The Constitution in Review

Fourth Report from the United Kingdom Constitution Monitoring Group

For period 1 August - 31 December 2022

THE CONSTITUTION SOCIETY

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Foreword

The review period saw transitions at the highest level in the UK constitution. One head of state succeeded another; and – either side of this event – the office of Prime Minister twice changed hands. In comparing the first process with the latter two, it is possible to make some observations about the nature and operation of the UK constitution. The process by which Charles III instantaneously became (on 8 September 2022) and was subsequently confirmed as monarch functioned smoothly. It involved adherence to clearly defined and established rules and procedures, with the key players involved performing the roles expected of them. Other forms of government are possible, and arrangements can change, with new systems potentially working as well as or better than old. However, there is value to having clarity around what is supposed to happen, with participants in the process ensuring that it does. Politicians of different parties, for instance, were able fully to cooperate in fulfilling their constitutional functions. The new monarch, in his early statements, stressed his commitment to maintenance of constitutional principles. One significant aspect of the processes immediately following the accession was the recognition he made of the UK as a state with more than one component in it, with a distinct legal status for Scotland.[1]

A comparison between this episode and the circumstances surrounding the selection of Liz Truss (6 September 2022) and then her replacement, Rishi Sunak (25 October 2022), as Prime Minister, produces revealing contrasts. The manner by which Truss arrived in the post – a vote of Conservative Party members (following earlier rounds of voting by Conservative MPs) – was a source of constitutional uncertainty. The established principle is that premiers rest on the confidence of the House of Commons; yet Truss was not the first choice of her own parliamentary cohort at the last round of MP voting. The short Truss premiership was marked by various transgressions of established practice. In contrast with her predecessors and her successor, she failed to make early contact with devolved first ministers, apparently a calculated – and extraordinary – discourtesy. Other irregular activities included the removal of the Permanent Secretary to the Treasury, Sir Tom Scholar; and the steps taken to deny Parliament full oversight of a significant fiscal package. While we do not take a position on the merits of the fiscal package in itself, we note that it has been widely judged to have produced negative outcomes. Even Truss soon appeared to distance herself from it. The market response to the policy and the loss of confidence in her administration's capacity to govern and to handle its relations with Parliament properly and effectively led to her downfall; perhaps evidence that disregard for norms can impact negatively upon the political prospects of those who fail to adhere to them.

After replacing Truss, Rishi Sunak came under fire when controversies arose around his government, centring on ministerial conduct and his upholding of standards. It was disturbing that Suella Braverman could be quickly reappointed to one of the most senior posts in government having been dismissed for a serious breach of the Ministerial Code. Further comment on the controversies surrounding Richard Sharp (linked to the Johnson administration) and Nadhim Zahawi must wait for the next report, but a comparison between the monarchical transition and the turbulence surrounding the office

1 See: 'King Charles vows to protect the security of the Church of Scotland', *The Church of Scotland*, 10 September 2022, available at: < https://www.churchofscotland.org.uk/news-and-events/news/2022/articles/king-charles-vows-to-protect-the-security-of-the-church-of-scotland >, last accessed 6 February 2023.

of Prime Minister suggests that it remains possible for key constitutional functions to take place satisfactorily. Contemporary politicians showed they were able to contribute to this effective operation. But at the same time, tensions and weaknesses exist within our system of government at both the UK and devolved levels. Ministers have demonstrated a propensity to exploit and aggravate these problems, to the detriment of the public – and even their own – interest.

The members of the United Kingdom Constitutional Monitoring Group, in individual capacity, March 2023.

United Kingdom Constitution Monitoring Group

The United Kingdom Constitution Monitoring Group (UKCMG) comprises experts and practitioners covering a range of areas of the UK constitution. Its principal purpose is to assess developments – actual and anticipated – in the UK constitution. To form a basis for its work, in the absence of a codified constitution for the UK, the UKCMG has identified a set of 20 general and desirable guiding principles that express what we believe to be the core values underpinning the proper operation of the UK system of governance. Edmund Burke once said that 'to make us love our country, our country ought to be lovely'. It is with such an observation in mind that we hope to encourage adherence to our principles.

In this report we consider events and tendencies across a series of constitutional categories over a five-month period from 1 August to 31 December 2022. We assess them against our 20 principles, drawing attention to any areas of concern. At the beginning of each section, we identify key aspects of the principles engaged in the material that follows. The appendices contain more detailed accounts of the most important developments. This publication is the fourth in an ongoing, twice-annual, series. The principles we use are reproduced in appendix a. The UKCMG is impartial and has no party affiliation.

Members of the group participate in a personal capacity, and not as representatives of any other organisations or institutions with which they are associated.

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Integrity in public life

In all our previous reports, we have noted widespread concerns about integrity in public life, centring on the UK executive. Prominent within them was the former Prime Minister, Boris Johnson, who was perceived as suffering from shortcomings in his own right, and as failing properly to apply rules to others. However, the departure of Johnson in itself should not be assumed to have brought these problems to an end. The successor administrations of Liz Truss and Rishi Sunak have included within them numerous ministers and officials who were in different ways involved in the problems that manifested themselves under Johnson. Sunak appears to some extent to have recognised and acknowledged there are shortcomings in this area. But serious efforts to address underlying flaws in the system for the maintenance of public integrity appear so far to be lacking. We noted in a previous report that the dissemination of misleading information by the UK executive was a recurring problem. There remain grounds for concern about such practices. We re-iterate here the support expressed in our previous reports for the full implementation of the final recommendations of CSPL arising from its Standards Matter inquiry.

Constitutional change process

There is some evidence that important changes in the nature of the UK constitution could be underway. For instance, the principle of collective Cabinet responsibility seems to have been under sustained pressure. Existing understandings have been tested in another way. In recent decades, the two main parties have tended to give their members beyond Parliament an enhanced role in choosing their leader. A potential implication of this tendency is that the role of the parliamentary cohort of a party is diminished, and possibly that the membership in the country may impose a leader upon its parliamentary members that those members would not have chosen of their own accord. If a leadership election takes place while the party concerned holds office, it is established that it in effect entails the selection of the holder of the office of the premiership. Yet the constitutional position is that governments and/or prime ministers require the confidence of the House of Commons. The appearance of extra-parliamentary party members as potentially having the final say in who becomes Prime Minister carries with it the possibility of creating uncertainty about this longer-existing and constitutionally crucial principle.
Our reports have identified numerous examples of a less than satisfactory approach to constitutional change from the UK government. The legislative proposals for a Bill of Rights confirm a further problem: that the introduction or otherwise of substantial and questionable alterations to the UK constitution can turn on political fortunes, involving the rise and fall of prime ministers and the people they appoint to particular Cabinet posts. Such considerations can be expected to play a part in constitutional processes. But that they should be so decisive, and not mediated by other considerations and principles, is less than ideal.

During our previous report period, the UK government introduced the Northern Ireland Protocol Bill, intended to provide it with the power to override aspects of the Protocol on Ireland/Northern Ireland in the UK/EU Withdrawal Agreement. It was constitutionally challenging from a number of perspectives, including doubts about its compliance with international law and its possible negative consequences for arrangements for the governance of Northern Ireland. The Bill continued its passage through Parliament during the present report period. A further bill with considerable constitutional implications, the *Retained EU Law (Revocation and Reform) Bill*, was introduced to Parliament during the current report period. It

has already prompted considerable objections from a range of sources involving, for instance, the role of Parliament, the discretionary powers of ministers, the rule of law, and the legal system as a whole.

Elections

The leadership contests which resulted in the prime ministerships of Truss and then Sunak raise questions about the role of elections in the UK constitution. The victor in a contest of the sort that Truss won over Sunak might be perceived as having thereby secured a mandate of some kind, and as being required to act upon pledges made during the contest. But what is less clear is how they fit with other sources of legitimacy and obligation, including Parliament, and the electorate. The twin in prime-ministerial changeovers of 2022 raise further questions involving the idea of mandates. It is reasonable to ask whether changes of Prime Minister – particularly when accompanied by abrupt revisions of governing style and policy approach – can be said in some way to diminish an initial electoral mandate. If they do, then repeated such transitions, as occurred during the current report period, might have a cumulative effect.

In previous reports, we discussed the UK government policy of introducing a requirement for individuals to produce photo identification at polling stations in order to be able to vote in elections. We maintain our existing view that it will be regrettable if a law presented as a means of safeguarding the integrity of elections proves to be disproportionate in its negative impact on participation in democratic processes. A major test for this new requirement will come during our next report period with the local elections taking place in May 2023.

Another controversial aspect of the Elections Act 2022 was that it provided for the secretary of state to issue a 'Strategy and Policy Statement' for the Electoral Commission. The government issued a draft statement in August 2022, on which the House of Commons Levelling Up, Housing and Communities Committee published a report in December. The Committee stated that the evidence it received suggested no such statement was needed; that the statement failed to make clear the independence of the Commission, including from the government; and that it might create practical difficulties for the Commission. The House of Commons Speaker's Committee on the Electoral Commission reenforced these views later in the same month. These findings confirm reservations we previously raised about the possible negative implications of the Elections Act for the Commission.

Legislatures

The contest to elect Truss as Prime Minister presented constitutional challenges. Truss was not placed first by MPs, with Sunak securing the most votes in each of the five rounds, before losing to Truss in the vote of members beyond Parliament. This position called into question conventional conceptions of the UK government being formed out of Parliament, and the need (on the part of the government and/or the Prime Minister) for possession of the confidence of the Commons. In this sense, it undermined the status of Parliament as, by tradition, the central institution of the UK constitution, and created uncertainty about the functioning of the system. There were democratic implications. In a sense, rather than being vested in a body elected in a contest in which all eligible UK voters might take part (amounting to 47,074,800 people in December 2019), the final decision over who should become Prime Minister was transferred to a self-selecting group of Conservative Party members, numbering 173,437 in total.

During the present report period, credible complaints persisted about the misleading of the UK Parliament by ministers, whether intentional or otherwise. Ministers appeared to make questionable assertions to Parliament over migration, asylum, and homebuilding. A similar laxity was revealed in Scottish government statistics surrounding renewable energy production in this report period. There, senior figures from both the Scottish National Party and the Scottish Greens were accused of misleading the Scottish Parliament over the percentage of energy produced in Scotland from renewable sources. It would be regrettable and detrimental to the functioning of the constitution were such practices to become normalised.

We have previously observed signs of a tendency for the UK executive to create and deploy extensive delegated law-making powers. The advent of Brexit and the pandemic provided impetus for this tendency. It appears, we have noted, possibly to be part of a more general pattern of the UK government expanding its discretionary power and reducing the extent to which it can be checked in its actions by institutions such as the UK Parliament, the courts, and regulatory bodies. The *Retained EU Law (Revocation and Reform) Bill* introduced in the present report period is a further extension of this tendency. The controversial sunset provision included in the bill points to a scenario in which immense legal changes can take place – either because a wide range of laws are simply allowed to lapse, or are replaced in some way – with a circumscribed role for Parliament. This bill is of considerable significance and of great concern from a number of constitutional standpoints.

Ministers and the Civil Service

A central theme of the present report is that of a new Prime Minister and government being installed whose genuine command of the confidence of the House of Commons was open to question. Such an event was significant in itself, and also had further implications of a constitutional nature. The premier and administration arguably did not rest in the full support of the Commons, nor had there been reference back to the electorate. Yet a radical change in policy direction, initially in the fiscal area, followed. Moreover, in pursuit of this approach, the new government departed from more traditional norms in areas such as the management of the Civil Service and submitting itself to the appropriate level of parliamentary accountability. This chain of events reveals a feature of the UK constitution which we judge deserves attention. It is possible for an individual or group to secure leadership positions within the UK executive without clear endorsement either via a General Election or from the House of Commons, and to operate – at least for a time – subject to few effective constitutional constraints.

Reports of internal divisions within Cabinet based on briefings from supposedly well-placed anonymous sources have a long history. But avowed dissent by ministers from decisions made has been less common, and has normally not been regarded as compatible with continued holding of ministerial office. On some occasions – most recently during the 2016 European Union referendum campaign – collective responsibility has been officially relaxed in relation to specific matters. But lately it appears to have come under pressure through unmandated departures from it. A weakening of collective responsibility – for which we detect evidence – represents an undermining of a central component of the UK constitution. To create uncertainty of this type is a problem in itself. It is also detrimental to the internal cohesion of government; creates external uncertainty about its operation and policy; and makes accountability for its actions more difficult to achieve.

A degree of security of tenure supports the ability of civil servants, while loyally supporting ministers, to operate on a basis of evidence and avoid partisan attachments. In contravention of this norm, when Truss became Prime Minister, an important early act was the removal of Tom Scholar as Permanent Secretary to the Treasury. We see this event as an extension of a worrying trend of this sort that has become apparent in particular during the present decade. It creates uncertainty around the arrangements and values prevailing at a high level in the UK executive and has the potential to detract from their effectiveness.

The territorial constitution

We judge the position in Northern Ireland during the current report period with respect to the Protocol and the associated failure to form an executive to be constitutionally problematic in a number of senses. It has created general uncertainty over the stability of the peace process, the government of Northern Ireland, and when an election might take place. Furthermore, it entailed Northern Ireland being denied its own tier of democratically accountable devolved government, and arrangements being imposed from the centre. Finally, it meant that responsibility for important decisions relating to the political future of Northern Ireland were taken on by a UK-level minister. We hope for improvements in the next report period, and note that an agreement on the operation of the Protocol between the UK and EU has now been reached.

As during all our previous report periods, doubts existed in Northern Ireland and Scotland (though the precise contexts differ) on what are the proper conditions in which a referendum should be held on a given subject; in this instance, the possible departure of a particular territory from the UK. For Northern Ireland, the prospect of such a vote rests in specific statutory provision, though ambiguities remain. For Scotland, there is less clarity, notwithstanding confirmation from the UK Supreme Court that the Scottish Parliament cannot legislate to hold an independence referendum on its own initiative.

We have noted in previous reports a tendency, in the context of Brexit, for measures that have the effect of concentrating power at UK level – increasing its authority relative to the devolved tier. The *Retained EU Law (Revocation and Reform) Bill*, which was progressing through the UK Parliament during this report period, would – among its other consequences – signify a significant continuation of this trend. There was a lack of prior discussion with the devolved authorities on the substance of the Bill. Ambiguities exist about what do and do not constitute devolved and reserved areas of competence within the body of Retained EU Law. The Bill creates delegated powers for both UK and devolved ministers. But it also seems to create the potential for the former to intervene in devolved areas without the involvement of the latter – an increasingly common theme in recent UK legislation and a persistent source of criticism from the Scottish and Welsh governments, frequently leading them to recommend the withholding of consent to UK Bills affecting devolved matters. In the light of these ongoing tendencies, we are concerned that the 'Sewel' convention, used to regulate the relationship between the UK and devolved legislatures in the exercise of their law-making powers, is proving increasingly less effective.

Judiciary and the rule of law

The *Retained EU Law (Revocation and Reform) Bill* raises a number of concerns relating to the rule of law. They include:

- Vesting potentially excessive arbitrary power in ministers, especially at UK level, to alter (or allow to lapse) a wide range of law. The heavy emphasis upon delegated legislation in the Bill limits the role of Parliament and increases the likelihood of arbitrary executive power that is detrimental to the rule of law;

- Uncertainty about the relationship between laws through alterations to pre-existing legal hierarchies inherited from the long period of UK membership of the European Union;

- Uncertainty about the precise laws that are affected, and the relationship between the UK and devolved fields in the exercise of the powers the bill creates; and

- Uncertainty about how and when the government intends to deploy (or not deploy) the powers created, which potentially affect a vast range of policy areas and could have far reaching impact upon the lives of members of the public.

The Bill of Rights legislation remained before Parliament during the present report period. It raises legitimate constitutional objections in as far as it amounts to a restriction of the ability of courts to independently uphold legality in the actions of the executive, and human rights. The Bill as drafted would have a substantial impact on the powers of the devolved legislatures, and it is likely to be opposed by them. It also raises potential issues in its interaction with the Belfast/Good Friday Agreement.

Judicial review – the means by which the legality of the activities of public authorities, including ministers, can be independently assessed – is crucial to the attainment of the various principles set out at the head of this section, and which between them amount to the rule of law. If judicial review is to work effectively, there have to be mechanisms whereby governmental legal officers are able to provide clear and accurate legal advice to ministers. Moreover, when faced with an action for judicial review, the government should cooperate with the applicant for judicial review, ensuring information is exchanged in order to facilitate accountability through the judicial process.

The Fourth Report

Analysis

Integrity in public life

Key principles:

It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement; and that they should as far as possible command consensus. Constitutional change should take place in a considered fashion and as far as possible on a basis of consensus. The legislative authority of the UK Parliament should be exercised subject to underlying constitutional principles including those outlined in this text (principle 1).

Ministers are accountable, individually or collectively, to their legislatures for the exercise of their ministerial responsibilities, and for the activities of the publicly-funded bodies within their remits (see e.g.: **Ministerial Code***, 2022, paragraph 1.3b). Ministers must provide information that is both accurate and truthful to their respective legislatures, and should correct unintended errors they make as soon as possible (see e.g.:* **Ministerial Code***, paragraph 1.3c). Devolved and UK ministers should be as open as they can in their interactions with legislatures and the public. They should withhold information only if to do otherwise would compromise the public interest, as set out in freedom of information legislation and other specific legislation (see e.g.:* **Ministerial Code***, paragraph 1.3d) (principle 3).***

Ministers are under an overarching duty to comply with the law…uphold the administration of justice and protect the integrity of public life. They are expected to observe the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. (principle 7).

Public expenditure should be approved only for the purposes authorised by the relevant legislation, and in accordance with established norms and reasonable expectations (principle 8).

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1. **In all our previous reports, we have noted widespread concerns about integrity in public life, centring on the UK executive. Prominent within them was the former Prime Minister, Boris Johnson, who was perceived as suffering from shortcomings in his own right, and as failing properly to apply rules to others. However, as we noted in our third report, the departure of Johnson in itself should not be assumed to have brought these problems to an end.**

2. **The successor administrations of Liz Truss and Rishi Sunak have included within them numerous ministers and officials who were in different ways involved in the problems that manifested themselves under Johnson. Sunak appears to some extent to have recognised and acknowledged there are shortcomings in this area. But, as is discussed below, serious efforts to address underlying flaws in the system for the maintenance of public integrity appear so far to be lacking (principles 1; 7)**.

3. In our previous report we noted that, following a police investigation, both the Prime Minister and the Chancellor of the Exchequer were found in violation of criminal law for their participation in gatherings during a time when Covid restrictions were in force. They were served with, and paid, fixed penalty

notices for their attendance at an event celebrating the Prime Minister's birthday on 19 June 2020.[2] No precedent can be found for holders of these offices being found to have committed criminal acts.[3] Consequently there was no established practice regarding what the consequence should be. Neither office-holder resigned in immediate consequence of these acts. The episode, it can reasonably be inferred, contributed to the ultimate downfall of Johnson. But that being found to have acted illegally did not lead directly to their departure is notable. Furthermore, the then-Chancellor, Sunak, subsequently became Prime Minister (principles 1; 7).

4. **We noted in a previous report that the dissemination of misleading information by the UK executive was a recurring problem. There remain grounds for concern about such practices. For instance, on 2 November, the Secretary of State for Levelling Up, Michael Gove, tweeted that 'We've secured new free trade deals with over 70 countries since 2016. That's over £800 billion worth of new global trade.' However, in reality the figure of approximately £800 billion applied to the total value of trade with all those markets with which the UK had trade deals (including the EU) and not to new trade attributable to deals struck since 2016.[4] A further example of the promulgation of dubious information came on 15 December, when the health minister, Maria Caulfield, made exaggerated claims about the cost of providing a pay increase to nurses that matched the rate of inflation (principle 7).[5]**

5. **In our previous report, we noted instances of failure by senior figures within the UK executive to adhere to and to promote basic standards of conduct**, as revealed by the police and Sue Gray investigations into gatherings on government premises during Covid restrictions; and the Chris Pincher episode. **Further instances of shortcomings in this regard occurred during the present report period.**

6. **On 19 October, Suella Braverman resigned as Home Secretary in the Truss government, for leaking sensitive official information through communicating it with another MP (see: Appendix d).[6] Yet following the replacement of Truss, Braverman was reappointed to the same Cabinet post by Sunak only six days later, on 25 October. Understandably, this decision was widely criticised. It was problematic from the point of view of maintenance of standards, and of particular concern given the sensitive nature of the ministerial post involved (principle 7).** As the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) held in a report considering a wide range of standards issues, published on 2 December:

> 'The reappointment of the Home Secretary sets a dangerous precedent. The leaking of restricted material is worthy of significant sanction under the new graduated sanctions regime introduced in May, including resignation and a significant period out of office. A subsequent change in

2 'Partygate: Which Downing Street parties have resulted in fines', *BBC News*, 27 May 2022, available at: < https://www.bbc.co.uk/news/uk-politics-60124162 >, last accessed 30 January 2023.

3 Rowena Mason and Aubrey Allegretti, 'Boris Johnson defies calls to quit after he and Rishi Sunak fined', *Guardian*, 12 April 2022, available at: < https://www.theguardian.com/politics/2022/apr/12/boris-johnson-and-rishi-sunak-fined-for-breaking-covid-lockdown-laws >, last accessed 30 January 2023.

4 '"New" UK trade deals don't account for "over £800 billion worth of new global trade"', *Full Fact*, 3 November 2022, available at: < https://fullfact.org/economy/post-Brexit-trade-deals-Gove/#actions >, last accessed 14 January 2023.

5 'Health minister's claims on nurse pay fact checked', *Full Fact*, 16 December, available at: < https://fullfact.org/economy/maria-caulfield-nhs-nurse-pay/?utm_source=content_page&utm_medium=related_content >, last accessed 14 January 2023.

6 See Appendix d.

> Prime Minister should not wipe the slate clean and allow for a rehabilitation and a return to ministerial office in a shorter timeframe. To allow this to take place does not inspire confidence in the integrity of government nor offer much incentive to proper conduct in future.'

7. **The Braverman episode pertained to a document key to the upholding of constitutional values, the *Ministerial Code*.** The Braverman leak breached principles set out in the Code, which stipulates that (paragraph 2.14) 'Ministers have an important role to play in maintaining the security of government business.' In accepting the resignation of her Home Secretary, Truss stated that 'It is important that the Ministerial Code is upheld, and that Cabinet confidentiality is respected.' **We have previously recorded concern about the undermining of this document, and means by which it is upheld. For almost the entirety of this report period, the post of Independent Adviser on Ministers' Interests was vacant, following the second resignation in a row of the holder of this post, Lord Geidt, in June 2022.**[7] **(principle 7). Liz Truss became the first Prime Minister since Anthony Eden (1955-1957) not to have issued such a text, which prior to 1997 was known as *Questions of Procedure for Ministers*.**

8. **On 22 December, the Prime Minister issued a new edition of the *Ministerial Code*. His foreword stated that:**

> **'**as we go about our tasks, we will uphold the Principles of Public Life, ensuring integrity, professionalism and accountability at every level. I know Ministers enter government because they believe in public service. They work hard because they want to make a difference to others. They do their jobs knowing it is an incredible privilege to serve. In everything we do, we must keep those thoughts at the forefront of our minds to earn the trust of the British people.'

9. This passage suggested some recognition of a need for improvement. However, the substantive content of the code had not changed from that issued under Johnson; any opportunity to use it to bolster standards had been neglected.

10. **At the same time as issuing a new edition of the Code, Sunak appointed a new Independent Adviser on Minister's Interests, Sir Laurie Magnus. But, even before he had been appointed, controversial limitations had already been placed upon him.** Earlier in the month, PACAC had noted that:

> 'Following the resignation of Rt. Hon. Suella Braverman MP as Home Secretary for leaking restricted material and her subsequent reappointment only a few days later, the Government has said the new Independent Adviser will not investigate matters surrounding her resignation as they took place under the previous Prime Minister. Determining what a new Independent Adviser can or cannot investigate would appear to call into question whether the apparent authority of the Independent Adviser to initiate their own inquiries, which we discuss in this chapter, is as extensive as it appears. It would also suggest that the inquiry into allegations of racism made by former Transport Minister Nusrat Ghani MP against a ministerial colleague that Lord Geidt had not completed when he resigned also will not be concluded as it too took place under a different Prime Minister. This situation is unsatisfactory.'

7 House of Commons Public Administration and Constitutional Affairs Committee, email from Lord Geidt received on 17 June 2022, available at: < https://committees.parliament.uk/publications/22732/documents/167114/default/ >, last accessed 30 January 2023.

11. **The alleged behaviour of other ministers was a source of controversy.** Gavin Williamson resigned as Cabinet Office minister on 8 November following various claims about his prior conduct, discussed further below. Williamson had twice been removed from a ministerial post previously, before his reappointment by Sunak upon becoming Prime Minister in October 2022. On the first occasion, in May 2019, his departure involved allegations about his having leaked sensitive information connected to his then portfolio of Secretary of State for Defence. Later in November, Dominic Raab, by this point Deputy Prime Minister, Secretary of State for Justice and Lord Chancellor, became subject to an internal inquiry following complaints from officials about his behaviour (principles 1; 7). If the inquiry, headed by Adam Tolley KC, makes findings of fact which vindicates these complaints it would imply a breach of the Ministerial Code, but the Prime Minister will be the ultimate judge of the standards of behaviour expected of a Minister and the appropriate consequences of a breach of those standards. The prominence of the dispute more generally speaks to the increasingly visible tensions between ministers and civil servants noted across our previous reports.

12. Our previous reports have drawn attention to **concerns about the disbursal of public money, in particular involving processes related to the award of pandemic-related contracts.**[8] **We drew and have drawn no express conclusions on this matter, beyond noting that the concerns were relevant from the point of view of proper use of public money and propriety in public office. News stories developing during the current report period meant that public concerns about such matters have continued** (see Appendix b) (principle 8).

13. **We restate once again the general conclusion from our previous reports that urgent attention needs to be given to reinforcing standards in public life.**[9] **The Johnson premiership exposed weaknesses in existing protections and weakened further an already insecure framework.** Those steps, we have found, that were taken or committed to under Johnson to improve the enforcement of standards – such as changes to the *Ministerial Code* and the role of the Adviser, or the establishment of a new Office of the Prime Minister – did not seem to be adequate to the task, and certainly appeared to fail to offset other, growing problems. Furthermore, they did not prevent the continuation of difficulties which in July led to the downfall of Johnson, or the further issues under his two successors discussed in the present report.

14. **As we have stated previously, the departure of Johnson should not be treated as having been the end of a problem, but instead as having created the need and opportunity for measures to prevent their recurrence, to reverse damage incurred, and to halt any objectionable measures in progress or being contemplated. The evidence to date fails to suggest that this much needed change of course has come about.**

15. **We re-iterate here once again the support expressed in our previous reports for the full implementation of the final recommendations of CSPL arising from its Standards Matter inquiry (see Appendix d, Second Report).** CSPL made proposals in relation to the *Ministerial Code* and Independent Adviser on Ministers' Interests; the Advisory Committee on Business Appointments; the regulation of public appointments; and transparency around lobbying. While the changes CSPL advocated were

8 See: House of Commons Committee of Public Accounts, *Government's contracts with Randox Laboratories Ltd*, Seventeenth Report of Session 2022-23, HC 28 (House of Commons, London, 2022), p. 3, available at: < https://committees.parliament.uk/publications/23257/documents/169721/default/ >, last accessed 30 January 2023.

9 Among others, the Labour Party's *Commission on the UK's Future* has made a number of recommendations in response to what it regards as a growing crisis. See: Commission on the UK's Future, *A new Britain: renewing our democracy and rebuilding our economy* (December, 2022), available at: < https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf >, last accessed 13 January 2022.

not as comprehensive as some hoped, if implemented they would amount to a significant package. **They would complement the proposals contained in the Boardman review, focused specifically on avoiding conflicts of interest in the relationship between government and outside commercial interests (see Appendix e, Second Report). As we have previously held, the overall effect of such a programme could be a more formalised system, with more coherent rules, and a greater statutory underpinning. Ethical practices in the operation of the ethical system itself would be better protected.**

16. **We also refer to related recommendations produced by PACAC in December 2022. They include that:**

> 'The Commissioner for Public Appointments should be placed on a statutory basis in an Act of Parliament at the earliest opportunity. The legislation should make clear that the Commissioner's role is to ensure that public appointments made by Ministers are in compliance with the Governance Code. It should also detail the process by which the Commissioner is appointed, the term of office, and their role in revisions to the Governance Code for Public Appointments. (Paragraph 55)…
>
> Primary legislation should be introduced at the earliest opportunity to establish the Independent Adviser as a statutory position to end the uncertainty about whether future appointments will be made at all…(Paragraph 81)
>
> The Independent Adviser should be subject to the Commissioner for Public Appointments process applicable to Significant Appointments. In addition, in accordance with our recommendation in this report concerning revisions to that process, the Independent Adviser's appointment should be subject to a pre-appointment hearing with the relevant Select Committee and should require its endorsement. (Paragraph 87)'[10]

10 House of Commons Public Administration and Constitutitonal Affairs Committee, Propriety of governance in light of Greensill, Fourth Report of Session 2022-2023', HC 888 (House of Commons, London, 2022), available at: < https://committees.parliament.uk/publications/31830/documents/178915/default/ >, last accessed 25 January 2023.

Constitutional change process

Key principle:

It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement; and that they should as far as possible command consensus. Constitutional change should take place in a considered fashion and as far as possible on a basis of consensus. The legislative authority of the UK Parliament should be exercised subject to underlying constitutional principles including those outlined in this text (principle 1).

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17. **The UK system allows for changes to fundamental arrangements to take place in an unplanned, gradual, and amorphous fashion.** For example, the principle that prime ministers must sit in the House of Commons and not the House of Lords took a number of decades to solidify. (For instance, the last premier to sit in the Lords, Lord Salisbury, left office for the last time in 1902; yet the precedent most clearly establishing this point is generally traced to 1963, when Alec Douglas Home – making use of legislation passed that year – renounced his peerage to secure the office of Prime Minister.) **We recognise that the UK is not necessarily unique in this regard, and that – even within the context of a territory with a codified constitution – less formal practice and convention can play an important part. Furthermore, we do not take a general position on the merits of the flexibility that is commonly presented as a distinguishing feature of the UK system. However, it is important that consideration is given to the possibility that significant changes might be underway, and what their implications are, including whether they create potential difficulties.**

18. **There is some evidence that important changes in the nature of the UK constitution could be underway.** For instance, the principle of collective Cabinet responsibility seems to have been under sustained pressure, as is discussed further below. Existing understandings have been tested in another way. **In recent decades, the two main parties have tended to give their members beyond Parliament an enhanced role in choosing their leader. A potential implication of this tendency is that the role of the parliamentary cohort of a party is diminished, and possibly that the membership in the country may impose a leader upon its parliamentary members that those members would not have chosen of their own accord.**

19. **If a leadership election takes place while the party concerned holds office, it is established that it in effect entails the selection of the holder of the office of the premiership. Yet the constitutional position is that governments and/or prime ministers (see discussion below) require the confidence of the House of Commons. The appearance of extra-parliamentary party members as potentially having the final say in who becomes Prime Minister carries with it the possibility of creating uncertainty about this longer-existing and constitutionally crucial principle. The problems are exacerbated because there has never been a definitive account of the meaning of this rule. We may be prompted to ask questions about it that are difficult to answer. For instance, are prime ministers individually, or governments collectively, or some combination of both, required to possess confidence? The *Cabinet Manual* – which perhaps comes closest to providing a formal description of such matters, though its contents can still be subject to debate – is ambiguous on this point, suggesting that either interpretation might be the case.** It states (paragraph 2) that: 'The government of the day holds office by virtue of its ability to command the confidence of the House of

Commons.' Yet, conversely, it also asserts, (Chapter 3 Introduction) that 'The Prime Minister is head of the Government by virtue of his or her ability to command the confidence of the House of Commons'. Perhaps incorporating both views, moreover, it holds (paragraph 2.8) that: 'If the Prime Minister resigns on behalf of the Government, the Sovereign will invite the person who appears most likely to be able to command the confidence of the House to serve as Prime Minister and to form a government'. (Other passages add to the uncertainty.)

20. **The election of Truss as Conservative leader and by extension Prime Minister in September illustrated how the means by which this process takes place can highlight and add to what is already a position of uncertainty.** In the final round of MPs' voting on 20 July, Truss came second, receiving 31.6 per cent of votes cast, with Rishi Sunak in first place, with 38.3. Penny Mordaunt, who was eliminated, coming third, with 29.3. In the vote of Conservative members at large, the placing of Truss and Sunak was reversed, the former receiving 57.4 per cent of votes cast, the latter 42.6 per cent. **How meaningful would it be to hold that Truss thereby possessed the confidence of the Commons (or was able to form a government that meaningfully did so) is open to question. It has come generally to be accepted that being the leader of the sole or main party of government, in accordance with whatever means that party has of determining and retaining its leader, is sufficient to be appointed Prime Minister. But it is not clear how far Truss had the confidence of her own parliamentary party, let alone the Commons as a whole, or was able to construct a government that could command confidence from either body. To speculate, the political instability of her government might in part be attributed to its attenuated constitutional basis.** Sunak became a successor to Truss without the need for a vote among members outside Parliament. Following recent problematic experiences, it may be that both the Conservatives and Labour are now to some extent drawing back from the vesting of such power in their mass memberships. Nonetheless, it must be noted that **an important constitutional issue has arisen that requires close attention (principles 1; 2)**. We discuss further below other constitutional issues connected to the recurring replacement of prime ministers during the report period.

21. Our reports have identified numerous examples of a less than satisfactory approach to constitutional change from the UK government. **The late Queen's Speech of 2022, setting out the legislative programme for the coming session, suggested that this pattern was likely to continue** (see: Appendix e, Third Report)**. For instance, it included a proposal for a Bill of Rights. The process leading to this measure, as we noted in our previous report, has so far been questionable.** Following on from one of the proposals contained in the 2019 Conservative General Election Manifesto, it began with the establishment of the Independent Human Rights Act Review (IHRAR), the report of which appeared in the last report phase (see Appendix b: Second Report). Following a thorough consideration and wide consultation exercise, a majority of members of the Review group recommended only minor changes to the Human Rights Act (HRA) and a programme of civic and constitutional education about rights in the UK. However, the government then published a consultation on proposals that went beyond IHRAR's recommendations and which it has been observed had a weak evidential basis.[11] No draft of the Bill was offered by the Government to permit scrutiny by either interest groups or the Joint Committee on Human Rights, and this despite a joint letter from the Public Administration and Constitutional Affairs Committee, the Joint Committee on Human Rights and the Constitution Committee requesting that

11 See: Tatiana Kazim, Mia Leslie and Lee Marsons, 'The government's Human Rights Act consultation: divergence, context and evidence', *The Constitution Society Blog*, 27 January 2022, available at: < https://consoc.org.uk/the-governments-human-rights-act-consultation-divergence-context-and-evidence/ >, last accessed 30 January 2023.

such a draft be made available.[12] **The legislative proposals for a Bill of Rights confirmed concerns we have previously raised about this initiative. The rationale on which they were founded was questionable; they lacked coherence in key respects; they related to a treaty commitment; they had devolution implications; and they contained negative implications for rights protection. Furthermore, they were notably controversial in an area in which change would ideally rest on some degree of consensus.** (see: Appendix h, Third Report) (principles 1; 7; 8; 18; 19).

22. **A key advocate of the Bill of Rights proposal has been Dominic Raab, who has a longstanding interest in this area dating back to the 2000s. Raab pursued the measure as Secretary of State for Justice and Lord Chancellor under Johnson. The removal of Raab from the Cabinet under Truss appeared to signal the end of this initiative; while the restoration of Raab to the same post under Sunak suggested its possible revival. It may well be that the Bill of Rights is no longer a priority and will be dropped by the government.[13] But that such a measure could be considered, devised and introduced to Parliament in the way it was is a source of constitutional concern. Moreover, this experience suggests that the introduction or otherwise of substantial and questionable alterations to the UK constitution can turn on political fortunes, involving the rise and fall of prime ministers and the people they appoint to particular Cabinet posts. Such considerations can be expected to play a part in constitutional processes. But that they should be so decisive, and not mediated by other considerations and principles, is less than ideal (principle 1).**

23. **During our previous report period, the UK government introduced the Northern Ireland Protocol Bill, intended to provide it with the power to override aspects of the Protocol on Ireland/ Northern Ireland in the UK/EU Withdrawal Agreement. It was subject to widespread criticism, including from within the Conservative Party and the majority of MLAs in the NI Assembly.[14] It was also constitutionally challenging from a number of perspectives, including doubts about its compliance with international law and its possible negative consequences for arrangements for the governance of Northern Ireland** (principles 1; 7) (see Appendix f, Third Report). **The Bill continued its passage through Parliament during the present report period.**

24. **As with the Bill of Rights proposal, even if this legislation is not ultimately passed or implemented, that it was initiated at all by a UK government is sufficiently troubling in itself. Furthermore, and as with the Bill of Rights, decisions about whether and how the government will proceed with this legislation seem to rest to a significant extent upon political contingency: in this case, the internal dynamics of the Conservative Party, and their relationship with a particular group within Northern Ireland. While these considerations should play a part in deliberation, it is questionable that they should be afforded such a degree of prominence as to override not only other perspectives, but also basic constitutional principles (principle 1).**

12 See: Liberty, 'What are they so afraid of': MPs call for pre-legislative scrutiny for proposed bill of rights', *Liberty website*, 21 June 2022, available at: < https://www.libertyhumanrights.org.uk/issue/what-are-they-so-afraid-of-mps-call-for-pre-legislative-scrutiny-for-proposed-bill-of-rights/ >, last accessed 30 January 2023.

13 Aubrey Allegretti, 'Sunak's next U-turn may be to ditch Raab's bill of rights', *Guardian*, 8 December 2022, available at: < https://www.theguardian.com/law/2022/dec/08/rishi-sunak-next-u-turn-may-be-to-ditch-dominic-raab-bill-of-rights >, last accessed 15 January 2023.

14 See: Rebecca Black, '52 of 90 MLAs sign letter to Johnson rejecting legislation to amend NI Protocol', *Belfast Telegraph*, 13 June 2022, available at < https://www.belfasttelegraph.co.uk/news/northern-ireland/52-of-90-mlas-sign-letter-to-johnson-rejecting-legislation-to-amend-ni-protocol-41748039.html >, last accessed 30 January 2023.

25. **A further bill with considerable constitutional implications, the** *Retained EU Law (Revocation and Reform) Bill*, was introduced to Parliament during the current report period. It has already prompted considerable objections from a range of sources, discussed below, involving, for instance, the role of Parliament, the discretionary powers of ministers, the rule of law, and the legal system as a whole.

26. **Our principal focus is upon government rather than opposition parties. However, it is reasonable to consider the proposition that, following the next General Election, Labour will be a party of government, with a constitutional programme of its own.** We note the publication, during the present report period, of a constitutional review commissioned by the Labour leadership and conducted by the former Labour Prime Minister, Gordon Brown. It does not constitute formal Labour policy; and we do not comment on the merits or otherwise of the report drafting process, or of its proposals. However, the Labour leader has appeared to commit to aspects of it. **A notable feature of the Brown review is how widely it ranges across different aspects of the constitution, including the status of the House of Lords; devolution; standards and integrity; and entrenchment of constitutional principles. This scope confirms how interconnected different aspects of the system are; and the value of carefully considered, holistic approaches to change** (see: Appendix c)**.**

Elections

Key principles:

It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement; and that they should as far as possible command consensus. Constitutional change should take place in a considered fashion and as far as possible on a basis of consensus. The legislative authority of the UK Parliament should be exercised subject to underlying constitutional principles including those outlined in this text (principle 1).

The UK is a representative democracy. The existence of devolved and UK governments is derived from the broad support of the respective legislatures. The UK House of Commons and the devolved legislatures in turn derive legitimacy from the free and fair election of their members held at intervals of no more (except in the most exceptional of circumstances) than four or five years (principle 2).

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27. **We noted in our previous report that the process for determining the replacement for Boris Johnson also involved two elections: one within the Conservative parliamentary party, the other among the whole membership of the Conservative Party**. These votes were not public votes in the same way as other types of elections. However, they could be held in practice to comprise part of the functioning of the constitution since (as noted above), in practice, their outcome is accepted as determining who will be appointed Prime Minister. **Given the importance of these processes, it is worth noting that the norms to which they are subject differ significantly from those that apply to public elections, and might in some senses be judged wanting.**[15] Identification requirements for the mass membership stage, for instance, seemed not be as rigorous as those the government recently insisted on introducing via the Elections Act.

28. **Furthermore, as we noted, decisions about the way in which the contest was triggered and took place, which rested with the Conservative Party, had significant consequences for the operation of the political system.** They determined the means by which the Prime Minister was removed, and for how long, once the decision to oust him was taken, he would continue to remain in office while his successor was selected. **The precise rules could alter at short notice, and vary significantly from one election to the next.** The members in the country might or might not be involved at all, depending on the outcome of the stage of the process involving Conservative MPs. The nomination requirements for the election to replace Truss as leader were far more stringent than they were for the contest which Truss had won; and in the event Sunak was successful without any competitive vote taking place at the parliamentary or extra-parliamentary stage. Such arbitrariness and inconsistency for such an important process might be seen as problematic (principles 1; 2).

29. **The leadership contests which resulted in the prime ministerships of Truss and then Sunak raise further questions about the role of elections in the UK constitution.** The victor in a contest of the sort that Truss won over Sunak might be perceived as having thereby secured a mandate of some kind, and as being required to act upon pledges made during the contest. But what is less clear is how they

15 David Klemperer, 'Party members choosing prime ministers – a constitutional concern?', *Constitution Society Blog*, 4 August 2022, available at: < https://consoc.org.uk/party-members-and-prime-ministers/ >, last accessed 30 January 2022.

fit with other sources of legitimacy and obligation, including Parliament, and the electorate. **Mandates derived from general election outcomes have some kind of place – albeit difficult precisely to define – within the UK constitution.** They influence the behaviour of the House of Lords in responding to legislative measures emanating from the Commons. **The idea of an internal party contest being a source of legitimacy can therefore create confusion around what is already a loose understanding.** To complicate matters further, since succeeding Truss, Sunak has distanced himself from pledges he had made in the previous contest in which Truss had beaten him.[16] (principles 1; 2).

30. **The twin prime-ministerial changeovers of 2022 raise further questions involving the idea of mandates.** According to constitutional principle, possession of the confidence of the Commons is alone sufficient for a government (subject to the ambiguities discussed above) to remain in office. But – as noted above – a party of government gains authority of some kind for its programme, in particular in relation to the Lords, by having placed it before the electorate. This understanding could be interpreted as suggesting that general elections are a source of constitutional legitimacy that extends beyond simply determining the composition of the House of Commons on which governments rest. For a Prime Minister to be succeeded by a politician of the same party without a General Election taking place is a normal occurrence. Furthermore, in theory, multiple such transitions are possible within a single Parliament, provided the Commons is willing to tolerate them. However, **it is also reasonable to ask whether changes of Prime Minister – particularly when accompanied by abrupt revisions of governing style and policy approach – can be said in some way to diminish an initial electoral mandate. If they do, then repeated such transitions, as occurred during the current report period, might have a cumulative effect (principles 1;2).**

31. In previous reports, we discussed the UK government policy of introducing a requirement for individuals to produce photo identification at polling stations in order to be able to vote in elections (see Appendix g, Second Report). The justification the government offered for this policy was that it is a means of preventing fraud and promoting trust in the electoral system. However, the proposal met with opposition. Critics argued that the problem supposedly being addressed is, in practice, minimal. They cautioned also that the intended measure might lead to certain social groups more than others being unable to exercise their right to vote.[17] **This measure passed into law in our previous report period as part of the Elections Act 2022.** The end of this report period also saw the publication of the secondary legislation relating to Voter ID.[18] While the legislation provides much necessary detail about how the system of Voter ID will be administered at the 2023 English local elections, criticism of the scheme as a whole remain prevalent.[19] **We maintain our existing view that it will be regrettable if a law presented as a means of safeguarding the integrity of elections proves to be disproportionate in its negative impact on participation in democratic processes. The legitimacy of the 'free and**

16 Andrew Woodcock, 'Sunak tears up manifesto of promises from leadership election', *Independent*, 2 November 2022, available at: < https://www.independent.co.uk/independentpremium/uk-news/rishi-sunak-conservative-leadership-election-b2217088.html >, last accessed 6 February 2023.

17 A recent report has noted that those charged with administering the May 2023 elections currently feel underprepared for the task. See: John Ault, *An accident waiting to happen? Voter ID in the 2023 English local elections* (The Constitution Society, London, 2022), available at: < https://consoc.org.uk/wp-content/uploads/2022/11/John-Ault-Report.pdf >, last accessed 26 January 2023.

18 *The Voter Identification Regulations 2022*, available at: < https://www.legislation.gov.uk/ukdsi/2022/9780348240504 >, last accessed 2 February 2023.

19 Peter Walker, 'Only 10,000 people in Great Britain have applied for government-issued voter ID', *The Guardian* (31 January 2023), available at: < https://www.theguardian.com/politics/2023/jan/31/only-10000-people-in-uk-have-applied-for-government-issued-voter-id >, last accessed 2 February 2023.

fair elections' referred to in principle 2 rests on the fullest ability to participate among those who are eligible to do so. A major test for this new requirement will come during our next report period with the local elections taking place in May 2023.

32. **Another controversial aspect of the Elections Act 2022 was that it provided for the secretary of state to issue a 'Strategy and Policy Statement' for the Electoral Commission. As discussed in our previous reports, there were objections to the possibility this measure created for interference in the independent of the Commission – a problem from the standpoint of the need for free and fair elections. The government issued a draft statement in August 2022, on which the House of Commons Levelling Up, Housing and Communities Committee published a report in December. The Committee stated that the evidence it received suggested no such statement was needed; that the statement failed to make clear the independence of the Commission, including from the government; and that it might create practical difficulties for the Commission.[20] The House of Commons Speaker's Committee on the Electoral Commission reinforced these views later in the same month.[21] These findings confirm reservations we previously raised about the possible negative implications of the Elections Act for the Commission.**

20 House of Commons Levelling Up, Housing and Communities Committee, *Draft Strategy and Policy Statement for the Electoral Commission,* Fourth Report of Session 2022–23, HC 672 (House of Commons, London, 2022), available at: < https://committees.parliament.uk/publications/31803/documents/178809/default/ >, last accessed 6 March 2023.

21 The Speaker's Committee on the Electoral Commission, *Response to the Government's consultation on the draft Strategy and Policy Statement for the Electoral Commission,* Third Report 2022, HC 967 (House of Commons, London, 2022), available at: < https://committees.parliament.uk/publications/33350/documents/180486/default/ >, last accessed 6 March 2023.

Legislatures

Key principles:

The UK is a representative democracy. The existence of devolved and UK governments is derived from the broad support of the respective legislatures (principle 2).

Ministers are accountable, individually or collectively, to their legislatures for the exercise of their ministerial responsibilities, and for the activities of the publicly-funded bodies within their remits… Ministers must provide information that is both accurate and truthful to their respective legislatures, and should correct unintended errors they make as soon as possible…Devolved and UK ministers should be as open as they can in their interactions with legislatures and the public…(principle 3).

Governments should not use their powers to compromise the ability of legislatures autonomously to perform the constitutional functions they carry out on behalf of the public, such as holding the executive to account and making law (principle 4).

Ministerial powers should normally be specified in primary rather than secondary legislation. Such powers are subject to limits and constraints (principle 8).

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33. **We have noted in previous reports the testing of various norms involving the relationship between the UK executive and Parliament. This pattern continued in the present period.** Our last report observed that the process by which a successor to Johnson as Prime Minister was chosen created doubts about the central constitutional principle that possession of the confidence of the House of Commons should be the decisive factor in appointments to the UK premiership (principles 1; 2). **As we have repeatedly noted, within the UK constitutional system, it is fundamental to the fulfilment of democratic principles that the House of Commons, as returned by voters at a General Election, should provide the basis for government, and that prime ministers acquire and retain office on a basis of their perceived ability to command the confidence of the Commons. This confidence, as recorded above, has admittedly always been difficult to define with precision. But developments in the present report period have served to challenge the principle it represents in a more serious way. This tendency is a concern from the point of view of the position of Parliament, the viability of the democratic system, and the need for certainty about what the rules and arrangements are (principles 1; 2).**

34. **If there is a change of prime ministers because the incumbent stands down between general elections, it is generally well-established that the internal processes of the party of the outgoing premier take on a special status. In effect, they confer by proxy the confidence of the Commons upon the person who wins, who is then asked to form a government.** Examples of transitions of this type include when James Callaghan succeeded Harold Wilson in 1976; when John Major succeeded Margaret Thatcher in 1990; and when Gordon Brown succeeded Tony Blair in 2007.

35. **However, depending on the process used and the particular circumstances, mid-Parliament handovers of this type can prove problematic and raise concerns.** For instance, in the period before the Conservative Party had a formal process for choosing a leader, the means by which Alec Douglas Home became premier after Harold Macmillan announced his intended retirement in 1963 was a source of criticism, and less than ideal from the point of view of the need to insulate the monarchy from

controversy. More recently, it would be reasonable to ask how far the Boris Johnson administration could fully be said to be in possession of the confidence of the Commons at the point when he became Prime Minister on 24 July 2019; a doubt which might be held to have persisted up to the decisive Conservative General Election victory of 12 December 2019. For Johnson there was a dual problem: resistance to him within his own Conservative parliamentary cohort, which itself lacked an overall majority within the Commons.

36. **These kind of tensions are a problem in themselves**. They suggest a tension between the means by which prime ministers are chosen and the maintenance of the principle of parliamentary government. **The Johnson administration also provided an example of how such a disjuncture can in turn lead on to further undesirable outcomes**, in the form of the attempted, unlawful prorogation of 29 August 2019, an effort by the Prime Minister to evade accountability to a Parliament he regarded as troublesome.

37. The contest to elect **Truss as Prime Minister presented further constitutional challenges of this nature.** In 2019, Johnson was the first-placed candidate in each of the five rounds of MP voting; before winning the final vote of members in the country (against Jeremy Hunt) by 66.4 per cent to 33.6. By contrast, **Truss, as previously noted, was not placed first by MPs, with Sunak securing the most votes in each of the 5 rounds, before losing to Truss in the vote of members beyond Parliament. This position presented a challenge to conventional conceptions of the UK government being formed out of Parliament, and the need (on the part of the government and/or the Prime Minister) for possession of the confidence of the Commons. In this sense, it undermined the status of Parliament as, by tradition, the central institution of the UK constitution, and created uncertainty about the functioning of the system. There were democratic implications. In a sense, rather than being vested in a body elected in a contest in which all eligible UK voters might take part (amounting to 47,074,800 people in December 2019), the final decision over who should become Prime Minister was transferred to a self-selecting group of Conservative Party members, numbering 173,437 in total. We note that the Truss government proved by any standard to be unstable and short-lived. We suggest that consideration could be given to the possibility that there was a connection between – on the one hand – the way in which it came into being, and – on the other hand – its effectiveness and durability (principles 1; 2).**

38. The selection Sunak did not involve any voting. On 24 October, it was announced that his was the only valid nomination among Conservative MPs. This outcome did not raise questions about the principle of parliamentary government in the way that the advent of the Truss premiership did. However, **it cannot be entirely excluded that a similar experience to that associated with Truss could come about in future. Moreover, over recent decades, MPs have become increasingly prone to voting contrary to the instructions of the whips. We recognise the need for MPs to be able to exercise their own judgement, and that their breaking with the official position of their party hierarchy need not be a constitutional problem. But it is possible that a Prime Minister, even if they were the most supported candidate among MPs, could nonetheless face such concerted resistance from one or more factions among their own parliamentary cohorts as to find effective government difficult to sustain. We note, furthermore, that there is a general uncertainty surrounding the concept of confidence and how it is discerned that is a constitutional vulnerability. This issue relates to multiple matters with which we are concerned, including clarity of arrangements and changes to them; the constitutional position of the executive, of Parliament, and of the relationship between them; and the circumstances in which general elections are triggered (principles 1; 2).**

39. **The satisfactory functioning of the UK constitution rests in part on the UK executive respecting the role of the UK Parliament and not deploying its powers in a way that might compromise Parliament and its accountability function. There were examples of concerning activity in this regard during the present report period. For example, an irregular and less than satisfactory approach was taken to Parliament with respect to the fiscal package adopted under Truss, with the processes that would normally apply to a budget avoided. There was evidence of a continuation in the practice of ministers sometimes announcing major policy initiatives to the media before Parliament (see: Appendix b). Good conduct is difficult to impose, nor are the rules clear. The system is therefore vulnerable in circumstances where their good faith is open to question; creating doubts about their respect for Parliament, and adherence to standards and integrity requirements** (principles 1; 2; 3; 7).

40. **In the Lords, Boris Johnson used his political peerages during the report period to appoint 13 additional peers. This took the total number of Johnson appointees to 86, double the total of Theresa May and more than 10 percent of the entire House of Lords. This figure, moreover, excludes those to be appointed as part of Johnson's resignation honours list. Beyond the volume of appointments, it has been suggested that many of those appointed by Johnson were so nominated in large part thanks to services rendered to either Johnson himself or the wider Conservative Party.[22] We do not take a specific view on any individual appointment. However, we recognise these concerns about generally problematic patterns. They are in part attributable to vulnerabilities in the system by which membership of the House of Lords is determined. Like many aspects of the UK constitution, it has always depended in part on the restraint and good judgement of those in positions of power, in particular the Prime Minister. But under Johnson, reflecting the approach of this Prime Minister, these qualities appeared noticeably absent. We anticipate that Johnson's resignation list (for peerages and various honours) may be a subject to which we return in our next report.**

41. **In previous reports, we have remarked upon the existence of significant concerns regarding the alleged misleading of the UK Parliament by ministers.** This matter engages principle 3, and in particular its requirement that '[m]inisters must provide information that is both accurate and truthful to their respective legislatures, and should correct unintended errors they make as soon as possible'. We have noted that, important as this principle is, if the political leadership of a government is not committed to it, enforcement is difficult to achieve. Such a circumstance calls into question whether constitutional arrangements regarding the relationship between ministers and legislatures can be said to be subject to 'robust and impartial enforcement' (principle 1). If the Prime Minister is subject to doubts of this type, then questions around proper 'leadership', one of the *Seven Principles of Public Life*, arise (see principle 7).

22 Rowena Mason, 'One in 10 Tory peers have given more than £100,000 to party', *The Guardian,* 29 December 2022, available at: < https://www.theguardian.com/politics/2022/dec/29/one-in-10-tory-peers-have-given-more-than-100000-to-party >, last accessed 9 January 2023;

Lara Spirit, 'Young aides included on Boris Johnson's Lords list', *The Times,* 8 November 2022, available at: < https://www.thetimes.co.uk/article/young-aides-included-on-boris-johnsons-lords-list-8x2hnt5jn >, last accessed 9 January 2023.

42. **During the present report period, credible complaints persisted about the misleading of Parliament, whether intentional or otherwise.** Ministers appeared to make questionable assertions to Parliament over migration, asylum, and homebuilding.[23] A similar laxity was revealed in Scottish government statistics surrounding renewable energy production in this report period.[24] There, senior figures from both the Scottish National Party and the Scottish Greens were accused of misleading the Scottish Parliament over the percentage of energy produced in Scotland from renewable sources.[25] **It would be regrettable and detrimental to the functioning of the constitution were such practices to become normalised (principles 3;7).**

43. **In the light of this continuing problematic pattern, the ongoing Committee of Privileges inquiry into Johnson is an important matter. As discussed in our previous report,** on 22 April 2022, the Commons agreed a motion in the name of the Leader of the Opposition:

> 'That this House—
>
> (1) notes that, given the issue of fixed penalty notices by the police in relation to events in 10 Downing Street and the Cabinet Office, assertions the Rt hon Member for Uxbridge and South Ruislip has made on the floor of the House about the legality of activities in 10 Downing Street and the Cabinet Office under Covid regulations…appear to amount to misleading the House; and
>
> (2) orders that this matter be referred to the Committee of Privileges to consider whether the Rt hon Member's conduct amounted to a contempt of the House'.[26]

44. **We noted previously that this process is a cumbersome one, and that any conclusion arrived at would be reached after the Prime Minister concerned had departed office. Nonetheless, it remains of utmost constitutional importance that the Committee of Privileges should carry out its work. A possible contempt of Parliament is a serious matter and must be treated as such, especially if the alleged perpetrator was a Prime Minister (and who perhaps retains aspirations, along with some of his advocates, for a return to the same post). Activities such as those the Commons has entrusted the Committee to investigate should, if they have taken place, be subject to accountability, both for historic reasons, and to provide a deterrent for the future.**

45. **With these observations in mind, we find it disappointing that there is reason to suppose that the government, Johnson and others have behaved in ways that have been intended to undermine the Committee in the performance of this task. They include less than satisfactory levels of compliance with its evidence-gathering activities[27]; and the issuing of legal advice challenging the legitimacy of the process. That Johnson has been supported from public funds in securing the most prestigious representation available, both when he was still Prime Minister and after being**

23 For a list with details, see: 'MPs who have not corrected the record', *Full Fact*, available at: < https://fullfact.org/updates/mps-who-have-not-corrected-the-record/ >, last accessed 19 January 2023.

24 'Senior SNP politicians mislead on renewable energy generation', *Full Fact,* available at: < https://fullfact.org/economy/snp-sturgeon-blackford-swinney-renewable-energy/ >, last accessed 2 February 2023.

25 David Bol, 'Greens' Lorna Slater 'misled parliament' over energy figure', , 17 November 2022, *The Herald,* available at: < https://www.heraldscotland.com/politics/23132550.greens-lorna-slater-misled-parliament-energy-figure/ >, last accessed 2 February 2023.

26 HC Hansard for 21 April 2022, 'Votes and proceedings' available at: < https://commonsbusiness.parliament.uk/Document/56399/Html?subType=Standard#anchor-3 >, last accessed 30 January 2023.

27 Rowena Mason and Aubrey Allegretti, 'Partygate hearings could be put back to new year after No 10 delay', 23 November 2022, *Guardian*, available at: < https://www.theguardian.com/politics/2022/nov/23/partygate-hearings-could-be-put-back-to-new-year-after-no-10-delay >, last accessed 19 January 2023.

forced out of office following further questionable activities, was a subject of scrutiny during the present report period (principles 3; 4; 7)**. We expect to make further comment on this issue in our next report**.

46. **We have previously observed signs of a tendency for the UK executive to create and deploy extensive delegated law-making powers. The advent of Brexit and the pandemic provided impetus for this tendency. It appears, we have noted, possibly to be part of a more general pattern of the UK government expanding its discretionary power and reducing the extent to which it can be checked in its actions by institutions such as the UK Parliament, the courts, and regulatory bodies.**

47. As discussed in our previous report, the 'Brexit Freedoms Bill' included in the Queen's Speech was intended to create delegated law-making powers of considerable breadth, to be used as part of a programme of post-Brexit divergence in the UK legal system. Depending on the way it was realised, we argued, it had the potential to further erode the position of Parliament relative to the executive with respect to law making.[28] It was introduced into the Commons on 22 September 2022 as the *Retained EU Law (Revocation and Reform) Bill*. The controversial sunset provision included in the bill points to a scenario in which immense legal changes can take place – either because a wide range of laws are simply allowed to lapse, or are replaced in some way – with a circumscribed role for Parliament. We discuss this plan – which is of considerable significance and of great concern from a number of constitutional standpoints – further, below (principles 3; 8).

48. **We restate once more our view that the effect of reliance on delegated legislation is to increase the discretion of the UK executive, a development which is problematic from the point of view of a number of our principles. The heavy use of delegated legislation challenges the constitutional principle that ministerial powers should normally be set out in primary as opposed to secondary legislation (principle 8). There is tension with principle 3 regarding ministerial accountability to legislatures, arising because delegated legislation is not subject to parliamentary procedures as rigorous as those applied to primary legislation.**

49. **The relative lessening of controls exercised by the UK legislature is also challenging from the point of view of the tenet that ministerial powers should be 'subject to limits and constraints' (principle 8). Furthermore, when asked to approve the creation of delegated powers, Parliament might not be made sufficiently aware of the purposes to which they might be put.** This lack of knowledge is unsatisfactory from the point of view of the need for executives to be open with legislatures (principle 3). **In both pressing the legislature to provide vaguely defined powers, and then utilising those authorities to maximise its discretion, the UK government risks undermining the ability of the Westminster Parliament to effectively perform its constitutional functions on behalf of the public, such as law-making and holding the executive to account (principle 4).** One example of this phenomenon is the Northern Ireland Protocol Bill, previously described by the House of Lords Delegated Powers and Regulatory Reform Committee as 'as stark a transfer of power from Parliament to the Executive as we have seen throughout the Brexit process. The Bill is unprecedented in its cavalier treatment of Parliament, the EU and the Government's international obligations.'[29] **Delegated powers can also raise concerns with regard to the potential diminution of the autonomy of the devolved**

28 Tom West and Oliver Garner, 'Brexit "freedoms", risks and opportunities? Certainty and uncertainty in the revision of retained EU law', *Hansard Society*, 24 February 2022, available at: < https://www.hansardsociety.org.uk/publications/articles/brexit-freedoms-risks-and-opportunities-certainty-and-uncertainty-in-the >, last accessed 30 January 2023.

29 House of Lords Select Committee on Delegated Powers and Regulatory Reform, *Northern Ireland Protocol Bill*, Seventh Report of Session 2021-22, HL Paper 40 (House of Lords, London, 2022).

systems, where the concerns of devolved legislatures can be circumvented by the excessive empowerment of the Westminster executive. Likewise, such delegated powers risk undermining of the rule of law by providing extensive discretion to government ministers to make vaguely defined law (principles 16-19).

50. We acknowledge again that redressing this imbalance will require Parliament to scrutinise more detailed and complex primary legislation. Without a corresponding increase in the legislature's resources and capacity, this may prove a difficult task.

51. We expect that the creation of expansive and vaguely determined delegated powers through Acts of Parliament will continue to be a subject of future reports. It might include consideration of the vesting of authority in regulatory bodies.

52. That the name of what became the Retained EU Law (Revocation and Reform) Bill changed from Brexit Freedoms Bill, the title originally attached to it in the Queen's speech, is perhaps suggestive of disagreement between the government and parliamentary authorities. Were a government to seek to use bill titles as slogans rather than neutral descriptors, it would represent an abuse of parliamentary processes. Such a practice might, moreover, connect to a tendency for the introduction of legislation intended to meet the communication goals of ministers, possibly lacking in substantial content or of a flawed nature.

Ministers and the Civil Service

Key principles:

It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement (principle 1).

Ministers are accountable, individually or collectively, to their legislatures for the exercise of their ministerial responsibilities, and for the activities of the publicly-funded bodies within their remits (principle 3).

Civil servants are accountable to ministers, who in turn are accountable to Parliament ***[*****Civil Service Code*****, 2015]. There are limited exceptions to this general principle, including the role of specific officials (Accounting Officers or, in Scotland, Accountable Officers), who at UK level are personally responsible to the House of Commons Committee of Public Accounts* **for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources** ***[*****Ministerial Code*****, paragraph 5.3]. Similar exceptions apply at devolved level, with officials accountable for financial management to devolved legislatures (principle 6).***

Ministers…are expected to observe the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership (principle 7).

Civil servants, with the exceptions of 'special advisers' and certain others, must be recruited on merit on the basis of fair and open competition. They should be promoted on merit usually following a competitive process. They must be required to carry out their duties with integrity and honesty, and objectivity and impartiality. They must serve the government to the best of their ability in a way which maintains political impartiality, and act in a way that deserves and retains the confidence of ministers in the government of the day, while ensuring they will be able to establish the same relationship with those they may be required to serve in a future government (principle 10).

[UK]* Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code and the requirements of the Constitutional Reform and Governance Act 2010** ***[**Ministerial Code*****, paragraph 5.1j]. [UK]* Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the Principles of Scientific Advice to Government** ***[*****Ministerial Code*****, paragraph 5.2]. These principles extend to devolved ministers also (principle 11).***

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53. **A central theme of the present report is that of a new Prime Minister and government being installed whose genuine command of the confidence of the House of Commons was open to question. Such an event was significant in itself, and also had further implications of a constitutional nature. The premier and administration arguably did not rest in the full support of the Commons, nor had there been reference back to the electorate. Yet a radical change in policy direction, initially**

in the fiscal area, followed. Moreover, in pursuit of this approach, the new government departed from more traditional norms in areas such as the management of the Civil Service and submitting itself to the appropriate level of parliamentary accountability.

54. **This chain of events reveals a feature of the UK constitution which we judge deserves attention. It is possible for an individual or group to secure leadership positions within the UK executive without clear endorsement either via a General Election or from the House of Commons, and to operate – at least for a time – subject to few effective constitutional constraints.** We do not take a view on the particular policies involved. But we observe the existence of a strong case that the practical outcomes of this episode were far from successful, including from the point of view of its main instigators. For instance, Kwasi Kwarteng, the first Chancellor of the Exchequer under Truss, stated once out of office that, 'looking back, I think we could have had a much more measured approach.' [30] Furthermore, negative responses to the overall course of action upon which the Truss government embarked led to its historically swift termination. **This outcome might be interpreted as demonstrating that the UK constitution does in fact contain within it the corrective mechanisms necessary to constrain arbitrary executive behaviour. However, they were retrospective in nature, coming into force only after perceived damage had been inflicted.**

55. A key component of the operation of the UK executive is the principle of collective Cabinet responsibility which, coupled with individual ministerial responsibility, comprises the doctrine of ministerial responsibility. The *Cabinet Manual* describes the Cabinet and its collective responsibility in the following terms (p.30):

> 'Cabinet and Cabinet committees take decisions which are binding on members of the Government. Cabinet and Cabinet committees are composed of government ministers, who are then accountable to Parliament for any collective decisions made. Collective responsibility allows ministers to express their views frankly in discussion, in the expectation that they can maintain a united front once a decision has been reached.'

56. The need to present outward unity is stressed by the *Ministerial Code*, which states (paragraph 2.3):

> 'The internal process through which a decision has been made, or the level of Committee by which it was taken should not be disclosed. Neither should the individual views of Ministers or advice provided by civil servants as part of that internal process be disclosed. Decisions reached by the Cabinet or Ministerial Committees are binding on all members of the Government.'

57. This principle brings with it the need to conform to various forms of etiquette, including that set out in paragraph 8.3 of the *Ministerial Code*:

> 'Ministers should ensure that their statements are consistent with collective Government policy. Ministers should take special care in referring to subjects which are the responsibility of other Ministers'.

30 Nadeem Bagshah, 'Kwarteng told Truss to "slow down" radical measures after mini-budget', *Guardian*, 10 November 2022, available at: < https://www.theguardian.com/uk-news/2022/nov/10/kwarteng-told-truss-to-slow-down-radical-measures-after-mini-budget >, last accessed 22 January 2023.

58. **Reports of internal divisions within Cabinet based on briefings from supposedly well-placed anonymous sources have a long history. But avowed dissent by ministers from decisions made has been less common, and has normally not been regarded as compatible with continued holding of ministerial office. On some occasions – most recently during the 2016 European Union referendum campaign – collective responsibility has been officially relaxed in relation to specific matters. But lately it appears to have come under pressure through unmandated departures from it.** In the previous report period, we noted the phenomenon in July 2022 of ministers remaining within government while calling for the resignation of the Prime Minister. While the texts cited above do not specifically preclude such conduct, the drafters of such documents cannot be expected to have foreseen it. It is clearly difficult to reconcile with Cabinet unity. While this episode might be seen as specific to the exceptional circumstances of Johnson and his downfall, behaviour seriously detrimental to collective responsibility continued during the present report period. For instance, during the Conservative Party conference in October 2022, the Home Secretary, Braverman, stated that she had been 'in favour' of the fiscal initiative pursued under Truss, and was 'disappointed' about the taxation reduction for high earners being dropped, which she saw as the outcome of a 'coup' by Conservative backbenchers (see also Appendix d).[31] To discuss policies and changes to them in terms of personal preferences and unwanted external influences seems not to be fully in the spirit of the collective responsibility principle.

59. Braverman also touched on the issue of whether benefits rates should increase in line with inflation, which had become a subject of controversy. While not dissenting from existing policy, or stating what it should be in future, she indicated a personal outlook on the subject. Early on the same day, Penny Mordaunt, Leader of the House of Commons, had stated in a radio interview that: 'I have always supported, whether it's pensions, whether it's our welfare system, keeping pace with inflation. It makes sense to do so. That's what I voted for before and so have a lot of my colleagues.'[32] This statement also seems to have strained the concept of collective responsibility, as did the visibility of what seemed to be a clash between the two ministers on the subject.

60. Even Truss herself appeared to distance herself from the approach of her own government. In an BBC interview on 2 October, when still Prime Minister, asked whether the whole Cabinet knew of the plan to remove the top rate of income tax, Truss said:

> 'No, no we didn't. It was a decision that the chancellor made….When budgets are developed, they are developed in a very confidential way. They are very market sensitive. Of course, the cabinet is briefed, but it is never the case on budgets that they are created by the whole cabinet.'[33]

61. Regardless of whether this was an accurate description of the operations of government, to discuss internal processes in this way appears to depart from the stipulation included in paragraph 2.3 of the *Ministerial Code*. Moreover, her statement in general appeared to be an attempt to distance herself

31 Jennifer Scott, 'Home Secretary Suella Braverman attacks Tory MPs who "staged coup" over 45p tax rate cut and "Benefit Street culture" in Britain', *Sky News*, 4 October 2022, available at: < https://news.sky.com/story/home-secretary-suella-braverman-attacks-tory-mps-who-staged-coup-over-45p-tax-rate-12711959 >, last accessed 22 January 2023.

32 'Mordaunt: Raising benefits in line with inflation "makes sense"; *Evening Standard*, 4 October 2022, available at: < https://www.standard.co.uk/business/business-news/mordaunt-raising-benefits-in-line-with-inflation-makes-sense-b1029997.html >, last accessed 22 January 2023.

33 'Cabinet was not informed of plans to scrap top rate of tax, Truss says', *Reuters*, 2 October 2022, available at: < https://www.reuters.com/world/uk/uk-pm-truss-says-cabinet-was-not-informed-plans-scrap-top-rate-tax-2022-10-02/ >, last accessed 22 January 2023.

from a decision by which all ministers were necessarily bound. **For the Prime Minister to undermine collective responsibility in this way is particularly detrimental to the principle, particularly in the area of the Budget, which is core to the maintenance of any administration.**

62. A former minister who is no longer inside the government is not subject to the rules in the same way as they were when in office. But for them to distance themselves from the approach of the administration in which they participated within weeks of their exit could serve to undermine the effectiveness of the doctrine (unless, perhaps, they resigned on a matter of principle specifically over the issue to which they are referring). The former Chancellor of the Exchequer, Kwasi Kwarteng, remarked in a media interview given in November 2022:

> '"After the mini-budget we were going at breakneck speed and I said, you know, we should slow down, slow down.
>
> "She [Truss] said, 'Well, I've only got two years' and I said, 'You will have two months if you carry on like this.' And that is, I'm afraid, what happened."…I think the prime minister was very much of the view that we needed to move things fast. But I think it was too quick."'[34]

63. In a media interview on 4 November 2022, Chris Philp, who had been Chief Secretary to the Treasury under Truss (and was by this point Policing Minister under Sunak) stated that 'The decisions around the mini-budget were taken principally by the then-prime minister and to a lesser extent the then-chancellor'.[35]

64. **A weakening of collective responsibility – for which we detect evidence – represents an undermining of a central component of the UK constitution. To create uncertainty of this type is a problem in itself. It is also detrimental to the internal cohesion of government; creates external uncertainty about its operation and policy; and makes accountability for its actions more difficult to achieve** (principles 1; 2; 3)**.**

65. **Liz Truss' victory in the Conservative Party leadership election was followed by an incident with negative implications for the Civil Service values set out in the *Civil Service Code*, and in particular those of objectivity and impartiality.** The Code describes objectivity as meaning: **'**basing your advice and decisions on rigorous analysis of the evidence'; and impartiality as 'acting solely according to the merits of the case and serving equally well governments of different political persuasions'. The possession of such qualities on the part of career officials (as opposed to special advisers, who are exempt from these particular requirements in the Code) rests in the UK on an assumption of permanent employment. The traditional position has been that, generally, ministers and prime ministers do not displace senior officials from their posts. A degree of security of tenure supports the ability of civil servants, while loyally supporting ministers, to operate on a basis of evidence and avoid partisan attachments. In contravention of this norm, when Truss became Prime Minister, an important early act was the removal of Tom Scholar as Permanent Secretary to the Treasury. We see this event as an

34 Nadeem Bagshah, 'Kwarteng told Truss to "slow down" radical measures after mini-budget', *Guardian*, 10 November 2022, available at: < https://www.theguardian.com/uk-news/2022/nov/10/kwarteng-told-truss-to-slow-down-radical-measures-after-mini-budget >, last accessed 22 January 2023.

35 David Bond, 'Former Treasury minister blames Liz Truss and Kwasi Kwarteng for budget chaos', *Evening Standard*, 4 November 2022, available at: < https://www.standard.co.uk/news/politics/treasury-minister-chris-philp-liz-truss-kwasi-kwarteng-mini-budget-chaos-b1037536.html >, last accessed 22 January 2023.

extension of a worrying trend of this sort that has become apparent in particular during the present decade. It creates uncertainty around the arrangements and values prevailing at a high level in the UK executive and has the potential to detract from their effectiveness (principles 1; 7; 10; 11).

66. **We note that the person appointed successor to Scholar, James Bowler, was himself a career official. A less regular appointment, perhaps from outside the Civil Service, would have represented a greater departure from established norms, and clearer movement towards a system in which ministers and prime ministers habitually dispense with officials who served their predecessors and appoint in their place individuals whom they regard as attuned to their needs and committed to their agendas.** Models of this type are employed in other territories, but they are not part of the UK system, nor has there been a clear discussion or signalling of an intention to move towards them (principle 1).

67. **In our previous report, the UK government announced its intention to reduce the size of the UK Civil Service (on a full-time equivalent [fte] basis) by 2025 to the figure of 384,250 immediately prior to the Brexit referendum. This implies a reduction of 94,790 fte staff on the latest published figure for Civil Service numbers at March 2022.** We did not take a position on what was an appropriate size for the Civil Service. However, **the arbitrary way in which this decision was taken and presented seemed likely to adversely affect Civil Service morale, and by extension the effectiveness of this institution in performing its constitutionally essential role.** Furthermore, whatever the optimum size of the Civil Service might be, **reductions on this scale would have implications for what the Civil Service was able practically to deliver, and by extension the wider capacity of government.**[36] **We note that Sunak abandoned this specific centralised target at the beginning of November; as well as ending the freeze that had been introduced for fast stream recruitment.**[37]

36 Rhys Clyne, 'Civil Service cuts will force ministers to choose between painful options', *Institute for Government*, 13 May 2022, available at: < https://www.instituteforgovernment.org.uk/blog/civil-service-cuts-will-force-ministers >, last accessed 30 January 2023.

37 Beckie Smith and Tevye Markson, *Civil Service World*, 1 November 2022, available at: < https://www.civilserviceworld.com/professions/article/civil-service-91000-job-cuts-scrapped-2-pay-cap-looms-sunak-hunt >, last accessed 19 January 2023.

The territorial constitution

Key principles:

It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement; and that they should as far as possible command consensus. Constitutional change should take place in a considered fashion and as far as possible on a basis of consensus. The legislative authority of the UK Parliament should be exercised subject to underlying constitutional principles including those outlined in this text (principle 1).

The devolved institutions of Wales and Scotland are 'permanent' parts of the United Kingdom constitution…The devolved institutions of Northern Ireland are also constitutional fixtures; subject to the proviso that Northern Ireland can, after approval via a referendum, leave the UK (once the UK Parliament has legislated to this effect) and join the Republic of Ireland. The UK government has previously conceded the principle that Scotland could become independent from the UK subject to a referendum (principle 13).

The devolved institutions have the right to legislative and executive autonomy in their respective spheres of operation.* [T]*he UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature…The devolved institutions have a proper interest in decisions taken at UK level that impact upon them, and over international agreements entered into by the UK when their implementation would fall within devolved competence (principle 15).

Appropriate structures, regulations and practices should exist to ensure that the principles…above are fully realised. They should allow in particular for liaison, coordination and genuine co-decision-making between devolved and UK executives; and between devolved and UK legislatures (principle 16).

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68. **We have noted in previous reports that a major source of concern related to the territorial constitution of the UK (and its external relations) and involved the post-Brexit status of Northern Ireland. This issue, which arose partly as a consequence of the actions of the UK government, continued in the present report period.** As we have previously iterated, the Northern Ireland Protocol of the European Union Withdrawal Agreement offers a mechanism by which UK departure from the European Union might be reconciled with both the status of Northern Ireland as a part of the UK, and with the requirements of the Northern Ireland peace process, including the 1998 Belfast/Good Friday Agreement. The Protocol presents the novel proposition of a state applying the rules of a supranational organisation of which it is not (or is no longer) a member within its own territory, leading to what is in effect an internal regulatory barrier. We recognise the sensitivity of this issue. Even with goodwill on different sides, the implementation of the Protocol was always likely to present considerable challenges. Yet, given the decision by the UK to leave the EU, it was desirable that every effort be made to ensure the success of the Protocol, the model agreed by both the EU and UK to manage the post-Brexit situation in Northern Ireland.

69. **Tensions have surrounded the Protocol during all of our reporting periods. Their manifestations have included opposition to the Protocol from some within the Unionist community and the political parties that represent them; and complaints from the UK government that the Protocol is not working satisfactorily and requires a full overhaul (see Appendix j, Second Report).**

70. Elections to the Northern Ireland Assembly, held in May 2022, took place in this context. For the first time, Sinn Fein, a republican party, became the largest party in the Assembly. The Democratic Unionist Party (DUP), in second place, refused to participate in the Executive. The power-sharing arrangements prescribed in the Belfast/Good Friday Agreement, the central component of the Northern Ireland peace process, were thereby unable to function properly. **The DUP persisted in non-participation throughout the present report period.**

71. On 28 October, the period within which executive posts had to be filled passed, triggering a statutory obligation for the Secretary of State for Northern Ireland to set the date for a further election. In November, the government introduced legislation that swiftly became the *Northern Ireland (Executive Formation etc) Act 2023*. This moved the point by which it was necessary for an executive to have been formed to 8 December. It also created the power for the secretary of state, through statutory instrument, to extend the period by a further six weeks. This power was utilised, moving the cut-off past the end of the report period, to 19 January. The Act further included measures to allow the government of Northern Ireland to continue functioning without an executive having been established.

72. **We judge the position in Northern Ireland with respect to the Protocol and the associated failure to form an executive to be constitutionally problematic in a number of senses. It has created general uncertainty over the stability of the peace process, the government of Northern Ireland, and when an election might take place. Furthermore, it entailed Northern Ireland being denied its own tier of democratically accountable devolved government, and arrangements being imposed from the centre. Finally, it meant that responsibility for important decisions relating to the political future of Northern Ireland were taken on by a UK-level minister** (principles 1; 2; 13; 15; 16)**.**

73. In our previous report, we noted that, resurrecting an approach it had instigated in 2020 and then abandoned under pressure including from the Lords, on 13 June 2022 the government introduced legislation into Parliament that would enable it to override the Protocol: the Northern Ireland Protocol Bill (see: Report Three, Appendix f). The UK government asserted that the course of action it was following was a means of safeguarding the peace process, and was in accordance with international law. **We disagreed with the first of these claims, and were highly sceptical regarding the second.**

74. **In previous reports, we have concluded that the UK government has failed to meet standards that can reasonably be expected of it in relation to such an important and sensitive matter, contributing to constitutional difficulties, and raising further issues in the process. The tone of its communications seemed at times to be unnecessarily combative, and was possibly calculated to be such.[38] The conduct of ministers responsible for policy in this area might be found wanting if assessed against the *Seven Principles of Public Life*.** Prior to the Protocol coming into force, for

38 See, for instance, a speech given by Lord Frost; the assertions contained within which included that, in its approach to discussions around the Protocol, the EU might be accepting 'societal disruption and trade distortion' as 'an acceptable price for Northern Ireland to pay to demonstrate that "Brexit has not worked".' Lord Frost, 'Observations on the present state of the nation', 12 October 2021, available at: < https://www.gov.uk/government/speeches/lord-frost-speech-observations-on-the-present-state-of-the-nation-12-october-2021 >, last accessed 16 January 2022.

instance, the then Prime Minister insisted, incorrectly, that it would not entail checks on goods moving between Great Britain and Northern Ireland (see Second Report), raising questions about his adherence to the principle of 'honesty'.[39] Moreover, in distancing themselves from the Protocol that they previously themselves negotiated and then extolled, senior ministers in the UK government appeared to show a less than adequate regard to the 'accountability' principle. **The UK government, we have previously concluded, compounded its constitutionally problematic approach by introducing legislation that is questionable in a number of ways, including from the perspective of international law. It was less than open about the nature of its claimed legal case; and the assertions it has made about being a preserver of the peace process in the face of destabilisation from the EU have been dubious. Such conduct has had the effect of undermining arrangements for peaceful governance in Northern Ireland** (principles 1; 7; 13). During the present report period, there was some evidence that talks aimed at resolving the dispute over the Protocol were making progress, seemingly partly as a consequence of the UK becoming more cooperative. **An agreement between the EU and UK has now been reached.** Nonetheless, the bill which would enable the UK to disapply the agreement continued its passage through Parliament during the present report period. We note that decisions in this area over legislative programmes and the conduct of diplomacy seem to a significant extent to be conditioned by political dynamics, in particular within the Conservative Party. It is questionable that outcomes of substantial constitutional importance should be subject to such contingencies (principle 7).

75. As during all our previous report periods, doubts existed in Northern Ireland and Scotland (though the precise contexts differ) on what are the proper conditions in which a referendum should be held on a given subject; in this instance, the possible departure of a particular territory from the UK. For Northern Ireland, the prospect of such a vote rests in specific statutory provision, though ambiguities remain.[40] For Scotland, there is less clarity. The Supreme Court, in the Lord Advocate's Reference case, assessed whether a proposed Scottish Independence Referendum Bill dealt with matters that were within the legislative scope of the Scottish Parliament, or were reserved to the UK Parliament (see: Appendix f). The Court confirmed that the legal authority to provide for an independence referendum rests at UK and not at devolved level.[41] It found that:

> 'It is plain that a Bill which makes provision for a referendum on independence – on ending the Union – has more than a loose or consequential connection with the Union of Scotland and England… A lawfully held referendum would be a political event with political consequences. It is equally plain that a Bill which makes provision for a referendum on independence – on ending the sovereignty of the Parliament of the United Kingdom over Scotland – has more than a loose or consequential connection with the sovereignty of that Parliament…For these reasons, we reject the Lord Advocate's submissions that the proposed Bill does not relate to reserved matters.'[42]

39 'Loyalist group withdraws support for Good Friday Agreement', *BBC News*, 4 March 2021, available at: < http://www.bbc.co.uk/news/uk-northern-ireland-56276653 >, last accessed 30 January 2023.

40 See: *Northern Ireland Act 1998*, Part 1, s. 1; and sch. 1. See also: *Working Group on Unification Referendums on the island of Ireland: Final Report* (Constitution Unit, London, 2021), available at: < https://www.ucl.ac.uk/constitution-unit/sites/constitution-unit/files/working_group_final_report.pdf >, last accessed 18 August 2021.

41 The Court also dismissed the SNP's submission that domestic legislation ought to be interpreted with regard to the international right to self-determination, ruling that this argument applied only to colonies or foreign occupation.

42 Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998, Judgement, 23 November 2022, UKSC 31, paras 82-83, available at: < https://www.supremecourt.uk/cases/docs/uksc-2022-0098-judgment.pdf >, last accessed 25 January 2023.

76. While this judgment provided clarity on this point, it did not resolve basic questions about the possibility of independence. The SNP has stated that it will contest the next UK General Election solely on the question of independence, and seek a mandate by this means. The legitimacy of such an initiative, if it takes place, would surely lack universal acceptance.[43]

77. **The constitutional arrangements here are not 'clear and knowable', which our first principle deems an important requirement. The existence of a substantial body of support for departure from the UK within a given territory also suggests a lack of the 'consensus' called for in the same principle (though in Northern Ireland, divergence on this point is provided for within the system itself through the 1998 Belfast/Good Friday Agreement).**

78. **We note that it is the position of the Welsh Government that it is possible to secure a mandate for an independence referendum through a devolved election, which the UK Parliament should then act upon. The Welsh Government has stated that:**

> 'In the case of Northern Ireland, provision is made for periodic "border polls", and in certain circumstances the Secretary of State is statutorily obliged to arrange for the holding of one. There are no equivalent standing statutory arrangements for Scotland or Wales for the holding of referendums on continuing membership of the Union, but it remains our view that, provided a government in either country has secured an explicit electoral mandate for the holding of a referendum, and enjoys continuing support from its parliament to do so, it is entitled to expect the UK Parliament to take whatever action is necessary to ensure that the appropriate arrangements can be made.'[44]

79. We have noted in previous reports a tendency, in the context of Brexit, for measures that have the effect of concentrating power at UK level – increasing its authority relative to the devolved tier. The *Retained EU Law (Revocation and Reform) Bill*, which was progressing through Parliament during this report period, would – among its other consequences – signify a significant continuation of this trend. There was a lack of prior discussion with the devolved authorities on the substance of the Bill. Ambiguities exist about what do and do not constitute devolved and reserved areas of competence within the body of Retained EU Law. The Bill creates delegated powers for both UK and devolved ministers. But it also seems to create the potential for the former to intervene in devolved areas without the involvement of the latter (principles 1; 8; 13; 15; 16) – an increasingly common theme in recent UK legislation and a persistent source of criticism from the Scottish and Welsh governments, frequently leading them to recommend the withholding of consent to UK Bills affecting devolved matters.

80. In the light of these ongoing tendencies, we are concerned that the 'Sewel' convention, used to regulate the relationship between the UK and devolved legislatures in the exercise of their law-making powers, is proving increasingly less effective. In the first Miller case in 2016, the UK Supreme Court found the convention, notwithstanding its being referenced in statute, was not justiciable. Enforcement therefore depends upon its being recognised and abided by at UK level. Furthermore, a shared understanding of how Sewel – and its inbuilt exemption – applies in practice is necessary to its viability. There is reason to believe that both these qualities are at present lacking. This absence of judicial

43 While the question of legitimacy remains unanswered, the resignation of Nicola Sturgeon in February of 2023 means the Scottish National Party's policy on this issue may be reconsidered in the immediate future.

44 Llywodraeth Cymru/Welsh Government, *Reforming Our Union: Shared Governance in the UK*, Second Edition, June 2021, p.9, available at: < https://www.gov.wales/sites/default/files/publications/2021-06/reforming-our-union-shared-governance-in-the-uk-june-2021-0.pdf >, last accessed 25 January 2023.

and self-regulation and of a common interpretation of the convention are worrying from a number of perspectives. They raise doubts about constitutional clarity; about the possibility of independent enforcement; about the need for change to be consensual; about the desirability that the authority of the UK Parliament be exercised in accordance with constitutional principles; and about the autonomy of the devolved institutions (principles 1; 15).

81. Late on in the present report period, the Scottish Parliament passed the Gender Recognition Reform Bill. The UK government immediately threatened to act to negate this legislation, using powers provided to UK ministers under Section 35 of the *Scotland Act 1998*. Subsequent developments and their constitutional implications will be addressed in our next report.

82. In December 2022, the Independent Commission on the Constitutional Future of Wales produced its interim report. Reflecting frustrations about some of the issues we have raised in successive reports, its provisional conclusions included that:

> 'Devolution was a major step forward for Welsh democracy, but the current settlement has been eroded by decisions of recent UK Governments particularly in the context of Brexit. The status quo is not a reliable or sustainable basis for the governance of Wales in the future.'

83. Furthermore, the Commission went on:

> 'The UK's unwritten constitution takes for granted the unfettered sovereignty of the Westminster Parliament. This means that the ability of the people of Wales, and their elected representatives, to determine how they should be governed is severely constrained. Within the UK Parliament, the Welsh Members will always be a small minority, with the result that the particular concerns of Wales will struggle to be heard'.[45]

45 The Independent Commission on the Constitutional Future of Wales, *Interim Report,* (2023), pp. 3-4. Available at: < https://www.gov.wales/sites/default/files/publications/2022-12/independent-commission-the-constitutional-future-of-wales-interim-report-december-2022.pdf >, last accessed 25 January 2023.

Judiciary and the rule of law

Key principles:

Ministers are under an overarching duty to comply with the law, including international law and treaty obligations, uphold the administration of justice and protect the integrity of public life (principle 7).

Ministerial powers should normally be specified in primary rather than secondary legislation. Such powers are subject to limits and constraints; they should be exercised…only for the purposes authorised by the relevant legislation, and in accordance with established norms and reasonable expectation. The exercise of ministerial powers should only exceptionally be immune from challenge in the courts (principle 8).

The judiciary is independent of both the government of the day and Parliament…Civil servants, ministers and, in particular, the Lord Chancellor are under a duty to uphold the continued independence of the judiciary, and must not seek to influence particular judicial decisions (principle 17).

The courts scrutinise the manner in which ministers' powers are exercised. The main route is through the mechanism of judicial review, which enables the actions of a minister to be challenged on the basis that he or she did not have the power to act in such a way (including on human rights grounds); that the action was unreasonable; or that the power was exercised in a procedurally unfair way [*Cabinet Manual*, paragraph 3.39]. The devolution statutes impose additional constraints on the competence of devolved ministers (principle 18).

The activities described in 17 and 18 must be recognised as central to the maintenance of the rule of law. All institutions and office holders dealt with in these principles are required to promote the rule of law. It encompasses concepts including the law being clear and possible to know; access to the law; equality before the law; governors and governed alike being subject to the law; impartiality in the application of the law; adherence to international law; and the protection of human rights (principle 19).

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84. **The *Retained EU Law (Revocation and Reform) Bill* raises a number of concerns relating to issues dealt with in this section. It is problematic from the point of view of the rule of law for a variety of reasons.** They include:

- **Vesting potentially excessive arbitrary power in ministers, especially at UK level**, to alter (or allow to lapse) a wide range of law. The heavy emphasis upon delegated legislation in the Bill limits the role of Parliament and increases the likelihood of arbitrary executive power that is detrimental to the rule of law;

- **Uncertainty about the relationship between laws** through alterations to pre-existing legal hierarchies inherited from the long period of UK membership of the European Union;

- **Uncertainty about the precise laws that are affected**, and the relationship between the UK and devolved fields in the exercise of the powers the bill creates; and

- **Uncertainty about how and when the government intends to deploy (or not deploy) the powers created**, which potentially affect a vast range of policy areas and could have far reaching impact upon the lives of members of the public (principles 1; 8; 19).

85. The various forms of indeterminacy referred to above engage with another area of concern addressed repeatedly on our reports. **As we have noted, over a number of years, various figures within the governing (at UK level) Conservative Party have made clear that they regard the judiciary as having over time extended its influence beyond its proper remit** in the conduct of judicial review and the application of the Human Rights Act, and having intruded upon matters that should be the preserve of politicians.

86. **Yet in introducing the Revocation and Reform Bill in the form it has taken, UK ministers are set to increase reliance on the judiciary, which is likely to be called upon to resolve the many uncertainties inherent within it.** It is inevitable and proper that the courts will be called upon to resolve apparent differences over legal matters; and it is regrettable that they are sometimes improperly criticised for performing this function. However, **it is also the responsibility of law-makers (and governments in proposing legislation) as far as possible to achieve clarity in the measures they produce. To fail to do so is to risk relying excessively on the courts, potentially drawing them into areas of political controversy and exposing them to mis-founded criticism** (principles 1; 17; 18; 19)**.**

87. **We have previously noted concerns about the tendency of the UK government to legislate for measures that raise widespread concerns with regard to the rule of law and human rights. A measure of this type that was progressing through Parliament during the current report period was the *Public Order Bill*. This measure has been subject to criticism for imposing improper restrictions on the ability of members of the public to engage in protest.** Aspects of the legislation that the parliamentary Joint Committee on Human Rights found objectionable from a human rights perspective included the provisions dealing with 'locking on', the obstruction of transport projects, and interference with major infrastructure. It called for the removal of clauses providing for 'serious disruption prevention orders' and allowing for the police to conduct stop and search without suspicion. The Committee judged that the bill would inappropriately restrict the freedoms of movement and of expression, and might be in violation of the European Convention on Human Rights.

88. We have previously noted that we judged **the policy of seeking to deport refugees to Rwanda to be problematic from the perspective of international human rights norms and domestic law. The UK government remained committed to implementing this plan during the present report period.** On 19 December, the High Court found that the general policy was lawful, but quashed eight individual decisions, requiring the Home Secretary to reconsider them if they wished to remove the people concerned (see: Appendix e).[46]

89. **In our previous report period, we noted that the government had brought forward legislation for the overhaul of the *Human Rights Act 1998* (HRA) and the means by which the rights guaranteed by the European Convention on Human Rights can be relied upon in UK law. Whatever the fate of the proposal in the post-Johnson era, that it was introduced at all is a source of concern from the point of view of various constitutional principles. The provisions the government produced depart significantly from the recommendations of the independent review it commissioned to thoroughly consider the subject (see Appendix k, Second Report). It has been observed that,**

46 *R ((AAA) Syria and Ors) v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin).

contrary to the independent review, the government's intended measures rest on a weak evidence base.[47] Substantial concerns have also been raised about the impact the government's reforms would have on access to justice.

90. **The content of the Bill of Rights proposal raised legitimate constitutional objections in as far as it amounted to a restriction of the ability of courts to independently uphold legality in the actions of the executive, and human rights. Furthermore, this envisaged change was constitutionally problematic in that it represented a departure from good practice in constitutional change.** The Bill as drafted would have a substantial impact on the powers of the devolved legislatures, and it is likely to be opposed by them. It also raises potential issues in its interaction with the Belfast/Good Friday Agreement[48] (principles 1; 2; 7; 8; 15; 17; 18; 19).

91. **During the Truss premiership, the Bill of Rights idea appeared to have been dropped. Under Sunak the UK government is in theory committed to it again. We record concern both regarding the proposal itself, and the way in which decisions over a matter of such constitutional significance should seemingly rest more on political contingency than inclusive, considered deliberation. We note that the Bill of Rights, and matters connected to it such as the European Convention on Human Rights and European Court of Human Rights, will be salient issues during the next report period.**

92. **Judicial review – the means by which the legality of the activities of public authorities, including ministers, can be independently assessed – is crucial to the attainment of the various principles set out at the head of this section, and which between them amount to the rule of law. If judicial review is to work effectively, there have to be mechanisms whereby governmental legal officers are able to provide clear and accurate legal advice to ministers. Moreover, when faced with an action for judicial review, the government should cooperate with the applicant for judicial review, ensuring information is exchanged in order to facilitate accountability through the judicial process. This is known as the duty of candour. During the report period two developments occured which, if they become part of a trend, may undermine the rule of law.** In August, the then Attorney General, Suella Braverman, published new guidance on legal risk.[49] The new guidance was produced due to concerns of the then Attorney General that legal advice was overly cautious.[50] The new guidance keeps the threshold for concluding that a policy or decision is *prima facie* unlawful as being "where no respectable legal argument exists to justify the decision or policy'", noting that "this will be rare". However, as the Constitution Committee concludes, "while the 'respectable legal argument' threshold may be justified in some circumstances of genuine legal uncertainty" concerns remain as to whether "the threshold as

47 See: Tatiana Kazim, Mia Leslie and Lee Marsons, 'The government's Human Rights Act consultation: divergence, context and evidence', *The Constitution Society Blog*, 27 January 2022, available at: < https://consoc.org.uk/the-governments-human-rights-act-consultation-divergence-context-and-evidence/ >, last accessed 30 January 2022.

48 Joanna George, 'Why the proposed 'Modern' Bill of Rights is contradictory constitutionalism', *Constitution Society,* 1 August 2022, available at: < https://consoc.org.uk/modern-bill-of-rights/ >, last accessed 30 January 2023.

49 The Attorney General, *Guidance on Legal Risk* (2022), available at: < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1095957/Attorney_General_s_Guidance_on_Legal_Risk.pdf >, last accessed 2 February 2023.

50 Tevye Markson, 'Attorney general accuses 'overcautious ' government lawyers of 'hampering ministers'', 2 August 2022, *Civil Service World,* available at: < https://www.civilserviceworld.com/news/article/government-lawyers-too-cautious-says-attorney-general >, last accessed 2 February 2023.

currently set out in the guidance could sometimes be used purely for the convenience of the Government. Public confidence in the Government's commitment to the rule of law demands that any threshold is meaningful and aligns with an ethos of genuinely seeking to comply with the law."[51]

93. The new guidance on legal risk also provides a new narrative, explaining that, when presenting legal risk, "it is important to ensure negligible or discounted risks are not given undue weight" and that "legal risk is not elevated to disproportionate levels". Government lawyers are also advised to identify mitigations. The guidance also states that "a high risk", which is described as a 70%+ chance of likelihood of legal challenge and a 70% chance of a successful legal challenge, "does not mean that something will necessarily be found unlawful". **If the rule of law is to be upheld, it is important that lawyers are able to provide accurate legal advice and that ministers are willing to listen to this advice and act within the law. What may be seen by ministers as overly cautious may be regarded by lawyers as an accurate assessment of legal risk. It is also important that ministers take legal risk seriously if they are to uphold the rule of law.**

94. **In March 2022, the divisional court delivered its judgment on the government's policy of seizing mobile phones from those arriving in the UK from small boats. The court concluded that this policy was unlawful.[52] Concerns arose in the case as it became clear that the government had originally denied the existence of this policy, only later to concede that this policy had indeed been in place. This raised concerns about the extent to which the government had complied the legal duty of candour. In October, the divisional court delivered a second judgment assessing the breach of the duty of candour in this case.[53]** The divisional court was concerned that "a failure of governance… allowed an unlawful policy to operate for an unknown length of time", at least in part because those responsible for the policy "failed to explain it clearly to the Government Legal Department lawyers and counsel who were instructed in the case".[54] Whilst recognising that this was unusual, and that this may well have been explained by the emergency nature of this policy and the problems created by the pandemic, nevertheless, the court noted that it was worrying that it appeared that insufficient steps had been taken to ensure that the policy pursued by the department was lawful. **The duty of candour plays an important role in the upholding of the rule of law. It ensures that courts are provided with all the information they need to decide cases correctly. If the duty is undermined, this may limit the ability of courts to scrutinise the manner in which ministers exercise their powers. It is to be hoped that this is a one-off incident, caused by the stress of the situation and the pandemic, and that the government learns from this decision in order to fully embed the importance of the rule of law across all legal departments.**

95. **Further developments in judicial practice should be noted. They involve the use of secondary material, particularly explanatory memorandums prepared by the government when presenting Bills to Parliament.** These can be used to supplement the determination of the ordinary meaning of words and should play a secondary and not a primary role.[55] **Courts are particularly concerned when these notes are not prepared at the same time as the Bill, and also recognise the need to ensure that the use of this secondary material does not inadvertently prioritise the view of the government**

51 House of Lords Select Committee on the Constitution, *The Roles of the Lord Chancellor and the Law Officers*, Ninth Report of Session 2022-23, HL paper 118, para 148.
52 *HM v Secretary of State for the Home Department* [2022] EWHC 695 (Admin).
53 *R (HM) v Secretary of State for the Home Department* [2022] EWHC 2729 (Admin).
54 *R (HM) v Secretary of State for the Home Department* [2022] EWHC 2729 (Admin), [10].
55 See, *R (O) v Secretary of State for the Home Department* [2022] UKSC 3, *R (Coughlan) v Minister for the Cabinet Office* [2022] UKSC 11 and *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31.

as opposed to that of Parliament.[56] Nevertheless, statements of Justices of the Supreme Court also suggest that it may be possible to refer to explanatory memorandums to point out a possible ambiguity. This may arise, for example, when, on its face, legislation provides for a broad ministerial power, but the explanatory memorandum sets out a narrower scope or purpose of that broad power.[57] **The use of explanatory memorandums in this manner may help to uphold the rule of law, ensuring that broad powers are only used for the narrower purposes for which they were proposed. The use of explanatory memorandums in this way may also promote legal certainty**, providing a source from which we can discern the purpose of legislation and the scope of ministerial powers that may otherwise be interpreted to empower ministers to act beyond the purpose for which a power was granted.

56 See, in particular, the statements of Lord Reed in *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31, [35] to [42].

57 See, for example, the judgment of Lady Arden in *R (O) v Secretary of State for the Home Department* [2022] UKSC 3.

Appendices

Appendix a: UK Constitution Monitoring Group Statement of Principles

The list of items that follows is neither exhaustive nor final. It is potentially subject to subsequent refinement, expansion, or addition. Where appropriate, we have drawn directly on the texts of laws and official documents in the public domain (using italics). In other instances, we have used our own words (unitalicised). Sources are indicated. We recognise that these principles can be applied in a variety of different ways. Some of them could legitimately change; but any such alterations should be carried out in accordance with item 1 of the list. As a whole they are intended to provide significant reference points against which to assess key developments significant to the UK constitution.

Nature of UK constitution, and constitutional change

1. It is essential that the constitutional arrangements of the UK are clear and knowable; that they should be, wherever possible, subject to robust and impartial enforcement; and that they should as far as possible command consensus. Constitutional change should take place in a considered fashion and as far as possible on a basis of consensus. The legislative authority of the UK Parliament should be exercised subject to underlying constitutional principles including those outlined in this text.

Representative democracy

2. The UK is a representative democracy. The existence of devolved and UK governments is derived from the broad support of the respective legislatures (see e.g.: *Cabinet Manual*, 2011, paragraph 2). The UK House of Commons and the devolved legislatures in turn derive legitimacy from the free and fair election of their members held at intervals of no more (except in the most exceptional of circumstances) than four or five years.

Governments and their accountability to legislatures

3. Ministers are accountable, individually or collectively, to their legislatures for the exercise of their ministerial responsibilities, and for the activities of the publicly-funded bodies within their remits (see e.g.: *Ministerial Code*, 2022, paragraph 1.3b). Ministers must provide information that is both accurate and truthful to their respective legislatures, and should correct unintended errors they make as soon as possible (see e.g.: *Ministerial Code*, paragraph 1.3c). Devolved and UK ministers should be as open as they can in their interactions with legislatures and the public. They should withhold information only if to do otherwise would compromise the public interest, as set out in freedom of information legislation and other specific legislation (see e.g.: *Ministerial Code*, paragraph 1.3d).

4. Governments should not use their powers to compromise the ability of legislatures autonomously to perform the constitutional functions they carry out on behalf of the public, such as holding the executive to account and making law.

5. At UK level, the House of Commons is rightly acknowledged as in a position of primacy over the House of Lords. But the House of Lords has a legitimate role in parliamentary processes, including scrutiny of primary and delegated legislation, and its special interest and expertise in constitutional matters should be acknowledged.

6. *Civil servants are accountable to ministers, who in turn are accountable to Parliament* [*Civil Service Code*, 2015]. There are limited exceptions to this general principle, including the role of specific officials (Accounting Officers or, in Scotland, Accountable Officers), who at UK level are personally responsible to the House of Commons Committee of Public Accounts *for keeping proper accounts; for the avoidance of waste and extravagance; and for the efficient and effective use of resources* [*Ministerial Code*, paragraph 5.3]. Similar exceptions apply at devolved level, with officials accountable for financial management to devolved legislatures.

Legal powers and obligations of ministers

7. *Ministers are under an overarching duty to comply with the law, including international law and treaty obligations, uphold the administration of justice and protect the integrity of public life. They are expected to observe the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership.* (*Cabinet Manual,* paragraph 3.46. For the *Seven Principles of Public Life* see below).

8. UK and devolved ministers' powers are derived from legislation; ministers may also exercise powers derived from the common law, including prerogative powers of the Crown. Ministerial powers should normally be specified in primary rather than secondary legislation. Such powers are subject to limits and constraints; they should be exercised, and public expenditure approved, only for the purposes authorised by the relevant legislation, and in accordance with established norms and reasonable expectation. The exercise of ministerial powers should only exceptionally be immune from challenge in the courts (see e.g.: *Cabinet Manual,* paragraph 3.24).

9. [UK] *Ministers must ensure that no conflict arises, or could reasonably be perceived to arise, between their public duties and their private interests, financial or otherwise* [*Ministerial Code* paragraph 7.1]. *Ministers must not use government resources for Party political purposes* [*Ministerial Code*, paragraph 1.3i]. These principles extend to devolved ministers also, and all holders of public office.

Civil Service

10. Civil servants, with the exceptions of 'special advisers' and certain others, must be *recruited on merit on the basis of fair and open competition.* They should be promoted on merit usually following a competitive process. They must be required to *carry out their duties with integrity and honesty, and objectivity and impartiality.* They must serve the government to the best of their ability in a way which maintains political impartiality, and act in a way that deserves and retains the confidence of ministers in the government of the day, while ensuring they will be able to establish the same relationship with those they may be required to serve in a future government (see: *Constitutional Reform and Governance Act 2010,* Part 1 for the UK, Scottish and Welsh governments; *Civil Service Codes;* and similar provisions for the Northern Ireland Civil Service).

11. [UK] *Ministers must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the Civil Service Code and the requirements of the Constitutional Reform and Governance Act 2010* [*Ministerial Code*, paragraph 5.1j]. [UK] *Ministers have a duty to give fair consideration and due weight to informed and impartial advice from civil servants, as well as to other considerations and advice in reaching policy decisions, and should have regard to the Principles of Scientific Advice to Government* [*Ministerial Code*, paragraph 5.2]. These principles extend to devolved ministers also.

12. 'Special advisers' to ministers are temporary civil servants who are not required to be recruited on merit through competition or to carry out their duties with objectivity and impartiality. They are an accepted part of government but should act in accordance with prescribed limitations (see: *Constitutional reform and Governance Act 2010, part 1; Special Advisers Codes, and similar provisions in Northern Ireland*).

Devolution and the Union

13. The devolved institutions of Wales and Scotland are 'permanent' parts of the United Kingdom constitution (see: *Scotland Act 2016*, section 1; *Wales Act 2017,* section 1). The devolved institutions of Northern Ireland are also constitutional fixtures; subject to the proviso that Northern Ireland can, after approval via a referendum, leave the UK (once the UK Parliament has legislated to this effect) and join the Republic of Ireland. The UK government has previously conceded the principle that Scotland could become independent from the UK subject to a referendum.

14. In those spheres of operation which have been devolved in Wales, Scotland and Northern Ireland, or those devolved in Scotland and Northern Ireland but not in Wales, responsibility for those functions in relation to England or England and Wales are exercised by 'UK government' ministers answerable to the UK Parliament.

15. The devolved institutions have the right to legislative and executive autonomy in their respective spheres of operation. [T]*he UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the devolved legislature.* (*Memorandum of Understanding,* 2013, paragraph 14. See also: *Scotland Act 2016*, section 2; *Wales Act 2017*, section 2). The devolved institutions have a proper interest in decisions taken at UK level that impact upon them, and over international agreements entered into by the UK when their implementation would fall within devolved competence.

16. Appropriate structures, regulations and practices should exist to ensure that the principles set out in items 13 and 15 above are fully realised. They should allow in particular for liaison, co-ordination and genuine co-decision-making between devolved and UK executives; and between devolved and UK legislatures.

The judiciary and the rule of law

17. *The judiciary interprets and applies the law; and develops the common law in its decisions. It is a long-established constitutional principle that the judiciary is independent of both the government of the day and Parliament so as to ensure the even-handed administration of justice. Civil servants, ministers and, in particular, the Lord Chancellor are under a duty to uphold the continued independence of the judiciary, and must not seek to influence particular judicial decisions.* (*Cabinet Manual*, paragraph 16. See also: *Justice (Northern Ireland) Act 2002*, section 1; *Constitutional Reform Act 2005,* part 2; *Judiciary and Courts (Scotland) Act 2008*).

18. *The courts scrutinise the manner in which ministers' powers are exercised. The main route is through the mechanism of judicial review, which enables the actions of a minister to be challenged on the basis that he or she did not have the power to act in such a way (including on human rights grounds); that the action was unreasonable; or that the power was exercised in a procedurally unfair way* [*Cabinet Manual*, paragraph 3.39]. *The devolution statutes impose additional constraints on the competence of devolved ministers.*

19. The activities described in 17 and 18 must be recognised as central to the maintenance of the rule of law. All institutions and office holders dealt with in these principles are required to promote the rule of law. It encompasses concepts including the law being clear and possible to know; access to the law; equality before the law; governors and governed alike being subject to the law; impartiality in the application of the law; adherence to international law; and the protection of human rights.

Constitutional monarchy

20. The monarchy should not be drawn into party political controversy. The powers formally attached to the monarchy should not be deployed in ways that undermine the principles outlined in this text.

The Seven Principles of Public Life (1995)

In addition, those working in the public sector are expected to adhere to a set of ethical standards set out by Lord Nolan in the first report of the Committee on Standards in Public Life (1995). They are included in a range of Codes of Conduct across public life.

1.1 Selflessness

Holders of public office should act solely in terms of the public interest.

1.2 Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

1.3 Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

1.4 Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

1.5 Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

1.6 Honesty

Holders of public office should be truthful.

1.7 Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Appendix b: Timeline of events

August

1 August: The postal ballot for the leadership of the Conservate Party opens
2 August: The postal ballot for the leadership of the Conservate Party is delayed after a security warning is issued by GCHQ
3 August: After the Northern Ireland Assembly is recalled by the Social Democratic and Labour Party, the Democratic Unionist Party block the election of a speaker. Consequently, no executive can be formed
5 August: The Parliamentary Standards Commissioner, Kathryn Stone, finds the Leader of the Opposition, Keir Starmer, breached MPs' code of conduct eight times in 'minor or inadvertent' ways
12 August: Conservative leadership candidate Liz Truss refers to 'wokeism and antisemitism' in the Civil Service; while rival Rishi Sunak proposes job cuts to fund energy support payments
15 August: New Cabinet Office policy allows speakers who have a history of criticising the government to be banned from learning and development events
22 August: Criminal barristers in England and Wales vote in favour of indefinite strike action in an ongoing dispute over legal aid fees
25 August: Senior civil servant Neil Gibson takes control of Northern Ireland finances under section 59 of the Northern Ireland Act 1998

September

2 September: The UK government's response to the House of Lords Constitution Committee report, *Respect and cooperation*, is published six months later than the standard period would allow. The response also ignored some recommendations, leading the Committee to ask for a further response
5 September: Liz Truss wins the Conservate Party leadership election
6 September: Boris Johnson resigns as Prime Minister
Liz Truss is installed as Prime Minister
Liz Truss announces her new Cabinet
7 September: The UK government announces that the new Bill of Rights Bill has been shelved and will not progress through Parliament
8 September: The Permanent Secretary to the Treasury, Tom Scholar, is removed with immediate effect by new Chancellor of the Exchequer, Kwasi Kwarteng
8 September: The death of Queen Elizabeth II is announced
King Charles III becomes Monarch
10 September: The Accession Council meets and formally proclaims Charles III king
Charles III takes the Oath relating to the Security of the Church of Scotland
11 September: Senior MPs take the Oath of Allegiance to the new King
12 September: King Charles III addresses the Westminster Parliament before traveling to Scotland to meet with First Minister Nicola Sturgeon. The procession of Queen Elizabeth II's coffin passes along the Royal Mile in Edinburgh
13 September: King Charles III visits Northern Ireland and meets Stormont political parties including Sinn Fein
19 September: The funeral of Queen Elizabeth II takes place
22 September: Speaker of the House of Commons, Lindsay Hoyle, criticises Jacob Rees Mogg for informing the media of government plans in advance of the House
The Retained EU Law (Revocation and Reform) Bill is introduced to Parliament
23 September: Chancellor of the Exchequer, Kwasi Kwarteng, announces a 'mini-budget' which has not been scrutinised by either Parliament or the Office for Budget Responsibility

26 September: Labour Party members vote in favour of proportional representation for general elections at their annual conference
26 September: It is revealed that the Cabinet Office ethics team signed off on payment arrangements, subsequently reversed, for Prime Minister Liz Truss's chief of staff, that differed from the normal means of paying people in such posts

October
11 October: Prime Minister Liz Truss announces that responsibility for Union policy and devolution will return to the Cabinet Office
The First Minister of Wales, Mark Drakeford, confirms to the Senedd that Prime Minister Liz Truss has yet to contact him. A similar situation exists in regard to Scotland, where the Prime Minister has yet to contact First Minister Nicola Sturgeon
The UK Supreme Court begins hearing the reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998
14 October: Boris Johnson's political honours list is announced, creating 13 new Conservative peers
15 October: In response to political pressure following the exceptionally poor market reception for 23 September's 'mini-budget', Prime Minister Liz Truss announces Kwasi Kwarteng has been replaced as Chancellor of the Exchequer by Jeremy Hunt
17 October: New Chancellor Jeremy Hunt announces that almost all changes announced in the 'mini-budget' are to be reversed
19 October: Suella Braverman is forced to resign as Home Secretary after it is revealed she sent confidential documents via a personal email account. Braverman's resignation letter contains criticisms of the conduct and direction taken by the government in which she had served
20 October: Following continued significant political pressure in the wake of the 'mini-budget', Liz Truss resigns as Prime Minister
24 October: Boris Johnson announces he will not put his name forward as a candidate for Leader of the Conservative Party despite, he claims, having secured support from a number of MPs sufficient to pass the threshold of 100 set by Graham Brady MP and the 1922 Committee
Rishi Sunak becomes the only Conservate MP to pass this nomination threshold and is duly elected Leader of the Conservative Party
Rishi Sunak is instated as Prime Minister
25 October: Rishi Sunak announces his new cabinet with Suella Braverman reappointed as Home Secretary following her resignation six days previously

November
1 November: Matt Hancock MP is suspended from the Conservative Party after agreeing to appear on a residential reality TV contest
7 November: Boris Johnson's resignation honours list is revealed, including numerous appointments for political allies
8 November: Gavin Williamson resigns as Minister of State without Portfolio following complaints about his conduct
16 November: Dominic Raab answers questions in Parliament over two allegations of bullying
18 November: It is announced that the Scottish Ministerial Complaints Procedure will be updated such that ministers will be named when claims are upheld, among other reforms
20 November: The Leader of the Opposition, Keir Starmer, pledges to abolish the House of Lords, appearing to mean that it will be replaced with a differently composed second chamber
21 November: Suspended former Conservative MP David Warburton is found to have breached the Ministerial Code by failing to declare a £150,000 loan from a Russian businessman

23 November: The UK Supreme Court rules unanimously that it had jurisdiction to decide the Lord Advocate's reference and unanimously that the proposed question related to the reserved matters of the Union and the Parliament of the United Kingdom in the Lord Advocate's reference. It also holds that the international law right of self-determination does not confer on the people of Scotland the right to become independent.
The government announces it will make amendments to its North Ireland Troubles (Legacy and Reconciliation) Bill following criticism at all stages of its progression
25 November: The inquiry into allegations of bullying against Dominic Raab MP is expanded and Prime Minister Rishi Sunak appoints employment barrister Adam Tolley KC to investigate the matter (there is no Independent Adviser on Ministers' Interests in post yet, following the resignation of Lord Geidt from the post in June 2022)
30 November: The UK Supreme Court begins hearing the application by James Hugh Allister and others for Judicial Review (Appellants) (Northern Ireland) on the Northern Ireland Protocol

December
2 December: The Public Administration and Constitutional Affairs Committee publishes its *Propriety of Governance* report. This includes criticism of the reappointment of Suella Braverman as Home Secretary
5 December: Labour's Commission on the UK's Future, led by former Prime Minister Gordon Brown, releases its report *A New Britain.* The report proposes a raft of constitutional reforms for adoption by the Labour Party ahead of the next general election
6 December: The Identity and Language (Northern Ireland) Act 2022 receives royal assent
Northern Ireland (Executive Formation etc) Act 2022 receives royal assent
The Independent Commission on the Constitutional Future of Wales releases its interim report
7 December: A fifth unsuccessful attempt is made to recall Stormont, with the Democratic Unionist Party again preventing the recall
The UK Supreme Court upholds the legality of the Northern Ireland Abortion Buffer Zones Bill
8 December: The Prime Minister expresses shock over claims made about the activities of Conservative Peer Michelle Mone in relation to the award of pandemic related contracts
12 December: Secondary legislation is published ahead of the introduction of compulsory Voter ID at elections in 2023
15 December: The High Court rules that Edwin Poots acted unlawfully in seeking to halt post-Brexit goods checks in Northern Ireland
The Prime Minister's spokesman confirms five additional complaints have been made by civil servants about Dominic Raab's behaviour as a minister
19 December: The High Court rules that the government's agreement to send asylum seekers to Rwanda is lawful in general, though individual cases can remain subject to review
21 December: The Speaker of the Commons, Lindsay Hoyle, voices his opposition to aspects of recommendations made by the Labour Party's Commission on the UK's Future
22 December: Laurie Magnus is named as the Prime Minister's new Ethics Adviser. He is the first person to occupy the post since Lord Geidt's resignation in June 2022
The High Court rules the government's EU resettlement plan is not lawful
22 December: Rishi Sunak issues a new version of the Ministerial Code

Appendix c: *A new Britain*, report of The Commission on the UK's Future

We do not seek to make specific predictions, nor do we take a view on the desirable outcome. But there is a reasonable chance that Labour will be a party of government after the next General Election.[58] For this reason, evidence of the possible approach to constitutional matters that Labour might take in power merits consideration. Policy has yet to be formalised by the Party ahead of the next general election. However, Keir Starmer has pledged to abolish the House of Lords if elected.[59] While this bald statement might seem to point to a shift towards a unicameral Parliament, it seems more likely that it will entail a reformed second chamber, with a different composition and perhaps functions and powers. Beyond this commitment, the most high-profile contribution to Labour planning in this area – though not comprising official party policy – has been the report of the Commission on the UK's Future, entitled *A new Britain: renewing our democracy and rebuilding our economy*.[60]

Published on 6 December 2022, the report is the work of a group commissioned by Starmer and headed by former Prime Minister Gordon Brown. The commission is made up of Labour Party figures from across the nations and regions of the UK. The report was long in the making. While the Commission itself was announced in September of 2021, talk of Brown leading Labour policy development on the Union long predates this.[61]

While *A new Britain*'s 40 recommendations are not binding on Labour, their scope and scale necessitate discussion among those concerned with constitutional issues. Of these, the Commission's recommendation to abolish and replace the House of Lords with an elected second chamber has garnered the most attention thus far, and to which Starmer has committed in principle. In place of the Lords, the Commission recommends an 'Assembly of Nations and Regions'.[62]

The Assembly would reduce the size of the second chamber by nearly 600 members, to 200 members. All would be elected, though 'the precise composition and method election' are left open to further consultation.[63] Alongside the composition, the function of this second chamber would also be altered.

58 Adam Forrest, 'Labour extends lead over Tories to 20 points in first poll of 2023', *The Independent,* 11 January 2022, available at: < https://www.independent.co.uk/news/uk/politics/labour-tories-poll-election-2023-b2255754.html >, last accessed 13 January 2022.

59 Michael Savage, 'Keir Starmer: I will abolish House of Lords to 'restore trust in politics', *The Guardian,* 19 November 2022, available at: < https://www.theguardian.com/politics/2022/nov/19/keir-starmer-i-will-abolish-house-of-lords-to-restore-trust-in-politics >, last accessed 13 January 2022.

60 Commission on the UK's Future, *A new Britain: renewing our democracy and rebuilding our economy* (December, 2022), available at: < https://labour.org.uk/wp-content/uploads/2022/12/Commission-on-the-UKs-Future.pdf >, last accessed 13 January 2022.

61 Jody Harrison, 'Gordon Brown to lead commission "to settle the future of the union" – Starmer', *The Herald,* 29 September 2021, available at: < https://www.heraldscotland.com/politics/19613897.gordon-brown-lead-commission-settle-future-union----starmer/ >, last accessed 13 January 2022.

62 Commission on the UK's Future, *A new Britain,* p. 17.

This policy appears to draw inspiration from a previous Labour Party report, *Remaking the British state,* which proposed a 'Senate of Nations and Regions'. See: Seán Patrick Griffin, *Remaking the British state: for the many, not the few* (2020), pp 192-212, available at: < https://www.scottishlabourleft.co.uk/uploads/6/4/8/1/6481256/remaking_the_british_state_for_the_many_not_the_few_final_report_v2.pdf >, last accessed 13 January 2022.

63 Commission on the UK's future, *A new Britain,* p. 17.

At present the House of Lords retains only one absolute veto power, which may be exercised against bills attempting to extend the term of a parliament. The Commission proposes that this power be widened, such that the Assembly might veto Commons legislation which impacted devolution, including that which was in breach of the Sewel Convention.[64] In this regard, the report is relatively innovative. To prevent the abuse of this power, the Assembly would 'first be required to refer the question to court, most likely directly to the Supreme Court, for an authoritative judgement on whether the constitutional protection powers are engaged.'[65] In this sense, both the Assembly and the Supreme Court could act as a check to defend the devolution settlement and to balance the power of the House of Commons. The Assembly would also help monitor standards in public life and alongside this changed remit, would continue to perform the functions of the present Lords in scrutinising legislation and offering amendments to bills from the Commons.[66]

In addition to the Assembly of Nations and Regions, the Commission also proposes the formation of a Council of Nations and Regions. Chaired by the Prime Minister, it is recommended that the new Council meet once a year and have various sub-committees to deal with the day-to-day work of facilitating cooperation between Westminster and the devolved nations and regions.[67] Importantly, the Commission also recommends placing the Council on a statutory footing, entrenching some work presently conducted by convention. Likewise, the formation of a 'Council of the UK' is also recommended: 'where the devolved governments in Scotland, Wales and Northern Ireland will meet the UK government' to consider the programme for Parliament, plans for devolved legislation and UK wide economic strategies.[68] Finally, a 'Council of England' will be formed from English local government officials, mayors, Westminster and Whitehall to govern aspects of English devolution. The Council of England will further be aided by an 'English Grand Committee' where English MPs will meet and debate English legislation.[69] The Brown Commission envisages this as a more formalised approach to English Votes for English Laws, which was abolished in 2021.

In addition to these numerous structures relating to devolution, the Commission also recommends reform intended to improve standards in public life. It presents this project as entwined with the project of dispersing power downwards from Whitehall and improving local democratically accountability. Among other recommendations, the Commission suggests that Parliament should take responsibility for the Information Commissioner's Office, 'that FOI should be expanded to all new public service contracts delivered by private companies, and perhaps most importantly, that a new independent Integrity and Ethics Commission be established.'[70] Its remit would encompass that presently covered by the Independent Adviser on Ministers' Interests, the Commissioner for Public Appointments and the Civil Service Commission. This body would have investigatory powers independent of prime ministerial influence.[71]

64 Commission on the UK's future, *A new Britain,* p. 140.
65 Commission on the UK's future, *A new Britain,* p. 141.
66 Dexter Govan, 'A new Britian in review', The Constitution Society Blog, 8 December 2022, available at: < https://consoc.org.uk/a-new-britain-in-review/ >, last accessed 19 January 2023.
67 Commission on the UK's future, *A new Britain,* p. 102.
68 Commission on the UK's future, *A new Britain,* pp 119-120.
69 Commission on the UK's future, *A new Britain,* p. 122.
70 Govan, 'A new Britain in review'.
71 See: *United Kingdom Constitution Monitoring Group,* The Constitution in Review: Third Report of the United Kingdom Constitution Monitoring Group (London, 2022).

Beyond an expansion in accountability mechanisms, the Commission on Integrity and Ethics Commission would also introduce into the UK constitution a role for 'juries of ordinary citizens' who, chosen at random, would make the ultimate decision about whether action would be recommended by the Commission over matters it had investigated.[72] The report also recommends the creation of a new 'anti-corruption Commissioner' whose appointment would be subject to approval by the devolved parliaments.

The report's 40 recommendations are as follows:

1. The political, social, and economic purposes of the UK as a Union of Nations, which the overwhelming majority of people in the country already accept, should be laid out in a new constitutional statute guiding how political power should be shared within it.

2. The common desire for more local control should be reflected in a legal requirement, to require decisions to be taken as close as meaningfully and practicably possible to the people affected by them, so putting power and opportunity closer to each citizen.

3. There should be a constitutional requirement that the political, administrative and financial autonomy of local government should be respected by central government.

4. There should be an explicit constitutional requirement to rebalance the UK's economy so that prosperity and investment can be spread more equally between different parts of the UK than it is today, thereby equalising living standards across the country over time.

5. There should be new, constitutionally protected social rights – like the right to health care for all based on need, not ability to pay - that reflect the current shared understanding of the minimum standards and public services that a British citizen should be guaranteed.

6. Towns and cities across England should be given new powers to drive growth and champion their areas.

7. The UK needs a radically reformed suite of place-based, innovation-led R&D programmes, with Mayors and local leaders in all parts of the UK playing a key role in design and delivery. This should include the replacement for EU regional funding, and future support for the Strength in Places Fund.

8. The UK Infrastructure Bank should be given an explicit mission to address regional economic inequality in the provision of infrastructure.

9. The British Business Bank should be given a new remit to promote regional economic equality in access to investment capital. It should do this by bridging the equity finance gap outside of London and the South East, and should be renamed the British Regional Investment Bank to reflect this change.

10. There should be an economic growth or prosperity plan for every town and city to contribute to our shared prosperity, owned by Councils, Mayors, towns and cities working in partnership.

11. 50,000 civil service jobs should be transferred out of London, saving at least ¬£200m per year, and more Agency and Public Bodies Headquarters moved out of London. We identify the first dozen of possible candidates.

72 Commission on the UK's future, *A new Britain,* p. 128.

12. Local government should be given greater long-term financial certainty to enable them to invest more confidently in their areas' futures.

13. Local government should be given more capacity to generate its own revenue with new fiscal powers.

14. Local leaders should be able to take new powers from the centre, through a new, streamlined process to initiate local legislation in Parliament.

15. There should be "double devolution" that pushes power closer to people - giving them and their community the right to have more of a say on the issues that affect them, the services they use and the places they live.

16. Enhanced Protection: Scottish devolution should be constitutionally protected by strengthening the Sewel Convention and protecting it from amendment through the new second chamber.

17. Enhanced status internationally in devolved areas: the Foreign Affairs reservation should be amended to permit the Scottish Government, with the agreement of the Scottish Parliament, to enter into international agreements and join international bodies in relation to devolved matters.

18. Enhanced status for MSPs: Members of the Scottish Parliament should enjoy the same privileges and protections as Members of Parliament in relation to statements made in their proceedings.

19. Enhanced local control: there is a strong case for pushing power as close as possible to people in Scotland, and consideration should be given to establishing new forms of local and regional leadership, such as directly elected Mayors.

20. Enhanced opportunities for co-operation to mutual benefit: there should be not only enhanced self-government for Scotland but strengthened cooperation with the UK Government to address the challenges Scotland faces today.

21. Enhanced access to economic resources for Scotland: the British Regional Investment Bank should maximise support for innovation and investment in Scotland, in conjunction with the Scottish National Investment Bank and the European Investment Bank.

22. Enhanced protection: Welsh devolution should be constitutionally protected by strengthening the Sewel Convention and protecting it from amendment through the new second chamber.

