

# Pre-chewed Politics

## Have the constitutional reforms made since 1997 not gone far enough?

**Devolution** - Following successful referendums, the Scotland Act 1998 (created the Scottish Parliament), Government of Wales Act 1998 (created the Welsh Assembly), Good Friday Agreement 1998 (created the Northern Ireland Assembly) have significantly reformed the UK constitution, greatly decentralising power from Parliament. The initially weak powers of the Welsh Assembly were strengthened following a successful referendum in 2011, which approved the devolution of primary legislative powers. The Wales Act (2014) then devolved stamp duty, business rates, and landfill tax to Wales, and allowed for a referendum to be held on whether to devolve income tax powers. However, in his 2015 Spending Review, the Chancellor George Osborne agreed to devolve these powers without a referendum. Following the 2014 Scottish independence referendum, further powers have also been devolved to the Scottish Parliament. The Scotland Act (2016) devolves powers over income tax, air passenger duty, abortion law, and welfare benefits. In addition, the Act also recognises the Scottish Government and Parliament as permanent features of the UK constitution, meaning that a referendum would be required to abolish them. Supporters argue that these reforms have improved representation, as the members of the devolved assemblies know the particular needs of their constituents. In 2015, Parliament approved the new 'English Votes for English Laws' (EVEL) system, which allows English, or English and Welsh, MPs the opportunity to veto all, or particular clauses, of bills that only effect England, or England and Wales.

**Further reforms?** Some argue that the West-Lothian Question (whether non-English MPs should be able to vote on bills that only effect England, when English MPs cannot vote on issues that have been devolved) has yet to be adequately answered. EVEL's veto does not stop non-English MPs from defeating bills that only affect England because all legislation must still be approved by a majority of all MPs. In March 2016, SNP MPs helped to defeat plans to relax Sunday trading hours in England. Had Scotland's 59 MPs not voted, the measure would have passed. Some argue that only an English Parliament would fully answer the West-Lothian question. Supporters of further devolution also argue that current reforms have not gone far enough, and that more powers should be devolved.

**The Human Rights Act (1998)** - The Human Rights Act 1998 (HRA) made the rights listed in the European Convention on Human Rights part of UK statute law. Prior to this, citizens who felt that their human rights had been violated had to take their case to the European Court of Human Rights. The HRA has had a significant impact on the UK constitution. It has provided citizens with a clear list of rights that they can defend in UK courts. The Supreme Court can interpret existing statutes so that they comply with the HRA and issue declarations of incompatibility where laws do not comply. The Act also influences Parliament by requiring bills to be issued with statements explaining how they comply with human rights.

**Further reforms?** Many Conservative MPs would like to withdraw from the European Convention on Human Rights and replace the HRA with a UK Bill of Rights. They would like to rewrite, and more narrowly define some of the rights, particularly the 'right to family life', which has been used to stop the extradition of criminals. Conservatives also argue that the European Court of Human Rights undermines Parliamentary sovereignty, as, under Article 46 of the ECHR, the UK government must 'abide' by the Court's rulings. They are particularly frustrated by *Hirst v the United Kingdom (2005)*, where the ECtHR ruled that the blanket ban on prisoner votes undermines human rights. Critics are also frustrated that the UK Supreme Court has to 'take into account' the 'judgment, decision, declaration or advisory opinion' of the ECtHR.

**Reform of the Judiciary** - The Constitutional Reform Act 2005 established the UK Supreme Court and reformed the appointments process for judges by introducing the Judicial Appointments Commission (JAC). These changes have significantly widened the separation of powers in the UK, strengthening the independence of the judiciary. Under the old system, the prime minister, on the recommendation of the Lord Chancellor, personally appointed Law Lords and Appeal Court judges. A dedicated Supreme Court selection commission now makes the appointments. It consists of one member of the JAC, the President and Deputy President of the Supreme Court, and further individuals from the various appointment bodies of Scotland, Northern Ireland and England and Wales. The Lord Chancellor is excluded from the Commission.

**Further reforms?** The Human Rights Act (1998) allows the Supreme Court to declare laws to be 'incompatible' with human rights, but the Court remains much weaker than its equivalent in other nations. With a codified constitution, and

a set of fundamental laws and rights, the Supreme Court would be able to strike down laws that are unconstitutional, creating a stronger separation of powers. Although the appointments process has been reformed, there is still a lack of diversity on the Supreme Court, which still only has a single female (white) justice.

**European Union** - The 2009 Lisbon Treaty significantly increased the integration of EU members by increasing the use of qualified majority voting in the Council of Europe (often called the Council of Ministers). Previously, many decisions required unanimous approval, giving the UK a veto. However, under qualified majority voting each nation has a number of votes depending on population size, and a majority vote is needed for proposals to succeed. In January 2016, ahead of the June referendum, David Cameron announced a newly negotiated deal on the UK's EU membership, including a new 'emergency break' on migrants' access to in-work benefits for up to four years, a 'red card' system that requires the council presidency to reconsider bills that 55% of national parliaments vote against within 12 weeks of their first proposal, and assurance that the UK would not be forced to adopt the Euro.

**Further reforms?** Critics argue that there is a democratic deficit within the EU, whereby the UK public has only limited power to hold officials to account for their actions. They feel that Cameron's EU deal does not go far enough to restore Parliamentary sovereignty. They point out that the European Commission decides when the 'emergency brake' can be put in place, and argue that the 'red card' falls far short of the national veto that most Eurosceptics wanted. As part of the General Election campaign, the Conservatives promised to hold an in/out referendum. This EU referendum is now scheduled for June 23, 2016 and both sides of the debate are campaigning heavily to influence public opinion.

**Codification of the UK constitution** - Although it has not been formally codified, the UK constitution has undergone reforms that have brought it closer to codification. The Human Rights Act (1998) has helped to give citizens a clear list of rights, and has also empowered the courts to issue a declaration of incompatibility to laws that do not comply. Similarly, while lacking legal status, the Cabinet Manual, created for the civil service in 2011, lists many of the unwritten conventions and rules of government.

**Further reforms?** For some, the most important constitutional reform would be the codification of our uncoded constitution. Not only would a codified constitution be much clearer and easier to understand, but it would also challenge Parliamentary sovereignty, ending what some describe as the UK's 'elective dictatorship'. Governments with majorities in the House of Commons are currently extremely powerful, but the introduction of a codified constitution, with entrenched, fundamental, 'higher' laws, would be an important check on this power. A codified constitution would likely establish much clearer checks and balances between the three branches of government, and would empower the judiciary, making it more like the US Supreme Court, which can strike down laws it finds to be unconstitutional.

**House of Commons Reform** - In 2009, the House of Commons Reform Committee (the Wright Committee) recommended a number of procedural changes that have now been implemented. Select Committee chairs are elected by MPs across the Commons and are paid an additional salary, while other committee members are chosen by MPs within their party. The Backbench Business Committee allows backbench MPs to raise issues for debate, such as an e-petition. The Committee is able to schedule business on 35 days, at least 27 of which take place in the House of Commons Chamber and the rest in Westminster Hall. The Liaison Committee, which is made up of the Chairs of the other Select Committees in the House of Commons, now questions the prime minister on government policy twice a year. The Fixed Term Parliaments Act (2011) requires elections every 5 years, rather than when the prime minister chooses. A dedicated Petitions Committee was also established in 2015, with responsibility for managing and timetabling e-petitions. The Committee is made up of 11 backbench cross-party MPs, and is chaired by Helen Jones of the Labour Party who was elected in June. It meets weekly when the Commons is in session.

