



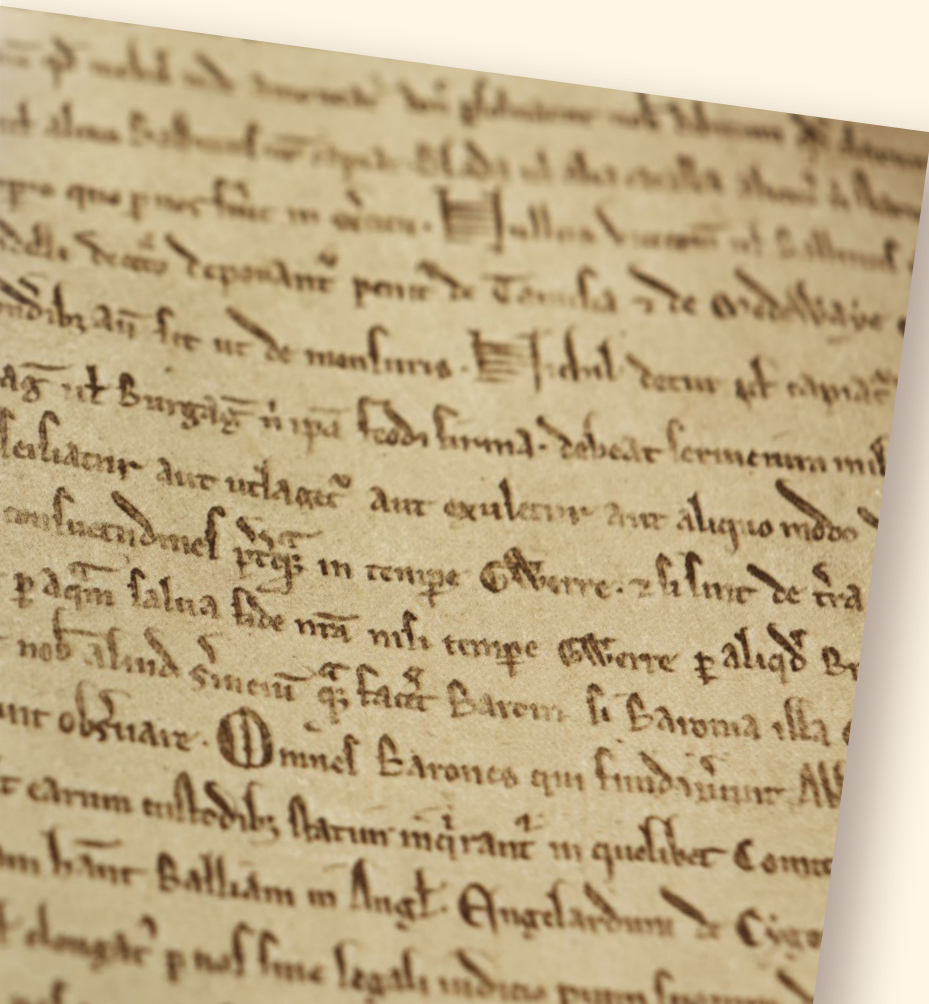
HOUSE OF COMMONS

POLITICAL AND CONSTITUTIONAL  
REFORM COMMITTEE

# THE UK CONSTITUTION

*A summary, with options for reform*

MARCH 2015



## CHAIR'S FOREWORD

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Parliament, through the Political and Constitutional Reform Select Committee of the House of Commons, has spent the full fixed five-year term of the 2010 Parliament looking at the path to possible codification of the United Kingdom's constitution. In a unique collaboration with a team from the Centre for Constitutional and Political Studies at King's College London, led by Professor Robert Blackburn, we published '*A new Magna Carta?*'<sup>1</sup>, a seminal and comprehensive work offering three options for codification.

We then embarked upon an unprecedented public consultation. While the responses to the consultation broadly favoured a written constitution, they also raised many views and options on what should be its content. We make no pretence that there is a consensus view either among the public or the committee. Instead, we feel the debate and discussion should go on.