23. Enhanced role for Members of the Senedd: the Welsh Senedd's members should, if desired, enjoy the same privileges and protections as Members of Parliament in relation to statements made in their proceedings.

24. Enhanced powers: new powers should be made available to the Senedd and Welsh Governments, including embarking upon new powers over youth justice and the probation service.

25. Enhanced access to economic resources for Wales: the British Regional Investment Bank should maximise support for innovation and investment in Wales, in conjunction with the Welsh Development Bank and the European Investment Bank.

26. We support devolution in Northern Ireland, consistent with the principle of consent and the commitments made in the Good Friday Agreement and wish to see it restored and strengthened.

27. Enhanced access to economic resources for Northern Ireland: the British Regional Investment Bank should maximise support for innovation and investment in Northern Ireland, in conjunction with Invest NI and the European Investment Bank

28. There should be a 'solidarity clause', a legal obligation of co-operation between the different levels of Government and institutions across the UK.

29. The UK need a new and powerful institution to drive co-operation between all its governments – a Council of the Nations and Regions.

30. The structures of co-operation and of central government and Parliament should respect and recognise those areas of decision making that are England- only.

31. Joint policy initiatives in areas of common interest, from climate change to security, should embed co-operation between different levels of government.

32. International trade policy should be made more inclusive of devolved leaders across the UK and have an explicit focus on reducing the UK's regional economic inequality.

33. UK-wide departments and public bodies should, as a matter of course, be obliged to make space in their governance and oversight arrangements for national and regional representation.

34. We must clean up our politics with new rules for politicians and civil servants, new powers to clamp down on outside earnings for MPs, new laws to eliminate foreign and corrupt money from UK politics, and powerful new institutions to enforce these, to replace the current institutions that have failed.

35. There should be a greater role for the public in making and enforcing the rules followed by politicians.

36. There should be a powerful new anti-corruption Commissioner to root out criminal behaviour in British political life where it occurs.

37. The House of Lords should be replaced with a new second chamber of Parliament: an Assembly of the Nations and Regions.

38. The new second chamber should complement the House of Commons with a new role of safeguarding the UK constitution, subject to an agreed procedure that sustains the primacy of the House of Commons .

39. The new second chamber must have electoral legitimacy, and should be markedly smaller than the present Lords, chosen on a different electoral cycle – with the precise composition and method of election matters for consultation.

40. We recommend that the necessary consultation and preparatory work should begin now, and this should include a ground-up conversation with the people of Britain.

Appendix d: Suella Braverman

On 25 October 2022 Suella Braverman was reappointed as Home Secretary just six days after she had been forced to resign as a result of a security breach she had committed while in post. That her resignation and reappointed occurred around the resignation of Prime Minister Liz Truss doubtlessly served to divert attention from the incident, but Braverman's reversal of fortune merits discussion from the point of view of the maintenance of constitutional norms.

Biography

In 2015 Suella Braverman was elected as MP for Fareham for the first time. In 2016, she was elected as deputy-chair of the European Research Group, rapidly becoming chair before her appointment as a minister in January of 2018.[73] Her first ministerial post came as Parliamentary Undersecretary of State at the Department for Exiting the European Union, a post Braverman held until November of 2018.[74] In May 2020, Braverman resigned alongside the then-Brexit Secretary, Dominic Raab, in protest at the Brexit deal negotiated by then-Prime Minister Theresa May.[75]

In February 2020, Boris Johnson appointed Suella Braverman as Attorney General. Braveman remained in this post until 6 September 2022, where she developed a reputation for her stringent views on a number of issues, chief among them immigration. Following the downfall of the Johnson administration, Braverman ran to be Conservative Party leader but was defeated in the second round of MPs' voting.[76] With the election of Liz Truss as leader and Prime Minister, Braverman was promoted once again, this time to the role of Home Secretary, on 6 September 2022.

Home Secretary

As Home Secretary the style and content of her politics represented a continuation of her time as Attorney General.[77] In particular, Braverman emphasised the importance of the control of borders. Speaking at an event at Conservative Party conference in early October, she said it was her 'dream' and 'obsession' to see flights taking asylum seekers to Rwanda.[78] In a media interview, Braverman also expressed doubts about government plans for a trade deal with India on the basis that it could increase immigration to

73 Andrew Gaudion and Jon Fellowes, 'Who is Suella Braverman? Home Secretary's husband, political career, real name and more', *The Metro,* 2 November 2022, available at: < https://metro.co.uk/2022/10/27/who-is-suella-braverman-and-what-is-her-real-name-husband-age-and-more-17648010/ >, last accessed 23 January 2023.

74 'The Rt Hon Suella Braverman KC MP', *Gov.co.uk*, available at: < https://www.gov.uk/government/people/braverman/ >, last accessed 23 January 2023.

75 Gaudion and Fellows, 'Who is Suella Braverman?'.

76 Zoe Adams, 'Who is Home Secretary Suella Braverman? Everything you need to know', *LBC,* 31 October 2022, available at: < https://www.lbc.co.uk/news/explained/who-is-home-secretary-suella-braverman-background-policies-husband/ >, last accessed 24 January 2023.

77 'Suella Braverman, a Johnsonian lawyer', *The Economist,* 7 April 2022, available at: < https://www.economist.com/britain/2022/04/07/suella-braverman-a-johnsonian-lawyer >, last accessed 24 January 2023.

78 See Appendix e.

the UK.[79] This criticism was difficult to reconcile with the principle of collective Cabinet responsibility, and seemingly related to divisions within the Truss government involving Braverman and the Prime Minister.

In another notable speech during her 43 day-term as Home Secretary, in moving the controversial Public Order Bill, Braverman blamed protests which had taken place that day on her political opponents, suggesting: 'It's the Labour party, it's the Lib Dems, it's the coalition of chaos, it's the Guardian-reading, tofu-eating wokerati, dare I say, the anti-growth coalition that we have to thank for the disruption that we are seeing on our roads today.'[80]

Resignation

The event leading to Braverman's resignation involved her transmission of official documents to a backbench colleague, and, inadvertently, to an additional member of parliamentary staff.[81] On 19 October 2022 the Home Secretary was forced to resign following this breach of the ministerial code.[82] Braverman had in fact sent a draft written statement on migration rules to a backbench MP via a personal email address for feedback. The seriousness of doing so was sufficient for her to leave her office, though some in the Conservative Party sought to downplay the transgression as a 'run of the mill' breach of protocol.[83]

In particular, Braverman had intended to email her colleague Sir John Hayes MP the draft ministerial statement copying in his parliamentary secretary, but instead inadvertently sent it to a parliamentary employee of the same name as the secretary who instead worked for Andrew Percy MP. Percy's office then reported this to the Conservative Chief Whip, and so Number 10 came to be informed.[84]

The use of a personal email account was of particular concern since it would not have engaged the same security checks as a governmental account. Beyond this security risk, though, documents such as those sent by Braverman have the potential to influence financial markets. Consequently, their distribution in advance of publication is prohibited in the Ministerial Code to prevent profiteering.[85]

79 Fraser Nelson, 'Suella Braverman: 'Brexit isn't a revolution – it's a restoration', *The Spectator*, 8 October 2022, available at: < https://www.spectator.co.uk/article/suella-braverman-brexit-isnt-a-revolution-its-a-restoration/ >, last accessed 24 January 2023.

80 HC Hansard for 18 October 2022, 'Public Order Bill', available at: <https://hansard.parliament.uk/Commons/2022-10-18/debates/52B4111A-9C01-4FF0-A1CF-06721F589D61/PublicOrderBill# >, last accessed 25 January 2023.

81 Suella Braverman, *Letter to Dame Diana Johnson MP*, 31 October 2022, available at: < https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1114666/311022_HASC_letter.pdf >, last accessed 25 January 2023.

82 Pippa Crerar, Peter Walker and Aubrey Allegretti, 'Suella Braverman forced to resign as UK home secretary', *The Guardian*, 19 October 2022, available at: < https://www.theguardian.com/politics/2022/oct/19/suella-braverman-departs-as-uk-home-secretary-liz-truss >, last accessed 25 January 2023.

83 Robert Peston, *Tweet*, 19 October 2022, available at: < https://twitter.com/Peston/status/1582762227631034369?s=20&t=l0dgAj-HBu_EoI4qoZiBIA >, last accessed 25 January 2023.

84 Andrew Learmonth, 'Braverman reappointed as Home Secretary days after quitting over rule breach', *The Herald,* 25 October 2022, available at: < https://www.heraldscotland.com/politics/23077778.braverman-reappointed-home-secretary-days-quitting-rule-breach/ >, last accessed 24 January 2022.

85 For amendment of the Code see: *United Kingdom Constitution Monitoring Group*, The Constitution in Review: Third Report of the United Kingdom Constitution Monitoring Group (2022), pp 56-58.

Given Boris Johnson's amendment of the Ministerial Code, though, Braverman's decision to resign was her own and uncertainty remains over her true motivation in doing so.[86] Some reports have suggested that following arguments with Truss over immigration policy, Braverman took the opportunity to resign to apply further pressure to Truss and so end the latter's tenure as Prime Minister. In support of this view, Braverman's resignation statement did little to address concerns surrounding her breach of the Ministerial Code. Instead, the letter was used to criticise the government and by implication Truss, stressing resignation was a matter of honour for failing to deliver on promises, rather than the necessary consequence of her actions in breach of national security.[87]

Reappointment

With her resignation, Suella Braverman became the shortest-serving Home Secretary since 1834. A number of Conservative MPs reportedly 'believed Braverman, 42, was still running a campaign to become the next leader' while Home Secretary. Consequently, Braverman's resignation from the position was seen by many as 'paving the way' for another attempt at the leadership.[88] Whether it had been a deliberate effort to topple the Truss government or not, Braverman's resignation contributed to governmental instability. By 20 October 2022 Truss herself felt obliged to resign.

Braverman did not, however, manage a successful bid for the leadership. Rishi Sunak quickly announced he would stand, and internal negotiations among Conservative MPs began. Eventually, only Sunak would cross the 100-nomination threshold set by the 1922 Committee, despite apparent efforts by Boris Johnson to run for the position. In spite of her close links with Johnson, Braverman eventually endorsed Rishi Sunak in the race, a move considered to be important in securing Sunak's victory.[89]

Sunak quickly moved to reappoint Braverman as Home Secretary. This move led Starmer as Leader of the Opposition to accuse the Prime Minister of making a 'grubby deal' with Braverman in exchange for her support.[90] Sunak defended his position, though, claiming that while the Home Secretary had made an 'error of judgement', she had recognised that, and 'raised the matter and accepted her mistake.'[91] A barrage of criticism follow from across the House of Commons. The Liberal Democrats requested an inquiry into Braverman's reappointment, 'including any promises Sunak made to her behind closed doors'.[92] Their request has yet to be answered.

86 Tony Diver, 'MP's who violate ministerial code don't have to resign, says Boris Johnson', *The Telegraph*, 27 May 2022, available at: < https://www.telegraph.co.uk/politics/2022/05/27/mps-violate-ministerial-code-dont-have-resign-says-boris-johnson/ >, last accessed 24 January 2022.

87 'Suella Braverman: Home Secretary's resignation letter in full', *BBC News*, 19 October 2022, available at: < https://www.bbc.co.uk/news/uk-politics-63320750 >, last accessed 25 January 2023.

88 Rajeev Syal, 'Deportation dreams and tofu-eating threats: who is Suella Braverman?', *The Guardian*, 19 October 2022, available at: < https://www.theguardian.com/politics/2022/oct/19/who-is-suella-braverman-home-office >, last accessed 25 January 2023.

89 Ben Riley-Smith, 'Suella Braveramn endorses Rishi Sunak even though she 'backed Boris Johnson from the start'', *The Telegraph,* 23 October 2022, available at: < https://www.telegraph.co.uk/politics/2022/10/23/suella-braverman-endorses-rishi-sunak-even-though-backed-boris/ >, last accessed 25 January 2023.

90 HC Hansard for 26 October 2022, 'Oral answers to questions to the Prime Minister', available at: < https://hansard.parliament.uk/commons/2022-10-26/debates/AFE4B63F-9A0F-453B-B6BB-9469A9AD9232/OralAnswersToQuestions# >, last accessed 25 January 2023.

91 HC Hansard for 26 October 2022, 'Oral answers to questions to the Prime Minister'.

92 Kate Whannel, 'Rishi Sunak defends return of Suella Braverman to Home Office', *BBC News*, 26 October 2022, available at: < https://www.bbc.co.uk/news/uk-politics-63397590 >, last accessed 24 January 2023.

Controversy over Braverman's reappointment did not end with the Prime Minister's statement on the matter, though. Instead, soon afterwards, it was revealed that the Home Secretary had breached the Ministerial Code a further six times by using her personal email for official business during her first tenure.[93] This quickly promoted new calls for her resignation.

In a wider review of recent breaches of the Ministerial Code, addressing the reappointment of the Home Secretary, the Public Administration and Constitutional Affairs Committee, concluded that:

> 'The reappointment of the Home Secretary sets a dangerous precedent. The leaking of restricted material is worthy of significant sanction under the new graduated sanctions regime introduced in May, including resignation and a significant period out of office. A subsequent change in Prime Minister should not wipe the slate clean and allow for a rehabilitation and a return to ministerial office in a shorter timeframe. To allow this to take place does not inspire confidence in the integrity of government nor offer much incentive to proper conduct in future.'[94]

93 Chris McCall, 'Suella Braverman called on to resign after admitting sending official documents to personal email', *Daily Record*, 31 October 2022, available at: < https://www.dailyrecord.co.uk/news/politics/suella-braverman-called-resign-after-28372983 >, last accessed 25 January 2022.

94 House of Commons Public Administration and Constitutitonal Affairs Committee, *Propriety of governance in light of Greensill,* Fourth Report of Session 2022-2023', HC888 (House of Commons, London, 2022), p. 33, available at: < https://committees.parliament.uk/publications/31830/documents/178915/default/ >, last accessed 25 January 2023.

Appendix e: The UK-Rwanda Migration and Economic Development Partnership

Summary

In April 2022, the UK and Rwanda came to an agreement on a Migration and Economic Development Partnership. This agreement included a detailed a memorandum with a five-year 'asylum partnership arrangement'.[95] The arrangement allows the UK to send potential asylum-seekers to Rwanda. The Rwandan government agreed to either consider granting them permission to stay or to return them to their country of origin. These asylum-seekers will not be able to return to the UK. In exchange for receiving and processing the claims of these asylum-seekers, the UK has allocated £120 million in development funding to Rwanda.

The arrangement has caused considerable controversy. Critics have voiced their concerns over the legality, morality and practicality of the plan. Since its announcement, however, no asylum seeker has been sent to Rwanda, largely because of legal challenges. On 14 June 2022, the first planned flight to Rwanda was stopped following an injunction by the European Court of Human Rights. More recently, in September and October of 2022, legal challenges by four organisations and a number of claimants were heard by the High Court in a rolled-up hearing.[96] On 19 December 2022, the High Court handed down a combined judgment.[97] The Court concluded that, in principle, it is lawful for the government to arrange for the relocation of asylum seekers to Rwanda, and for their claims to be determined in Rwanda. But the Court also held that the claims made by eight asylum seekers were not properly considered by the Home Secretary and must be considered afresh. Although parts of the High Court judgment will be appealed, it was welcomed by the government. The Home Secretary has announced that the government will resume the plan once the litigation process has ended.

The asylum partnership arrangement

On 14 April 2022 it was announced that the UK had entered a new agreement with Rwanda: The Migration and Economic Development Partnership. This partnership contains an agreement that allows the UK to send asylum-seekers to Rwanda. These asylum-seekers would not be able to return to the UK. In exchange, the UK committed to providing Rwanda with £120 million in development funding and to paying for the costs of relocation.

The relocation agreement is initially being used to remove asylum-seekers who make dangerous journeys to the UK and are considered 'inadmissible' to the UK's system.
Those who the Home Office deems 'inadmissible' will be identified and then referred to Rwandan authorities on an individual basis after an initial screening process in the UK.

95 House of Commons Library, 'UK-Rwanda Migration and Economic Development Partnership', 28 June 2022, available at: < https://commonslibrary.parliament.uk/research-briefings/cbp-9568/ >, last accessed 25 January 2023.
96 Joshua Rozenberg, 'Rwanda hearing adjourned', 11 July 2022 , available at: < https://rozenberg.substack.com/p/rwanda-hearing-adjourned >, last accessed 25 January 2023.
97 *R ((AAA) Syria and Ors) v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin).

An asylum-seeker may be considered inadmissible to the system if they have undertaken an irregular and 'dangerous' journey to the UK and that they have a connection to a safe third country.[98] A dangerous or irregular journey to the UK is a journey that is likely or able to cause harm or injury. This includes asylum-seekers who travel in small boats across the English Channel or those transported in lorries. Those who have reached the UK after 9 May 2022 have been deemed the highest priority for relocation.

An asylum seeker may be held to have a connection to a safe third country for a number reasons, including:

- if that person is recognised as a refugee or has been granted international protection in another country;
- if the individual has an outstanding or refused claim in another country;
- if the individual crossed another country and failed to take advantage of an opportunity to claim asylum, where it would have been reasonable to do so; and
- where, considering a person's particular circumstances, it would have been reasonable for them to claim asylum in a safe third country, instead of the UK.

The Home Office has announced that, initially, only a subset of inadmissible cases will be relocated to Rwanda or safe third countries. For instance, the UK will still consider inadmissible claims that are not suited to removal or if removal is not plausible within a realistic timeframe. Adults accompanied by young children will not be initially considered for relocation.

Until 28 June 2022, immigration rules set out the requirements for 'inadmissibility' as regards a non-EU application for asylum. These rules have mostly been replaced by provisions in the Nationality and Borders Act 2022. The most recent changes therein stipulate that individuals who were previously present or have another connection with a safe third country will be categorised as inadmissible to the UK's asylum system. This means that those asylum-seekers can be removed to the any safe third country that agrees to receive them, without the UK having to consider their claim.

Political controversy

Various questions remain unanswered surrounding the implementation of the asylum partnership agreement. The government has not published figures of the number of asylum-seekers that it expects to relocate. On 1 January 2022, the government claimed that the scheme would be used for 'anyone entering the UK illegally' with no limits on numbers.[99] In a speech in April 2022, then Prime Minister,

98 Home Office, 'Inadmissibility: safe third country cases', 28 June 2023, available at: < www.gov.uk/government/publications/inadmissibility-third-country-cases/inadmissibility-safe-third-country-cases-accessible >, last accessed 25 January 2023.

99 'What is the UK's plan to send asylum seekers to Rwanda?', *BBC News,* 16 January 2023, available at: < https://www.bbc.co.uk/news/explainers-61782866 >, last accessed 25 January 2023.

Boris Johnson had claimed 'Rwanda will have the capacity to resettle tens of thousands of people in the year ahead.'[100] More recently, Dominic Raab indicated the number of people who will be relocated through the plan will be in the hundreds.[101]

The agreement has not been subject to formal parliamentary scrutiny or to a vote. Since the agreement is contained in a Memorandum of Understanding, it is not subject to the same formal scrutiny requirements that treaties receive, as outlined by the Constitutional Reform and Governance Act 2010. The Act does not entail scrutiny requirements for all international agreements; it only codifies one part of the 'Ponsonby Rule' on international treaties and agreements.

The European Union Committee and International Agreements sub-committee, though, have interpreted the Ponsonby Rule so as to require the government to draw to the attention of the House all agreements of a binding and serious character. They argue that this includes the asylum partnership agreement, given that it is a politically important memorandum of understanding.[102] Whether the government is required to lay Memorandums of Understanding before Parliament for scrutiny has in turn been disputed. The government holds that there is no requirement for the House of Commons to be informed of a non-treaty arrangement. At the time of writing, the Rwanda asylum partnership arrangement has not been subject to a vote in Parliament or to formal scrutiny. The government has also pointed out that the Memorandum of Understanding underpinning the arrangement has been published.[103]

The asylum partnership arrangement has been criticised by senior politicians, Non-Governmental Organisations and civil society groups. Concerns surround the plan's legality, practicality, expense and morality. Critics include the former Prime Minister Theresa May; the Archbishop of Canterbury, Justin Welby; and – reportedly – the then Prince of Wales and now King, Charles III.[104] The UNHCR claimed that through this 'externalisation' policy, the UK was seriously undermining the 'international refugee protection regime, which has stood the test of time and saved millions of lives'.[105] Along similar lines, the Migration Policy Institute has suggested the arrangement 'advances the idea that states can pay to cast off responsibilities they signed up to under the 1951 Convention.'[106] In April 2022, a group of over 150 civil society organisations wrote to the Prime Minister and Home Secretary outlining their objections for rights-related reasons and reasons of practicality.[107]

100 Gov.uk, 'PM speech on action to tackle immigration', 14 April 2022, available at: < https://www.gov.uk/government/speeches/pm-speech-on-action-to-tackle-illegal-migration-14-april-2022 >, last accessed 25 January 2023.

101 Dominica Raab, 'Hundreds not thousands will be sent to Rwanda' *The Times*, 20 May 2022, available at: < https://www.thetimes.co.uk/article/first-refugee-flight-to-rwanda-delayed-after-legal-challenge-2jh7hwrh6 >, last accessed 25 January 2023.

102 House of Lords European Union Committee, 'Treaty Scrutiny: working practices', Eleventh Report of Session 2019-2021, HL Paper 97 (House of Lords, London, 2020), paras 97-106.

