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Introduction

We have responded to the following questions posed by the Committee:

- What safeguards exist to protect the UK constitution?
- Where do the vulnerabilities lie with the safeguards of the UK constitution?
- Who are the key guardians of the integrity of the UK's constitution? What formal or informal powers do they have? Who guards the guardians?
- How do the UK's constitutional safeguards compare to those in other jurisdictions? What are the comparative strengths and weaknesses of the UK's system?
- How has the landscape of constitutional safeguards changed over time? Which safeguards have become both more or less significant, and why?
- How could potential threats to the constitution be mitigated?

Note: we have responded to the questions in an order that differs from that in which they were asked simply because it better fits with our evidence.

Executive summary

- Some of the main safeguards which protect the UK constitution are: judicial review and the independence of the judiciary; the UK's bicameral Parliament; parliamentary committees; the Human Rights Act 1998 and, through it, the European Convention on Human Rights; and, political / constitutional conventions.
- Some key vulnerabilities of the UK's constitutional safeguards are: that they largely rely on the self-restraint of constitutional actors to behave with propriety; that there will often be little to no consequences for acting unconstitutionally; that, because of the largely political nature of the UK constitution, the courts often cannot rule on a breach of the constitution; and that the UK public is largely uninformed about the constitution with the consequence that constitutional actors can often breach the constitution without the restraining hand of critical public opinion.
- Various constitutional actors are themselves the guardians of their own constitutional behaviour. The Prime Minister has a significant role in deciding whether Ministers have acted improperly but this leaves the system open to abuse.
- Stability of governance, the separation of powers and the lawful exercise of power are key principles in the safeguarding of the UK constitution and, in this respect, the UK is in line with other common law and civil jurisdictions.
- There has been a rise in populism, populist parties and populist politicians across the globe and in the UK. Such parties and politicians often argue that electoral success should override any constitutional or legal restraints on their behaviour.
- Threats to the constitution may be mitigated by the following:
 - Diversification of the Prime Minister's power in relation to the Ministerial Code;
 - A new judicial power to declare legislation to be in breach of constitutional principles;
 - A new judicial power to rule legislation null and void;
 - Educational initiatives to engender a better informed, constitutional literate citizenship

Full Evidence:

What safeguards exist to protect the UK constitution?

1. In light of the leading doctrine of parliamentary sovereignty in the UK constitution, the constitutional safeguards are practically those of judicial review, bicameralism, parliamentary committees, the Human Rights Act 1998 and political conventions. A core vulnerability of the constitutional order is that many political safeguards are actually dependent on the government in power and the Prime Minister (we give more detail on this point below). In any case, some of the main safeguards in the current constitutional order are:
 - i. Judicial Review and the independence of the Judiciary. The courts have demonstrated that they are capable and willing to rule on the legality of executive acts or decisions. This is perhaps best demonstrated most recently by the judgments of the Supreme Court in the two *Miller* cases.¹
 - ii. The UK's bicameral Parliament. A fundamental feature of the UK constitution is that the Government will almost always have the majority of support in the House of Commons and thus able to exercise a large degree of control over the Commons.² This executive dominance is offset to some degree by having an independent House of Lords.
 - iii. Parliamentary Committees. One of the primary functions of Parliament is to hold the Government to account.³ This is an important safeguard of the UK constitution and it operates to a great extent through the scrutiny of Government that occurs via the system of Select Committees.
 - iv. The Human Rights Act 1998 and, through it, the European Convention on Human Rights.
 - v. Political or constitutional conventions – these are non-legal rules of the constitution which are binding on the constitutional actors to which they apply. It is a particular feature of the UK constitution that some of the most important rules of the constitution are not legal rules but are political / constitutional conventions.
2. There are significant strengths in this multi-faceted approach to safeguarding the constitution. Each safeguard can complement the others and they can work in tandem. One safeguard may even step in and act when others prove ineffective - the Supreme Court's ruling in the *Miller II* case is an example of this whereby the court was able to prevent an attempt to sideline Parliament and where restraint by Parliament did not occur.⁴

¹ *R (Miller) v Secretary of State for Exiting the EU* [2017] UKSC 5; *R (Miller) v Prime Minister* [2019] UKSC 41.

² The exception to this is where there is a minority government.

³ *R (Miller) v Prime Minister* (n 1) [46]-[47], [55].

⁴ *R (Miller) v Prime Minister* (n 1).

Where do the vulnerabilities lie?