Therefore what follows is a further draft of a much simplified, popular version. It contains – in black text – a brief description of our current constitutional arrangements and reference to the relevant sections of the third blueprint published in '*A new Magna Carta?*' and – set out separately to facilitate comparisons – a number of options which emerged from the consultation. These options are illustrative and not exclusive. They are designed to initiate further discussion, and perhaps fierce argument, to inform the 2015

general election campaign and to continue to the end of the year of the 800<sup>th</sup> anniversary of Magna Carta, into a possible constitutional convention and beyond.

A refreshed Parliament will collate your further ideas on a codified constitution and, when our political leaders are ready, they will have a ready-crafted document and set of responses to help them to deliver to the British people - should they wish it - a codified constitution of their choice.

### Graham Allen MP

*Chair of the Political and Constitutional Reform Select Committee*

Send your response, comments and contributions on the debate to **pcrc@parliament.uk**, contribute to the debate on social media using **#UKconstitution** or complete our online survey at **<http://www.smartsurvey.co.uk/s/150290KVDWR>**.

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<sup>1</sup> Second Report of the Political and Constitutional Reform Committee, Session 2014-15, *A new Magna Carta?*, HC 463

## PREAMBLE<sup>2</sup>

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United, we stand in celebration of the diverse voices that make up the great chorus of our nation. Confident in our individuality, and steadfast in our shared values and common purpose, we—the citizens of the United Kingdom of Great Britain and Northern Ireland—have come together in the spirit of self-determination in order to establish the principles of our law and governance.

By this act, we create for ourselves a sovereign state, animated by many spirits, accountable to all. Conscious of the responsibility that we bear to future generations—and of their role in defending and regenerating this Constitution—we lay down maxims crafted to promote civic harmony, mutual tolerance, universal wellbeing, and social and political freedom.

We embody these ideas in democratic government, and enshrine them in a system of law. And we empower each citizen to reform this design, by democratic process and political debate. By popular mandate, we establish this Constitution:

- To recognise every citizen as an equal partner in government—at a local, regional, and national level.
- To affirm that each citizen is entitled to fair and equitable treatment under the law.
- To establish the principle of equality of opportunity for all citizens.
- To eradicate poverty and want throughout the nation.
- To protect and cultivate community identities within the four great countries of the union: England, Scotland, Wales, and Northern Ireland.
- To preserve our common environment, and to hold it in trust for future generations.
- To safeguard freedom of thought, conscience, and assembly; and to facilitate peaceable dissent.
- And to protect these fundamental rights against the encroachment of tyranny and the abdication of reason.

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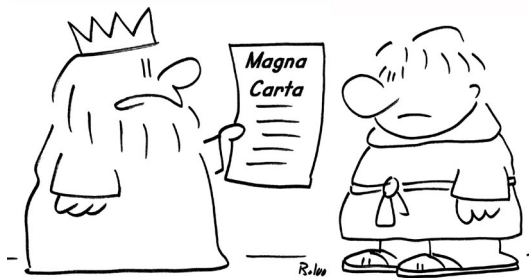
<sup>2</sup> Below is the winning entry in the Committee's competition for the public to find a suggested preamble for a future UK Constitution. It has been drafted by Richard Elliott. If you are inspired to do better, please send your own suggestion to [pcrc@parliament.uk](mailto:pcrc@parliament.uk)

Through this undertaking, we remind one another of the benefits and duties of citizenship enshrined in membership of the United Kingdom, challenging ourselves to enact these principles throughout society.

Let our example stand as an inspiration to the peoples of the world, and to their rulers and their governments.

Let our principles animate our dedication to peace and justice in international affairs.

And let our united resolve grow ever-stronger under the enlightened auspices of this Constitution.