**Further reforms?** While select committees have been strengthened, they still lack any legal power to compel witnesses to attend and answer questions. The Backbench Business Committee could be given more time, or more regular slots, in the timetable and Private-Member Bills could be given more time for debate. The Wright Committee also recommended the creation of a House Business Committee, made up of members of the Backbench Business Committee and frontbench ministers, to set the House's weekly agenda, which would further strengthen Parliament.

**House of Lords Reform** - The House of Lords Act (1999) removed all but 92 hereditary peers from the House of Lords, giving it greater legitimacy even without the introduction of elections. It has also increased the balance in numbers between the parties. The increase in Life Peers has also brought greater expertise and independence to the Lords. For supporters, these reforms have helped the Lords to be more assertive, making more amendments and opposing more bills. Under the House of Lords Reform Act (2014), peers can now choose to resign from their role.

**Further reforms?** Labour's 1999 reforms were always intended to be the first of two stages of changes, yet the second stage never arrived. Backbench Conservatives defeated the House of Lords Reform Bill (2012), favoured by the Liberal Democrats. Therefore, the issue of the 92 hereditary peers has not been addressed, nor the issue of introducing elections, leaving the Lords open to charges of being undemocratic, and unfitting of the modern age. The 2015 Strathclyde Review investigated whether the House of Lords' power to veto statutory instruments should be restricted, after the Lords blocked the Government's reforms to working tax credits. The review proposed a number of reforms that could significantly alter the power of the chamber. The proposals range from fully removing all power to veto SIs, through to its recommended approach of giving the House of Lords the limited power "to invite the Commons to think again when a disagreement exists" over secondary legislation, with the Commons having the final say.

**Electoral reform** - The Political Parties, Elections and Referendums Act (2000) limited donations to political parties and capped the amount parties can spend on their campaign expenditure. It also created the Electoral Commission, which oversees elections, and advises on matters like the wording of referendum questions. There has been an increase in the use of proportional electoral systems in devolved and European elections. Since the European Parliamentary Elections Act (1998), England, Scotland and Wales have used the Closed Party List System for EU elections, while Northern Ireland uses the Single Transferable Vote (STV). The Supplementary Vote is used to elect the Mayor of London and other elected mayors in England and Wales. The STV is used for electing the Northern Ireland Assembly. The Additional Member System is used to elect the Scottish Parliament, the National Assembly for Wales and the London Assembly. The Transparency of Lobbying, Non-party Campaigning and Trade Union Administration Act (2014), soon called the 'gagging bill' by its critics, also reduced the amount that pressure groups can spend influencing elections by around 60%. It limited groups to spending £9,750 in each constituency, and it broadened the activities that are regulated by these spending limits, including market research, public meetings, press events and transport costs.

**Further reforms?** While there has been considerable electoral reform across the UK, many activists are still keen to replace FPTP with a more proportional system at general elections. The Coalition Government's plans to reform constituency boundaries, creating 600 more equally sized constituencies, were defeated in 2013. The Government has announced that a new review by the Boundary Commission will be completed by 2018, to be in effect by the 2020 General Election.

**Freedom of Information Act (2000)** - The Freedom of Information Act (2000) gives a general right of access to recorded information held by more than 100,000 public bodies in England, Wales and Northern Ireland. In 2008, journalists used the law to ask the High Court to require the publication of the expenses claimed by MPs, leading to the infamous expenses scandal, which exposed the illegal and misleading claims made by some MPs. To protect particularly sensitive information, the FOI Act lists 24 exemptions to "the general right of access". Nine of these exemptions are either entirely, or partially, absolute. For example, all personal information is completely exempt. However, the other 15 areas are qualified, and public bodies have to consider whether the public interest in releasing the material outweighs the public interest in withholding it. If requests are refused, the requestor can appeal to the Information Commissioner (IC). If the IC upholds the decision of the public body, the requester can then appeal to an Information Rights Tribunal, and then an Upper Tribunal.

**Further reforms?** The Government established an Independent Commission on Freedom of Information in 2015, which found that the law is working as intended, and that "the right of access should be increased," for example, by requiring public bodies to publish more information more regularly. Some campaigners are disappointed by the fact that the law gives cabinet ministers the right to veto the release of certain information. So far this veto has been used seven times. The first and fifth uses prevented the release of cabinet meeting minutes relating to the invasion of Iraq, the second and third were for cabinet meetings on devolution, the fourth was for a risk register compiled by civil servants on proposed NHS reforms, the sixth was to prevent the publication of letters written by Prince Charles to

government departments, and the seventh was for an internal review of High Speed Rail Two (HS2). However, in 2015 the Supreme Court ordered the release of Prince Charles' letters, arguing that cabinet ministers could not veto the decision of an Upper Tribunal, headed by a High Court Judge, and that the veto should be used only to overrule the IC's decisions.

### **Direct Democracy – Referendums and Recall Elections**

A convention is developing that significant constitutional reforms require public approval in a referendum. This has gone some way to alleviating concerns that our constitution is too flexible and gives a majority government too much power to make significant constitutional changes. Issues such as the creation of the Scottish Parliament and Welsh Assembly, the introduction of an elected Mayor of London, the Good Friday Agreement, the introduction of the Alternative Vote, and most recently, the questions of Scottish independence and the UK's EU membership, have all been put to the public in referendums. The Recall of MPs Act (2015) also introduced recall elections. An MP can be recalled if they are convicted of a criminal offence and given a sentence of 12 months or less, or if the Commons Standards Committee finds an MP guilty of serious misconduct and suspends them for at least 21 sitting days. A recall petition would then need to be signed by 10% of the MP's constituents, and then a vote would be held.

**Further reforms?** While the use of referendums has increased, some argue that they could still be used more regularly, or that the public should be able to initiate their own votes on bills by collecting enough signatures, as is common in many US states. A referendum was promised on the 2009 Lisbon Treaty, but it never materialised. Instead it has taken pressure groups decades of campaigning to secure another vote on the European Union. Many campaigners also want much stronger recall powers, arguing that constituents should be able to remove their MP if they feel that they are not representing their views and are failing in their job, not just if they have been found guilty of serious misconduct. A rival recall bill was submitted by the backbench Conservative MP Zac Goldsmith, which would have allowed a recall if 20% of constituents signed a recall petition, for whatever reason.

### **Decentralisation and Elected mayors**

The Greater London Authority Act (1999), created a directly elected mayor of London, while the Local Government Act (2000) introduced the option for local authorities in England and Wales to have directly elected mayors. By 2012, there were 17 directly elected mayors in England. Referendums were held on 3 May 2012 to decide if 11 large English cities would introduce directly elected mayors, however, only Bristol voted Yes, with Doncaster (which already uses this system) voting to retain their existing elected mayor. In 2012, the first Police & Crime Commissioner (PCC) elections were held, in an attempt to introduce electoral accountability to those responsible for managing the police. Since then, a new devolution model has been developed under the Cities and Local Government Devolution Act (2016). Under this new law, additional powers over budgets, finances, transport, health and social care will be devolved to regional combined authorities, such as the Greater Manchester Authority, the Liverpool City Region and West Yorkshire Combined Authority. Some of these combined authorities will be led by new directly elected mayors, who will replace Police and Crime Commissioners for these areas. Each devolution deal is drawn up on a case-by-case basis between the authority and the Government.

### **Further reforms?**

Earlier attempts to decentralise power were met with a very lukewarm reaction. In 2004, 77.9% voted against plans to create an elected assembly in the North East region in a referendum. Turnout for the Police and Crime Commissioner elections was very low, ranging from 10-20%, while many cities have voted against plans to have directly elected mayors. However, eight devolution deals have already been drawn up with combined authorities under the new Cities and Local Government Devolution Act (2016), and many more applications have been made.