

The UK constitution

Key historical documents

While most modern democratic states have experienced some kind of constitutional ‘moment’ in their recent past — a revolution, liberation or declaration of independence from a colonial power, which has provided an opportunity to redraw or to formalise political arrangements — Britain has not. Instead, Britain’s constitutional arrangements are said to have evolved over many centuries to reflect the deepest values and ideals of its people.

Supporters of Britain’s evolutionary constitution maintain that it has been able to adapt by embracing changing political circumstances without significant social or political upheaval. Critics argue that ‘unplanned evolution’ has left Britain with outdated institutions, unprotected rights and with a constitution that is unclear and often unhelpful.

A number of important historical documents contain many of the principles that guide Britain’s evolutionary constitutional arrangements to this day.

1215 Magna Carta

The Magna Carta was drawn up over 800 years ago to check the power of the English king and to set out the basic rights of his subjects. It established the principle of the rule of law.

- Clause 39 declares that ‘no free man shall be imprisoned or deprived of his lands except by judgement of his peers or by the law of the land’ and is still quoted in the British parliament — for instance, in 2008 in opposition to government proposals to detain terror suspects for up to 42 days without charge.
- Clause 40 states ‘to no one shall we sell, delay or deny right or justice’, asserting the right to a fair trial and providing the basis for the later Habeas Corpus Act which requires legal authority for lawful arrest.
- Clause 61 contains one of the earliest demands for an assembly and an expression of the inextricable link between taxation and representation.

Significance of the Magna Carta:

1689 Bill of Rights

The Bill of Rights established the sovereignty of parliament and its supremacy over the monarch. It sets out the limits of royal power, asserting:

- the requirement for regular parliaments sustained by free elections
- the basic rights of citizens, the primacy of the rule of law and the prohibition of cruel and unusual punishment
- the supremacy of Parliament in matters of taxation and legislation

In addition, Article 9 of the Bill of Rights enshrines in law the principle of parliamentary privilege, meaning that members can speak freely within Parliament without fear of legal action or arrest.

Significance of the Bill of Rights:

1701 Act of Settlement

The Act of Settlement remains one of the main constitutional laws governing the succession to the throne of the United Kingdom. Although sharing a monarch since 1603, the Act paved the way for the parliamentary union of England and Scotland in 1707.

- It prohibits Roman Catholics from acceding to the throne—a feature which has prompted several challenges in recent years.
- In Westminster, recent private members' bills—introduced in 2004, 2009 and 2011—have all failed to repeal or amend the Act.

Significance of the Act:

1911 and 1949 Parliament Acts

The Parliament Acts asserted the supremacy of the House of Commons over the unelected House of Lords by limiting — and potentially bypassing — its legislation-blocking power of veto. The 1911 Act limited delay of money bills to 1 month and the 1949 Act made further amendments to limit the overall delaying power of the Lords from 2 years to 1 year. The amended form of the 1911 Act has been used just four times since 1949. The most recent occasion was in the passing of the Hunting Act 2004 which prohibited hunting with dogs.

Significance of the Acts:

1972 European Communities Act

A major source of Britain's constitutional arrangements lies in the form of European Union law, stemming from the European Communities Act which legislated for the UK's accession to the EU (then known as the European Economic Community) in 1972. The Act has been amended numerous times to incorporate later legislation, such as the Single European Act (1986) and the Treaty of Lisbon (2007).

Following the referendum to leave the EU, the European Communities Act was repealed as part of Britain's EU exit negotiations.

Significance of the Act and developments since:

1998 Human Rights Act

The Human Rights Act 1998 (HRA) enshrined most of the provisions of the European Convention on Human Rights (ECHR) in UK law. ECHR guarantees such things as the right to life, the right to liberty and personal security, the right to a fair trial, respect for private and family life and freedom of peaceful assembly and association. The HRA requires the British government to ensure that legislation is compatible with the Convention. UK courts hear cases under the Convention but they cannot automatically overturn legislation that they deem to be incompatible with its provisions: it is up to parliament to decide whether or not to amend or repeal the offending statute.

Significance of the Act:

Devolution Acts

In 1999 power was devolved to new institutions in Scotland, Wales and Northern Ireland, following 'Yes' votes in referendums in each nation. The new system was one of asymmetric devolution, rather than following a standardised blueprint. The devolved bodies were granted different powers and distinctive features. Devolution was to be a process rather than an event, with further powers devolved since 1999.

The Scottish Parliament has primary legislative and tax-varying powers. The Parliament, together with the Scottish Executive, has sole responsibility for policy on issues such as education, health and local government. Granting such

wide-ranging powers to the Scottish government, while still allowing Scottish MPs at Westminster to vote on laws that no longer directly affected their constituents, brought the so-called West Lothian Question into sharp focus. The Scotland Act (2012) gave the Scottish government the power to vary income tax up or down by 10% as well as devolving further powers to them — for example, the regulation of controlled drugs. The Act also allowed the Scottish government to borrow up to £2.2 bn each year.

The National Assembly for Wales, commonly referred to as the Welsh Assembly, was initially weaker than the Scottish Parliament. It had secondary legislative and executive powers, but no primary legislative authority. This meant that it could only ‘fill in the details’ of, and implement, legislation passed by the Westminster Parliament in policy areas such as education and health. The Wales Act (2014) was the UK government’s response to the Silk Commission’s recommendations on further devolution to Wales. Although it was fairly modest in scope, the Act did transfer control of some smaller taxes to devolved institutions in Wales. The Act also changed the name of the Welsh executive from the Welsh Assembly government to the Welsh government.

The Northern Ireland Assembly was granted legislative powers over a similar range of policy areas to the Scottish Parliament, but was not given tax-raising powers. Special procedures were established in the Assembly to ensure cross-community support. These included the establishment of a power-sharing executive.

Significance of the Acts: