

The UK Supreme Court

Lucy Ryall evaluates the latest role played by the UK Supreme Court in the protection of rights, devolution, voter ID and gender identity

EXAM LINKS

- **Edexcel** UK government 4.1 and 4.4: Relations between the branches.
- **AQA** Topic 3.1: UK government (judiciary and devolution).

Since its creation in 2009, following the Constitutional Reform Act (2005), the Supreme Court has become increasingly involved in UK politics. This has grown more apparent in the last few years, with some significant rulings against the executive. In the wake of this, the media have picked up more stories on the Supreme Court, including the *Daily Mail* calling the Supreme Court judges 'Enemies of the People' in 2016, not long before their judgement in *R (Miller) v Secretary of State for Exiting the European Union*. Conservative MP Jacob Rees-Mogg described the *Miller v PM* decision in 2019 as a 'constitutional coup'. The Conservative's 2019 election manifesto promised to look at the judicial system in the Supreme Court to ensure 'that it is not abused to conduct politics'.

Here are some cases that have had an impact in recent years.

PoliticsReviewExtras

Download this poster at
www.hoddereducation.co.uk/politicsreviewextras

Voter ID

Despite the narrative that the Supreme Court has often ruled against the government, it does also rule in favour of them. The Queen's Speech in 2021 confirmed the government's desire to introduce voter identification for elections. To make this change, the minister for the cabinet office began pilot schemes to see how the new system would work. As a result of legal challenges against the pilot schemes, the Supreme Court was required to pass judgement on whether the pilot schemes for voter ID were within the government's powers, or if it was *ultra vires*. In *R (on the application of Coughlan) v Minister for the Cabinet Office* (2022), the Supreme Court confirmed that the cabinet office *did* have the authority.

Gender identity

In November 2021 in the case of *R (Christie Elan-Cane) v Secretary of State for the Home Department*, the Supreme Court again waded in on the recognition of rights. This case followed increased calls for a third gender option on a passport to include 'X', alongside 'M' and 'F'. The category of 'X' would have allowed for those who are gender fluid, or do not identify as a specific gender, to have an option. 'X' is a recognised 'third gender' in several countries, including Australia, Canada and Uruguay. In this case, however, the Supreme Court ruled that the government did not have an obligation to provide a third gender option on passports.

Protection of rights

In 2021 the Supreme Court handed down a judgement that argued that a Scottish law had been unlawfully made. The law, named the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill, was designed to improve the rights of Scottish children by allowing them to use the Scottish court system to challenge any breaches to their rights. They could use the United Nations Convention on the Rights of the Child (UNCRC) to do this.

While most countries have signed the UNCRC, enforcing it is down to individual countries, which Scotland tried to do. However, it was decided by the Supreme Court that the power to do this lay outside the powers of the Scottish Parliament, making this a case of devolution as well as the protection of rights.

Devolution

Only a year later, the Supreme Court involved itself in Scottish affairs again, when it blocked Scotland's attempt to bring in a second independence referendum. The referendum has been a point of contention for several years now. Driven largely by the SNP and motivated somewhat by the UK leaving the EU (Scotland voted 62% to remain), calls for a second independence referendum have increased in recent years. However, the Supreme Court ruled that it was beyond the Scottish Parliament's powers, as per the devolution agreement from 1998.

ACTIVITIES

Discuss

1 Why has the Supreme Court sometimes been viewed negatively by the Conservative Party?

Research

2 Read about *Miller v PM* (2019) and *Miller v Secretary of State for Exiting the European Union* (2017). How far do these cases show the Supreme Court's power?

Lucy Ryall is head of history and politics at Poole High School.

The justices of the UK Supreme Court, October 2023