**"You can read, right? — I want you to check this thing for loopholes."**

# OUR DEMOCRATIC SETTLEMENT

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The United Kingdom is a constitutional monarchy.<sup>3</sup>

**Possible alternative:**

The United Kingdom shall be a democracy where the people are sovereign.

There shall be a separation of powers guaranteeing an independent and elected executive and legislature, and an independent and impartial judiciary.

The United Kingdom shall operate as a Union of nations with power devolved to the lowest appropriate level.

**Status:**

The United Kingdom constitution is composed of the laws and rules that create the institutions of the state, regulate the relationships between those institutions, or regulate the relationship between the state and the individual.

These laws and rules are not codified in a single, written document.

Constitutional laws and rules have no special legal status.

**Possible alternative:**

The Constitution of the United Kingdom shall be the basic law according to which the United Kingdom shall be governed. The Constitution shall have the highest legal status and all other laws and rules must be consistent with it.

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<sup>3</sup> This provision, and subsequent provisions, are set out more fully in the blueprint written constitution published in the Committee's Second Report, Session 2014-15, *A new Magna Carta?*, HC 463, p 285.

**Amendment:<sup>4</sup>**

Constitutional laws and rules may be enacted, amended or repealed by Parliament using its ordinary legislative procedures.

**Possible alternative:**

There shall be a Commission for Democracy, which shall keep under review the operation of the Constitution.

Amendments to the Constitution may be proposed by the Commission for Democracy, by the Government, or by either House of Parliament.

The Constitution may only be amended following approval by:

- Two-thirds of the members of both the First and Second Chambers of Parliament, and
- The majority of people voting in a referendum.



"Hey! — Don't go adding disclaimers!"

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# THE HEAD OF STATE<sup>5</sup>

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The Head of State of the United Kingdom is the hereditary Monarch.

**Possible alternative:**

The Head of State of the United Kingdom shall be directly elected by the people.

OR

The Head of State shall be nominated and approved by both Houses of Parliament.

The Head of State must be a British Citizen, and must be over 18 years of age.

The Head of State's term of office shall be [10] years, which may be renewed once.

## **Powers**

The powers of the Head of State are formal, ceremonial and non-political, and include:

- Granting assent to legislation approved by both Houses of Parliament;
- Appointing the Prime Minister;
- Appointing Ministers of the Crown;
- Granting honours and titles;
- And any other powers as may be accorded to the Head of State.

The Head of State must act with strict political neutrality. The Head of State exercises these powers on the advice of the Prime Minister.

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<sup>5</sup> *A new Magna Carta?* pp 285-287

# THE EXECUTIVE<sup>6</sup>

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## THE PRIME MINISTER

The Prime Minister is the Head of the United Kingdom Government.

The Head of State appoints as Prime Minister the member of the House of Commons who can command the confidence of the House of Commons.

The Prime Minister remains in office until either:

- Following a General Election, the Prime Minister is no longer able to command the confidence of the House of Commons, or
- The Government loses a vote of no confidence in the House of Commons and a replacement government cannot be found within 14 days, or
- The Prime Minister resigns.

### Possible alternative:

The Prime Minister shall be directly elected by the people [in a two-round ballot].

OR

The Prime Minister shall take office following nomination and confirmation by the House of Commons.

The Prime Minister's term of office shall be 5 years, renewable.

## CABINET

The Cabinet consists of the Prime Minister and senior Ministers and is the collective leadership of the United Kingdom Government.

Ministers must be members of either House of Parliament and are appointed and dismissed by the Head of State, acting on the advice of the Prime Minister.

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<sup>6</sup> *A new Magna Carta?* pp 290-302



The maximum number of holders of ministerial office entitled to sit and vote in the House of Commons at any one time is ninety-five.

**Possible alternative:**

Ministers shall be appointed by the Prime Minister and hold office at his or her discretion.

Cabinet level appointments shall be ratified by Parliament.

***Powers of the Executive***

The Executive exercises powers on the basis of an Act of Parliament, the common law or convention.

The common law powers of the Executive include, but are not limited to:

- Declaring war and committing troops to armed conflict;
- Signing treaties and international agreements;
- Granting passports;
- Issuing pardons.

The Prime Minister and Ministers are responsible to Parliament for the exercise of these powers.

**Possible alternative:**

The powers of the Executive shall be listed in a Prime Ministerial Powers Act, which may only be amended by a majority of two-thirds of the members of each House of Parliament.

The Act shall specify the Prime Minister's duties in respect of all matters including war-making, treaty-making, and initiating legislative action for the public good.

The Prime Minister and Ministers shall be accountable to Parliament for the exercise of these powers.

# THE LEGISLATURE<sup>7</sup>

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## PARLIAMENT

The United Kingdom Parliament has two chambers, the House of Commons and the House of Lords.

The United Kingdom Parliament may pass laws on any matter, without restriction in law.

### Possible alternative:

The United Kingdom Parliament shall have two chambers, the First Chamber and the Second Chamber.

Laws passed by the United Kingdom Parliament must comply with the provisions of the Constitution. Any laws that do not comply with the Constitution shall be invalid.

## THE HOUSE OF COMMONS

The House of Commons is the First Chamber of the United Kingdom Parliament.

### *Membership*

The House of Commons has 650 directly elected members, known as Members of Parliament. Members are elected by simple majority system, also known as First Past the Post.

### Possible alternative:

The First Chamber shall have [500] directly elected members, known as Members of Parliament. Members shall be elected by an electoral system agreed by the people in a referendum.

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<sup>7</sup> *A new Magna Carta?* pp 303-313

## **Functions**

The main functions of the House of Commons are:

- To represent the peoples of the United Kingdom in all matters;
- To hold the government to account;
- To scrutinise and approve Bills as part of the legislative process;
- To authorise taxation;
- To scrutinise and approve the Government's budget and planned expenditure on an annual basis;
- To debate the public policies of and for the Government of the United Kingdom.

### **Possible alternative:**

The main functions of the First Chamber shall also include:

- To confirm the appointment of the Prime Minister and other Ministers;
- To act in accordance with the values of this constitution.

The role of a Member of Parliament includes, but is not limited to:

- Participating in the work of the House of Commons;
- Representing and furthering the interests of their constituency;
- Representing individual constituents and taking up their problems and grievances.

### **Possible alternative:**

- Making judgements balancing the interests of public, party and conscience free from influence or coercion.

It is for each MP to decide how best to balance these tasks.

## **THE HOUSE OF LORDS**

The House of Lords is the Second chamber of the United Kingdom Parliament.

### ***Membership***

The House of Lords is composed of Life Peers, 92 Hereditary Peers and 26 Lords Spiritual.

Life Peers are appointed for life by the Head of State on the advice of the Prime Minister.

The 92 Hereditary Peers hold office for life. When a vacancy arises, it is filled following a by-election, governed by the standing orders of the House.

The 26 Lords Spiritual include the Archbishops of Canterbury and York, the Bishops of London, Durham and Winchester, and 21 other Bishops of the Church of England according to seniority of appointment.

Members of the House of Lords may resign their membership.

There is no limit on the number of members of the House of Lords.

### **Possible alternative 1:**

**The Second Chamber shall be subordinate to the First Chamber. It shall have [500] voting members, directly elected to represent in proportion the nations and regions of the United Kingdom.**

**Members shall be elected for a period of [fifteen] years and [shall/shall not] be re-elected**

**The electoral system for elections to the Second Chamber and for vacancies shall be decided by each of the nations and regions of the United Kingdom.**

**Possible alternative 2:**

The Second Chamber shall be a Chamber of Experts, with [350] members.

Its members shall be appointed by the Head of State on the advice of an independent commission.

Members shall be appointed for a period of [fifteen] years.

Members shall be appointed on the basis of recognised expertise in their field. Members may be members of a political party, but may not form party political groupings within the Second Chamber.

***Powers/Functions***

The main functions of the House of Lords are:

- To hold the government to account;
- To scrutinise, amend and approve bills as part of the legislative process.

The House of Lords has no power to veto legislation approved by the House of Commons, save to veto any Bill which seeks to extend the life of a Parliament beyond 5 years.

**Possible alternative:**

The primary function of the Second Chamber shall be to scrutinise and amend Bills approved by the First Chamber.

The Second Chamber shall pay special regard to Bills that would reform the Constitution. Such Bills must be approved by a majority of two-thirds of the members of the Second Chamber.

The Second Chamber may also veto a Bill that has been approved by the First Chamber if the Bill is considered to be contrary to the independence of other institutions including Local Government, human rights or any other provisions of the Constitution.

# DEVOLVED GOVERNMENT OF THE NATIONS, REGIONS AND LOCALITIES<sup>8</sup>

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## ***Devolved Government of Nations and Regions***

There are devolved parliaments and assemblies in Scotland, Wales and Northern Ireland. There is an assembly in Greater London.

The powers and functions of these devolved parliaments and assemblies are determined by laws passed by Parliament.

These laws may be amended or repealed by Act of Parliament.

## ***Local government***

There are directly elected local authorities in all areas of the United Kingdom.

Local authorities are bound by Acts of Parliament in respect of powers to raise taxes, and to promote the economic, social and environmental well-being of the areas that they represent.

The powers, funding and responsibilities of local authorities are determined by law.

## **Possible alternative:**

The United Kingdom shall operate on the basis of the guiding joint principles of union and devolution.

Permanent devolved parliaments and assemblies in Scotland, Wales & Northern Ireland shall be established as parts of the Union, and they may make national constitutions which respect this federal Constitution.

Devolution in England shall be in the form of independent local government, to which shall be assigned a proportion of national income tax.

The freedoms and duties of local government in England shall be defined in an Independent Local Government Act. Such an Act may only be amended with the agreement of two-thirds of the members of each House of Parliament, and of the majority of people voting in a referendum.

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<sup>8</sup> *A new Magna Carta?* pp 321-326

# THE JUDICIARY<sup>9</sup>

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## GENERAL PRINCIPLES

The judiciary is independent and impartial.

Ministers must uphold the principle of judicial independence.

There are separate courts systems in England and Wales, Scotland and Northern Ireland.

The most senior court in the United Kingdom is the United Kingdom Supreme Court. The Supreme Court is the final court of appeal on all matters, except criminal appeals in Scotland.

## *Appointment of judges*

Senior judges are appointed by the Head of State on ministerial advice. The procedures for selecting candidates for judicial office are set out in Acts of Parliament.

Appointment to judicial office must take place on the basis of merit.

When selecting candidates for judicial appointment, regard must be had for the need to promote diversity among the judiciary.

## *Functions*

The primary functions of the judiciary are to:

- Uphold the rule of law and the rights of individuals;
- Adjudicate on any disputes that are brought before them, and;
- Maintain the administration of civil and criminal justice.

The judiciary is responsible for the development and application of the common law.

The judiciary must interpret and apply laws enacted by Parliament.

There is no power to strike down laws enacted by Parliament.

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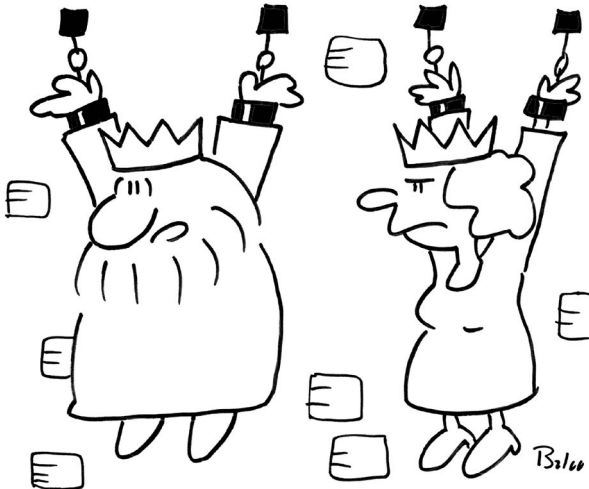
9 *A new Magna Carta?* pp 339-347

**Possible alternative:**

The judiciary shall have the power to strike down laws that are found to be inconsistent with the Constitution.

