

Constitutional conventions

Nick Gallop reviews the changing nature of constitutional conventions in the UK

EXAM LINKS

- **Edexcel** Component 2 Topic 1: the constitution.
- **AQA** Paper 1 Topic 3.1.1.1: the nature and sources of the British Constitution.

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The UK constitution is often said to be ‘unwritten’. ‘Uncodified’ is a more appropriate term, since the immense body of constitutional sources – including Acts of Parliament (statute law), laws made through the UK courts (common law), authoritative works such as those by the likes of Erskine May and Walter Bagehot on parliamentary practice, and treaties – are indeed written, but not formalised into a single document like that of the codified constitution of the USA. Yet there are some important parts of the UK’s constitutional arrangements that remain largely ‘unwritten’.

Constitutional conventions most often relate to conduct or customs that promote restrained political behaviour or preserve the traditions of the British state. While such conventions are legally unenforceable, breaching them can result in *political* sanctions. For many, the continued presence of conventions ensures that the fundamental ‘values’ of the UK’s constitution are retained. However, critics argue that conventions can be vague and unhelpful, especially in times of uncertainty or crisis. The flexibility of the UK’s uncodified constitution means that conventions are subject to challenge and change at any one time.

Box 1 Conventions renewed

The authority and impartiality of the speaker of the House of Commons

According to the Constitution Unit’s paper on parliamentary conventions, the impartial role of the speaker was challenged by the behaviour of Speaker John Bercow during the extensive parliamentary debates on Brexit, especially in 2019. Sir Bernard Jenkin, Chair of the Public Administration and Constitutional Affairs Committee, noted to the then speaker in a point of order that ‘it is remarkable how often you please one lot and not the other lot’.

Speaker Bercow retired in October 2019 and the candidates who stood to replace him emphasised ‘the importance, and acceptance, of the conventions under which a speaker serves – accountability, impartiality and fairness’ (according to the Constitution Unit). For former deputy speaker Dame Eleanor Laing, ‘it is the role of the speaker not to create division or rancour in this House, but to seek consensus and to remind us of the things that unite all of us: our rules, our procedures, and our precious conventions.’ Sir Lindsay Hoyle sought to reassert the convention, declaring on taking the Speaker’s Chair in 2019: ‘I will be neutral. I will be transparent’.



Lindsay Hoyle became speaker in 2019

Box 2 Conventions in flux

The appointment of the prime minister by the monarch

While the last time a British monarch used their prerogative powers to appoint a favoured prime minister was nearly two centuries ago in 1834, when William IV dismissed the Whig administration and appointed Lord Melbourne, the king or queen is still constitutionally responsible for appointing UK prime ministers. Queen Elizabeth II appointed a total of 15 prime ministers during her reign, including the shortest-serving prime minister, Liz Truss. Truss tendered her resignation to the Queen’s successor, King Charles, just 44 days later. The king in turn appointed Rishi Sunak in October 2022.

The convention of royal appointment is evolving, seen as being progressively more dependent on clear advice offered by the prime minister as to who should be appointed next. Not only did the (now annulled) Fixed-term Parliaments Act pose a serious problem, potentially allowing for the office of prime minister to be vacant for lengthy periods of time, but the growing convention for prime ministers to prolong their departures to allow a clear successor to emerge has become increasingly expected.



Box 3 Conventions under pressure

Relations between the UK and devolved governments

Parliamentary sovereignty is the principal feature upon which all of the UK’s constitutional arrangements are based. However, where the devolved institutions of Scotland, Wales and Northern Ireland are concerned, Westminster’s sovereignty is offset by a convention – the Sewel Convention – that ensures the UK government will not interfere in areas of devolved competence.

In April 2023, the Scottish government announced that it was seeking a judicial review of the Secretary of State for Scotland’s decision to make an Order under Section 35 of the Scotland Act to prevent the Gender Recognition Reform (Scotland) Bill from proceeding to royal assent. The Sewel Convention’s ‘last resort’ of a UK government veto to block legislation it disagreed with appeared to members of the Scottish government as a deeply concerning development, since they argued that the UK government had made ‘no representations throughout the 9-month passage of the bill’.



The Scottish Parliament building

ACTIVITIES

- 1 Research other constitutional conventions in the news, such as those governing the relationship between the House of Lords and House of Commons.
- 2 Outline the convention of collective ministerial responsibility and explain how has this been challenged in recent years.
- 3 Outline and explain the constitutional conventions that exist between ministers and judges.
- 4 Do the advantages of constitutional conventions outweigh the disadvantages?

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