resignation. The comfortable majority win in the 2019 general election reduced the risk of such legislative defeats. More recently, Labour's 2024 landslide victory has similarly strengthened the government's ability to pass legislation. While opposition-led defeats may occur less regularly under this Labour government, much of the legislative agenda still depends on careful party management and avoidance of legislative defeats.
- **Party loyalty** – This ties in to the lack of ability to ensure legislative victory for the UK. Partly due to declining majorities, and partly due to circumstances, the voting alignment of the main parties does not happen as consistently as in the past. This results in what we refer to as 'backbench rebellions'. This is when the largest governing party leaders and whip cannot convince the whole party to vote in line with their agenda. These rebellions can often be the difference between legislative success and defeat. For example, David Cameron introduced a bill to deploy troops in Syria in 2013. He did this with the intention of taking military action. However, over 30 Conservative MPs rebelled against taking action, which resulted in a major legislative defeat.

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- **The House of Lords** – There is now a more assertive House of Lords than in the past, particularly the scrutinising influence, of the Lords was limited due to the dominance of the executive. However, the House of Lords Act 1999 reduced the number of hereditary Lords who inherited their seat – from nearly 700 to just 92. This has, in part, led to a greater confidence in challenging the work of the government. Between 1999 and 2022, the government has been defeated 168 times in the House of Lords. This is a more assertive nature of the chamber.
- **Free votes** – Because of the trend of the executive not being able to control the House of Commons in the way it once did, the prime minister may choose to allow a free vote on an issue. Where, despite the prime minister perhaps vocalising a commitment to a particular policy, the whip system is not used, the majority of their own party will vote as they see fit. David Cameron allowed a free vote on same-sex marriage in 2012, supporting its legalisation. This is because of the well-known long-standing support for gay marriage by the Conservative Party in general. His uncertainty over the outcome was predicted – they were split almost down the middle when it came to the vote. Cameron came out on top as members from other parties tended to vote against the government. This avoided the consequential embarrassment if the whip system had been used.
- **Select committees** – Select committees have become more assertive in recent times. The Wright Reforms, introduced by the Reform of the House of Commons Committee, was a select committee that brought into place this new assertiveness. It introduced elected chairs, backbench business and a public accounts committee. Now that MPs elect chairs of these committees, their scrutinising function is assured. Though there are still structural limitations that limit their power, such as the lack of obligation of the government to liaise with recommendations and low levels of funding, their recommendations may have an indirect impact. In 2022, the Committee of Privileges found that Boris Johnson had repeatedly misled Parliament over illegal lockdowns at the time known as ‘Partygate’. The report recommended a 90-day suspension, prompting his immediate resignation as an MP – a rare instance of a select committee holding a former prime minister directly to account.
- **Ministerial questions** – Ministerial questions, including prime ministerial questions, provide a unique opportunity for Parliament to scrutinise the works of government. The question-and-answer format. Its usefulness has been brought into question in recent times as the House of Commons has become rowdy and disturbed, and there appears to be no obligation to answer questions.

Overall, there have clearly been changes to the trend in British politics that have led to a more assertive House of Commons and a less dominant executive. Both the House of Commons and the House of Lords, in recent times, become increasingly able to challenge the workings and legislation of the executive. Structural changes to select committees, the modified importance of backbench business, and the increase in the number of government defeats over legislation in both the House of Commons and the House of Lords suggest that the nature of British politics no longer includes elective dictatorship. While the structural aspects of the scrutinising power of Parliament have improved, there are more limitations on the executive and the executive can and does still dominate the legislature, as will be discussed below.



Find an example in recent times of Parliament being able to hold the executive to account. Would this have been possible before these changes?

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The Dominance of the Executive over Parliament

Does elective dictatorship still exist in the UK, despite a more assertive Parliament in which we can assess whether this is the case is to examine what about the executive and remains to be used to dominate the legislature.

The whip system

One way that the government continues to have control over Parliament is through the whip system, in most cases, which is in place. This means that there is still pressure on MPs to vote in line with their own party. Governments with a majority are therefore difficult to defeat in the Commons as whips ensure that there are more votes on the side of the government than if the entire opposition were to vote against the preferred outcome of the executive.

Whips use push and pull factors to make sure that MPs vote with the government. Gavin Williamson served as Conservative chief whip between 2016 and 2017. He developed a reputation for his unorthodox techniques to allow government victories in the Commons. For instance, his habit of keeping a tarantula on his desk has been viewed by some as intimidating; his name was Cronus, taking the name of a Greek titan who killed and ate his own children to retain his power. Even in times of coalition, the parties in government ensure that the whip is used on MPs in most cases, making it difficult for the opposition to mount a legislative challenge.

Difficulty for Parliament to remove governments and ministers

Another reason why the government is still largely able to control the legislature is because there are limitations on Parliament being able to remove governments and individual ministers from office. This is also a two-sided point – the prime minister can appoint and dismiss as they please. MPs' scrutiny of the government could be worth a great deal more if they could hold ministers to account to the extent that they could actually remove them from their positions.

It is still possible, however, for MPs to oust a government as a whole. A vote of no confidence can result in the Commons forcing the ousting of a government. The Fixed-term Parliaments Act 2011 enshrined this principle, clarifying that a vote of no confidence would result in a General Election being called (unless a government is formed which gets Parliament's confidence within 14 days). This was first triggered in 2019 after Theresa May's government suffered a defeat in the Commons of historic proportions. A vote of no confidence has not ousted a government since 1979, when James Callaghan's Government was removed in this way. The rareness of this situation perhaps makes it become any easier for Parliament to get rid of a government; however, it does mean that governments, particularly with a slim or no majority, have to tread carefully. When May initially delayed a vote on her Brexit deal in December 2018.

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Executive control over Parliament agenda

Ultimately, even in times when there is a coalition government, the executive has far more structural control over what is debated in Parliament. The size of the majority does not affect the advantage that the executive is in when it comes to choosing the legislative agenda. The amount that the opposition can influence parliamentary proceedings in this fashion is much more limited. For example, opposition days – days in which the opposition chooses debate topics – occur on just 20 days in a parliamentary session. This is not to suggest that, despite declining majorities, there remain significant differences in the ability of the government versus the opposition to influence the agenda of Parliament that still allow elective dictatorship to occur.



Secondary legislation

In addition to this, despite the increase of cases where opposition parties are challenging government legislation, not all legislation is subject to the review process. Some are referring specifically to secondary legislation. This is where a law can be made without going through the formal legislative process. Therefore, it does not go through the House of Commons or the House of Lords as is the case with primary legislation. As an indication, statistics show that around 70% of secondary legislation is made up of, referring to the orders, rules and regulations made by ministers. Since 1990, an average of around 3500 statutory instruments have been made. This shows the scope and importance of secondary legislation in contributing to the legislative process.

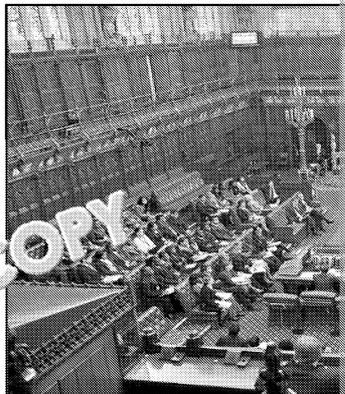
Select committees?

Though we have mentioned the enhanced significance of select committees of Parliament is now closer to the executive in terms of power, this is definitely not the case in terms of actual authority of select committees. That is to say, the actual authority of select committees remains unchanged. That is to say, the actual authority of select committees remains unchanged. That is to say, the actual authority of select committees remains unchanged. Not only this, but the influence of select committees is inherently limited by the executive's access.



House of Lords

Another reason why the executive is still dominant over the legislature is that the House of Lords is limited in terms of the authority it possesses. While the chamber has become more democratic, its democratic legitimacy has slightly increased, it still does not hold enough power to influence the agenda of the government. The Salisbury Convention prevents the House of Lords from interfering with government manifesto policy. As well as this, the House of Commons may accept, reject or amend proposals and amendments made by the House of Lords. The extent to which the executive dominates Parliament is, therefore, increased by its relationship with the House of Commons.



The upper chamber

Size of parliamentary majorities

The most common and effective reason for executive dominance, however, is a large government majority. When a governing party's MPs comfortably outnumber the opposition, it becomes far easier for the executive to control events in Parliament, and avoid any compromise. The large government majority secured in the 2024 general election has led to an increased level of executive dominance relative to years of slim government.



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Is the Power Balance Changing?

There is no doubt that there has been some change in the relationship between the legislature in the UK. There has, in recent times, been a greater challenge. This has more often than in the past resulted in the government having to back down. The legislature is also more capable of holding the government to account over time. Does this mean that elective dictatorship has come to an end in the UK? It is a difficult answer, and there are arguments for both sides. Below is a summary of the changes.

Elective dictatorship still exists

- The 2019 and 2021 general elections have shown that comfortable parliamentary majorities are still achievable.
- Party whips usually ensure that the party with the most seats – the governing party – votes together and wins a parliamentary vote.
- The executive controls the legislative agenda and topic of debate.
- The House of Lords has no authority to enforce amendments or rejection of government bills.
- The Salisbury Convention blocks the House of Lords from interfering with manifesto policy.
- The Parliament Acts can be used by the government to bypass opposition in the House of Lords.
- Parliament cannot do much to remove government ministers from office. Resignations are very rare.
- Select committees are structurally limited in enforcing change of government.
- Scrutinising practices, such as ministerial questions, are weak and ineffective.

Elective dictatorship has ended

- Majorities have become less common in the UK, meaning the executive cannot command the House of Commons as it once did.
- Legislative debates in the House of Commons have become increasingly important, and the decline of party whips has become more pronounced.
- Backbenchers are becoming more important, and parliamentary rebellion is more common between parliamentary victory and defeat.
- Conventions that strengthened the case for elective dictatorship, such as the Salisbury Convention, no longer take effect, and Parliament has an increased say.
- The Fixed-term Parliaments Act means the prime minister cannot call a general election at will.
- The House of Lords is more unbiased as the removal of hereditary peers has reduced the influence of the Conservative Party no longer dominates the chamber.
- Hereditary peers being removed has made the upper chamber more capable of scrutinising government legislation.
- An increase in the use of free votes over key issues has resulted in less government legislation being passed. The government will achieve its preferred outcome in the legislative process.
- Select committees have become more effective in carrying out their role since the 2010s. Ministers are now elected.

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Talking Point

Consider Keir Starmer's Labour government. To what extent has elective dictatorship ended?

4.3 The Aim, Role and Impact of the Euro on UK Government

Learning Objectives

- ✓ Learn the implications of the four freedoms of the EU and how they have impacted the UK.
- ✓ Understand the role the EU has on UK law.
- ✓ Identify examples of where the EU has had an impact on expressing sovereignty of the UK.
- ✓ Suggest the impact that Brexit may have on the impact of the EU on UK law.



Key Terms

European Union	A political union made up of member states previously part of the European Economic Community.
European Commission	An institution within the European Union responsible for implementing legislation.
European Parliament	A directly elected institution within the European Union responsible for legislative tasks.
European Council	An institution within the European Union that is responsible for setting the overall agenda of the EU.
Council of the European Union	An institution of ministers responsible for carrying out the decisions of the European Council.
Court of Justice of the European Union	An institution of the European Union made up of judges who ensure that EU law is implemented in member states.
Four freedoms	The freedom of movement of goods, services, capital and labour, which is a key ambition of the European Union.
Brexit	The decision by the United Kingdom, via referendum, to leave the European Union.

Did you know?
The European Union covers over 4.4 million square kilometres, which is even bigger than the largest country by land area – Russia.



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What is the European Union?

The European Union is a term thrown around in politics a great deal today. Many people do not have an idea of some of the pros and cons of European integration for their country or what the EU actually is or what it represents. Simply put, the EU refers to the countries that have cooperated in terms of an economic and political alliance that can be traced back to the 1950s.

In June 2016, after a nationwide referendum, the UK became the first integrated state to vote to leave the EU. We will, over the course of this chapter, discuss the implications of being part of the EU, and touch on the causes and consequences of the decision to leave.

The UK left the EU in January 2020, leaving the latter with 27 member states. While there is still a commitment to the single market and integration in the sense that there is a common goal, and values (of democracy and prosperity) among member states are similar, there is rising tension within the institution due to the migration crisis to Brexit, it has been a difficult period in history for the world to understand the aims and role of the European Union, we should first explore the economic union that hosts over half a billion people.



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History of British Relations with the European Union

Before it was called the European Union, there were principles of economic bound member states for many years. There are clear stages in which the process has taken place, and the formation of the institution has been a gradual and various member states join at different periods in time.

- **1952**
The European Coal and Steel Community (ECSC) was established by the result of the Second World War. The French Foreign Minister, Robert Schuman, argued that no further wars should take place in Europe, particularly between France and Germany. The ECSC comprised of France, West Germany, Italy, Belgium, the Netherlands and Luxembourg. Part of the reason many political figures in the UK had historically been sceptical of European integration was that they felt France and Germany held all the power. The treaty made a common market for coal and steel which was designed to promote economic cooperation between the members.
- **1958**
The European Economic Community (EEC) was created in 1958. A product of the 1957 Treaty of Rome, the six members that had made up the Economic Coal and Steel Community formed the EEC. The aim was further economic integration. As well as the ECSC, the EEC bound the member states including the European Atomic Energy Community and the way for the Common Agricultural Policy and a Customs union.
- **1973**
Remember, at the start of the stage there were still only six member states that had agreed and committed to a process of cooperation in Europe. The 1960s saw attempts of expansion thwarted by French President Charles de Gaulle (right). He was against UK membership as he thought it would reduce France's power in the bloc, and in his view Britain was insufficiently committed to the bloc's political aims, so he vetoed British entry. The bids of Denmark, Ireland and Norway stalled following the British denial because of their economic strength. Upon de Gaulle's resignation in 1969, negotiations for the expansion resumed. In 1973, Denmark, Ireland and the UK joined the European Community. A referendum held in the UK two years later, in 1975, 67% of the public voted to remain.
- **1985**
The Single European Act in 1985 was the first step taken by the EEC to create a single market. As will be discussed later, this is a key principle of the European Union. A revision of the Treaty of Rome, led by all member states in the European Community. Many were unhappy that there was no free trade between them. Therefore, the aim was to have tariff-free trade. This would hand further legislative power to the European Council, which was doing this goal. Greece, Spain and Portugal joined the bloc in 1981.
- **1991**
The Maastricht Treaty was signed in 1991 and came into effect in 1993. It established the Monetary Union and fully established the European Union. This stage of political and economic cooperation, including on security and justice, was signed this treaty.

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- 1999**
The euro, a single monetary currency, was launched across Europe, replacing national currencies. It was adopted by 11 EU states. Denmark and the UK opted out of adopting the currency. Greece joined in 2001, and seven states have since become members of the eurozone.
- 2004**
10 countries joined the EU, expanding the size of the bloc dramatically.
- 2009**
In 2009, a financial crisis occurred within the EU. The eurozone had accumulated large and damaging debts. Mediterranean states were particularly harshly affected. Greece, Spain and Portugal were among those that needed to be bailed out by the EU and the International Monetary Fund. This created tension among member states, whose citizens felt unfairly punished for the failings of other states. The worst affected, Greece, eventually decided to retain the euro as its currency after a massive recession. It was forced by the EU to accept severe austerity measures in return.
- 2013**
The newest member state, Croatia, joined the EU. There are now 28 member states. This is significantly higher than had been the case before 2004.
- 2015**
As a result of conflict in the Middle East and northern Africa, 2015 sparked the movement of millions of refugees across the Mediterranean to reach the EU from the south. This gave rise to a debate between a humanitarian approach, which was associated with the thousands who were dying while making the trip, versus a realist approach, which focused on the economic strain of such a sudden spike in the European population.
- 2016**
On 23rd June 2016, the United Kingdom voted to leave the European Union in a referendum which was promised and held by then Prime Minister David Cameron. The majority of the electorate voted for Brexit.
- 2020**
The United Kingdom left the European Union on January 31st 2020, becoming the first to do so in EU history. UK MEPs left the European Parliament, and the UK withdrew from the European Commission and other EU institutions. The UK continues to follow EU laws and regulations until the end of the transition period on 31st December 2020.
- 2022**
In response to the Russian invasion of Ukraine, the EU implemented a series of sanctions against Russia and plans to phase out the purchase of Russian oil. Over 1 million displaced Ukrainians entered European Union countries, and the UK's status as a candidate, beginning the ascension process to membership.
- 2025**
The UK and EU agreed a wide-ranging 'reset' deal easing trade checks and deepening defence cooperation. The agreement marked a shift towards improved relations under Labour.

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The Role of European Institutions

There are many different institutions within the European Union today that have such a complex and long-drawn-out history. It is worth going through the history of the chapter, so that when we visit the aims and policies of the EU, if we refer to the institutions you will have an idea of what they are and how they operate. There are two categories of institutions that we will discuss. The first category contains intergovernmental institutions that are made up of members of member state governments who collaborate in various functions. The second category contains supranational institutions, which are an independent authority from national governments.

European Commission

The first institution we are looking at is a supranational body. You can think of it as a branch of the European government. It is a cabinet government with 28 members who work in Brussels and commits to honouring the treaties of the EU and to maintaining peace. As you may have guessed, there is one member per member state of the EU (i.e. one for France, one for the UK, one for Germany, etc.). However, there is no bias in favour of home states, and each commission member should strive towards decisions benefiting the entire EU. All of the commission members are nominated by the Council of the European Union and approved by the European Parliament, both of which will be discussed in more detail below. That is, except the Commission President, who is proposed by the European Council then elected by the European Parliament. There are also over 30,000 civil servants who work alongside the cabinet to make up the entire body of the European Commission.

In terms of its functions, it has a number of executive and legislative rights that aid the commission in carrying them out:

- Draft legislation and rule on legislation
- Develop medium-term strategies
- Represent EU over trade
- Responsible for the European budget
- Examine the implementation of European legislation

Council of the European Union

This institution is also often referred to as the Council of Ministers and is the first intergovernmental institution we shall examine. The council is made up of government ministers from every one of the member states. It is designed to represent their executive governments. Just as is the case with the European Commission, there is one member in this institution to represent each state. The Council of the European Union has different powers:

- It shares legislative and budget powers with the European Parliament.
- In some cases it may initiate EU law.
- It organises the economic policy of member states.
- It progresses foreign and security policy in the EU.

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European Council

The European Council is not to be confused with the Council of the European Union as it is an entirely different institution. Once again, however, it is an intergovernmental body because it is made up of members of national governments within the EU. It is comprised of the national leaders of every member state. For instance, Friedrich Merz of Germany and Emmanuel Macron of France are part of the European Council. The other two members are the president of the European Council and the president of the European Commission (in total 30 members). The president of the European Council is decided upon by national governments. The only other member who takes part in the (roughly quarterly) meetings is the High Representative of the Union for Foreign Affairs and Security Policy. Formal responsibilities include:

- Defining the overall policy and trajectory of the EU
- Debating over key issues
- Making important decisions on foreign and economic policy

European Parliament

This is another supranational institution of the European Union. It consists of parliamentary members. There are 720 members, who are split proportionally. Citizens of member states can vote for who they wish to represent them at the European Parliament (MEP). The Strasbourg building is one of three in which they may meet. Members are split roughly in proportion to population sizes. For instance, Germany has 99 seats, France has 81 seats, while Ireland has 14 seats and Malta has 6 seats. The European Parliament includes:

- It exercises a legislative role along with the Council of the European Union.
- As part of the legislative branch, it holds budgetary power. The European Parliament has authority over this.
- It has control over the executive. As the EU has a clearly defined branch system, there are certain checks and balances to ensure one branch does not overstep. The European Parliament elects the Commission President. It can then oversee the work of the executive.
- It has certain authorities, called supervision powers, given to the institution by the Treaty. These are mainly concerned with temporary problems that affect the EU.



Plenary hall, Strasbourg. The meeting place of the European Parliament.

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Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) is the judicial branch of the EU. Do not confuse it with the European Court of Justice (ECJ) – the name is very similar, but the ECJ is the highest court of the CJEU. The CJEU is responsible for upholding EU law and ensuring that it is applied in member states. It is based in Luxembourg. Its functions are relatively straightforward:

- To ensure the law of treaties of the EU is applied and interpreted
- To interpret EU law

The Court of Justice of the European Union should also not be confused with the European Court of Human Rights, which is independently focused on upholding the Human Rights Act.

What Does the European Union Aim to Ensure?

The European Union, as we have discussed, is founded upon the urge to end competition, and promote cooperation and integration, in Europe. To achieve this, the EU has worked to establish a single market and maintain peace, freedom and justice, and to eliminate discrimination from the EU. These values will be discussed in more detail to be underpinned by the ‘four freedoms’ of the EU.

The Four Freedoms of the Single Market

The European Single Market, a chief principle of European integration since 1992, is based on free movements that should not be restricted or restricted. These are the free movement of goods, services and capital. This principle seeks to promote integration with a single economy benefiting the member states overall, and an increasingly unified society too. The agreement stretches beyond EU states, however, to Iceland, Liechtenstein, Norway and Switzerland, for instance. So, what do these four freedoms actually mean? We will explore them individually.

The Free Movement of People

This is the single market principle that any citizen in any EU member state can work, live, or retire in any other EU member state. This targets the elimination of discrimination based on nationality. In other words, people who choose to work in another member state should have the exact same social and political rights as nationals within that state. Economic integration is designed to improve the efficiency of the market, on the principle that the best person for a given job could come from anywhere, so there should not be additional barriers to entry. For example, a French citizen should be able to apply for a job in Germany. Politically, this has become a symbol of an integrated cosmopolitan society as people work (and study) in countries of their choice. The Schengen Agreement led to the creation of open borders between a large number of EU member states with no checks at all; so, for example, crossing from France to Belgium by car is now a simple matter. The Welsh passport is simply a sign to let you know where you are. The Schengen Agreement is not a necessary feature of EU membership.

A note should be made here on Brexit. One of the key reasons why people left the European Union was the premise that exiting would give back national control. However, the principle aims at equality and freedom, and in a sense achieves this as people are continually assured, what it doesn't take into account is that there

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those entering and leaving a member state. In the UK, roughly three million EU member states, whereas there are around one million UK nationals living in EU member states. We can assume that this is because the UK is one of the most attractive places to live in Europe and this influx of people particularly accelerated with the eastward enlargement of the EU.

Concerns about culture as well as the economy have been vocally expressed in the Leave campaign of the Brexit referendum. However, it was added to the first of the freedoms had been occurring since 2015. Though many who had landed in southern Europe sought to reside in the UK, there was a growing concern that the loss of sovereignty over the British border could have detrimental effects on national prosperity.

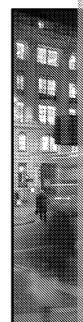


The Free Movement of Goods

This is the idea that there should be no duties or taxation on goods when moving between member states. This, again, eliminates the possibility of discrimination. The rules that prohibit the movement of products from one state to the other. A physical restrictions such as border controls. Products can literally move from one state to another with no limitation.

The Free Movement of Services

The service freedom is partly concerned with the free movement of people. This is because it refers to the provision of services, mainly concerned with professional and commercial services. Here we are referring to businesses. Providing services abroad freely, this may mean people moving abroad too, so it works hand in hand with the first freedom.



The Free Movement of Capital

Finally, we have the free movement of capital. This means that there has been a commitment to removing restrictions on capital – for example, on foreign investment – between the member states of the EU.

The Impact of the European Union on UK Government

The European Union has authority in the treaties that it draws up between member states. We have spoken about some of these already, including the Maastricht Treaty, which established the EU. It had, therefore, become one of the sources of the UK constitutional law. The EU has become one of the binding forces of law on the national state and other member states in the EU. This has led to the impact of UK laws because the states pool their laws across the EU.

On sovereignty, membership of the EU had complicated the situation in the UK. The UK had adopted a system of parliamentary sovereignty, in which political authority rests with Parliament. However, upon entering the EU, statute law was no longer the supreme law of the land. EU law and treaties became sovereign over statute law in the UK. Theoretically, this meant that the EU was the sovereign political institution in the UK. In practice, however, legal sovereignty, however, or 'sovereignty in theory'.

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While the EU had the most ability to exercise authority legally, the UK Parliament held the political sovereignty – sovereignty in practice. The UK could reject, and indeed did, sovereignty by deciding to leave.

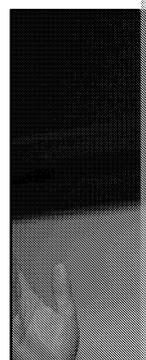
Case study – Factortame 1990

Factortame Limited v Secretary of State for Transport is an EU court case that examined the work of the UK government. Specifically, it relates to a policy in which the UK required a majority of fishing ships located on its shores to have British owners. A Spanish fishing company had brought to the EU's attention this which breached European law. Under the Common Fisheries Policy of the EU, there were quotas on the amount of fish that could be caught. It also effectively neutralises all EU waters and keeps trade restrictions so that member states are not in competition. The UK government introduced the 1988 Merchant Shipping Act which stated that ships on British waters should have British owners, the European Court of Justice ruled this was a violation of the Common Fisheries Policy and would increase competition between member states. The significance of this case study ruling should not be underestimated. It was the first time an Act of Parliament was forcibly suspended because it breached European law. This paved the way for EU law to become legally sovereign in the UK – which it remains to this day in 2020.



The Impact of Brexit

The truth is that when the United Kingdom voted to leave the European Union on 23rd June 2016, there was already tension between the two political bodies. This was the bursting point of an increasing distrust that UK citizens felt towards the EU. The year before, the United Kingdom Independence Party (UKIP), led by Nigel Farage, was concerned almost solely with offering a platform for Britain to leave the EU and take control of its own borders. Its significantly improved electoral performance (despite winning only one seat, it picked up millions of votes) was an indication of what was to come.



Nigel Farage
Brexit referendum
millions of votes

The UK had never seemed as comfortable in the EU as the union's other most significant members. The community even rejected attempts to involve the UK in the early days of the ECSC. The British politicians were not happy with the UK's power within the EU. The authority of the founding states, particularly France and Germany. The relationship between the founding countries built meant that they had large influence and control over the EU. When the UK was a member of the EU for the first time, it also struggled to adapt to its entry.



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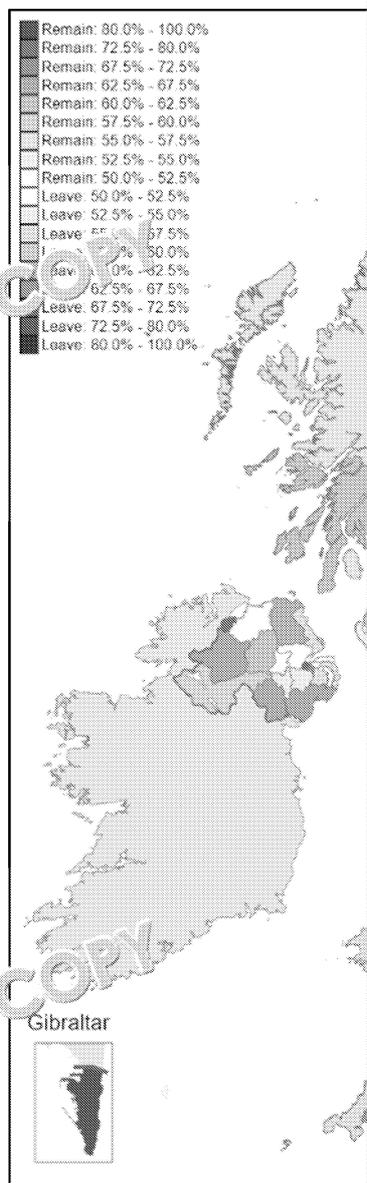


All of these factors contributed to two outcomes. British politicians became sceptical of the EU. More specifically, they had historically been comfortable with managing good relations with other member states, but tended to see issues with the less-democratic institutions that are not made up of different representative governments. The second and possibly more important outcome of this was increased support at the prospect of remaining a member of the EU. This ultimately was capitalised on by Eurosceptic politicians and has resulted in Brexit – the United Kingdom becoming the first ever member of the European Union to leave.

As an incentive to vote Conservative in the 2015 general election, David Cameron in the run-up promised that he would hold a referendum to determine whether the UK should remain in the EU. The subsequent referendum was held in 2016. 17.4 million (51.89%) voted to leave the European Union, whereas 16.1 million (48.11%) voted to remain in the EU. The turnout was 72.2%. Those who campaigned in favour of remaining in the EU included Prime Minister David Cameron, claimed that the UK was better off in, and that there would be disastrous economic consequences if we were to leave. It is a political consensus that the Leave campaign covered a wider range of issues: as well as countering the Remain side that exiting the EU would be costly, it made arguments about the eradication of undemocratic rulers at the top of the EU. While this was not the result of the referendum, we have established that there was an element of EU began before the campaigns from both sides.

The UK left the EU on 31st January 2020. The primacy of EU law in the UK was retained under British statute. Nevertheless, Parliament now has the power to repeal retained EU law if it wishes. This is the reassertion of British sovereignty and supporters were enthusiastic about. Independent of what, according to the result of the referendum, 45% of Leave voters selected as their main reason for voting to leave was to allow Britain to trade independently, and the appropriate to other countries.

However, the consequences of Brexit are not just political, but also economic. The economic shift is in trade. Goods and services can no longer move so freely between member states. Many require extra checks and bureaucracy, which increase costs for consumers. The UK has also experienced labour shortages in some sectors, which also contribute to driving up prices. In 2020 the global economic



The results of the 2016 referendum

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coronavirus pandemic – from supply issues to inflation – were entangled with the EU and the UK, making the economic fallout of both the decision, and the pandemic, harder to distinguish.

The social consequences particularly concern the conclusion of freedom of movement no longer able to travel to, work in and live in EU member states without restrictions. Arrangements that were in place prior to the Brexit referendum have been replaced by fewer Brits living in EU countries, and less migration from EU countries to the UK. There also remains the uneasy question of Northern Ireland. The post-Brexit arrangements formalised through the Windsor Framework, align Northern Ireland with the EU's hard border with the Republic of Ireland. While this has stabilised trade and relations, it has not resume in full. The arrangement remains politically contentious – particularly from a view it as undermining Northern Ireland's place in the UK. Disputes over the use of the Stormont Brake continue to generate tension, meaning Northern Ireland remains a fault line in UK–EU relations.

The open question on Brexit remains whether the increased economic costs of some social freedoms are a worthwhile trade-off for the restoration of political independence and various opportunities political independence could create.

Has the EU achieved its primary aims?

Yes

- The European Single Market has transformed the EU into an international economic zone.
- Economic integration has reduced costs and inefficiencies.
- Peaceful and cordial relations between member states have been strengthened.
- There is ongoing demand to join the EU from external nation states.

No

- The economic crisis has proven that the EU is economically brittle.
- The free movement of people has led to public dissatisfaction.
- There is a rise of populist anti-EU rhetoric, leading to the UK being the only major EU member state to leave.
- Eastward expansion has been difficult and success has been slow.

Talking Point



What do you think the main advantages and disadvantages of the EU relate to the role of the EU in UK politics?

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4.4 The Location of Sovereignty in the UK

Learning Objectives

- ✓ Explain the different types of sovereignty that can be found in the UK.
- ✓ Explain how the location of sovereignty has shifted over time.
- ✓ Form an opinion about which institution or body is now sovereign in the UK.

Key Terms

Sovereignty	Supreme authority within a political system.
Legal sovereignty	Sovereignty in theory. It refers to who makes decisions.
Political sovereignty	Sovereignty in practice. The ability to exercise authority.
Parliamentary sovereignty	The legislature is the supreme lawmaking body in the UK.
Pooled sovereignty	Authority is shared between a number of different political entities.
Popular sovereignty	Power ultimately resides with the people.
Elective dictatorship	The process of the executive dominating the legislature.



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What is Sovereignty?

You may be familiar with the word 'sovereignty' by now. It finds itself intertwined with a lot of the core elements of British politics. It simply means the location of supreme authority in a political system. The modern concept was defined when European states agreed at the Treaty of Westphalia (1641) that the ruler of each state would be sovereign within it, and respecting the sovereignty of states became a hallmark of the international system. Kings, queens and emperors were considered the absolute sovereigns of most political systems, above the rule of law in many cases. Later, questions were raised about the extent to which these monarchs, and not their aristocratic counterparts, held political authority. Today, there are many locations and bodies where sovereignty could be argued to be located, thanks to the creation of accountable governments and a properly enforced legal system, to name a few.



The front cover of the book

Different Types of Sovereignty

We need to distinguish between the different types of sovereignty and what more easily determine who holds supreme authority in the UK political system. The types of sovereignty that we are particularly concerned with:

- **Legal sovereignty**

This refers to the legal authority within a state, i.e. who makes the laws. The supreme legal authority in the UK is Parliament; no other body can and to Parliament has authority over previous ones.

- **Political sovereignty**

This is who has the fundamental political power in a political system. The electorate, because Parliament is responsible to them and derives its power ultimately hold it to account and can elect new representatives. The electorate has authority over Parliament.

In the UK, different locations of legal and political sovereignty can occur, but not at the same time. Only one institution or body can be sovereign. However, variation in who is sovereign will result in different forms of sovereignty emerging:

- **Parliamentary sovereignty**

This is the traditional view of British politics. Along with the rule of law it is one of the 'two pillars' of the UK constitution. Parliamentary sovereignty basically means that the legislature is the supreme political authority. It proposes that Parliament may legislate over any matter of its choosing and that legislation cannot be overturned by a higher authority.

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- Judicial sovereignty**
Judicial sovereignty is the idea that the courts are the supreme legal authority in a political system. This may be due to the fact that they have the power to judge all institutions and individuals within an institution equally, so they therefore have the rule of law in their hands. Their typical lack of accountability to the public only enhances this view. In the UK, this power would be held by the Supreme Court.
- Pooled sovereignty**
This term refers to the sharing of authority with other political bodies. While the UK once shared powers with the EU in areas like trade and regulation, Brexit ended this formal arrangement. Although EU law no longer applies, ongoing cooperation with EU institutions continues in various policy areas.
- Popular sovereignty**
Popular sovereignty is a more recent notion and refers to a system where political supremacy. This could be due to two reasons: it could be an idea where the people can ultimately remove institutions above them if they are displeased, or it could refer to direct democracy, where the people actively make the decisions, for example. This may also be referred to as direct sovereignty.
- National sovereignty**
Supporters of national sovereignty argue that the supreme political authority lies with the nation state, and that the nation should be responsible for its own actions. This is a directly opposing theory to pooled sovereignty.
- Devolved sovereignty**
Finally, devolved sovereignty refers to the situation in which parliamentary sovereignty has been shared with subnational institutions. Regional bodies can now be argued to be the supreme authority within the political system.

Talking Point



Find an example of a political system for each of these forms of sovereignty and explain how each differ from the UK political system?

While there are arguments to suggest that any one of these forms of sovereignty is the best, there are significant constraints on all of them too. This makes any form of sovereignty in the UK particularly difficult. In order to try to be better able to understand the UK, we should analyse changing trends in the political system and how they have

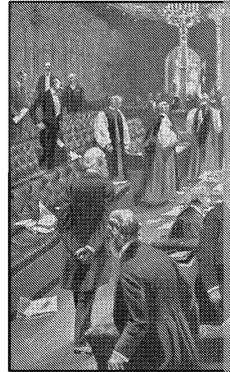
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Elective Dictatorship

At one time in British politics it was common knowledge that Parliament was the source of power and the authoritative institution. Today, this is much less clear for a number of reasons. It should be stated that Parliament is still theoretically sovereign, but that the day to day basis has shifted. Specifically, power has, in recent years, moved to the executive. This situation is emphasised by the fact that, with a large parliamentary majority, party discipline is an advantage.

The executive has had an increasing reliance on these advantages that has made it difficult for the branch now being called the legislature to be sovereign. The whip system in Parliament ensures that, with a majority, the governing party can capitalise on its numerical advantage. As well as this, it dominates the legislative timetable, so the rest of Parliament has very little say over what will be debated or discussed in either chamber. The Salisbury Convention prevent the power of the House of Lords from being able to hold the government to account. With the exception of 2019, executive defeats were becoming increasingly rare. The coalition government of David Cameron, for instance, lost only six legislative votes in the House of Commons. As not one single party won a majority, you would expect this to be a weak indication that structurally the advantage is with the executive, and parliamentary sovereignty is in decline.



Parliament

Case study – Universal Credit

Toward the end of 2017, the government was criticised by the opposition for appearing to ignore the views of MPs. Labour brought forward a motion (opposition bill) to Parliament proposing that welfare reforms should be halted while mistakes were dealt with. It unanimously passed through the Commons. However, the response of the government was, from Deputy Prime Minister Damian Green, that this vote was non-binding and the government was under no obligation to abide by this decision. Remember, this is a minority government effectively ignoring the representative MPs. Is this a case to suggest that legal sovereignty now lies with the executive?

This development has become more contentious in the most recent history. It is worth mentioning that in many cases of elective dictatorship we are as a result of a first past the post electoral system is designed to create them, that parliamentary majorities are not always achieved. This simply has not been the case. In the four general elections between 2005 and 2017, there have been hung parliaments due to two failures, in 2010 and 2017, where no single party won a majority. This has led to a system of whips and legislative agenda being set by the balance of power. As well as this, there have been changes to try to prevent elective dictatorship which have increased the powers of select committees and the Backbench Reform Committee has provided new opportunities for MPs to challenge the government. Overall, this is a reaction to the state of elective dictatorship, and the extent to which we can suggest that parliamentary sovereignty still exists.

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The Creation of a Supreme Court

The judicial branch of the UK has not always been genuinely able to challenge other branches of government. This all changed in 2005 with the Constitutional Reform Act, which changed the appointment system of judges which had previously been done by the Lord Chancellor. The Law Lords – the highest judges at the time – were criticised for being unelected and held little influence, particularly over a democratically elected Parliament. Their power was placed in the hands of the legislature.

However, in 2005 an independent judicial commission was given more authority in the appointment process. The overall impact of this has been limited (judges tend to still be white, upper class and male). The legitimacy of the judicial branch has increased. This paved the way for the Constitutional Reform Act in 2005. The court has been given new influence, including judicial review. This means they can determine that public officials have acted beyond their authority. This has increased its influence, it could be argued that sovereignty has shifted from Parliament to the court. The only institution which can make the legislature answerable in this way.

Case study – Rwanda Scheme

In 2023, the UK Supreme Court ruled that the government's plan to deport asylum seekers to Rwanda was unlawful. The case, *R (AA) v Home Secretary*, centred on whether the policy breached rights under the Human Rights Act 1998. The Court found that deporting individuals to Rwanda posed a real risk of breaching the *non-refoulement principle* – being sent to a country where they could face persecution – which violated Article 3 of the European Convention on Human Rights, prohibiting inhuman or degrading treatment. This ruling prevented the implementation of a major government policy and reignited political debate over judicial power. With all this in mind, is the judiciary sovereign in the sense that it now effectively checks the power of the executive? Or, as the sovereign branch, the legislature?

The case study brings forward possibly the most important reason why the judiciary is now more powerful than it once was. The Human Rights Act (which enshrines the European Convention on Human Rights into UK law) has increased the power of the judiciary. This is in contrast to the US where, as above, the Supreme Court can now declare acts of the government incompatible with the US Constitution. This has added a new dimension to previously only being able to declare acts of the government unconstitutional to the UK constitution. However, the power of the Supreme Court in relation to the executive is still debatable. The Supreme Court cannot, as the US Supreme Court is able to, declare acts of the executive unconstitutional and enforce their rulings. In addition, it is still within the power of the executive to change these arrangements via a simple majority in Parliament.

This is exactly what the 2022 Bill of Rights Bill aimed to do, as it sought to limit the role of the courts in interpreting human rights and to give more power to Parliament. The proposal faced strong criticism from legal experts and the public, and was ultimately dropped in 2023. In June 2025, the government announced plans to pursue targeted reforms to the European Convention on Human Rights. As withdrawal from the Convention is off the table, the move signals continued efforts to reshape the UK's human rights framework – reinforcing the idea that, despite the increased power of the judiciary, Parliament retains ultimate sovereignty.

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Devolution

There is also devolution to take into account. Devolution is the transfer of power to subnational institutions. This has taken place at an accelerated pace since 1997. In some context here to help understand why devolution can be said to be undermining national sovereignty. In 1997 Tony Blair was prime minister and had the biggest mandate since Winston Churchill's leader in the post-war period. Part of his extensive reforms to the UK consisted in the political authority of the regional powers (namely Scotland, Wales, Northern Ireland). After referendums, subnational institutions with primary legislative power were created in the United Kingdom.

Scotland is the most powerful of all the devolved political bodies. It has a wide range of powers including tax variance, health and social services, agriculture and the environment, police and elections. These powers have steadily increased in scope in the years since 1997. It is important is that these were powers of the UK Parliament that have been handed to these institutions. Inherently, therefore, there has been a loss of parliamentary sovereignty which powers are being handed to these bodies.

Case study – Scotland Act 2016

Following the result to remain part of the United Kingdom in the Scottish Independence Referendum of 2014, there has been a more concerted effort to hand powers to the Scottish Parliament to avoid a new surge for independence, particularly after the Brexit result. The Scotland Act 2016 gave Scotland new and unprecedented tax variance powers. For the first time ever, the Scottish Parliament was responsible for raising more than 50% of the money it spends. This coincided with more control over welfare and housing benefits, the right to receive more than half of the VAT raised in Scotland, and further authority over regional issues such as oil extraction and road signs. This single Act has increased the political sovereignty of the Scottish Parliament over its own territory at the expense of the power of the UK Parliament.

Case study – Wales Act 2017

The Wales Act 2017 was a consequence of the Wales Act 2014, which had given some political power to the Welsh Assembly over taxes and gave a platform for a referendum for increased devolution over income tax in Wales. The new Wales Act gave increased authority to the subnational institution with regard to its own operation. This included the ability to amend the Government of Wales Act of 2006 and control of its own electoral system. It also gave the same powers as the Scotland Act 2016 had given to the Scottish Parliament, particularly over environmental issues such as oil extraction and road sign control. It is important that these provisions were given to the Welsh Assembly, as it had long been seen as lagging behind Scotland in terms of its devolved authority. If Scotland and Wales both holding this power, can it still be said that Parliament is sovereign?

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Increased Referendums

More commonly than ever before in the United Kingdom today, key issues are put forward to the public to make decisions on. In early 2019, only three referendums were held for the whole electorate, and these were the two votes on EU membership (1975 and 2016) and the Scottish independence referendum in 2014. In addition, there have been several votes on smaller scale issues, such as the 2011 referendum on the independence of Wales.

A referendum, simply put, is a popular vote on a single issue. It is set out in a referendum question and whichever answer has the most votes wins the referendum. It should be noted that it is not the only way in which we might consider to be examples of direct democracy. We now use online petitions very commonly as they can be set up online, which has given the citizens of the UK a new way to influence government. We may talk about party membership, which has increased in popularity, for example, in the Labour Party since 2015. But referendums are the purest form of direct democracy and best help us understand the trend of popular sovereignty potentially emerging in the UK.

Case study – the Brexit Referendum 2016

On 23rd June 2016, a referendum was held in the UK asking whether or not the United Kingdom should remain a member of the European Union. There was much campaigning on both sides, and the result of the referendum ended with 'Remain' and 'Leave' within 4% of each other. The British electorate chose to leave the EU, and as Prime Minister David Cameron campaigned to remain part of the union, he ended up resigning as a result (even though he said he wouldn't!). As referendum results are not legally binding, there was no legal obligation for Parliament to enact it if a different outcome was desirable. However, it gives an indication of the high regard for the authority that politicians give to referendum results – that they respect these outcomes enough to feel that they should be countered by a new referendum. This indicates that there is no other sovereign authority to challenge the decisions made by the people.



The case study above suggests that popular sovereignty has an unwritten existence in the politics of the United Kingdom. This has certainly proven to be at least partially accurate in recent times, with Brexit and, before that, the Scottish Independence Referendum in 2014. However, it must be mentioned and it is worth remembering that referendums do not necessarily mean that Parliament must obey the result. Parliament is, indeed, sovereign according to the twin pillars of the constitution, and this is highlighted by the fact that it may ignore the result of a referendum. On the other hand, this has not been done recently, and it seems that ignoring a referendum result may have serious democratic implications and come at a great cost for the politicians who would have to carry out such an act.

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Membership of the European Union

Possibly the most complex and increasingly diverse changing trend to sovereignty in the United Kingdom is its relationship with the European Union. Upon becoming a member of the EU, the UK passed some of its political authority to the institution, with aspects of its sovereignty and the Common Agricultural Policy already in force by the time of entry. The Court of Justice effectively proved that EU laws and treaties had become sovereign over state laws. This ruling enforced changes to fishing quotas that had been imposed by the UK, which prevented many fishing companies from EU member states using UK waters. The court judged that this was in violation of EU law and would increase competition for EU member states. Many British politicians argued that this would put several fishing companies out of business. But the ruling of the EU stood. Of all the sources of the UK's law, the treaties were the only ones that could overrule Acts of Parliament, and this was one of the terms of its significance, not least in terms of contributing to the UK's decision to leave.

Case study – the freedom of movement of people

One of the four freedoms of the European Union concerns the free movement of people. This means citizens of member states in the EU can travel freely to work or study. This has significantly affected the UK, as roughly three times as many people have entered the UK from member states as citizens of the UK have left to reside in other EU states. Calls for further border controls were incompatible with fundamental EU freedoms, and this contributed to the UK's decision to leave. This suggests that membership of the EU was never fully in alignment with the principle of parliamentary sovereignty. It was one of the reasons the UK had left the EU that it could develop its own border policies.



Membership of the European Union entails pooled sovereignty, which argues against parliamentary sovereignty. Pooled sovereignty refers to a power-sharing of sovereignty between the authorities of different states. Such a situation can be easily observed in the European Council is an obvious example of this, with 27 seats, one for each member state of the EU.

The UK's decision to leave the EU has serious implications for how it will exercise its sovereignty in the UK. There is a desire to ensure that Parliament takes control of security policy, as well as lessening the influence of the European Court of Justice. The government offers a platform for Parliament to retrieve sovereignty from the EU – that it has lost it. It could be argued that the very act of leaving the EU on peaceful and negotiated terms shows that sovereignty was never lost by Parliament. Likewise, the fact that it was Parliament that made this decision perhaps shows that the UK still has the ultimate *political* sovereignty. This is a Constitution topic for more on this concept and debate!

In joining a supranational organisation such as the EU, it is inevitable that the UK's central body has no chance of making changes across the board. If the UK had sought to follow its own policy every time, the EU wouldn't be able to function. Factortame can be seen in this light – the EU ruled in the best interests of EU member states, not just UK ones, which are the priority of the UK government.

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Who is Sovereign in the UK?

Now we have discussed the changing patterns in terms of where sovereignty can begin to attempt to draw conclusions about which institution or political body to be legally and politically sovereign. One thing is certain: it is now much harder to conclude that parliamentary sovereignty is the fundamental pillar of the UK constitution. While it may still exist, there are other forms of sovereignty that can be argued to have emerged in recent times.

<i>Parliament has regained sovereignty</i>	<i>Parliament has lost sovereignty</i>
 <ul style="list-style-type: none"> The only law that can override statute law is EU law, but all the power of the European Union is 'borrowed', as Parliament can repeal the European Communities Act at any time. Parliament is increasingly able to check the authority of the executive with more powers to select committees and backbenchers. Referendums do not have obligatory outcomes, and Parliament may ignore their results. The Supreme Court cannot declare any act unconstitutional, and, therefore, its rulings are not legally binding on the legislature. 	<ul style="list-style-type: none"> The European Union has become increasingly powerful, and has the power to overrule Parliament, and thus a different form of sovereignty (and thus a different form of sovereignty) in order to reverse the decision. Elective dictatorship has reduced the legislative agenda of the executive, and Parliament has lost control of terms of agenda. Referendums are held over key issues, and the result of popular sovereignty may be overruled by the executive in a democratic crisis. The creation of the Supreme Court has established a new balance of power, and the executive cannot dominate the judiciary.
<i>The executive is now sovereign</i>	<i>The executive is now sovereign</i>
<ul style="list-style-type: none"> The executive dominates the legislature in a period of elective dictatorship. It has full legislative control. The Supreme Court cannot rule Acts unconstitutional and its judgements are not binding on the executive. The prime minister and the cabinet are so dominant with large majorities that personalised ideologies can emerge, such as Thatcherism or Blairism. The prime minister, not Parliament, represents the state nationally and is responsible for leading the nation in times of crisis. 	<ul style="list-style-type: none"> Institutional reform has reduced the power of Parliament to check the executive. The Brexit Committee, for instance, has no power if the government does not refer legislative agenda. The Supreme Court has ruled in cases where government has acted beyond the powers of the executive. The increased use of executive powers means prime ministers can act more effectively, as seen in Cameron's resignation and the Brexit vote in the European Union. Governments are now in a majority after two of the last four elections.

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<i>The Supreme Court is now sovereign</i>	<i>The Supreme Court is now sovereign</i>
<ul style="list-style-type: none"> • The top of the judicial branch is now much more neutral as it is appointed by an independent commission rather than the Lord Chancellor, meaning it can use the rule of law more efficiently. • The creation of a Supreme Court has fully separated the judiciary from Parliament, and this means it can judge ministers more effectively. • The Human Rights Act has given the Supreme Court more authority to make rulings on the work of the executive and the legislature. • The decision to leave the European Union may enhance the position of the Supreme Court with less influence from the European Court of Human Rights. 	<ul style="list-style-type: none"> • In reality, the change in the Supreme Court has impacted its elites and the Supreme Court is not as binding as they are as the other branches can ignore them. • The Supreme Court justices are unelected and the other branches of government can disadvantage them. • The key rulings of the Supreme Court are arguably the same as they would have made if there was little or no change.

<i>The people are now sovereign</i>	<i>The people are now sovereign</i>
<ul style="list-style-type: none"> • Referendums are increasingly used on key issues and are a clear form of direct democracy. • While referendums are not legally binding, to ignore them may result in a democratic crisis for the executive, the legislature or both. • Other forms of direct democracy such as e-petitions and participatory budgeting have become more commonplace in recent times. • Even though Parliament is legally sovereign, political sovereignty lies with the people as MPs are their representatives and the people have the final say over who represents them. 	<ul style="list-style-type: none"> • Referendums do not always result in the executive and the legislature choosing to ignore them. • As the Supreme Court is not legally binding, decisions of citizens are preferred over those of the executive. • The executive will often ignore the people despite the large population usually in favour of this outcome. • Pressure groups have more influence in day-to-day politics than the people.

<i>The European Union was sovereign</i>	<i>The European Union was sovereign</i>
<ul style="list-style-type: none"> • EU laws were the only source of the UK constitution that could override an Act of Parliament, suggesting that sovereignty had shifted from Parliament to the EU. • EU treaties are sure to be enforced by European courts. • The pooled sovereignty of the EU ensures it has far greater power than any one of its member states. • The EU had argued for more leverage during Brexit negotiations. 	<ul style="list-style-type: none"> • Parliament could still override European Commission decisions thus rendering them held obsolete. • Brexit has completely restored sovereignty and the restoration of parliamentary sovereignty. • Pooled sovereignty is not a new concept as membership but globalisation in the 19th century. • There are policy areas where the EU still has influence over, such as trade.

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Talking Point



Has Parliament lost its sovereignty in recent years? If so, who has the authority in the UK?