OR

The judiciary shall have the power to issue a declaration of unconstitutionality in respect of a law that is found to be inconsistent with the Constitution.



"I didn't know the Magna Carta had small print!"



## BILL OF RIGHTS<sup>10</sup>

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The following rights, deriving from the European Convention on Human Rights and expressed in the Human Rights Act, are available without qualification to all persons within the United Kingdom:

- Everyone has the right to life;
- Everyone has the right to be free from torture, inhuman or degrading treatment;
- Everyone has the right to be free from slavery and forced labour;
- No-one may be found guilty of a criminal offence if their actions did not amount to a criminal offence under national or international law at the time of their commission.

The following rights, deriving from the European Convention on Human Rights and expressed in the Human Rights Act, which may be qualified by law are available to all persons within the United Kingdom:

- The right to liberty and freedom from arbitrary arrest and detention;
- The right to a fair trial;
- The right to respect for private and family life, home and correspondence;
- The right to freedom of thought, conscience and religion;
- The right to freedom of expression;
- The right to freedom of assembly and association;
- The right to marry and found a family;
- The right to peaceful possession of property;
- The right to education;
- The right to take part in free and fair elections, held at regular intervals.

The enjoyment of these rights is secured without discrimination on any grounds.

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10 *A new Magna Carta?* pp 327-338

**Possible alternative 1:**

There shall be a Bill of Rights which sets out the rights to be protected and enforced within the United Kingdom.

**Possible alternative 2:**

All persons shall be equal before the law and shall be entitled to the equal protection of the law, without discrimination.

**Possible alternative 3:**

The rights of certain groups within society shall be given special regard, in particular the rights of:

- Children;
- Older people;
- People with disabilities.

**Possible alternative (additionally):**

The following social and economic rights shall be available to all persons within the United Kingdom. These rights may not be enforced by the courts, but instead shall be principles to guide the work of the Governments and Parliaments of the United Kingdom and of the devolved assemblies:

- The right to an adequate standard of living, including adequate food, clothing and housing;
- The right to social security;
- The right to receive adequate healthcare, free at the point of use;
- The right to work in an occupation freely entered into, in a safe environment;
- The right of workers to resort to collective action, including the right to strike.

***Status in law***

The rights protected in the Human Rights Act apply as follows:

- It is unlawful for public authorities to act in a way that is inconsistent with the protected rights;
- As far as it is possible to do so, courts must interpret legislation so that it is consistent with the protected rights;
- Where a compatible interpretation is not possible, a declaration of that incompatibility may be made. Such a declaration does not affect the validity or application of that legislation.

**Possible alternative:**

The rights protected in this [Constitution/Bill of Rights] shall have a special legal status.

Any law which is not consistent with the protected rights shall be invalid.

This summary, and the options for change, are intended to stimulate debate. What are your thoughts on our document 'The UK Constitution'?

- Which of the options in the document, if any, do you support?
- Should the Prime Minister's powers be set out in law?
- Should the second chamber [currently the House of Lords] be elected?
- Where should power be devolved to in England?

Tell us what you think about these questions, and many others, by:

- Completing our online survey at <http://www.smartsurvey.co.uk/s.asp?i=150290KVDWR>
- Emailing your thoughts to [pcrc@parliament.uk](mailto:pcrc@parliament.uk)
- Using #UKconstitution on social media

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Political and Constitutional Reform Committee  
House of Commons  
London SW1A 0AA