



The **Democratic Audit** of the  
United Kingdom

# How Democratic is the UK? **The 2012 Audit**

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## Introduction

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This is our fourth periodic Audit of democracy in the UK, and the first to be published exclusively on-line (for our previous studies see Klug et al., 1996; Weir and Beetham, 1999; Beetham et al., 2002b). In this introductory chapter, we outline the methods used to undertake our evaluation of UK democracy in 2012 and summarise the main changes since our last comprehensive Audit in 2002. We also introduce the international comparators which feature, for the first time, in the current Audit and highlight some of the issues raised by them. Finally, we reflect on the nature of the UK's changing constitutional order and consider the implications for future political and constitutional reform.

### Auditing democracy

The idea of a democratic audit is a very simple one. It is a comprehensive and systematic assessment of a country's political life against the key democratic principles of popular control over decision-making, and political equality in the exercise of that control. It is a kind of 'health check' on the state of a country's democracy, using a broad-ranging framework which covers all the main areas of our democratic life.

Before elaborating on our auditing methods, it is first important to clarify what we mean by 'democracy'. Experts agree that democracy means 'rule of the people', but disagree about almost every aspect of how that is best achieved, theoretically or practically. There are many democratic alternatives, some of which have been attempted in the past, albeit without lasting success, while others are proposals which remain essentially untested. These are not just theoretical disputes about utopian conceptions of the popular will. If we want to try to assess how democratic a country is in practice, what exactly are the criteria we should be measuring it against?

One approach, following the lead of American political scientist Robert Dahl, is to examine 'actual democracy' which, in effect, means the variants of representative democracy found around the world. If representative democracy is our focus, then the minimal requirements for a country to be considered 'democratic' are surprisingly straightforward. To paraphrase Dahl (1998), in a democratic society, decisions are taken by elected representatives, returned via free and fair elections, with citizens enjoying universal and equal rights to vote, form associations, express their views and access alternative sources of information. From this sort of conception, organisations such as Freedom House have constructed simple indices of which countries in the world can be considered electoral democracies. Freedom House consult expert opinion in response to 'yes/no' questions such as whether there is universal adult suffrage for all citizens, if elections are contested regularly with reasonable ballot secrecy and security, and so on. These opinions are then aggregated to produce simple binary scores indicating either the presence or absence of democracy. On this basis, Freedom House finds there are currently 117 electoral democracies in the world, up from 69 in 1989.

However, while defining some 'minimal requirements' for a democracy is helpful, Democratic Audit has always adopted a far broader set of criteria than are typically used in most democracy assessments. We also seek to go beyond the limitations of democracy assessment as a set of 'yes/no' answers. In practice, democratic values and principles are realised to different degrees by the contrasting institutional arrangement which exist in different countries or in the same countries at different times. Few would dispute that the UK is a democracy, as measured by any currently accepted criteria. Yet, equally few would have questioned the UK's democratic credentials a century ago, despite the fact that only men were permitted to vote in 1912. Put another way, it would be surprising for anyone to argue that the UK is already as democratic as it would be possible, or desirable, for it to be. Our purposes, therefore, are to ask whether the UK is becoming more or less democratic and to identify what needs to be done to broaden and deepen democratic governance.

Our assessment methodology is based on a framework pioneered by Professor David Beetham (1994) and begins from the two basic principles of representative democracy, namely:

- Popular control: how far do the people exercise control over political decision-makers and the processes of decision-making?
- Political equality: how far is there political equality in the exercise of popular control?

From these two principles Democratic Audit has derived its full framework made up of 15 separate sections, organised into four main 'Blocks' covering: 'citizenship, law and rights'; 'representative and accountable government'; 'civil society and popular participation'; and 'democracy beyond the state'. Each of these 'blocks' is in turn sub-divided into a number of different sections, or chapters, covering 15 core aspects of a democratic political system, as follows:

- [Nationhood and citizenship](#);
- [Rule of law and access to justice](#);

- [Civil and political rights](#);
- [Economic and social rights](#);
- [Free and fair elections](#);
- [The democratic role of political parties](#);
- [Effective and responsive government](#);
- [The democratic effectiveness of parliament](#);
- [Civilian control of the military and police](#);
- [Integrity in public life](#);
- [The media in a democratic society](#);
- [Political participation](#);
- [Decentralisation](#);
- [External influences on UK democracy](#);
- [The UK's democratic impact abroad](#).

Finally, each of these 15 sections is further divided into between three and eight specific 'search questions'. In total, the Audit provides answers to 75 individual 'search questions', covering issues as diverse as the inclusivity and accessibility of voter registration procedures, the extent to which the media are independent from government, and the degree to which there is public accountability of the police and security services. In answering these questions, we do not seek to 'score' UK democracy using numerical indices. Instead, our answers to the search questions draw on a mix of qualitative and quantitative sources to evaluate the relative degrees to which democratic principles are being promoted, as well as being realised in practice.

The method and framework underpinning our study have international standing and credibility. While the democratic audit methodology was originally developed for the specific purpose of assessing UK democracy, it has since been developed with the assistance of International IDEA (Institute for Democracy and Electoral Assistance), a non-governmental organisation based in Stockholm. With IDEA's support, Democratic Audit re-designed and expanded the framework to create a universal tool for assessing the condition of democracy in any country in the world. Two International IDEA publications detail the whole process of taking on a democratic audit (Beetham et al., 2002; Beetham et al., 2008). Following the completion of eight pilot assessments (Beetham, 2002), the Audit methodology has been applied in at least 15 democracies, including Australia, Austria, Ireland, Latvia, the Philippines and South Africa (see, among others, Beck and Robert, 2003; Rozenvalds, 2005; Hughes et al., 2007; Sawyer et al., 2009). A similar approach has also been adopted by the Democratic Audits of Canada, Russia and Sweden – although the Audits in these countries do not use the IDEA framework (see, for example, Cross, 2011). A number of large-scale national 'power and democracy' studies have also been conducted in recent years, notably in the Scandinavian countries (Østerud and Selle, 2006; Andersen, 2006). In addition, the democratic auditing approach has been applied to the study of the European Union (Lord, 2004).

### Assessing democratic change

As with our previous studies, our latest Audit provides a snapshot of the state of UK democracy at a particular point in time. Throughout our 2012 Audit, we seek to assess what has changed since we published our last comprehensive assessment in 2002. In each of the 15 sections which make up the Audit, we identify areas which have improved compared to a decade ago, those which we regard as continuing concerns, and issues which represent new or previously unidentified concerns.

A total of 74 areas of democratic improvement are identified across the Audit as a whole, although these must be set alongside 92 continuing concerns and 62 new and emerging concerns. However, it would be highly misleading to read these outcomes as a simple scorecard, for three key reasons:

- **While there have been a handful of very significant democratic advances over the last decade, many of the improvements we identify are relatively modest in scope.** For instance, it clearly could not be argued that reducing the age of candidature at general elections from 21 to 18 equates in importance to the establishment of a UK Supreme Court.
- **It is by no means clear that all, or even most, of the improvements we identify have become fully embedded features of UK democracy.** For example, the modest progress we note with regard to economic and social rights under Labour from 1997-2010, is likely to be undone rapidly by the current Conservative-Liberal Democrat coalition. Meanwhile, other identified improvements since 2002 are the subject of intense political controversy, and may also be reversed by the current government.
- **Political and constitutional reforms have a tendency to create unforeseen consequences, some of which will deepen existing democratic concerns, or even create new ones.** A number of democratic improvements identified in our Audit are directly counter-balanced by clear concerns arising from the very same aspects of UK democracy. For instance, while devolution has enhanced democratic arrangements in Scotland, Wales and Northern Ireland, it also poses profound challenges for the operation of democracy in the UK as a



whole. Similarly, while reforms introduced by Labour have enabled the judiciary to operate more independently from the legislative and executive branches of government, these changes have also become part of a wider set of constitutional uncertainties about where power and authority resides in the UK political system.

It is also important to recognise that, due to the multi-faceted nature of the Audit framework, there is a mixture of improvement and deterioration observed in each of the 15 sections. In all of the 15 sections, we identify at least some steps forward, but also a number of steps back, and the relative size of these steps varies enormously. Even more significantly, there are large numbers of instances where our assessment repeats the most serious concerns we have expressed in previous Audits. It is the weight of these 'continuing concerns' which are generally the most significant factor in shaping our assessment of how the UK is performing on each dimension. Ultimately, therefore, our assessment of whether the complex, and often conflicting, dynamics of UK democracy represent improvement or deterioration against our core criteria must be a subjective one. Nonetheless, the sheer volume of qualitative and quantitative evidence we have collated, not just for our current Audit but also for our previous ones, enables us to make informed judgements about the extent to which democracy in the UK is improving or deteriorating.

Overall, we find that while UK democracy has moved forward four areas since our last Audit in 2002, and is broadly static in three further areas, it has slipped back, mostly very moderately, in the remaining eight. Below, we summarise the specific mixture of improvements and concerns identified in each of the 15 sections, beginning with those in which we adjudged there to be improvement overall.

### **1. Overall improvement**

#### **• Democratic effectiveness of parliament**

The strengthening of parliament, particularly the House of Commons, is one of the most encouraging developments identified by our current Audit. Changes introduced under Labour included experiments with pre- and post-legislative scrutiny, the introduction of public bill committees and greater transparency for public accounts. However, demands for further reform grew, particularly in the wake of concerns about parliament's lack of influence over the decision to go to war in Iraq. Gordon Brown's constitutional reform programme resulted in some modest reduction in the scope for the executive to bypass parliament via the use of the royal prerogative, but the crucial changes came towards the end of Labour's period in office. The public scandal over MPs' expenses added weight to the case being made that parliament needed to reform itself, resulting in the introduction of elections for members of select committees and their chairs and measures to give the Commons more control over its own timetable. Arising from the report of a special select committee chaired by Tony Wright, then Labour MP for Cannock Chase, the 'Wright reforms' may, over time, help produce substantial changes in the ability of parliament meaningfully to contribute to democratic processes. Nonetheless, deficiencies remain, not least continued dependency upon the executive, a lack of powers in key areas still covered by the royal prerogative, and weaknesses in financial scrutiny.

#### **• Civilian control of military and police**

Our last full Audit concluded that the military in the UK is under formal civilian control, and that military involvement in civilian affairs, normally confined to emergencies, has not tended to be politically controversial. Against this backdrop, we highlight some modest further progress in this Audit. There have been some improvements in the social representativeness of the military and police. It is also possible to point to an emerging consensus that the Intelligence and Security Committee should provide for greater accountability of the intelligence and security services to Parliament, although concrete reforms to achieve this have yet to be realised. However, a number of concerns identified a decade ago remain evident. The 'democratic deficit' in police accountability has not been addressed, and criticisms of the police complaints system persist, despite a major reform in 2004. We have very little confidence that the introduction of elected Police and Crime Commissioners will address these concerns. Likewise, the accountability of the intelligence and security services to parliament remains very weak, despite widespread recognition of the need for change in this area.

#### **• Decentralisation**

Devolution provides a clear counter-trend to decades of centralisation of the UK state, but it also creates big constitutional tensions because of the continued absence of devolution to England. The success of the devolved institutions is highly apparent and, while turnouts in devolved elections remain a concern, there is clear evidence that devolution has been instrumental in leading a process of democratic renewal in Scotland, Wales and Northern Ireland. However, the growing 'devolution gap' between England and the three 'Celtic nations' poses serious problems for the UK political system as a whole, not least in the context of the weak autonomy of English local government and the coalition's decision to dismantle the existing English regional governance structures. If the coalition's commitment to localism is intended to reverse decades of centralisation of government in England, it is predicated on a high-risk strategy that local government will be able to find meaningful ways of using a range of new freedoms and flexibilities in the context of large-scale cuts in their revenue base.

#### **• The UK's democratic influence abroad**

The UK has a relatively good record of promoting democracy and human rights and supporting institutions and international agreements designed for this purpose. However, there have also been long-standing concerns about UK participation in US-led military interventions and about UK arms exports to regimes which might deploy them in the perpetration of human rights abuses. Our current Audit identifies several instances of improvement. The UK has participated in a treaty banning cluster munitions. Progress has been made in the reaching of international aid targets; in the institutional commitment to development aid, and wider acceptance of its value as a policy goal. There have been limited improvements to the regime of parliamentary oversight of external policy. However, the UK remains reluctant to ratify certain international human rights treaties, the destinations of some arms exports remain controversial, and the UK parliament remains restricted in its ability to oversee the conduct of UK foreign policy. The most dramatic problem during the present Audit period has, without doubt, been the association of the UK with the US in the pursuit of the so-called 'war on terror', particularly during the presidency of George W. Bush.

### **2. No or minor change overall**

#### **• Political participation**

While election turnouts and party membership have declined compared to previous decades, levels of engagement in other forms of political activity, such as signing petition or taking part in demonstrations, are either stable or have increased. Moreover, there is no evidence of a decline in levels of civic participation: levels of volunteering are high and the voluntary sector has grown in size and significance. This evidence of a healthy and vibrant civil society provides a partial counterbalance to the sharp decline in electoral participation. We are also encouraged by the growth of ethnic minority representation in many areas of public office, which is also replicated, albeit to a lesser extent, with respect to some aspects of gender representation. However, there are ongoing threats to the independence of civil society organisations, particularly where they have become directly engaged in the delivery of public services. With regard to the representation of women and ethnic minorities in public life we highlight a mixture of progress and failure. Overall, women remain under-represented in all forms of public office, a pattern which is repeated with respect to the UK's ethnic minority population. Moreover, class inequalities in political participation are highly evident; those from professional and managerial backgrounds are far more likely to participate in political and civic life than those from manual occupations. It is far from certain that the coalition's 'Big Society' agenda will prove successful in addressing these concerns.

#### **• Rule of law and access to justice**

The rule of law is well established in the UK and key recent improvements include the continued extension of the scope for judicial review under the Human Rights Act 1998 and the enhanced judicial independence provided for by the Constitutional Reform Act 2005, including the establishment of a UK Supreme Court. There is qualified evidence of falling levels of crime and growing confidence in the legal system. But despite these notable forms of progress, we remain concerned about: the ongoing tensions between parliamentary sovereignty and the rule of law; the limitations placed on human rights review; the further restrictions on legal aid, which will further reduce access to the law; the use of secret evidence in judicial processes; and evidence of continued discrimination in the criminal justice system. Moreover, confidence in the legal system remains both lower than it was in the UK three decades ago and below the level typical of our main comparator democracies.

#### **• Economic and social rights**

The UK ranks among a relatively small number of countries worldwide which can point to a consistently strong track record in meeting basic economic and social rights. There is clear evidence of improvement on a number of fronts since our last full Audit, most notably: a continued narrowing of the gender pay gap; a clear fall in levels of child poverty; and a sustained increase in expenditure on health care. However, on a great number of other measures, progress has stalled and levels of poverty and inequality in the UK remain very high by European standards. Moreover, early indications suggest that the combined impact of the economic downturn from 2008 onwards and the policies being implemented by the coalition since 2010 have prompted an intensification of a number of social problems including youth unemployment and homelessness.

### **3. Overall deterioration**

#### **• Nationhood and citizenship**

We note improvements in legislation governing citizenship, most notably the legal framework for promoting equality and combating discrimination. However, we continue to have concerns about the treatment of asylum seekers and the extent of executive immigration powers. Meanwhile, we highlight a number of democratic improvements associated with devolution, particularly in Northern Ireland, where it has been central to the peace process. However, we also document how the asymmetric nature of devolution in the UK has given rise to

a number of profound constitutional tensions, especially with regard to Scotland, which highlight a lack of consensus about some of the most fundamental aspects of the UK's governance arrangements.

### • Civil and political rights

The protection of civil and political rights has undergone a significant transformation as a result of the Human Rights Act 1998, including a far more significant role for the judiciary. However, the formative years of the new system have coincided with heightened concern about international terrorism, and a tendency among politicians to favour security over liberty. The act has made it harder for government to engage in actions which curtail human rights, but it has not prevented the introduction of control orders, the heavy use of stop and search powers, or the extension of periods of pre-charge detention. Taken together, these measures amount to a worrying erosion of civil and political rights under Labour, which have only been subject to very limited reversal by the coalition.

### • Free and fair elections

There can be little doubt that UK elections are essentially free and fair, as defined by widely accepted international standards. However, when assessed against other established democracies, a number of significant concerns emerge with regard to UK electoral processes and outcomes. Measured against our chosen comparator democracies, turnouts in all types of UK election are low, and the simple plurality system used for elections to the House of Commons produces highly disproportional outcomes. We also highlight growing concerns about the completeness and accuracy of the electoral registers and a rise in the number of electoral fraud accusations reported to police.

### • The democratic role of political parties

In past Audits we have stressed how the party system and the electoral system interact in the UK to sustain the dominance of the two main parties, despite their diminishing levels of popular support, whether measured by membership levels or votes cast at the ballot box. We have also highlighted the persistence of party funding controversies arising from the main parties' reliance on large donations and have made the case for far-reaching reforms in this area. These concerns continue to dominate the findings of our 2012 Audit, which shows that membership of the two largest parties is continuing to fall and that their dependency on 'big money' is more pronounced than ever. Moreover, while declining party membership and a loss of faith in political parties are common features of established democracies, the UK ranks poorly on such measures when compared to its European neighbours. Political parties emerge from this Audit as one of the weakest aspects of UK democracy.

### • Effective and responsive government

We welcome a number of changes since our last full Audit, including: the civil service capability review; the placing of the civil service on a statutory footing; greater acceptance within government of the value of public engagement; and the full implementation of the Freedom of Information Act 2000 in 2005. However, there are ongoing concerns about skills and organisation in the civil service, as well as tensions between the roles of special advisers and permanent civil servants. We highlight concerns about inequalities of access to government when consulting on policy, with particular reference to the role of lobbyists in this area. Finally, low levels of public confidence in government and personal political efficacy point to wider issues about the effectiveness and responsiveness of government. The failures of government to ensure adequate regulation of the financial system provide a dramatic illustration of the shortcomings we identify.

### • Integrity in public life

Major political scandals have continued to occur since our 2002 Audit, despite the growth of bodies and rules intended to promote integrity in the conduct of public officials and restore public confidence. The police investigation associated with the 'cash-for-peerages' allegations in 2006, the MPs' expenses scandal of 2009 and credible evidence of police corruption uncovered during investigations into the 'phone-hacking' affair have almost certainly impacted negatively on perceptions of integrity in public life. There is, without doubt, a very strong perception, shared by experts and the general public alike, that standards in public life in the UK have declined further in recent years, both in absolute terms and relative to other established democracies.

### • The media in a democratic society

By international standards, the UK media is relatively free and, on some measures, relatively pluralistic. However, the concentration of media ownership in the UK, the negative impact of intensifying market competition on news reporting and investigative journalism, and the extent to which intrusion and harassment characterise the practices of some sections of the press are all long-standing concerns for Democratic Audit. These same issues feature strongly in our current Audit, although we also add concerns about declining newspaper circulation, falling television news consumption, and the regulatory challenges arising from the blurring of the boundaries between print, digital and broadcast media. Meanwhile, emerging evidence suggests that illegal practices in the media, including phone-hacking, email-

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hacking, as well as numerous forms of journalistic harassment, may well have become commonplace. Finally, we identify ongoing concerns about the scope for investigative journalism to fall foul of libel law as well as associated issues raised by the growing use of court injunctions by large corporations and powerful individuals to prevent the press reporting on specific matters of democratic importance.

### • External influences on UK democracy

The UK is subject to a broad range of external influences which impact on its democratic arrangements. These influences include political, diplomatic and trade organisations; powerful corporate bodies operating in industry and finance; and even other nation-states more powerful than itself. The common view is that their impact on democracy is a negative one. International bodies such as the EU and the WTO are frequently criticised for a lack of transparency and accountability. There is widespread unease about the scope for multinational corporations to shape policy, and particular concerns about the hold which financial markets have over economic policy. And many would argue that, in foreign policy, the UK is influenced to an unhealthy extent by the United States. However, we also take the view that UK policy-makers risk exaggerating the implications of these external influences. In international affairs, the UK continues to punch above its weight, generally enjoying far greater influence within multilateral bodies than its population alone would entitle it to; although without sufficient oversight of this power from both parliament and the public. Mainstream acceptance of the idea that globalisation dictates certain policy options has served to close off discussion of different policy options for the UK, leading to a clear divergence from social policy norms in Europe. Meanwhile, the UK's approach to the EU falls between two stools of either accepting the trade-off between constraints and benefits which membership entails or opting not to participate in order wholly to preserve national sovereignty.

### International comparisons

As well as evaluating how UK democracy is developing over time, our Audit seeks to compare the UK against a range of other democracies. Throughout the Audit, we make use of available statistical data to benchmark the UK's democratic performance against the average for western Europe (represented by the EU-15) and the average for established democracies globally (represented by the OECD-34). In addition, wherever possible, we use three groups of comparator democracies within the OECD, each of which represents a specific 'type' of western democracy. These are the English-speaking 'Westminster democracies', the 'consensual democracies' of western Europe, and the Nordic countries.

Democracy type	Westminster – OECD (5)	Consensual – OECD (6)	Nordics (5)
Welfare regime type	Liberal	Corporatist	Social Democratic
Countries	<i>Australia</i>	Austria	<i>Sweden</i>
	Canada	Belgium	Denmark
	New Zealand	Germany	Finland
	United Kingdom	Luxembourg	Iceland
	<i>Ireland</i>	<i>Netherlands</i>	Norway
		Switzerland	

The distinction between Westminster and consensual democracies is taken from Arend Lijphart's (1999) classic study of democracies. In Lijphart's characterisation, the Westminster model comprises a centralised political system, in which a majoritarian electoral system, limited party competition, a weak separation of powers and constitutional flexibility concentrate power in the hands of single-party governments. By contrast, consensual democracies are characterised by greater fragmentation of power, including a decentralised state; a stronger, formal constitutional separation between the executive, the legislature and the judiciary; and proportional electoral systems and multi-party systems which make coalition government the norm.

We have added the Nordic countries as a separate category for two key reasons. First, the Nordics do not fit fully into the two-fold Lijphart classification. While Nordic democratic systems and traditions have much in common with the consensual democracies, the long-standing influence of social democracy had resulted in a particularly strong commitment to political equality, as typified by measures promoting the participation of women in public life. Second, by giving due recognition to the particularly social democratic characteristics of Nordic democracy, our Audit works with three categories of democracy which are broadly consistent with the clusters of welfare states identified in

Esping-Andersen's (1990) book, *The Three Worlds of Welfare Capitalism*. Given the broad reach of the Audit framework, long-running debates about the relationships between democracy and capitalism, and the core concerns we express in our 2012 Audit about growing inequality and rising corporate power, this threefold classification proves to be highly revealing.

We have also selected a specific country from each group of comparators to offer scope for more detailed comparison in some areas. Thus, some of our datasets compare the UK directly against Australia (Westminster democracy), the Netherlands (consensual democracy) and Sweden (Nordic), all of which are broadly typical of their democracy 'type'. In addition, we have also added two further comparators, one from the EU-15 (Ireland) and one from the EU-34 (USA), both of which sit somewhat uneasily with the Lijphart model. Ireland retains sufficient legacy of the British democratic system to still be viewed as a Westminster democracy, although it now has several features which are atypical of the model, most notably the use of a proportional electoral system. The USA, meanwhile, cannot be easily placed in either category, being a highly decentralised state with a strong separation of powers, but operating perhaps the purest majoritarian electoral and party systems to be found in any established democracy.

In total, our Audit includes over 40 comparative datasets, although not all compare the UK to the full range of comparators listed above. In virtually every case, the UK ranks below the EU-15 average and is usually at, or just below the OECD-34 average. The contrasts between the UK and the Nordic countries are particularly stark. Indeed, the Nordic countries out-perform the UK on just about every quantifiable measure of democracy used for cross-national comparison. For example:

- Average turnout in parliamentary elections in the Nordic countries in the 2000s was 79 per cent, compared to 60 per cent in the UK.
- In 2010, the proportion of MPs who were female averaged 41 per cent in the Nordic countries, but only 22 per cent in the UK.
- While the average global ranking of the Nordic countries in the 2011 Freedom House index for press freedom was 2nd, the UK was placed 20th.
- The proportion of total tax revenue raised by sub-national governments averages 25 per cent in the Nordic countries, against a mere 5 per cent in the UK.

### What are the core problems with UK democracy? Common themes

There are some obvious 'weak links' in the UK's democratic system which can be identified from the above. Significantly, these weaknesses cluster around particular sets of issues associated with elections, political parties, the media, integrity in public life, and the responsiveness and effectiveness of government. Indeed, the tendencies which we see as most concerning tend to cross-cut several individual sections of the Audit framework, leading us to identify five overarching thematic concerns. Several of these themes are common to all established democracies, although we have found them to be especially pronounced in the UK.

**1. The UK's constitutional arrangements are increasingly unstable and it is by no means clear what a reformed Westminster model would look like.** While significant constitutional reforms have been introduced since 1997, some changes have proved less effective than expected, several facets of the UK political system have proved stubbornly resistant to reform. Moreover, some areas of reform have had clearly unintended or unanticipated consequences, most notably devolution to Scotland. The UK's previously unitary state is now characterised by highly asymmetric decentralisation, with considerable autonomy granted to Scotland, Wales and Northern Ireland, while English governance remains highly centralised. Meanwhile, changes in the operation of the UK party and electoral systems have undermined some of the most fundamental planks of the Westminster model, particularly the principle of single-party majority government, but there is, as yet, little indication of UK politicians recognising these new realities.

**2. Public faith in democratic institutions is decaying, and reforms aimed at restoring public confidence in democratic arrangements have tended to prove, at best, ineffectual and, in several cases, counter-productive.** Long-term survey evidence suggests that the public trust politicians and political parties less and less, and that they regard democratic institutions such as Parliament as increasingly irrelevant. Measures such as the transfer of functions to independent bodies, the increased regulation of political activity and the promotion of greater transparency and access to information have done nothing to reverse these trends. If anything, they have made it worse.

**3. Political inequality is widening rapidly and even provisions intended to guarantee basic human rights are increasingly being brought into question.** While representative democracy is notionally built on principles of political equality (such as one person, one vote), there have always been wide variations in the extent of political participation, and degree of political power exercised, by different social groups. However, political inequalities in the UK have widened over the past four decades, in tandem with the widening of economic and social divisions. While the Human Rights Act has provided for some protection for those most at risk, even this principle of a 'minimal' guaranteeing of key civil and political rights has been called into question in recent years.

**4. Corporate power is growing, partly as a result of wider patterns of globalisation and deregulation, and threatens to undermine some of the most basic principles of democratic decision-making.** Business interests have always enjoyed privileged status in modern

democracies. However, there are very firm grounds to suggest that the influence large corporations and wealthy individuals now wield on the UK political system is unprecedented. Bolstered by pro-market policy agendas and deregulatory measures, corporate power has expanded as a variety of countervailing forces have declined in significance. Policy-making has shifted from the democratic arena to a far less transparent set of arrangements in which politics and business interests have become increasingly interwoven.

**5. Almost all available indicators suggest that representative democracy is in long-term, terminal decline, but no viable alternative model of democracy currently exists.** All measures of popular engagement with, and attitudes towards, representative democracy show a clear decline over time. Whether we seek to measure it via turnout in elections, membership of political parties, voter identification with political parties, or public faith in the system of government, the pattern is the same. While the same basic trends are found in all established democracies, the UK compares especially poorly on just about every conceivable measure. While there is some evidence to suggest growing interest in forms of direct and participatory democracy, it is by no means clear how these alternative models can co-exist with the assumptions and practices which have traditionally underpinned representative democracy in the UK.

### The nature of the 'unwritten' UK constitution

While many of the trends we point to common to all established democracies, the themes identified above also play out in a particular way within the context of the UK's internationally unusual constitutional arrangements. The UK constitution is uncoded and, in large part, unwritten. There is no single document, or set of interlinked documents, which can be clearly labelled as the UK constitution. This absence of a codified constitution is internationally exceptional, with only New Zealand and Israel counting among democracies which share this characteristic. Moreover, the lack of a written constitution is associated with the absence, in the UK system of government, of a number of internationally common constitutional features. Chief among these 'democratic design' omissions are the following:

- **A lack of constitutional transparency, including any sufficiently clear and consensual understanding of what the UK constitution comprises.** At present, the UK constitution, such as it is, is contained in variety of different sources – non-statutory royal prerogative powers, acts of parliament, conventions that have no direct legal force and which are frequently not written down in any official document, and constitutional doctrines. Both conventions and doctrines can be difficult to define and there may well be disagreement about their nature. This lack of clarity can often be exploited by the UK-level executive to serve its own purposes at the expense of other groups.
- **The absence of any firmly established principle of 'popular sovereignty'.** Popular sovereignty represents the idea that the authority of government is derived from the people and, in most democracies, is regarded as vital to the existence of democratic legitimacy. But in the UK, parliament (composed of the elected Commons and the unelected Lords and monarch), rather than the people, is regarded as sovereign. Yet, at the same time, government exercises a range of powers under the royal prerogative which have never been approved even by parliament, nor are they formally subject to parliamentary control.
- **The lack of entrenched tiers of governance below the UK level.** Devolved and local government in the UK are both legally subordinate to the UK Parliament which can – in theory at least – alter or amend them unilaterally on simple majority votes. As a consequence the multinational nature of the UK is not given full constitutional expression and local government in England is subject to constant interference and undermining from the centre.
- **The absence of agreed democratic procedures for amending the constitution.** There are no consistent and comprehensive procedures for making amendments to the UK constitution and which ensure such changes are subject to processes more rigorous and inclusive than those applying to regular parliamentary procedure.
- **The lack of mechanisms ensuring that all governmental institutions are subject to constitutional constraints.** The UK Parliament, which is to a considerable extent under the effective control of the executive, possesses the ability to override constitutional principles through primary legislation. The courts are unable to disapply such legislation, except if an act of parliament is in conflict with European law. The outcome of this position, in practice, is that central government is not subject to the restraints found in most other established democracies.
- **The absence of a fully justiciable and entrenched Bill of Rights.** The European Convention on Human Rights is incorporated to UK law under the Human Rights Act 1998. But Parliament retains the ability to legislate expressly in contradiction of Convention rights. If a court finds primary parliamentary legislation to be in violation of the Convention, it can make a declaration of incompatibility but not disapply the legislation, with the final decision about what to do left to UK-level politicians.

In the view of Democratic Audit, these various omissions from the UK constitution are detrimental to the functioning of democracy. Moreover, while the UK constitution remains uncoded, it will continue to be characterised by a series of problematic tensions. Central to these difficulties is the doctrine of parliamentary sovereignty, according to which the UK Parliament is unlimited in its legislative power. This principle has deep roots (in English constitutional history at least). The specific label 'parliamentary sovereignty' was popularised

more recently by the legal academic A. V. Dicey from the late nineteenth century (Dicey, 1915). According to this doctrine, parliament is able to alter the constitution as it sees fit, and abrogate other constitutional doctrines such as the rule of law in the process (Bingham, 2010). Parliamentary sovereignty has frequently been wielded in this way to bring about constitutional change, by whichever party or coalition of parties dominates the Commons and thereby forms the executive. Traditionally, it has been held that no body other than Parliament is able to produce primary legislation and no court can pronounce its acts invalid. Moreover, it was once held that all acts of Parliament automatically supersede earlier acts of Parliament with which they conflict, even if they do not expressly state that do them – a concept known as the doctrine of implied repeal (Bogdanor, 2009). Finally, while Parliament is able in theory to do almost anything, the doctrine of parliamentary sovereignty was often held as preventing it from doing one thing: limiting the power of a future Parliament. For this reason, a sovereign Parliament might be held to be unable to create a written constitution which would entrench certain constitutional enactments and rights, protecting them from being overturned by Parliament using regular legislative methods.

Various intellectual problems might be identified with the doctrine of parliamentary sovereignty. For instance, why is it that an all-powerful Parliament is unable to create a constitution, and if so how can it be classed as omnipotent? Moreover, developments since Dicey's time have called into question the practical viability of the doctrine he promoted. They include:

- **The granting of independence to numerous colonies:** the acts of parliament providing for independence seemingly cannot be reversed by the UK Parliament, both on practical political grounds and, in some interpretations, even in theory (Goldsworthy, 2010).
- **The supremacy of EU law:** since the UK joined the European Economic Community (now the European Union) in 1973, it has been established that EU law takes precedence over acts of Parliament, with courts able to disapply Acts of Parliament on this basis. The European Communities Act 1972 (ECA) is protected from implied repeal.
- **Human rights legislation:** the Human Rights Act 1998 (HRA) gives the courts a role in reviewing primary legislation (as well as other forms of legislation and administrative acts) for its compatibility with the European Convention on Human Rights, arguably challenging in practice and in law the doctrine of parliamentary sovereignty (Kavanagh, 2009; Young, 2008). Like the ECA, the HRA is seemingly protected from implied repeal.
- **The establishment of devolved governments:** since the late 1990s, devolution has been established in Northern Ireland, Scotland, Wales, (and Greater London). These tiers of governance represent a practical challenge to the supremacy of the UK Parliament.
- **The growing use of referendums:** the period since the 1970s has seen a number of political decisions determined by the use of referendums, particularly those concerning constitutional matters subject to a degree of popular controversy. This adoption of 'direct democracy' is in direct contradiction to notions of parliamentary sovereignty, particularly where referendums are deemed to be binding.
- **Evidence of changing attitudes towards parliamentary sovereignty within the judiciary:** members of the judiciary have shown an increased interest (not yet acted upon) in the possibility of disapplying acts of Parliament which they found to contravene fundamental principles of the rule of law, or requiring a range of statutes they deemed constitutional not to be subject to implied repeal, but only to express repeal.

Attempts have been made to refine the doctrine of parliamentary sovereignty to accommodate these tendencies (Goldsworthy, 2010). Nonetheless, the problem remains that at the heart of the UK constitution, as traditionally understood, lies growing uncertainty and instability. The process of adopting a written constitution for the UK would enable these tensions to be recognised and accommodated within a more coherent constitutional order. Such a project is not to be taken lightly. Drawing up a written constitution in a technically and democratically satisfactory manner, would be a substantial task. But it is almost certainly essential if the UK is to ensure that it remains in line with widely-accepted international democratic norms.

### Mapping a route to democratic renewal

We welcome both the greater profile given to constitutional reform in recent decades, as well as many of the individual reforms which have been introduced. However, in view of the evidence we present in this Audit, we are critical of the failure of governments, and opposition parties, to take a 'holistic view' of the reform process. Constitutional change since 1997 has been extensive, but reform has tended to be piecemeal, lacking in any consistent or coherent approach or any clear sense of direction. The most obvious overarching objective of recent reforms has been the stated desire of senior figures across all political parties to reverse the decline in public trust and popular participation in UK democracy. Yet, as we have noted, there is little evidence that recent reforms have had any success in this regard – about the best that can be said is that the decline in electoral turnout has been arrested.

In this context, it is important to note that moments of crisis have often served as drivers of change, notably accusations of 'sleaze' in the 1990s and the controversies over MPs' expenses from 2009 onwards. These 'flash-points' of popular disquiet have given rise to periods in

which constitutional reform efforts have arguably been as incoherent as they have been intense. One fundamental contradiction has remained throughout. Governments have attempted to respond to declining public faith and popular participation by rendering political and governmental processes more open and transparent, and extending the options for citizen engagement. But, with the exception of devolution, they have done so without fundamentally challenging the 'power-hoarding' instincts of the British state. The result is a highly flawed variant of the Westminster model of democracy in which some elements more typical of the consensual democracies have been imported, but political power remains highly concentrated. As Matthew Flinders (2010) has noted, we are therefore caught in a process of 'democratic drift'.

Democratic Audit supports greater transparency and openness although, as we have already noted, there is little evidence to suggest that they will, of themselves, restore popular trust in the democratic process. We also support the development of mechanisms for greater participatory democracy. But it is also our view that simply extending the menu of options for citizens to participate, whether through consultation procedures, e-petitions, citizens juries, referendums, or the direct election of police and crime commissioners, represents an insufficient basis for democratic renewal. Some of these initiatives can, and should, have a role in reinvigorating our democracy, but they also risk becoming a diversion from the core problems of the UK's political system.

We would suggest that political and constitutional reforms will only succeed if they are guided by a long-term vision of how parliament, local councils and other organs of representative democracy are to be re-established as the centrepiece of our political system. Recent reforms to the UK Parliament are an encouraging development, as is the evidence of parliamentarians becoming more assertive in their role as scrutinisers of government legislation and action. And, while they are certainly not democratic panaceas, there is a great deal to be learnt at Westminster from the way in which the Scottish Parliament and the Welsh Assembly have forged links between representative institutions and civil society. But perhaps the most significant lesson to be learnt from devolution is that democratic improvements do not stem from 'quick fixes'. The successes of devolved governments in Scotland, Wales and Northern Ireland are the products of new constitutional settlements, from which the residents of England, by far the great bulk of the UK population, have been excluded. If significant, and sustained, improvements in British democracy are to be achieved, then a fresh constitutional settlement will be required for the UK as a whole. In this regard, the case for defining a new, written constitution for the UK, as an act of far-reaching democratic reform and renewal, has never been stronger.

### [References](#)

# 1. Citizenship, law and rights

## 1.1 Nationhood and citizenship

### Executive Summary

This chapter reviews the available evidence relating to the six 'search questions' concerned with nationhood and citizenship.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### ***(a) Areas of improvement***

##### **1. Corrections of some unfairness in citizenship legislation.**

Amendments to citizenship law have removed some of the features of the system which led in practice to racial discrimination and rendered some people 'stateless'. (For further details and discussion, see Section [1.1.1](#))

##### **2. The introduction of a significant body of equality legislation.**

In the period considered by the present Audit, numerous additional protections against discrimination were introduced; and the Equality Act 2010 established a single, consolidated framework for equality law. The Equality Act 2006 set up a single Equality and Human Rights Commission, although its effectiveness has been questioned. (For further details and discussion, see Section [1.1.1](#) and Case-Study [1.1a](#))



### **3. Some degree of support for devolution as a means of achieving sub-UK autonomy in the short-to-medium term**

The UK is a multinational state upon which, traditionally, there has been an attempt to impose something akin to a unitary system of government. The strains associated with this structure have led to the adoption of approaches which partially resemble federal models, with devolution to Northern Ireland, Scotland and Wales. The arrangement for self-government in Northern Ireland also has a consociationalist dimension to it, through its power-sharing mechanisms. In different ways, the devolution settlements have managed to secure significant degrees of support in the territories where they have been introduced, although often involving the idea that they should be extended, and for some being seen as a staging post to independence. (For further details and discussion, see Sections [1.1.3](#) and [1.1.4](#))

#### ***(b) Areas of continuing concern***

##### **1. Continued resistance to granting voting rights to prisoners.**

The UK is one of a relatively small number of democracies in Europe with a blanket ban on prisoner voting. Despite coming under pressure from the Council of Europe to alter this position, the UK government continues to resist. The approach favoured in the UK is founded on the view that all who are imprisoned should cease to play any part whatsoever in the democratic process. (For further details and discussion, see Section [1.1.1](#) and Table [1.1a](#))

##### **2. Continued concerns about discrimination against and targeting of minority groups and women.**

Concerns persist about various forms of discrimination continuing to be prevalent in UK society. The public tend to share this view, believing that various minority and vulnerable groups are discriminated against, in particular on the basis of ethnicity and age. (For further details and discussion, see Section [1.1.1](#) and Figure [1.1c](#))

##### **3. Lack of a clear and inclusive process for amending the UK constitution, in practice affording discretion to the UK executive.**

Because there is no written UK constitution, there is no document in which an amendment process can precisely be specified; nor is it always clear when the constitution is being altered. The UK constitution can be altered in a variety of different ways, often swiftly and with relative ease. This arrangement often affords substantial initiative to the UK level executive, although at present the Scottish government is seeking to challenge this tendency over the issue of Scottish independence. The referendum on the alternative vote (AV) in May 2011 demonstrated the limitations of such mechanisms as a means of ensuring more inclusive, impartial constitutional amendment in the UK. (For further details and discussion, see Section [1.1.5](#), Table [1.1d](#), and Case-Study [1.1b](#))

##### **4. The significant discretion possessed by the executive in its exercise of immigration powers.**

The Immigration Act 1971 provides the executive with broadly drawn powers in the exercise of immigration policy. In the present Audit cycle the executive attempted to limit further the ability of the judiciary to oversee its conduct in this area. (For further details and discussion, see Section [1.1.6](#))

#### ***(b) Areas of new or emerging concern***

##### **1. Problems with the 'Life in the UK' test.**

Taking the 'Life in the UK' test has become a requirement for people living in the UK who wish to be naturalised, in order for them to become citizens and therefore full participants in UK democracy. However, the character of the test may serve to discriminate against certain groups. (For further details and discussion, see Section [1.1.1](#) and Figure [1.1a](#))

##### **2. Evidence of a deterioration in the relative international quality of UK measures intended to ensure the integration of immigrants**

Detailed assessments have been made of the extent to which measures taken by various states to facilitate the integration of immigrants into society conform to international norms. They show a marked decline in the absolute and relative performance of the UK between 2007 and 2010. (For further details and discussion, see Section [1.1.1](#) and Figure [1.1b](#))

##### **3. A difficult to resolve tension between traditional constitutional models and constitutional changes introduced in recent decades.**

The UK continues to pass through a period of rapid and unprecedented constitutional change. Changes since the 1970s, such as European Union membership, devolution, and the Human Rights Act 1998 pose difficult questions for such key constitutional traditions as

the idea of a centralised, unitary state, and the doctrine of parliamentary sovereignty. At the same time, a clearly defined new constitutional model has yet to emerge. In particular, although there has been movement towards federal structures, they have not yet been adopted fully. The central executive continues to assert the existence of parliamentary sovereignty; and England outside Greater London has no devolved government. (For further detail and discussion, see Sections [1.1.3](#), [1.1.4](#) and [1.1.5](#))

#### **4. Lack of clarity about how decisions about the future constitutional status of Scotland can be made.**

It is widely accepted that the Scottish National Party government in Edinburgh, which won an outright majority in the Scottish parliamentary elections in 2011, possesses a mandate to hold a referendum on independence. But there is a lack of clarity about the extent of its legal powers to do so; and there has been disagreement between Edinburgh and London about when the vote should be held, and what options should be presented to the Scottish public. (For further details and discussion, see Sections [1.1.3](#), [1.1.4](#) and [1.1.5](#))

#### **5. Increased disagreements about fundamental features of the UK constitution.**

There are pronounced disagreements about a variety of issues, including: the extent of devolution; the status of Northern Ireland, Scotland and Wales within the UK; the role of the UK in Europe; the Human Rights Act 1998; the monarchy; the established church; and the un-codified nature of the UK constitution. Taken together these issues are more than simple political disagreements, and are fundamental to the nature of the democratic system itself. There is evidence of a decline in popular attachment to the UK as a political entity, with increased fragmentation into individual national components, including a pronounced rise in English at the cost of British identity, which could in future prove a destabilising force. (For further details and discussion, see Sections [1.1.3](#) and [1.1.4](#), Figure [1.1d](#), and Tables [1.1b](#), [1.1c](#) and [1.1d](#))

#### **6. Problems with lack of adherence to international standards regarding the rights of asylum seekers.**

A wide range of international agreements bind the UK to various standards in its treatment of asylum seekers. But credible concerns have been raised that the UK is failing to meet the required standards in a range of areas. (For further details and discussion, see Section [1.1.6](#))

## Introduction

This chapter reviews the available evidence relating to the six 'search questions' concerned with nationhood and citizenship in the UK

With its origins in the Greek words 'demos' (people) and 'kratos' (rule), it is widely agreed that democracy represents a system of 'rule by the people'. Of course, the issue of whether the people do, in fact, rule in a liberal democracy continues to be widely debated. Indeed, the significance of this debate about the extent to which the people 'rule' is central to the purpose of this Audit and its two core principles of popular control over decision-making, and political equality in the exercise of that control. But, in this first chapter, we begin with the seemingly innocuous matter of defining the 'demos'. As our last full UK Audit put it: 'Democracy as rule of the people pre-supposes agreement on who constitutes "the people"' (Beetham, 2002, p. 9). As this chapter illustrates, the existence of such agreement cannot always be taken for granted.

Democracy requires that all full members of the society - its citizens - are defined as equals (Beetham, 2005). As such, there should be no discrimination between different groups of citizens. It is also necessary that those who are not, or not yet, full citizens of a state but are present within its borders, either as refugees or immigrants, should be treated fairly and in accordance with international norms and human rights standards. Furthermore, it is widely recognised that conflicts between different ethnic, linguistic, religious or national groups about the terms of their membership of a given state tend to be deeply problematic for the effective functioning of democracy. Consequently, constitutional and political mechanisms will need to be developed which can resolve disputes arising from such social divisions, where they exist (Dahl, 2000). Finally, if the fundamental rules of a democracy - the constitution - change, the principle of popular sovereignty dictates that such amendment should be conducted in an inclusive and impartial fashion, to ensure citizen ownership of the rules which govern their society.

Based on these values, the following section considers the following aspects of nationhood and citizenship in the UK:

- The inclusiveness of the political nation and state citizenship;
- The extent to which cultural differences are acknowledged, and minority and vulnerable groups are protected;
- The degree of consensus on state boundaries and the constitution;
- The effectiveness of arrangements to moderate or reconcile societal divisions;
- The impartiality and inclusiveness of constitutional amendment procedures;
- The extent to which government respects international agreements on the treatment of refugees and asylum seekers, and the extent

to which its immigration policies are free of arbitrary discrimination.

In our 2002 Audit, we found that citizenship laws had a racially discriminatory effect and rendered some individuals effectively 'stateless'. We noted how minority and vulnerable groups appeared to be victims of discrimination; and that there was no comprehensive framework for anti-discrimination legislation. We described the arrangements for the people of Northern Ireland to determine the future of the province; but concluded that devolution in Scotland and Wales did not directly address the issue of pressures for separatism in either nation. Executive domination of the mechanisms for constitutional amendment meant that the process of making changes to the constitution could not be conducted impartially and was clearly not inclusive, although the use of referendums had improved this position partially. We also stressed in 2002 that the lack of a written UK constitution created or exacerbated many of the problems we identified with respect to these questions of nationhood and citizenship.

The present Audit identifies improvements relating to citizenship rules and anti-discrimination legislation, although we continue to have concerns about the treatment of asylum seekers and the extent of executive immigration powers. We point to evidence of increased popular support for devolution as a means of achieving greater political autonomy in the areas of the UK in which it has been introduced. However, we also find that, after a relatively intense period of constitutional change in the UK, there is a pronounced lack of agreement about many features of the country's governance arrangements. While this lack of consensus is most evident with regard to the future status of Scotland within the Union, we find grounds to suggest that the process of devolution to Scotland, Wales and Northern Ireland has far wider implications for UK democracy. Indeed, devolution comprises the most fundamental example of how political reform in the UK since 1997 has challenged the traditional constitutional assumptions associated with the 'Westminster model', but without giving rise to a coherent new set of constitutional rules to replace it. From this current position of 'democratic drift' (c.f. Flinders, 2010), it is by no means apparent how a new constitutional settlement might be arrived at in an inclusive and impartial way.

### 1.1.1 The political nation and citizenship

How inclusive is the political nation and state citizenship of all who live within the territory?

Since democracy ultimately entails self-government by the people, the concept of citizenship is crucial. The rules for acquiring citizenship must be fair; and citizens should be treated equally. Likewise, the grounds on which citizenship rights can partially or wholly be denied require careful consideration. Moreover, in line with human rights conventions, the treatment of those who are not full citizens but present within the territory must also be taken into account.

#### ***The political nation***

While the issue of how individuals are admitted to UK citizenship, discussed below, is important to the inclusiveness of UK democracy, it should not be assumed that all those who are defined as citizens are automatically fully incorporated into the political nation. Many UK citizens, who hold British passports, have begun to define their identity at least partially based on race, ethnicity and religion. In a survey of 96 individuals from a range of ethnic backgrounds in Great Britain, the organisation ETHNOS found that the participants who identified most strongly with 'Britishness' were ethnic minorities from England ([ETHNOS, 2005](#)). Ethnic groups across Britain also drew on other sources of identification such as religion (Muslims only), ethnicity and race or colour. These traits and characteristics were used to complement a sense of Britishness – creating identities such as 'British Muslim', 'British Asian' or 'Black British'. In general, the British were seen as being either exclusively white English people or else a multicultural and diverse group of people. Survey participants from Scotland and Wales more closely identified themselves with these nations than with Britain (see Section [1.1.4](#)).

#### ***Citizenship***

The possession of UK citizenship is clearly of symbolic importance - and brings with it definite advantages, both perceptual and concrete. The inclusiveness of citizenship therefore remains crucial to the UK as a rights-based democracy. For instance, as Lord Goldsmith, the former attorney general, noted in his 2008 review of citizenship: 'There is a clear distinction between the rights of citizens and those with limited leave to be in the UK' ([Goldsmith, 2008, p. 11](#)). In the UK, the opportunity to gain British citizenship is highly valued by non-citizens - particularly those with only limited leave to remain - as it is seen to provide a greater level of security and opportunity, especially with regards to economic and social rights. Certain groups, such as refugees, believe that citizenship confirms their right to work and access services, such as banking and health care. Although, technically, asylum seekers and refugees are entitled to NHS services, in reality many GPs are hesitant to provide care if individuals cannot confirm their eligibility for these services by evidence of a British passport. As a result, obtaining a British passport is a key event for asylum seekers, refugees and other migrants.

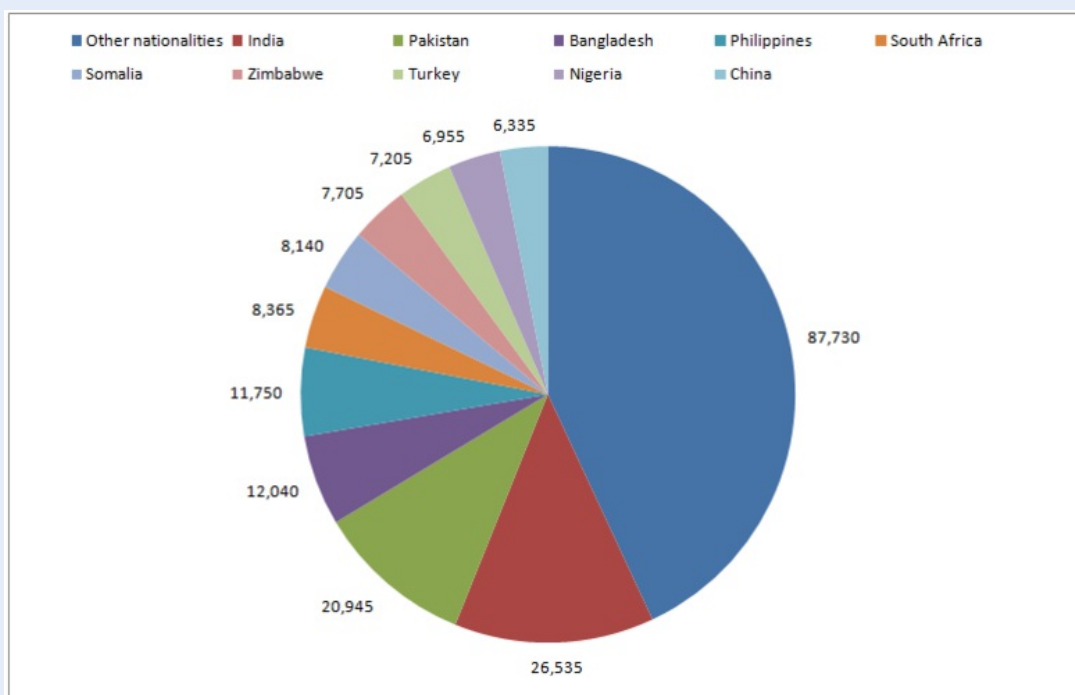
The previous full Audit identified problems with a lack of inclusiveness in the rules governing UK citizenship. In the long term they have been 'racially discriminatory both in their intention' and in their application. While the British Nationality Act 1981 dropped the concept of 'patricity' - which provided a category of Commonwealth citizen, who were almost exclusively white, with an equal right of abode in the

UK - it retained the racially discriminatory character of previous immigration acts through the distinction it drew between those born abroad to British parents and others. The 1981 act also 'created a number of categories of British "nationals" who have no right of entry to the UK, some of whom have been rendered de facto stateless' (Beetham et al., 2002, p. 10). These latter deficiencies were addressed by legislation introduced during the present Audit cycle:

- The British Overseas Territories Act 2002 had two main effects. First, it altered the name of 14 British Dependent Territories citizens to British Overseas Territories citizens. Second, the act provided these citizens with a right of abode in the UK.
- The Nationality, Immigration and Asylum Act 2002 amended the British Nationality Act 1981. It had the effect that British subjects, British Overseas Citizens and British Protected Persons who did not have other nationality could become British citizens and therefore enter the UK and live there. The Act also removed previously existing distinctions between legitimate and illegitimate children in the acquisition of citizenship (Goldsmith, 2008; Barnett, 2011).

For residents who cannot access citizenship through birth or parental origins, as is the case with the overwhelming majority of new migrants to the UK, citizenship must be acquired through naturalisation. The home secretary may grant naturalisation to any person of full age and meeting various requirements as to residence, character, language and future intentions. An applicant must also demonstrate a sufficient proficiency in English and knowledge of British culture by passing the 'Life in the UK' test, introduced in 2005. Statistics show that nearly a third of applicants failed their citizenship test in 2009 (BBC, 27 May 2010). That being said, the number of people granted citizenship in 2009 was at its highest level since the test was introduced in 2005 (Home Office, 2010). Figure 1.1a provides an overview of the nationalities of the individuals who received UK citizenship in 2009. The concern is that some nationalities are prejudiced by the framework and aims of the test, including applicants from Afghanistan, Zimbabwe and Iraq, who despite being the top countries of origin for asylum seekers and refugees, rank far further down the scale when it comes to the percentage of citizenship grants. The difficulty of the test and the obscurity of some questions raise concerns as to whether it is an accurate measure of an individual's commitment to contribute to British social and economic life.

Figure 1.1a: Nationalities receiving British citizenship in 2009.



Source: [Home Office \(2010\)](#).

While the home secretary has some discretion in matters relating to naturalisation, any judgment must be exercised without regard to the race, colour or religion of the person involved. Up until 2002, the British Nationality Act 1981 excluded the need for the home secretary to give reasons for discretionary decisions and restricted judicial review (though he or she was still required to act fairly). This arrangement arguably created the possibility for a less inclusive approach to citizenship to go unchecked. Through the Nationality, Immigration and Asylum Act 2002, this shortcoming was rectified. The home secretary may also by order deprive a person of citizenship status - except where it would make them stateless - if satisfied that to do so is 'conducive to the public good'. Appeals are possible, unless the home

secretary certifies that the information on which the decision was based ought not to be made public on 'public interest' grounds (Bradley and Ewing, 2011). Again, this arrangement is suggestive of a discretionary power that could potentially be exercised to the detriment of inclusive citizenship.

Once British citizenship is attained, individuals are automatically citizens of the European Union by way of the 1992 Maastricht Treaty, which grants every European citizen a right to move and reside freely within the EU states. EU citizenship complements national citizenship without replacing it. Because it remains dependent on attaining national citizenship first, there is unequal access to European citizenship. As such, the Charter of Fundamental Rights and Freedoms cannot be enjoyed by non-EU citizens, although the European Convention on Human Rights can be. So, whilst refugees can be long-term *residents* of EU member states they remain excluded from the benefits of EU citizenship, such as free movement, because of their lack of national citizenship.

### **Voting Rights**

The right to vote is one way in which citizenship is realised. UK adult citizens, together with all Irish and Commonwealth citizens resident in the UK, are entitled to vote in general elections (see Section 2.1.2 for details of the franchise). However, the right to vote is removed from convicted and sentenced prisoners. Successive governments have held the view that prisoners convicted of serious crimes do not have the moral authority to vote. The denial of voting rights to prisoners was identified by Democratic Audit as an area of concern in the first 1996 Audit (Klug et al., 1996). It was noted that minority ethnic groups were, as they still are, disproportionately affected by the disenfranchisement of prisoners. According to recent figures, black males are eight times more likely to be barred from voting than their white counterparts due to their disproportionate representation in the prison population (Liberty, 2007).

Prisoner voting rights are approached in a variety of different ways across Europe. Table 1.1a shows that the most common approaches are either to allow prisoners as a whole to vote (which applies in 14 countries including all the Nordic states, except Norway), or to grant the vote to prisoners in particular categories (as is the case in 14 further countries, including the six consensual democracies used as comparators in this study). In its blanket ban, the UK is in a group largely composed of new democracies and is the only one of the EU-15 to deny all prisoners the right to vote.

**Table 1.1a: Prisoners' voting rights in Council of Europe member states**

<b>Prisoner voting rights</b>	<b>No. of cases</b>	<b>Countries</b>
Prisoners able to vote	14	Albania, Croatia, Cyprus, Denmark, Finland, Iceland, Ireland, Macedonia, Moldova, Serbia, Slovenia, Spain, Sweden, Switzerland.
Prisoners in particular categories able to vote	14	Andorra, Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Poland, Romania, Turkey
Prisoners able to vote in particular kinds of elections	3	Czech Republic, Latvia, Slovakia
Blanket ban on prisoner voting	6	Bulgaria, Estonia, Georgia, Hungary, Liechtenstein, United Kingdom

Source: Derived from [White \(2011, pp. 45-47\)](#).

In *Hirst v UK* (2005), the European Court of Human Rights found that restricting prisoners' right to vote breached the ECHR (article 3, protocol 1- right to fair and free elections). The last Labour government failed to implement the ruling, though it held two policy consultations on the issue in 2006 and 2009. The UK came under increased pressure from the Council of Europe to lift the blanket ban. In November 2010, the new Conservative prime minister, David Cameron, explained to the House of Commons that, although the idea of granting voting rights to any prisoner made him feel 'physically sick', he felt that it would be necessary to bow to the court (White, 2011, p. 6). In December 2010, the government announced that it intended to make it possible for prisoners serving custodial sentences of under four years to vote, but only in European and UK parliamentary elections. Judges, in passing sentence, would be able to specify that a particular offender, though serving less than four years, could not vote. The general position of the government was that it did not agree with these changes, but that it was legally obliged to act; and that the apparent alternative of paying compensation to prisoners was less desirable. No specific timeframe was announced. Initially a deadline was imposed by the grand chamber of the European Court that would expire six months from April 2011. But in August 2011 the government announced that it had achieved a further extension to this deadline, that would run for six months after another case before the European Court of Human Rights in which it was intervening. As yet the position remains unresolved,

with pressure on the UK government to resist the ECHR ruling intensifying following a vote of the House of Commons in favour of a blanket ban on prisoners' voting rights, by 234 votes to 22 ([Guardian, 2011](#)).