3. There are some substantial weaknesses in the system. The political safeguards noted above may prove to be ineffective in practice because they largely rely on constitutional actors acting in good faith, exercising restraint and respecting the legitimate roles and authority of other constitutional institutions. Yet, those who operate the safeguards may act, or be accused of acting, with a lack of impartiality or for political reasons.
4. Moreover, even where it is clear that a constitutional actor has breached a political safeguard there may be little or no consequences and any criticisms may be disregarded. For example, if a parliamentary committee concluded that a political actor has acted unconstitutionally or otherwise improperly, there may be no real adverse penalties. If, for instance, there were a negative finding against a Minister, he or she may simply choose to ignore it.
5. The legal safeguards may also prove to be insufficient. The courts cannot rule on behaviour that may be considered unconstitutional but which is not unlawful. Legal safeguards cannot, therefore, compensate for every failure of behavioural/institutional safeguards. That is, the courts are not capable of addressing every political failure or breach of constitutional principles.
6. Thus, while we are of the view that these safeguards can be effective, current and future parliaments ought to consider ways to strengthen existing safeguards and/or create additional ones. These are considered below in answer to the question of how potential threats to the constitution might be mitigated?
7. There is also a significant vulnerability because UK citizens are considered to be largely uninformed about the constitution and about constitutional principles.⁵ This helps provide cover for constitutional actors to act in breach of the constitution should they wish. To put this another way, one safeguard of the constitution would be to have an informed and constitutionally literate citizenship who would be able to critique, call out and use their vote against any constitutional actor who acts or seeks to act with constitutional impropriety.
8. It is often said that the UK constitution is political rather than legal in nature. Among other things, this means that, as we have noted above, many of the most important rules that are meant to guide and act as a constraint on those in power are political in nature rather than legally enforceable. In such a constitution, an informed citizenship is all the more important to hold those in power accountable and, through the force of public opinion, ensure that they act in line with constitutional principles. In

⁵ A 2007 survey by Ipsos found that 77% of UK adults aged 18 or above knew 'just a little', 'Hardly anything at all' or has 'Never heard of it' when asked about 'The constitutional arrangements governing Britain', 'Reported Knowledge of the British Constitution' (*Ipsos*, 27 March 2008) <<https://www.ipsos.com/en-uk/reported-knowledge-british-constitution>> accessed 24 September 2026.

contrast, an uninformed citizenship means that breaches of constitutional principles may be met with a metaphorical shrug of indifference.

Who are the key guardians of the integrity of the UK's constitution? What formal or informal powers do they have? Who guards the guardians?

9. One feature of the UK constitution is its reliance on individual constitutional actors to 'do the right thing'. This is sometimes known as the 'good chaps' theory – that those in power will undertake their role with a good understanding of, and will endeavour to remain in line with, the written and unwritten, political and legal rules and principles of the constitution.
10. For instance, Ministers of the Crown are key guardians of the UK's constitution, being trusted to carry out policies and act with propriety, in accordance with expected standards. A breach of these standards should mean that they are held to account; however, we question how effective the current system is at doing this. We posit that much of the power in scrutinising ministerial behaviour and enforcing consequences for constitutional impropriety lies with the Prime Minister. We suggest that this is an area of weakness.
11. The expected standards for ministerial behaviour are defined in the Ministerial Code, including the Seven Principles of Public Life which provide ethical guidance on behaviour, as well as constitutional conventions. The Prime Minister can refer a potential breach of the Code to the Cabinet Office or the Independent Advisor for further investigation. The latter is now able to investigate even when the matter has not been referred.⁶ Nonetheless, regardless of the outcome of the investigation, the Prime Minister remains the ultimate judge of standards of ministerial behaviour.⁷ It is the Prime Minister who decides whether a breach has occurred, whether there should be a sanction, and ultimately whether the Minister remains in their post. As such, a Minister may breach the Code and continue to have the confidence of the Prime Minister. Similar to the arguments made by other academics,⁸ we question how effective this is, particularly at safeguarding constitutional propriety. A fundamental issue is that holding a Minister to account is highly dependent on the judgment of one individual: the Prime Minister. Recent years have illustrated how this reliance can cause issues particularly concerning allegations of abuse and a lack of impartiality.⁹

⁶ Cabinet Office 'Ministerial Code' (29 June 2026) <<https://www.gov.uk/government/publications/ministerial-code/ministerial-code>> accessed 23 August 2026, [2.6].

⁷ 'Ministerial Code' (n 6) [2.1].

⁸ Stuart Wallace, 'The 2024 Ministerial Code: Weak Reforms and Missed Opportunities' (*The Constitution Society*, 19 February 2025) <<https://consoc.org.uk/2024-ministerial-code-weak-reforms/>> accessed 23 August 2026. See also Mike Gordon 'Labour's Ministerial Code and Political Standards Reform' (*UKCLA*, 5 December 2024)

<<https://ukconstitutionallaw.org/2024/12/05/mike-gordon-labours-ministerial-code-and-political-standards-reform/>> accessed 24 September 2026.