103 UK government, 'Memorandum of Understanding between the UK and Rwanda', 14 April 2022, available at < www.gov.uk/government/publications/memorandum-of-understanding-mou-between-the-uk-and-rwanda >, last accessed 25 January 2023.

104 Amar Mehta, 'Rwanda asylum scheme: Archbishop of Canterbury hits out at government plans, saying they are ungodly' *Sky News*, 17 April 2022, available at: < https://news.sky.com/story/rwanda-asylum-scheme-archbishop-of-canterbury-hits-out-at-government-plans-saying-they-are-ungodly-12592037 >, last accessed 25 January 2023.

105 UNHCR, 'Analysis of the Legality and Appropriateness of the Transfer of Asylum Seekers under the UK-Rwanda arrangement', 8 June 2022, available at: < www.unhcr.org/publications/legal/62a317d34/unhcr-analysis-of-the-legality-and-appropriateness-of-the-transfer-of-asylum.html >, last accessed 25 January 2023.

106 Hanne Beirens and Samuel Davidoff-Gore, 'The UK-Rwanda Agreement Represents Another Blow to Territorial Asylum', *Migration Policy Institute, Commentaries,* April 2022, available at: < https://www.migrationpolicy.org/news/uk-rwanda-asylum-agreement >, last accessed 25 January 2023.

107 Bail for Immigration Detainees, 'BID and 150+ organisations oppose plans to send people seeking asylum to Rwanda', *Bail for Immigration Detainees Website,* 14 April 2022, available at: < https://www.biduk.org/articles/bid-and-150-organisations-oppose-plans-to-send-people-seeking-asylum-to-rwanda- >, last accessed 25 January 2023.

Legal challenge

As soon as the plan was put into force a number of applications were made for permission to seek judicial review, of the plan as a whole, and of the Home Secretary's decision to remove specific asylum-seekers. The decision was challenged – initially separately – by 15 individuals, a trade union and three campaign groups. These legal challenges encompassed various issues including: the legality of the scheme as a whole; the legality of the removal directions of asylum seekers; whether Rwanda is a safe destination; and whether the scheme is compatible with the UK's treaty obligations under the European Convention on Human Rights.

The High Court, at first, had to decide whether the balance of convenience favoured sending the asylum-seekers to Rwanda or allowing them to remain the UK while their cases were being heard. On 10 June 2022, Mr Justice Swift held that the importance of the asylum plan being implemented outweighed the problems that might have been incurred by the asylum-seekers if they were removed. This judgment was then upheld by the Court of Appeal and Supreme Court. However, on 14 June 2022 – which was the day of the first planned flight to Rwanda – the European Court of Human Rights issued a last-minute injunction prohibiting the deportation of one of the asylum seekers. Under the 'rule 39 procedure', the Court prohibited the deportation of an Iraqi man on the grounds he would have faced 'a real risk of irreversible harm'.[108] This measure allowed the six remaining passengers to seek appeal. Subsequently, their removal orders were scrapped and the flight to Rwanda was cancelled. However, the government remained persistent with its intention to proceed with the asylum arrangements.

Over summer, it was decided that legal challenges to the plan would be heard altogether on a 'rolled-up' basis. This meant that the court would decide on all matters, namely, the substantive merits of the case and the permission to seek judicial review, at the same time. The legal challenges were then heard in two strings of hearings. The challenges involving individual asylum seekers, in addition to Freedom from Torture, PCS, Care4Calais, Detention Action and the UNHRC were heard in a 5-day hearing that started 5 September 2022. Asylum Aid's case was heard separately between the 12-14 October 2022.

On 19 December 2022, the High Court handed down its judgment.[109] The Court held that the government's arrangements to relocate asylum-seekers to Rwanda and have their claims determined there were lawful. The Court held that the Rwanda asylum partnership arrangement did not breach human rights laws or the UK's obligations under the UN Refugee Convention and the European Convention on Human Rights. The Court held that the Home Office assessment suggests that the asylum-seekers relocated would be treated properly, and that there was no compelling evidence to suggest that Rwanda would not honour its obligations under the agreement. The Court also decided that Care4Calais, Asylum Aid, Detention Action and the PCS Home Office union did not have 'standing' to challenge the asylum partnership arrangements.[110] These organisations were held to be too removed from the issues, and therefore unable to rely on the right legally to challenge the arrangements.

108 Registrar of the court, The European Court of Human Rights, 'The European Court grants urgent interim measure in case concerning asylum- seeker's imminent removal from the UK to Rwanda', *Press Release* ECHR 197 (2022), 14 April 2022.

109 *R ((AAA) Syria and Ors) v Secretary of State for the Home Department* [2022] EWHC 3230 (Admin).

110 *R ((AAA) Syria and Ors) v Secretary of State for the Home Department* , para [432]-[434]. Care4Calais, Detention Action and PCS Home Office did not have standing, while Asylum Aid's claim was deemed 'unnecessary' given that the individual claimants were able to pursue claims covering the same grounds, [429].

However, the Court also held that the Home Secretary had not properly considered the circumstances of eight asylum-seekers, and that the Home Secretary must consider their claims afresh. It was held that Home Secretary should decide whether anything about each claim means that it should be determined in the UK, or whether there are other reasons why the asylum-seekers in questions should not be relocated. This likely means that the Home Secretary can proceed with relocating these asylum seekers to Rwanda.

On 16 January 2023, the High Court held a hearing to deal with matters relating to the appeal on its judgment.[111] Permission to appeal was granted on all of the grounds sought by the individual asylum-seekers and the charity Asylum Aid, on the basis that there were 'compelling reasons' for their claims to heard. The other three organisations involved were refused permission to apply for a judicial review.[112] At the time of writing, it is unclear whether these grounds will be renewed in a further appeal to the Court of Appeal.

At present, it is unlikely that the government will move ahead with plans to relocate asylum-seekers so long as the arrangements are being challenged in courts. Despite this, the government remains committed to the Rwanda asylum partnership arrangement. In December, the Home Secretary welcomed the judgment of the High Court saying the government would press ahead as soon as the 'litigation process has come to an end'.[113]

111 CO/2032/2022, CO/2104/2022, CO/2077/2022, CO/2080/2022, CO/2098/2022, CO/2072/2022, CO/2094/222, and CO/2056/2022, [2023] EWHC 55 (Admin), para [29] for compelling circumstances to justify appeal on certain grounds.

112 Ibid., para [5].

113 Jess Glass, 'Home Secretary: 'We will send migrants to Rwanda as soon as possible', *Evening Standard* 19 December 2022, available at: < www.standard.co.uk/news/politics/government-suella-braverman-home-secretary-rwanda-lewis-b1048299.html >, last accessed 25 January 2023.

Appendix f: New Judgment: Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998 [2022] UKSC 31

Summary

The Scotland Act 1998 places limits on the Scottish Parliament's powers to legislate on certain matters. Section 29(2)(b) of the Act states that legislation which relates to 'reserved matters' is outside of the Scottish Parliament's legislative competence. These reserved matters include the Union of the Kingdoms of Scotland and England, and the UK Parliament.[114] In June 2022, the Scottish government published a draft Scottish Independence Referendum Bill, which would facilitate holding a referendum on the question: 'should Scotland be an independent country?' It was simultaneously announced that the Lord Advocate had agreed to the First Minister's request to refer the Bill to the Supreme Court for a ruling on whether the draft bill was outside the Scottish Parliament's legislative competence on the basis that it related to either or both of the reserved matters listed above. In making the reference, the Lord Advocate used a provision in the Scotland Act which had not been previously invoked.

On 23 November 2022, the Supreme Court unanimously held that the draft bill relates to both reserved matters. The judgment meant that the Scottish Parliament could not pass the draft bill unless and until there was an amendment to the Scotland Act, either via an Order in Council approved by the both the UK and Scottish Parliaments or by primary legislation enacted by the Westminster Parliament. Scotland's First Minister, Nicola Sturgeon, responded to this outcome by stating that the ruling was 'a hard pill to swallow' but that she respected the judgment.[115] Sturgeon confirmed that, as had previously been announced as a fall-back strategy, the Scottish National Party would 'fight the next general election' solely on the issue of Scottish independence.

Background: 'reserved matters' under the Scotland Act 1998

Section 29 of the Scotland Act 1998 states that the Scottish Parliament cannot enact legislation which relates to reserved matters.[116] The definition in Schedule 5 includes various constitutional issues, but of particular interest here is the 'Union of the Kingdoms of Scotland and England, and 'the Parliament of the United Kingdom.' Consequently, if the Scottish Parliament tried to enact a bill that 'relates to reserved matters' this would not be law.

Section 30(2) of the Scotland Act 1998 states that an Order in Council can be made to modify the definition of reserved matters under Schedule 5.[117] In 2013, a section 30 Order temporarily modified Schedule 5 of the Act to facilitate holding the 2014 Independence referendum.[118] The Scottish government wishes to hold another referendum on independence. On 28 June 2022, and for the third time, First Minister Sturgeon requested another s.30 Order.[119] The UK government refused.

114 Scotland Act 1998, sch.5, Part 1, para (1)(b) and (c).
115 'We'll find another way to Scottish independence – Sturgeon', *BBC News*, 23 November 2022, available at: < www.bbc.co.uk/news/live/uk-scotland-63701835 >, 24 January 2023.
116 Scotland Act 1998, s.29(2)(b).
117 Scotland Act 1998, s.30(2)
118 Scotland Act 1998 (Modification of Schedule 5) Order 2013
119 Nicola Sturgeon, 'Independence referendum, First Minister's statement', 28 June 2022, available at: < www.gov.scot/publications/ministerial-statement-independence-referendum/ >, last accessed 26 January 2023.

The Reference

On 28 June 2022, the Lord Advocate, Dorothy Bain KC, made a reference to the Supreme Court about the provisions of a draft bill legislating for a consultative referendum on Scotland's independence.[120] The key issue was whether s.2 of the draft bill related to reserved matters and would therefore be outside the Scottish Parliament's legislative competence. However, before considering the draft bill, the Court addressed two preliminary issues: whether the reference concerned a 'devolution issue' and whether the Court should decline to accept the reference.

Issue 1: is the question referred a devolution issue?

To make the reference, the Lord Advocate relied on para 34, sch.6 of the Scotland Act which states: 'the Lord Advocate […] may refer to the Supreme Court any devolution issue that is not the subject of proceedings.'[121] This provision had not been previously relied upon. Schedule 6 defines what counts as a 'devolution issue'.[122] The Reference relied on the definition in para 1(f) which includes the passage: 'any other question about whether a function is exercisable within devolved competence or in as regards Scotland and any other question arising by virtue of this Act about reserved matters'.[123] The Lord Advocate argued that the Supreme Court's jurisdiction was clear because the reference concerned whether the draft bill's provision relates to two reserved matters.

The Lord Advocate argued that by virtue of the Scotland Act she had an implicit duty to provide legal advice on whether draft government bills are within competence. Section 31(1) of the Scotland Act requires the person introducing a bill to state that, in his or her view, the bill is within the Scottish Parliament's competence,[124] and under the Scottish Ministerial Code such statements for government bills must be cleared in advance by the law officers. In this case, the Lord Advocate was not sufficiently confident that the Bill would be within devolved competence to allow her to provide the necessary clearance. Bain argued that the referral procedure under para 34 sch.6 of the Scotland Act exists to allow certain law officers to obtain authoritative legal guidance from the Court on aspects of the devolution framework.[125] The wording of sch.6 with respect to 'any other question' is framed broadly to allow law officers to obtain rulings in unforeseen circumstances like those raised by the draft bill. She argued that that the discretionary power conferred upon her should be exercised in accordance with her view of the public interest. In this case, the Lord Advocate thought that it was in the public interest for the Supreme Court to determine whether the draft bill related to a reserved matter. Bain argued it was unlikely this question of law would otherwise be authoritatively resolved.

Counsel on behalf of the Advocate General (the UK government) disputed the grounds for bringing the reference.[126] Amongst other things, Sir James Eadie KC argued that the question referred did not arise by virtue of the Scotland Act 1998, as required by para. 1(f). The Act does not explicitly require the Lord

120 Supreme Court website, 'Reference by the Lord Advocate', 28 June 2022, available at: < www.supremecourt.uk/news/reference-by-the-lord-advocate-to-the-supreme-court-28-june.html >, last accessed 26 January 2023.
121 Scotland Act 1998, sch.6, para 34
122 Scotland Act 1998, sch.6, para 1(f)
123 Scottish government, 'Lord Advocate's Written Case: whether the question for a referendum on Scottish Independence contained in the proposed referendum bill relates to reserved matter', 12 July 2022, available at: < https://www.gov.scot/publications/reference-to-the-supreme-court-publication-of-the-lord-advocates-written-case/ >, last accessed 26 January 2023.
124 Scotland Act 1998, s.31(1)
125 Scottish government, 'Lord Advocate's Written Case', para [16].
126 UK government, 'Written Case on behalf of Her Majesty's Advocate General for Scotland', 22 July 2022, available at: < www.gov.uk/government/publications/supreme-court-case-no-20220098-written-submission/written-case-of-behalf-of-her-majestys-advocate-general-for-scotland-uksc-20220098#conclusion >, last accessed 26 January 2023.

Advocate to advise ministers on statements of legal competence. This requirement is created by the Scottish Ministerial Code. He also argued that it would be contrary to the intention of the Scotland Act to allow Bills to be referred to the Supreme Court *before* being introduced into the Scottish Parliament given that the Act provides (in s.33) a procedure for referring Bills to the Supreme Court *after* they have been passed by the Parliament but before receiving Royal Assent.

The Supreme Court held that the question referred was within its jurisdiction. The relevant issue was whether the question referred concerned reserved matters as required by para. 1(f) of sch.6.[127] These requirements were satisfied. The Court found that the s. 33 referral procedure operates separately to para 34, sch.6.[128] The Court also held that sch.6 para.1(f) should be construed in line with: the ordinary meaning of the words primarily due to the provision's breadth, the Supreme Court's general approach towards interpreting the Scotland Act 1998 in previous cases, and the 'sweeping-up' purpose of the provision.

Issue 2: should the Court decline to accept the reference?

The second issue was whether the Supreme Court should exercise its discretion nevertheless to decline to accept the reference.

The Lord Advocate argued that it was in the public interest that the draft bill be referred to the Court. Here, Bain argued that the question referred concerned a genuine issue of law that if left unresolved could have allowed the draft bill to be introduced.[129] The Lord Advocate also argued that the reference concerned an issue of 'exceptional public importance' because the draft bill was 'directly relevant to a central [SNP] manifesto pledge endorsed by the Scottish electorate.'

Counsel on behalf of the Advocate General argued that the Court should decline the reference for several reasons, including that the reference would not necessarily have allowed the Court to give a determinative answer on the proposed bill.[130] Sir James argued that any bill actually introduced might have been different to the proposed bill. This would have then required a further reference under s.33. Counsel also argued that the reference treated the Court like a 'legal advice centre' because it did not concern a difficult question of law. Providing legal advice on a straightforward issue of legislative competence was the Lord Advocate's own responsibility.

The Supreme Court held that it should accept the reference. It distinguished between the cases where it had previously turned down references in the context of ordinary litigation and this Reference which concerned the devolution settlement (where the Court has clear jurisdiction).[131] The Court held that the reference concerned a question of law that was of immense public importance. The Court acknowledged that the outcome would have 'clear practical consequences'; namely, whether the Scottish government would bring forward the proposed bill. The Scottish government had indicated that if the proposed bill was cleared by the Supreme Court, it would have introduced the bill. The question, therefore, was 'not hypothetical, academic, or premature'.

127 *Reference by the Lord Advocate of devolution issues under paragraph 34 of Schedule 6 to the Scotland Act 1998* [2022] UKSC 31 [2022] UKSC 31 para [23].
128 [2022] UKSC 31 para [23].
129 Scottish government, 'Lord Advocate's Written Case', para [23].
130 UK government, 'Written Case on behalf of Her Majesty's Advocate General for Scotland'.
131 [2022] UKSC 31 para [53]

Issue 3: does the draft bill relate to reserved matters?

The third and central issue addressed by the Supreme Court was whether section 2 of the draft bill related to a reserved matter. Section 2 of the draft bill provides for a consultative referendum on the question: 'Should Scotland be an independent country?'. Two reserved matters were of potential relevance: the 'Union of the Kingdoms of Scotland and England' and 'Parliament of the United Kingdom'. The answer to this question depended upon the scope of each reservation, the purpose of the draft bill, and the effect of the bill under all the circumstances.[132]

The Lord Advocate's Written Case sets out carefully balanced arguments both for and against the proposition the draft bill relating to these reserved matters. For instance, it was argued that on one hand, the purpose of an advisory referendum had 'at best an indirect… or consequential connection' to the Union, and that 'the legal consequences are, relevantly, nil'.[133] On the other hand, it was also argued that the subject matter of the referendum provided for by section 2 asks voters to decide on whether they wish the Union to end. As the draft bill is clearly intended to bring about Scotland's independence, it inevitably relates to the Union.

Ultimately, the Supreme Court held that the draft bill related to both the Union and the UK Parliament.[134] With respect to the scope of reserved matters, the Court held that scope of the Union is clear. It was held that the purpose of the draft bill – holding an independence referendum – 'evidently encompasses the question whether the Union should be terminated'.[135] The 'reservation' of the UK Parliament was taken to encompass parliamentary sovereignty and by extension, the relationship between Westminster and Holyrood (as established in the Continuity Bill case).[136] The Court held that a consultative referendum, as envisaged, concerned 'whether Scotland should cease to be subject to the sovereignty' of the UK Parliament. Accordingly, a referendum would 'undoubtedly be an important political event.'[137] The Court held that the 'clear outcome' to such a referendum, whichever way that might be, 'would possess the authority of a democratic expression of the view of the Scottish electorate'. The result would either strength or weaken the legitimacy of the Union and would directly impact upon the relationship between the UK Parliament and the Scottish Parliament.

The Scottish National Party's intervention

The Scottish National Party intervened by making written submissions on the right to self–determination in international law and the principle of legality in domestic law, arguing that in case of ambiguity the Scotland Act should be read in accordance with international law, thus allowing a referendum to be held. However, these submissions were rejected by the Supreme Court.[138] The Court held that there was no ambiguity in the Scotland Act, but that in any case the international law right to self-determination was not relevant. The Court cited a judgment by the Supreme Court of Canada which held that international law only conferred a right to secede in limited circumstance which did not apply to Quebec, nor by extension to Scotland. The Court also held that the distribution of powers between Westminster and Holyrood under the Scotland Act 1998 was not capable of breaching the right to self-determination.

132 [2022] UKSC 31 para [15]
133 UK government, 'Written Case on behalf of Her Majesty's Advocate General for Scotland' paras [114]-[127].
134 [2022] UKSC 31 para [83]
135 [2022] UKSC 31 para [77]
136 [2022] UKSC 31 para [63]
137 [2022] UKSC 31 para [81]
138 [2022] UKSC 31 para [89]-91]

Unlike the Supreme Court of Canada, the UK Supreme Court had nothing to say about the principle of self-determination as a matter of domestic law, nor about the process by which Scotland might become independent.

Political aftermath

The Supreme Court's judgment clarified that the Scottish government could not bring forward the Draft Independence Referendum Bill; it would clearly be outside the Scottish Parliament's legislative competence. As a result, Scotland's First Minister must seek the co-operation of the UK Government to amend the Scotland Act in order to legislate for a consultative referendum. Given the repeated refusals of the UK government, the prospect of such an amendment in the near future would appear highly unlikely.

The First Minister, Nicola Sturgeon, responded to the judgment of the Court by stating that while it was disappointing, she respected the Court's decision. Sturgeon further suggested that the Scottish National Party would find a new way to pursue independence, and that the next general election would be 'the most obvious opportunity to seek … a de facto referendum.' Sturgeon declared that 'democracy is what is at stake ... It is now about whether or not we even have the basic democratic right to choose our own future.' [139]

By contrast, in Westminster, the Supreme Court's decision was welcomed. Prime Minister Rishi Sunak stated in the House of Commons that the UK government respected the Supreme Court's 'clear and definitive ruling'.[140] This was reinforced by Alistair Jack, the Secretary of State for Scotland, who called for the Scottish government to focus on 'issues that matter' and not 'constitutional division.'[141]

More recently, on 14 December 2022, during an opposition debate the Scottish National Party sought to take control of the House of Commons Order paper to present another bill that would have amended the Scotland Act 1998.[142] This Bill would have modified schedule 5 to allow the Scottish Parliament to legislate for another referendum. The attempt was unsuccessful.

139 'We'll find another way to Scottish independence – Sturgeon', *BBC News*, 23 November 2022, available at: < www.bbc.co.uk/news/live/uk-scotland-63701835 >, last accessed 26 January 2023.

140 HC Hansard, 'Scottish Referendum Legislation: Supreme Court Decision', 23 November 2022, available at: < https://hansard.parliament.uk/Commons/2022-11-23/debates/CC72D2CE-6495-4A79-8798-74E0B48BE97F/ScottishReferendumLegislationSupremeCourtDecision >, last accessed 26 January 2023.

141 HC Hansard, 'Scottish Referendum Legislation: Supreme Court Decision'.

142 HC Hansard, 'Scotland's Future', 14 December 2022, available at: <https://hansard.parliament.uk/Commons/2022-12-14/debates/A8E40BBE-0756-4BE1-95EE-46194E4167CF/Scotland'SFuture >, last accessed 26 January 2023.

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