### ***Integration of immigrants***

An important aspect of inclusiveness, as assessed in this section, concerns the integration and civic participation of those who are not - or not yet - full citizens. The Migration Integration Policy Index (MIPEX) uses 148 different policy indicators to measure the extent to which public policies promote the integration of legal migrants in a range of countries internationally (currently 33). The Index uses European and international agreements and regulations as a basis for setting standards, which are then scored on the basis of expert normative judgements collected via surveys. There are now seven broad policy areas: 'Labour Market Mobility'; 'Family Reunion for Third Country Nationals'; 'Education'; 'Political Participation'; 'Long Term Residence'; 'Access to Nationality'; 'Anti-Discrimination'. Each of these seven areas is divided into four 'dimension scores' that are arrived at by scoring the various policy indicators which fall within that 'dimension' on a scale of one to three (with three meaning adherence to the highest standards of equality of treatment). The scores within each dimension are averaged and converted into percentages; and then each of the dimensions is averaged to produce scores for each of the seven policy areas. Finally, an overall score for each country is generated through averaging the scores of the seven policy areas.

The forerunner of MIPEX, the European Civic Citizenship and Inclusion Index, was compiled in 2005 for the countries making up the EU-15 (Geddes et al, 2005). In its original form, the study produced separate indices for five policy areas, with no aggregate score, with each country scored against an EU-15 average of 100. Direct comparisons between the 2005 study and subsequent indices is therefore difficult, although it is possible to identify, in broad terms, how the UK's ranking within the EU-15 had changed. In the 2005 study, the UK's scores ranked just below the EU-15 average in four policy areas, and significantly above average in a fifth ('access to nationality'). In 2007, the UK's relative position appeared to improve, with its ranking in three of the six policy areas significantly above the EU-15 average and three just below average. However, in 2010, the UK's rankings appeared to slip back slightly, with its scores in four policy area below, two above, and one closely in line with, the average for the EU-15. Of the five policy areas to be maintained in all three studies, the UK has consistently been ranked below the EU-15 average in two: labour market mobility and family reunion.

More systematic comparisons are possible between the 2007 and 2010 indices. Figure 1.1b shows the overall scores achieved by the UK in the 2007 and 2010 MIPEX indices compared to the averages for the consensual democracies, the Nordic countries and the EU-15. In both studies, a country's maximum score was measured as a percentage and the methodology used was consistent enough to allow comparison between 2007 and 2010 (although there is a minor difference in the policy areas considered - see the note under Figure 1.1b). As the chart shows, while the average scores in the three groups of comparators were either static (in the case of the consensual democracies and the EU-15) or rose (in the case of the Nordic countries), the UK's aggregate score fell by six percentage points, from 63 to 57. As a result, the UK's scores fell well below the average for the Nordic countries from 2007 to 2010, with the UK also dropping from just above to just below the EU-15 average. This shift in the UK's score ratings, and its relative ranking, between 2007 and 2010 seems to have come about almost entirely as a consequence of policies aimed at greater management of inward migration, including the citizenship test discussed above. However, the decline in the UK's position was offset to a limited extent by legislative change through the Equality Act 2010 ([Niessen et al., 2007, p. 3](#); [Huddleston and Niessen, 2010, pp. 202-5](#)) (see also Section [1.1.2](#)).

**Figure 1.1b: Migrant integration index score (aggregate of policy areas), UK and Comparators, 2007 and 2010**





## Democratic Audit



Note: The scores for 2007 were derived from six policy areas (labour market mobility; family reunion for third country nationals; political participation; long term residence; access to nationality; and anti-discrimination'. A seventh policy area, education, was introduced for the 2010 survey.

Source: [Niessen et al. \(2007, p. 3\)](#); [Huddleston and Niessen \(2010, p. 11\)](#).

We are pleased to note that some of the discriminatory features of citizenship laws were corrected during the period under examination. However, we are also concerned by a number of developments identified in this current Audit. First, it would appear that the citizenship test which has been introduced may have a discriminatory effect. Second, we are particularly worried about the resistance that successive UK governments have displayed towards lifting the blanket ban on prisoner voting. This issue is important because it suggests a view of democratic citizenship as something that can be entirely stripped from an individual. Moreover, it suggests a denigration of a system of supranational protection for human rights in which the UK has been a participant for half a century and which has an important role to play in the upholding of such standards throughout the continent (see [Introduction](#) to Section 1.2). We believe this stance should be reversed promptly without further delay; and that the new system introduced should exceed minimum requirements, taking into account European best practice. Finally, we noted an apparent deterioration in the quality of the UK's arrangements for the integration of immigrants, and urge that the reasons for this change should be given more detailed consideration by UK policy-makers.

### 1.1.2 Cultural differences and minority groups

How far are cultural differences acknowledged, and how well are minorities and vulnerable social groups protected?

It is necessary within a democracy that majority rule is prevented from entailing discrimination against minority groups; and that cultural diversity is recognised and protected. In the 1996 and 2002 Audits, it was noted that the European Convention on Human Rights (ECHR) - as incorporated into UK law under the Human Rights Act 1998 - EU law and a number of domestic innovations had gone some way towards the advancement of a rights framework in the UK. Nevertheless, it was also observed that a general principle of non-discrimination was lacking. Article 14 of the ECHR only prohibits discrimination in so far as it protects the enjoyment of *other* Convention rights, rather than being a freestanding protection against discrimination in itself. Moreover, we noted that piecemeal reforms had failed to create a body of law which comprehensively protects all individuals from discrimination (Klug et al., 1996; Beetham et al., 2002. See also Section [1.2.2](#)). Since 2002, a number of developments have helped to rectify this situation. They have created new protections for groups that were previously not encompassed by anti-discrimination law. They have also advanced more generally the principle of entrenching equality.

In this section, we summarise the key legislative changes over the past decade which have provided for greater protection for minorities and vulnerable social groups. We also consider the extent to which there is evidence of discrimination in the UK associated with race, religion, sexual orientation, disability, age and gender. Other sections of the Audit consider the particular circumstances of asylum seekers (see Section [1.1.6](#)) and also the forms of social protection for those on low incomes (see Section [1.4.1](#)).

#### **Legislative change**

During the present Audit cycle, there has been a plethora of legislation aimed at protecting minority and vulnerable groups. Probably the most important of all was the Equality Act 2010, which consolidated provisions for the protection of equality which had previously been piecemeal ([Equality and Human Rights Commission, 20110a](#) (see also Sections [1.3.3](#) and [1.4.1](#)). Case Study 1.1a provides an overview of the principal antidiscrimination legislation leading up to the 2010 Act from 2002 onwards.

#### Case Study 1.1a Anti-discrimination legislation 2002-2007

- **Flexible working regulations introduced in 2002** established the right for parents with young or disabled children to request flexible working hours.

- **The Adoption and Children Act 2002** made it possible for same-sex partners to adopt children.
- **Employment equality regulations introduced in 2003** banned workplace discrimination against individuals on the basis of their sexual orientation, religion, or belief.
- **The Civil Partnership Act 2004** created an official status for relationships between same-sex partners.
- **The Gender Recognition Act 2004** established transgender rights.
- **The Disability Discrimination Act 2005** established a new requirement for public authorities to promote disability equality.
- **The Employment Equality (Age) Regulations 2006** banned age discrimination both in employment and vocational training.
- **The Equality Act 2006** prohibited discrimination on grounds of religious belief in various areas; established a duty for public authorities to promote gender equality; and established the Equality and Human Rights Commission.
- **The Racial and Religious Hatred Act 2006** created a new offence of inciting hatred on the basis of religion.
- **The Equality Act Sexual Orientation Regulations 2007** banned discrimination in various areas on grounds of sexual orientation.

Sources: Derived from tables in [Equality and Human Rights Commission \(2010a, pp. 20-21\)](#) (see also Sections [1.2.2](#), [1.3.3](#) and [1.4.1](#)).

### ***Enforcement and monitoring bodies***

Legislation prohibiting discrimination against minorities and other vulnerable groups would mean little, in practice, without the existence of watchdog bodies to punish those individuals, employers or service providers which break the law. In the UK, the responsibility for this job was previously split between three separate agencies: the Commission for Racial Equality (CRE), the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC). Following the Equality Act 2006, however, the responsibilities of these anti-discrimination commissions were combined in a new body - the Equality and Human Rights Commission (EHRC) - which was also charged with preventing discrimination on the 'new' legal grounds of age, sexual orientation and religious belief. The decision to create a single commission covering all of the discrimination 'strands' was prompted by the expansion of anti-discrimination legislation into these hitherto uncharted areas, and reflected the government's conviction that a single body responsible for enforcing anti-discrimination law and promoting equality would be more effective than a diffuse collection of smaller agencies ([O'Cinneide, 2007](#)).

In the past, the EHRC's predecessor bodies had been criticised by some for being overly timid in the application of their enforcement powers (see [PIRU, 2006](#)). However, it is not at all clear that the EHRC has performed any better in this respect. Indeed, some observers have been highly critical of the commission for this very reason. In 2007, for instance, former head of the Commission for Racial Equality, Lord Herman Ouseley, described the enforcement of anti-discrimination law in the UK as 'piss poor' ([Peacock, 2007](#)); while others have also criticised the commission for doing too little to enforce anti-discrimination laws - particularly against private sector employers (see [Squires, 2009](#)). The apparent lack of empirical evidence relating to the EHRC's performance in enforcing anti-discrimination law makes these arguments difficult to substantiate; but it would probably not come as any surprise to find that they had some merit. The enforcement powers of the EHRC are largely consistent with those of its stymied predecessors (Hepple, 2011), and its governance and leadership under Trevor Phillips have been subject to consistent criticism (see e.g. [JCHR, 2010](#)). In addition, there is now an acknowledged risk that coalition funding cuts and plans to 'substantially reform' the commission ([HM Government, 2011](#)) will severely damage its operational independence and freedom of action (see [Liberty, 2011](#); [BIHR, 2011](#); [Justice, 2011](#)), and thus potentially diminish the commission's enforcement capabilities still further.

### ***Public attitudes about discrimination***

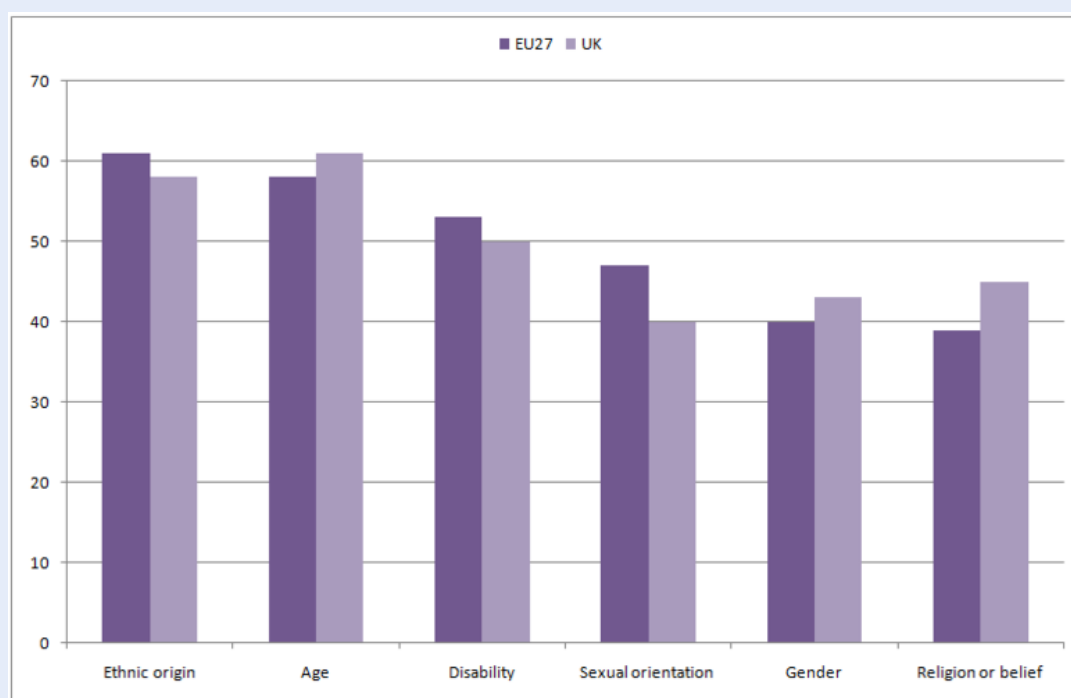
Despite legal and institutional reforms during the past decade, statistical evidence continues to cause concern about the extent of discrimination against vulnerable groups in the UK. The Citizenship Survey, for example, continues to find that black and minority ethnic groups believe they suffer from racial discrimination in applying for jobs and promotion ([DCLG, 2008](#)). And despite EU-wide efforts to reduce gender inequality in the workplace, women in the UK are worse off in terms of pay and employment than men when compared to



their counterparts in many other EU member states (for minorities and women in the employment market, see Section [1.4.1](#)). The same is true for people with disabilities, who can face serious challenges in finding and retaining paid work.

According to the results of the Eurobarometer survey set out in Figure 1.1b, age, ethnic origin and disability are perceived as the three most common bases of discrimination in both the UK and in the EU as a whole. The survey found that discrimination on the basis of gender, age and religion was perceived to be more common in the UK than the average for the EU 27, although perceived discrimination based on disability, ethnicity and sexual orientation were all lower than the EU average.

Figure 1.1c: Perceptions of discrimination as either 'very' or 'fairly widespread', 2009 (EU27 and UK compared).



Source: [Eurobarometer \(2009\)](#).

### *Race and Religion*

Despite the progress that has been made in protecting individuals from racial and religious discrimination, it remains a concern in certain occupations such as the judiciary, construction industry and the police force (see also Section [1.2.5](#)). The coalition agreement stated that it would promote more opportunities for black, Asian and minority ethnic communities, including by providing internships for under-represented minorities in every Whitehall department. The general sentiment of the Equality and Human Rights Commission is that the police and other institutions need to work harder to keep up with an 'Obama generation', which is moving forward in its recognition and support of diversity.

A climate of inter-faith tension developed following the 9/11 attacks in the US and the July 2005 bombings in London (which encouraged the introduction of the Racial and Religious Hatred Act 2006, creating for the first time the offence of 'inciting religious hatred'). Muslims have come under significant pressure in recent years owing to the growing support for the British National Party and the English Defence League. Bradford, Burnley and Oldham, for example, faced 'race riots' in 2001 after the BNP gained significant support in these areas. The violence was targeted toward the South Asian community, which is predominantly Muslim.

Such religious and ethnic tensions exist within a broader environment which is to some extent determined by perceptions encouraged by the media. Previous research by [Oborne and Jones \(2008\)](#) for Democratic Audit has found a tendency in some media coverage towards distorted and misleading portrayals of the Muslim communities in the UK; and a lack of effective accountability to encourage more balanced representations (see also Sections [3.1.2](#) and [3.1.5](#)).

There are also grounds for concern about possible discrimination against ethnic minority groups in the criminal justice system, such as in

the application of stop and search powers by the police (see Section [1.2.5](#)).

### **Sexual Orientation**

As a result of the Civil Partnership Act 2004, same sex partners now have the same rights as heterosexual married couples. This granting of rights to same sex couples is comparable to similar reforms in New Zealand and Canada, although countries like Australia and the US still fail to legally recognise same sex partnerships. While perpetrators of racially and religiously motivated violence can be charged with specific offences such as racially or religiously aggravated harassment or assault, the same is not true of homophobic hate crime. Instead perpetrators of homophobic hate crimes are charged with existing offences, such as assault, and the hostility of the crime is only taken into account during sentencing, as per section 146 of the Criminal Justice Act (England and Wales) 2003. Nonetheless, a recent study has found that among the 56 member states of the Organisation of Security and Cooperation in Europe (OSCE), the UK is one of only 12 to meet human rights legislation that allows for bias based on sexual orientation to be treated as an aggravating circumstance in the commission of a crime, and one of only four to be consistently proactive in the prompt implementation of appropriate monitoring measures ([Human Rights First, 2008](#)).

Organisations like Stonewall (the lesbian, gay and bisexual rights organisation) recommend improvements in how homophobic hate crime is reported, investigated and recorded, believing that such changes would encourage more victims to come forward as well as increase convictions. Stonewall's research suggests that 'only a quarter of homophobic hate crimes and incidents are reported to the police' ([Dick, 2009, p. 11](#)).

### **Disability**

In our 2002 Audit, we took the view that the effective impact of the Disability Discrimination Act 1995 was limited, largely because the scope of the legislation was restricted to specific instances of direct discrimination and victimisation. The Disability Discrimination Act 2005 went some way to addressing these concerns by placing a statutory duty on public bodies to promote disability equality and by placing specific requirements on providers of public transport and education with regard to accessibility and inclusion. The Equality Act 2010, replacing large parts of the Disability Discrimination Act, widened the protection for disabled individuals further. In addition, by signing the UN Convention on The Rights of Persons with Disabilities in 2009, the UK has made significant progress in improving protection for the rights of disabled individuals. The UK government has come a long way since its 'ineffective' Disabled Person (Employment) Act 1944 (Klug et al., 1996).

However, despite this undoubted progress, there remain some areas where the treatment of disabled people falls short of the ideal. The [Equality and Human Rights Commission \(2011\)](#) reported that the response of public authorities to harassment of disabled people was often lacking, with tendencies to ignore incidents and blame the victims. Responses such as these have long been considered unacceptable with other types of discrimination.

Disability organisations have expressed concern about the impact on disabled people of government policies on benefits and tax credits, which are important because many disabled people cannot participate in the labour market or face practical or financial disadvantage in doing so. One third of disabled people are below the poverty line. The system of medical testing for claimants introduced in 2007, now planned to be more stringent, and changes in the Welfare Reform Bill in 2011, have all been controversial ([Disability Alliance, 2011](#)).

### **Age**

Mandatory retirement has been one of the main debates in the concern over age discrimination in the UK. Article 6(1) of the Equality Directive prohibits discrimination based on age unless it can be objectively and reasonably justified by a legitimate aim. The Directive however refrains from establishing any EU-wide standards for retirement, respecting the fact that national law and practice varies greatly on the issue. Organisations like Age UK have argued for many years that mandatory retirement is a form of ageism that fails to consider the changes in demographics and lifestyle that allow older employees to work longer than before. In July 2010 the government announced that it would abolish the default retirement age, thereby removing the ability of firms compulsorily to retire staff at a certain age. Under the Employment Equality (Repeal of Retirement Age Provisions) Regulations 2011, the default retirement age was phased out and then fully abolished from 1 October 2011. Employees can no longer be required to retire at age 65, and their decision about whether to continue to work does not affect their entitlement to receive a state pension at the qualifying age. Of course, in times of high unemployment, the indirect consequence of such a change may be to create more employment difficulties for younger people.

### **Gender**

In April 2009, the UN Committee on Economic, Social and Cultural Rights held that the UK needed to carry out a 'comprehensive review of its policies to overcome gender inequalities' while also addressing the gender pay gap, the disadvantages faced by women in terms of

pension provision and the low conviction rate for rape. The gender pay gap in the UK, which is higher than the EU27 average, is considered elsewhere in this Audit (see Section [1.4.1](#)). Concerns about the low, and apparently declining, rate of convictions for rape in the UK has been a serious concern for some time ([Regan and Kelly, 2003](#)). The Stern Review of how rape complaints are handled by public authorities in England and Wales found that as few as 11 per cent of rape cases are typically reported to police and that only six per cent of allegations which are reported to police eventually result in a conviction for rape ([Stern, 2010](#)).

We consider elsewhere in this Audit the effectiveness of redress mechanisms (see Section [2.3.4](#)) and the availability of legal aid (see Section [1.2.4](#)), both of which are important in ensuring that individuals from vulnerable and minority groups can make use of the legal protections that have been created.

In conclusion to this section, Democratic Audit welcomes the substantial progress towards legal recognition of cultural differences and protection of minority rights that has been made over the last decade. The consolidation of various individual measures into the Equality Act 2010 may prove to be a particularly significant moment in this process. However, while we do not necessarily oppose the establishment of a single Equality and Human Rights Commission provided for in law in 2006, we note concerns about its effectiveness as a body. There is also continuing evidence that members of the public see discrimination as a problem, particularly in such areas as gender, age and religion. In an era of concerns about changed forms of international terrorism, there has been a potential for an overlapping of racial and faith-based discrimination, possibly aggravated by some media coverage. Finally, we believe there is scope for improvement in the official handling of homophobic hate crime; and of rape cases.

### 1.1.3 Constitutional and territorial consensus

How much consensus is there on state boundaries and constitutional arrangements?

A key feature of democracy is that it allows for the existence of competing viewpoints on a range of different issues. However it can be detrimental to the functioning of this system if there is excessive disagreement over the fundamental framework within which discourse and decision-making takes place. Problems of this nature can arise if particular groups within a given state do not regard themselves as legitimately included within that state, and may even wish to secede; or if there is a serious lack of consensus around core features of the established constitution. In the UK there are particular disagreements about the status of some territorial portions of the UK; and a range of specific features of the UK constitution.

#### ***The territorial structure of the United Kingdom***

The UK is a multinational state, comprising at present England, Northern Ireland, Scotland and Wales. Wales was the subject of military conquest by England during the middle ages. England and Wales were united via an act of parliament of 1536, with Wales given representation in the English parliament. England and Scotland were united into Great Britain by the Treaty of Union of 1706, which was given legislative expression by the subsequent Acts of Union passed by the parliaments of both nations, creating a new British parliament. A similar Union between Great Britain and Ireland was affected in 1800, creating the United Kingdom. The UK in effect recognised the independence of southern Ireland with the Anglo-Irish Treaty of 1922; though it did not do so formally until the Ireland Act of 1949 (Bradley and Ewing, 2011). Within the UK, England is clearly dominant. England has the largest population (over 80 per cent of the total) and therefore receives the greatest representation in the House of Commons (532 seats of 649 in the present House). England is also dominant economically, partly because of the size of the English population, but also due to the disproportionate influence of London and South East England on the UK's economic affairs.

Traditionally, the UK has been regarded as a unitary state with a single, central source of supreme legislative authority. This position is associated with the doctrine of parliamentary sovereignty, which holds that parliament is legally unlimited in its legislative powers and cannot be bound, even by a written constitution or itself (Barnett, 2011). But the reality has always been more complex than the label 'unitary' might imply, with, for instance, the existence of different legal systems across the UK for England and Wales; Northern Ireland; and Scotland. It has been suggested that the term 'union state' might be more appropriate than 'unitary state' (see [Introduction](#) to Section 1.2). Nonetheless, the UK has certainly resembled a unitary state more than a federal state, in which sovereignty is shared between a central federal tier of government and sub-federal 'state' level governments. In this sense, the UK's political system has contrasted markedly with other nation-states with multinational characteristics - such as Belgium, Spain and to some extent Canada - all of which have adopted federal structures.

Adherence to the doctrine of parliamentary sovereignty is a barrier to the establishment of a federal UK, since a federal constitution would imply parliament ceasing to be supreme and, almost certainly, becoming subject to a written constitution, alongside whatever institutions were established at the sub-UK level. Another block on the introduction of a federal-type system is the relative size of England within the UK, which it is often judged might lead to inherent instability, with England - if it were included as a single component in the UK - able to dominate all the others (Turpin and Tomkins, 2011). Yet within the existing, now semi-unitary structure, England is also sometimes

perceived as excessively powerful, partially giving rise to some of the problems discussed below. At various points the idea of a federal UK has been seriously considered, including shortly before the First World War as a means of dealing with tensions over Ireland (Bogdanor, 2001).

Throughout its history, various forms of resistance to the traditional composition of the UK state have been evident. There has been opposition both to the unitary style of government; and to inclusion within the UK at all. In Ireland there has been a long history of resistance to membership of the UK; and an associated violent struggle between those who wish to secede (and since the 1920s, join with the south, later the Republic) and those who wish to remain part of the UK (known as 'unionists'). This division came to be bound up with a religious split between Roman Catholics (on the republican side) and Protestants (on the unionist side). Nationalist movements also developed in Scotland and Wales during the twentieth century, becoming increasingly political in nature, forming into parties which began to promote the idea of independence from the UK. In Wales, nationalism has had a strong cultural and linguistic dimension, with Welsh being the most widely spoken minority indigenous language in the UK. In Scotland, separatism has been mainly national and cultural in nature. In neither of these countries did religion play the same part that it did in Northern Ireland. Beyond the separatist movements in Scotland and Wales, there was growing support for the view, particularly in Scotland, that a greater degree of autonomy from Westminster/Whitehall was required. This sense was strengthened by the economic and industrial policies pursued by the Conservative governments of 1979-97, which had only limited electoral support in Scotland and Wales, and were perceived as greatly damaging by many within these nations (Bogdanor, 2001).

The key response to these tendencies in recent times has been the introduction of devolution. Precedent was provided for such an approach by the creation of a devolved assembly for Northern Ireland under the Government of Ireland Act 1920 which operated until it was suspended in 1972. An attempt was made to introduce devolution to Scotland and Wales in the 1970s, but neither of the referendums held in March 1979 delivered sufficient support for devolution to be introduced under the relevant legislation (in Scotland there was a majority for 'yes', but the turnout requirement was not met. In Wales there was an overwhelming 'no'). The Labour government elected in 1997 introduced devolved governance to Northern Ireland, Scotland and Wales, subject to approval from referendums in the areas concerned, which was obtained in each case (there were no turnout requirements this time) (Barnett, 2011; see also Sections [1.1.5](#) and [3.3.1](#)).

The effectiveness of devolution as a means of addressing the societal divisions inherent to the territorial structure of the UK is considered in more detail in Section [1.1.4](#). It can be noted for now that, while levels of political violence associated with the status of Northern Ireland have reduced substantially (see Section [2.5.4](#)), devolution has certainly not eradicated either secessionism or the desire amongst some for greater autonomy still. Moreover, devolution has more generally served to create imbalances which have, in turn, prompted further disagreement about UK constitutional arrangements - particularly with regard to the so-called 'West Lothian question' (see below).

Devolution is asymmetrical in two senses. First, where it has been introduced, it has been configured in different ways - thus, the Scottish parliament has more extensive powers than the Welsh assembly. Second, devolution has not been introduced at all to England, outside Greater London. Initially the Labour government intended that devolved, directly elected assemblies would be introduced into the regions of England. However, the overwhelming defeat of the proposal for a North East regional assembly at a referendum in November 2004 led to this idea being dropped. Consequently England outside of Greater London has been left behind by devolution (Hazell, 2006; for details of referendums, see Section [1.1.5](#)).

Various complaints have emanated about this imbalance. The so-called 'West Lothian question' was first raised by Tam Dalyell when MP for West Lothian, when devolution was proposed in the 1970s. It involves the dilemma of how it can be appropriate for Scottish MPs in Westminster to debate and vote on issues which have been devolved to Scotland, when English MPs cannot debate and vote on those same issues in relation to Scotland. Solutions that have been vaunted include the idea of Scottish MPs having restricted involvement in issues devolved to Scotland, but any such proposal would entail complications. The coalition has established a non-partisan committee to investigate possible solutions. Composed of six experts, its chair is Sir William McKay, a former clerk of the House of Commons. Beginning work in February 2012, it is scheduled to report in the next parliamentary session. It will consider arrangements applying not only to Scotland, but devolved territories as a whole.

Another possible solution to the issues raised by the 'West Lothian question', assuming regional devolution within England remains off the agenda, is to introduce an English parliament and executive. There is some evidence of growing support for this idea in England ([Curtice, 2010](#)), but it has yet to be taken up by any of the main three parties in England. Parties running specifically on this issue, notably the English Democrats, have had very limited electoral impact. Furthermore, as noted above, a federal UK within which England was a single component might prove structurally unstable. The precedents for such imbalanced federations - such as the West Indies Federation of the 1950s and 1960s, within which Jamaica was by far the largest nation - may not be encouraging, since they have tended to break up. An English parliament would provide few of the benefits of bringing decision-making closer to people associated with other instances of devolution, because of the sheer size of England. The coalition policy of introducing directly elected mayors to the largest English cities (subject to referendums) may offset the impact of asymmetrical devolution, but only to a limited extent (see Section [3.3](#)). It should also be noted that, within England, support exists within some areas - in particular Cornwall - for the introduction of devolved arrangements of some

kind.

Further disquiet about constitutional arrangements developing within England involves the idea that Scotland, in particular, is somehow being over-subsidised by English tax payers. A specially formed House of Lords Committee inquired into the existing method for determining levels of finance within the UK, known as the 'Barnett formula'. It called for a new formula based on needs ([Select Committee on the Barnett Formula, 2009](#)).

Democratic Audit does not take a position on the precise degree of regional and national autonomy that should be provided for within the UK; or ultimately on whether particular components of the UK should or should not secede. However, we support the principle of self-determination; and note that the unitary tradition of the UK has become increasingly strained by attempts to respond to calls for self-government and separatism in parts of the UK. We welcome the introduction of devolution in so far as it helped fulfil some of the democratic aspirations of those in the areas concerned, particularly within the context of the traditionally extreme centralisation of the UK state (see Section [3.3.1](#)). Yet it seems that devolution has not fully dealt with all of the problems it sought to address and may have exacerbated some of them. Moreover, the uneven way in which devolution has been introduced has produced new instability within the structure of the UK constitution, involving the position of England, particular outside Greater London, where there is no devolution.

### ***Other areas of constitutional controversy***

Disagreement exists about other fundamental features of the UK constitution. The introduction of devolution is one of a number of measures that have caused questions to be raised about the practical and legal viability of a doctrine traditionally held by many to be central to the UK constitution: parliamentary sovereignty. Further challenges to the doctrine have arisen from UK membership of the European Union (EU); the incorporation of the European Convention on Human Rights (ECHR) into UK law through the Human Rights Act (HRA) 1998 (see Section [1.2.2](#)); and the increased use of referendums as political decision making devices (see Section [1.1.5](#)). Some observers now argue that the doctrine, at least as traditionally understood, has seriously been compromised. Within the judiciary there are signs of a growing adherence to the idea that the courts might at some point displace parliamentary sovereignty, to uphold the rule of law or protect fundamental constitutional legislation (see [Introduction](#) to Section 1.2). Some commentators maintain that the doctrine continues to apply, though not as traditionally interpreted (Goldsworthy, 2010). The government continues to assert that parliament is sovereign and glosses over the possible difficulties with the doctrine ([Blick and Hennessy, 2011](#)).

For those who argue that parliamentary sovereignty has either become outmoded, was never viable, or is simply undesirable, the most obvious solution is the introduction of a written constitution for the UK (Bogdanor, 2009; Gordon, 2010). Such commentators note that there are exceptional difficulties in defining the precise contents of the UK constitution, because of the role played by vague arrangements such as conventions. The unwritten constitution, it is further held, is difficult to enforce and excessively easy to amend (see Section [1.1.5](#)). It has never been made subject to a holistic design process, or fully democratically approved. Various draft written UK constitutions have been published in recent decades (for example IPPR, 1991; Gordon, 2010). Campaign groups such as Unlock Democracy include a written constitution amongst their objectives. At the 2010 general election both the Labour and Liberal Democrat parties pledged to instigate processes that might lead to a written constitution, which is acknowledged by its advocates as a substantial undertaking of historic proportions. Advocates of the existing unwritten constitution, meanwhile, argue that it is desirable because of the flexibility it provides; and because it enables major issues to be resolved politically, rather than in the courts. They also point to the difficulties that would be inherent in creating a UK written constitution (see [Blick, 2011](#) and Jowell and Oliver, 2011 for further discussion).

As has been suggested, two arguable threats to the doctrine of parliamentary sovereignty come from the HRA and EU membership. They are also both significant sources of constitutional disagreement in their own right. Both generate controversy partly because they involve the participation of the UK in supranational legal systems. Under the HRA, the courts can review official actions and legislation for their compliance with the ECHR. They can quash actions and secondary legislation and go as far as to declare acts of parliament incompatible with the convention, though they cannot actually strike acts down (see Section [1.2.2](#)). Those who object to the HRA argue that it has led to an undermining of democratic processes and led to the foreign imposition of spurious rights for undeserving individuals. Often, such critics advocate repealing the HRA, possibly withdrawing from the ECHR and perhaps introducing a UK Bill of Rights in its place ([Pinto-Duschinsky, 2011](#)). The two parties comprising the coalition disagree over these issues, but a commission has been established to examine the possibility of a domestic Bill of Rights, though the Liberal Democrats have stipulated that it should not be possible to lessen existing commitments ([Commission on a Bill of Rights, 2011](#)).

Under the European Communities Act 1972 courts can go a stage further than under the HRA and disapply primary legislation that they find incompatible with European law. Those who take a more traditional view of parliamentary and national sovereignty, tending to believe that it cannot be pooled with other states, but only lost, find such an arrangement deeply objectionable. Here, concerns are expressed that the UK is making difficult-to-reverse transfers of power to unaccountable foreign institutions; and that groups of European ministers are taking decisions away from the scrutiny of parliament (see Section [4.1](#)). The possibility of leaving the EU outright is now discussed as a serious option, prompted partly by the current difficulties experienced in the Eurozone. Within the Conservative Party there is a powerful

eurosceptic group, who at the very least support a major renegotiation of UK terms of membership.

Significant disagreement surrounds various other parts of the UK constitution. A debate is currently taking place about whether the rules of succession for the monarchy, which entail gender and religious discrimination, should be amended ([Political and Constitutional Reform Committee, 2011](#)). The present government intends to end the gender bias; the religious position is more complicated. Some argue that the official religion should be disestablished (see also Section [1.3.3](#)). A pressure group, Republic, campaigns for the abolition of the monarchy. There are also long-standing debates about whether the electoral system used to return MPs to the House of Commons should be reformed, culminating in the May 2011 referendum on whether to replace 'first-past-the-post' elections with the 'alternative vote' (AV). While some have regarded the decisive 'no' vote against AV as settling this issue, it is important to note AV was not the electoral system favoured by either the Liberal Democrats or the leading campaign organisations, notably the Electoral Reform Society and Unlock Democracy, all of whom wish to see a more proportionate House of Commons (see Sections [1.1.5](#) and [2.1.4](#)).

Democratic Audit accepts that some degree of disagreement about constitutional arrangements is inevitable and, to an extent, healthy, hence the need for amendment procedures (see Section [1.1.5](#)). However, we are concerned about the existence of simultaneous controversy about a number of fundamental UK constitutional matters including the doctrine of parliamentary sovereignty, EU membership, and provision for the protection of human rights. Whatever the particular merits in each case, this combination of different disagreements, together with the structural instability in the UK associated with devolution discussed above, amounts to a genuine, and potentially far-reaching, constitutional problem. As Flinders (2010, p. 306) puts it, 'there are simply too many rough edges' in the UK's current constitutional arrangements. We note further that a clear picture of the actual nature of the UK constitution is difficult to establish, making a rational discussion of what is should be difficult to hold. For these reasons we find the option of seeking to establish a written constitution attractive, although it is a clearly not a task to be taken lightly.

### 1.1.4 The political system and social divisions

How far do constitutional and political arrangements enable major societal divisions to be moderated or reconciled?

Major societal divisions, particularly those associated with nationality, religion, language, culture and ethnicity, can create problems for the operation of democracy (Dahl, 2000). In a political sense, such divisions may distort the negotiating and decision-making processes that take place under a democratic constitution, particularly where some groups within a society see their demands as 'non-negotiable', making compromise effectively impossible. In the worst cases, conflicts can arise which lead to a major democratic breakdown and descent into violent conflict. The UK has certainly experienced such problems, in their most extreme form in relation to Northern Ireland, with violent acts involving both sides - and in some cases questionable actions by the security forces - and many civilian casualties (see Section [2.5.4](#)). Separatism in Wales has at its fringes been associated to a limited extent with terrorism; but the Welsh and Scottish nationalist movements use democratic political means to advance their respective causes (for the constitutional background see Section [1.1.3](#)).

#### ***Federalism and consociationalism***

When faced with divisions involving various combinations of national, cultural, religious and linguistic identity, two main approaches can be taken to achieve moderation or reconciliation. The first is to adopt federal models. This technique has been used in states such as Spain, Belgium and Canada. It involves the sharing of political and legal authority between a federal tier of governance at the centre and a number of semi-autonomous states operating as a sub-federal tier. Federalism is particularly appropriate when ethnic or other social divisions accord with geographical boundaries, creating greater homogeneity in particular areas. Its value as a means of reconciling societal divisions within an existing nation-state is that it can allow for some degree of autonomous expression of national/regional identity at the sub-federal level while retaining overall coherence at the centre. Under some federal arrangements, such as the Spanish constitution of 1978, it is possible for different components within the state to be permitted varied degrees of autonomy according to their particular characteristics and levels of demand for autonomy; and for greater autonomy to develop over time. Typically the types of function reserved to federal level involve such matters as foreign policy, security and intelligence and macro-economic policy; and all institutions of governance, both federal and sub-federal, are subject to a constitution enforced by a supreme court (Turpin and Tomkins, 2011).

The second approach to accommodating potential social conflicts within a democracy is consociationalism. Models of consociational democracy tend to involve guaranteeing levels of representation for different groups in a society, and often forms of 'power-sharing', which are used to ensure both elite cooperation across the main societal divide(s) and the binding of the social groups in question into the political system (Lijphart, 1968; 1977). The methods by which such participation can be guaranteed include specially selected electoral systems and the allocation of places within the executive in a strict proportionate relationship to representation within legislatures (Noel, 2005). Consociational models can be particularly appropriate in instances where social cleavages are not associated with a clear geographic distribution of different social groups, as was the case with the Netherlands in the twentieth century.



Somewhat unusually, constitutional reforms in the UK since 1997 have adopted some characteristics of both federalism and consociationalism. The introduction of devolution to Scotland and Wales can be interpreted, in part, as the application of semi-federal principles to moderate or reconcile a societal division, in that it involved the establishment of sub-UK tiers of governance to provide greater autonomy for those nations. The approach to Northern Ireland contains elements of federalism and consociationalism. As for Scotland and Wales, a sub-UK tier of governance has been introduced in the province, comparable to a 'state' government in a federal system. But devolution in this case should be seen as a facet of a broader peace settlement, as embodied in the Belfast or 'Good Friday' Agreement of 1998. The electoral system adopted, the Single Transferable Vote, was chosen to prevent any one group being able to dominate; and power-sharing within the Northern Ireland Executive is required. Provision is included in the Agreement for Northern Ireland to separate from the UK, subject to a referendum in the province. The Republic of Ireland has a clear role in the agreement which establishes mechanisms for liaison between Westminster and Dublin (Wicks, 2006; see Sections [3.3.1](#) and [3.3.2](#)).

These approaches to the modification and reconciliation of divisions represent a profound break with longer-established constitutional principles in the UK for a number of reasons. First, for what has long been regarded as an exceptionally centralised state, devolution has meant a significant transfer of powers away from the centre. Moreover, in every case devolution has either been extended, or has legislative processes underway that, if passed, will lead to it being extended further. Second, given the delegation of law-making powers which it has seen, devolution amounts to a challenge to the doctrine of parliamentary sovereignty (see Section [1.1.3](#)). Third, each devolved legislature is elected using an electoral system different to the 'first-past-the-post' system used in Westminster elections. The political models which have developed under devolution tend to be less adversarial as a result; devolved government has involved the establishment of coalitions forced to work through consensus (although ironically a coalition at Westminster now faces a majority Scottish National Party government in Edinburgh). Fourth, the UK supreme court, established under the Constitutional Reform Act 2005, is responsible for handling disputes involving the respective powers of devolved and central governance, in a role akin to that of a federal constitutional court, which is not a familiar concept to the UK (see Section [1.2.3](#)). Finally, as part of the peace process, an extremely novel approach to national sovereignty has been taken in Northern Ireland, with its population afforded the right of self-determination as to which state they will be a part of in future. This arrangement has been guaranteed not only in UK legislation, but an international treaty (Wicks, 2006).

Despite these significant modifications to traditional UK constitutional practice, certain key features of the UK constitution have been retained. Fundamentally, the UK parliament and government continue to assert the existence of the doctrine of parliamentary sovereignty (see Section [1.1.3](#)). The implication of this position for the management of societal divisions is that there remains a legal imbalance between the powers of the UK parliament and of its devolved counterparts. Legal limitations are imposed on the powers of the devolved parliaments and assemblies. They cannot act without their prescribed fields of operation; or contrary to the European Convention on Human Rights, as incorporated under the Human Rights Act 1998. The UK parliament, on the other hand, remains in theory legally unlimited in its powers, and could unilaterally legislate directly for devolved matters - or indeed to alter or abolish devolved institutions, though at a high political cost. This kind of interference is prohibited only by a constitutional convention - which is by definition not directly legally enforceable - to the effect that Westminster does not legislate for devolved matters without the consent of the devolved assembly/parliament concerned through a 'legislative consent motion'. Other agreements covering the interaction between devolved and central government - for instance providing the devolved areas with a role in European policy impacting upon them - are also ultimately founded in convention (Barnett, 2011).

### ***Northern Ireland***

How effective, then, are the mechanisms for dealing with UK societal divisions? In Northern Ireland, it could be held that the Belfast Agreement has encouraged nationalists, numerically the smaller group in Northern Ireland, to follow a long-term strategy of waiting for demographic changes to make the winning of a referendum possible at some point in the future. At the same time it has provided unionists with a guarantee that Ireland will not be reunited without a referendum being held. Power sharing has given the different groups some kind of stake in the process.

The level of violence in Northern Ireland has clearly decreased (see Section [2.5.4](#)). Yet devolved government has been suspended on multiple occasions, prompted by difficulties with the peace process - a reminder of the persistence of the supremacy of the UK parliament. However, Table 1.1b shows that there is some evidence of cross community support for the devolution arrangement. The level of support is greater amongst the Protestant than Catholic community. It is clearly the favoured option amongst Protestants, while for Catholics reunifying with the Irish Republic is preferred. However, between 2007 and 2008 support for devolution dropped significantly amongst Protestants, from 72 to 64 per cent, while it rose marginally amongst Catholics, from 35 to 36 per cent.

Table 1.1b: Northern Ireland constitutional preferences by religious denomination 2007 and 2008 (%)

	2007	2008
--	------	------

**Protestants**

To remain part of the UK with direct rule	17	25
To remain part of the UK with devolved government	72	64
To reunify with the rest of Ireland	3	4
Independent state	4	3
Other answer	1	1
Don't know	3	2

**Catholics**

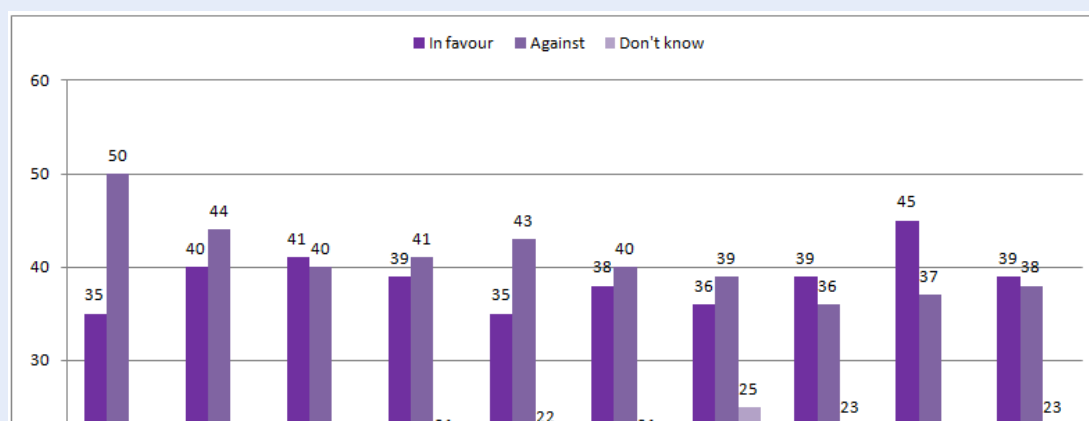
To remain part of the UK with direct rule	4	7
To remain part of the UK with devolved government	35	36
To reunify with the rest of Ireland	47	39
Independent state	6	8
Other answer	1	3
Don't know	7	7

Source: [Wilford and Wilson \(2009, p. 29\)](#).

**Scotland**

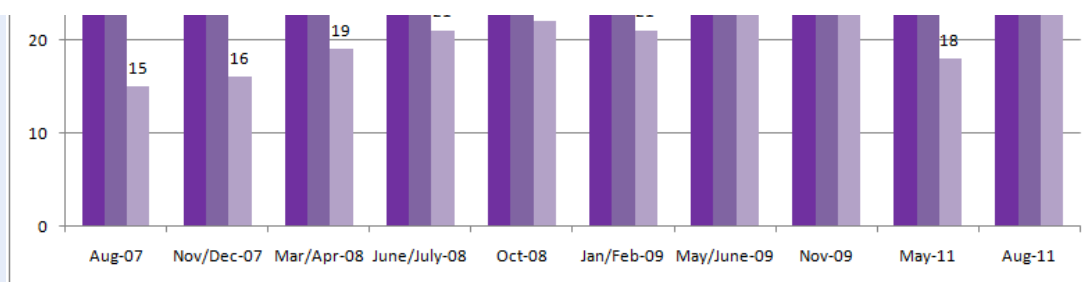
In Scotland, there has been a Scottish National Party (SNP) government since 2007; at first a minority government within the parliament, then from 2011 with a majority. In a sense, this development suggests clear movement towards possible secession for Scotland. It is now accepted in both Edinburgh and Westminster that the Scottish government has a mandate for the holding of an independence referendum, even amongst the three main, pro-union, parties of the UK. However, it should not be assumed that electoral support for the SNP is synonymous with support for independence. Up to a point, the electorate may be engaged in sophisticated activity, backing different parties at different times for purposes such as expressing disapproval at a Westminster government, or resisting a particularly disliked party. Figure 1.1d shows responses to an opinion poll question about a possible referendum at various points between August 2007 and August 2011. While the phrasing of opinion poll questions about Scottish independence vary, with notable implications for the results, the figures presented in the graph show responses to an identical question, phrased in terms of whether the Scottish government should negotiate with the UK government for Scotland to become an independent state. Support for this position has fluctuated between 35 and 40 per cent, except for on two occasions. In March/April 2008, support rose to 41 per cent; and in May 2011, the month when the SNP won an outright majority in the Scottish parliament, it surged to 45 per cent, before dropping back to 39 per cent in August 2011. Owing to the fact that up to a quarter of those polled provide no answer to the question, or respond with 'don't know', Figure 1.1d shows that 'yes' has led 'no' on four occasions, including in the three most recent polls.

Figure 1.1d: Popular support for Scottish government negotiating an independence settlement with the UK government, August 2007-August 2011





## Democratic Audit



Source: [TNS-BMRB \(2011\)](#)

This polling assumes there is a straight choice between separation and continued membership of the Union. There has, however, been discussion of a third option involving greater autonomy for Scotland, extending beyond that currently envisaged in the Scotland Bill. The 'Full Fact' website recently conducted analysis of opinion polling on independence, remaining within the Union and, where available, this third option, sometimes labelled 'devolution max'. This latter option would involve an extension of autonomy greater than that contemplated by the UK government in the present Scotland Bill, but falling short of full independence. Full Fact noted that in October 2011, TNS-BMRB put forward three options, with 28 per cent of respondents supporting independence; 33 per cent 'devolution max'; and 29 per cent no further constitutional change. Ipsos MORI research in 2009 also included a 'devolution max'-type option. This survey showed that 20 per cent wanted independence, 46 per cent increased powers, and 32 per cent no change. The same options were used by Ipsos MORI in 2010 and produced similar figures of 22 per cent, 44 per cent and 32 per cent respectively.

On this evidence, it is clear that a significant proportion of Scots do not wish to be part of the Union, despite the introduction of devolution. Many are also willing to vote for the SNP in Scottish parliamentary elections, either because of, despite of, or regardless of its position on independence. Devolution, then, has seemingly provided the independence movement with political opportunities. Yet, it would also appear that the most popular option for the future of Scotland is an extension of devolution of some kind. It could be argued that this tendency demonstrates that devolution has been a success - at least from the point of view of those who seek to preserve the Union - in that it is seen by some within Scotland as an effective means of obtaining autonomy without separation from the Union. However, the SNP regards 'devolution max' as a staging post towards full independence, even if it is not achievable in the short-to-medium-term. The position is muddled further because it may not be entirely clear what 'devolution max' entails; and if the Scotland Bill becomes law the Scottish parliament will have already had its fiscal powers extended to some extent.

Aside from the views of the Scottish public on independence, an issue relevant to the effectiveness of mechanisms for dealing with divisions is how the question of secession might actually be decided. The legal position is unclear. Unlike for Northern Ireland, there is no defined 'exit clause' from the Union for Scotland (nor for Wales). It is not currently certain that the Scottish government possesses formal powers allowing it to hold a referendum on independence. Consequently, to make the position absolutely certain, the Westminster parliament may have to transfer powers to Scotland ([Secretary of State for Scotland, 2012](#)). But there are divergences between Edinburgh and London about the timing of the referendum and whether it should include a third, 'devolution max' option, which the SNP desires because of its perceived popularity, but which the UK government opposes for the same reason. The importance of constitutional conventions to the handling of relations between devolved and central governance has been noted. While it may be the case that these loose and not directly legally enforceable modes of operating have been effective to date, they are clearly becoming strained. For instance, it is not clear that consent will be secured from the Scottish parliament to the Scotland Bill. Whether conventions about mutual consent between the Scottish and UK governments will work when the high stakes of independence are involved is highly uncertain. How then might resolution be reached? The matter may be considered by the courts at some point. Or the UK parliament may seek to deploy the 'nuclear option' and use its sovereignty to override the Scottish parliament - which the latter may not accept as a legitimate act.

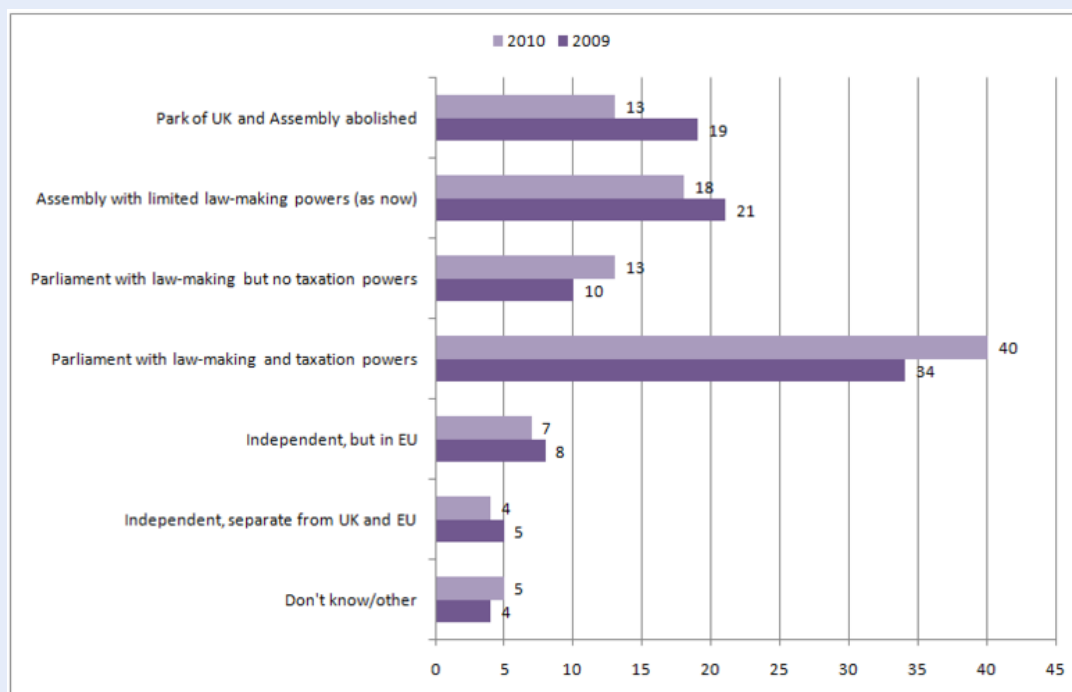
## Wales

During the era of devolution, Plaid Cymru, the Welsh nationalist party, has modified its position, downplaying independence as an objective, and participating in the Welsh administration alongside Labour from 2007 to 2011. It is possible that Plaid will become more overt in its support for secession once again in the future. Nonetheless it could be held that, in so far as it was intended to achieve greater consensus about Welsh membership of the UK, devolution has in this sense achieved a degree of success for the time being.

Figure 1.1e suggests a majority of the public in Wales support devolved governance of some kind, but with opinion split between a wide variety of different options, including over the kind of independence that might be wanted. Between 2009 and 2010, support for both possible independence options (within and without the EU) remained at around 5 per cent each, indicating far lower levels of support for independence than are found in Scotland. However, support for the strongest form of devolution - a parliament with law-making and

taxation powers - rose from 34 to 40 per cent from 2009 to 2010. Meanwhile, opposition to any kind of devolution or independence fell from 18 to 13 per cent.

Figure 1.1e: Welsh constitutional preferences, 2009 and 2010



Sources: [Jones and Scully \(2009\)](#); [BBC Wales \(2010\)](#)

The 2011 referendum on full legislative powers for the assembly provided some further evidence of support for the idea of devolution. The referendum held on the initial establishment of the assembly in 1997 was won by only 50.3 per cent to 49.7 per cent; whereas the 2011 referendum on full legislative powers for the Welsh assembly was won by 63.5 per cent to 35.5 per cent. This shift could also be read as an indicator of a rise in support for devolution since it was introduced. However the turnout in 2011 was only 35.4 per cent, which does not suggest immense enthusiasm for (or indeed against) the project. The turnout in 1997, which saw a much closer result, was significantly higher, at 50.1 per cent, but again suggested a relatively high level of indifference about how Wales is governed.

### **National identity**

One means of measuring the impact of attempts at reconciling or moderating societal divisions could be the extent to which people regard themselves as belonging to their particular national group, or a larger whole. Table 1.1c contains data on this subject applying to Great Britain (that is, excluding Northern Ireland). In England, the percentage of people describing themselves as English rose from 31 per cent in 1992, to 40 per cent in 2005; while those describing themselves as British fell from 63 to 48 per cent over the same period. In Scotland, there has been a far stronger rise in national identity over a longer period. The percentage of people describing themselves as Scottish has grown from 65 per cent in 1974 to 79 per cent in 2005; while the percentage citing a British identity has fallen from 31 per cent in 1974 to 14 per cent in 2005. In Wales, national identity has been more stable, being chosen by 57 per cent in 1979 and 60 per cent in 2003; while those regarding themselves as British fell from 33 per cent and 27 per cent over the same period.

Table 1.1c: Trends in 'forced choice' national identity, 1974–2005: percentage responses

	1974	1979	1992	1997	1999	2001	2003	2005
<b>Lives in England</b>								
English identity	n/a	n/a	31	34	44	43	38	40
British identity	n/a	n/a	63	59	44	44	48	48

**Lives in Scotland**

Scottish identity	65	56	72	72	77	77	72	79
British identity	31	38	25	20	17	16	20	14

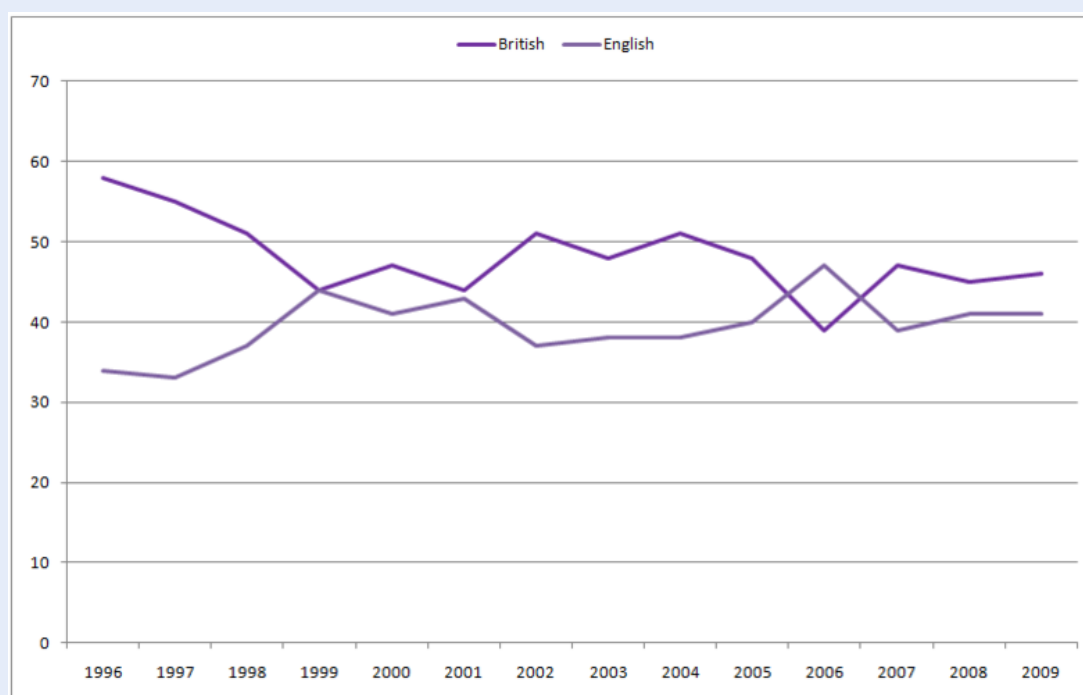
**Lives in Wales**

Welsh identity	n/a	57	n/a	63	57	57	60	n/a
British identity	n/a	33	n/a	26	31	31	27	n/a

Source: [Cruse \(2008, p. 14\)](#).

However, in none of these cases were the trends in national identity entirely smooth. Table 1.1c certainly shows, amongst other things, that a British identity declined in significance relative to an English one between 1992 and 2005. Yet, Figure 1.1f, which provides an annual time-series for national identity among residents of England, shows that this decline became most acute during the second half of the 1990s - just as the impact of devolution was being felt (Curtice, 2010, p. 5).

Figure 1.1f: Trends in 'forced choice' national identity among UK citizens resident in England, 1996-2009 (%)



Source: [Curtice \(2010\)](#)

Analysis of a Yougov poll from late 2011 showed that in Britain as a whole, only 19 per cent viewed themselves as 'British'; and 63 per cent as 'English' (Kellner, 2011). In Section 1.1.3, we noted how devolution has produced a pronounced disequilibrium between those parts of the UK subject to devolution and those that are not (that is England outside Greater London). It is conceivable that attempts to address societal divisions outside England may have helped to encourage a new societal division between England and the rest of the UK. Indeed, the same Yougov poll provided evidence of a distinct political outlook amongst those identifying themselves as 'English' on a divisive constitutional issue. While 58 per cent of the 'English' favoured leaving the European Union (with 26 wishing to remain inside), only 37 per cent of 'British' identifiers wished to leave, with 46 per cent supporting continued membership (the question was predicated on how they would vote in a referendum on the issue) (Kellner, 2011). If the English identifiers became a more politically self-aware group, such a trend would pose difficult constitutional and democratic questions for the country as a whole, given their numerical supremacy within the UK.

Democratic Audit believes that devolution has merit as a device for political decentralisation in the over-centralised UK state (see Section [3.3.1](#)). Devolution also has potential as a device for reconciling or moderating societal divisions. As an important component in the Northern Ireland peace processes, it can be seen as contributing to some of the progress that has been achieved in securing the peace in Northern Ireland, although it has not been without its difficulties. The impact that has been made in Wales is difficult to assess. There is some evidence that devolution has more support now than it did when first introduced, and that during the devolution era Plaid Cymru has been to some extent integrated into the existing system. In Scotland, it would be difficult to argue that devolution has not advanced the cause of the SNP and helped independence seem a far more realistic proposition, though whether the Scottish public would vote for separation in a referendum remains unclear. It may be that methods designed to deal with divisions have contributed to a new fissure, between those who regard themselves as 'English' and the rest, that could pose enormous problems for the stability of the Union in future. Evidence of significant support for the idea of 'devolution max', not only in Scotland but Wales also, may provide the basis for a short-term solution. Yet, granting further autonomy to Scotland may equally become a staging post towards independence. Meanwhile, a more autonomous Scotland will only serve to make the anomaly of the English case even more apparent.

A more general point should also be made about the manner in which recent constitutional change has sought to accommodate demands for greater autonomy in the 'Celtic nations' of the UK. Devolution has posed a major challenge to various long-established features of the UK constitution. At the same time, the reforms which have been enacted have not fully supplanted this earlier model. In some respects a quasi-federal system is now in place, but it is very much a 'halfway-house'. At the centre, there remains an attempt to assert the continued viability of parliamentary sovereignty and other such traditional doctrines and methods. This confusion - and indeed clash - between political realities and theoretical legal authorities creates the potential for a major constitutional crisis. If such a crisis is to be avoided, there must be clarity about how decisions relating to the position of the different components of the UK's multinational state should be made (at present, except perhaps for Northern Ireland, such clarity is clearly absent). Moreover, any such mechanism must accord the residents of Scotland and Wales with a prominent role. As a point of principle, the centre should not claim exclusive legal ownership over the process.

### 1.1.5 Procedures for constitutional amendment

How impartial and inclusive are the procedures for amending the constitution?

Fundamental constitutional rules, as generally provided for in written constitutions (though not in the UK), are crucial to the way in which a democracy operates. They often set out many of the key ground rules, such as the composition of institutions, the relationships between them, and the rights of those within the territory. For this reason, changes to the rules can have a significant impact - positive or negative - upon democracy. Indeed it could well be argued that the most important feature of any constitution is the way in which it can be changed, since through this means its entire content can be controlled. Amendment procedures should therefore prevent the subordination of change to sectional interests; and should themselves be democratically satisfactory, securing wide involvement amongst those within the society which they will impact upon. Internationally, written constitutions often stipulate that their alteration involves the meeting of requirements more rigorous than those of the regular legislative process. For instance, legislative super-majorities of two thirds or possibly higher may be stipulated, or referendums required. In a federal constitution, there may be a specified role for the states of which the federation is composed. By these means the constitution of a country is treated as higher law, owned by the whole of society - the alteration of which is more than a simple legislative act (Finer et al., 1995).

#### ***Procedures for amending an unwritten constitution***

In the UK there has never been a clear, comprehensive procedure or procedures for amending the constitution. This omission has come about both because there is no written constitution to specify definitively and with authority what the procedure is; and because, even to the extent that procedures exist, the lack of an agreed definition of the constitution makes it difficult to agree whether or not it is being changed in any given circumstance, and consequently whether the procedures should be used.

The UK constitution, rather than being codified in a document or group of documents, is derived from many sources, including statute; conventions; doctrines; and the royal prerogative (see Section [2.4.3](#)). Even the views of constitutional observers can be regarded as a constitutional source (Barnett, 2011). Moreover, the nature of each of these different sources changes in different ways over time ([Select Committee on the Constitution, 2002](#)).

Probably the most prominent means by which constitutional change comes about is through legislation in the UK parliament. According to traditional accounts of the doctrine of parliamentary sovereignty, any act of parliament, whether fundamental to the constitutional settlement or relatively trivial, can be overturned by the same legislative process; and no binding procedure can be applied to entrench constitutional law. There is no official category of constitutional legislation. But a new legal principle has begun to develop. Some constitutional enactments have come to be protected from implied repeal by subsequent acts of parliament. That is to say, parliament can only alter them if it expressly says that it intends to do so, rather than simply as an indirect consequence of legislation it produces. The clearest examples of legislation of this kind are the European Communities Act (ECA) 1972 and the Human Rights Act (HRA) 1998. Courts are willing to strike

down legislation which by implication conflicts with European law as incorporated into UK law under the ECA, even if the offending legislation was passed after the ECA. If primary legislation conflicts with the European Convention on Human Rights as incorporated by the HRA, courts do not strike it down, but neither do they disapply the HRA. Instead they issue a 'declaration of incompatibility'. The effect of these legal arrangements is that parliament can only repeal the ECA and HRA if it expressly states that this is its intention; which could be seen as a limited form of constitutional amendment procedure (Bogdanor, 2009; Goldsworthy, 2010).

Alongside this apparent legal change, certain regulations and practices exist within parliament and government in relation to legislative constitutional change. The Parliament Act 1911 removed the ultimate veto of the House of Lords when faced by a determined majority in the House of Commons, except in relation to extensions of the life of a parliament beyond five years, which the Lords remains able to block absolutely. In this sense, there is a special amendment procedure applied to the length of a parliament, which is thereby constitutionally entrenched.

In the post-Second World War period a convention has operated that bills of 'first class constitutional importance' should be sent to a committee of the whole house in the Commons. There is however no clarity about how such bills should be defined. Matthew Flinders has noted that it is puzzling, for instance, that the bills that became the Freedom of Information Act 2000, Regional Development Agencies Act 1998 and Bank of England Act 1998 were not treated as possessing 'first class' constitutional significance (Flinders, 2010, pp. 219-22).

A range of parliamentary committees can also play a part in considering legislative constitutional change. Relatively recent innovations in the period covered by this Audit include the House of Lords Select Committee on the Constitution, the Joint Committee on Human Rights and the House of Commons Political and Constitutional Reform Committee, which was established in 2010. Specially formed committees may consider constitutional legislation in draft form, such as the joint committee currently scrutinising the draft House of Lords Reform Bill. However, all of these committees work through influence rather than the possession of special powers within the legislative process.

The holding of referendums has come to play an increasingly important part in constitutional legislative change. Sometimes legislation is introduced after consultative referendums, as with devolution in the late 1990s. An emerging tendency is for legislation providing for referendums to specify that the results of these plebiscites will be binding. The referendums on the extension of the powers of the Welsh Assembly and on the proposed introduction of the alternative vote, both of which were held in 2011, were binding in this way. In addition, the European Union Act 2011 stipulates a detailed range of possible types of pooling of UK authority at European Union (EU) level that, under the act, would now require a binding referendum to be held.

Table 1.1d lists all the referendums which have been held at UK and sub-UK national/regional level. There have been 11 in total, all concerning constitutional issues, beginning in the 1970s. No referendums took place during the long period of Conservative office from 1979 to 1997.

Table 1.1d: UK national and regional-level referendums, 1973-2011.

Date	Territory	Issue	Turnout (%)
08 March 1973	Northern Ireland	Should Northern Ireland remain part of the UK? remain part of the UK	58.7
05 June 1975	UK	UK membership of the EEC	64.6
01 March 1979	Scotland	Devolution for Scotland	63
01 March 1979	Wales	Devolution for Wales	58.3
11 September 1997	Scotland	Establishment of Scottish Parliament; and its fiscal power	61.2
18 September 1997	Wales	Establishment of Welsh Assembly	50.6
07 May 1998	Greater London	Creation of Greater London Authority and Mayor of London	34.5
22 May 1998	Northern Ireland	Good Friday Agreement	81.1
04 November 2004	North East England	Establishment of regional Assembly	47.8
03 March 2011	Wales	Extension of legislative powers of Welsh Assembly	35.4
05 May 2011	UK	Introduction of the Alternative Vote for UK parliamentary elections	42

Source: [Wilks-Heeg \(2011\)](#).

This list suggests that a constitutional convention is developing that referendums should be used for certain kinds of constitutional changes in the UK, involving devolution, the status of Northern Ireland, the Commons voting system, and Europe. The House of Lords Select Committee on the Constitution argued in 2010 that the most appropriate possible use of referendums is for the making of decisions of fundamental importance to the constitution. It noted that such issues could not clearly be defined, but that they would include abolition of the monarchy; leaving the EU; the secession of any part of the UK; the abolition of either the House of Commons or the House of Lords; a change in the parliamentary electoral system; and the introduction of a written constitution ([House of Lords, 2010](#)). As such, there are clearly significant constitutional reform issues that would not be expected to be subject to a referendum, although the principle of what changes should, or should not, be subject to popular approval is by no means clear. Thus, while the present government held a referendum on electoral reform, and has passed legislation to initiate referendums on elected mayors in the largest English cities, it did not hold referendums on fixed-term parliaments, the introduction of elected police commissioners or its European Union Bill; and does not intend to hold a referendum on its proposals for a mainly elected House of Lords. Where referendums do take place, moreover, they rarely show much evidence of generating public interest in matters of constitutional change. As Table 1.1d shows, only four referendums have achieved turnouts of over 60 per cent, while four recorded participation levels below 50 per cent. As such, the extent to which referendums constitute an inclusive procedure for constitutional amendment could be questioned.

The following case-study, which considers the AV referendum of 2011, casts light on the value of referendums as a means of impartial, inclusive decision-making.

### Case Study 1.1b: The AV Referendum of 2011

The May 2011 referendum on the alternative vote (AV) electoral system for the House of Commons was the second UK-wide referendum in history. It is therefore important as a case study of the impartiality and inclusiveness of referendums as a mechanism of constitutional change in the UK.

In terms of the impartiality of the process, it is important to consider how the idea of a referendum on AV became part of the agenda in the first place. Proposals for a referendum on electoral reform were not new. In 1997 Labour had promised to set up a commission of inquiry into the electoral system and offer a referendum choice between the commission's proposed system and the status quo (first-past-the-post or FPTP). The Independent Commission on the Voting System, chaired by Lord (Roy) Jenkins, reported in 1998, recommending a new system: AV with a proportional top-up element (known as AV plus). However, the referendum did not take place and in further manifestos Labour promised only a review of electoral systems, stating that 'a referendum remains the right way to agree any change for Westminster'. The Review of Voting Systems was published in 2008 but contained no recommendations relating to Westminster.

Although a deliberative, if non-inclusive, process had taken place, it had no bearings for the eventual question asked in the referendum. In 2009 Labour Prime Minister Gordon Brown came out in favour of a referendum on AV, and this proposal passed the Commons in February 2010 (although it fell with the calling of the election). The move was widely perceived as tactical, though the pledge was repeated in the Labour manifesto. But the reality of an AV referendum emerged as a compromise between the pro-proportional representation Liberal Democrats and the pro-FPTP Conservatives in the rapid coalition negotiations after the election in May 2010. An AV referendum was therefore the preferred option of neither government party, while the party that had favoured it had been defeated in the election. The coming of the referendum was therefore itself an example of non-inclusive, non-transparent politics.

The legislative process for the referendum was also far from ideal. The bill providing for it was in two parts. The one dealing with the referendum, whether from the coalition agreement (Lib Dem and Conservative) or from a manifesto (Labour) should have been a matter of consensus. The other part of the bill dealt with boundary changes and the size of the House of Commons and was highly controversial. Implementation of AV, in the event of a 'yes' vote, was to be contingent on the implementation of the boundary changes for which there had been no public mandate or body of evidence. Arguments about the latter portion of the bill meant that Royal Assent was delayed to February 2011, not long before the actual referendum campaign was due to begin. The referendum was not ideal from the point of view of electoral administration, in that changes were being made to the process long after the closure period of 6 months before the poll recommended by the Gould review of the 2007 Scottish elections. It also exposed some tensions within the electoral administration system, although the clear responsibility for delivering the result taken by the Electoral Commission means that there was probably an unprecedented degree of public accountability for the actual running of an electoral event. The public information campaign run by the Commission tried hard to be impartial, but the task of presenting information neutrally to the public proved to be an inherently fraught assignment.

The campaign itself was not preceded by any extended public discussion, and the general understanding of the meaning and purpose of the proposed change was low. The Yes and No campaigns, in response to the lack of interest and understanding, ended



up running misleading campaigns. 'Yes' often attempted to harness anti-politics emotion, while 'No' made dubious claims about the cost and implications of AV, and exploited the unpopularity of the Liberal Democrats. Turnout in the referendum was 42 per cent, more than many had expected during the campaign, but a sign that neither side of the argument had aroused public enthusiasm (turnout on well-understood issues such as Europe in 1975 and Scottish devolution in 1997 was much higher).

In conclusion, the AV referendum demonstrates how the options that are available for constitutional reform are drawn up in a far from impartial and inclusive way. Alternative arrangements are available. The original idea of putting the Jenkins report to a referendum at least involved a measure of independent involvement in drawing up the question. More radical democratic options are available too, including the Citizens Assembly model pioneered in Canada and the New Zealand system of offering several alternative electoral systems to the public as well as a change/no change option. While control of the agenda was probably the least satisfactory element of the AV referendum, it also illustrated that a deliberative element is often lacking in the public involvement that does take place in the process of constitutional reform in the UK.

Principal source: Baston and Ritchie (2011)

As noted above, legislation is not the only component of the constitution, and legislative change is not the only form of constitutional amendment. Procedures applying to changes to these other portions of the constitution are even harder to discern and often less stringent than those involving legislative alteration. Changes can come about through judicial decisions, for instance when a court determines whether or not a particular royal prerogative power exists, or interprets constitutional legislation (Bradley and Ewing, 2011). Conventions - which are often vaguely defined rules and not directly legally enforceable - can seemingly be changed by precedents, that is actions by constitutional players in response to particular circumstances. These precedents can either develop the understanding of a particular convention, or render it redundant. Increasingly, conventions are being written down in official but non-statutory, publicly available codes. It may be that the act of producing these documents not only defines but alters constitutional conventions ([Blick and Hennessy, 2011](#)). Finally, it is not entirely clear how constitutional doctrines such as parliamentary sovereignty can fundamentally be changed at all (Brazier, 2008).

### ***Constitutional flexibility, impartiality and inclusiveness***

Though some parts of the UK constitution may not be easily changeable at all, much of it can be changed swiftly and radically. As part of a comparative study of the systems of government of 36 countries, Arend Lijphart produced an index of 'constitutional rigidity', measuring the difficulties involved in securing alterations to the fundamental rules of the political system. The UK had the joint lowest score, alongside Iceland, Israel and New Zealand, of 1.0 on a scale of 1.0 to 4.0. It should not be a surprise that three of these countries - the UK, Israel and New Zealand - are the main democracies not to possess written constitutions (Lijphart, 1999, p. 220). In his recent updating of Lijphart's work as it applies to the UK, Flinders found that this earlier assessment of the flexibility of the UK constitution still holds following the period of Labour government from 1997 (Flinders, 2010). The torrent of constitutional reform since 1997, continued by the coalition government from May 2010, provides confirmation of the persistence of this flexibility. It includes devolution (see Sections [1.1.3](#), [1.1.4](#), [3.3.1](#) and [3.3.2](#)); the Human Rights Act 1998 (see Section [1.2.2](#)); the Constitutional Reform Act 2005 (see Section [1.2.3](#)); the Constitutional Reform and Governance Act 2010 (see Sections [1.2.2](#), [2.3.2](#) and [4.2.4](#)); and the Freedom of Information Act 2000 (see Section [2.3.5](#)). It could be argued that some of this legislation, though permitted by constitutional flexibility, might reduce the level of flexibility in future. The Constitutional Reform and Governance Act might make it harder for governments to alter the configuration of the civil service; and the European Union Act 2011 will create difficulties for any government seeking to enhance UK participation in the EU. At the same time, other parts of this programme of change, particularly devolution, have created a momentum for more change still (see Sections [1.1.3](#) and [1.1.4](#)).

As previously noted by the Audit, the flexibility of the UK constitution has in practice afforded considerable discretion to the UK-level executive (Weir and Beetham, 1999). Through its position of strength within parliament, the executive can secure legislative alterations to the constitution. For this reason, the impact of the various parliamentary procedures relating to constitutional change is weaker than it might be in a less executive-dominated chamber. Indeed, because the electoral system for the Commons produces disproportionately large vote shares for certain parties, constitutional change becomes a more exclusive process still (Flinders, 2010). Potentially, significant constitutional change can be driven through by the executive with minimal consultation, as was recently the case with the Parliamentary Voting System and Constituencies Act 2011 and the Fixed-term Parliaments Act 2011. Both these measures could be seen as partial, in that they were driven largely by the necessities of the coalition agreement.

Moreover, the executive can issue codes which seek to define important features of the non-statutory portions of the UK constitution, such as conventions and doctrines, virtually unilaterally. The production of the cabinet manual, published in final form in 2011, is an example of such a process ([Cabinet Office, 2011](#)). Though consultation took place, the final decisions about content rested with the executive. The manual defined important constitutional arrangements, such as procedures to be followed when no party has an overall Commons majority.

At the same time it presented a partial view of controversial issues, including the doctrine of parliamentary sovereignty. It was silent on questions such as whether the devolution settlements are in practice entrenched by the referendums held before they were introduced ([Blick and Hennessy, 2011](#)).

By contrast, those outside the London-based executive find it difficult to achieve constitutional change. For example, the long-term and large-scale campaign for a Scottish parliament was dependent upon the election of a Labour government in 1997 to be put into effect (Bogdanor, 2001); as were the campaigns for a Freedom of Information Act and the incorporation of the European Convention on Human Rights into UK law. Similarly, the attempt to introduce a Bill of Rights for Northern Ireland, based on the recommendations of the Northern Ireland Human Rights Commission, was dependent upon time being found in the timetable of the UK parliament (see Section [1.2.2](#)). However, the drive for the extension of devolution, particularly within Scotland, has since been driven from the areas involved themselves, not from Whitehall. As has been noted above, the Scottish government, following the outright victory of the Scottish National Party in the Scottish elections of 2011, is widely accepted as having a mandate to hold an independence referendum; although it is by no means clear whether it has the legal powers to do so (see Section [1.1.4](#)). In this sense, some of the initiative for triggering constitutional amendment has been wrested from the UK executive, though the ultimate outcome is not yet known.

The House of Lords Constitution Committee recently set out some proposed guidelines on the introduction of legislation bearing on constitutional change that could, if adhered to, bring about greater impartiality and inclusivity; although their impact would be limited by the vague nature of the unwritten UK constitution. The committee argued that in future governments should give more consideration to the possible difference their plans would make to the constitution; scrutinise them carefully within government and consult widely and thoroughly outside government and with parliament ([Select Committee on the Constitution, 2011](#)).

Democratic Audit believes that certain core and interrelated features of the UK constitution make alterations to the constitution of an impartial and inclusive nature difficult to achieve. First of all, as there is no written constitution, there are no precise amendment procedures and no ways to determine whether constitutional change is actually taking place at any given time. Second, the doctrine of parliamentary sovereignty, which is in turn closely associated with executive dominance, means that UK governments can - and often do - drive the process of constitutional change in a manner which is both partial and exclusive. Dominance by the UK executive is beginning to be challenged by events in Scotland, although not in the sense that a clear and improved new system is being established. Third, the flexibility of the UK constitution has lately facilitated a rapid pace of change. While many of the changes from 1997 have in principle been desirable, the rapidity of their introduction, combined with their piecemeal nature, surely makes it difficult to ensure that they are enacted in an inclusive, impartial fashion. Referendums, which are increasingly a feature of UK constitutional change, may to some extent increase the involvement of the public, but they bring with them significant problems of their own. We believe that the clearest means by which these various flaws in the constitutional amendment procedures of the UK could be corrected is through the introduction of a written constitution with a clearly defined amendment procedure contained within it.

### 1.1.6 International obligations towards migrants

How far does the government respect its international obligations in its treatment of refugees and asylum seekers, and how free from arbitrary discrimination is its immigration policy?

Citizens are those who have fully been admitted into the political community and thereby have rights as full participants in democracy. But democracy also requires the appropriate treatment of those within the territory who are not full citizens; and that the state behaves in a responsible fashion in the context of the international community, upholding the obligations it has undertaken in fulfillment of wider democratic values. To this end, it is important that those arriving in the country claiming they are in danger of persecution or other improper treatment in the states from which they have fled are treated fairly; and that immigrants are not dealt with in an arbitrary, discriminatory fashion.

#### **Asylum seekers**

International law stipulates that states can control who enters and leaves their territory. But a range of different international obligations apply to the way in which asylum seekers are treated. The central conventions are the 1951 United Nations Convention on the Status of Refugees and its Protocol of 1967. Also of importance are the United Nations International Convention on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR) as incorporated under the Human Rights Act (HRA). These instruments have a wide scope. They prohibit discrimination against asylum seekers in their enjoyment of their rights. They forbid inhuman or degrading treatment of asylum seekers, and other less severe forms of neglect or ill-treatment; and mean that asylum seekers should not be made severely destitute. The existence of housing rights is stipulated, alongside property rights, healthcare rights and the right to a family life. A right to liberty of the person is established for asylum seekers; and to a fair trial or to a fair hearing. A European Union Council Directive of 2003 set out that asylum seekers from vulnerable groups should be specially catered for. Children who are asylum seekers have special rights under the Convention on the Rights of the Child of 1989. However, the UK has entered reservations about this



Convention in relation to asylum seekers; and it has reserved the right to detain children in adult centres ([Joint Committee on Human Rights, 2007](#)).

In theory, therefore, asylum seekers possess a wide range of protections. However, attempts to ensure the fulfillment of these human rights takes place in an environment in which states, including the UK, are often determined to exert more direct control over asylum policy and not be restricted, as they see it, by international obligations ([Schuster, 2003](#)). Concerns about UK compliance with its human rights obligations with respect to asylum seekers have focussed on a number of issues, as noted by the parliamentary Joint Committee on Human Rights in a report of 2007. First, it recorded the complexity of support provided to asylum seekers, and the ineffectiveness with which it was sometimes provided, leading in some cases to high degrees of destitution. Second, the committee found that the policy that had been introduced of charging people visiting from overseas for some healthcare services lacked justification. Third, there was no basis for the reservation entered by the government to the UN Convention on the Rights of the Child. Fourth, there were concerns about an increase in the detention of asylum seekers, including those from vulnerable groups such as children, torture victims, women who were pregnant and people with health problems, both mental and physical. Fifth, the Committee noted that the media played an often unhelpful role, through distorted coverage of the issue of asylum seekers ([Joint Committee on Human Rights, 2007](#)). The coalition government which took office in 2010 signaled an important policy change in this area when it committed to end the detention of child asylum seekers. However, the implementation of this policy has been delayed, and the precise form it will take is unclear.

### **Immigration**

The Immigration Act 1971 is the central piece of legislation determining the conduct of immigration policy. It provides extensive powers to the Home Secretary and various officials. These powers take in the authority to permit or deny entry into the UK; to search people entering and leaving; to remove people; powers of detention; and numerous investigatory powers related to criminal offences under the act. While the broad framework of immigration powers exists in the 1971 act, it is the detail of how it is implemented that is important in practice. The Home Secretary sets out lengthy rules under the authority of the act. These rules are laid before parliament, which can disapprove them, and has done so twice, in 1972 and 1982. They stipulate, amongst other things, that the conduct of immigration policy should not discriminate on such grounds as race or religious faith and that the Human Rights Act must be complied with (Bradley and Ewing, 2011).

There is an inbuilt tendency in immigration policy for tensions to develop between, on the one hand, the executive seeking to pursue its political priorities and, on the other hand, the judiciary seeking to uphold legal standards. During the present Audit cycle, the government sought seriously to circumscribe the potential for judicial review of immigration decisions. When it was first introduced in bill form, the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 included what is termed an 'ouster clause' which:

'would have introduced a new section 108A into the Nationality, Immigration and Asylum Act 2002 with the effect of cutting off all appeals to, and judicial review by, the ordinary courts in immigration matters, and excluding habeas corpus applications in immigration cases. Most importantly, it would have made section 7(1) of the Human Rights Act subordinate to the Nationality, Immigration and Asylum Act 2002, and thereby severely curtailed remedies for violations of Convention rights through the ordinary courts' ([Joint Committee on Human Rights, 2005, p. 25](#)).

This proposal had serious implications for the rule of law. The ability of the judiciary to review the action of the executive for its legality is fundamental to democracy (see Section [1.2.2](#)). Substantial political pressure was applied in the House of Lords and the 'ouster clause' was dropped. However, human rights concerns continued to be expressed about the clause included in its place. The Joint Committee on Human Rights raised concerns about discrimination, noting that the European Convention on Human Rights required that everyone within a jurisdiction should have equal means to achieve the protection of their Convention rights when they wished to challenge administrative action. It held that the bill risked breaching that right ([Joint Committee on Human Rights, 2004](#)).

A particular immigration power has long given cause for concern about the potential for abuse. The home secretary possesses a power to deport individuals on public interest grounds. It is another wide power. In 2003 the House of Lords found that it could legally be deployed even if the threat that the individual supposedly posed was to a foreign state, rather than directly to the UK. Appeals against such decisions are heard by the Special Immigration Appeals Commission (SIAC). SIAC can take evidence in secret, with special advocates representing those subject to deportation - another problematic arrangement from the point of view of democratic principle. The special advocates are entitled to see secret evidence which may form the basis for deportation. Once they have seen this evidence they can have no more contact with their clients, unless authorised to do so by SIAC (see also Section [1.2.4](#)). The decisions of SIAC can only be reviewed on a basis of points of law, not the substance of the decision (Barnett, 2011).

The Anti-Terrorism, Crime and Security Act 2001 (ATCSA) turned the home secretary's power to deport into what was in effect a detention power. Under article three of the European Convention on Human Rights, individuals cannot be deported if the destination country is likely to subject them to torture or other ill-treatment. ATCSA created a power to detain terrorist suspects who could not be deported because they were subject to this risk. For whatever reason, these terrorist suspects could not be put on trial, but they were nonetheless being detained.

Putting this power into effect required a derogation from article 5 of the European Convention on Human Rights, on the grounds that there was an emergency threatening the life of the nation. Eventually, the House of Lords found by a majority of eight to one that, while there was a public emergency, because the power applied by definition to foreign nationals, discrimination was taking place in the deprivation of liberty. For these reasons, article 5 (the right to liberty) and article 14 (against discrimination in the enjoyment of rights) were being violated. ATCSA was declared incompatible with the European Convention on Human Rights. The order providing for the derogation from the European Convention on Human Rights was also quashed, on grounds of being discriminatory and disproportionate. The government responded by bringing forward a regime which applied to both foreign nationals and UK nationals (Bradley and Ewing, 2011; Barnett, 2011) (see Section [1.3.1](#)).

Democratic Audit notes that the political and security policy temptations to override democratic concerns in asylum and immigration policies are considerable. Those most likely to suffer do not possess votes; and the balance of media pressure is usually likely to be in favour of more stringent measures. We are concerned that UK governments have not lived up to the spirit or the legal fact of their human rights obligations with regard to the treatment of asylum seekers, the most vulnerable of individuals. We also note the importance of the widely drawn immigration powers exercised by public authorities being subject to effective judicial review. Yet, the evidence of recent years is that government is concerned to circumscribe the ability of courts to oversee its exercise of these powers - a worrying anti-democratic urge. Here is a good example of how, for democracy to function meaningfully, majority rule must be subject to principles of legality. The 2004 judicial decision that the detention of foreign national terrorist suspects was incompatible with human rights demonstrates the value of the judiciary; and why its scope for action should not be reduced.

## Conclusion

In this chapter, we have identified a number of areas of improvement in achieving common agreement over citizenship without discrimination. Legislation governing citizenship and, in particular, the legal framework for equality has been improved. Devolution has also been associated with some significant democratic improvements. It has helped ease violent tensions in Northern Ireland; and there is evidence that support has grown for devolution in Wales, with the Welsh Assembly recently acquiring greater powers following a referendum. In Scotland, where the Scottish parliament already has significant law-making competencies, devolution of additional powers also seems a popular option. More generally, we welcome devolution as a means of reducing the level of centralisation that has characterised the UK constitution. It also seems to enjoy a degree of practical entrenchment which is often lacking from important features of the UK system of government.

However, the unintended consequences of devolution have created great democratic difficulties. First, in none of the territories in which it has been introduced is there an overwhelming consensus that devolution has served to eradicate the grievances or problems which encouraged its introduction in the first place. Significant numbers of protestants and, to a still greater extent, roman catholics in Northern Ireland prefer other options. In Wales, there seems to be more consensus about remaining within the UK, although an independence movement still exists. In Scotland, devolution has to some extent assisted the secessionists, providing them with a political opening. The idea of Scottish independence has made considerable advances since the advent of devolution. A further problem is associated with the asymmetrical nature of devolution, particularly the fact that it has not been applied to England outside Greater London. Yet at the same time, English identity, denied a formal political outlet, has strengthened. Indeed, throughout Britain, 'British' identity is broadly and in some cases severely in decline. Such a lack of cohesion could prove destabilising for the concept of the 'political nation'.

Second, devolution has challenged - but not wholly supplanted - earlier constitutional models. It is difficult to describe the UK as a unitary state any longer; but neither does the term 'federal' apply in any genuine sense. Parliamentary sovereignty is in practice undermined by devolution, but the UK executive seeks to assert that it remains unaltered. The longstanding assumptions of UK government have been questioned by other developments, such as UK membership of the European Union (EU) and the Human Rights Act 1998 (HRA), as we pass through a period of unparalleled constitutional change. While the constitution may seemingly be in a stage of transition, the end destination is not clear. There is disagreement about many issues, from EU membership and the HRA to the status of the monarchy, and whether or not the constitution itself should for the first time be codified in a single text. Disputes about such matters as whether prisoners should have voting rights of some kind often relate to broader disagreements about, for instance, the nature of citizenship and whether systems for the supranational enforcement of rights should apply in the UK. Moreover, the ability of the executive to violate human rights obligations with respect to asylum seekers, or restrain judicial scrutiny of immigration policy - both issues identified in this chapter - might be reduced under a codified constitution. We believe that the simultaneous existence of several fundamental constitutional disagreements creates an impression of genuine democratic instability.

Third, it is not clear how these issues can be resolved satisfactorily. The UK constitution, unwritten as it is, has no defined amendment procedures and has often been altered virtually on the whims of the executive. It is not always agreed even that a constitutional alteration is taking place. Once again, the position in Scotland highlights this problem. While the right to self-determination of the Scottish people is widely accepted, the means by which it can be achieved is not known and has itself become part of the contest between opposing sides in the dispute over the future of Scotland. While we recognise that disagreement is part of the essence of democracy, the lack of an effective

constitutional framework within which disputes can be played out is deeply unsatisfactory. A written constitution seems the most likely means of providing such a framework.

All of these issues engage some of the key themes identified in this Audit as a whole. First, it is clear from the discussion above that existing constitutional arrangements are unstable, that old models are under pressure, but new ones have yet fully to establish themselves. Second, the old institutions of democratic governance, in particular the UK parliament, have lost a degree of authority in at least parts of the UK. The European Union is subject to sustained criticism; and the Human Rights Act has been associated with a challenging of the authority of the judiciary. At the same time the precise future status of the newer, devolved institutions is unclear and regularly subject to change. Third, devolution has created an appetite for more change still, although it is by no means clear what the direction of change should be. While it is difficult to establish a clear consensus around any of the existing representative institutions, centralised or devolved, nor do methods of direct democratic decision-making, such as referendums, appear to generate mass enthusiasm. Finally, this chapter has also pointed to some initial, specific concerns about political inequality, with particular reference to prisoners, immigrants and asylum seekers. In subsequent chapters, we catalogue how broader forms of political inequality are becoming one of the most pervasive features of contemporary British democracy.

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## 1.2. The rule of law and access to justice

### Executive Summary

This chapter reviews the available evidence relating to the six 'search questions' concerned with the rule of law and access to justice in the UK

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Evidence of a falling overall crime rate.**

The available evidence points to a long-term decline in the overall crime rate for England and Wales, as well a more recent fall in crime in Scotland and Northern Ireland. However, the statistical evidence needs to be qualified, owing to a number of caveats about how crimes are defined and recorded. (For further details and discussion, see Section [1.2.1](#) and Figure [1.2a](#))

##### **2. The significant impact of judicial review under the Human Rights Act 1998.**

During the period considered in the present Audit, the impact of the Human Rights Act (HRA) 1998 upon the practice of judicial review has begun to be felt. The HRA significantly expands the scope of judicial review to include the protection of rights provided for under the European Convention of Human Rights. The HRA has had both a legal and cultural impact. (For further details and discussion, see Section [1.2.2](#) and Case Studies [1.2b](#) and [1.2c](#))

##### **3. Reform of the office of lord chancellor.**

The role previously played by the office of lord chancellor was problematic from the point of view of judicial independence and the rule of law. The holder was the most senior judge in the UK, played a part in judicial appointments, was a prime-ministerial appointment to cabinet, with executive responsibility for justice policy, and was the Speaker of the House of Lords. Consequently, the lord chancellor's role straddled the judiciary, the executive and the legislature. The Constitutional Reform Act 2005 - while it did not abolish the office completely - curtailed these roles considerably. (For further details and discussion, see Section [1.2.3](#))

##### **4. Statutory provision for independence in judicial appointments.**



The Constitutional Reform Act 2005 established the Judicial Appointments Commission for England and Wales, which reduces the role of the executive in the making of judicial appointments. Equivalent statutory bodies have been established in Northern Ireland and Scotland. (For further details and discussion, see Section [1.2.3](#))

## **5. Establishment of an independent supreme court**

The Constitutional Reform Act 2005 created a UK supreme court. It became active in 2009, replacing the House of Lords as the highest court in the UK. It has also taken on responsibility for resolving disputes involving devolved matters, previously dealt with by the Judicial Committee of the Privy Council. Its basic powers are the same as those once possessed by the House of Lords. However, it is reasonable to assume that, as a clearly established court in its own right, the supreme court's actions in the longer run will be characterised by growing independence. (For further details and discussion, see Section [1.2.3](#))

### ***(b) Areas of continuing concern***

#### **1. The potential conflict between the doctrine of parliamentary sovereignty and the principle of the rule of law.**

According to the doctrine of parliamentary sovereignty, parliament can legislate however it chooses and cannot be overruled by a court. This principle creates the potential for a clash with the rule of law, which in theory parliament can violate using its sovereign power. (For further details and discussion, see [Introduction](#) to Section 1.2)

#### **2. The dual party political and legal role of the attorney general.**

There are inherent tensions in the combined roles of the attorney general as, on the one hand, a party political appointment and, on the other hand, the senior legal officer in the government and chief legal adviser to the government. (For further details and discussion, see Section [1.2.3](#))

#### **3. Social and geographical differentiation in rates of crime victimisation.**

Despite evidence of an overall decline in crime levels, significant geographical differences in levels of victimisation remain. In part, these geographical contrasts reflect significant socio-economic divisions in the likelihood of being a victim of crime. (For further details and discussion, see Section [1.2.1](#), Figures [1.2b](#) and [1.2c](#))

#### **4. Systemic and financial problems with the legal aid system.**

There are long-standing, systemic problems with the way legal aid is provided in England and Wales. These problems will surely be aggravated by the present financial cuts. Moreover, problems of local access to legal aid create particular problems for some of the most vulnerable members of society. (For further details and discussion, see Section [1.2.4](#) and Figure [1.2d](#))

#### **5. Continued use of 'diplock courts' in Northern Ireland.**

Despite a commitment made by the UK government in 2007 to end provisions for jury-less trials in Northern Ireland (introduced in 1973 because of the security situation in the Province), the use of these so-called 'diplock courts' was extended once again in 2011 under the terms of the Justice and Security (Northern Ireland) Act 2007. (For further details and discussion, see Section [1.2.4](#))

#### **6. Continued evidence of inequality in the operation of the criminal justice system.**

Figures for the operation of various aspects of the criminal justice system, including for stop and search, arrests and imprisonment, point to disproportionately high representation of ethnic minority groups in contacts with the criminal justice system. It is not clear that there is a convincing explanation that dispels the worrying suspicion of discrimination. (For further details and discussion see Section [1.2.5](#) and Figures [1.2.e](#), [1.2f](#), [1.2g](#), [1.2h](#) and [1.2i](#))

### ***Areas of new or emerging concern***

#### **1. New evidence of paramilitary involvement in organised crime in Northern Ireland.**

Paramilitary groups in Northern Ireland continue to be involved in a many forms of organised crime, with implications for the operation of the rule of law in the province. (For further details and discussion, see Section [1.2.1](#) and Case Study [1.2a](#))

## 2. The loophole in the Human Rights Act for private sector and voluntary organisations.

Case law around the Human Rights Act has led to the emergence of a principle that private sector or voluntary organisations providing publicly funded services are not treated as public authorities for the purposes of the act. This position has partly been rectified by the Health and Social Care Act 2008, but not fully. (For further details and discussion, see Section [1.2.2](#))

## 3. The rise of secret evidence.

The use of secret evidence in legal cases of various sorts has increased. It has been accompanied by the employment of special advocates, who represent the interests of an individual in relation to the secret evidence. These trends constitute a threat to due process and the right of access to justice. (For further details and discussion, see Section [1.2.3](#) and Case Study [1.2d](#))

## 4. Problems with confidence in the justice system.

While confidence in the justice system has increased in recent years, it appears to remain at significantly lower levels than three decades ago. There are also significant variations in the levels of confidence that different groups have in various features of the system. When placed in international comparative perspective, levels of confidence are only moderate; and may reflect broader concerns about the operation of democracy in the UK. (For further details and discussion, see Section [1.2.6](#) and Figures [1.2j](#), [1.2k](#), [1.2l](#), [1.2m](#) and [1.2n](#))

## Introduction

The rule of law is widely accepted as essential to the functioning of democracy. It involves the law being upheld universally and applying to all members of society, with no one being above it. It is particularly important, from the perspective of the Audit, that agents of the state are subject to the rule of law. If they are not, majority rule, though a fundamental component of democracy, can be used as a means of abusing other principles which are also important to democracy, such as the protection of minority rights. However, no universally accepted interpretation of the rule of law exists. It is now referred to in an act of parliament, the Constitutional Reform Act 2005 (see Section [1.2.3](#)), but is not defined in this act, nor in any other legislation. In its most 'thin' conceptions, the rule of law could possibly allow for flagrant abuses of many of the principles held by the Audit to be essential to democracy, provided that they were permitted by the law (Bingham, 2010).

However, for it to be meaningful, we regard a 'thicker' version of the rule of law to be necessary; one which requires that the operations of the state should take place within legal limits, and that the legislative activities of parliament should be subject to constitutional constraints. The judiciary and the courts have a crucial role in upholding the law. To perform this function effectively they must be free from inappropriate external influences, including from the executive. The nature of the law and the punishments entailed by violating it must be known, and should not be applied retrospectively. No punishment should take place without due legal process. Furthermore, we believe that the rule of law is a dynamic concept. Indeed, there have been more recent developments in our understanding of the rule of law that should be taken into account in democratic assessment. For instance, human rights should be upheld. In addition, people should also have access to justice, which should not be denied them because of a lack of personal financial means (Beetham et al., 2002).

Any consideration of the rule of law in the UK needs to take into account complicating features of the UK constitution. First of all, it might be better to speak of a rule of 'laws' than of 'law', since there are three different legal systems in place: for England and Wales; Northern Ireland; and Scotland. While the UK parliament can legislate for the whole of the UK - theoretically on any matter it chooses - it often limits the territorial application of its legislation to specific areas. This legal diversity has been heightened by the advent of devolution (see Section [3.3](#)). Specific legislation-making bodies now exist in Northern Ireland, Scotland and Wales. While the Welsh legal system remains merged with that of England, the existence of a Welsh body responsible for administering significant legislative responsibilities; and of an Assembly now able to produce its own law, is a pressure towards legal diversity (Evans, 2010). Northern Ireland, as a consequence of the 1998 Belfast or 'Good Friday' Agreement is arguably not even fully subject to UK sovereignty (Wicks, 2006). In this context of diversity, we discuss the differences in provision for human rights in the different devolved areas below (see Section [1.2.2](#)); and consider evidence from the different parts of the UK where appropriate.

Second, while the rule of law is long established as a crucial component of the UK constitution, it has a complex relationship with another widely accepted doctrine: that of parliamentary sovereignty (Bingham, 2010). According to the doctrine of parliamentary sovereignty, the legislative power of the UK parliament is legally unlimited. In other words, it can pass any law it chooses. On one level, the rule of law and parliamentary sovereignty are compatible, since the upholding of the law and of the will of parliament can be seen as one and the same thing. Indeed, it can mean that the judiciary, which is responsible for interpreting legislation, can possess a substantial degree of discretion, particularly under the common law system developed in England and Wales, with its emphasis on the application of precedent (Slapper and Kelly, 2011).



Nonetheless, parliament can deploy its sovereignty to pass legislation that in some way compromises the rule of law, possibly seriously – for instance, through conferring sweeping arbitrary powers on executive office holders, as it has done during military emergencies in the past (Simpson, 1994). Indeed some of the counter terrorism powers recently created and assessed in this Audit have arguably compromised important human rights features of the rule of law (see Sections [1.3.1](#) and [1.3.2](#)). In such circumstances, the established position is that the courts are largely powerless to resist (see Sections [1.2.2](#) and [1.2.3](#)). The courts cannot disapply primary legislation specifically to uphold the rule of law. If the UK possessed a written constitution, as virtually all other democracies do, it would probably be a means by which important aspects of the rule of law could be further protected. Legislation that could not be reconciled with the provisions of the constitution might be struck down.

Recent developments suggest greater strength for the rule of law in the face of parliamentary sovereignty. Under the Human Rights Act 1998, courts can declare primary legislation incompatible with the parts of the European Convention on Human Rights incorporated into UK law, though they cannot actually disapply the legislation involved. Moreover, members of the judiciary have referred increasingly to the possibility that they might altogether refuse to apply legislation that substantially contravened the rule of law (Goldsworthy, 2010).

A third complicating factor involves the sources of legal authority in the UK. This issue again involves the lack of a written UK constitution. If such a text existed, all legal authority would be derived from it, in theory at least. However, in the UK, legal authority has different sources (Barnett, 2011). Some executive power is derived from the royal prerogative, the remnants of monarchical power that are wielded largely by ministers and officials (see Sections [1.2.2](#) and [2.4.3](#)). Curiously, given the doctrine of parliamentary sovereignty, royal prerogative powers have, by definition, never been approved by parliament, although parliament can, in theory override prerogative powers by issuing statute. Much legal authority is derived from parliament, either through powers conferred via acts of parliament or by the delegated authorities they create. However, there is a debate about where the authority of parliament is derived from, and what are the limits upon it. Could it, for instance, legislate to abolish the separate legal system of Scotland or would this be without its authority (Wicks, 2006)? Finally, the judiciary itself can be seen in practice as making law through the decisions it arrives at. The precise source and nature of its authority is again a matter of contention. Some hold that the basis of all constitutional legitimacy, even that of parliament, is recognition by the courts; while others maintain that parliament is the ultimate authority (Goldsworthy, 2010). Without a constitutional text to refer to, such debates are difficult to hold, let alone resolve.

With these considerations in mind, in the following section we assess:

- the extent to which the rule of law extends throughout the UK;
- how far public office holders are subject to the rule of law and transparent enforceable regulations;
- the independence of the judicial system;
- the extent of access to justice and due process;
- the impartiality and equitability of the criminal justice and penal systems;
- public confidence in the effectiveness and fairness of the legal system.

In the previous Audit (Beetham et al., 2002) we noted concerns about the implications of the doctrine of parliamentary sovereignty and the practical fact of executive dominance for the rule of law; and about restrictions on the territorial reach of the law, including in Northern Ireland. We noted the looseness of the application of the rule of law to public officials and expressed the hope that the Human Rights Act 1998 would come to make a difference in this respect. The Audit also drew attention to the lack of separation of powers in the UK, and in particular the office of lord chancellor, which combined legislative, executive and judicial functions. We expressed concerns about the ability of the legal aid system adequately to provide support for all those who needed it; about discrimination in the criminal justice system, especially with regard to the use of stop and search powers; and over public confidence in the legal system.

In the present Audit, we find some improvements have taken place. The Human Rights Act 1998 has extended the scope of judicial review significantly. The Constitutional Reform Act 2005 has introduced statutory protection for the rule of law, including judicial independence, and established a UK Supreme Court. There is also qualified evidence of falling levels of at least some types of crime; and of increasing levels of confidence in the legal system. At the same time basic constitutional problems involving possible contradictions between parliamentary sovereignty and the rule of law remain. The scope of judicial human rights review and other forms of judicial review is circumscribed. The precise difference that a Supreme Court will make is as yet unclear. The legal aid system continues to undergo serious strains; and we are concerned about the use of secret evidence in judicial processes. We remain worried about the possibility of discrimination in the criminal justice system. Confidence in the legal system appears still to be below the level it was at three decades ago; and the international performance of the UK in this respect is only moderate.

### 1.2.1 Rule of Law

How far is the rule of law operative throughout the territory?

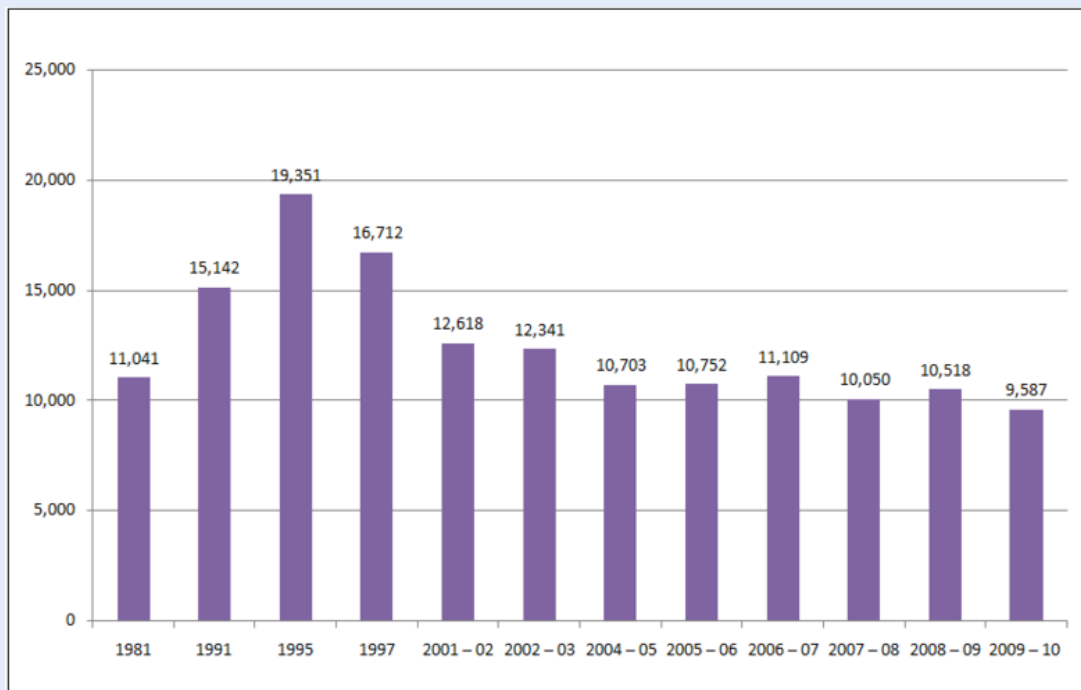
A crucial component of the rule of law is that it applies universally. The fulfilment of this condition requires not only that the government and citizens are equally subject to the law; but that law and order is upheld throughout the country, and that there are no areas where it is significantly compromised, therefore depriving some individuals of the full benefits of the rule of law. Data on the incidence of crime provide some indication as to the extent to which the rule of law is maintained, though it is necessary to recognise their limitations. Qualitative evidence is also available, which as we discuss points to problems with the maintenance of the rule of law, particularly in Northern Ireland.

The two main sources of crime data for England and Wales are police recorded crime and the British Crime Survey (BCS). The existence of two different sets of official figures in itself has been said to produce confusion. Both source have their weaknesses and have difficulty in commanding full public confidence. The advantage of police recorded crime as a source is that it includes all crimes on the 'Notable Offence List', which comprises both crimes involving a specific victim (such as violent and acquisitive crime) and so-called 'state-based' crimes (such as drug possession). However, police recorded crime has weaknesses as a means of measuring the pervasiveness of the rule of law. The figures can fluctuate substantially according to whether or not the police become aware of crimes; and how they record them. Particular criticisms have also been raised about the extent to which recorded crime statistics can ever recognise the incidence of so called 'white collar crime', such as fraud, insider trading and money laundering, much of which goes undetected and unpunished (Croall, 2001).

The BCS has certain advantages over police recorded crime. Based on a survey of 46,000 households, it is derived from members of the public's accounts of their experiences of crime and therefore includes within it crimes that are not reported to the police. It produces higher estimated levels of crime than the police figures. But the BCS too has limitations that should be acknowledged. It does not cover drug crime or crime directed at businesses, and neither does it include crimes which may be committed in a corporate or 'white collar' context (Croall, 2001). In addition, the BCS does not include incidents of anti social behaviour, though in some cases such behaviour may in fact be criminal. It accepts that behaviour is criminal on a basis of descriptions from respondents, without a need for proof. Nonetheless the BCS provides data running over a period of three decades that is at least a useful indicator of certain trends. The two different types of data should as far as possible be considered together to create an overall picture ([National Statistician, 2011](#); [Chaplin et al., 2011](#)).

Notwithstanding the civil disturbances of August 2011, the BCS suggests that overall crime has reached historic low levels, with even the incidence of an economic downturn in recent years not, as was expected, leading to an increase. Since the BCS was initiated in 1981, it recorded crime rising steadily, peaking in 1995. The trend was then downwards. In 2010-11 there was a rise, but not of statistical significance (see Figure 1.2a).

Figure 1.2a: Total number of crimes (000s) in England and Wales, 1981-2009/10



Source: [Flatley et al. \(2010, p. 28\)](#).

The Scottish equivalent to the BCS does not show any clear trend in the overall level of crime during the period since its inception in 1993. However there has been a sharp recent drop-off of 16 per cent between 2008-09 and 2010-11 ([Scottish Government, 2011](#)). The Northern Ireland version of the BCS has only been run continuously since 2005, so it does not provide the length of coverage available for England and Wales or Scotland. There was a fall of 45.4 per cent in the number of crimes between 2003-04 and 2010-11, though interrupted by rises in 2007-08 and 2009-10 ([Toner and Freel, 2011](#)).

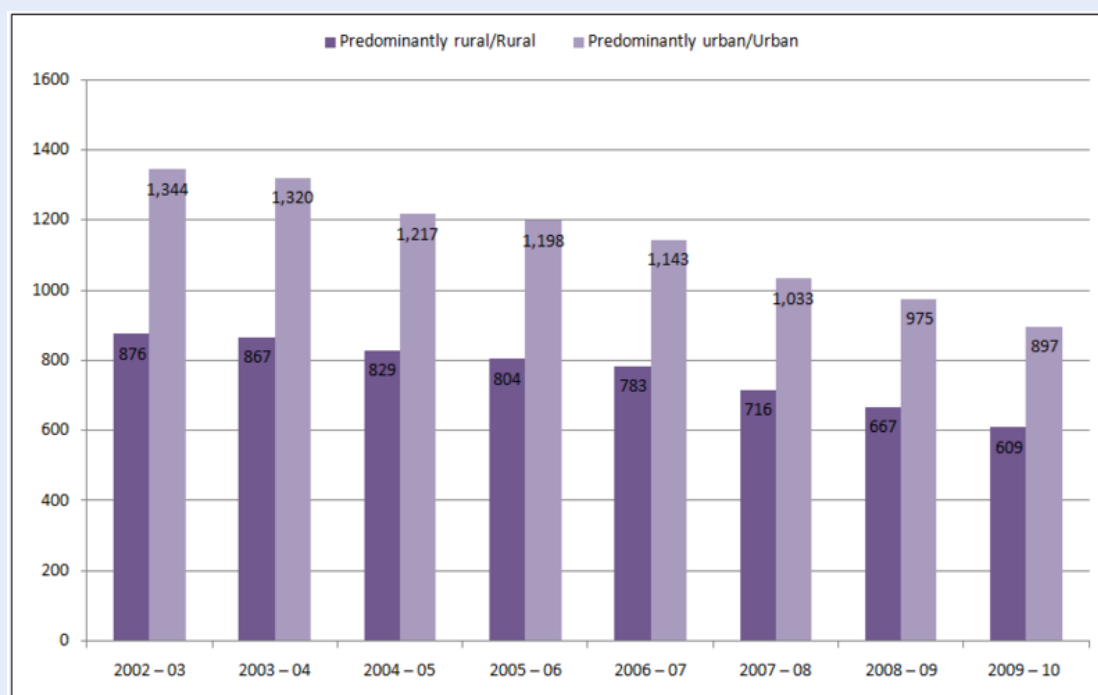
The downward trend suggested by the BCS is in line with international patterns. As noted in an official analysis of the BCS:

'in general, crime increased between 1988 and 1991 with a downward trend since 1996 across the developed world. The EU, Canada and Australia show similar trends with a "turning point" during the early to mid-1990s while in the US crime has decreased since 1988' ([Flatley et al., 2010, p. 3](#)).

Consensus is lacking about the cause of this apparent international drop in crime rates. A wide range of possibilities has been proposed by different analysts. Some of them suggest better performance by public agencies, in particular the police, in controlling crime. Others point to broader economic, social, lifestyle, environmental and cultural changes. Technology may have made some crimes, such as car crime, harder to perpetrate. It may also be that criminal activity, rather than reducing, has moved into areas not as well reflected in official figures such as electronic crime ([Farrell et al., 2010](#)). Yet, just about every attempt to explain these trends has been found wanting. As Farrell et al. (2010, p. 25) put it: 'The question *Why have crime rates dropped in most developed countries for the best part of a decade?* is one of childlike simplicity but arguably the biggest unsolved puzzle of modern-day criminology'.

While the overall trend in the BCS is one of falling crime, police recorded crime suggests significant geographical and social differentials exist in victimisation. As Figure 1.2b shows, residents of rural areas are significantly less likely to be victims of crime than those in urban areas. However, the gap between urban and rural crime rates has also narrowed significantly in recent years, owing principally to the sharp drop in recorded urban crime levels over the course of the 2000s.

Figure 1.2b: Average level of recorded crime in rural and urban police force areas, 2002/03 – 2009 /10 (crime per 10,000 of population), England and Wales



Source: [Flatley et al. \(2010, p. 176\)](#).

Another clear tendency from the BCS is for households in deprived areas to be more likely to be subject to crime than households in less deprived areas. Figure 1.2c illustrates that levels of crime tend to be significantly higher in the most deprived English areas than in the least deprived areas (for the definition of these areas, see the note under Figure 1.2c) although, again, there is some evidence to suggest that the gap may have narrowed over the course of the past decade, owing largely to the reduction in crime in the most deprived areas.

Figure 1.2c: Incidence of BCS household crime rates by level of deprivation in England, 2001/02 - 2009/10 (crimes per 10,000 households)



Note: Lower Layer Super Output Areas (LSOAs) are small geographical units used for statistical purposes, particularly the measurement of social deprivation. There are 32,482 LSOAs in England, each with a population of around 1,600 in 2010. The graph compares crime rates in the 20 per cent most deprived LSOAs in England with the 20 per cent of LSOAs with the lowest levels of social deprivation.

Source: [Flatley et al. \(2010\)](#).

The conclusion we draw from a consideration of the statistics on crime is that evidence exists that the rule of law, as manifested in the upholding of law and order, has become more effective. However, this view should be qualified by the methodological problems involved in measuring crime and the fact that many forms of crime, particularly those perpetrated by the most powerful, may go undetected. Moreover, there is evidence that, in England and Wales, there are differentials in the incidence of crime across geographical areas as defined according to different characteristics. Households in urban and less affluent areas seem more likely to be subject to crime. In these senses the pervasiveness of the rule of law throughout the territory is circumscribed.

### ***The Rule of Law in Northern Ireland***

Even if crime is seemingly in overall decline in the UK, particular cultural issues can give cause for concern about the resilience of the rule of law. We have noted the evidence of declining overall crime in Northern Ireland. Moreover, according to the Northern Ireland Crime Survey and the BCS, the danger of an individual being a victim of crime is lower in Northern Ireland than in England and Wales (12.6 per cent and 21.5 per cent respectively for 2010-11). However concerns about the operation of the rule in law in Northern Ireland, related to the security situation there, are long-standing. While in recent years levels of paramilitary activity in the province have fallen dramatically (see Section 2.5.4), concerns remain that paramilitary organisations remain active in relation to various forms of organised crime. The Northern Ireland Affairs Select Committee has identified connections between paramilitaries and organised crime (see Case Study 1.2a) and this view is also strongly reflected in public opinion in the province (see Section 2.5.4).

### **Case Study 1.2a: The House of Commons Northern Ireland Affairs Committee report, Organised Crime in Northern Ireland**

The House of Commons Northern Ireland Affairs Committee report, [Organised Crime in Northern Ireland \(HC 2005-06\)](#), was

published in June 2006. It was based on more than six months work; and as well as taking evidence in more regular ways, the committee drew on 'a number of private unrecorded sessions and informal meetings' (p. 6).

The report noted that while 'the widespread paramilitary terrorist violence that has characterised much of Northern Ireland's recent history is no longer prevalent [...] the legacy of the paramilitaries continues to cast a shadow over the economy and society of Northern Ireland' (p. 7). The committee found that 'those paramilitaries who have been involved in perpetrating acts of terrorism continue to be involved, either as part of an organisation or as individuals, in organised criminality' (p. 10).

Areas in which the committee identified paramilitaries as being active included:

- Oils fraud;
- Cigarette smuggling;
- Intellectual property crime;
- Illegal dumping;
- Social Security Fraud;
- Armed Robbery;
- Drugs; and
- Human Trafficking.

The committee noted receiving evidence 'about the unusual alliances between paramilitary organisations, including between republicans and loyalists, which were formed for certain specific, often drug related, organised criminal activity' (p. 11). It stated:

'We are deeply concerned by the control which paramilitary groups from both communities continue to exercise over those communities, the fear that this creates and the attendant negative consequences that this has for the reporting of organised crime' (p. 12).

The committee also concluded that there was potential for such crime to de-stabilise the peace process as a whole (p. 12).

## 1.2.2 Public Officials

To what extent are all public officials subject to the rule of law and to transparent rules in the performance of their functions?

It is essential to democracy that governments have the legal authority to act. They must be able to implement policy programmes upon which they were elected, and provide the public services that are required for the functioning of a meaningful democratic environment. Consequently, various powers are conferred upon ministers, officials and other representatives of government at all levels. Primarily these powers are conferred by parliament (Klug et al., 1996). Acts of parliament may establish specific powers, or create the ability to make policy through secondary legislation, which is subject to varying degrees of parliamentary oversight, often negligible or non-existent (see Section [2.4.2](#)). Another set of powers exist under the royal prerogative. Though formally belonging to the monarch they are wielded in practice by ministers and officials at central government level (and to a limited extent at devolved level). These powers have not been approved by parliament, which largely has no formal role in their exercise (see Section [2.4.3](#)).

It is essential to the rule of law that the powers conferred upon public office holders are exercised in accordance with democratic values; and that those who use them must not exceed their legal authority when doing so. To ensure that powers are wielded appropriately, a system of judicial oversight is necessary; and clear rules about the conduct expected of public officials should be both publicly available and adhered to. The extent to which both requirements are fulfilled in the UK is considered in this section.

### ***Judicial review of official action***

The primary means in the UK through which official compliance with the rule of law can be sought is judicial review. The decisions of ministers and the process by which they are taken can be considered in the High Court. This review can be carried out on a number of grounds. First, consideration can be given as to whether an act was legal, that is whether it was within the existing legal powers, and whether it was directed towards the purpose for which those powers were intended. Second, there may be an assessment of the procedure followed and whether it was fair. Third, consideration can be given to whether a conclusion was reached in a reasonable fashion. Fourth, there can be an assessment of compliance with European law, as provided for under the European Communities Act 1972. Finally, courts can assess official compliance with the European Convention on Human Rights (ECHR), as incorporated into domestic law under the

Human Rights Act 1998 (HRA). This feature of judicial review became active only shortly before the beginning of the period covered by this present Audit and for this reason merits detailed consideration. Previously, the ECHR existed only as an external commitment, and rights existing under it could only be accessed through the European Court of Human Rights in Strasbourg. Case Study 1.2b lists the ECHR rights which are incorporated under the HRA. The principles which they seek to uphold are essential to the rule of law and the sustenance of democracy. Primarily they are civil and political rights such as the right to free expression and to freedom of assembly and association, all of which are clearly necessary to meaningful democracy.

### Case Study 1.2b: Convention rights as listed in Schedule 1 of the Human Rights Act 1998

#### Part I – The Convention Rights and Freedoms

Article 2 – Right to Life

Article 3 – Prohibition of Torture

Article 4 – Prohibition of Slavery and Forced Labour

Article 5 – Right to Liberty and Security

Article 6 – Right to a Fair Trial

Article 7 – No Punishment without Law

Article 8 – Right to Respect for Private and Family Life

Article 9 – Freedom of Thought, Conscience and Religion

Article 10 – Freedom of Expression

Article 11 – Freedom of Assembly and Association

Article 12 – Right to Marry

Article 14 – Prohibition of Discrimination

Article 16 – Restrictions on Political Activities of Aliens

Article 17 – Prohibition of Abuse of Rights

Article 18 – Limitation on Use of Restrictions on Rights

#### Part II – The First Protocol

Article 1 – Protection of Property

Article 2 – Right to Education

Article 3 – Right to Free Elections

The HRA requires government actively to seek not to contravene rights. It is made generally unlawful for any public authority to act in a way that is not compatible with the convention. Section 19 of the act states that the minister taking a bill through parliament must make a statement that it is compatible with the ECHR or, in exceptional circumstances, that it is not, but that the government intends to proceed with the Bill anyway. Internal Whitehall procedures exist for scrutinising the statements of compatibility ([Cabinet Office, 2011](#)).

Judicial review has in recent decades become an increasingly prominent feature of the UK constitutional landscape. The 1999 Audit

observed that, since the late 1970s, the courts have increasingly been willing to inquire into and condemn the activities of public officials (Weir and Beetham, 1999). The rise of judicial review has been assisted by the advent of the HRA. A review of the implementation of the act by the Department for Constitutional Affairs found that, while complete data was not available 'there is no doubt that a substantial body of case law has been generated' ([Department of Constitutional Affairs, 2006, p. 10](#)). The House of Lords, then the highest court in the UK, had considered the HRA in about a third of its cases during the first five and a half years of operation of the act, although it did not necessarily affect the outcome. The subject matter of cases was wide, including counter-terrorism; criminal law; sentencing; mental health; discrimination; and education. Research published four years later has shown the scope of its impact to have grown further still (Chakrabarti et al., 2010). The HRA has been argued to have had a cultural impact upon the behaviour of organisations, leading to more respect for the rights of vulnerable individuals in receipt of public services, without legal action necessarily being involved ([Mathews et al., 2008](#)).

Under judicial review courts are able to force administrative decisions to be reversed and made again, taking into account the views of the court. Courts may also strike down delegated legislation - which theoretically includes the legislation of devolved legislatures. However it is at this point that their powers generally end. In accordance with the doctrine of parliamentary sovereignty, the courts cannot normally strike down primary legislation (the very limited exception being acts of parliament that are incompatible with European law). Even if an act of parliament violates ECHR rights, the most a court can do is issue a 'declaration of incompatibility' under Section 4 of the HRA. It is then for the government and parliament to decide how to resolve the issue. It could however be argued that a constitutional convention is developing to the effect that once appeal routes have been exhausted, governments accept declarations of incompatibility; and act to correct them (see, for example, [Blick and Hennessy, 2011](#)). Indeed, there is a debate about the extent to which the traditional doctrine of parliamentary sovereignty has survived the advent of the HRA (Bogdanor, 2009; Kavanagh, 2009; Young, 2008). Nonetheless, the fact that courts do not, except under European law, strike down primary legislation is a key difference between constitutional arrangements in the UK and in many countries with 'written' constitutions, where courts are often able to declare primary legislation void if it is incompatible with the text of the constitution.

A further limitation on the effectiveness of judicial review is that the courts have a tradition of deference towards areas of decision making that it is felt are more the province of politics than legal inquiry. Often, decisions about foreign affairs and national security fall into this category. In particular, courts have proved wary of considering the exercise of the royal prerogative. While there has been a gradual increase in their willingness to involve themselves in overseeing this particular power, attempts to secure judicial review of the legality of the invasion of Iraq of 2003 - effected under the royal prerogative - proved unsuccessful (Bradley and Ewing, 2011).

The courts themselves have established a restriction on judicial review specific to the HRA. A study of the HRA conducted to mark the tenth anniversary since its passing into law described an important 'legislative frailty' in the act ([Donald, 2009, p. 185](#)). This frailty concerned a loophole that had developed, serving to exempt voluntary and private sector bodies providing publicly-funded services from being covered by the act. [Donald \(2009\)](#) held that, when parliament was passing the act, it was clear in its intention that non-public providers of public services would be included. But case law had served to reduce the reach of the act. This position was partly corrected when Section 55 of the *Health and Social Care Act 2008* defined private care homes carrying out publicly funded care as public authorities under the HRA. But it did not deal with other non-public bodies providing publicly funded services.

Finally, it is also important to note that, when the impact of the Human Rights Act is considered in tandem with devolution policy, a complex picture is revealed. As Case Study 1.2c shows, there are some inconsistencies in the way in which human rights are enforced in the UK. Moreover, the embedding of the ECHR in the Belfast Agreement, an international treaty, means that its legal status in Northern Ireland is based on more than just the HRA alone. Indeed, it can be argued that any attempt by the UK government to depart from the provisions of the HRA (see Section [1.1.3](#)) would have to involve the exemption of Northern Ireland, and possibly also Scotland.

### Case Study 1.2c: Human rights and devolution

Because human rights is such a broad framework affecting many aspects of state activity, human rights law has a complex relationship with devolution, most acutely in Northern Ireland but also in Scotland. As the organisation Justice argues in its analysis, the HRA has combined closely with the statutes providing for devolution to create a 'symbiotic relationship in the protection of human rights' ([Rasheed, 2010, p. 3](#)).

The Belfast Agreement of 1998 is an international treaty, and it included a provision that the British government would 'complete incorporation into Northern Ireland law of the European Convention on Human Rights (ECHR) with direct access to the courts, and remedies for breach of the convention, including power for the courts to overrule Assembly legislation on grounds of inconsistency' ([Belfast Agreement, 1998](#)). If a UK government sought in some way to depart from the ECHR - including its applicability in domestic courts and administrative law - the international legality of doing so for Northern Ireland would therefore be questionable.



The Northern Ireland Human Rights Commission (NIHRC) has been mandated under the Northern Ireland Act 1998 (which implemented the Belfast Agreement) to advise the secretary of state on additional, specific rights to include in a Northern Ireland Bill of Rights. Discussions have also continued between the NIHRC and its counterpart in the Republic of Ireland about a Charter of Rights for the island of Ireland, which would incorporate protections found in both the UK HRA and the 2003 act which incorporated the ECHR into Irish law, and involve further provisions. Their joint advice was published in June 2011 ([Northern Ireland Human Rights Commission/Irish Human Rights Commission, 2011](#)).

The long delay in writing further rights in Northern Ireland has been produced by a lack of consensus. In 2009 the UK government rejected most of the framework of additional rights proposed by the NIHRC in 2008 as not being specific to Northern Ireland. The process has lacked domestic consensus as well, with the unionist community feeling excluded. The legitimacy of the UK government legislating on human rights in Northern Ireland without the consent of the Assembly and Executive, and the various signatories to the Belfast Agreement, is questionable.

Neither the Northern Ireland nor Scotland devolution acts make human rights a 'reserved' matter under the control of Westminster. Thus – again arguably – the Scottish parliament and Northern Ireland assembly may choose to legislate separately from Westminster. In strict legal terms, Westminster may legislate over the head of the parliament and assembly, but a constitutional convention has developed that it legislates in devolved areas with the express consent of the devolved assembly through 'Sewel Motions'. Devolved institutions are banned, under their founding statutes, from acting in breach of 'convention rights' and those are interpreted as having the same meaning as the HRA. The 'observation and implementation' of convention rights, however, is devolved.

A further complication is that both in Scotland and Northern Ireland there exist statutory bodies to monitor and enforce human rights: the NIHRC under the Northern Ireland Act 1998 and the Scottish Human Rights Commission (SHRC) by act of the Scottish parliament in 2006. Both have greater powers than the Equality and Human Rights Commission, which operates in England and Wales.

Current Scottish government policy is not sympathetic to altering the HRA. It appears unlikely that in Scotland or in Northern Ireland consent by Sewel motion would not be obtained for a Bill of Rights that is smaller than the ECHR.

In conclusion, enforcement of human rights is already inconsistent across the UK; the bodies existing in Northern Ireland and Scotland have powers in excess of those of the Equalities and Human Rights Commission for England and Wales. There has been a long process to extend human rights in Northern Ireland which has not yet concluded, and is legally based on more than just the HRA. Departure by the UK government from the provisions of the HRA would involve either the exemption of Scotland and Northern Ireland (hence the British Bill of Rights would become an 'England and Wales Bill of Rights'), or a constitutional and political crisis that would test the devolution settlement.

Main source: [Rasheed \(2010\)](#).

The ability of the courts to review executive action is clearly essential to the sustenance of democratic values. The Audit welcomes the increase of judicial activism in this area that has taken place in recent decades; and the extension of its scope directly into the protection of human rights marked by the HRA. However, we note that the ability of the courts to prevent behaviour potentially undermining to the rule of law is limited. If, in another territory, legislation was issued which clearly violated constitutional principles, it could be ruled incompatible with the constitution and therefore void. This option does not exist in the UK. We remain concerned that certain powers - particularly those exercised under the royal prerogative - remain to a considerable extent resistant to judicial scrutiny. We also regard it as regrettable that a loophole has developed in the coverage of the HRA, exempting some bodies from being defined as public authorities despite clearly providing public services. Given the growing commitment to private sector and voluntary involvement in public service provision under the coalition government, this gap in human rights coverage is if anything a growing concern, since it means that some of the most vulnerable groups may not receive the protection they need. Finally, we should note that, as considered in Section [1.1.3](#), consensus about the future of the HRA is absent, with some arguing that it should be substantially modified or possibly abolished. If such a change was to lead to an undermining of the ability of individuals to access their human rights, which it seems likely that it would, it would be regrettable. Moreover, it would be highly destabilising for the UK, given the position in Scotland and Northern Ireland; and probably incompatible with international law.

### **Transparency of rules**



A number of official documents have appeared in recent years which offer guidance on the appropriate conduct of public officials. Some of these codes exist on a non-statutory basis, such as the Ministerial Code ([Cabinet Office, 2010b](#)); while others have a foundation in an act of parliament, such as the Civil Service Code, first promulgated in 1996 and provided with a statutory basis by the Constitutional Reform and Governance Act 2010 ([Cabinet Office, 2010a](#)) (see Sections [2.3.2](#) and [2.6.1](#)). They are largely drawn up inside the executive, with minimal outside involvement.

These documents tend to include a variety of provisions, such as descriptions of practice, rules about financial probity, and general statements of principle. For instance, the Ministerial Code contains stipulations about the operation of cabinet, relations between ministers, civil servants and special advisers, the private interests of ministers and the presentation of policy ([Cabinet Office, 2010b](#)). Some of the provisions contained in these codes, such as the Cabinet Manual's description of the procedures to be followed in the event of a general election which yields no overall single party majority in the House of Commons, would normally be expected to be found in the text of a written constitution, if such a thing existed for the UK ([Cabinet Office, 2011](#)).

Parts of these codes can receive wide public attention when they are deemed to be relevant to particular public controversies, such as scandals involving ministers. But it is often difficult to detect how systematically they are adhered to. If an individual - in particular a minister - is seen clearly to be in violation of a code, the main sanctions against them appear to be political. It is possible, however, that the judiciary could come in future to use codes such as the Cabinet Manual in judicial review, in order to assess whether public authorities had behaved appropriately in a particular circumstance (see [Blick and Hennessy, 2011](#)).

The Audit welcomes the increased public appearance of documents providing accounts of the various rules according to which public officials and ministers are supposed to operate. However, as largely executive owned documents, they do not possess the independent status that proper oversight requires. Moreover, the vague nature of these texts is symptomatic of the informal status of the UK constitution, which - while it can aid flexible operation, particularly for the executive - leaves unanswered questions about the means by which public authorities can be made to adhere to key principles such as the rule of law. In so far as they provide for important components of the constitution, it would be better if they were provided for at least on the face of an act of parliament, or perhaps in a written constitution.

### 1.2.3 Judicial Independence

How independent are the courts and the judiciary from the executive, and how free are they from all kinds of interference?

An independent judiciary and courts are essential to the upholding of the principle that the whole of society is subject to the law. Since a core component of the rule of law is that executive action can be subject to judicial review (see Section [1.2.2](#)), it is essential that government cannot exercise inappropriate influence over the deliberations of the courts. More generally, it is imperative to the sustenance of the rule of law throughout the UK that the judiciary is free from all forms of interference.

An assessment of how far the UK fulfils these requirements involves considering the constitutional provision which exists for judicial independence, including specific prohibition on political interference with the courts; how far the judiciary is institutionally and procedurally distinct from the executive; and the integrity of the judicial appointments process.

The UK has a long tradition of judicial independence. Judges are immune from civil action for the things they say in court. In practice they enjoy security of tenure. While they could in theory be forced out of office by parliament, this power would only conceivably be exercised in the most extreme circumstances. The law of contempt of court prohibits various forms of attempts at interference with the courts, for instance through publishing information in the press; or preventing the courts from receiving pertinent information. In theory parliamentary rules restrict criticism of judges and commentary on ongoing cases. There is a strong convention that judges should not be seen to be engaged in party political activity (Bradley and Ewing, 2011). Moreover, judicial impartiality is required by Article Six of the European Convention on Human Rights (ECHR), which stipulates the right to a fair trial (Barnett, 2011). One of the impacts of this Article is to interact with the common law principle that judges should not be biased, either because of their personal interests or connections, or their personal opinions. But while the courts are generally free of direct interference with their consideration of particular cases, according to the doctrine of parliamentary sovereignty, parliament - which acts under the powerful influence of the executive - is able, if it chooses, to reverse judicial decisions to which it objects, through legislation. Ultimately, the judiciary cannot resist the will of the executive as expressed via primary parliamentary legislation since it cannot strike it down, even if it appears to violate fundamental constitutional values (Klug et al., 1996; Weir and Beetham, 1999). Moreover, the UK has no formal constitutional separation of powers. The executive, legislature and judiciary are in significant ways fused with each other.

During the present Audit period, the legal basis for judicial independence was recast to an historic extent by the Constitutional Reform Act (CRA) 2005. This act brought about significant changes to the ancient office of lord chancellor, though did not fully abolish it (it is now merged with the post of Justice Secretary). Traditionally the post was an important component of the fusion of powers in the UK. Lord

chancellors were the most senior judges in the UK and the head of the judiciary in England and Wales, making numerous judicial appointments. They were at the same time members of the cabinet, owing their position to the patronage of the prime minister of the day, playing a part in legal policy formation and implementation. Finally, lord chancellors were speakers of the House of Lords (Beetham et al., 2002). In 2003 the government announced that it intended to abolish the lord chancellorship completely, but eventually this plan proved too complicated to affect. Under the CRA 2005, the lord chancellor ceased to be a judge; and was no longer Speaker of the House of Lords, with the act providing for the election of a lord speaker. The first holder of this new post was elected in July 2006 (Slapper and Kelly, 2011).

Section three of the CRA 2005 created a requirement to uphold judicial independence applying to the lord chancellor and other government ministers, and all those with responsibility for the judiciary and the administration of justice. Importantly, the act stipulates that ministers should not use their privileged access to set out to influence particular decisions by the judiciary (Bradley and Ewing, 2011). The act made a similar stipulation, applying specifically to Northern Ireland, in Section four. Section one of the Judiciary and Courts (Scotland) Act 2008, an act of the Scottish parliament, also requires a number of senior figures, including all Scottish ministers, the first minister, and members of the Scottish parliament, to uphold the independence of the judiciary.

The CRA 2005 also significantly reduced the role of the executive in the appointment of judges. The strict position is that judicial appointments are made by the crown. Before the CRA 2005, the prime minister made recommendations on the most senior appointments; with the lord chancellor recommending or making appointments at lower levels (outside Scotland). The CRA 2005 established a Judicial Appointments Commission, which makes recommendations on appointments to the lord chancellor. Only those it recommends can be appointed; though the lord chancellor possesses the power to reject candidates once and ask that the Commission reconsider its recommendation once. Ultimately, however, the commission can have its way (Slapper and Kelly, 2011). A Northern Ireland Judicial Appointments Commission was established in 2005. Its powers were expanded in 2010 after the devolution of policing and justice. It makes recommendations for appointments to the crown through the lord chancellor. In Scotland, where justice is devolved, there has existed a Judicial Appointments Board, which makes recommendations to the first minister, since 2002. It was given a statutory basis in 2008.

Finally, the CRA created an independent, 12-member UK Supreme Court, supplanting the House of Lords as the highest court in the UK. The Supreme Court also assumed from the Judicial Committee of the Privy Council responsibility for resolving disputes involving devolved administrations. The Court became operational in 2009. Members of the Supreme Court cannot sit in the House of Lords, even if they hold peerages (until they retire from the Supreme Court, whereupon they can take up their places in the Lords again) (Slapper and Kelly, 2011).

Another reform contemplated but not executed in recent years has been to the office of attorney general. Attorney generals hold ministerial office and are party political appointments made by the prime minister. At the same time they act as the senior legal adviser to the government; and senior law officer within it. They also make important decisions about whether to proceed with certain prosecutions. Lord Goldsmith, who was attorney general at the time of the invasion of Iraq in 2003, has been associated with particular controversy for his role in advising on the legality of the operation. In 2007 the government consulted on the possibility of distancing some of the functions of the attorney general from a political appointment, but no progress was made subsequently ([Attorney General's Office, 2007](#)).

The Criminal Justice Act 2003 addressed another threat to the independence of the courts, arising from jury tampering. The act made it possible for trials in England and Wales to be held without a jury in cases where there was a risk of such intervention taking place. The implications of this measure for principles of due process are discussed below (see Section [1.2.4](#)).

A number of criticisms were made of the changes entailed by the CRA 2005. Objections were raised to the way in which they were initially announced in 2003 without prior consultation. There were concerns that such a large set of reforms were being brought about simultaneously. Doubts were also expressed about whether the measures included in the CRA 2005 were needed, with some believing the existing system was functioning satisfactorily. Finally, some were worried about the alterations to the office of lord chancellor possibly denying the judiciary a powerful representative within the cabinet ([Constitutional Affairs Select Committee, 2004a](#); [Oliver, 2004](#)). It might also be noted that, although the CRA 2005 created a statutory requirement for ministers not to use their special access to influence particular decisions, cabinet members have in recent years shown themselves more than willing to criticise particular judicial decisions once they have been made; and make more generalised attacks on the judiciary (Bradley and Ewing, 2011).

But the nature of the old office of lord chancellor had long been identified as problematic for judicial independence, because it entailed an overlapping of the judiciary, legislature and executive (Beetham et al., 2002, p. 27). Gary Slapper and David Kelly argue that the position of the lord chancellor 'was clearly founded on fundamental conflicts of interest [...] In this regard, the changes introduced by the Constitutional Reform Act 2005 can be seen to be not only pertinent, but also timely, in their endeavours to address an issue before it became a problem' (Slapper and Kelly, 2011, p. 397). The government presented the CRA in general as part of a constitutional modernisation programme; and achieving an independent, more transparent judiciary ([Constitutional Affairs Select Committee, 2004a](#)).

The Audit broadly welcomes the CRA 2005. We see the reforms to the role of the office of lord chancellor and the establishment of the

Judicial Appointments Commission (and equivalent bodies for Northern Ireland and Scotland) as strengthening the principle and practice of judicial independence. We approve also of the establishment of the UK Supreme Court. It is not a full constitutional court and possesses few powers in addition to those that were wielded by the law lords. However, it represents another important separation of the judiciary from the legislature - again significant from the point of view of democratic principle. Moreover, the mere fact of the Supreme Court clearly being separate from parliament, and occupying its own premises, may lead to its development in ways which are at present hard to predict, but are likely to involve more judicial autonomy in the UK. We note, however, that the initial announcement of these valuable changes was badly handled and not subject to consultation. Furthermore, judicial independence does not yet enjoy the entrenched protection that it might under a written constitution. The Audit also regrets that the opportunity was not taken to reform the office of attorney general recently, since it is characterised by some of the anomalies that were once associated with the lord chancellor. We also urge that ministerial attacks on the judiciary should be curtailed.

### 1.2.4 Citizens Access to Justice

How equal and secure is the access of citizens to justice, to due process and to redress in the event of maladministration?

It is clearly necessary, if the rule of law is to be fulfilled, that all within a society should have access to justice if they require it, in order to ensure that their rights within the democratic system are upheld. Article Six of the European Convention on Human Rights (ECHR), as incorporated under the Human Rights Act 1998, is now an important source of this fundamental right. It involves individuals being able to access both representation, regardless of their personal means, and to be subject to fair legal processes. However, a defined right of access to justice does not mean that all citizens have equal access to it in practice. As a former senior law lord once put it, 'It has been said, with heavy irony, that justice in the UK is open to all, like the Ritz Hotel' (Bingham, 2010, p. 86). Given the costs of undertaking legal action, the availability, or otherwise, of legal aid is a particularly important factor in determining the extent of access to justice.

#### **Legal Aid**

In a developed society such as the UK the complexity of the law serves to limit the citizen's access to justice. The overall rise in the volume of parliamentary legislation is detailed elsewhere in this Audit (see Section [2.4.2](#)). In a common law territory, the complexity is further compounded by the volume of so-called 'judge-made law'. Finally, under the European Communities Act 1972, European Union law is given effect in the UK, making the overall picture more complicated still. Persons seeking access to justice, who are not themselves legal experts, will therefore need to acquire professional representation, which does not come cheaply (Bingham, 2010).

Article Six of the ECHR requires that an individual who cannot afford representation should have it provided for them if to do so is necessitated by the interests of justice. But a previous UK Audit has noted that the principle of equality before the law has never:

'meant equality of access to the law in the United Kingdom. Even the most obvious pre-requisite of such access - the provision of legal aid to enable those otherwise unable to pursue their rights in the courts - is not available for all types of case and has been subject to sharp financial reductions in recent years' (Klug et al., 1996, p.90).

During the present Audit period a major change was instigated to legal aid in England and Wales by an official report by Lord Carter of Coles: *Legal Aid - A market based approach to reform* (2006). The underlying purpose of the review was to achieve reductions in the rising costs of legal aid. As its title suggested the report proposed a shift to a free market system for the provision of legal aid. Carter envisaged that lawyers would have to compete with each other to secure contracts for providing criminal legal aid work; and that they would be paid on a fixed basis rather than according to time spent on cases. Carter's proposals are being phased in over a period of time (Slapper and Kelly, 2011).

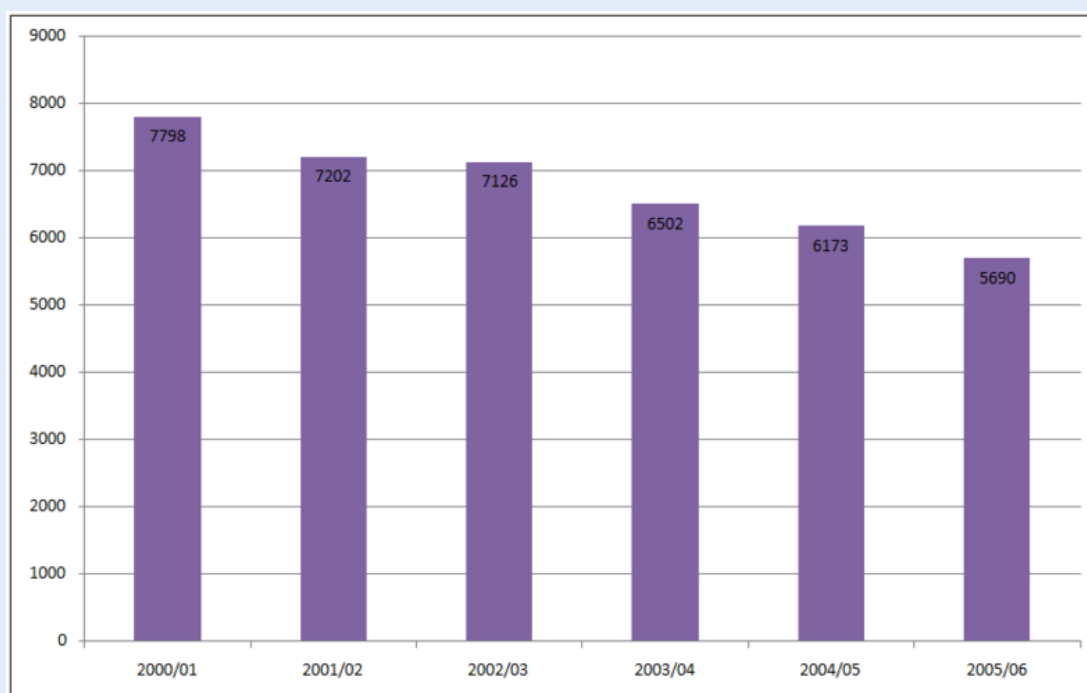
Further impact on legal aid will be felt in England and Wales as a result of the coalition government's retrenchment programme, which is intended to reduce legal aid costs by £350 million a year. It sets out to achieve these aims by moving some areas of law either partly or wholly outside the scope of legal aid. These include large portions of the family law aspects of legal aid, except in cases where violence is taking place ([Justice Committee, 2011](#)).

During the period under consideration in this Audit, the House of Commons Constitutional Affairs Select Committee and its successor, the Justice Committee, have carried out a number of inquiries into the legal aid system. In its first report on this subject during the current cycle, on civil legal aid, the Constitutional Affairs committee noted various concerns ([Constitutional Affairs Select Committee, 2004b](#)). A bureaucratic form of auditing introduced in 1999 known as 'cost compliance' was widely criticised as penalising some more professional firms and rating more highly those who were less trusted. The committee held that solicitors were not being adequately recompensed for their efforts. There were problems with recruiting young new entrants into legal aid work. Work on criminal and asylum cases had produced pressure on the civil legal aid budget; and the government was resistant to providing extra funding. Finally, the needs of many in society

were not being sufficiently provided for, 'often among those who are most vulnerable' ([Constitutional Affairs Select Committee, 2004b, p. 42](#)).

In the same 2004 report, the committee identified some underlying concerns about the legal aid system. It found that while '[n]o country spends more money per capita on legal aid than England and Wales [...] over the last decade [the system] has come under considerable financial strain' (p. 7). The number of 'acts of assistance' was increasing (p. 16). But fewer solicitors held civil legal aid contracts with the Legal Services Commission (LSC, which is responsible for the legal aid system): with those figures dropping from 4,854 in 2001 to 3,632 in March 2006. There is another way of analysing the overall decline in solicitors' involvement in legal aid. Since firms usually hold contracts for more than one classification of law, rather than considering simply how many firms held a contract of some kind with the LSC, the total number of contracts held across the 12 different legal categories can be assessed. There was a steady overall decline, as Figure 1.2d shows, which amounted to 30 per cent over the period.

Figure 1.2d: Civil contracts held in all categories of law, excluding for personal injury



Source: [Constitutional Affairs Select Committee \(2007, p. 15\)](#).

However, behind this headline figure, some categories rose dramatically, such as public law (by 411 per cent); and community care (181 per cent). The three largest percentage drops were recorded by consumer law (79); employment law (46); and debt law (35). The figures provided by the committee did not include contracts held in the personal injury category.

Evidence exists that one consequence of this overall downward trend was that, in some parts of England and Wales, insufficient legal aid services were available. For instance, mental health services were apparently lacking in East Anglia, Hull and North Yorkshire; while there was said to be a lack of criminal legal aid in South West England, South West Wales, and North East England.

Responding to the implementation of the proposals made by Lord Carter in 2007, as described above, the Constitutional Affairs Committee criticised the policy as having been introduced 'too quickly, in too rigid a way and with insufficient evidence'. The system as a whole was being changed to deal with rising costs. Yet the only serious increases in legal aid costs were limited to public law cases involving children; and Crown Court defence work ([Constitutional Affairs Select Committee, 2007, p. 4](#)).

The coalition cuts to legal aid have been a wide source of concern. In spring 2011, the Justice Committee described them as 'fundamental, extensive and bold'. It raised particular concerns about the plans to remove many areas of family law from legal aid, apart from where domestic violence was taking place. The Committee was 'not convinced that using domestic violence as a proxy for the most serious cases is advisable [...] If the Government does continue to use domestic violence as a criterion for eligibility, it should broaden the definition to include non-physical domestic abuse' ([Justice Committee, 2011, p. 31](#)). Gary Slapper and David Kelly have argued that '[t]he overhaul of

the [...] legal aid scheme will mean that people will be forced to settle divorce disputes out of court and to take out private legal insurance to pursue their claims. Vulnerable citizens will be likely to suffer...' (Slapper and Kelly, 2011, p. 668).

Some serious systemic problems have been identified in the legal aid system of England and Wales. As noted by the Constitutional Affairs Select Committee, spending per capita has been high - found by one study to be higher than any other comparable country. Yet, even before the present cuts, the system was struggling. Part of the answer to this puzzle may be that the legal aid system is often dealing with problems that arise from a failure to deal with issues earlier on in the process through the making and implementation of public policy, and through complaints and appeal processes operated by public bodies. Second, the legal system is structured in such a way as to create many formal occasions on which representation is required, even if producing little practical outcome. Third, unlike in some other territories, legal aid is contracted out to the private sector, rather than handled by public employees, which may lead to inflation of costs. Fourth, the government itself, through producing such large volumes of legislation, creates more cases which may necessitate the provision of legal aid ([Flood and Whyte, 2006](#)).

We note that problems with the effectiveness of the legal aid system in England and Wales are an ongoing issue of democratic concern. They can mean that some of the most excluded members of society can be denied access to an important part of the democratic system. Uneven coverage is problematic from the point of view of effectively securing the rule of law for all. It is clear that funding is not the only issue involved. There are other matters, touched upon elsewhere in this Audit, that create strains on a system that is required to handle social problems that have not been addressed earlier on. However, given its current difficulties, and given that the underlying social problems are not likely to be addressed in the immediate future, the present policy of retrenchment can be assumed to create more problems still.

### ***Due process and redress***

The common law and Article Six of the ECHR establish the various fundamental principles of due process. Individuals are entitled to a fair public hearing: to be informed promptly of the case against them; to examine or have examined witnesses against them; and to represent themselves or be represented by a counsel of their choice. These principles have been tested in recent years by the increased use of secret evidence and special advocates, as Case Study 1.2d sets out.

#### **Case Study 1.2d: Special advocates and secret evidence**

A special advocate is, in the words of the House of Commons Constitutional Affairs Select Committee ([2005, p. 19](#)):

'a specially appointed lawyer (typically, a barrister) who is instructed to represent a person's interests in relation to material that is kept secret from that person (and his ordinary lawyers) but analysed by a court or equivalent body at an adversarial hearing held in private'.

The committee noted the view expressed by Lord Bingham in 2004 that ([2005, p. 26](#)) the use of special advocates raises:

'ethical problems, since a lawyer who cannot take full instructions from his client, nor report to his client, who is not responsible to his client and whose relationship with the client lacks the quality of confidence inherent in any ordinary lawyer-client relationship, is acting in a way hitherto unknown to the legal profession. While not insuperable, these problems should not be ignored, since neither the defendant nor the public will be fully aware of what is being done. The appointment is also likely to cause practical problems: of delay, while the special counsel familiarises himself with the detail of what is likely to be a complex case; of expense, since the introduction of an additional, high-quality advocate must add significantly to the cost of the case; and of continuing review, since it will not be easy for a special counsel to assist the court in its continuing duty to review disclosure, unless the special counsel is present throughout or is instructed from time to time when need arises. Defendants facing serious charges frequently have little inclination to co-operate in a process likely to culminate in their conviction, and any new procedure can offer opportunities capable of exploitation to obstruct and delay. None of these problems should deter the court from appointing special counsel where the interests of justice are shown to require it. But the need must be shown.'

A report by Eric Metcalfe of Justice ([2009, p. 5](#)), entitled *Secret Evidence*, drew the following conclusions:

- A person knowing the evidence against them was 'a basic principle of a fair hearing';
- This principle had 'been undermined' by the rapid growth in the use of secret evidence over the previous ten years;
- It was now possible to use secret evidence 'in a wide range of cases including deportations hearings, control orders proceedings, parole board cases, asset-freezing applications, pre-charge detention hearings in terrorism cases, employment tribunals and even planning tribunals';

- In some criminal cases, defendants were 'now being convicted on the basis of evidence that has never been made public'. There had been judgments issued by criminal courts with redactions to conceal some of the evidence used; and 'Evidence from anonymous witnesses has...been used in hundreds of criminal trials and is widespread in ASBO (Anti-Social Behaviour Order) hearings'; and
- Almost 100 special advocates had been appointed since 1997, although the government was not even aware precisely how many.

Sources: [Constitutional Affairs Select Committee \(2005\)](#); [Justice \(2009\)](#).

The right to trial by jury can be traced as a tradition stretching back in England as far as Magna Carta in 1215, and is therefore an important component of due process within this jurisdiction. However, this right is not provided for by the European Convention on Human Rights, nor is it established firmly by any other means. As noted above (see Section [1.4.3](#)), provision was made in 2003 for trials to be held without jury in England and Wales. There is a longstanding practice of jury-less trials in Northern Ireland, prompted by the security situation in the province. Despite the normalisation of circumstances there, the use of these so-called 'Diplock Courts' was extended once again this year by the Justice and Security (Northern Ireland) Act 2007 (Extension of duration of non-jury trial provisions) Order 2011.

Democratic Audit is concerned both about the use of secret evidence and special advocates; and the apparent erosion of the long-established principle of jury trials. Both of these tendencies challenge principles of due process, not only in UK legal traditions but also - in the case of secret evidence - as provided for by Article Six of the European Convention, incorporated into UK law by the Human Rights Act 1998. However, we note that the 1998 act itself has provided greater access to the law, through meaning that rights can be accessed in national courts rather than only through the European Court of Human Rights in Strasbourg.

The issues of redress in the event of maladministration are considered elsewhere in the Audit (see Section [2.3.4](#)).

## 1.2.5 Criminal Justice System

How far do the criminal justice and penal systems observe due rules of impartial and equitable treatment in their operations

It is important to the rule of law and its universality that the criminal justice and penal systems are required to treat all people equally; and that they observe such rules. The Human Rights Act 1998, incorporating the European Convention on Human Rights, prohibits discrimination which prevents the enjoyment of other rights under the convention. If, therefore, someone is denied a convention right by the criminal justice and penal systems on a discriminatory basis, their rights are being violated. For instance, if an individual is found to have been discriminated against in sentencing decisions then there has been a breach of Article Five, the right to a fair trial, in conjunction with Article 14 (Barnett, 2011).

As well as the rights contained in the convention, there are more specific protections intended to prevent arbitrary and, by extension, possibly discriminatory behaviour. For instance, generally in the UK the police power to stop and search requires reasonable suspicion that the individual concerned is in possession of various defined items connected with criminal activity (for exceptions under counter-terrorism powers, see Section [1.3.1](#)). Home Office guidance to police stipulates that reasonable suspicion cannot be based on stereotypical views of certain groups. Arrest may only be carried out either with a warrant, or because an offence has, is being, or will be committed by an individual; or because of the commission of a breach of the peace, a concept that has been defined under common law (Bradley and Ewing, 2011). Under the Criminal Justice Act 1991, the government is required annually to publish statistical information relevant to the issue of possible discrimination. The police were included within anti-discrimination legislation by the Race Relations (Amendment) Act 2000.

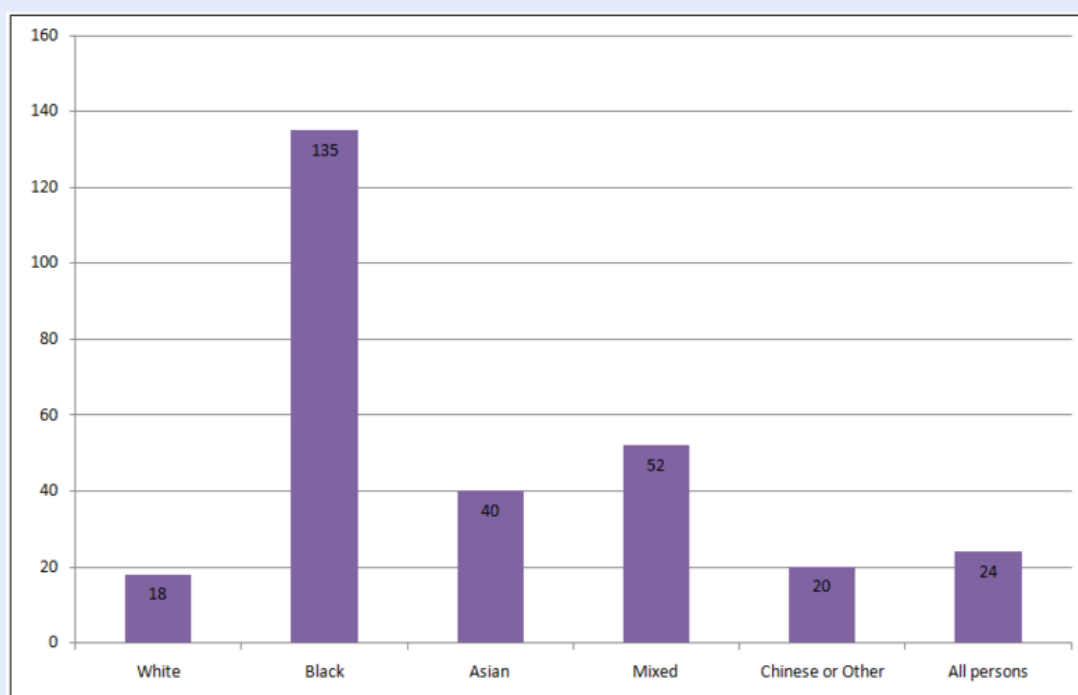
Concern about discrimination in the criminal justice and penal systems has often focused on evidence that people may be treated differently because of their physical appearance, and in particular their apparent ethnicity. The official inquiry into the murder of Stephen Lawrence, which reported in 1999, famously stated that the investigation was 'marred by a combination of professional incompetence, *institutional racism* and a failure of leadership by senior officers' ([Macpherson, 1999, Chapter 46](#), emphasis added). But what is the current position? The data that follow show that, in relation to overall population levels, certain groups with particular physical appearances are clearly overrepresented in police stop and searches; arrests; and in the composition of the prison population.

Figures for stop and search by the police may not be entirely reliable since it is possible that a significant number of stops are not recorded. However, they can be seen as providing a useful indication of practice ([Bowling and Phillips, 2007](#)). Black people are the most overrepresented group amongst those subject to stop and search (Figure 1.2e). While in 2008-09 the average rate of people stopped and



searched per 1,000 was 24, as many as 135 black people in every 1,000 were stopped and searched. White people had the lowest rate, at 18 per 1,000.

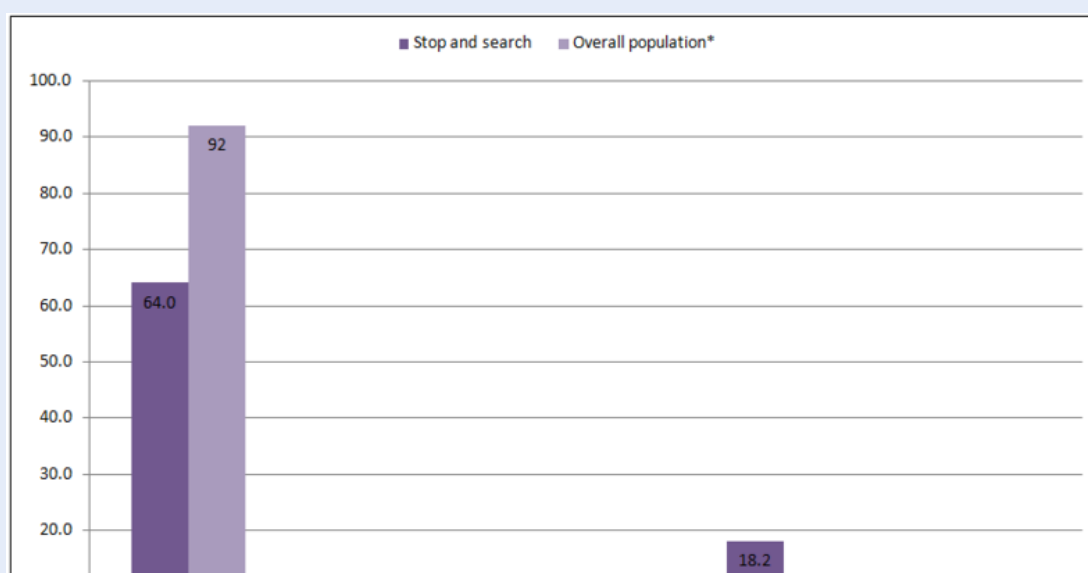
Figure 1.2e: Stop and search section 1 PACE and other legislation per 1,000 population, self-identified ethnicity, England and Wales 2008/9



Source: [Ministry of Justice \(2010, p. 24\)](#).

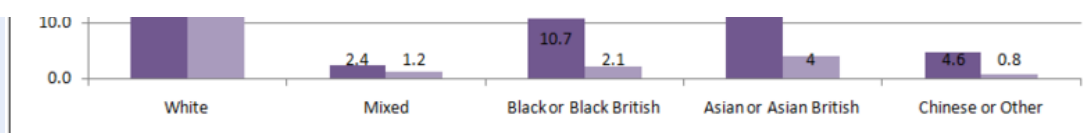
Asian people in particular are overrepresented in Great Britain in stops and searches under Section 44 of the Terrorism Act, as shown in Figure 1.2f. While whites make up 92 per cent of the population, only 64 per cent of those stopped under counter-terrorism powers were white. On the other hand, while Asians/British Asians make up only 4 per cent of the population, they accounted for 18.2 per cent of those stopped and searched.

Figure 1.2f: Percentage of stops and searches made in Great Britain under s44 (1) and (2) of the Terrorism Act 2000 by self-defined ethnicity, 2009/10





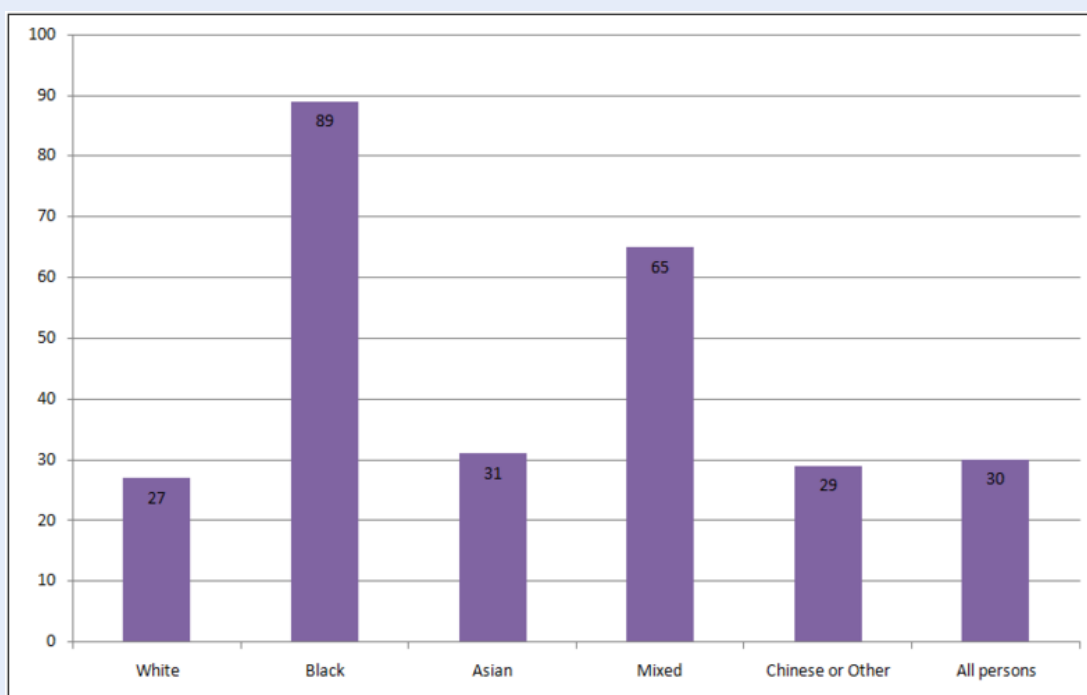
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Source: [Home Office \(2010a, p. 43\)](#).

Figure 1.2g shows that during 2008-09, whites had the lowest rate of arrest in England and Wales (27 per 1,000); while blacks had the highest (89 per 1,000). Those of mixed ethnicity were second highest (65 per 1,000). The other groups - Asian and Chinese or Other, came within one per cent of the overall rate of 30 per 1,000.

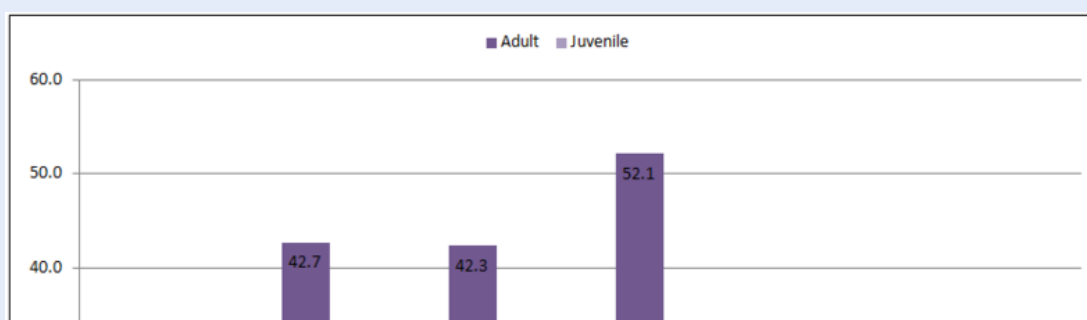
Figure 1.2g: Arrests per 1,000 population, self-identified ethnicity, England and Wales 2008/09



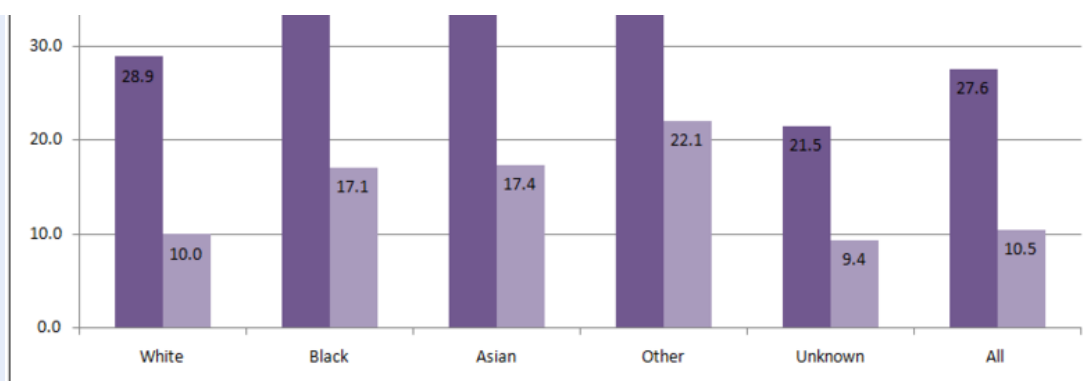
Source: [Ministry of Justice \(2010, p. 29\)](#).

Figure 1.2h shows that once convicted of a criminal offence, white people in England and Wales are less likely to receive immediate custodial sentences than those from other groups (with the exception of those where ethnicity is recorded as 'unknown'). Around 42 per cent of adults, and 17 per cent of juveniles, defined as black or Asian were sentenced to immediate custody following conviction in 2008, while the rates for white adults and juveniles were 29 and 10 per cent respectively.

Figure 1.2h: Percentage of persons sentenced to immediate custody, at all courts, England and Wales, 2008



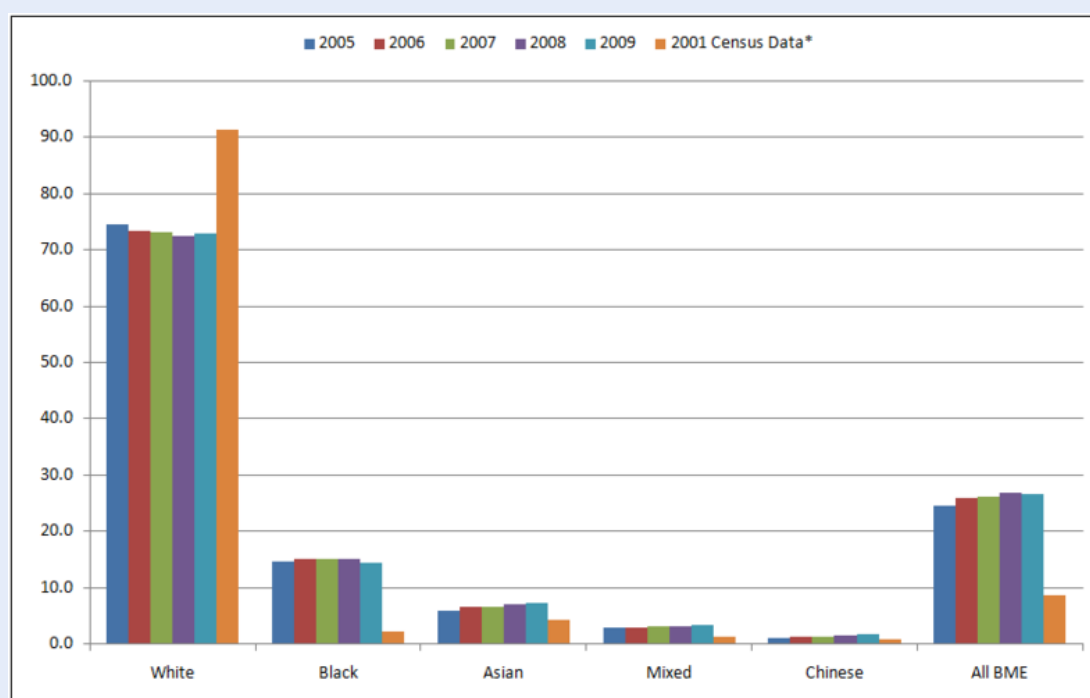
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Source: [Ministry of Justice \(2010, p. 37\)](#).

British minority ethnic groups comprise, both individually and collectively, a disproportionately large proportion of the prison population relative to overall population levels; while whites are consistently underrepresented, as the run of data from 2005 to 2009 depicted in Figure 1.2i demonstrates.

Figure 1.2i: Total prison population (including foreign nationals) in England and Wales 30 June 2005 to 2009, self-identified ethnicity



Source: [Ministry of Justice \(2010, p. 47\)](#).

It is clear, then, that black and minority ethnic groups are overrepresented at all stages of contact with the police and criminal justice system: being the subject of stop and search; being arrested; being given custodial sentences; being in prison. The question which then arises is whether these tendencies come about because of discrimination, or other more democratically acceptable reasons. Stop and search, which is important both in itself and as a common entry point into criminal justice procedures such as arrest, has been scrutinised heavily in this regard ([Miller, 2010](#)).

The figures cited above show overrepresentation in relation to the general population of different ethnic groups. A variety of explanations have been put forward for these patterns, some as a direct counter to suggestions that they reflect discrimination. One such explanation is that stop and search rates reflect variations in the size of the 'available population'. According to this perspective, some social groups

spend more time than others in private spaces, such as at home or at work, and are therefore less likely to be stopped and searched ([Waddington et al., 2004](#)). On the other hand, the police choose where to target stop and search, and may specifically do so in areas where the 'available population' possesses particular characteristics ([Bowling and Phillips, 2007](#)). Another hypothesis is simply that there are differential levels of involvement in crime amongst different social groups. But there are difficulties in establishing the proclivities of certain groups to commit crimes, given the amount of crime that is unsolved ([MVA and Miller, 2000](#); [Bowling and Phillips, 2007](#); [Waddington et al., 2004](#)). In the light of longstanding evidence of prejudiced attitudes within the police force, there are reasonable grounds to suppose that such outlooks continue to play a part in stop and search ([Bowling and Phillips, 2007](#)). The guidance given to police about the practice is arguably contradictory in both ruling out stereotyping, but allowing searches to be carried out on a basis of distinctive clothing associated with gangs (Bradley and Ewing, 2011, p. 450).

In 2007 the House of Commons Home Affairs Select Committee considered the apparent overrepresentation of young black people across all areas of the criminal justice system. It drew a series of conclusions about the possible causes of this phenomenon. It argued that social exclusion was the fundamental source of the tendency. Social and economic disadvantage, including educational issues, and cultural factors played a part in this overall picture. There were also problems with the criminal justice system itself. Young black offenders were more likely to come into contact with the system, partly because of their social characteristics and the sorts of crime they were likely to commit. The committee also found that discrimination led to disproportionate representation of young blacks, including in stop and search and possibly decisions to charge defendants. In addition, the committee expressed concern about the numbers of young black people remanded in custody before they were sentenced. There was some evidence that discrimination in sentencing was taking place, both involving whether or not to use custodial sentences, and the length of sentences ([Home Affairs Select Committee, 2007](#)).

On the surface some of the data regarding the operation of the criminal justice and penal systems cause concern about the extent to which impartiality and equitability are being observed. Democratic Audit believes that closer consideration of the practice of stop and search shows that there are problems in sustaining explanations for this inequity that do not involve the conclusion that discrimination takes place. We believe that these issues merit close attention, both in the realm of stop and search and more generally in the areas of operation of criminal justice and penal policy. Furthermore, there are complex socio-economic issues involved that are relevant to the broader democratic issues considered throughout this Audit.

## 1.2.6 Confidence in the legal system

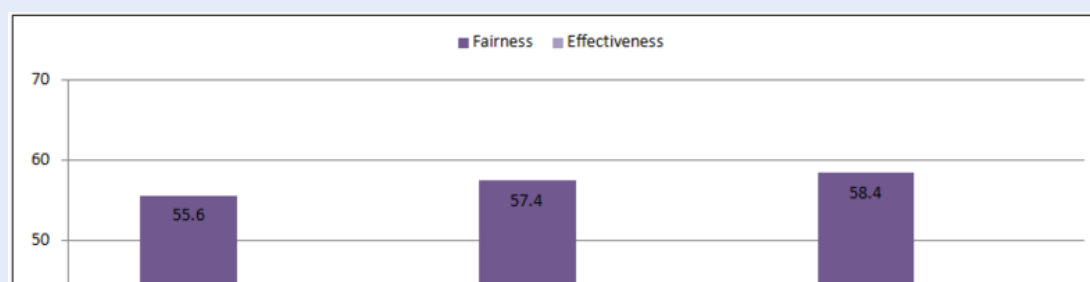
How much confidence do people have in the legal system to deliver fair and effective justice?

However effectively the rule of law may operate in reality, it is also important to its part in the functioning of democracy that it is perceived to be effective. A lack of public faith in the authorities to deliver the basic requirements of justice spells problems for the health of democracy. Survey evidence provides us with some useful indications of the extent to which people regard the UK's legal system as being fair and effective.

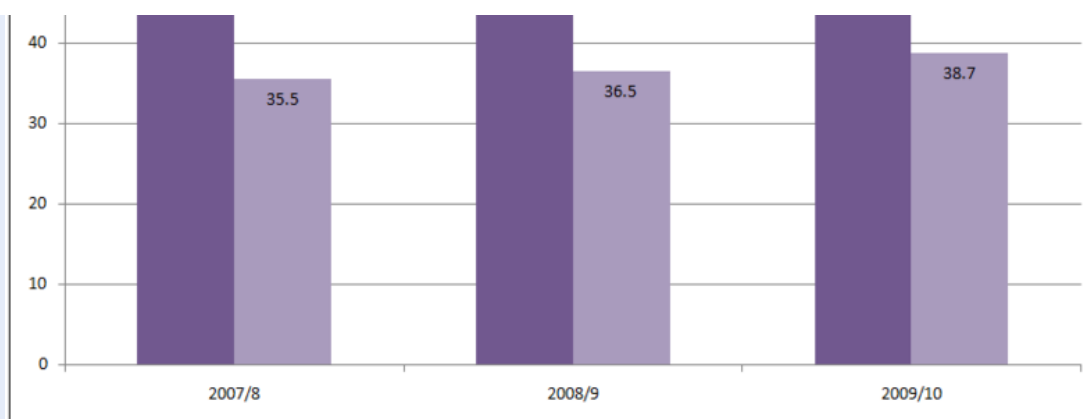
Given the evidence that at least some kinds of crime have been in decline (see Section [1.2.1](#)), it is important to ask whether this trend is reflected in public opinion. Between 2000 and 2007-08, the British Crime Survey (BCS) used a set of up to seven questions (five questions up to 2001; six questions up to 2004-05; seven thereafter) that measured public confidence in the criminal justice system in England and Wales. Overall, the findings from these surveys show slightly rising levels of confidence over this period ([Kershaw et al., 2008](#)).

In 2007-08 the BCS introduced a new set of questions about the perceived fairness and effectiveness of the criminal justice system that directly address the subject of this section. As illustrated in Figure 1.2j, responses to these questions have shown that confidence in the fairness and effectiveness of the criminal justice system in England and Wales is rising slightly; but that it is seen as more fair than effective, with well under half of respondents having confidence in its effectiveness.

Figure 1.2j: Confidence\* in the fairness and effectiveness of the criminal justice system in England and Wales



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Note: \*Confidence based on the responses 'very confident' and 'fairly confident'.

Source: [Flatley et al. \(2010, p. 122\)](#).

The figures for Northern Ireland have been close to those for the UK: in 2009-10, 58 per cent thought the criminal justice system overall was fair; and 37 per cent thought it was as a whole effective ([Freel and Toner, 2010, pp. 11-13](#)). The Scottish Crime and Justice Survey does not run directly comparable questions, but figures for the UK as a whole are considered below.

The extent of people's confidence in the criminal justice system, as measured by the BCS, is likely to vary in accordance with socio-demographic characteristics. An analysis of BCS data from 2004-05 showed that those living in inner city areas were likely to be more confident about the reduction of crime, the efficient handling of cases, meeting the needs of victims, and dealing with young people who were accused of crime, than those who were from urban or rural areas. However, people from urban and rural areas were more confident than people from inner city areas that those who were accused of crime would be treated fairly and have their rights respected, and that witnesses would be well treated. An ongoing tendency was noted for women to be more confident in the criminal justice system than men, except over whether the accused would be fairly treated by the criminal justice system. People in the 16-24 age category had higher confidence than other age groups across nearly all of the categories covered by the survey ([Allen et al., 2006](#)).

People whose household income was less than £10,000 were more likely than those from households with an income of £30,000 and above to be confident about the effectiveness of the criminal justice system in reducing the level of crime, its efficiency in handling cases, its meeting of the needs of victims and its effectiveness when dealing with young people who were accused of crime. On the other hand, those in the higher income group tended to be more confident than those in the lower income group about respect for the rights of the accused and proper treatment of witnesses. Confidence tended to be higher among private renters than both social renters and owner-occupiers. People from ethnic minority groups were more likely to be confident in all features of the criminal justice system than whites, except for the two issues of the treatment of the accused and witnesses ([Allen et al., 2006](#)).

An analysis of the breakdown for BCS measures of confidence in the criminal justice system conducted in 2008 showed that people from black and minority ethnic groups had higher levels of confidence than whites for five of the seven measures then used. The only area in which whites had a higher level of confidence was in the criminal justice system treating people accused of a crime fairly and respecting their rights. Those who perceived a high level of anti-social behaviour in their area; who had experienced a crime as a witness or victim in the last 12 months; and who read tabloid newspapers were less likely to have high levels of confidence. Women, younger people, and those in private rented accommodation were, by contrast, likely to have higher levels of confidence ([Kershaw et al., 2008](#)).

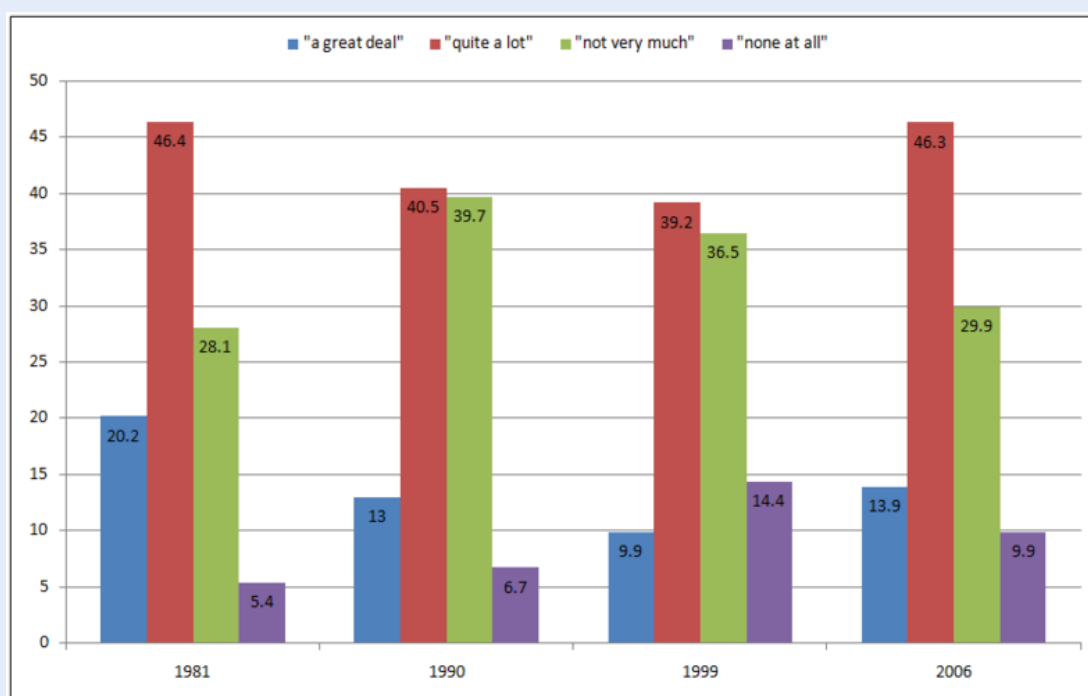
The data for effectiveness and fairness questions from the 2008-09 survey have been assessed as showing that people from black and minority ethnic backgrounds were more likely than white people to regard the criminal justice system as fair and effective. There were also significant variations according to how the area respondents live in is defined according to the 'Output Area Classification' (OAC) used by the census. There are seven main OAC groups: Blue Collar Communities; City Living; Countryside; Prospering Suburbs; Constrained by Circumstances; Typical Traits; and Multicultural. People living in areas defined as 'City Living' were more likely to say that the criminal justice system is fair than people living in other areas; and people living in 'Multicultural' or 'City Living' areas were more likely to say that it was effective. Readers of broadsheet newspapers were more likely to regard the criminal justice system as fair and effective than readers of non-broadsheets ([Walker et al., 2009](#)).

Another variable that has been identified in measures of confidence in the criminal justice system, based on both BCS data and other opinion research, is that people are more likely to be confident in the system at a local level than at national level; and that the police are

the most highly rated group within the system (Hough and Roberts, 2004). This pattern reflects a more general tendency for people to rate what they experience locally considerably above how they perceive the situation to be nationally.

Despite the modest increase in public confidence noted above, it is difficult to establish a clear overall trend in public confidence in the justice system over the last decade, at least as measured by the BCS. The World Values Survey provides a longer term, as well as a comparative, picture. Based on data from the survey, Figure 1.2k suggests that confidence in the justice system in Great Britain declined quite significantly between 1981 and 1999, but that it had increased again by 2006 despite not returning fully to its 1981 level.

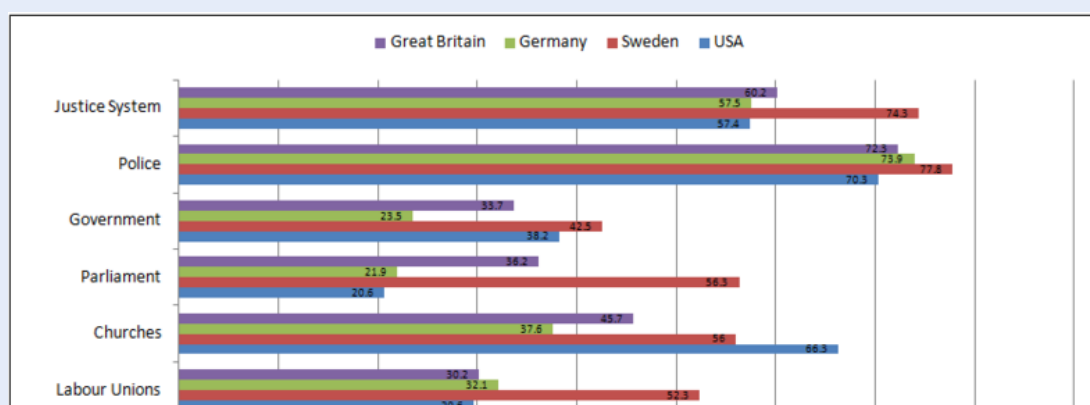
Figure 1.2k: Percentage confidence in the justice system in Great Britain: detailed trends from the World Values Survey



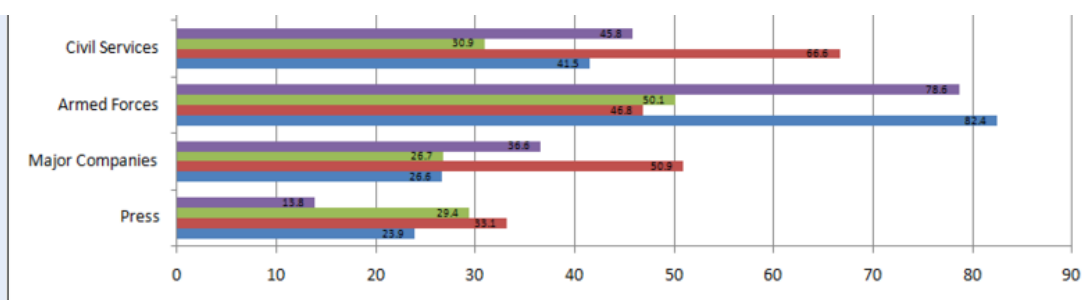
Source: [World Values Survey \(2011\)](#)

The World Values Survey also enables us to draw comparisons of confidence in the justice system in Great Britain with trust in other institutions in the UK; and against other democracies internationally. Figure 1.2l shows that, after the armed forces, the police and the justice system are rated more highly than other institutions in Great Britain (see also Section 2.5). However, similar tendencies are evident in relation to other countries for which data are presented in Figure 1.2l and, while levels of public confidence in the police and justice system in Great Britain compare well to those in Germany or the USA, they are clearly lower than those found in Sweden.

Figure 1.2l: Percentage confidence\* in institutions, World Values Survey, 2006



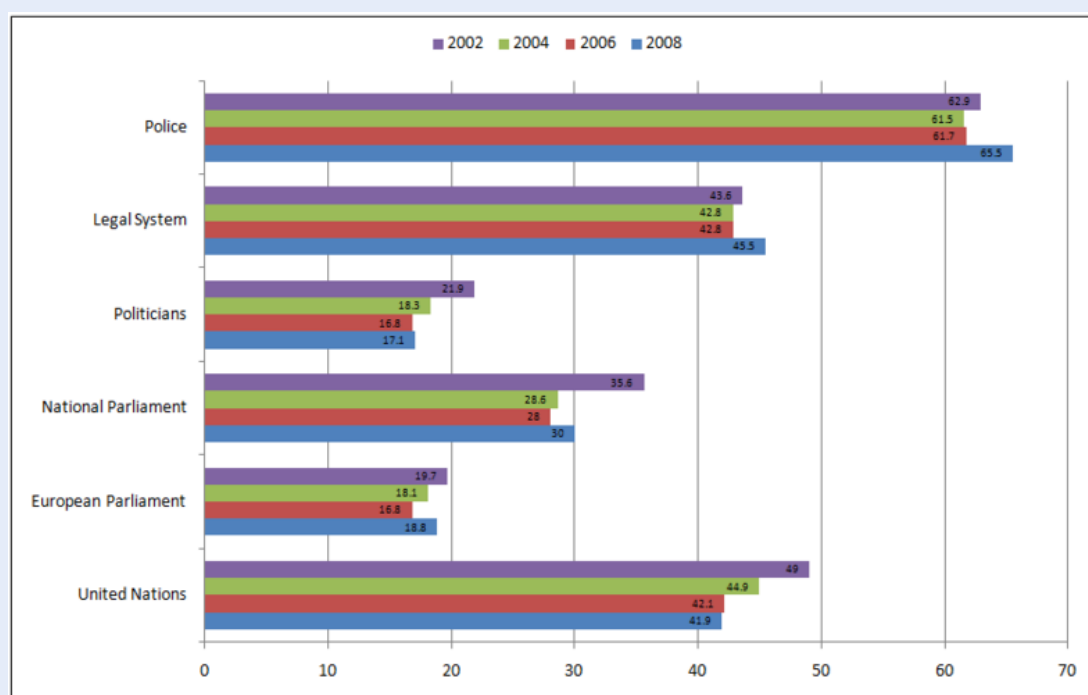
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Source: [World Values Survey \(2011\)](#)

Figure 1.2m, derived from four surveys held by the European Social Survey from 2002-2008, also measures trust in institutions in the UK. It shows the police and the justice system to be highly rated in comparison to politicians or the UK parliament. Moreover, levels of trust in both the police and the justice system were higher in the 2008 survey than they were in the first survey, dating from 2002. By contrast, levels of public trust in politicians, in the national parliament, in the European parliament and in the United Nations, all show an overall decline when the results from 2008 are compared to those from 2002.

Figure 1.2m: Trust\* in Institutions in the UK (%), 2002-2008



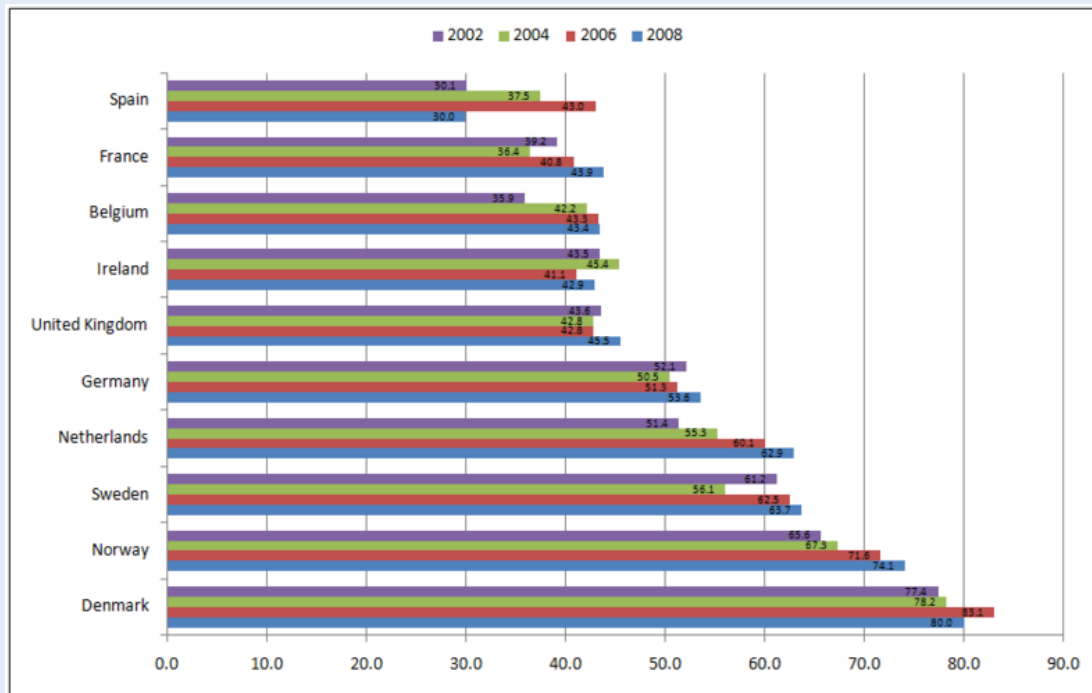
Note: \*Trust is the sum scores 6-10 on a 0-10 Likert scale.

Source: [European Social Survey \(2011\)](#)

When international comparisons are made using the European Social Survey data for trust in the legal system between 2002-08, the performance of the UK is moderate, however. As Figure 1.2n shows, while the UK has comparable ratings to countries such as Ireland, Belgium and France (with Spain having overall the worst performance), it is clearly behind Germany, the Netherlands, and the Nordic countries. Denmark, Norway and Sweden have consistently recorded the highest levels of public trust in the legal system, followed by the Netherlands and Germany.

Figure 1.2n: Trust\* in the Legal System (%), European Social Survey 2002-2008

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Note: \*Trust is the sum scores 6-10 on a 0-10 Likert scale.

Source: [European Social Survey \(2011\)](#)

A recent comparative study of European data on confidence, or trust, in the justice system provides some useful insights into the reasons for these national variations. Its most important findings were that in nearly every country - including the UK - there was a connection between, on the one hand, a feeling of being able to trust people and of personal life satisfaction and, on the other hand, higher levels of trust in the legal system. Another factor that applied to the UK and some other countries was that if an individual belonged to a group they felt was discriminated against, this tended to reduce their overall level of trust in the legal system ([Van der Walle and Raine, 2008](#)). An earlier study, from 2004, suggested that the reason for the police tending to score more highly on questions concerning public trust is that there are relatively low levels of knowledge of the court system ([Hough and Roberts, 2004](#)).

Measuring levels of confidence in the justice system is a complex task and, inevitably, perceptions are shaped by the socio-demographic characteristics of survey respondents. Nonetheless, a number of conclusions can be drawn. First, it appears, on the basis of the World Values Survey, that confidence is at a significantly lower level than it was three decades ago, though it has risen from a low point reached in the late 1990s. Second, while this evidence of improvement is encouraging, BCS data suggests that public confidence in the effectiveness of the criminal justice system is substantially below 50 per cent. Improvements notwithstanding, these figures should be a cause for concern, not least because of the variety of social groups among which levels of confidence fall below this overall figure. Third, while the justice system and the police are highly rated in relation to other institutions in the UK, it is important to recognise that this is part of a wider international tendency and that it reflects, in part, the low levels of confidence in politicians, parliaments and governments. Finally, the international evidence serves to demonstrate that trust in the justice system is linked to broader feelings of personal trust and personal wellbeing; and to some extent, underlying patterns of social division. That the UK only performs moderately well against comparable states, and well behind the Nordics and others, is indicative of a broader pattern identified consistently throughout this Audit.

## Conclusion

This Audit has identified significant positive developments with regard to the rule of law. Two events of historic significance stand out. First, the Human Rights Act (HRA) 1998 has expanded the scope of judicial review substantially, enhancing the potential for subjecting public office holders to the law. Second, the Constitutional Reform Act 2005 has effected a number of changes desirable from the perspective of the rule of law. It has ended the anomalous and problematic position of the lord chancellor in straddling judicial, executive and legislative functions. In establishing the Judicial Appointments Commission, the act has also lessened the role of the executive in appointing the judiciary. Finally, the act created the UK Supreme Court, which, while it does not possess many powers additional to those possessed by the House of Lords when it was the highest court in the UK, may come in time to play an important constitutional role.



However, these significant improvements should be offset against ongoing and emerging problems. Fundamentally, the constitutional position in the UK remains that the doctrine of parliamentary sovereignty is a potential threat to the rule of law; which is not protected by a written constitution as it is in nearly all other democracies internationally. Below this overall constitutional level, evidence of the involvement of paramilitary groups in organised crime in Northern Ireland raises questions about the upholding of the rule of law in the province. There are also problems with access to justice and due process. The legal aid system in England and Wales continues to be identified as suffering from systemic weaknesses and financial deficiencies. Problems have arisen with the provision of due process for all; particularly as regards the use of secret evidence and special advocates. There is cause for suspicion that the criminal justice system is not properly observing rules prohibiting discrimination, in areas including the operation of stop and search. Public confidence in the justice system, though it may be increasing, is not especially high by north European standards.

This discussion of the rule of law in the UK relates to many broader issues raised in this overall Audit. The possible tensions between the rule of law and parliamentary sovereignty are suggestive of constitutional instability. The enhancements that have been achieved in the rule of law - for instance through expanding the reach of judicial review and the creation of a Supreme Court - have perhaps increased the likelihood of a serious clash between this doctrine and that of parliamentary sovereignty at some point in the future. Meanwhile, the variation in approaches to human rights across different parts of the UK demonstrate the complexities that have been produced by constitutional reform in recent decades; and the tensions that might be arise if central government sought to impose a new direction on the whole of the UK, such as replacing the HRA with a 'British Bill of Rights'.

The evidence of an overall decline in crime pointed to in this section is likely to offer much of the explanation for the observed increase in public confidence and trust in the legal system over the last decade. This rise in public trust in the police and the criminal justice system is encouraging, not least because it goes some way to reversing an earlier decline, but it is the only area in which we find improved levels of public faith in key institutions. At the same time, it must be recognised that public faith in the criminal justice system has yet to return to the levels at which it stood in the early 1980s, and that the UK continues to lag substantially behind the Nordic countries and some other European states on this measure. Finally, the evidence presented in this chapter points to additional forms of growing political inequality, highlighted throughout this Audit. There are evident inequalities in the chances of an individual being stopped and searched, arrested, and imprisoned, with ethnicity being a particularly strong determinant of contact with the criminal justice system. Meanwhile, we find grounds to suggest that the extent to which an individual can access the law is likely to be determined increasingly by their personal financial means, particularly in view of changes to legal aid.

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### 1.3. Civil and political rights

#### Executive Summary

This chapter reviews the available evidence relating to the four 'search questions' concerned with civil and political rights in the UK.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

##### **(a) Areas of improvement**

## **1. Overall falling violent crime rates.**

There is evidence of falling levels of violent crime, as measured by the British Crime Survey. However, the major civil unrest which took place in England during August 2011 involved a major violation of physical security, and will presumably increase public fear of more violation in future. (For further details and discussion, see Section [1.3.1](#))

## **2. Coalition review of counter-terrorism and security powers.**

Following its formation in May 2010, the coalition government reviewed policy relating to counter-terrorism and security powers. This has led to a number of changes in policy. Labour's plans for compulsory identity cards, never implemented, have been dropped. Control orders, imposing severe restrictions on the civil and political freedoms of terrorist suspects, are being replaced by less stringent 'T-Pims' (Terrorism Prevention and Investigation Measures). In addition, there has been a reduction in the use of terrorist stop and search powers that do not require 'reasonable suspicion', and the powers under which they can be used have been revised to some degree. (For further details and discussion, see Sections [1.3.1](#) and [1.3.2](#))

## **3. Comprehensive protection for religious freedom under the law.**

During the period since the last Audit, significant steps have been taken to introduce measures aimed to prevent religious discrimination. The Employment Equality (Religion or Belief) Regulations 2003 prohibited direct and indirect discrimination in employment on the grounds of religion or belief. The Racial and Religious Hatred Act 2006 outlawed inciting hatred on the grounds of religion or belief. The Equality Act 2006 prohibited discrimination on the grounds of religion or belief in the provision of goods, facilities and services, the management of premises, education and the exercise of public functions. These provisions were further consolidated by The Equality Act 2010, which includes religion or belief as one of a number of 'protected characteristics' defined by the Act. (For further details and discussion, see Section [1.3.3](#))

## **4. More positive promotion and entrenchment for minority indigenous languages.**

Additional measures have been introduced to protect the main minority indigenous languages in the UK: Welsh (by far the most widely spoken), Scots, and Irish Gaelic. The Government of Wales Act 2006 obliged Welsh ministers to adopt a 'Welsh language strategy' and 'Welsh language scheme'. In February 2011, the Welsh Language Measure passed by the Welsh assembly the previous December received royal assent, introducing various new institutions and enhanced status for the Welsh language. The Northern Ireland (St Andrews Agreement) Act 2006 (section 15) provided that the Northern Ireland Executive must 'adopt a strategy setting out how it proposes to enhance and protect the development of' the Irish and Ulster Scots languages. (For further details and discussion, see Section [1.3.3](#))

### ***(b) Areas of continuing concern***

#### **1. Differential violent crime victimisation.**

While violent crime is falling overall, it continues to impact disproportionately across different social groups. Those from younger age groups, men and the unemployed remain more likely to be attacked. Women are substantially more likely than men to be victims of domestic and sexual assault. There are other crimes of a physical nature to which women, sometimes concentrated within particular ethnic groups, are particularly vulnerable. (For further details and discussion, see Section [1.3.1](#))

#### **2. The incidence of hate crime.**

Racial hate crime was first classified as an offence in the Public Order Act 1986, while crimes motivated by hate associated with religion, disability, sexual orientation or transgenderism have been recognised in a series of laws passed since 1998. It is difficult to assess trends, but there is evidence of a growth in the proportion of cases identified as hate crime that lead to a criminal charge. While the incidence of hate crime is a serious concern, it is also important to acknowledge that there is now far stronger public and institutional awareness of racially and religiously aggravated crime. (For further details and discussion, see Section [1.3.1](#))

#### **3. Widely drawn police counter-terrorist stop and search powers.**

The Audit has previously described the 'broadness' of stop and search powers, and the tendency for stop and search powers of all types to fall disproportionately on particular ethnic groups is noted elsewhere in this Audit (see Section [1.2.5](#)). These general concerns about stop and search have been compounded by the rising emphasis placed upon counter-terrorist activity across the whole of the UK. (For further details and discussion see Section [1.3.1](#))

### **(c) Areas of new or emerging concern**

#### **1. The extension of pre-charge detention times for counter-terrorist suspects.**

During the period of the present Audit, the maximum period of pre-charge detention under section 41 of the Terrorism Act 2000 has been extended from seven to 14 days (this change came into force in January 2004); and then from 14 to 28 days (since July 2006). Even a limit of seven days is both a departure from international norms (though direct comparisons are difficult) and from principles of due process. Further problems involve the inappropriate conditions in which suspects are held. Consequently, the coalition's decision to reduce the maximum to 14 days does not fully resolve our concerns and, moreover, makes no practical difference since the police rarely use the ability to extend beyond 14 days detention. (For further details and discussion, see Section [1.3.1](#) and Figure [1.3c](#))

#### **2. Various efforts to detain and then deport foreign terrorist suspects to destinations where there is cause for concern about potential mistreatment.**

The Anti-Terrorism, Crime and Security Act 2001 contained provisions allowing indefinite detention of foreign national terrorist suspects, who were not charged with an offence, and whom the government could not deport (in compliance with article 3 of the European Convention on Human Rights) because there was a danger that they would be subjected to torture or other degrading treatment in their country of destination. When, in 2004, the House of Lords ruled this approach incompatible with the ECHR, the government introduced the control orders regime, provided for by the Prevention of Terrorism Act 2005. In parallel with control orders, the government has continued to seek deportation of terrorist suspects through the conclusion of agreements with individual states that they will not subject those sent there to torture or other degrading punishment. This approach has also been criticised from a human rights perspective. (For further details and discussion, see Section [1.3.1](#))

#### **3. The growth of surveillance and the use of personal data in the public and private sectors.**

Concerns about surveillance and the collection and handling of personal data have mounted over the last decade. The coalition has carried out a review and made proposals including restraining local authorities in their use of covert investigatory techniques, to ensure that they are directed only at serious crime and approved by a magistrate. The coalition has also dropped the previous government's national identity card scheme and the associated National Identity Register. However, concerns remain about the widespread use of surveillance technologies and about the range and reach of the 'database state'. (For further details and discussion, see Section [1.3.1](#) and Case Study [1.3b](#))

#### **4. Multiple concerns about the impact of control orders and various other counter-terrorism measures upon the freedoms of movement, assembly, expression and association.**

We identify five key concerns about the impact of counter-terrorism measures on civil and political rights. First, control orders, introduced by the Prevention of Terrorism Act 2005, severely circumscribe the freedoms of those who are subject to them, including the freedoms of movement, assembly, expression and association. The coalition intends to replace control orders with less stringent 'T-Pims' (Terrorism Prevention and Investigation Measures), but these will leave a number of key features of the control orders system in place. Second, major impositions have been made on the freedom of individuals through the use of asset freezing orders. Third, the proscription of terrorist organisations is problematic from the point of view of the freedom of association, with implications as well for the freedoms of speech, assembly and movement. Fourth, the deployment of counter-terrorist stop and search powers can infringe upon freedom of movement. Finally, other counter-terrorist powers potentially infringe upon the rights of journalists and protestors. (For further details and discussion, see Section [1.3.2](#))

## **Introduction**

Civil and political rights are essential to the functioning of democracy. Without them citizens cannot meaningfully participate in the activities that are central to a democratic society. This point can be illustrated in a number of ways. Citizens in fear for their physical security cannot properly participate in democratic processes. Free and inclusive elections and public deliberation over policy require the existence of such rights as freedom of speech and freedom of association. Furthermore, democratic principle requires that all citizens must have equal enjoyment of civil and political rights, regardless of such characteristics as gender, ethnicity and sexual orientation (Beetham et al., 2002, pp. 39-40).

It will be necessary and in the interests of democracy in some cases both to balance some of these rights against each other and to limit them (though other rights - in particular the protection from torture - are absolute). For instance, there should be limits on the extent to which the right to freedom of expression can be used to justify violation of the right to privacy; yet equally, the right to privacy should not be used inappropriately to inhibit freedom of expression. Law enforcement agencies may need at times to interfere with physical security, for

example through detaining individuals whom it reasonably suspects of being involved in criminal activities. But any such restrictions on civil and political rights must take place within a clearly defined and limited legal framework, with the courts providing adjudication where necessary.

In this context, this section considers the following issues:

- The extent to which people are free from physical violation, and from the fear of such violation;
- The effectiveness of the measures in place to protect the freedoms of movement, expression, association and assembly;
- The effectiveness of provisions for the security of individuals to practise their own religion, language or culture;
- The extent to which individuals and groups working to improve human rights are free from harassment and intimidation.

Our last Audit welcomed the introduction of the Human Rights Act 1998 (HRA) as a means of strengthening provision for civil and political rights (Beetham et al., 2002). However, we noted concerns about the impact of the Terrorism Act 2000, including through its provision for police powers of arrest and for the proscription of terrorist groups. We also drew attention to the detention without trial of foreign national terrorist suspects under the Anti-Terrorism, Crime and Security Act 2001, which required derogation from the European Convention on Human Rights (ECHR). The Audit noted the vulnerability of certain minority groups to hate crime. We noted the persistence of the law of blasphemy, which protected the Anglican church but no other denomination of faith; and clear evidence of various forms of religious discrimination.

Consideration of these topics during the period of the present Audit takes place against a backdrop of two conflicting developments. The first involves recent legislative provision for the protection of human rights, through the HRA, as noted in our last Audit. While the UK has a longstanding cultural and political tradition of respect for civil and political rights, firm and comprehensive constitutional protections were lacking. In many countries protection for such freedoms is provided for in the text of a codified constitution (such as the 'Basic Rights' included in the German 'Basic Law'). In such cases, civil and political rights are typically entrenched against repeal; and may be justiciable, even to the point that courts can declare primary legislation in conflict with constitutional rights to be void. In the UK, on the other hand, the protection of rights was historically dependent to a large extent on the self-restraint of public officials and on parliament in the deployment of its legislative supremacy. Such legislative provision as existed for civil and political rights was piecemeal and vulnerable to repeal by parliament. Similarly while judges developed, via the common law, certain core principles in this area, the extent to which the judiciary could assert them in the face of the will of parliament was constrained.

The beginnings of a change in the UK approach can be traced to its commitment to the European Convention on Human Rights (ECHR), a document of the Council of Europe. (The UK is also party to other international agreements providing for such rights, including the United Nations International Covenant on Civil and Political Rights.) On 8 March 1953, the UK, one of the 10 founding members of the council, became the first country to ratify the ECHR. However, for four decades the ECHR only existed as an external treaty obligation. A further shift came in 1998 when the HRA incorporated the convention into UK law. This statutory shift was accompanied by the establishment of the Joint Committee on Human Rights (JCHR), an all-party parliamentary body comprising both MPs and peers. The JCHR monitors legislation for compliance with the ECHR, and inquires more generally into human rights.

The significance of the introduction of the HRA should not be understated. One important consequence is that courts can now quash administrative acts and secondary legislation that are found incompatible with convention rights, though they cannot disapply primary legislation as they might under a fully codified constitution (see Section [1.2.2](#)). The HRA enjoys a degree of constitutional entrenchment, since it is protected from implied repeal. Parliament can only override it if it does so expressly. Where an act of parliament not expressly overriding the HRA is found to be in conflict with convention rights, the courts disappplies neither act and issues a 'declaration of incompatibility', leaving ministers and parliament to resolve the issue.

In our 2002 Audit we described the HRA as 'a landmark in British constitutional reform that ranks in significance alongside the Magna Carta and the 1689 Bill of Rights' (Beetham et al., 2002, p. 40). But we struck a cautionary note also, noting that, judging by their tendency to introduce measures which contravene the HRA, 'ministers themselves seem not to have fully appreciated the significance of their own Act' (Beetham et al., 2002, p. 40). The inevitable tension which the HRA has introduced between politicians and judges has rendered the act increasingly controversial. Some commentators suggest the HRA has undermined criminal justice and security; others that it has not sufficiently strengthened human rights. There is a lack of agreement, including within the present coalition government, about its future, or whether it should have one at all (see Section [1.2.2](#)).

The legislative, quasi-constitutional protection for civil and political rights embodied in the HRA has been built upon by various other measures which have served to render legal protections against discrimination more comprehensive and coherent, including, as we find in this chapter, provision for religious freedom (see Section [1.3.3](#)). Policy measures aimed at promoting minority indigenous languages have also been introduced (see Section [1.3.3](#)). Beyond these developments in human rights and the protection of minorities, there are other improvements noted in this chapter, notably including the evidence of a long-term downward trend in both the incidence, and fear of, violent



crime (see Section [1.3.1](#)).

At the same time, however, we find a dramatic and worrying trend towards infringements on civil and political rights through government policy and legislation. It has been driven to a large extent, although not solely, by rising concerns about international terrorism following events in the US on 11 September 2001. As is discussed below, the period since 2001 has seen an international tendency towards infringements on human rights, of which the UK has been part. There have been incursions across the board, taking in widely drawn police stop-and-search powers (see Section [1.3.1](#)); extended periods of pre-charge detention for terrorist suspects (see Section [1.3.1](#)); various new terrorism offences which impinge on areas such as free expression (see Section [1.3.2](#)); and measures to restrict the freedoms of terrorist suspects who have been convicted of no offence (see Section [1.3.1](#)). There have also been concerns about the rise of a 'database state' which inappropriately manages the personal details of citizens (see Section [1.3.1](#)); and the role of the private sector in surveillance. Meanwhile, although the apparent fall in the incidence of violent crime is welcome, it is also evident that it has not applied as fully to certain vulnerable groups (see Section [1.3.1](#)).

The contradictions we note in this chapter with regard to human rights in the UK were well captured by the Council of Europe's human rights commissioner, Alvaro Gil-Robles, following a visit to the UK in 2004. In his subsequent report, Gil-Robles stated that the UK 'has every right to be proud of its achievement in introducing the Human Rights Act and has proven itself to be acutely conscious of the contours of the obligations entailed' ([Gil-Robles, 2005, p. 6](#)). However, he then went on to note:

'the frequency with which I heard calls for the need to rebalance rights protection, which, it was argued, had shifted too far in favour of the individual to the detriment of the community. Criminal justice, asylum and the prevention of terrorism have been particular targets of such rhetoric, and a series of measures have been introduced in respect of them which, often on the very limit of what the respect for human rights allows, occasionally overstep this mark [...] it is perhaps worth emphasising that human rights are not a pick and mix assortment of luxury entitlements, but the very foundation of democratic societies,' ([Gil-Robles 2005, p.6](#)).

Given the controversies which have been associated with the Human Rights Act since its introduction in 1998, it is important to seek to place the UK's human rights record in a broader historical and international context. Is there evidence of improved protection of civil and political liberties in the UK as a result of the HRA? And how does the UK's record in human rights compare to other established democracies, both before and after the introduction of the HRA?

### ***Guaranteeing civil and political rights in the UK: an overview***

A valuable starting point for our assessment of how well civil and political rights are guaranteed in the UK is provided by existing datasets which seek to measure the extent to which governments around the world adhere to international human rights standards. The three principal sources providing time-series data on civil and political rights are the Freedom House 'Freedom in the World' survey, the Political Terror Scale (PTS), and the Cingranelli-Richards Human Rights Index (CIRI).

While there are some important differences in the criteria and methodologies used to compile these datasets, they also have much in common. Each of the three sources provides an annual assessment of civil and political rights in more than 180 countries, with data presented in a consistent format for a period of 30 years or more. Moreover, while the relative merits of the contrasting approaches have been extensively debated ([Cingranelli and Richards, 2010](#); [Wood and Gibney, 2010](#)), a systematic comparison of the three datasets reveals that they produce remarkably consistent results, particularly with regard to established democracies. Specifically, all three datasets point to:

- A core group of 20-25 countries which have maintained the highest standards of human rights since the 1970s, concentrated in three geographical areas: Western Europe, North America and Australasia.
- A smaller group of up to 10 countries which stand apart as the global 'leaders' in human rights, comprising the five Nordic countries, the three 'Benelux' consensual democracies (Belgium, the Netherlands and Luxembourg) and two of the Westminster democracies (Canada and New Zealand).
- A clear tendency for respect for human rights in established democracies to come under pressure since 2000, with only a handful of democracies able to maintain an equivalent level of human rights protection as in previous decades (notably the Nordic countries, New Zealand, Belgium and Luxembourg).

Based on these datasets, the UK's global 'ranking' for protection of civil and political rights is a respectable one, although it generally falls short of the very highest standards observed elsewhere in Northern Europe. Typically, the UK can be classified as belonging to a 'second-tier' of established democracies in which extensive civil rights and political freedoms are guaranteed, but where there are some instances of specific human rights being infringed (see also Humana (1987), who ranked the UK equal 12th for adherence to human rights, alongside France and Australia, among 120 countries with populations of one million and above).



This long-run evidence of the UK maintaining a relatively high global ranking for its respect for human rights is reassuring. However, it is also vital to pay close attention to developments over the past decade, both within the UK and among other established democracies. As [Dreher et al. \(2007\)](#) note, in line with the tendency discussed above, there has been a general, albeit modest, decline in the human rights records of western democracies since the early 2000s, arising from measures introduced to counter the threat of domestic terrorism. While the UK is no exception in this regard, it is also one of the few established democracies with previous experience of a credible domestic terrorist threat (see Section [2.5.4](#)). The effect of this concern with the threat of terrorism has been partially to offset potential gains arising from the introduction of the HRA.

A more detailed consideration of the UK's overall record in protecting civil and political rights, both over time and in comparison with other democracies, can be gleaned from any of the three human rights datasets listed above. We have opted to use CIRI because, uniquely, it provides separate scores for a range of specific civil and political rights, as well as for a more limited range of social and economic rights. As such, the data contained within CIRI relate most closely to the approach to human rights adopted in our Audit framework and allow for individual components of change in human rights protection to be more readily identified.

CIRI's data is based on detailed coding of human rights reports for individual countries produced by the US State Department and by Amnesty International using 15 specific human rights measures. These measures include: a range of 'physical integrity rights', such as the rights not be tortured, or to be imprisoned for political beliefs; civil liberties encompassing freedoms of speech, association, assembly, movement and religion, as well as the right to participate in free elections; workers' rights; and the rights of women to equal treatment in political, economic and social affairs. In addition, CIRI aggregates some of these variables to construct two main sub-indexes: a Physical Integrity Rights Index, covering issues such as freedom from torture, extrajudicial killing and political imprisonment; and an Empowerment Rights Index, which aggregates the six measures of civil liberties plus the measure of workers' rights. Using the current criteria, countries are scored out of 30 for all the human rights considered, out of 8 for physical integrity rights and out of 14 for empowerment rights. Our focus here is on these two sub-indexes as measures, respectively, of civil rights and of political rights.

Measured in global terms, current CIRI data underlines that respect for human rights in the UK is in-line with other established democracies. Figure 1.3a shows the UK's scores on the two principal CIRI indexes described above. While the UK falls just short of the maximum scores in each instance, and thus ranks below the average for the Nordic countries, it is closely in line with the average for both the EU15 and the OECD. Unsurprisingly, as with all other established democracies, the UK's record on human rights is also judged to be significantly above the global average, as Figure 1.3a makes clear.

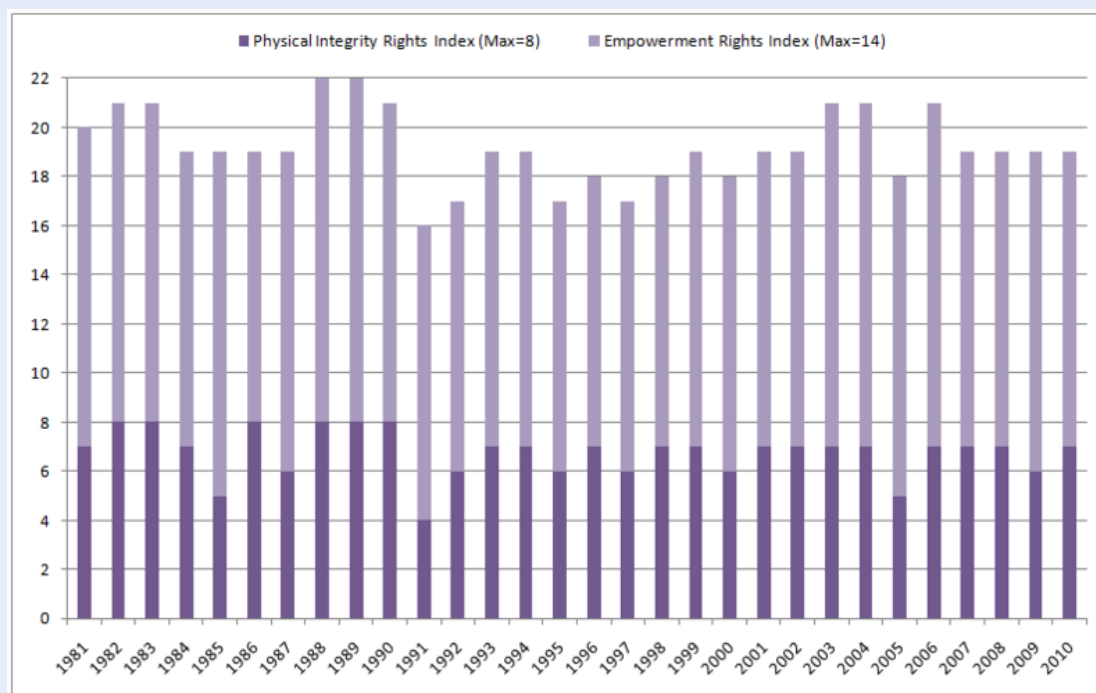
Figure 1.3a: Government respect for human rights: the UK in comparative perspective, 2010



Source: Cingranelli-Richards (CIRI) Human Rights Dataset (2011).

However, it is also important to note that CIRI data suggests a long-term decline in the UK's overall global ranking for human rights protection. Using the aggregate CIRI measure for all human rights, including those relating to economic and social rights for women, the UK has slipped from an overall global ranking of joint 11th in 1990 to joint 20th in 2010. Further analysis of the CIRI data for the UK highlights some of the reasons for this decline in the UK's relative position. Figure 1.3b highlights clear fluctuations in the UK's scores on the two principal CIRI indexes in the period from 1981-2010. Fluctuations in the UK's scores on the Physical Integrity Index, which are among the most variable of any established democracy over this period, are especially obvious from this data. Moreover, unlike most other OECD member states, these fluctuations are not confined to the decade since 2000 but are evident throughout the period. The clear explanation for this pattern is that the UK has struggled to adhere to the very highest standards of human rights in the context of a changing set of domestic terrorist threats (see Section [2.5.4](#)).

Figure 1.3b: UK scores on the Cingranelli-Richards (CIRI) Human Rights Dataset, 1981-2010



Source: Cingranelli-Richards (CIRI) Human Rights Dataset (2011).

The CIRI data also enables us to identify the specific areas where the UK track record in human rights is judged to be most variable over time; and therefore to explain why the UK stands apart from the small number of democracies which have consistently displayed exemplary human rights records. Table 1.3a summarises the instances in which the CIRI data records some degree of divergence from a full score on each of the 15 indicators which it uses. While this list is relatively lengthy, it is important to underscore that there is no country in the world for which the stringent CIRI methodology records zero breaches of human rights from 1981-2010 (Iceland comes closest, having a 'perfect' human rights score for 25 of the 30 years covered by the CIRI indicators). Neither does the data for the UK point to widespread and sustained abuses of civil and political rights - hence its relatively high global ranking on the index.

Nonetheless, Table 1.3a does point to some clear causes for concern. Most seriously, in 24 of the 30 years covered by the database there is evidence of at least occasional use of force by public officials in a way which can be classified as 'torture'. There are also eight years in which evidence was found of extrajudicial killings. No other North European democracy exhibits anything like this level of domestic state violence and, in countries such as Denmark, Norway and Iceland, in particular, the CIRI data finds it to be negligible. Moreover, the CIRI data also points to a significant number of years in which a degree of restriction was applied in the UK in relation to the freedoms of assembly, association, speech, movement and religion. Indeed, in 26 of the 30 years in the period under consideration there were restrictions of some kind observed in relation to at least one of these indicators. By contrast, the Nordic countries typically show evidence of any such restrictions in as few as four or five years over the same period.

Table 1.3a: Human rights concerns identifiable from the Cingranelli-Richards Human Rights Index, UK, 1981-2010

CIRI Indicator	Nature of concern identified	Frequency of concern (% of years in dataset)	Years when concern observed
<b>Physical Integrity Rights</b>			
Extrajudicial killings	Occasional killings by (or on behalf of) government officials without due process of law.	27%	1985, 1991, 1992, 1995, 1997, 2000, 2005, 2009
Political imprisonment (1)	Many individuals incarcerated by government officials because of non-violent political beliefs or actions	3%	1991
Political imprisonment (2)	A few individuals incarcerated by government officials because of non-violent political beliefs or actions	10%	1985, 1987, 2005
Torture	Occasional inflicting of extreme pain, or use of physical force that is 'cruel, inhuman, or degrading' by police, prison guards or other state officials.	80%	1981, 1984, 1985, 1987, 1991-2010 (inclusive)
<b>Empowerment Rights</b>			
Freedom of assembly and association	Some limiting of rights of citizens to assemble freely and to form or join political parties, trade unions, cultural organisations, or other interest groups.	37%	1986, 1992, 1995-2002 (inclusive), 2005
Freedom of foreign movement	Some restrictions on rights of citizens to leave and return to their country.	3%	1983
Freedom of domestic movement	Some restrictions on rights of citizens to move within their own country.	3%	2007
Freedom of speech	Some government censorship of the media	17%	1981, 1984, 1987, 1990, 2008
Freedom of religion	Moderate restrictions on peaceful religious practices	27%	1982, 1984, 1986, 2000, 2001, 2002, 2007, 2010
Workers' rights (1)	Severe restrictions on rights of workers to form associations at their workplaces and to bargain collectively with employers and/or other breaches of internationally-accepted standards for the workplace	27%	1991-1998 (inclusive)
Workers' rights (2)	Some restrictions on rights of workers to form associations at their workplaces and to bargain collectively with employers and/or other breaches of internationally-accepted standards for the workplace	17%	1986, 1999, 2008, 2009, 2010
Independence of Judiciary	Judiciary only partially independent of government control	3%	1993
Source: Derived from Cingranelli-Richards (CIRI) Human Rights Dataset (2011).			

The concerns highlighted in Table 1.3a are discussed in more detail in subsequent sections of this Audit. Physical integrity rights are dealt with in Section [1.3.1](#); freedoms of assembly, association, movement and speech in Section [1.3.2](#); and freedom of religion in Section [1.3.3](#). Meanwhile, the trade union aspects of workers' rights are examined in Section [1.4.5](#).

### 1.3.1 Civil liberties

How free are all people from physical violation of their person, and from fear of it?

If the population does not enjoy the most basic level of physical security, including freedom from fear of physical violation, then their prospects for accessing other civil and political freedoms and for wider democratic participation are inhibited. Violation of physical security

can arise both from other individuals in various form of violent crime; and from state agencies. In this sense, a democratic state has a complex role: a duty to ensure citizens and others are protected from physical violation; and at the same time to ensure it does not violate physical security inappropriately. A delicate balance is required when such issues as the use of force to prevent terrorists are considered.

Generally over the current Audit period there is evidence to suggest a reduction in violent crime, though with certain groups remaining considerably more vulnerable than others. However, partly driven by the response to one form of crime - that is, terrorism - there have been clear violations of basic principles involving the physical integrity rights that are fundamental to democracy.

The legal framework for the protection of physical security comes from both traditional and more recent sources. The legal principle of *habeas corpus*, originally developed in the common law, is a longstanding protection against arbitrary executive detention. The prohibition of torture continues to some extent to be based in the common law, which formed the basis for the unanimous House of Lords judgement in a 2005-06 case confirming that evidence obtained by torture could not be used in legal proceedings (but setting a disappointingly low threshold - 'balance of probabilities' - for determining that evidence was not procured in this way).

The European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act (HRA), includes a number of articles engaging freedom from physical violation. Article 2 states that 'Everyone's right to life shall be protected by the law'; Article 3 that 'No one shall be subjected to torture or to inhuman or degrading treatment or punishment'; Article 4 prohibits slavery and forced labour; Article 5 enshrines the right to liberty and security; Article 6 states that 'everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law'; Article 8 establishes a right to private and family life; and under Articles 1 and 2 of Protocol 6 the death penalty is prohibited. It should also be noted that Article 14 prohibits discrimination in the enjoyment of Convention rights.

### ***Violent crime***

One means of measuring freedom of the person from physical violation is through consideration of levels of violent crime. The serious civil unrest which took place in England during August 2011 involved the major violation of physical security and will presumably increase public fear of more violation in future. It came after a long period of falling levels of violent crime. According to the British Crime Survey (for a discussion of the merits of this data, see Section [2.2.1](#)), in 2009-10 there were 2.1 million violent incidents against adults in England and Wales. This figure represents a reduction of around 50 per cent since 1995 and violent crime is now at a similar level to 1981; with two million fewer incidents and around 800,000 fewer victims in 2009-10 compared with 1995 ([Flatley et al., 2010, p. 47](#)). In 2010-11 there was a rise, but not of a statistically significant nature ([Chaplin et al., 2011, p. 55](#)). Individual concerns about being a victim of violent crime have also been in long-term decline ([Flatley et al., 2010, p. 129](#)).

However, the impact of violent crime is felt disproportionately across different social groups. Those from younger age groups, men, and the unemployed are more likely to be attacked. Women are substantially more likely than men to be victims of domestic and sexual assault. ([Flatley et al., 2010, pp. 63-65](#)). As we noted in Section [1.1.2](#), there is clear evidence of under-reporting of rape. It has been estimated that in 2007-08, 87,280 rapes took place, but as few as 12,637 were recorded by the police in England and Wales, resulting in only 3,503 convictions ([Equality and Human Rights Commission, 2010, pp. 144-5; pp. 153-4; Stern, 2010, p. 85](#)). The conviction rate for the minority of cases which do come to court is around 60 per cent ([Stern, 2010](#)). However, as the above figures indicate, not only are as few as one-seventh of all incidents of rape reported to, and recorded by, the police but there is also a high rate of 'attrition' from the number of alleged rapes recorded to the number of cases coming to court ([Stern, 2010](#)). As a result, the proportion of all rapes which result in a conviction may be as low as one per cent ([Equality and Human Rights Commission, 2010](#)).

Another threat to freedom from physical violation arises from hate crime. While racial hate crime was first classified as an offence in the Public Order Act 1986, a number of recent acts of parliament have strengthened these provisions and extended them to cover religiously motivated crime, as well as crime motivated by disability, sexual orientation and transgender status. For England and Wales, the relevant legislation defining hate crime includes, among others, the Crime and Disorder Act 1998, the Criminal Justice Act 2003, the Racial and Religious Hatred Act 2006 and the Criminal Justice and Immigration Act 2008 ([Chakraborti and Garland, 2009](#)). The legal framework in Scotland was brought into line with that in England and Wales via the Offences Aggravated by Prejudice (Scotland) Act 2009, which gave recognition to these various forms of hate crime north of the border ([Hopkins, 2009](#)).

Hate crime figures for England and Wales were first published in 2010, and it is difficult to assess either the extent to which incidences of hate crime are being reported or whether levels of hate crime are changing. The latest statistics show that some 50,000 hate crime offences were recorded in England, Wales and Northern Ireland in each of the 2009 and 2010 calendar years. In both years, around 85 per cent of recorded hate crime related to racial or religious hatred, 10 per cent to sexual orientation and less than 5 per cent to disability ([ACPO, 2011](#)). It is difficult to assess whether these figures reflect actual levels of hate crime or, as would seem more likely, a far stronger public and institutional awareness of racially and religiously aggravated crime in comparison to the other categories ([Equality and Human Rights Commission, 2010](#)). However, from the limited number of years of data that are available, there is some evidence to suggest that there has

been a growth in the proportion of reported incidents of hate crime which result in charges being brought ([Equality and Human Rights Commission, 2010, p. 150](#); also, see Section [1.1.2](#)).

The overall picture, then, is that while violent crime and fear of it may be falling overall, certain groups appear to be considerably more vulnerable (though accurate and meaningful data may sometimes be hard to come by). This tendency is worrying from a democratic perspective, since it suggests a lack of equal access to fundamental civil and political rights.

### ***Terrorism, counter-terrorism and physical security***

Terrorism of various forms has been a direct threat to physical security in the UK for decades. The bombing atrocities in London of 7 July 2005, when 52 people were killed, put the existence of a terrorist threat beyond doubt, though its precise nature and causes are a subject of much debate. Clearly the government has a fundamental duty to protect people in the UK and UK subjects abroad from terrorist attacks. To this end it has a strategy known as 'CONTEST', comprising four primary strands, termed the 'four Ps'. These are: 'Pursue' - stopping terrorist attacks; 'Prevent' - stopping people from becoming terrorists or supporters of terrorists; 'Protect' - protecting against terrorist attacks; and 'Prepare' - reducing the impact of attacks that cannot be stopped.

The broad principles set out in 'CONTEST' are compatible with a credible approach to safeguarding physical security and providing for adherence to general human rights norms, and are specifically presented as such. Yet counter-terrorist policy in the UK has been subject to much criticism on the grounds that it undermines human rights, and possibly compromises its own effectiveness in the process, through creating resentment within the communities whose support is required to defeat terrorism ([Blick et al., 2006](#)). Two key areas of concern with respect to physical security are: stop and search powers granted to police under counter-terrorist legislation; and measures to detain or severely circumscribe the freedom of terrorist suspects who have not been charged, let alone placed on trial.

### ***Stop and search***

The Audit has previously described its concerns about the broad nature of stop and search powers (Beetham et al., 2002, p. 41). The tendency for stop and search powers of all types to be disproportionately focussed upon particular ethnic groups is noted elsewhere in this Audit (see Section [1.2.5](#)). Case Study 1.3b sets out the basic powers and trends in their usage as a counter-terrorist measure during the current Audit period.

#### **Case Study 1.3a: Counter-terrorist stop and search powers**

Section 43 of the Terrorism Act 2000 provides for police officers to stop and search those who they reasonably suspect are involved in terrorism activity. A total of 1,154 persons were stopped and searched under Section 43 powers in 2010-11, a six per cent decrease from the 2009-10 figure of 1,601. Only 3.2 per cent of stops and searches conducted on grounds of suspected terrorist activity led to arrests, compared with 10 per cent of stops and searches under the Police and Criminal Evidence Act 1984 in 2009-10. Moreover, of the arrests made following stop and search, very few tend to be for terrorism-related offences - indeed zero arrests were made on these grounds in 2009-10.

Until recently, Section 44 of the Terrorism Act 2000 allowed police officers, within authorised areas, to stop and search people and vehicles in order to search for items which could be used in connection with terrorism. There was no need for 'reasonable suspicion', creating a more arbitrary power than usually allowed to the police. The use of Section 44 powers rose from about 42,000 individuals stopped in 2006-07, peaking at over 250,000 in 2008-09. Thereafter numbers fell although in 2009-10, a total of 102,504 people were still stopped and searched, 79 per cent of them by the Metropolitan Police and 17 per cent by the British Transport Police. Only 0.5 per cent of these stop and searches led to arrests, none of which were for terrorism-related offences.

In June 2010, the European Court of Human Rights reached the decision that Section 44 of the Terrorism Act 2000 breached Article 8 of the Convention, the right to privacy and family life, because it was 'not in accordance with the law'. The coalition government has now reformed this power, but not abolished it completely. As the old Section 44 was being phased out, its use dropped substantially in 2010-11, by 91 per cent, to a total of 9,652 searches, of which 0.8 per cent resulted in an arrest.

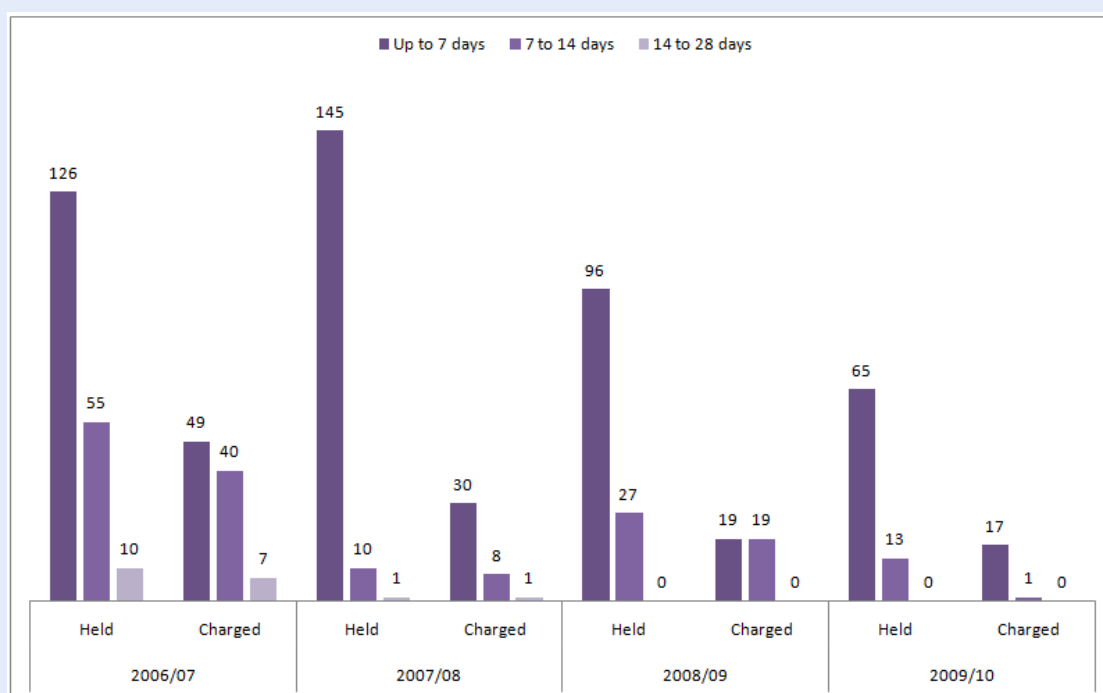
Sources: [Home Office \(2010\)](#); [Home Office \(2011\)](#); [Secretary of State for the Home Department \(2011\)](#).

### ***Detention and restriction of rights of suspects***

One way of achieving prolonged detention of terrorist suspects is through pre-charge detention of those who have been arrested under terrorism legislation. During the period of the present Audit, the maximum period of pre-charge detention under Section 41 of the Terrorism Act 2000 has been extended from seven to 14 days (a change that came into force in January 2004); and then from 14 to 28 days (put into effect in July 2006). There is a strong case that even a limit of seven days is both a departure from international norms (although direct comparisons are difficult). Concerns exist regarding the inappropriate conditions in which suspects are held ([Blick et al., 2006](#)).

The number of suspects detained under Section 41 of the Terrorism Act has fallen in recent years. As Figure 1.3c shows, whereas 191 individuals were detained under the legislation in 2006-07, this has since fallen year on year, dropping to 78 in 2009-10. In addition, the police have not, in recent years, made use of the facility to extend beyond 14 days detention. Again, the trend is clear from Figure 1.3c. Whereas 10 suspects were held for more than 14 days without charge in 2006-07 (nine in connection with the same police operation, 'Avert', related to the 'liquid bomb' plot), detentions of this length were used only once in 2007-08 and not at all in the two following years. As such, the coalition's reduction of the maximum to 14 days will probably make no practical difference if police have effectively ceased to use the ability to extend beyond 14 days detention.

Figure 1.3c: Suspects arrested under Section 41 of the Terrorism Act 2000: days held and charged, 2006-07 to 2009-10



Source: Home Office (2010).

Aside from through the use of arrest powers, since 2001 the government has developed means of indefinitely detaining or substantially restricting the rights of terrorist suspects without convicting them.

Under Part 4 of the Anti-Terrorism, Crime and Security Act 2001, provision was made indefinitely to detain foreign national terrorist suspects who were not charged with an offence and whom the government could not deport because (in accordance with Article 3 of the ECHR) there was a risk that they would be subjected to torture or other degrading treatment in their country of destination. The act was judged by the government to necessitate the introduction of a derogation from the European Convention on Human Rights (Article 5, the right to liberty and security of person).

In 2004, the House of Lords ruled this approach incompatible with the ECHR, by a majority of eight to one. While recognising the tradition that the judiciary display deference towards the executive on matters of national security, the strength of language used by some of the judges in this case indicated an intense concern about the course being pursued by the government. The law lords found that the act breached Article 14 of the convention (from which there had been no derogation), which prohibits discrimination, since the detention applied only to foreign nationals. They also held that the government response to the threat posed by Al-Qaeda was disproportionate; and that it violated Article 5 of the convention. While they could not strike down the act, they quashed the secondary legislation giving effect to

the derogation from Article 5.

Rather than responding to this judicial decision by backing away from its policy of severely limiting the freedoms of suspects, the government instead sought to extend its scope. It introduced the control orders regime, provided for by the Prevention of Terrorism Act 2005 (for more details of the control orders regime and coalition policy in this area, see Section [1.3.2](#)). The new legislation dealt with the issue of discrimination raised by the law lords by applying the provisions both to nationals and non-nationals, and all forms of terrorism. In parallel with control orders, the government has continued to seek deportation of terrorist suspects through the conclusion of agreements with individual states that they will not subject those sent there to torture or other degrading punishment ([Blick et al., 2006](#)).

We are deeply concerned about these various counter-terrorist powers and their deployment, which present a serious challenge to basic rights of physical security and due process. Though there is a downward trend in the use of counter-terrorist stop and search powers and some legal reforms have been introduced, basic issues remain. We also note the determination of government to continue to restrict the rights of individuals who are only *suspects*, even at the risk of being found to be in violation of human rights.

### **Surveillance and the 'database state'**

As well as terrorism (and the responses to it), potential threats to physical security have been driven by technological developments and their application in the public and private sectors - in particular through surveillance and the collection and handling of personal data (see Case Study 1.3b).

#### **Case Study 1.3b: Surveillance and the 'database state'**

Concerns about the growth of the so called 'database state' have mounted in recent years. A report by the [Foundation for Information Policy Research \(2009, p. 4\)](#) found that:

'In recent years, the Government has built or extended many central databases that hold information on every aspect of our lives, from health and education to welfare, law-enforcement and tax. This "Transformational Government" programme was supposed to make public services better or cheaper, but it has been repeatedly challenged by controversies over effectiveness, privacy, legality and cost.

'Many question the consequences of giving increasing numbers of civil servants daily access to our personal information. Objections range from cost through efficiency to privacy. The emphasis on data capture, form-filling, mechanical assessment and profiling damages professional responsibility and alienates the citizen from the state. Over two-thirds of the population no longer trust the government with their personal data'.

The report concluded that:

- Of the public sector databases reviewed, a quarter were almost certainly illegal under laws providing for data protection or human rights.
- More than half of the public sector databases reviewed could be challenged legally because of problems with their effectiveness or privacy.
- Of the public databases assessed, less than 15 per cent were found to be 'effective, proportionate and necessary with a proper legal basis for any privacy intrusions' (p. 4).
- The tendency in the UK for increased centralisation and pooling of data by public agencies was anomalous when compared to practices in other developed countries, where records tend to be held locally, especially where they relate to sensitive matters associated with social services or healthcare.

[The House of Lords Select Committee on the Constitution \(2009\)](#) considered how government surveillance and data collection were impacting upon both the privacy of citizens and their relationship with the state. The committee's report raised issues of concern about practices of surveillance in both the public and private sectors; and the requirement for them to comply with Article 8 of the ECHR, covering respect for privacy and family life. The committee noted that official provision for the oversight of personal information systems was more stringent for the public than for the private sector. It was 'concerned that primary legislation in the fields of surveillance and data processing all too often does not contain sufficient detail and specificity to allow Parliament to scrutinise the proposed measures effectively' (p. 83).



After taking office the coalition reviewed government policy in these areas ([Secretary of State for the Home Department, 2011](#)). It reported early in 2011 making a number of proposals, including for restraining local authorities in their use of covert investigatory methods to ensure that they are targeted only at tackling serious crime and must be approved by a magistrate. The coalition has also dropped the previous government's national identity card scheme and the associated National Identity Register (for media violation of personal security, see Section [3.1.5](#)). We are encouraged by these developments under the coalition, but note that there remain various concerns in this area, including regarding the conduct of the private sector.

### 1.3.2 Political rights

How effective and equal is the protection of the freedoms of movement, expression, association and assembly?

It is essential to democracy that people are entitled to move from place to place, discuss political issues openly, associate with others for political purposes, and assemble for political purposes such as demonstrations. These are once again a set of rights which have a firm place in UK political culture, but were not in the past provided for positively. The common law principle is that unless the law specifically prohibits a particular activity, then it is permitted. It was by this means that such rights as freedom of assembly and expression were provided for in the UK. The ECHR, on the other hand, establishes these rights in a positive sense. Article 10 covers freedom of expression and Article 11 freedom of peaceful assembly and association. Both of these rights are - within the context of the convention - restricted rights. This status means that they are not absolute. For instance, freedom of expression can be restricted by law, but only to the extent that is necessary in a democratic society. The purposes to which such limitations can be directed include national security, public safety, preventing crime and disorder, and to protect the rights of others. Freedom of association may be impinged upon to some extent by such measures as legislation to regulate political parties.

There are dangers involved in the striking of a balance between these rights and competing concerns, as demonstrated by a consideration of the policing of protest. There is reason to believe that the public authorities sometimes veer excessively towards caution, for instance in protecting those not involved in the protest from inconvenience. A recent parliamentary inquiry into this subject described how '[w]e were struck by the accounts of the use of a wide range of police powers against protestors and others involved with protest - such as journalists - as well as the significant mismatch between the perceptions of protestors and the police about the way in which protest is managed' ([Joint Committee on Human Rights, 2009, p. 19](#)). The inquiry concluded (p. 19) that: 'These factors could serve to diminish, rather than facilitate, protest and also risk encouraging conflict rather than co-operation between protestors and the police'. It went on to emphasise (p. 19) that '[i]n addition to its positive duty, the state is required not to restrict protests unless it is justified as being both necessary and proportionate to do so in pursuance of a legitimate aim: this is a high threshold'. In a subsequent report on policing protest the Joint Committee on Human Rights uncovered evidence of a cultural problem within the police force. It noted that HM Inspectorate of Constabulary had found 'only one police force (West Yorkshire) [...] to be using the correct definition of the term 'proportionate' with respect to the use of force in its training materials' ([Joint Committee on Human Rights, 2011, p. 8](#)).

During recent years, policy and legislation aimed at combating the threat of international terrorism have created a series of new threats to the fine balance between different rights. In the process, the freedoms of movement, expression, association and assembly have been severely tested. In view of these developments, the remainder of this section focuses specifically on how these freedoms may have been curtailed as a result of anti-terrorist measures.

#### **Control orders**

The purpose of control orders was to prevent terrorist suspects (who could not be prosecuted or deported) from engaging in terrorist-related activities (for a detailed account of control orders from which the following discussion is drawn, see [Carlile, 2011](#); [Secretary of State for the Home Department, 2011](#)). The orders, which currently being phased out, operated through placing various stringent restrictions on the activities of these suspects. The conditions imposed by control orders could include:

- the attachment of an electronic tag;
- the imposition of curfews: as of 10 December 2010, the longest curfew in place was 14 hours per day, and the average curfew 11.9 hours per day;
- regular (possibly more than once daily) reporting to a police station or monitoring company;
- the prohibition of movement beyond specified geographical limits;
- the requirement to move to and remain at a particular address;
- severe restrictions on who may enter the residence of the individual who is subject to an order;
- a list of people with whom the person subject to the order can make no contact;

- stringent restrictions on the use of communications technology; *and*
- stringent restrictions on financial activity.

Section 2 (1) of the Prevention of Terrorism Act 2005 provided that control orders may be issued when the home secretary had reasonable grounds to suspect that an individual was, or had been, involved in terrorism; and considered that it was necessary to public safety to impose obligations on that person through a control order.

The imposition and maintenance of control orders involved closed hearings and secret evidence, bypassing more regular full judicial processes such as opening hearings and jury trials (see Section [1.2.3](#)). In some early cases, individuals made subject to the control order were not made aware of the substance of the case against them (although following a House of Lords judgment in June 2009, a summary of the allegations had to be provided). The threshold for granting a non-derogating control order was, as noted above, 'reasonable grounds to suspect' that an individual was associated with terrorist activity. Control orders were not criminal proceedings, but the breach of a control order was a criminal offence.

There were two broad categories of control orders: those so stringent as to require derogation from the ECHR (Article 5, the right to liberty and security of person), and those that did not. No derogating control orders were issued. Non-derogating control orders lasted 12 months. After this point they could be renewed.

Between 2005, when control orders were introduced, and late 2010, 48 people were made subject to control orders, 28 of whom were foreign nationals. Most of those who were subject to a control order were subject to it for less than two years. Two foreign nationals were on control orders for in excess of four years before they were revoked. On 10 December 2010, eight control orders were in force. This figure was four fewer than a year earlier, and seven fewer than in 2008.

One criticism of the system was that the threshold, 'reasonable grounds for suspicion', was too low. It was argued that it should be raised at least to 'reasonable grounds for belief', which would still be short of the full civil standard of 'balance of probabilities', and further still from the criminal standard of 'beyond reasonable doubt'.

The coalition is in the process of replacing control orders with 'T-Pims' (Terrorism Prevention and Investigation Measures). These are intended to be less stringent but seem to leave a number of key features of the control orders system in place, including the use of secret evidence and civil proceedings to significantly deprive individuals of their freedoms. There will, however, be a time limit of two years; and the home secretary will have to have reasonable grounds to believe - rather than just reasonable grounds to suspect - that the individual is associated with terrorism.

Control orders/T-Pims are not the only means by which major impositions on the freedom of individuals have been made without recourse to criminal prosecution. Lord Carlile, the official reviewer of counter-terror legislation, has also drawn attention to asset freezing orders issued under Schedule 4 of the Terrorism Act 2000, which have for those they apply to, 'a grave effect upon [...] freedom of movement, [...] liberty and private and family lives' ([Carlile, 2010, p. 48](#)). As well as using powers under the Terrorism Act, the Treasury has utilised regulations issued under the United Nations Act 1946, giving effect to United Nations Security Council Resolutions on terrorist finance. The Supreme Court found these powers to be without the scope of the parent legislation; and struck them down immediately. The government responded with temporary legislation rushed through both Houses declaring the regulations to be valid. The coalition government has introduced limited reform through the Terrorist Asset Freezing etc. Act 2010. However, there remained cause for concern about whether a sufficiently rigorous standard of proof was being applied to the imposition of such orders; whether there would be sufficient openness about the reasons for orders; and whether those who were subject to them were given sufficient information to be able to have a fair hearing ([Joint Committee on Human Rights, 2010](#)).

### ***Proscribed organisations***

Under Part 2 of the Terrorism Act 2000, the Home Secretary may proscribe an organisation 'if he believes that it is concerned in terrorism' as defined in the act. As of 2010 there were 46 proscribed international terrorist organisations (and 14 organisations in Northern Ireland proscribed under previous legislation). Of the international organisations, two were proscribed under Section 2 of the Terrorism Act 2006 for glorifying terrorism. The act makes being a member of, or expressing support for, a proscribed organisation an offence. The definition of support can extend as far as to include the wearing of clothing.

Proscriptions are reviewed at least every 12 months using intelligence and other information. Appeals against proscription, if refused by the home secretary, are heard by the Proscribed Organisations Appeals Commission (POAC), another organisation which can hear secret evidence. As with control orders, a substantial restriction of key freedoms can therefore be imposed without the need for criminal proceedings.

The coalition review of counter-terrorism powers was concerned not with the possibility of abolishing or liberalising the proscription system, but with 'whether it would be practical to widen the current definition of terrorism or to amend the statutory test for proscription [...] to include organisations that promote views which incite violence or hatred' ([Secretary of State for the Home Department, 2011, p. 30](#)). However, ultimately the review ruled out this option.

Proscription in general is problematic from the point of view of the freedom of association, with implications as well for the freedoms of expression, assembly and movement. Proscription specifically on the grounds of glorification of terrorism raises heightened issues around freedom of expression. The official reviewer of terrorism legislation, although concluding that 'the retention of proscription is a necessary and proportionate response to terrorism', remarked that: '[t]he proscription of organisations is at best a fairly blunt instrument, especially when compared with the menace that can emerge from the internet' ([Carlile, 2010, p. 16](#)).

### ***Stop and search***

The broadly drawn stop-and-search powers, in particular those under the now slightly reformed Section 44 of the Terrorism Act 2000, are discussed at length in Section [1.3.1](#) with regard to freedom from physical violation of the person. The official reviewer has noted their impact upon freedom of movement in the following terms:

'Examples of poor or unnecessary use of section 44 abound. I have evidence of cases where the person stopped is so obviously far from any known terrorism profile that, realistically, there is not the slightest possibility of him/ her being a terrorist, and no other feature to justify the stop. Section 44 stops and searches in the past year have included a senior retired Cabinet Minister and a 64 year old Q.C., both so obviously not possible terrorists as to make the procedure laughable, were it not for the intrusion into their civil liberties. In another case the subject was a lawyer of whom the only possible factor giving rise to the stop is that he is British Asian: in no way other than on a crude racial basis could an intelligent decision have been made to stop him. Chief officers must bear in mind that a section 44 stop, without suspicion, is an invasion of the stopped person's freedom of movement,' ([Carlile, 2010, p. 34](#)).

### ***Photography and counter-terrorism powers***

Section 58A of the Counter-Terrorism Act 2008 creates a criminal offence of eliciting, publishing or communicating information about members of the armed forces, intelligence services or police which is 'of a kind likely to be useful to a person committing or preparing an act of terrorism'. Amateur and professional photographers have complained that 'this provision was being used to threaten them with prosecution if they take photographs of police officers on duty' ([Carlile, 2010, p. 43](#)). The coalition review 'noted the widespread concern, notably amongst photographers and journalists, that counter-terrorism powers are being used to stop people legitimately taking photographs' ([Secretary of State for the Home Department, 2011, p. 21](#)). It concluded that Section 44 of the Terrorism Act 2000, not Section 58A of the Counter-Terrorism Act 2008, was 'the key issue' ([p. 21](#)). The review argued that the 'curtailment of section 44 powers should significantly reduce concerns that counter-terrorism laws are being used against photographers' ([p. 24](#)). However, the review rejected the need for a change to Section 58A of the Counter-Terrorism Act.

### ***The Terrorism Act 2006***

The Terrorism Act 2006, a legislative response to the July 7 2005 bombings, created (in Sections 1 and 2) offences of the making of statements and the dissemination of publications that encourage terrorism. Section 8 of the 2006 act makes it an offence to attend any place, worldwide, that is used for terrorism training. Section 12 of the 2006 act amends the Serious Organised Crime and Police Act 2005, in relation particularly to trespass on nuclear sites, making it an offence to trespass within the outer perimeter boundary of a nuclear site. The act has generated particular controversy for its prohibition of language that 'glorifies' terrorism. This legally unusual term may have problematic implications for freedom of expression. In making it an offence to attend premises used for terrorism training the act 'has the effect of also criminalising a journalist who enters a terrorist training camp for the purposes of reporting on the activities there' ([Carlile, 2010, p. 54](#)). The ban on trespassing on nuclear sites has implications for the ability of anti-nuclear campaigners to protest.

### ***The overall impact of counter-terrorism powers***

The various powers described above, individually and collectively, give us considerable cause for concern about the protection of the freedoms of movement, expression, association and assembly. Control orders, while in force, impacted negatively on all of these rights. The proscription of terrorist groups also gives rise to multiple concerns. There are other individual infringements on the freedom of movement and expression. The targeting of those who express certain views that are deemed to glorify terrorism suggest that, as well as not fully being effective, the protection for key freedoms is also unequal. While the coalition has introduced limited improvements, fundamental problems remain.

## **1.3.3 Freedom of religion and rights of minorities**

## How secure is the freedom for all to practise their own religion, language or culture?

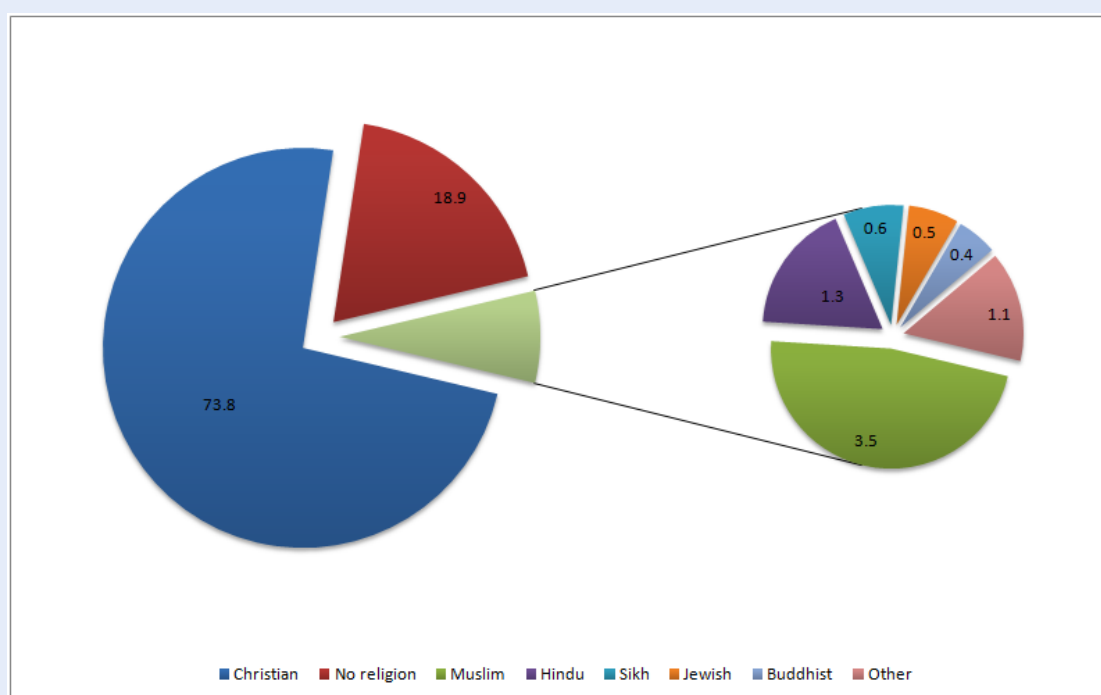
The freedoms to practise religion, language or culture are not necessarily as directly connected to the formal political processes of a democracy as are other rights such as the freedom of expression and association. However, they are essential components in the free society that is required for the sustenance of genuine democracy. Moreover, there is an historic and ongoing connection between on the one hand, religious, linguistic and cultural rights, and on the other hand rights such as freedom of expression, which means that they cannot fully be considered separately from one another.

### Religion

The freedom to practise religion has specific provision under Article 9 of the ECHR, which covers freedom of thought, conscience and religion. In the UK there is no formal concept of a secular state. The official position is that there is an established church (although not in Wales and Northern Ireland), of which the UK Head of State (i.e. the Queen) is the figurative head, and which has places in the House of Lords reserved for 26 of its bishops (with no such provision existing for any other faith group). Proposals for a reformed House of Lords brought forward by the coalition would mean that the proportion of bishops within the new second chamber would actually be higher, though within a smaller overall house. Rules of succession to the throne ensure that only someone in communion with the established church can become monarch.

As Figure 1.3d shows, the UK is a multi-faith society, with a considerable portion of the population holding no faith.

Figure 1.3d: Religious affiliation in the UK



Source: [Equality and Human Rights Commission \(2010, p. 63\)](#)

While a majority (74 per cent) of UK residents describe themselves as 'Christian', the figure includes those who are only 'culturally' Christian. Many of those who describe themselves in this way do not practice Christianity, and may even be agnostic or atheist. There are also Christians from denominations other than the official one, such as Roman Catholics. According to a Populus poll published in February 2011, 54 per cent of people described themselves as Christian ([Lowles and Painter, 2011](#)), a significantly lower figure than appears in Figure 1.3d, which again underlines that much religious identification in the UK is likely to be weak. Moreover, only 33 per cent of those self-identifying as 'Christians' reported religion as being important to them; while 36 per cent said that it was not ([Lowles and Painter, 2011](#)). Furthermore, 68 per cent of respondents indicated that they agreed with the statement 'religion should not influence laws and policies in this country'. The existence of an 'official religion' could, in a sense, be argued to discriminate against all those who do not subscribe to it. However, in practice, public policy tends to promote equal provisions for different faith groups, including those of no faith,

through measures such as providing for the establishment of faith schools alongside non-denominational schools.

Given the multi-faith and no-faith nature of the UK, protecting the freedom of religious belief and its interrelationship with other rights and anti-discrimination law is a complex issue, with competing claims to be reconciled (Woodhead, 2009). For instance, in the case of *Ladele v London Borough of Islington 2008*, a Christian registrar was threatened with dismissal after refusing to officiate for civil partnerships. She then claimed that she was subject to direct and indirect discrimination on the grounds of religion or belief. The initial employment tribunal found in her favour, but this ruling was reversed on appeal.

During the period since the last Audit, there has been substantial legislative activity intended to enhance religious freedom:

- In 2003 the Employment Equality (Religion or Belief) Regulations created a prohibition on both direct and indirect discrimination in employment on the basis of religion or belief. However an exemption was provided for employers with an 'ethos based on religion or belief', who can discriminate on the basis of religion or belief if being of a particular religion or belief is 'a genuine occupational requirement for the job' and where 'it is proportionate to apply that requirement in the particular case' (Regulation 7(3)).
- The Racial and Religious Hatred Act 2006 outlawed the incitement of hatred on the grounds of religion or belief, through amending the Public Order Act 1986, which now defines religious hatred as 'hatred against a group of persons defined by reference to religious belief or lack of religious belief'.
- In 2008 the common law offences of blasphemy and blasphemous libel, which protected only Christianity, were abolished through the Criminal Justice and Immigration Act 2008.
- The Equality Act 2006 prohibited discrimination on the basis of religion or belief in the provision of goods, facilities and services, the management of premises, education, and the exercise of public functions. Part 3 of the act provided for regulations made in 2007 outlawing discrimination on the grounds of sexual orientation in the provision of goods and services, but provided an exemption for the 'purpose of an organisation relating to religion or belief'. Significantly, however, this exemption is not applicable to organisations working within education and/or with public authority contracts; for instance, adoption agencies.
- Finally, the Equality Act 2010 consolidated a wide, disparate body of equality law, which was up until that point to be found in more than 100 different primary and secondary legislative provisions. The general intention of the act was to give consistent rights and protections to various different groups. Religion or belief was one of a number of 'protected characteristics' defined by the act - as well as age, disability, gender reassignment, race, gender and sexual orientation. Practices as well as policies can be deemed unlawful under the act. It also extends the requirement for public bodies to promote equality and sets out how this goal may be achieved - from the areas of race, gender and disability, to the additional protected characteristics in the act, including religion.

Some of these shifts provoked controversy. By including an exemption for employers with an 'ethos based on religion or belief', the Employment Equality (Religion or Belief) Regulations could be seen as protecting the religious views of members of one group, at the expense of the rights of members of another. Further controversy was generated during the passage of the Racial and Religious Hatred Act 2006. The act's outlawing of the incitement of hatred on the grounds of religion or belief was interpreted by some as potentially damaging to the right of freedom of expression. Once again the difficulties involved in balancing different civil and political rights were apparent.

### **Language**

Legislation and policy exists to protect the main indigenous minority languages in the UK: Welsh (by far the most widely spoken), Scots, and Irish Gaelic. Before devolution, the Welsh Language Act 1967 meant that that Welsh could be spoken in any legal proceedings in Wales; and that ministers could prescribe the use of Welsh versions of official documents. The Welsh Language Act 1993 established a Welsh Language Board, promoting equality between Welsh and English in official business. Since devolution, within the period of the current Audit, the Government of Wales Act 2006 provided that (Section 78) Welsh ministers had to adopt a 'Welsh language strategy' to promote the Welsh language and facilitate its use. The act also stipulated that Welsh Ministers adopt a 'Welsh language scheme' to give effect to the principle that the English and Welsh languages should be treated equally in the conduct of public business.

In February 2011, the Welsh Language Measure received Royal Assent, having been passed by the Welsh Assembly the previous December. This confirmed the official status of the Welsh language. It provided for the establishment of linguistic rights in service provision; and created a language commissioner, a Welsh Language Tribunal and a Welsh Language Partnership Council. It also allowed the language commissioner to investigate alleged instances of attempts at restricting the right of Welsh speakers to use their language with one another.

In Northern Ireland, the status of minority languages is a specific component of the peace process. The Belfast (or 'Good Friday) Agreement

of 1998 included the statement that (Section 6, 3):

'All participants recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland' ([Belfast Agreement, 1998, p. 14](#)).

The agreement went on to stipulate various ways in which these languages would be officially promoted. The Northern Ireland (St Andrews Agreement) Act 2006 (Section 15) provided that the Northern Ireland executive must 'adopt a strategy setting out how it proposes to enhance and protect the development of' the Irish and Ulster Scots languages.

### **Culture**

Culture can be harder to define than either religion or language (it can in part comprise both of them) and does not enjoy the same specific legal protection. Culture could potentially involve various convention rights, such as the freedom of association (Article 11) and expression (Article 10). There is also a right to culture provided for under the Article 15 of the United Nations International Covenant on Economic, Social and Cultural Rights. However, unlike the ECHR, this agreement is not incorporated into domestic legislation. Moreover, it is couched in broad terms, and difficult to apply clearly to specific circumstances.

The tensions that can be associated with cultural freedom are illustrated well by the position in Northern Ireland, where its exercise by one group can be interpreted as an intolerable provocation by another. With these problems in mind, the Belfast Agreement of 1998 (Section 6, 5) stated that:

'All participants acknowledge the sensitivity of the use of symbols and emblems for public purposes, and the need in particular in creating the new institutions to ensure that such symbols and emblems are used in a manner which promotes mutual respect rather than division. Arrangements will be made to monitor this issue and consider what action might be required' ([Belfast Agreement, 1998, p. 14](#)).

Alongside its stipulations about languages, the Northern Ireland (St Andrews Agreement) Act 2006 (Section 15) requires the Northern Ireland executive to 'adopt a strategy setting out how it proposes to enhance and protect the development of' the Irish and Ulster Scots 'heritage and culture'.

Aside from specific circumstances in Northern Ireland, there is evidence of a threat to cultural freedom in the UK posed by the rise of a politics of 'identity, culture and nation'. Populus research published in February 2011 ([Lowles and Painter, 2011](#)) found that while 49 per cent of the public believe that having a wide variety of cultures is part of British culture, 51 per cent think that the presence of other cultures has undermined British culture (see Case Study 1.3c).

### **Case Study 1.3c: The Searchlight Educational Trust report of 2011 (Excerpts)**

The Searchlight Educational Trust report of 2011, Fear and HOPE ([Lowles and Painter, 2011](#)), drew on detailed opinion polling to reach the following conclusions (excerpts taken from Executive Summary):

'A new politics of identity, culture, and nation has grown out of the politics of race and immigration, and is increasingly the opinion driver in modern British politics.'

'There are six identity 'tribes' in modern British society. These are:

- Confident Multiculturalists (eight per cent of the population);
- Mainstream Liberals (16 per cent);
- Identity Ambivalents (28 per cent);
- Cultural Integrationists (24 per cent);
- Latent Hostiles (10 per cent); and
- Active Enmity (13 per cent).'

'There is a new middle ground of British politics that is defined by two groups of voters: Cultural Integrationists, who are motivated by authority and order; and Identity Ambivalents, who are concerned about their economic security and social change. Together, they make up 52 per cent of the population'.

Source: [Lowles and Painter \(2011\)](#)

### 1.3.4 Freedom of expression for human rights groups

How free from harassment and intimidation are individuals and groups working to improve human rights?

We have found no evidence to suggest that human rights groups, or leading human rights campaigners, in the UK are subject to harassment or intimidation. The broad position set out in the last full Audit therefore remains:

'British society is rich in organisations, independent of government, that exist to protect and advance human rights [...] All such organisations seem free to organise, lobby and publish their views without their workers being harassed or intimidated by the authorities' (Beetham et al., 2002, pp. 56-7).

However, the various counter-terrorist measures discussed above with negative implications for freedoms of speech, movement, association and expression, pose a potential threat to human rights activists and the climate of freedom in which they operate, just as equally as they do to other political groups. In addition, revelations that undercover police officers had actively infiltrated environmental protest groups in the 2000s (Burton, 2011) raise important implications about the extent to which state agencies are, and should be permitted to be, engaged in covert surveillance of pressure groups.

## Conclusion

The period under consideration in this chapter is one in which the protection of civil and political rights in the UK underwent a significant transformation. The *Human Rights Act (HRA) 1998* marked an important constitutional shift away from a system in which provision for these rights largely rested on broad constitutional understandings; and the role of the judiciary in this area largely involved common law inferences of negative liberty. The new arrangements have provided for a more active part for the judiciary in rights specifically defined in national law.

The pre-HRA approach to protection of civil and political rights was clearly imperfect and the case for a more positive approach was strong. It is unfortunate that the formative years of the new system coincided with a period of heightened concern about international terrorism. The protection of civil and political rights within a democracy necessarily involves difficult and important decisions about limitations and balance. Most civil and political rights are not absolute. The role of the state is complex, since it is both required to act to uphold civil and political rights; and not to interfere excessively in society. Sometimes satisfactory approaches are difficult to shape. For instance, the desire to prevent incitement to religious hatred may impinge upon freedom of expression.

However, we believe that, in many cases, the strength of the reaction to the terrorist threat that became fully apparent on 11 September 2001 struck the wrong balance in favour of security over liberty. Indeed the House of Lords, in its 2004 judgement on detention of foreign terrorist suspects under the Anti-Terrorism, Crime and Security Act 2001, specifically found the derogation from the European convention disproportionate, confirming our view at least as regards to this feature of the government's approach.

It is arguable that, as this judicial decision shows, the existence of the HRA made it harder for the government flagrantly to abuse civil and political rights. However, the persistence and inventiveness of the government in pursuing its desire to detain or severely restrict the freedoms of individuals who have not been convicted of a crime is regrettable. The various methods pursued have included control orders; the heavy use of stop and search powers; and the extension of periods of pre-charge detention. Taken together, these measures produce an overall picture of a serious and worrying erosion of civil and political rights, notwithstanding the progress made, in particular, in the area of extending religious freedom. While we welcome limited improvements that have been brought about under the coalition, we recognise that there is ample scope for further reform before a more appropriate balance between security and freedom is struck.

Placing the chapter in the broader context of this full Audit, the lack of consensus over the future of the HRA is an important part of the instability that can be observed in UK constitutional arrangements. Failure to achieve agreement over the primary means by which civil and political rights are protected is a dispute of a fundamental nature. The challenge which the HRA - through being protected from implied repeal - poses to the traditional doctrine of parliamentary sovereignty is a further case of constitutional instability, since parliamentary



sovereignty is central to the UK version of Westminster model democracy. Government has often seemed determined to press on, using its dominance of parliament, even in the face of judicial resistance. Yet it might be held that the logic of the HRA, if adhered to, points towards an increased sharing of sovereignty.

Widening social and political inequality is another key development identified in this Audit. Democracy implies political equality; which in turn implies equal enjoyment of rights. The European Convention on Human Rights, incorporated into UK law by the HRA, specifically protects against discrimination in this regard. Yet the policy of detaining foreign terrorist suspects was found in 2004 to have violated this requirement. Other issues identified in this chapter provide wider evidence of the nature of inequality in contemporary Britain. Thus, the apparent fall in violent crime, one of the main improvements identified in this chapter as evidence of improved physical security for the population, masks the fact that certain groups - the less affluent, women, potential hate-crime victims - remain disproportionately likely to be the victims of particular forms of violence.

The state has a vital role in any society in both protecting and balancing civil and political rights. But the private sector has influence as well. This tendency has been made apparent by the role of private corporations in the rise of surveillance. As identified elsewhere in this Audit, there is a tendency to apply lower standards of democratic regulation to the private sector than the public.

Finally, the introduction of the HRA, and the subsequently enhanced role of the courts in upholding civil and political rights, poses some important questions about the changing nature of representative democracy in the UK. The ongoing controversy over the role of the HRA and the reluctance of government to change its overall policy approach when found to be in violation of human rights by the courts, suggest that the UK has yet to find the right balance between elected politicians and a genuinely independent judiciary.

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## 1.4 Economic and social rights

### Executive Summary

This chapter reviews the available evidence relating to the six 'search questions' concerned with economic and social rights.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Advances secured through the Equality Act 2010.**

The Equality Act 2010 modernised, strengthened and simplified all equality law to date into one piece of legislation, making it easier to understand, easier to comply with and easier to enforce. The act also obliges government and all public bodies to 'have due regard' for the impact of their policies and actions on minorities on grounds of gender, race, disability, age, religion and sexual orientation. (For further details and discussion, see Section [1.4.1](#))

##### **2. New measures to assist working parents.**

Traditionally, the UK has lagged behind the rest of western Europe with regard to parental leave and childcare provisions. There were significant improvements under the Labour governments of 1997-2010, including, notably, the introduction of paid paternity leave, new rights for parents to request flexible working hours, and a large-scale expansion of childcare. However, childcare costs remain exceptionally high, particularly by the standards of other European countries. (For further details and discussion, see Section [1.4.1](#) and Figure [1.4r](#))

### **3. Increase in the employment rate for disabled people.**

The overall employment rate for disabled people rose from 43 per cent in 1998 to 50 per cent in 2006. However, concerns remain about the extent to which the rate of employment varies by type of disability and about the fact that disabled people typically earn 10 per cent less than non-disabled people. (For further details and discussion, see Section [1.4.1](#))

### **4. Evidence of a fall in homelessness from 2004-2010.**

Levels of homelessness in England, as recorded in official statistics, were reduced sharply during the second half of the 2000s. The number of households accepted as newly homeless under the terms of the 1996 Housing Act fell from around 35,000 per quarter in 2004 to about 10,000 per quarter in 2010. There was also a sharp drop in the number of households living in temporary accommodation, which fell from a peak of around 100,000 in 2005 to 48,270 in early 2011. However, there are clear signs that homeless began to rise again from 2010-11 and that it will continue to do so over the next few years. (For further details and discussion, see Section [1.4.2](#))

### **5. Reduction in the rate of relative child poverty.**

Under the Labour governments of 1997-2010, there was a 7.2 percentage point decrease in the proportion of children living in poverty (from 26.9 per cent to 19.7 per cent), arising from the introduction of tax credits and increased public expenditure on benefits for parents with children. This decline was sharper than in any other OECD country during this period (see Figure [1.4t](#)). Despite this significant progress, however, Labour fell some way short of its target of halving child poverty, and child poverty rates in the UK remain significantly above the average for the EU-15. (For further details and discussion, see Section [1.4.2](#) and Figures [1.4t](#) and [1.4u](#))

### **6. Sharp reduction in poverty among pensioners.**

Since 1997, there has been a significant decrease in pensioner poverty in the UK, primarily due to the introduction of tax credits and higher benefit levels under Labour. On most accepted measures, pensioner poverty is now at its lowest rate since the mid-1980s. While poverty among pensioners has by no means been eradicated, it has been reduced by at least one-third, and the rate of pensioner poverty in the UK now compares reasonably favourably to other established democracies (see Figure [1.4v](#)). Under the coalition's proposals to restore the earnings-based link for rises in the basic state pension, levels of pensioner poverty in the UK are projected to fall further, albeit gradually, over the next 15 years. (For further details and discussion, see Section [1.4.2](#))

### **7. A significant increase in health care expenditure and continued improvements in life expectancy.**

Substantial investment in the National Health Service under Labour saw UK health expenditure rise from 7.5 to 9.5 per cent of GDP from 2002 to 2009, bringing it into line with the OECD average. Average life expectancy in the UK has also increased steadily, reaching 80.4 years in 2009, the same as the average for the EU-15 and only 0.2 years below the average for the Nordic countries (see Figure [1.4w](#)). However, the UK continues to spend less on healthcare than most other north European democracies and consideration of other health indicators reveals the UK to be under-performing relative to other established democracies, especially with regard to health inequalities. (For further details and discussion, see Section [1.4.3](#))

### **8. Increased spending on education and improved educational outcomes.**

There was a sustained increase in UK government spending on education during the 2000s, as a result of which education spending in the UK was brought into line with the average for the EU-15 (see Figure [1.4y](#)). Improved test and examination results, and a rise in the proportion of young people attending university, also provide some evidence, albeit contested, of an overall increase in standards, and an improvement in educational attainment from the mid-1990s to the late 2000s. However, levels of education spending continue to fall short of those in the Nordic countries and significant educational inequalities remain, which appear to be exceptionally wide by international standards. (For further details and discussion, see Section [1.4.4](#))

### **9. The establishment of a statutory procedure for union recognition.**

The Employment Relations Act 1999 established a statutory route to trade union recognition and the new system has bedded down more

successfully than previous attempts to introduce such a mechanism. These provisions are likely to have slowed the previously rapid decline in the proportion of workplaces which recognise trade unions for the purpose of collective bargaining. (For further details and discussion, see Section [1.4.5](#))

## ***(b) Areas of continuing concern***

### **1. Poverty and inequality remain higher than the EU-15 average despite improvements under Labour.**

Income inequality in the UK is very high by the standards of western Europe and has increased dramatically compared to the mid-1970s (see Figure [1.4a](#)). While the growth of inequality has slowed, there was still a slight increase in UK income inequality, as measured by the Gini coefficient, from the mid-1990s to the late 2000s. The policies pursued by Labour from 1997-2010 were successful in raising the incomes of many of the poorest in UK society, particularly pensioners, but provided no means of preventing inequality from widening as a result of the dramatic growth in the incomes of the highest earners. While inequality has increased in virtually all established democracies over the last decade, the contrasts between the UK and other north European democracies are more pronounced than ever (see Figure [1.4b](#)). Moreover, overall poverty levels in the UK remain above average for the EU-15, with six per cent of UK households in receipt of less than 40 per cent of the median income in the late 2000s (see Figure [1.4c](#)). (For further details and discussion, see the [Introduction](#) to Section 4.1)

### **2. High levels of labour market exclusion.**

A significant proportion of adults of working age in the UK remain excluded from the labour market owing, in large part, to a lack of available work in many areas of the country (see Figure [1.4g](#)) and low levels of government spending on active labour market policies (see Figure [1.4i](#)). While the UK's official unemployment rate fell sharply during the 2000s, it has begun to rise rapidly since the beginning of the economic crisis in 2008 (see Figure [1.4e](#)). However, the size of the working-age population reliant on social security remained high through to the mid-2000s, resulting in only a relatively modest fall in the proportion of households in which all adults aged 16-64 were 'workless'. Since the economic downturn, dependency on benefits has increased once more, with 19 per cent of UK households now defined as 'workless' - the same as in 1999 (see Figure [1.4f](#)). (For further details and discussion, see Section [1.4.1](#))

### **3. There are still significant numbers of low-paid workers in the UK.**

Despite the welcome introduction of a UK minimum wage in 1999, a higher proportion of full-time workers in the UK earn less than two-thirds of the median annual wage than in any other EU-15 country. On this measure, 21.6 per cent of UK workers are low-paid, compared to an average of 14.4 per cent for the EU-15 (see Figure [1.4k](#)). The European Committee on Social Rights has taken a very clear view that the UK's minimum wage is too low to guarantee the 'right to fair remuneration' established in Article 4 of the European Social Charter, thus leaving the UK in breach of this provision of the charter. It is especially clear that the minimum wage falls far short of a 'living wage' in London and the South East. (For further details and discussion, see Section [1.4.1](#))

### **4. Benefit levels remain low by international standards.**

Although UK total expenditure on social protection is broadly in line with countries of comparable economic development, the value of benefits paid to individual UK citizens without work is exceptionally low. It has been estimated that jobseeker's allowance and income support provide, respectively, only 41 and 58 per cent of the minimum income required by a couple with two children. The average value of social benefits paid to the unemployed in relation to previous earnings has fallen significantly in the UK since the 1960s (see Figure [1.4l](#)). Measured in this way, the unemployment benefit replacement rate in the UK stood at 15.2 per cent in 2007, less than half of the EU-15 average of 32.3 per cent (see Figure [1.4m](#)). (For further details and discussion, see Section [1.4.1](#))

### **5. Members of ethnic minority groups remain disadvantaged in the labour market, in health and in education.**

There is compelling evidence that ethnic minorities remain disadvantaged in British society, although there are also huge contrasts between different ethnic minority groups. Unemployment rates among ethnic minority groups are typically double those for the population as a whole (see Figure [1.4n](#) and Section [1.4.1](#)). There are also clear disparities between children of different ethnic origin with regard to educational attainment. While children of Chinese origin perform significantly better than average, those from black Caribbean and Pakistani backgrounds underperform in GCSE examinations. Meanwhile the likelihood of a child of black Caribbean heritage being excluded from school is significantly higher than average (see Section [1.4.4](#))

### **6. Gender inequality in the labour market persists.**

Progress in narrowing labour market inequalities between men and women in the UK has stalled. Both the female employment rate and

the gender pay gap have been static since 2003 (see Figures [1.4p](#) and [1.4q](#)). Although labour market participation rates for UK women are relatively high by international standards, they remain significantly below the average for the Nordic countries (see Figure [1.4o](#)). The availability of affordable childcare also remains a major issue (see Figure [1.4r](#)). With respect to the gender pay gap, the UK has some way to go if it is to reduce pay inequalities to the extent that they are below average for either the OECD or the EU-15. (For further details and discussion, see Section [1.4.1](#))

## **7. Levels of fuel poverty remain high, despite reductions in the early 2000s.**

In 2009, there were an estimated 5.5 million UK households experiencing fuel poverty (i.e. spending more than 10 per cent of household income on fuel to maintain an adequate level of warmth). Despite a number of interventions under the Labour governments of 1997-2010, which had initially helped to halve levels of fuel poverty, the problem was as prevalent by the late 2000s as it had been in the late 1990s (see Figure [1.4s](#)). In part, fuel poverty has risen because of rising energy prices, over which governments have little or no control. However, it can also be argued that fuel poverty will remain difficult to address when six per cent of UK households have an income below 40 per cent of the median. (For further details and discussion, see Section [1.4.2](#))

## **8. The persistence of class inequalities in health and education.**

Social class continues to play a major role in generating significant inequalities in health and education in the UK. The gap in life expectancy by social class has widened over the past 25 years (see Figure [1.4x](#)) and significant differences persist in levels of educational attainment among different socio-economic groups. Indeed, there is evidence to suggest that family background has a greater impact on test scores for UK school children than anywhere else in the OECD. (For further details and discussion, see Sections [1.4.3](#) and [1.4.4](#))

## **9. Ongoing restrictions on the right to strike.**

In past Audits, we have raised concerns that strikes by UK workers typically constitute a breach of contract under the common law. While legislation provides for immunities where industrial action is conducted 'in contemplation or furtherance' of a legally-defined trade dispute, the protections offered by these provisions have become progressively restricted in recent decades. In addition, legislation requiring certain procedural obligations to be met before industrial action can take place has been used by employers to secure court injunctions to prevent strikes in recent years, despite the fact that the legal cases being made generally hinge on very minor technicalities associated with the balloting of members. The European Committee of Social Rights has consistently reached a view that the UK fails to conform with Article 6§4 of the European Social Charter as a result of these restrictions. (For further details and discussion, see Section [1.4.5](#))

## **10. The degree of corporate influence over public policy.**

There are long-standing concerns about the extent to which corporate interests and wealthy individuals influence public policy in the UK. Throughout this Audit, we point to a profound shift in power away from national government and *towards* the corporate sector, arising from the dynamics of 'globalisation' and the rise of 'neo-liberal' policy prescriptions. However, we also find evidence to suggest that these trends, which pose major challenges for any conception of democracy, are particularly pronounced in the UK. The influence of the financial services sector on UK governments is especially evident and raises profound issues in light of the events which led up to, and arose from, the banking crisis from 2008 onwards. (For further details and discussion, see Section [1.4.6](#))

## **11. Pressures for deregulation are weakening corporate accountability.**

Over the past two decades, UK governments have become increasingly responsive to corporate demands for deregulation. A series of changes were introduced under Labour with the aim of decreasing the 'regulatory burden' imposed on businesses, and the coalition government looks set to go further still in removing or revising a large number of existing regulations. There are genuine concerns, most notably in areas such as health and safety, that the safety of workers is being comprised as a result. (For further details and discussion, see Section [1.4.6](#))

### ***(c) Areas of new and emerging concern***

#### **1. Rising youth unemployment.**

In the context of rising unemployment since 2008, young people have been particularly disadvantaged by a shrinking labour market. Unemployment among adults under the age of 25 stood at just under 20 per cent in the UK in late 2011. While rising youth unemployment is a common feature of all OECD countries, with rates as high as 40 per cent in some southern European countries, the problem appears to be more pronounced in the UK than in the rest of northern Europe. (For further details and discussion, see Section [1.4.1](#))

## **2. Public expenditure cuts threaten to reverse recent improvements in social conditions.**

Throughout this chapter, we note how policies pursued by Labour brought about some, albeit often modest, improvements in areas such as tackling poverty, assisting working parents, reducing homelessness, improving health care, and raising standards in education. Such progress notwithstanding, the UK remained below the average for the EU-15 on most social indicators by the late 2000s. Following the formation of the coalition government in May 2010, the instigation of deep cuts to many of Labour's social programmes may well reverse much, if not all, of the progress which was made from 1997-2010. (For further details and discussion, see the [Conclusion](#) to Section 1.4)

## **3. Issues surrounding new procedures for assessing eligibility to employment and support allowance.**

New procedures for the assessment of the illnesses and disabilities of employment and support allowance claimants have been subject to widespread criticism, particularly in view of the significant number of cases where claimants with severe long-term illnesses or profound disabilities were judged fit for work. (For further details and discussion, see Section [1.4.1](#))

## **4. The insufficient availability of affordable housing.**

A sharp rise in the number of households in the UK, together with a decline in housing construction, particularly in the social rental sector, is creating a looming housing crisis. From 2001 to 2008, the number of households on waiting lists for local authority housing in England almost doubled to 1.8 million. Given shortages of affordable social housing and high property prices, private sector rents have risen sharply in recent years and are a major factor in the total housing benefit bill reaching £20 billion in 2010. The growing mismatch between demand and supply in the housing market risks pushing private sector rents higher still. (For further details and discussion, see Section [1.4.2](#))

## **5. Homelessness looks set to rise as a result of the economic downturn and government policy decisions.**

Having declined for seven consecutive years under Labour, homelessness has begun to rise again. In the second half of 2011, increases were recorded in both the number of households accepted by English local authorities as newly homeless and in the number of households living in temporary accommodation. Research modelling the likely impact of the coalition's changes to housing benefit, including the imposition of an overall benefit cap, suggests that sharp increases in homelessness can be expected over the next few years. (For further details and discussion, see Section [1.4.2](#))

## **6. The social impact of the abolition of the educational maintenance allowance and the near-trebling of university fees.**

While there is some evidence of a modest narrowing of class inequalities in education over the last two decades, the coalition's decisions to abolish the educational maintenance allowance and raise the cap on university tuition fees to a maximum £9,000 a year are virtually certain to cause this gap to widen once more. (For further details and discussion, see Section [1.4.4](#))

## **7. Use of Section 188 orders to re-employ workers on inferior conditions.**

In recent years, there has been growing use by employers of 'section 188' notices to by-pass collective bargaining. Through this process, employers issue notices of mass dismissal, and then offer to re-employ workers on inferior terms without the agreement of the trade union or the workers, who have no choice but to accept. (For further details and discussion, see Section [1.4.5](#))

## **Introduction**

In recent decades, the focus of the classic, liberal conceptions of democracy on civil and political freedoms has increasingly been augmented by a concern with the guaranteeing of economic and social rights. There are two good reasons for this development which, taken together, provide a powerful rationale for considering economic and social rights as part of our comprehensive Audit of democracy in the UK. First, while the concept, and status, of economic and social rights has always been the subject of a degree of controversy, they have long been recognised as integral to conceptions of human rights. Indeed, the UN Declaration on Human Rights gives recognition to a number of economic and social rights, including the right to social security (Article 22), the right to work (Article 23), the right to an adequate standard of living (Article 25) and the right to education (Article 26). Second, in addition to their recognition in international human rights law, there are wider democratic grounds to support the assertion that democracies should guarantee economic and social rights for all their citizens in a nation-state. This rationale centres on the principle of political equality, and on a broader recognition of how political inequalities arise from, and interact with, wider forms of social and economic inequality.

### ***The foundations of economic and social rights***



In assessing how effectively and equally economic and social rights are guaranteed, this section of the Audit uses as its benchmark the socio-economic rights set out in the United Nations' (UN) International Covenant on Economic, Social and Cultural Rights (ICESCR), the provisions of the EU Charter of Fundamental Rights, the Council of Europe's European Convention on Human Rights (and its Social Charter), and the conventions of the International Labour Organisation. These human rights instruments - all of which the UK government is a party to - give binding force to a detailed range of socio-economic rights that include the right to work and to adequate pay and working conditions; the right to an adequate standard of living, food and clothing; the right to education; the right to enjoyment of the highest standard of physical and mental health; the right to adequate housing; the right to social security; and the right to non-discrimination in the enjoyment of those rights.

The ICESCR is of particular significance in defining the economic and social rights which are considered in this chapter (see Case Study 1.4a for a summary of these rights). As a party to the ICESCR, the UK is under an obligation to submit periodic reports, every five years, to the UN's Committee on Economic, Social and Cultural Rights. However, successive British governments have opted not to incorporate the ICESCR, and other such charters, into law. Instead, the basic social and economic rights enshrined within them have traditionally been given substance through an extensive patchwork of legislation on housing, education, health-care, employment relations, social care, disability and related matters - a body of law which imposes statutory obligations on local authorities and other public bodies. The extent to which this patchwork of legislation effectively guarantees social and economic rights is widely-recognised to be somewhat less than absolute. In its last three reports, the ICESCR has, for instance, set out a formidable and continuing list of 'serious concerns' with respect to the UK's economic and social rights compliance - highlighting areas such as the persistent *de facto* discrimination against ethnic minorities and people with disabilities; gender inequalities; widespread poverty; homelessness and housing shortages; and domestic violence (ICESCR 1997, 2002, 2009). Yet, in recent years, this long list of continuing concerns has also been accompanied by a number of areas of recognisable improvement. For instance, human rights commissions have been established across the UK; the number of children living in poverty has been reduced; the overall health of the population has improved; and welcome measures such as the 2003 Homelessness (Scotland) Act, the NHS constitution and what eventually became the Equality Act 2010 have been introduced (ICESCR, 2009).

### Case Study 1.4a: Rights protected by the International Covenant on Economic, Social and Cultural Rights (ICESCR).

The key rights enshrined in the ICESCR have been summarised by the Joint Committee on Human Rights (2004, pp. 6-7) as follows:

- equality between men and women (Article 3);
- the right to work (Article 6);
- the right to fair conditions of employment (Article 7);
- the right to form and join trade unions (Article 8);
- the right to social security (Article 9);
- the right to protection of the family (Article 10);
- the right to an adequate standard of living (including the right to food, clothing and housing) (Article 11);
- the right to health (Article 12);
- the right to education (Article 13);
- the right to culture (Article 15).

Source: Extract from Joint Committee on Human Rights (2004, pp. 6-7).

### ***The role of economic and social rights in promoting political equality***

As noted above, our focus on economic and social rights also reflects a fundamental concern with political equality in the Audit framework. At a most basic level, it can be argued that a guarantee of equal civil and political rights is rendered meaningless if basic economic and social rights are not also provided for (Beetham, 2005). It is clearly unlikely that individuals who are excluded from receiving education or health care, have no access to food or shelter, or are without an income from work or social security will be able to participate meaningfully in civic and political life. As such, if the principle of equal citizenship is accepted, it can be argued that is essential that 'no-one should be allowed to fall below a minimum acceptable level of economic and social existence' (Weir, 2006, p. x). The rights protected by the ICESCR reflect this 'minimalist' conception of economic and social rights and are today widely accepted as a foundation of a democratic system. Indeed, it is now commonplace for new and emerging democracies to include express guarantees of economic and social rights in their constitutions (Weir, 2006).



However, it is also possible to make a more expansive democratic case for economic and social rights. This argument takes a broader view of political equality, which goes beyond concerns to ensure that all citizens have equal rights with regard to their civil and political liberties alone. In this view, it is vital to recognise that social and economic inequalities give rise to inequalities in the political resources which individuals have at their disposal (Dahl, 2000). To address such political inequalities, governments will need to do more than simply ensure that citizens are above the minimum threshold required to prevent their exclusion from the democratic process. Rather, the promotion of political equality can only succeed as part of broader efforts to tackle socio-economic inequality. In this sense, economic and social policy becomes central to the task of securing and promoting wider political engagement. As our last full Audit put it, 'economic and social well-being create self-confident citizens able and willing to play a part in the democratic life of their society; to know and exercise their civil and political rights; and to enjoy personal and political freedoms (Beetham et al., 2002, pp. 58-59). This more 'social democratic' perspective on economic and social rights has found its strongest expression in western Europe, particularly the Nordic countries, although it can be argued to have influenced policy-making in all established democracies after 1945, including the USA (Dahl, 2000).

Since the original constitutions of all established democracies pre-date the adoption of the ICESCR by the United Nations in 1966, many do not incorporate the rights which the ICESCR enshrines. In a comparative study of the then 15 member states of the European Union, the [European Parliament \(1999\)](#) found that Spain and Portugal, both of which became democracies in the 1970s, had the most wide-ranging constitutional commitments to economic, social and cultural rights. By contrast, European states with some of the most extensive provisions for promoting the social and economic welfare of their citizens, notably Germany, Austria, Denmark, Sweden and the Netherlands, often had only minimal constitutional protections for economic and social rights. In these cases, however, the commitment to far-reaching economic and social rights was recognised to be beyond doubt, since it tended to be reflected both in laws governing welfare provision and in robust cross-party consensus about core economic and social policy goals ([European Parliament, 1999](#)).

These contrasts notwithstanding, the report of the [European Parliament \(1999\)](#) highlighted the exceptional nature of the UK with regard to provisions for protecting economic and social rights. There are two senses in which the UK differs from its European counterparts. First, uniquely among member states of the European Union, the UK has no written constitution in which economic and social rights could be enshrined. Second, legal conceptions of rights in the UK have a particular focus on civil rights and liberties, 'whereas fundamental social rights in the sense of participatory rights have not yet, by and large, been recognised in British jurisprudence' ([European Parliament, 1999, p. 29](#)). These arrangements were found to create a situation in which the UK could legitimately claim to provide levels of social protection for its citizens broadly in line with the European norm, but without any clear constitutional or legal definition of economic and social rights:

'A constitutional right to social security does not exist in the United Kingdom. Despite this, there are, of course, various social benefits comparable with those in other Member States and a national health service to which everyone has free access. There is also an individual right to enjoy these social benefits in accordance with the provisions of law. This is not, however, a constitutional right (and) the ordinary courts and common law play virtually no part in the protection of social rights, since the courts have generally refused to develop social rights' ([European Parliament, 1999, p. 30](#)).

### ***The role of the welfare state***

The above observations not only underline the contrasting ways in which established democracies seek to guarantee economic and social rights. They also highlight the existence of wide differences in the extent to which the policies pursued by democratically elected governments realise such rights in practice. In this regard, it is helpful to distinguish between the different types of welfare state which operate in established democracies and their relationship to the principal groups of democracies we use for comparative purposes in this Audit. In a pioneering study, Esping-Andersen (1990) proposes a threefold classification of welfare states based principally on their outcomes, as measured by 'decommodification indices' (statistical measures of the extent to which social policies enable individuals to survive financially without selling their labour power). His typology distinguishes between the following 'types' of welfare state:

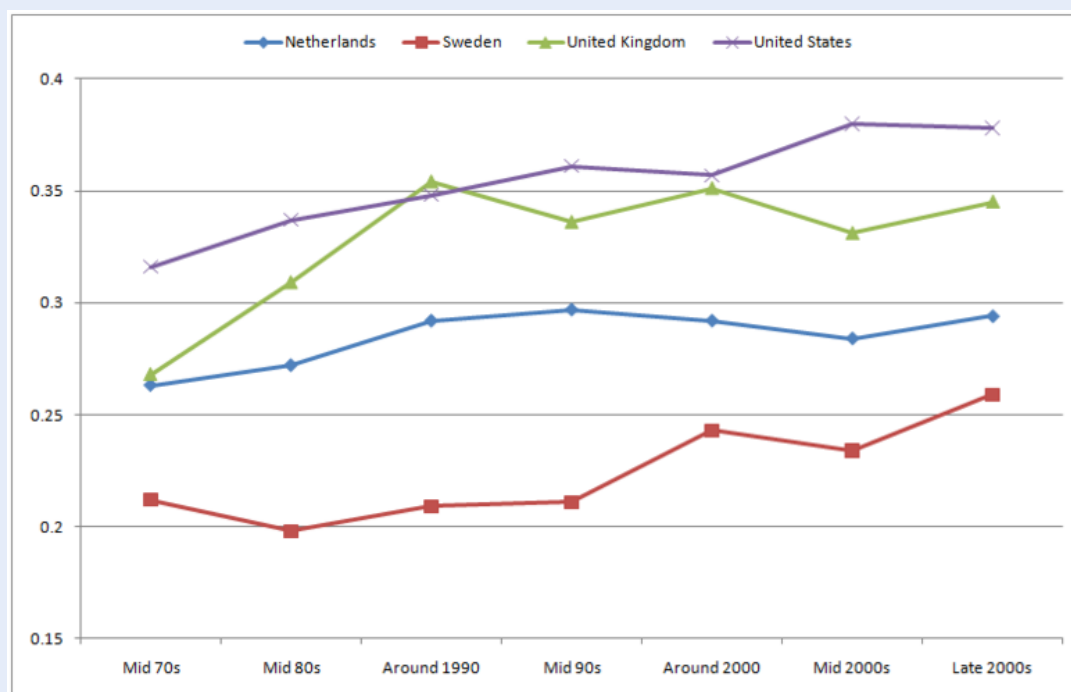
- **Social democratic:** characterised by universal social benefits and public services and extensive redistribution to minimise income inequality. This model also seeks, and depends on, the promotion of high levels of employment, including among women, through 'active labour market policies', affordable childcare and generous parental leave provisions. The most typical examples are found in northern Europe, especially the Nordic countries.
- **Corporatist/conservative:** essentially the Bismarkian social insurance model, in which relatively high levels of social protection are provided, but the highest benefits tend to accrue to the highest earners. This model was historically associated with the influence of Christian Democracy and tended to both assume and promote traditional family norms, although such values are far less evident today. The key examples comprise Germany, France, Belgium, the Netherlands and Italy.
- **Liberal:** these welfare states have limited, means-tested benefits, set at comparatively low levels and with restricted entitlement. There is minimal redistribution of income and levels of inequality tend to be high as a result. There is a strong preference for market-based provision, with the state's role being one of a 'residual' provider of last resort. This model is most clearly associated with the Anglo-Saxon countries, particularly the USA, Australia, New Zealand and Canada.

There has been significant debate, commencing with Esping-Andersen's own work, about where the UK belongs in this typology. Indeed, it can be argued that the UK exhibits some characteristics of all three of these welfare state models (Clarke et al., 2001). However, there is broad consensus that the UK has moved from being a largely 'social democratic' welfare state in the immediate post-war decades, to a more clearly 'liberal' welfare regime in the period since the early 1980s (Clarke et al., 2001; Hill, 2003). While aspects of social policy under New Labour could be interpreted as broadly 'social democratic' (Dixon and Pearce, 2005), the core principles of social policy reform under all UK governments since 1979 - namely restrictions on entitlement, more stringent means-testing and the embracing of private sector provision - have been consistent with the characteristics of the liberal welfare state.

With the UK increasingly regarded as a 'liberal' welfare state in the social policy literature, there is a remarkable degree of overlap between Esping-Andersen's (1990) typology of welfare states and the three principal groups of established liberal democracies which we use in this Audit. With the exception of the USA, the liberal welfare states also account for the primary examples of the Westminster democracies. Similarly, the group of countries which, following Lijphart (1999), we identify as the 'consensual democracies', accord closely with those in which the corporatist/conservative welfare model prevails. Finally, it is evident that the Nordic countries provide not only a specifically social democratic model of welfare provision, but also a distinctive set of democratic political arrangements and outcomes.

A key consequence of the shifts in UK social policy summarised above is that socio-economic inequality has widened enormously over the past 35 years. Figure 1.4a charts how income inequality in the UK has changed since the mid-1970s, using a measure known as the Gini coefficient. The Gini coefficient produces a score for income distribution on a scale between 0 and 1, whereby a score of 0 would represent perfect equality of income (everyone has exactly the same income) and a score of 1 would represent absolute income inequality (one person would have all of the income in a society). In practice, Gini coefficients tend to vary globally between about 0.2 and 0.7, although within the OECD the band is much narrower, currently ranging from 0.24 in Slovenia to 0.49 in Chile. The graph below compares the UK's score on this measure with three of the comparator democracies used throughout this Audit - the Netherlands, Sweden and the United States.

Figure 1.4a: Income inequality in the UK, USA, Sweden and the Netherlands, mid-1970s - late 2000s, (Gini coefficient)



Source: [OECD \(2011\)](#)

The overall trends captured by this graph are clear. First, over the period from the mid-1970s to the late 2010s, income inequality grew in all four countries, although the gap between Sweden (the most equal) and the USA (the least equal) remained broadly the same. Second, there are some significant differences in the extent to which income inequality has grown and in the periods in which this growth took place. The UK has witnessed the largest increase in inequality (8 percentage points) and the Netherlands the lowest (3 percentage points). As a consequence, the UK moved from having levels of income inequality virtually identical to those found in the Netherlands in the 1970s, to a

position of being almost as unequal as the USA by the late 2000s. However, it is also evident that the rise in income inequality in the UK occurred in the period from the mid-1970s to the early 1990s, after which income distribution remained relatively stable. More detailed analysis of income distribution during Labour's period of office shows that inequality, as measured by the Gini coefficient, rose very slightly from 0.34 in the mid-1990s to 0.36 in 2009-10 ([Wenchao et al., 2011, p. 30](#)).

While [Wenchao et al.'s \(2011\)](#) calculations suggest UK income inequality is now greater than at any time since the early 1960s, the absence of any sharp rise in income inequality in the UK from the mid 1990s onwards is nonetheless notable. Given the sharp rise in earnings at the very top end of the income scale, this slowing of the growth in income inequality resulted from the policies pursued by New Labour, in particular the introduction of a minimum wage and efforts to raise the income of the lowest earners through tax credits and other measures ([Wenchao et al., 2011](#)). However, the failure to reverse the growth of income inequality in previous decades means that the UK remains among the most unequal nations in the OECD, despite the steady growth of inequality elsewhere. As Figure 1.4b shows, income inequality levels in the UK in the mid- and late-2000s were above the average for both the Westminster democracies and the OECD as a whole. When compared against the EU-15, the consensual democracies or, in particular, the Nordic countries, the gap between the UK and its European counterparts is revealed to be greater still.

Figure 1.4b: Income inequality, UK and comparators, mid-2000s and late-2000s (Gini coefficient)



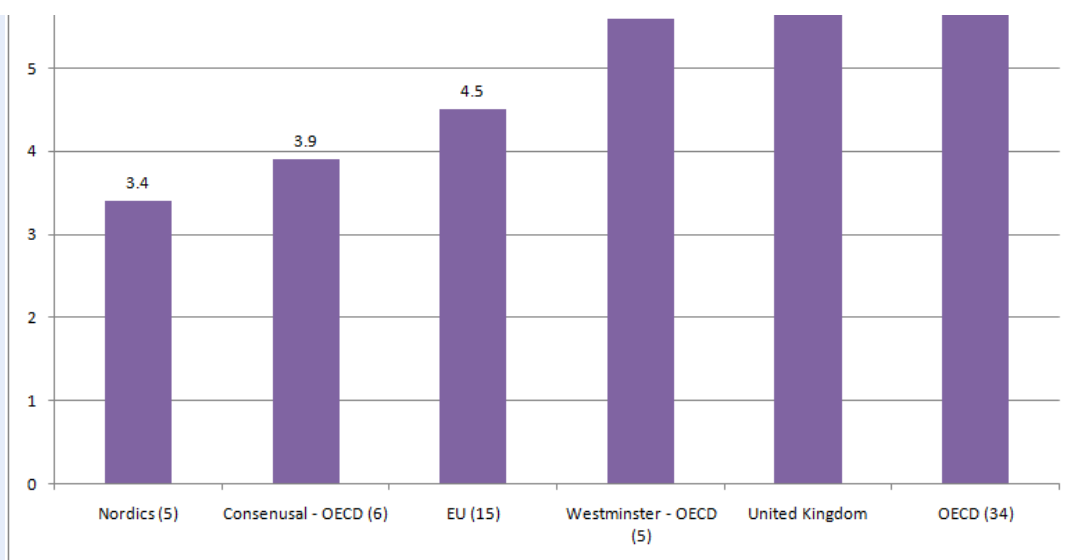
Source: [OECD \(2011\)](#)

In addition, while there have been clear improvements since our last Audit in the material conditions of those UK citizens on the lowest incomes, it remains the case that the UK exhibits comparatively high levels of poverty by the standards of other established democracies. Figure 1.4c provides data on poverty rates in the UK and our chosen groups of comparators, as measured by the proportion of households whose income is less than 40% of the median for the country as a whole. Defined in this way, 5.9 per cent of UK households were in poverty in the late 2000s, almost exactly equivalent to the OECD average of 6 per cent. Again, the UK fared slightly worse than the average for the Westminster democracies on this measure and significantly worse than both the Nordic countries and the consensual democracies.

Figure 1.4c: Proportion of households in severe poverty (less than 40 per cent of median income), UK and comparators, late 2000s.



## Democratic Audit



Source: [OECD \(2010\)](#)

The UK's comparatively high levels of poverty and inequality have clear democratic implications. As will become evident throughout this chapter, there are a number of important concerns about the extent to which economic and social rights are protected in the UK, many of which arise from the character of its contemporary welfare regime. Moreover, given the strong associations between socio-economic divisions and political inequality, the Audit as a whole highlights a variety of ways in which the UK's unequal society is reflected in a range of democratic concerns. These include growing differentials in turnout between different social groups (see Section [2.1.6](#)), which are replicated in equally stark contrasts in levels of participation in just about every other aspect of civic and political life (see Section [3.2.2](#)).

Against this backdrop, this chapter evaluates the UK's record in guaranteeing economic and social rights, for all citizens, in the following key areas:

- Access to work and social security, without discrimination;
- Guaranteed provision of the basic necessities of life, including shelter;
- Protection of the health of the population;
- The availability and inclusiveness of education;
- The freedom of trade unions to organise and represent the interests of their members.

Economic and social rights are primarily interpreted as imposing responsibilities on governments to ensure their protection and universal application. However, there are also strong grounds to consider the role of corporate interests with respect to economic and social rights, given their far-reaching influence in relation to the economic and social rights outlined above, as well as the scope for corporate activity to result in human rights abuses ([Weissbrodt, 2008](#)). Notions of corporate responsibility for the guaranteeing of human rights have begun to gain some recognition in international law since the UN's Sub-Commission for the Promotion and Protection of Human Rights (2003) approved the 'Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights' ([Hillemanns, 2003](#)). On this basis, this chapter also considers the extent to which corporations operating in the UK are regulated in the public interest, including the degree to which rules on corporate governance are applied in a rigorous and transparent manner.

As we have recognised in previous Audits, the UK ranks among a relatively small number of countries worldwide which can point to a consistently strong track record in meeting basic economic and social rights. Moreover, as we note in this chapter, there is clear evidence of improvement on a number of fronts since our last full Audit in 2002. In particular, the last decade has seen a continued narrowing of the gender pay gap; a clear fall in levels of child poverty; and a sustained increase in expenditure on health care. However, on a great number of other measures, progress has stalled and the concerns which we expressed in the last Audit about levels of poverty and social exclusion remain equally valid a decade on. When we compare the UK's performance on a variety of social and economic indicators against its international 'peers' in the developed world, these concerns become all the more apparent. Given the clear tendency for socio-economic inequality to undermine the principle of political equality, the findings presented in this chapter are of genuine, and far-reaching, democratic concern.

Most of the data presented in this chapter covers the period until the late 2000s. The impact of the banking crisis, and subsequent global economic downturn after 2008, is discernible in some of the statistics presented in this chapter - most notably unemployment figures.

However, the sustained impact of the economic crisis, combined with the deep cuts to public expenditure, including social welfare payments and provision, introduced after the Conservative-Liberal Democrat coalition came to power in May 2010, will only become clear over the next few years. When future updates of this Audit are undertaken, it is virtually inevitable that they will record a short-term deterioration in virtually all of the measures reported here.

### 1.4.1 Access to work and social security

How far is access to work or social security available to all, without discrimination?

As a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UK is obliged to protect people's right to work in an occupation of their choice and to social security in the absence of such work. Article 6 specifically requires states which adopt the covenant to provide all individuals with 'the opportunity to gain his (*sic*) living by work which he (*sic*) freely chooses or accepts'. To make this possible, technical and vocational guidance and training programmes must be made available and adequate policies must be in place to help people achieve steady economic, social and cultural development. According to Article 10 of the International Covenant, meanwhile, member states must also provide 'the widest possible protection and assistance' to its citizens - especially with regard to the care and education of dependent children.

In addition to these obligations under the ICESCR, provisions establishing rights to work and social security are also laid down in the EU's Charter of Fundamental Rights, first adopted in 2000, and legally binding on member states, since 2009, under the terms of the Lisbon Treaty of 2007. As well as the freedom to work, the charter creates a legal obligation on EU states to develop active employment policies and to organise a free functioning labour market. Similarly, as with the ICESCR, the charter also places a duty on member states to provide social security, with Article 34 expressly stating that entitlement to social security benefits is necessary in the event of illness, industrial accident, dependency or old age, loss of employment and maternity.

There has been some dispute as to whether the EU's Charter of Fundamental Rights is justiciable under UK law. In 2000, the Labour government negotiated a protocol which sought to maintain the authority of UK law in instances where it conflicted with the rights protected by the charter. At the time, the then Europe Minister, Keith Vaz, declared that the charter would be 'no more binding than the Beano', while Tony Blair told the House of Commons in 2007 that it was 'absolutely clear' that the UK had agreed an opt-out from the charter ([Beal and Hickman, 2011](#)). However, there are very strong grounds to suggest that the protocol, far from being an opt-out from the charter, is rather 'an exercise in smoke and mirrors' ([Barnard, 2007, p. 19](#)). Following recent legal cases, [Beal and Hickman \(2011, p. 114\)](#) have reached the view that 'there can no longer be any real doubt that the Charter has legal effect in UK law and that it can be relied upon by litigants here as a source of human rights protection'.

Of course, the extent to which work is available to all, without discrimination, and remunerated on the basis of a 'living wage', will depend significantly on the economic and social policies adopted by governments. Likewise, the mere availability of social security does not automatically mean that it will provide sufficient financial means for those unable to access employment. Indeed, this section identifies a number of long-standing concerns about unemployment and 'worklessness' in the UK, as well as evidence of continued inequalities, and possible discrimination, in the labour market. At the same time, there can be little doubt that the UK's attempt to 'opt out' of the EU Charter of Fundamental Rights reflects the growing contrasts between the UK's welfare state model and the approaches to social policy adopted across most of continental Europe (see the introduction to this chapter). As such, analysis of how the UK's employment and social security outcomes compare to other established democracies is instructive. As this section shows, the UK tends to lag behind its European counterparts, in particular, on a wide range of employment and social security measures.

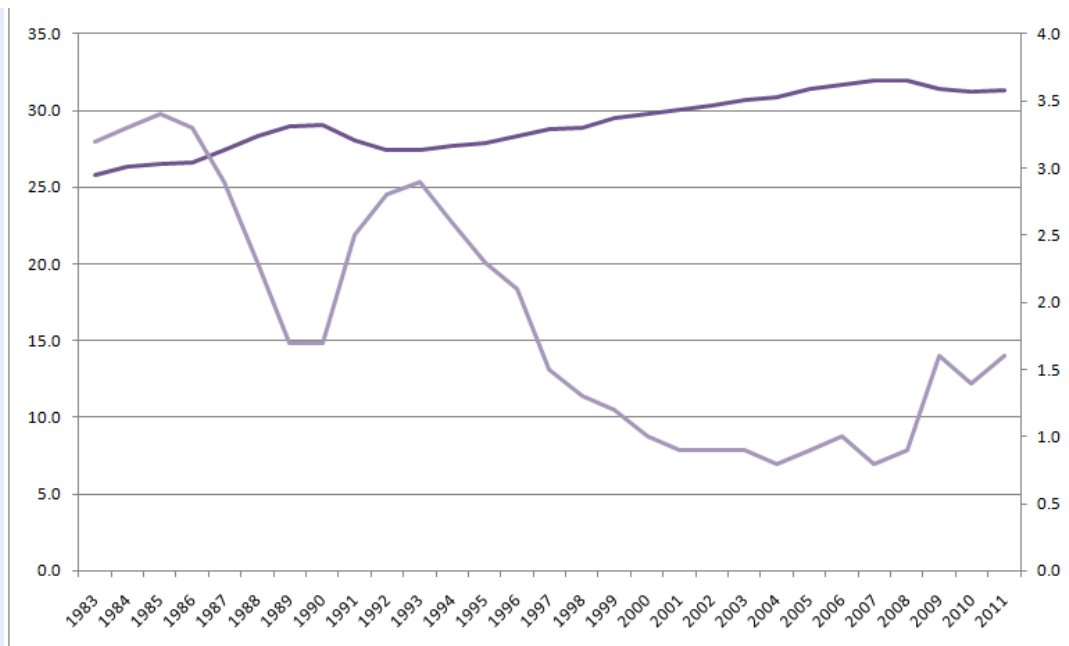
#### **The availability of work**

Like most other advanced industrial nations, the UK has long since abandoned the maintenance of full employment as an economic policy goal. While unemployment rates in the period from 1945-75 rarely rose above three per cent, large-scale job loss and the abandonment of Keynesian demand-management from the late 1970s prompted unemployment to soar. Unemployment peaked at around 3.5 million in 1985, equating to about 12 per cent on the workforce. However, as Figure 1.4d shows, the relatively steady growth in the total number of jobs in the UK since 1983 has served to reduce overall UK unemployment levels compared to their mid-1980s peak. Inevitably, both employment and unemployment levels have fluctuated as a result of the economic cycle. Thus, Figure 1.4d shows that unemployment rose sharply during two periods of recession since the mid-1980s: from 1990-93, and again in period after 2008. Nonetheless, the overall downward trend in registered unemployment is clear, particularly in the decade from 1994-2004.

Figure 1.4d: Total employee jobs and unemployment claimant count, 1981-2011



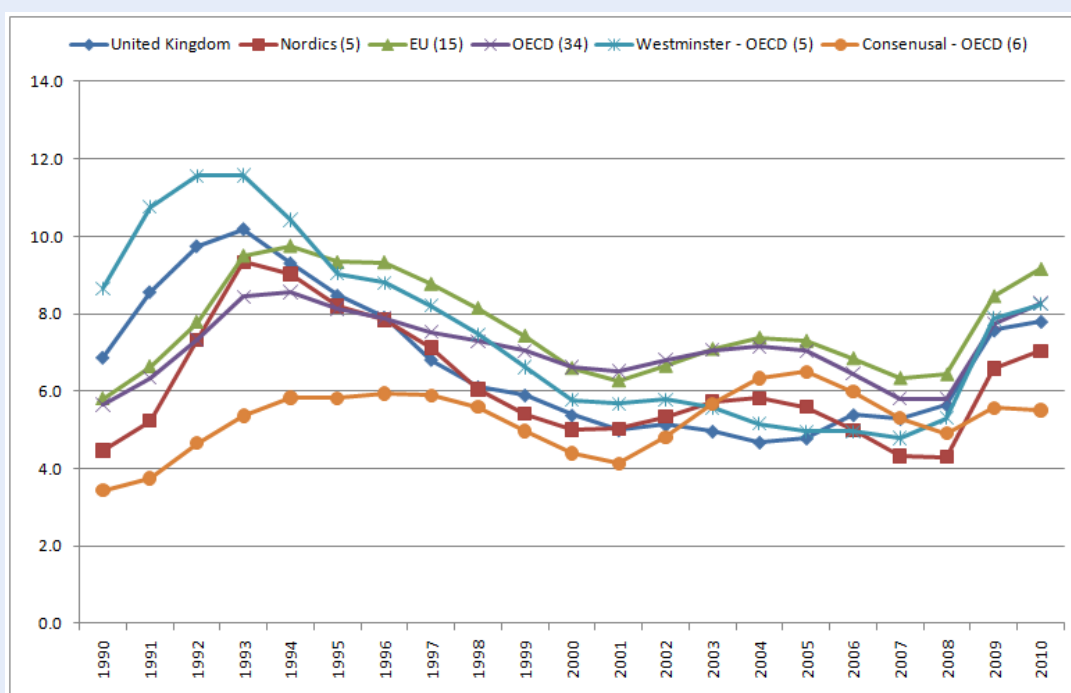
## Democratic Audit



Source: [NOMIS \(2012\)](#)

Fluctuations in the UK unemployment rate adhere closely to those found in comparable economies, as Figure 1.4e illustrates. The UK unemployment rate since the mid-1990s has been closely in line with the rates for both other Westminster democracies and, for much of the period, the average for the Nordic countries (although the Nordic average has tracked below the UK unemployment rate since 2006). Only the six consensual democracies used as comparators in this Audit show a more stable level of unemployment, as well as an unemployment rate that has tended to be consistently below that found in the UK (with the exception of the mid-1990s).

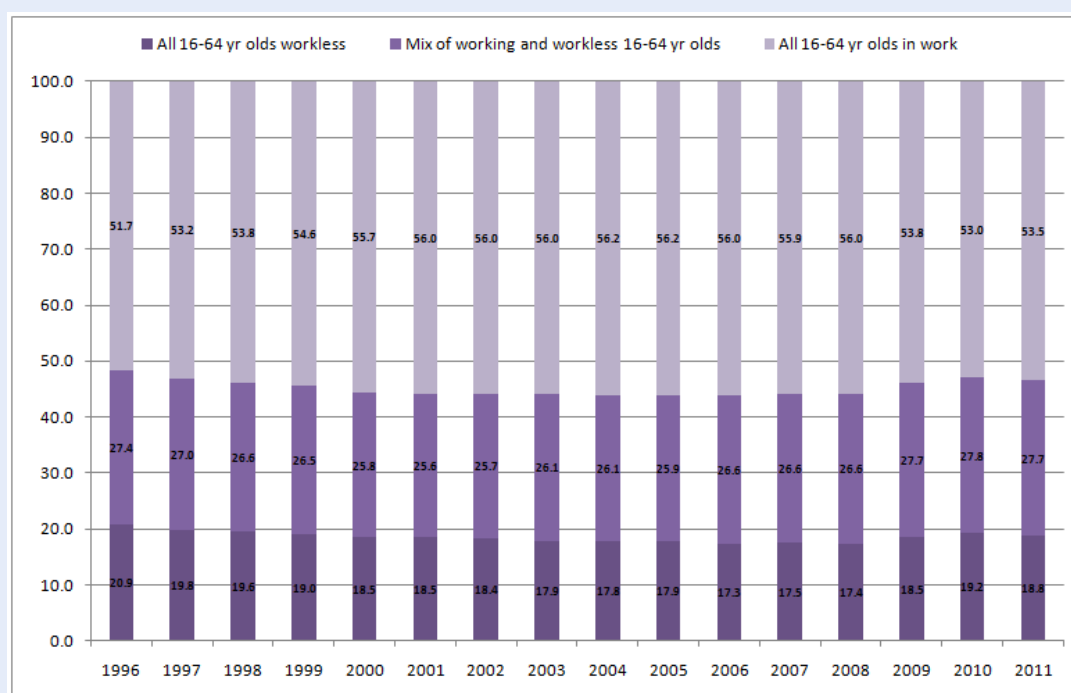
Figure 1.4e: Harmonised Unemployment rate as % of total civilian labour force, UK and comparator groups of democracies, 1990-2010



Source: [OECD \(2011\)](#)

These national figures for unemployment mask two very significant issues about the availability of work in the UK. First, changes to the definitions used to measure unemployment in recent decades tend to hide the fact that the apparent decline in unemployment has not been accompanied by a fall in the proportion of the working-age population who are reliant on social security. Instead, a significant share of the UK population aged 16-64 has effectively become permanently excluded from the labour market, subsisting on a range of other benefits such as income support, employment support allowance and disability benefit. Figure 2.4f shows that, from 1996-2011, there was barely any change in the proportion of households in which all adults aged 16-64 were 'workless'. Indeed, despite an overall growth in employment and a parallel reduction in unemployment, the share of households which were workless fell only relatively marginally in the period from 1996-2006, from 20.9 to 17.3 per cent. Moreover, since 2007, the proportion of households in which nobody works has begun to rise again, returning to levels typical of the late 1990s.

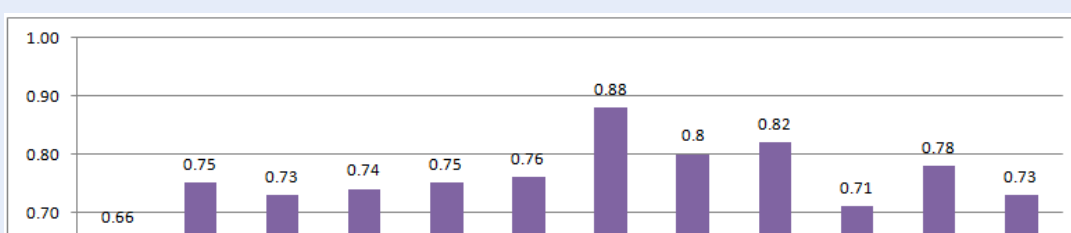
Figure 1.4f: Households by combined economic activity status of household members, UK, 1996-2011



Source: [ONS \(2011\)](#)

Second, there is strong evidence to suggest that these persistently high levels of worklessness arise primarily from a lack of available work, particularly in the north of England, Scotland, Wales and Northern Ireland. In the period from 2000-08, the UK's job density, a measure of the ratio of the total number of jobs to the total population aged 16-64, was consistently around 0.8. In other words, there was modest shortfall of jobs in relation to the size of the labour force. More importantly, however, there were also significant regional variations in job density. As Figure 1.4g shows, there were 0.88 jobs for every adult of working age in Greater London in 2009, 0.82 in the South East and 0.80 in the South West. However, job densities were considerably lower in many other parts of the UK, most notably North East England (0.66), Wales (0.71) and Northern Ireland (0.73). These contrasts, which are inevitably reflected in differential regional levels of unemployment and worklessness, underline that employment opportunities are far from equal across the UK.

Figure 1.4g: Job density (employee jobs per resident of working age) by country and region of the UK, 2009





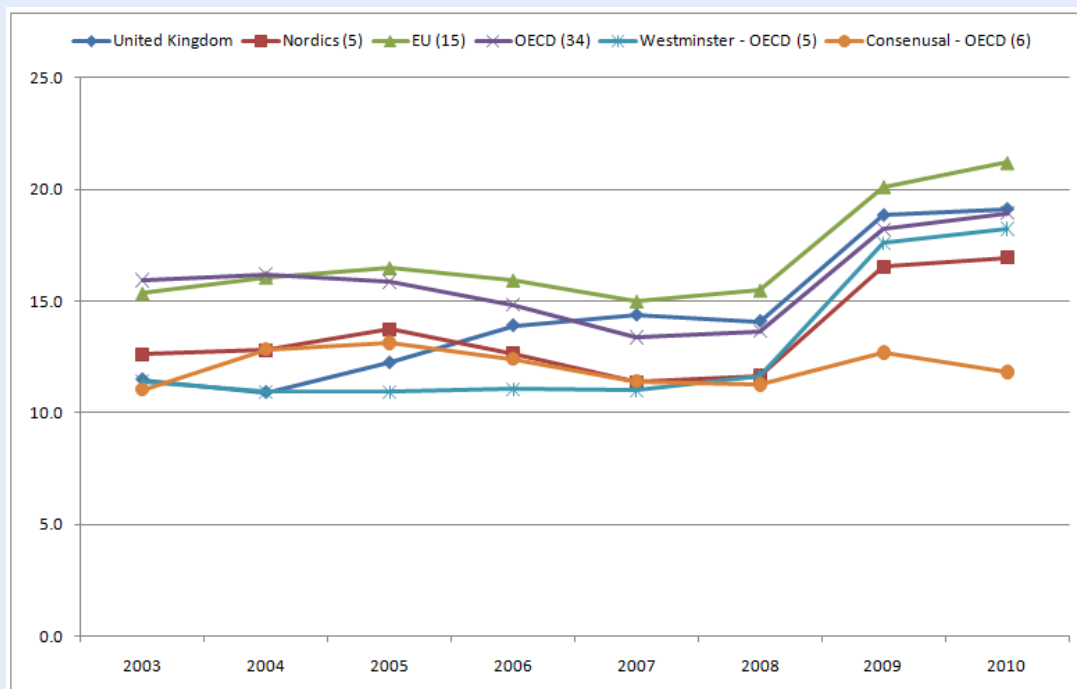
## Democratic Audit



Source: [NOMIS \(2011\)](#)

Given a period of weak and, at times, negative economic growth since 2008, UK unemployment has begun to rise steadily. As is ordinarily the case during periods of recession, some groups have fared worse than others. Of particular concern has been the rise in unemployment among adults under the age of 25, which now stands at just under 20 per cent. As Figure 1.4h shows, there has been a general rise in youth unemployment rates in the OECD since 2007, with the UK's rate remaining close to the OECD average throughout. However, it is again notable that youth unemployment in the UK remains higher than in the Nordic countries and, more clearly still, than in the consensual democracies.

Figure 1.4h: Youth unemployment rate (% of 15-24 year olds unemployed), UK and comparator groups of democracies, 2003-10

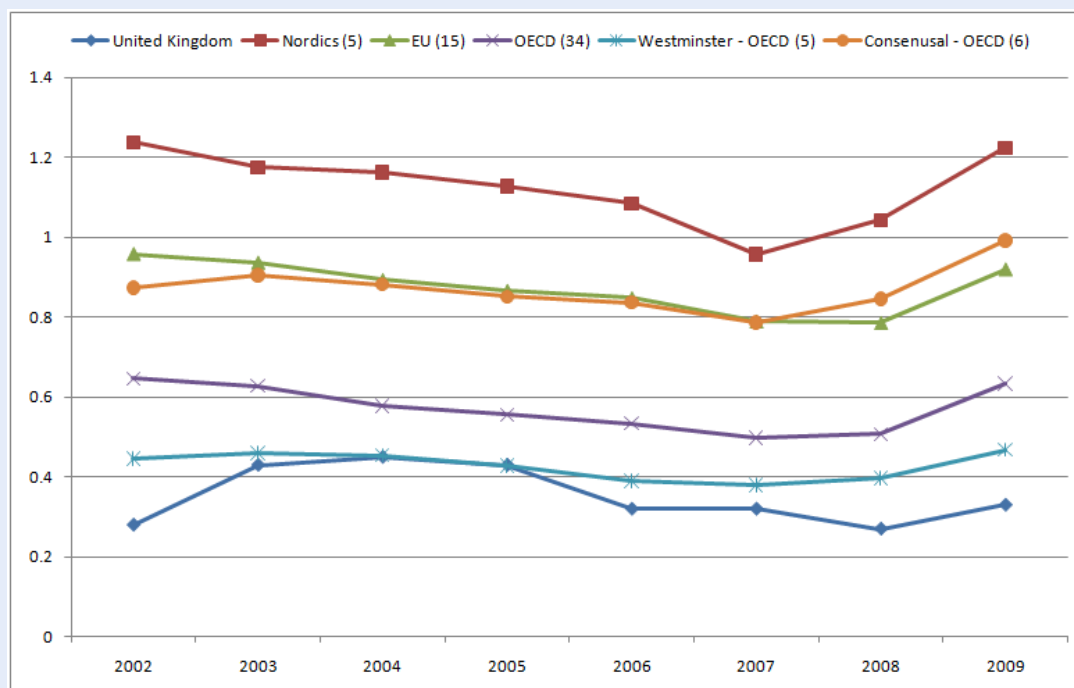


Source: [OECD \(2011\)](#)

Labour market policies are one important factor explaining the lower unemployment rates, particularly for youth unemployment, in the Nordic countries and the consensual democracies. While both the ICESCR and the EU's Charter of Fundamental Rights impose obligations on governments to pursue active labour market policies, there are significant variations in the extent to which different countries

invest in such measures. As Figure 1.4i shows, spending on active labour market policies in the UK is around 0.3 per cent of GDP, around a quarter of the level typically spent in the Nordic countries and about one-third of the expenditure committed in the consensual democracies.

Figure 1.4i: Public expenditure on active labour market policies as % of GDP, UK and groups of comparator democracies, 2002-09



Source: [OECD \(2011\)](#)

### The minimum wage

The first Blair government introduced the national minimum wage in 1999 to offer protection to low-income workers, and also to act as an incentive to work. All workers aged 16 and over are legally entitled to the national minimum wage, including casual labourers, agency workers, home workers, workers on short-term contracts and workers employed by subcontractors. The hourly rate of the minimum wage varies according to the age of the worker, as Table 1.4a illustrates, with the rate for workers aged over 21 set at £6.08 per hour from October 2011.

Table 1.4a: Hourly national minimum wage (NMW) from 1 October 2011

Type of NMW	Hourly rate
Standard rate of NMW for workers aged 21 and over	£6.08
Workers aged between 18-20 – reduced rate NMW	£4.98
Workers aged 16-17	£3.68
Apprentices who are either under 19 or in the first year of their apprenticeship	£2.60

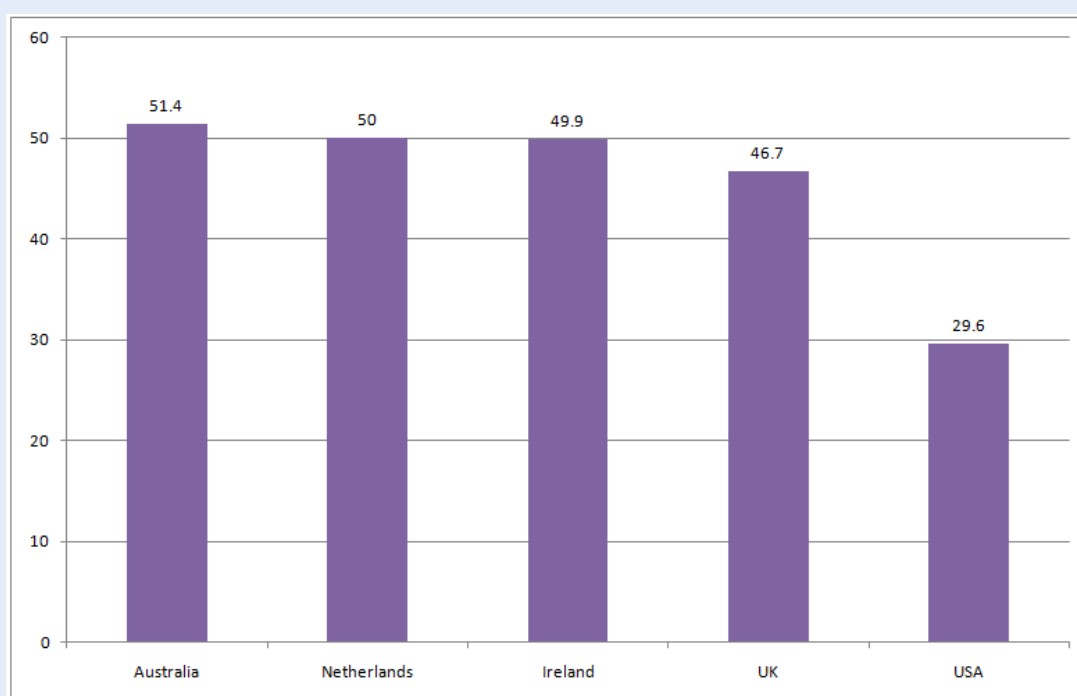
Source: [Citizens Advice Bureau \(2011\)](#)

The introduction of the minimum wage was a welcome development, which brought the UK into closer alignment with other countries in the EU (most of which also have a statutory minimum wage, or else a system of near-comprehensive collective agreements). The Low Pay

Commission's (2009) review of the impact of the minimum wage found that around 4.3 per cent of all employees were paid the minimum wage, but also highlighted that 'minimum wage jobs are more likely to be held by women, young workers, those of retirement age, ethnic minorities, those with a disability, and those with no qualifications' ([Low Pay Commission, 2009, p. xi](#)). The concentrations of low pay among these disadvantaged groups is of particular concern because there are question marks over whether the minimum wage is high enough to ensure a reasonable standard of living for those dependent on it, particularly in London and the south east, where living costs are higher. Indeed, the perceived inadequacy of the minimum wage as it stands has led a number of organisations - including London Citizens, the Living Wage Campaign, Church Action on Poverty and the Scottish Low Pay Unit - to campaign for it to be increased to a level equivalent to a 'living wage'. In addition, the [Low Pay Commission \(2009\)](#) has raised concerns about non-compliance with the minimum wage, stressing the need for greater resource to ensure both enforcement of the law and awareness of it among employees.

Comparative analysis suggests there is some legitimacy to these concerns. The rate of the UK's national minimum wage, as measured against median full-time earnings, compares reasonably favourably to other countries which have adopted a national minimum wage. Figure 1.4j, which uses this measure to benchmark the value of the UK's minimum wage to that in four of our comparator democracies, underlines that its value is broadly in line with the rates found elsewhere. As the graph shows, the minimum wage is roughly equivalent to 50 per cent of median earnings in Australia, the Netherlands, Ireland and the UK. Among our comparators, only the USA has a national minimum wage significantly below this level.

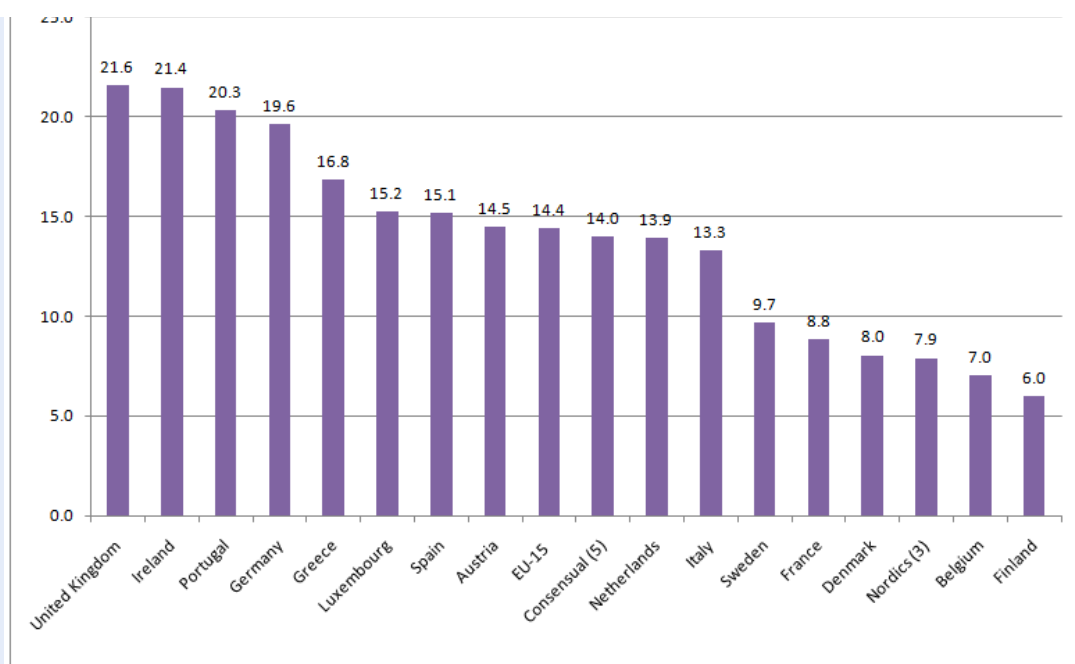
Figure 1.4j: Adult minimum wage relative to full-time median earnings, UK and comparators, 2007



Source: [Low Pay Commission \(2009, p. 306\)](#)

However, restricting comparison to countries which have a minimum wage can be highly misleading, not least because those countries with the narrowest inequalities in pay, including the Nordic countries, tend not to have a minimum wage. Figure 1.4k therefore approaches the issue of low pay from a different perspective, by showing the percentage of full-time employees who earn less than two-thirds of the median annual wage in all of the EU-15 countries. On this measure, there is a higher proportion of low-paid workers in the UK (21.6 per cent) than in any of the other EU-15 countries. Low-paid workers are significantly more prevalent in the UK compared to the EU-15 average (14.4 per cent). Moreover, the proportion of the UK's labour force receiving low pay is almost treble the average for the three Nordic countries which are members of the EU (7.9 per cent).

Figure 1.4k: Proportion of full-time employees earning less than two thirds of the median gross annual earnings, 2006



Source: [Eurostat \(2011\)](#)

Our concerns about the level of the UK's national minimum wage are also reflected in the views of the [European Committee on Social Rights \(2010, p. 7\)](#) which 'concludes that the situation in United Kingdom is not in conformity with Article 4§1 of the EU Social Charter on the grounds that the minimum wage is manifestly unfair'. In justifying this conclusion, the committee argued that the UK minimum wage was insufficient to guarantee the 'right to a fair remuneration', as established in Article 4, because:

'Despite a number of efforts aimed at improving the overall situation of minimum wage earners, and notwithstanding the fact that the pound value of the minimum wage has gone up during the reference period, this wage remains low and cannot be considered fair in the meaning of the Charter' ([European Committee on Social Rights, 2010, p. 7](#)).

### ***The availability of social security***

While figures show that UK expenditure on social protection is broadly in line with countries of comparable economic development ([Eurostat, 2011](#); [OECD, 2007](#)), concerns nevertheless abound over both the fairness of the terms of access for many state benefits and also the adequacy of the financial support that they provide. Research for the Joseph Rowntree Foundation in 2010, for example, found that a couple with two children need approximately £403 a week (after income tax and not including housing or childcare costs) to maintain a minimum socially acceptable quality of life; but that jobseeker's allowance (JSA) and income support (IS) only provide 41 and 58 per cent of this minimum income standard, respectively ([Kenway et al., 2010](#)). That this should be the case should arguably not come as any surprise, given that - unlike state benefits for children and pensioners - the value of benefits for workless, working-age adults either declined slightly or remained static during Labour's time in office (see Table 1.4b below). Indeed, as spending on social security is cut by the coalition, the material situation of these and other welfare claimants may well deteriorate further - particularly for those families affected by the benefits cap and changes to housing benefit being proposed in the Welfare Reform Bill currently making its way through parliament ([Lister et al., 2011](#)).

Table 1.4b: The value of benefits for workless, working-age adults

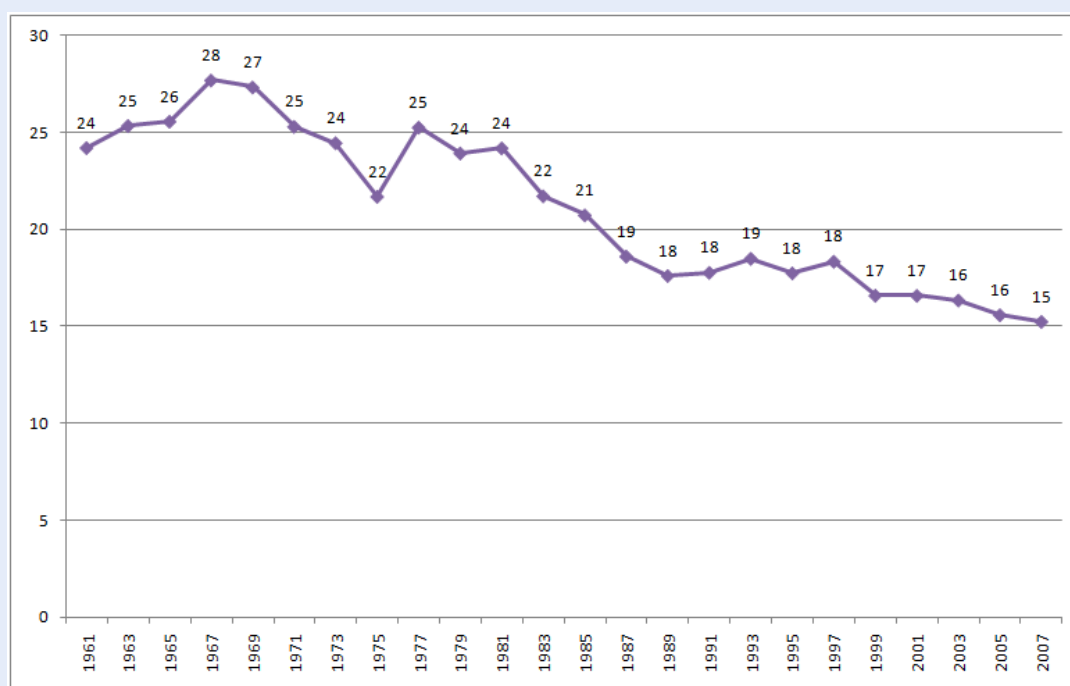
Claimant group	Benefit	Basic weekly amount for one person		
		As of April 2010	% change since April 1997 after inflation	As % of minimum income standard
Workless adults actively seeking a full-time job	Jobseeker's Allowance (JSA)	£65.45 (£51.85 for under 25s)	-1.5	41
Workless adults unable to work because of ill-health or disability	Incapacity Benefit (IB)	£91.40	+8	57

	Income Support (IS)	£93.45	-1.5	58
	Employment and Support Allowance (ESA)	During assessment phase: as JSA. After assessment phase, £91.40 if judged as having limited capability for work; £96.85 if judged incapable of work.	N/A	Assessment phase: 41. Main phase: 57 for those judged as having limited capability for work; 60 for those judged incapable of work.
<b>Workless lone parents with young children; carers (under 60)</b>	Income Support (IS)	As JSA but £65.45 for lone parent over 18.	-1.5	41
<b>Those who need care and / or with mobility difficulties</b>	Disability Living Allowance (DLA)	Care component: £71.40, £47.80 or £18.95. Mobility component: £49.85 or £18.95	+4 to +6.5	N/A

Source: [Kenway et al. \(2010\)](#)

The squeeze on benefit levels is, moreover, by no means a recent development. The relative value of social benefits when measured against wages has declined significantly since the late 1970s. Figure 1.4I charts the OECD's summary measure of the unemployment benefit replacement rate for the UK from 1961-2007. This measure calculates the average value of unemployment benefit as a measure of previous earnings for a range of different types of 'unemployment scenarios' (see the note under Figure 1.4I). As the Figure shows, the level of the unemployment benefit replacement rate peaked at 28 per cent in 1967 since which time it has steadily declined (other than a brief rise in the mid-1970s). By 2007, the unemployment benefit replacement rate had fallen to 15 per cent, a little over half of its level 40 years earlier.

Figure 1.4I: Unemployment benefit replacement rate (summary measure), UK, 1961-2007

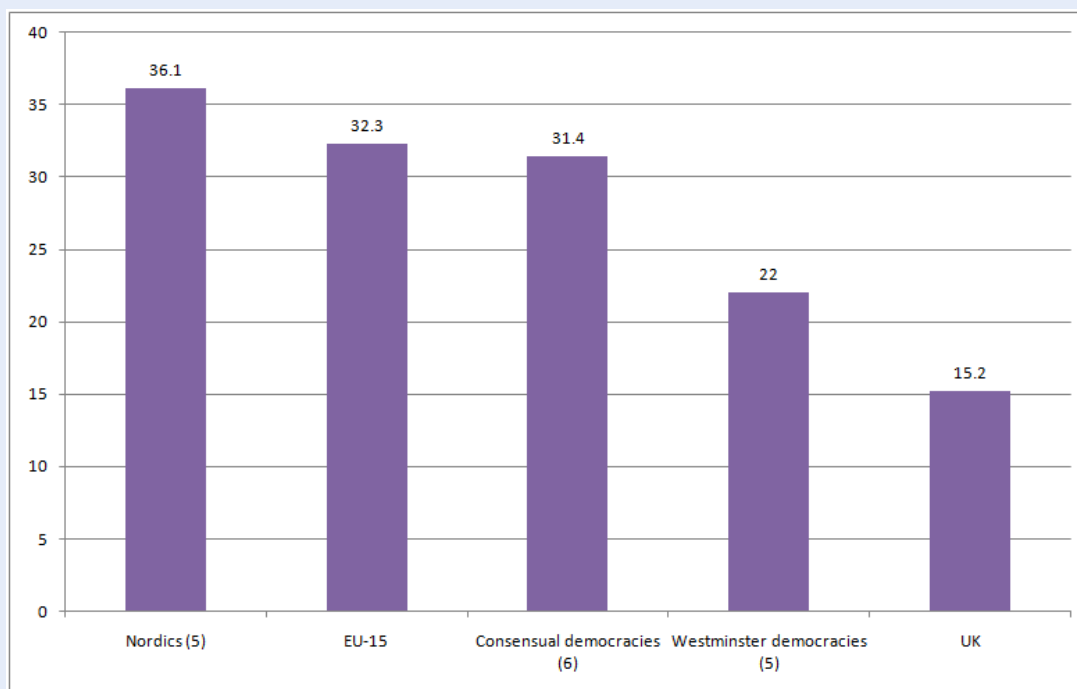


Note: The OECD summary measure of gross unemployment benefit replacement rates is calculated using the average value of unemployment benefit compared to previous earnings for two earnings levels, three family situations and three durations of unemployment.

Source: [OECD \(2009\)](#)

The decline in the unemployment benefit replacement rate in the UK since the 1960s is possibly the most dramatic in the whole of the OECD. Indeed, in most OECD member states the benefit replacement rate has increased, rather than decreased, over this period. This trend reflects the wider pattern of a fundamental restructuring of the UK welfare state highlighted in the introduction to this chapter. It has also resulted in unemployment benefit replacement rates which are significantly below the average for established democracies. Figure 1.4m compares the unemployment benefit replacement rate for the UK in 2007 with the average for four of our groups of comparator democracies: the EU-15, the Nordic countries, the consensual democracies and the Westminster democracies. As the graph shows, the UK's benefit replacement rate of 15.2 per cent is less than half of the EU-15 average and even falls seven percentage points short of the average for the Westminster democracies. The gap between the UK and the Nordic countries (average 36.1 per cent) is again highly evident.

Figure 1.4m: Unemployment benefit replacement rate (summary measure), UK and comparators, 2007



Source: [OECD \(2009\)](#)

The relative value of social security benefits is only part of the picture, however. Eligibility rules for benefit claimants have also been tightened over several decades, meaning that access to benefits has become more restricted. Labour's 'New Deal' programme, established shortly after the party's election in 1997 signalled the introduction of greater conditionality in the benefit system, with both younger and longer-term benefit claimants who failed to comply with the requirements of the scheme becoming subject to punitive sanctions (Dwyer, 2004; Tonge, 1999). This same conditionality was thereafter extended to other groups of people over the course of the next decade - both by Labour and the coalition government. For instance, single parents claiming benefits are now required to seek paid employment when their youngest child reaches the age of seven (a threshold which will be lowered to age five at some point in 2012). In 2008, for those unable to work due to sickness or disability, the government replaced the former mixture of incapacity benefit and income support with the more stringent employment and support allowance (ESA). This introduced tougher assessments of claimants' fitness to work - with the former personal capability assessment replaced by the work capability assessment (WCA). In similar fashion to any young person or single parent who neglects to meet the conditions necessary to receive jobseeker's allowance, those deemed capable of a level of work by the WCA can also be subject to benefit sanctions should they refuse the 'work-related activity' required of them.

A great deal of criticism has focused on the adequacy of the process for assessing eligibility for ESA. Many have questioned whether the 'tick box' computer programme used by private healthcare company Atos is an appropriate means of assessing the illnesses and disabilities of ESA claimants, while an independent review of the WCA, conducted by Professor Malcolm Harrington, found strong evidence of an 'impersonal and mechanistic' system characterised by a lack of transparency and poor decision-making ([Harrington, 2010](#)). These general findings concerning the WCA have been supported by a damning report from Citizens Advice, which documented huge numbers of cases where people suffering from severe physical and mental illnesses - including paranoid schizophrenia, bowel cancer, advanced Parkinson's disease and a possibly terminal kidney disorder - were all judged fit for work under the Atos assessment ([Citizens](#)

[Advice, 2010](#)).

### ***Discrimination in access to work***

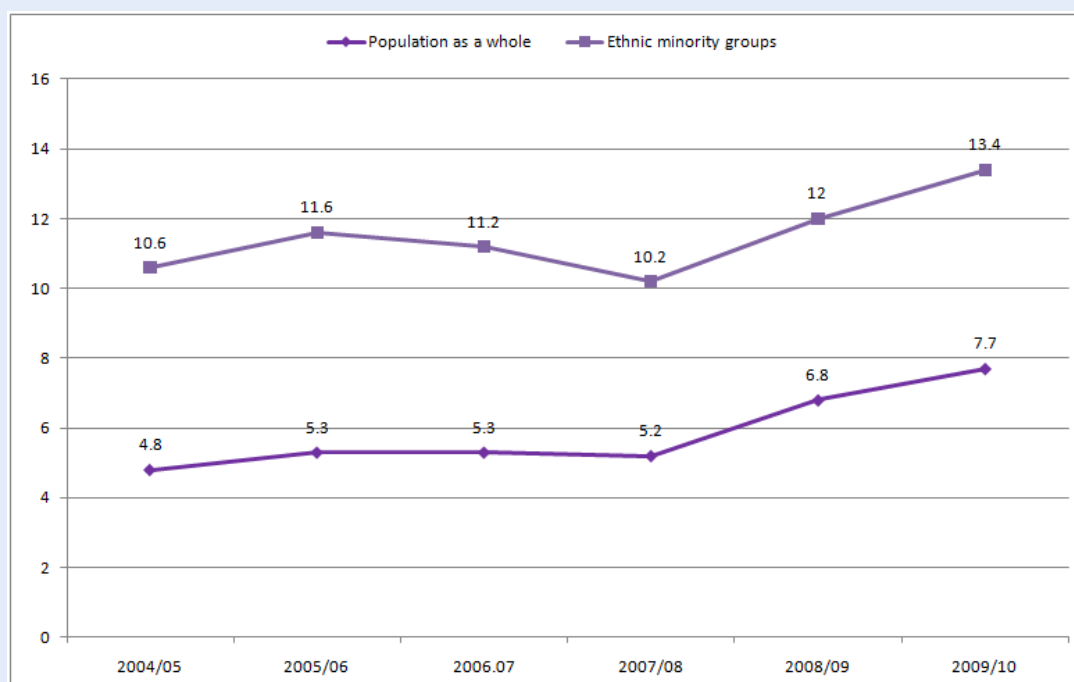
As a signatory to the International Labour Organisation's (ILO) Labour Standards, the UK is bound by ILO conventions on workers' rights. Article 2 of Convention 111 states that countries party to the convention must pursue employment policies which promote 'equality of opportunity and treatment in respect of employment and occupation, with a view to eliminate any discrimination in respect thereof'. In addition, Article 7 of the ICESCR provides for 'just and favourable working conditions', including equal pay for equal work, safe and healthy working conditions, opportunities for advancement and periodic paid holidays. In practice, however, the UK is far from meeting its obligations under the ICESCR, as well as other EU instruments protecting equality in the workplace - especially in the treatment of ethnic minorities and women. As we outline below, there is compelling evidence that ethnic minorities, women and disabled people are disadvantaged with regard to employment outcomes. With regard to women, it is also evident that the UK continues to lag behind most comparable democracies when it comes to promoting equality in the labour market. As we highlight below, concerted efforts were made under Labour to address inequalities in access to work, although their impact appears to have been limited.

In addition to these measures, the Equality Act 2010 is of particular significance in seeking to address discrimination in the labour market and the workplace. The act consolidated all previous equality and anti-discrimination legislation into one body of law, replacing an untidy patchwork of acts, statutory instruments and regulations stretching back to the 1960s. The act requires equal treatment in access to employment as well as to private and public services, regardless of a person's age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, and sexual orientation. It also adds special protections for pregnant women and disabled people, for whom employers are under a duty to make reasonable adjustments to their workplaces. However, in implementing the act, the coalition government decided not to proceed with a socio-economic duty that would have required all public bodies to assess whether they were addressing inequalities caused by class factors. In addition, other than a few limited exceptions, the act does not apply to Northern Ireland.

### ***Ethnic minorities***

In 2007, the Joseph Rowntree Foundation published a report on ethnic minorities in the labour market which found deep-rooted, widespread and persistent discrimination ([Clark and Drinkwater, 2007](#)). In 2008, meanwhile, the National Audit Office reported that discrimination in the UK labour market is one of three factors which contribute to the under-achievement of ethnic minorities ([National Audit Office, 2008](#)). Indeed, unemployment rates among ethnic minority groups are typically double those for the population as a whole, as Figure 1.4n illustrates. At the same time, those from ethnic minority backgrounds occupy a disproportionately small share of the nation's top jobs ([Race for Opportunity, 2008](#)), despite the fact that they are, on average, better-educated than their British-born white peers ([Dustmann and Theodoropoulos, 2010](#)).