⁹ Wallace (n 8).

How do the UK's constitutional safeguards compare to those in other jurisdictions? What are the comparative strengths and weaknesses of the UK's system?

12. When we think about constitutional safeguards, we look at what allows for stability in the constitutional order in a state. Indeed, stability is a key feature in advanced democracies.¹⁰ It is rooted in the lawful exercise of power on the part of the three branches of government, the executive, the legislature, and the judiciary. In the UK, this division of power between these three branches defines the UK's separation of powers which became significantly clearer with the creation of the Supreme Court in 2009. Generally speaking, the UK's constitutional safeguards, in terms of the lawful exercise of power, and in relation to the principle of the separation of powers, is in line with other common law and civil law jurisdictions.
13. While the judiciary in the UK is not a guardian of the constitution per se, a critical component of a state's institutional arrangements is to ensure an independent judiciary in order for legal rights to be protected. This, in turn, contributes to upholding the rule of law and, when done successfully, encourages public officials to behave in a lawful manner.
14. Yet a deeper look at the UK experience shows a marked shift in the discourse in the UK to recognising the executive as having the key role of safeguarding the constitution as opposed to the judiciary, because the executive engages with the constitution on a daily basis.¹¹ The point about behaving in a manner that prioritises safeguarding the constitution is complicated by the fact that in the UK the executive is comprised of many executive actors. Gauging these executive actors' views about whether they consider their remit to include actively safeguarding the constitution is difficult to answer.¹² The question inevitably asks who has ultimate oversight and has extended to the Prime Minister's role as being one that can amplify constitutional safeguards, as much as it can potentially undermine them.¹³

How has the landscape of constitutional safeguards changed over time? Which safeguards have become both more or less significant, and why?

15. The landscape of constitutional safeguards has changed with the rise of populist regimes across the world which have in common the view that democracy is no longer an aspiration and the putting in place measures that amount to backsliding against the baseline of democratic standards.¹⁴ We can look at two examples, Poland and the United States, in the mid-

¹⁰ Richard Ekins, 'The Balance of the Constitution' (2022) 67(2) *The American Journal of Jurisprudence* 199.

¹¹ Ben Young, 'The Executive's Responsibility for the Constitution' (2025) *Verfassungsblog*, March 31.

¹² Young (n 11).

¹³ Peter Hennessy and Andrew Blick, *Could it Happen Here? The Day a Prime Minister Refuses to Resign* (Haus Publishing 2025).

¹⁴ Wojciech Sadurski, *Poland's Constitutional Breakdown* (OUP 2019).

2000s until today. Poland's constitutional crisis occurred in 2015, when the ruling Law and Justice political party made efforts to undermine the constitutional order that effectively sought to dismantle the separation of powers and resulted in moulding the Constitutional Tribunal into a supporter of the government and governmental initiatives, that weakened protection of human rights,¹⁵ and which has resulted in a current situation (with a different government yet the President is from the Law and Justice political party) where judges are identified as 'illegal' (appointed by the Law and Justice political party) or not depending on the time of their appointment, resulting in a stagnant constitutional order.

16. In the United States, in the past year, the US Supreme Court has permitted the realisation of the unitary executive by not tempering executive action. For the executive power to assume full control, there must be acceptance of this theory by the courts, which then actively promote it; in other words, courts support a version of full, sole executive control on the part of the US President over all of the executive actors in the state. This has been confirmed as much by the US Supreme Court beginning with *Morrison v Ohio*.¹⁶
17. This rise in populist regimes across the globe appears to be mirrored somewhat in the UK and in the increased support for populist parties and politicians. Indeed, in the UK, one significant change in the landscape of constitutional safeguards is the degree to which constitutional actors are willing to push against constitutional norms and principles. This is important because, as we note above, constitutional actors and institutions have a substantial role in the safeguarding of constitutional principles. Perhaps the most prominent example is the 'constitutional violations' of the Conservative Government under Boris Johnson which 'raised a number of serious questions about the continued successful functioning of the UK's unwritten constitution'.¹⁷
18. There is also a growing view, both in the UK and elsewhere, that success at the ballot box overrides any legal or constitutional constraints on those in power. There is an echo of this in the recent example of the leader of the Reform Party, Nigel Farage, standing down as MP for Clacton and submitting himself to re-election in the constituency. This occurred after the initiation of a parliamentary inquiry into his receiving of a £5 million gift which was undeclared. Mr Farage stated that the 'people of Clacton should be the judges of [his] actions'¹⁸ implying that his subsequent re-election should override any adverse finding by any formal inquiry.

How could potential threats to the constitution be mitigated?

¹⁵ Sadurski (n 14).

¹⁶ 487 US 654. (Justice Antonin Scalia's dissent); David D. Driesen, 'The Unitary Executive Theory in Comparative Context' (2020) 72(1) *Hastings Law Journal* 1.

¹⁷ David Sanders, 'One Man's Damage: The Consequences of Boris Johnson's Assault on the British Political System' (2023) 94(2) *The Political Quarterly* 166, 166.

¹⁸ <<https://www.bbc.co.uk/news/videos/c36yd5njin30o>> accessed 14 September 2026.

19. We suggest the following as ways to mitigate potential threats to the constitution.

Diversification of the Prime Minister's power in relation to the Ministerial Code

20. We note above that an evaluation of whether the Ministerial Code has been breached and, if so, what consequences should follow are dependent on the judgment of the Prime Minister and that there have been allegations of abuse and a lack of impartiality. As such, we suggest that there should be further checks and balances to ensure that constitutional propriety is being upheld by Ministers. We appreciate that the Prime Minister needs to have control over government and should have the final say over ministerial behaviour. A complete removal of their power to investigate and sanction Ministers (as was originally proposed with the Ethics and Integrity Commission)¹⁹ would undermine this function. However, we argue that an increased diversification of power from the Prime Minister is needed. We advocate in favour of greater controls to ensure that the Prime Minister is safeguarding constitutional propriety. This could involve increasing oversight as well as the powers of the Independent Advisor.

A new judicial power of declaration

21. At the moment, under the Human Rights Act 1998, UK judges in the senior courts can declare legislation to be incompatible with the Convention rights.²⁰ Such a declaration 'does not affect the validity, continuing operation or enforcement of the provisions in respect of which it is given and is not binding on the parties in the proceedings in which it is made'.²¹ A declaration of incompatibility does, though, empower a Government Minister to take remedial action and enact secondary legislation to remove the incompatibility²² (though a draft of such remedial action normally has to be approved by a resolution of each House of Parliament within 60 days²³).
22. The senior courts could be afforded a similar power with regard to primary legislation that is in breach of constitutional principles. Legislation may provide them with the power to declare legislation to be unconstitutional with the proviso that such a declaration would not affect the validity or continuing application of the provisions in question. Similarly to the declaration of incompatibility under the Human Rights Act 1998, a declaration that legislation breaches constitutional principles may empower Ministers to take remedial action to amend the legislation in question or, at the very least, alert Ministers and parliamentarians as to the potential unconstitutional nature of the legislation.

¹⁹ Mike Gordon 'The United Kingdom's new Ethics and Integrity Commission: Labour's retreat on ministerial standards' [2026] PL 378.

²⁰ Human Rights Act 1998, s 4(2). The Convention rights are those rights and freedoms protected by the European Convention on Human Rights which are listed in s 1 and sch 1 of the 1998 Act.

²¹ Human Rights Act 1998, s 4(6).

²² Human Rights Act 1998, s 10.

²³ Human Rights Act 1998, sch 2, para 2. There is an exception where 'it is declared in the order that it appears to the person making it that, because of the urgency of the matter, it is necessary to make the order without a draft being so approved', sch 2, para 2.

A new judicial power to rule legislation to be null and void.

23. It might even be thought appropriate to go further and, for instance, provide the UK's Supreme Court with the power of strike down – the power to rule provisions in Acts of Parliament to be null and void. We recognise that this would be a significant challenge to the fundamental constitutional principle of parliamentary sovereignty but it could be accompanied by significant safeguards. For instance, it could be that such a power could only be exercised by a panel of 11 Justices of the Supreme Court and that there must be a supermajority of at least eight judges ruling in its favour. Alternatively, it might be that an order striking down primary legislation would only be effective if confirmed by a positive resolution of both Houses of Parliament within 60 days. This positive confirmation by both Houses may alleviate any fears about this being a breach of parliamentary sovereignty.

A better informed citizenship

24. We argue above that UK citizens are generally uninformed about the UK constitution and about constitutional principles. We further argue that this, in turn, helps to facilitate constitutional actors to act in breach of the constitution without the constraining force of critical public opinion. One mitigation of this would obviously be to have and to work towards a populace that is better educated on constitutional matters. This could be achieved through, for instance, greater educational outreach programmes by Parliament or by asking Further or Higher Education Institutions to establish short in-person or online courses.

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