Figure 1.4n: Unemployment rates among ethnic minorities and among population as a whole, age 16 plus , UK, 2004/05 – 2009/10





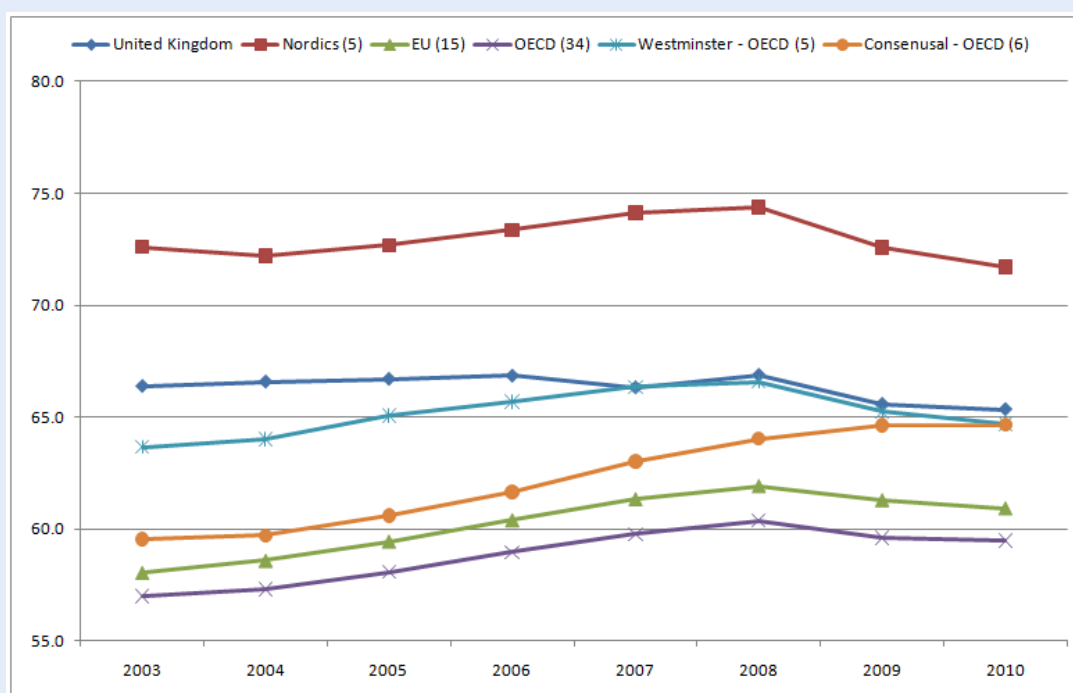
Source: [NOMIS \(2011\)](#)

Various policies have been suggested to counter the effects of racial discrimination in the workplace. [Clark and Drinkwater \(2007\)](#) advocated instruments such as quotas and the awarding of public sector contracts based on the ability of the employer to meet standards of racial equality. However, measures such as these are controversial and, perhaps as a result, actual government initiatives have tended to be rather less ambitious. The Department for Work and Pensions, for instance, has run outreach programmes in ethnic minority communities, and other short-term programmes, which had some success from 2002-09. However, these efforts have been criticised for lacking continuity, and the long-term outcomes necessary to address the deep-rooted problems which the Joseph Rowntree Foundation and others have highlighted ([Public Accounts Select Committee, 2008](#)).

## Women

Female participation in the UK labour market grew steadily from the early 1970s to the mid-1990s ([Court, 1995](#)). However, this growth in the female labour market participation rate has since slowed. In 2011, 65 per cent of women of working age were in employment, a modest increase from 62 per cent in 1992 ([NOMIS, 2011](#)). Moreover, most of this growth occurred in the 1990s, with female employment rates in the UK showing almost no sign of growth for about a decade. Indeed, owing to the impact of the recession after 2008, the proportion of UK women in work has begun to decline. Figure 1.4o places these developments in international context, showing that while female labour market participation rates in the UK remain comfortably above the OECD and EU-15 averages, they are no longer higher than the average for the consensual and Westminster democracies, as they had been in the early 2000s. Meanwhile, the gap between the UK and the Nordic countries remains as wide as it was at the time of our last Audit, with an average of 72 per cent of women in the Nordic countries in employment, compared to 65 per cent in the UK.

Figure 1.4o: Employment rate of women (% of female population aged 15-64 in paid employment), UK and groups of comparator democracies, 2003-10

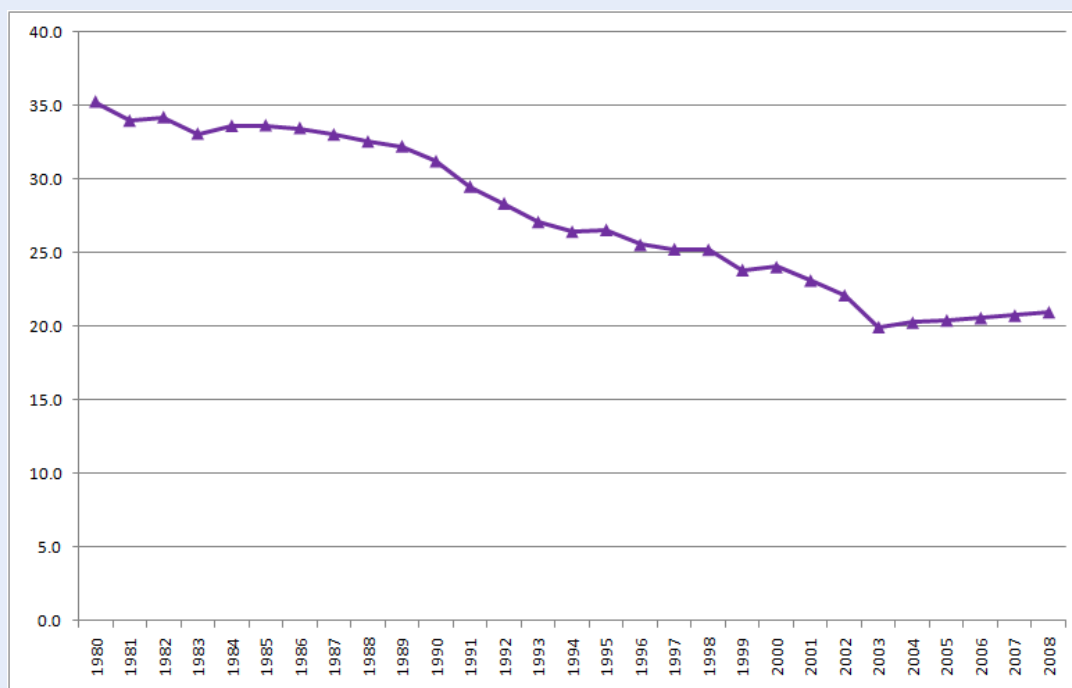


Source: [OECD \(2011\)](#)

Gender inequality in the labour market is also reflected in rates of pay. While the Equal Pay Act 1970 prohibits employers from providing less favourable pay or working conditions to female workers, a significant gender pay gap persists, with women in the UK being paid 21 per cent less than their male peers in 2008. Significant long-term progress has been made in addressing the gender pay gap since the 1980s, as Figure 1.4p shows. In 2003, women were paid 20 per cent less than their male counterparts, compared to 35 per cent less in 1980.

However, since 2003 this progress has stalled, and the gender pay gap has remained static at around 20 per cent. [Manning \(2006\)](#) suggests that there are two core reasons for the gender pay gap flat-lining in this way. First, discrimination against women in the labour market has become more subtle, making it increasingly difficult to identify the practices which lead to unequal pay. Second, the impact of women taking time out of employment when they have children continues to be a significant driver of unequal pay over the working life of male and female employees.

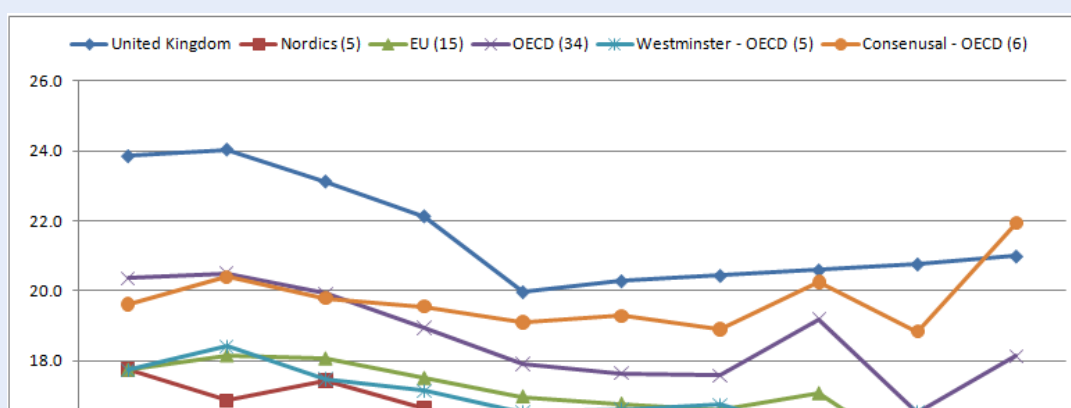
Figure 1.4p: Trends in gender wage gap in median earnings of full-time employees, UK, 1980-2008



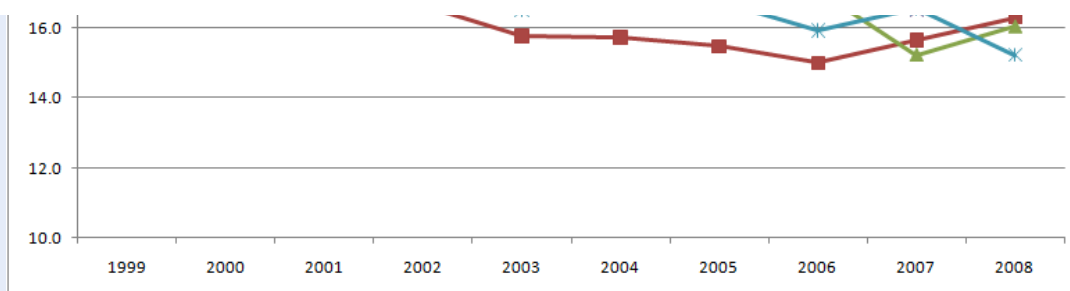
Source: [OECD \(2011\)](#)

The UK's experience with regard to the gender pay gap is by no means unique. Indeed, as Figure 1.4q illustrates, there was a general tendency across all of our groups of comparator democracies for pay differentials to remain at roughly the same level for most of the last decade. Even the Nordic countries, which had previously seen the greatest progress towards gender equality in pay, have seen progress stall since 2003. Nonetheless, Figure 1.4q illustrates that the gender pay gap in the UK remains very high by international standards. Moreover, the persistence of a 20 per cent gender pay gap in the UK reflects a more troubling general pattern identified in this Audit: across a whole series of measures, progress in tackling gender inequality in the UK has stalled since the early-mid 2000s (see Sections [2.1.5](#) and [3.2.3](#)).

Figure 1.4q: Trends in gender wage gap in median earnings of full-time employees, UK and groups of comparator democracies, 1999-2008



## Democratic Audit



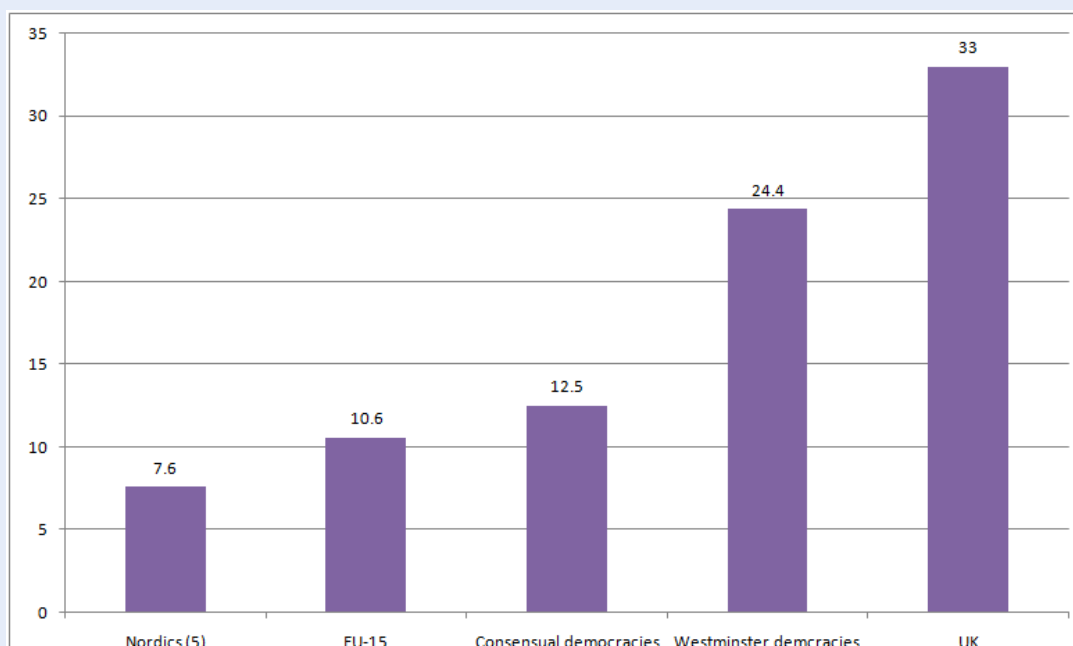
Source: [OECD \(2011\)](#)

## Parents

It is widely accepted that part of the explanation for the persistence of comparatively high levels of gender inequality in the UK relates to provisions for parental leave and childcare. People with children can face unfair treatment both in access to work *and* in the workplace itself. For instance, for those wishing to enter or re-enter the labour market, childcare costs can be a major barrier to employment; while for those already in work, rigid rules on parental leave and working hours can adversely affect the balance between work and family life. Traditionally, the UK has lagged behind most of western Europe in both of these respects, with policies generally limited in scope and targeted only towards specific groups of children.

Considerable efforts were made under the Labour governments of 1997-10 to address some of the issues affecting parents in the labour market. Indeed, as [Daly \(2010\)](#) notes, a distinctive set of family policies were at the heart of the New Labour welfare reforms introduced after 1997. These measures included: extensions to maternity leave and the introduction of paid paternity leave; new rights for parents to request flexible working hours; a large-scale expansion of childcare and early-years provision; and measures designed to enhance the affordability of childcare for working parents. The ambitious nature of these measures is undeniable, particularly with regard to the expansion of childcare and early-years facilities, which were supported by some £21 billion of state investment from 1997-2006 ([Daly, 2010](#)). There was also a particular focus on ensuring the availability of affordable, high-quality childcare and early-years provision in deprived areas via the Sure Start programme (see Section [1.4.4](#)). However, while the number of childcare places doubled under New Labour, affordability remained a major concern, despite measures designed to reduce the financial burden on parents such as tax credits, childcare vouchers, and up to 570 hours per annum of free nursery sessions for under-5s. As Figure 1.4r illustrates, childcare costs comprised, on average, 33 per cent of net household income in the mid-2000s, far higher than the average for any of our groups of comparator democracies. The contrast with the Nordic countries, where childcare costs typically represent around 8 per cent of household income, is particularly dramatic.

Figure 1.4r: Childcare costs as a proportion of net household income, UK and comparators, 2004



Note: The average for the EU-15 excludes Spain, for which no data is available.

Source: [OECD \(2010, p. 21\)](#).

Similarly, while the Labour government extended the right of parents to request flexible-working in 2008, evidence suggests that much more could be done to promote family-friendly working practices. The Equality and Human Rights Commission concluded that only radical changes to regulations on parental leave and flexible-working would meet parents' aspirations and promote gender equality ([Equality and Human Rights Commission, 2009b](#)). As with childcare, their report also noted that the UK stands out internationally as an exemplar of bad practice in this area - with long leave for mothers (mostly at poor rates of pay) contrasting with typically very short paternity leave.

### ***People with disabilities***

The UK government has made progress in ensuring that more people with disabilities are in employment, with the overall employment rate for disabled people growing from 43 per cent in 1998 to 50 per cent in 2006. However, the rate of employment varies substantially with the type of disability: for people with mental health problems employment stood at 20 per cent in 2005, while for people with learning difficulties the figure was around 10 per cent. Yet even when working, disabled persons tend to earn 10 per cent less than non-disabled people, on average ([Equality and Human Rights Commission, 2008](#)). Disabled people across all types of disability also experience discrimination in work and higher levels of 'negative behaviour' than non-disabled people ([Equality and Human Rights Commission, 2008](#)).

## **1.4.2 Provision for basic human needs**

How effectively are the basic necessities of life guaranteed, including adequate food, shelter and clean water?

As a developed country with comparatively high standards of living by global standards, there are relatively few concerns about the extent to which the UK ensures that its citizens are provided with basic necessities such as food and clean water. However, given the comparatively high level of poverty in the UK, particularly in comparison with other north European democracies (see the [Introduction](#) to this chapter), it is important to note that adequate food and shelter are by no means available to the whole of the population.

Issues concerning the high proportion of UK workers in low-wage jobs and the inadequacy of social benefits relative to the cost of living are discussed at length elsewhere in this chapter (see Section [1.4.2](#)). Accordingly, our focus here is primarily on issues concerned with 'shelter' and with poverty among the population of non-working age, particularly children and pensioners. As in previous Audits, we find grounds for concern about housing provision in the UK, including the affordability of housing and levels of homelessness. We also highlight issues surrounding 'fuel poverty', particularly given evidence that significant numbers of households are unable to afford sufficient fuel to maintain adequate levels of warmth. Finally in this section, we examine the incidence of child poverty which, despite a clear fall over the past decade, remains significantly higher than in other north European democracies.

### ***Housing***

Article 11 of the ICESCR recognises an individual's right to 'an adequate standard of living for himself and his family, including adequate food, clothing and *housing*' (emphasis added). As with other economic and social rights, the extent to which this expression of a universal right to housing is realised in practice depends critically on the focus and content of social policies. In this regard, it is important to note that housing policy has long been regarded as 'the wobbly pillar' of the UK's post-war welfare state and that it was perhaps the area of welfare provision which was most dramatically scaled back from the late 1970s onwards (Malpass, 2005). The number of housing units completed annually since the 1980s has been at about two-thirds of the level typical in the immediate post-war decades, despite continued growth in the size of the UK population and an accelerating rate of household formation. At the same time, the proportion of new housing built by the state dropped from a peak of 75 per cent in 1953 to 0.1 per cent in 1999 as government housing policy shifted decisively in favour of home ownership and a more residual social housing sector dominated by housing associations (Malpass, 2005). Patterns of housing tenure have altered dramatically as a result. From 1980 to 2007, the proportion of homes which were owner-occupied grew from 55 to 70 per cent, while the share of households renting from a local authority shrank from 32 to 10 per cent (Malpass, 2005; [Joseph Rowntree Foundation, 2009](#)). Housing Associations and other 'registered social landlords' now account for about 8 per cent of the housing stock, with the remaining 12 per cent of households found in the private rental sector (roughly the same as in 1980).

These trends have created a number of serious problems in relation to housing supply and affordability. The UK as a whole suffers from a serious shortage of housing, most notably in London and the South East, including a chronic shortfall of social and affordable housing for

those on lower incomes. From 2001 to 2008, the number of households on waiting lists for local authority housing in England grew from 1 million to 1.8 million, equivalent to eight per cent of all households ([Schmuecker, 2011, p. 6](#)). At the same time, the growing mismatch between housing demand and housing supply has resulted in a shortfall of around 150,000 housing units ([Pretty and Hackett, 2009](#)) with the shortfall projected, under current trends, to rise to 750,000 units by 2025 ([Schmuecker, 2011](#)). Similar problems are faced in Scotland and Wales, which also have severe problems of access to adequate and secure housing, and where plans to build new affordable homes are also falling behind schedule ([Equality and Human Rights Commission, 2009a](#)). The consequences of these trends are summarised in a recent Smith Institute report as follows:

'This unprecedented level of under-supply has serious social and economic consequences, not least in pushing up housing waiting lists and overcrowding to record levels. The lack of new homes will hamper economic prosperity, exert considerable upward price pressure, exacerbate wealth inequalities, constrain public service delivery, and thwart homeownership' ([Pretty and Hackett, 2009, p. 4](#)).

These pressures have become particularly evident in the private rented sector, where rents have risen sharply over the last decade. [Ball \(2010, p. 24\)](#) estimates that 'rents rose by almost 40% between 2000 and 2007, substantially above general price inflation'. A consequence of the combination of the shortage of social housing and rising rents in the private rental sectors has been that the total housing benefit bill has increased sharply, from £11 billion in 1999-2000 to £20 billion in 2009-10 ([Work and Pensions Select Committee, 2010, p. 11](#)). Rather than seek to regulate rents, however, the coalition has opted to impose a cap on housing benefit levels. The [Department for Work and Pensions \(2010\)](#) itself has warned that this policy will adversely affect families - causing disruption to schooling, a rise in homelessness and an increase in overcrowded households.

### **Homelessness**

The 1996 Housing Act defines homelessness broadly; living in temporary or emergency accommodation, in overcrowded or poor housing conditions, squatting, as well as a basic lack of adequate housing, all count as homelessness under the act. Yet as some of these conditions tend to be less visible (with those affected often referred to as the 'hidden homeless'), arriving at an accurate estimate of the true extent of homelessness in the UK – as defined by the act - can be difficult. Moreover, under the act, local authorities in England and Wales only have a statutory duty to find housing for homeless households that are eligible for assistance, 'unintentionally' homeless and part of a specified priority need group (such as pregnant women or those with dependent children). As a devolved issue, however, legislation on homelessness in Scotland has become considerably more comprehensive. As we note below, differences in legislation may have an important impact over the next few years.

Based on the definitions contained in the 1996 Housing Act, recorded levels of homelessness fell sharply in England during the second half of the 2000s. From 2004 to 2010, the number of households accepted as newly homeless under the act fell from around 35,000 per quarter to about 10,000 per quarter ([Department for Communities and Local Government, 2011b](#)). However, homelessness has since begun to rise again. In the third quarter of 2011, a total of 12,510 households were accepted by English local authorities as newly homeless. The number of households living in temporary accommodation shows a similar trend, falling from a peak of around 100,000 in 2005 to 48,270 in 2011. Yet, the third quarter of 2011 saw a rise in the number of households in temporary accommodation for the first time in seven years ([Department for Communities and Local Government, 2011b](#)).

It is a virtual certainty that this rise in homelessness will continue over the next few years. Research commissioned by Shelter and carried out by the Cambridge Centre for Housing and Planning Research suggests that up to 134,000 households are likely to have to move or will become homeless as a result of the coalition's proposed changes to housing benefit ([Fenton, 2010](#)). The report also estimates that around 35,000 households can be expected to contact their local authority for advice and assistance relating to homelessness, of which 19,000 are likely to require temporary accommodation to be provided by local authorities.

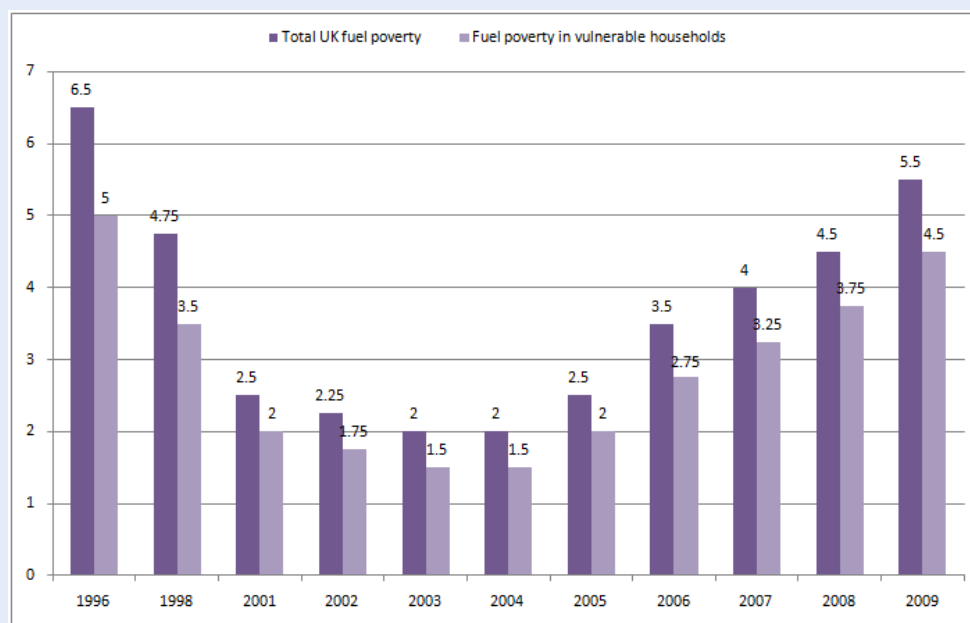
The impact of housing benefit cuts on homelessness in Scotland may well be less severe, however. Under the Homelessness etc (Scotland) Act 2003, almost all homeless households will be legally entitled to housing from 2012. For many people, this distinction could make all the difference, as cuts to housing benefit and rising private sector rents force an increasing number of individuals to be threatened with either unintentional homelessness or 'intentional' homelessness (if they are evicted for rent arrears).

### **Fuel poverty**

Fuel poverty (a condition defined as the need to spend more than 10 per cent of household income on fuel to maintain an adequate level of heating) is an ongoing problem in the UK. Over £25 billion was spent by the Labour governments on various programmes and benefit schemes designed to alleviate fuel poverty from 2000 onwards - initiatives which included Warm Front, a programme of grant-funding to pay for energy efficiency improvements in vulnerable households, and winter fuel payments to the over-60s. This extra investment was complemented, in turn, by a number of agreements between government and energy companies, which placed obligations on the latter to

increase household energy efficiency and thus (in theory) help reduce household fuel bills, particularly among the most vulnerable consumers. Yet, despite all these interventions, progress towards realising the government and devolved administrations' statutory targets to eradicate fuel poverty by 2016 (and by 2018 in Wales) has stalled. Indeed, levels of fuel poverty have risen markedly since 2004 - a trend chiefly attributable, it seems, to the significant increases in fuel prices during that same period ([Department of Energy and Climate Change, 2011](#)).

Figure 1.4s: Number of households in fuel poverty, 1996-2009 (millions)



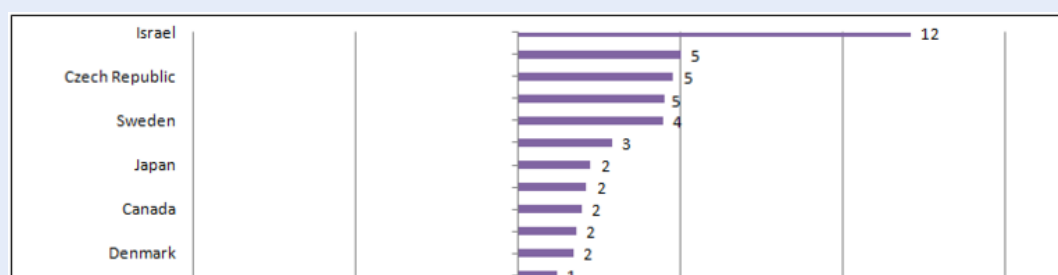
Source: [Department of Energy and Climate Change \(2011\)](#).

Comparing levels of fuel poverty in the UK to those in other established democracies is difficult in the absence of a universally-accepted definition of the term. However, previous studies have shown that the UK has one of the highest percentages of excess winter deaths in northern Europe (a measure calculated by finding the difference in the death rate in the winter months and the death rate during the autumn and summer months), and fuel poverty is known to be a key factor in determining the number of such deaths ([Healy, 2003](#)). Rising fuel bills have led many to expect that fuel poverty levels will rise further in comparison to 2009, despite the UK government and devolved administrations having legal targets to eradicate fuel poverty by 2016-18 ([Bolton and Richards, 2011](#)).

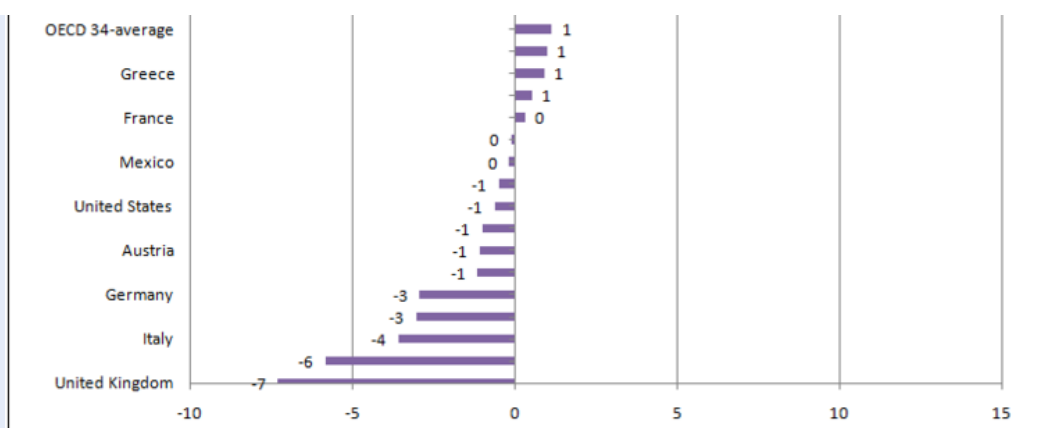
### ***Child and pensioner poverty***

Although the former government's target to halve child poverty from its 1998-99 level by 2010-11 was not achieved, statistics show that it did manage to achieve a 7.2 percentage point fall in the proportion of children living in poverty (from 26.9 per cent to 19.7 per cent) during its time in office between 1997 and 2010 ([Institute for Fiscal Studies, 2011](#)). As a result, the UK achieved the highest percentage point reduction in child poverty rates among OECD countries between the mid-1990s and the mid-to-late-2000s, as Figure 1.4t illustrates.

Figure 1.4t: Percentage point change in child poverty between mid-1990s and mid-to-late-2000s, OECD member states



## Democratic Audit



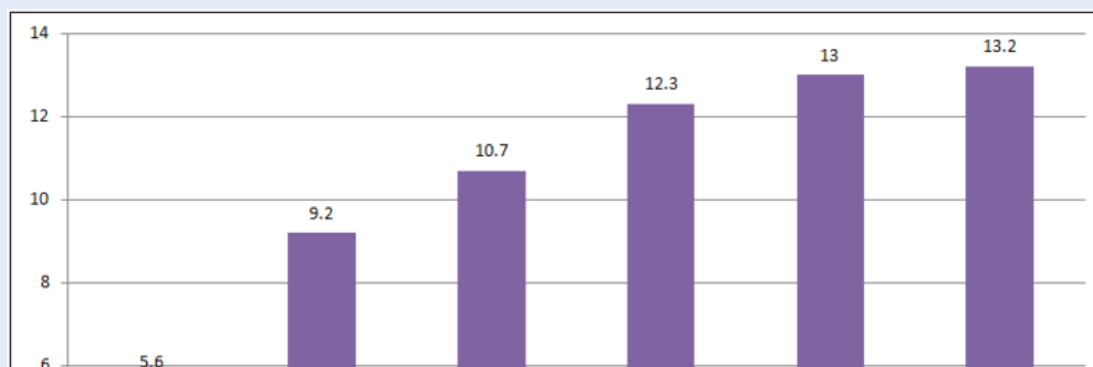
Note: Data relate to the period from the mid-1990s to 2007 for Canada, Denmark and Hungary; to 2006 for Chile and Japan; to 2005 for France, Switzerland and the United Kingdom; to 2004 for Australia, Austria, Belgium, Czech Republic, Finland, Greece, Luxembourg, Portugal, Spain and Turkey.

Source: [OECD \(2011a\)](#).

There is little question that increases in child-targeted benefits helped achieve this reduction, with the value of child tax credit and child benefit having more than doubled during the previous decade. However, these improvements in child welfare have not been experienced equally across family types. The incidence of child poverty has fallen very sharply over the past decade in workless households and in all lone parent households. Yet, this pattern has not been replicated in households where both parents work ([Institute for Fiscal Studies, 2011](#)). Moreover, there is still a great deal of progress to be made before levels of child poverty in the UK are reduced to levels more typical of western Europe - even if the overall direction of travel during the past decade or so is clear. As Figure 1.4u shows, child poverty rates in the UK remain significantly above the average for the EU-15 and are more than double the average for the Nordic countries ([OECD, 2011a](#)).

The question now is whether the coalition government, during a time of severe fiscal retrenchment, will be able to build on the progress made by Labour in tackling child poverty in the coming years. Certainly, the ambition to do so is there: David Cameron promised whilst in opposition that any future Conservative government would 'make British poverty history', and the coalition government has since accepted the statutory aim of the previous government's Child Poverty Act 2010 to 'eradicate' child poverty by 2020. But the likelihood of the government realising these goals is difficult to estimate. In April 2011, the government's first Child Poverty Strategy was released (albeit later than planned and without the legally-required involvement of an independent commission). This outlined a new approach to tackling child poverty with less focus on clear financial targets and more emphasis on non-income indicators, such as parenting skills, which are generally more difficult to measure. Critics are divided on the merits of this approach. Some argue that the inclusion of non-income indicators in the government's strategy to assess child poverty will better enable it to tackle the root causes of the problem, while others worry that this approach may lead to a neglect of income-based targets. If the long-term prospects of the government's child poverty strategy are as yet unclear, then the short-term consequences of government policy on child poverty levels seem somewhat more unequivocal. Child poverty is projected to rise by 300,000 from 2010-11 to 2013-14 (from 2.6 million to 2.9 million) as a result of government cuts to the benefits and tax credits system ([Institute for Fiscal Studies, 2011](#)).

Figure 1.4u: Percentage of children living in poverty, UK and comparators, late 2000s





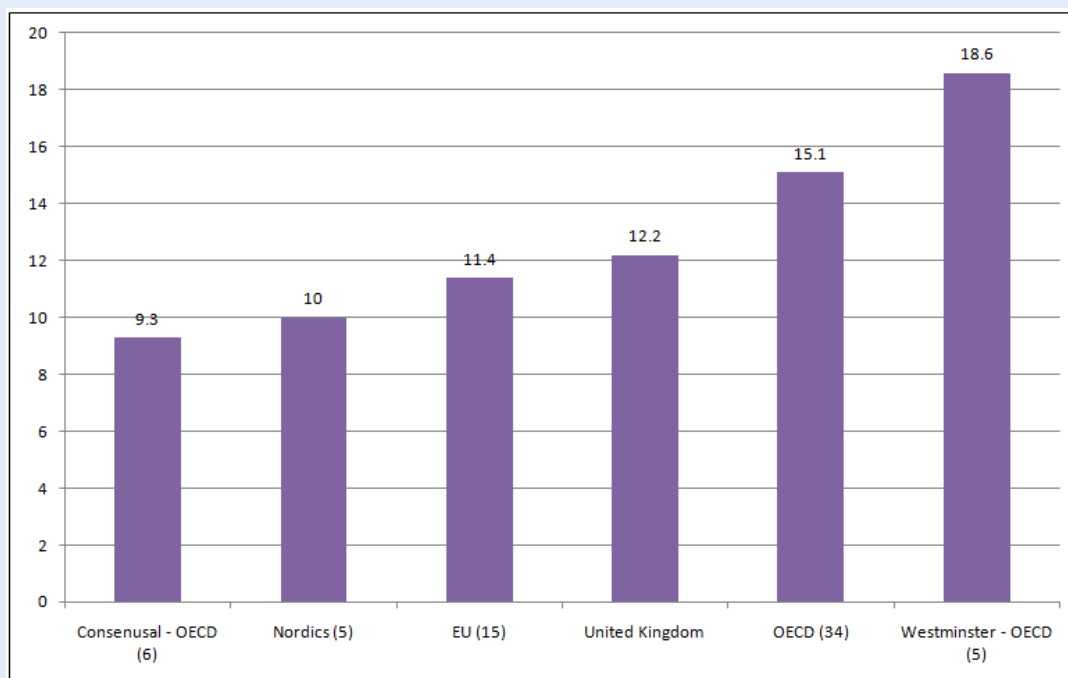
## Democratic Audit



Source: [OECD \(2011\)](#)

The period since 1997 has also witnessed a significant decrease in pensioner poverty - again due primarily to a combination of tax credits and higher benefit levels. Indeed, the [Institute for Fiscal Studies \(2011\)](#) calculates that pensioner poverty is now at its lowest rate since the mid-1980s. While poverty among pensioners has by no means been eradicated, it has been reduced by around one-third over the course of a decade (from around 3 million to 2 million) and, after housing costs are taken into account, poverty rates among pensioners are now lower than in any other demographic group. As a result of these changes, the rate of pensioner poverty in the UK now compares reasonably favourably to other established democracies. As Figure 1.4v shows, by the late 2000s, around 12 per cent of UK pensioners were in poverty, marginally above the 11.4 per cent average for the EU-15 but significantly below the 18.6 per cent average for the group of Westminster democracies adopted for comparison in this Audit. Moreover, while pensioner poverty rates are lower in the Nordic countries and the consensual democracies than they are in the UK, the gap is far narrower than it is for most other poverty measures.

Figure 1.4v: Poverty rates among pensioners, UK and comparator democracies, late 2000s



Source: [OECD \(2011\)](#)

The current coalition government has committed to restore the earnings-based link for rises in the basic state pension together with a 'triple-lock' guarantee that pensions will increase annually either in line with earnings, inflation or 2.5 per cent - whichever is highest. Modelling by the Pensions Policy Institute suggests that, in the absence of other policy shifts, this restoration of the earnings-link will serve to further reduce levels of pensioner poverty, albeit gradually, in the period to 2025 ([Carrera et al., 2011](#)).

The evidence presented in this section points to a number of significant improvements under New Labour. From 1997-2010, there were

clear fall in levels of homelessness, child poverty and pensioner poverty. Measures designed to tackle pensioner poverty have been particularly effective and, while it is apparent that Labour's target of halving child poverty by 2010-11 was not met, a sharp reduction in the proportion of children living in poor households was nonetheless achieved. However, other aspects of poverty reduction proved less successful. The incidence of fuel poverty, which had fallen sharply in the first half of the 2000s, began to rise rapidly again in the second half of the decade. Meanwhile, housing policy under Labour failed to address the growing mismatch between demand and supply, creating conditions which are widely anticipated to give rise to a deepening housing crisis over the coming decades.

With the exception of pensions, the programme of cuts and reforms to the benefit system being introduced by the coalition government is likely to reverse much of the progress achieved in the previous decade. Homelessness has already begun to rise and is projected to increase further as a result of changes to housing benefit. Fuel poverty remains a serious concern and it is by no means clear that current government policy will be able to counter the impact of rising fuel prices. It has also been estimated that child poverty is likely to increase as a result of changes to the tax and benefits system.

### 1.4.3 Health protection and health care

To what extent is the health of the population protected, in all spheres and stages of life?

Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishes the 'right of everyone to the enjoyment of the highest attainable standard of physical and mental health'. The International Committee's General Comment 14 also suggests that a state that fails to invest the 'maximum available resources' towards the realisation of this right is in violation of its obligations under Article 12.

In general terms, provisions to protect the health of the UK population, in all stages of life, are of an exceptionally high international standard. The National Health Service (NHS) embraces the principle of free medical care at the point of need and life expectancy in the UK is high. From 1990-2009, average life expectancy in the UK increased from 76 to 80.4 years. As Table 1.4c shows, life expectancy in the UK in 2009 was the same as the average for the EU-15 and only very marginally below the average for both the Nordic countries (80.6 per cent) and the consensual democracies (80.7 per cent). However, on other health indicators the UK fares less well, as Table 1.4c also illustrates. In particular, infant mortality rates in the UK are relatively high by the standards of other established democracies, as is the proportion of babies with low birth weights. Once again, the gap between the UK and the Nordic countries is especially evident with regard to both infant mortality and low birth rates.

Table 1.4c: Key health outcomes in the UK and comparators, 2009

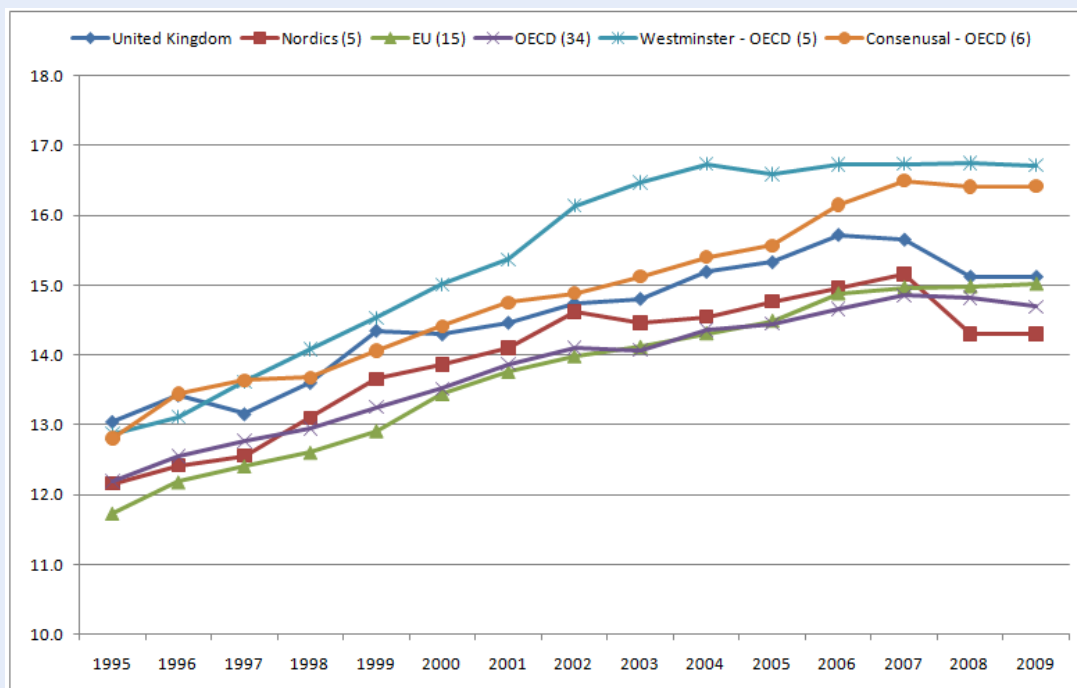
	UK	OECD	EU-15	Nordics	Consensual	Westminster
Life expectancy at birth (years)	80.4	79.4	80.4	80.6	80.7	80.7
Infant mortality rate (death per 1000 births)	4.6	4.6	3.4	2.6	3.4	4.4
Low birth weight (% of all live births)	7.4	6.7	6.6	4.8	6.8	6

Source: [OECD \(2011\)](#)

Spending on the NHS has been a major political issue in the UK for several decades, reflected in concerns about lengthy waiting lists for surgery and other forms of treatment. Labour's commitment to increase spending on the NHS, and cut waiting times, was central to the programme which secured them victory at the 1997 general election. As Figure 1.4w shows, health expenditure in the UK was under 7 per cent of GDP in the late 1990s - almost two percentage points below the average for the EU-15. UK health expenditure began to rise under Labour from 1998 onwards, but remained well below the average for the EU-15. The Wanless report, produced for the UK government in 2002, argued that years of under-investment in the NHS had led to the UK falling behind comparable countries on key indicators of health-care ([Wanless, 2002](#)). In the 2002 budget, Gordon Brown as Chancellor announced a significant five-year increase in spending in an attempt to match EU expenditure levels. As Figure 1.4w demonstrates, UK health expenditure rose from 7.5 to 8.5 per cent of GDP from 2002 to 2006, largely as a result of this investment. By 2009, health expenditure in the UK had reached the OECD average, at just under 9.5 per cent of GDP, although it continues to fall short of the average for the EU-15. As such, the UK continues to spend less on healthcare than most other north European democracies.

Figure 1.4w: Expenditure on health care as a % of GDP, UK and groups of comparator democracies, 1995-

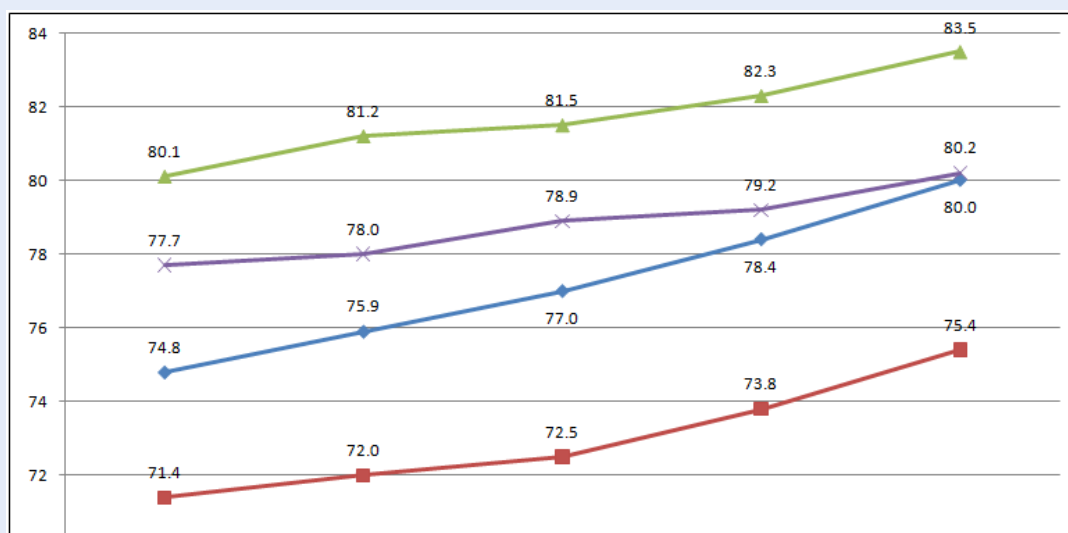
2009

Source: [World Bank \(2011\)](#)

### *Inequalities in health*

Overall, the population of the UK may enjoy a high standard of health; but as with all developed countries, this high national average tends to mask significant disparities in health status and access to care, whether according to gender, age, ethnicity, social class or other factors (Graham, 2004). It is especially apparent that the health of the wealthy is advancing at a faster rate than that of the poor. Figure 1.4x illustrates this tendency with regard to trends in life expectancy. On this measure, the difference in life expectancy between a child born into a managerial or professional family and a child born to parents whose occupation is described as 'routine' or 'manual' has increased for both sexes in the past 25 years - a trend also mirrored in longitudinal studies of death rates and infant mortality rates. These socio-economic differences are reflected, to some extent, in the health inequalities which continue to exist at a regional level. The 'north-south' divide still has a clear bearing on life expectancy, with those in the south of England enjoying longer, healthier lives on average than their counterparts in the north of England and the devolved nations.

Figure 1.4x: Male and female life expectancy at birth in the UK, 1982-2006.





Source: [Office for National Statistics \(2011\)](#)

These disparities between socio-economic groups are just as evident in statistics on the incidence and mortality rates for many of the most common physical and mental illnesses. For example, the gap in survival rates between rich and poor widened between 1986-90 and 1996-99 for 12 out of 16 cancers in men and nine out of 17 for women (Cancer Research UK, 2004); while poor men and women are also more likely to die from coronary heart disease or a stroke (British Heart Foundation, 2010). In addition, the [Health Select Committee's \(2009\)](#) report highlighted the differences which exist in health outcomes between ethnic groups - revealing, for instance, that men and women from Pakistani and Bangladeshi ethnic backgrounds report the highest rates of ill health and those from Chinese ethnic backgrounds the lowest. The committee also noted that people with schizophrenia are 90 per cent more likely to get bowel cancer, 42 per cent more likely to get breast cancer and will, on average, die ten years younger than those without mental health problems.

The previous Labour government had aimed to reduce health inequalities (as measured by infant mortality and life expectancy at birth) by 10 per cent by 2010. However, in its submission to the International Committee on Economic, Social and Cultural Rights in 2009, the Equality and Human Rights Commission had to admit that health inequalities between social classes have in fact widened ([Equality and Human Rights Commission, 2009a](#)). This widening gap was also confirmed in 2009 by the report from the Health Select Committee, which attributed the growing gulf to the fact that the health of the rich in England was improving faster than that of the poor ([Health Select Committee, 2009](#)).

If the government is to reduce health inequalities in the UK to a level similar to that observable in the Nordic countries, then it is clear that major changes will have to be made to the way in which the issue is tackled. The [Health Select Committee \(2009\)](#) concluded that the government has failed to take a systematic approach to developing policies to deal with inequalities in health; and that policy thus far has often been based on inadequate data and lacking in clear objectives. Meanwhile, the [World Health Organisation \(2008\)](#) has argued that the UK government - like other national governments - must make fundamental changes to the conditions of daily life; the inequitable distribution of power, money, and resources; and the low level of public awareness about the social determinants of health, if it is to make meaningful inroads into health inequalities ([World Health Organisation, 2008](#)).

#### 1.4.4 Access to education

How extensive and inclusive is the right to education, including education in the rights and responsibilities of citizenship?

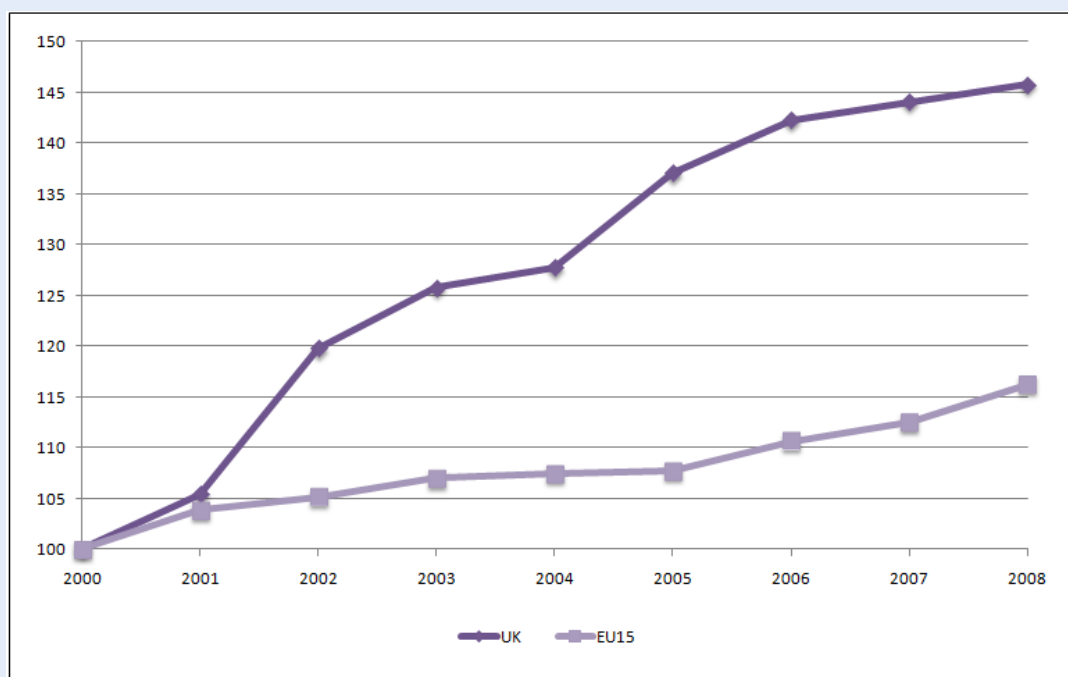
Though the Human Rights Act 1998 conferred a qualified right to education (enforceable in the UK courts through Article 2 of the first protocol to the European Convention on Human Rights), the right to education in the UK has been assured, in practice, for some time (Beetham et al., 2002). Free, compulsory education in the UK begins at the age of five and is available through to age 18. As such, concerns relating to the right to education in the UK have tended to centre not on the general availability of education to all children, but rather the quality, consistency and inclusivity of that education. The stark contrast in the educational opportunities available to children from different social classes is a particular concern, not least because of the very wide differences in educational attainment which arise from it.

Like the National Health Service, education was an area in which the Labour governments of 1997-2010 were determined to raise public funding from comparatively low levels. Tony Blair's oft-repeated mantra, 'education, education, education', was accompanied by a pledge to increase levels of spending on all stages of education, to raise the educational achievement of the whole population and to tackle what were seen as 'failing schools'. Labour also promised a significant expansion of education, nursery places and child-care provision for those under the age of five, in recognition of the need to prepare younger children - and especially those from lower socio-economic groups - for education in school.

It is evident that these were not idle promises. As Figure 1.4y shows, state expenditure on education in the UK rose at a considerably faster rate than the EU-15 average throughout the 2000s. As a result, the gap between UK spending on education and the average expenditure for the EU-15 narrowed dramatically. In 2000, UK spending on public educational institutions per pupil was only 78 per cent of the average for the EU-15 but, by 2006, this had risen to 99 per cent ([Eurostat, 2008c](#)). This increase in education spending was accompanied by a much stronger standards regime than had existed previously, with the Labour government adopting an express policy of 'zero tolerance to under-performance' ([Sullivan et al., 2011](#)). Labour's education measures therefore included more stringent school inspections with a particular

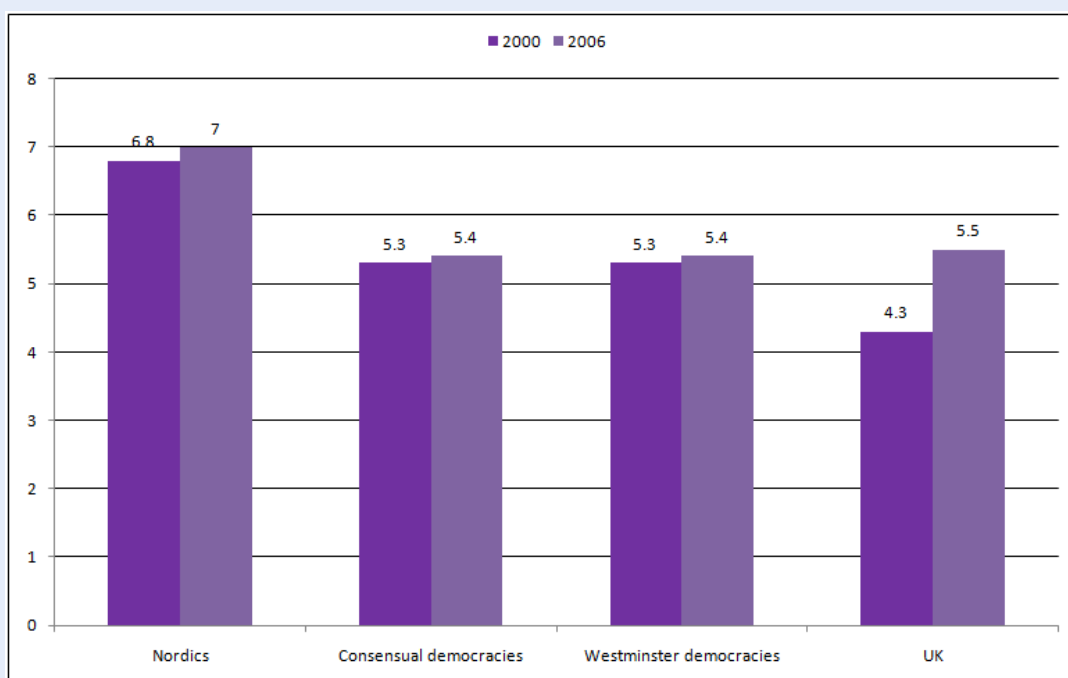
emphasis on tackling what were seen to be 'failing schools' and, from 2001 onwards, the creation of new 'Academy' schools in deprived areas ([Sammons, 2008](#)). At the same time, the Labour government introduced Sure Start centres in 1998, to provide free child-care and assist children from deprived neighbourhoods to improve their future prospects ([Children, Schools and Families Select Committee, 2010](#)).

Figure 1.4y: Change in total public expenditure on education in constant prices (2000 = 100), 2000-08.



Source: [Eurostat \(2008b\)](#)

Figure 1.4z: Public expenditure on education as a proportion of GDP, UK and groups of comparator democracies, 2000 and 2006



Source: [OECD \(2009\)](#)

The period since the late 1990s also points to significant improvements in attainment in schools. Results achieved in 'standard attainment tests' (SATs) at age 11 (key stage 2) and 14 (key stage 3) both showed marked improvement under Labour, while the proportion of 16 year olds gaining five or more GCSEs or equivalent at grades A\*-C, including English and maths, rose from 35 per cent in 1995-96 to 50 per cent in 2008-09 ([Chowdry et al., 2010](#)). There has been much controversy about whether these improvements in test scores and exam results reflect a genuine rise in standards (Massey et al., 2003; [Meadows et al., 2007](#)), or whether they are largely an illusion, arising from changes to assessment methods and a culture of 'teaching to the test' ([Tymss, 2004](#)). In support of the argument that improved grade represent a genuine rise in standards, [Sammons \(2008, p.660\)](#) points to international assessments such as PIRLS and TIMSS which 'provide external evidence of increases in primary pupil attainment levels in England, especially in mathematics'. Meanwhile, [Chowdry et al. \(2010\)](#) essentially reach the same view about attainment at key stages 2 and 3, finding that TIMSS data shows that 'England's average results at ages 9-10 and 13-14 appear to be well above the Western European average for Mathematics and Science'. However, the same authors add that analysis of PISA data shows that, 'England's 15-year olds-score around the OECD average for both reading and mathematics' ([Chowdry et al., 2010, p. 15](#)).

At the same time, however, it is clear that Labour's period in office was not accompanied by a meaningful reduction in educational inequalities - whether with respect to access *to*, the provision *of*, or the outcomes *from* education, which remain evident between children from different backgrounds. As the EHRC's triennial review, *How Fair is Britain?*, reported in 2010, overall educational outcomes remain strongly related to socio-economic background, gender, ethnicity and disability ([Equality and Human Rights Commission, 2010](#)). Children in receipt of free school meals are less than half as likely to achieve the 5+ A\*-C GCSE standard as those who are not. There are also clear disparities between children of different ethnic origin. In 2008, the percentage of children gaining 5+ good GCSEs in England were close to the average of 51 per cent for Bangladeshi, black African and white children; way above average for Chinese children (72 per cent); and considerably below average for black Caribbean and Pakistani pupils, at 39 and 43 per cent respectively. Moreover, educational inequalities are not only reflected in exam results. School exclusion also falls unequally on different groups. In England, Asian children are excluded from school at a rate of 5 per 10,000, black Caribbean children at 30 per 10,000, children with some form of special educational need at an equivalent rate, and gypsy and traveller children at a rate of 38 per 10,000 ([Equality and Human Rights Commission, 2010](#)).

However, there is an enormous body of evidence to support the conclusion that social class 'remains the strongest predictor of educational achievement in Britain' ([Perry and Francis, 2010, p. 18](#)) and that this gap widens at each higher level of attainment ([Sullivan et al., 2011](#)). Research by the Sutton Trust shows that the children of university-educated parents are four times more likely to obtain at least five GCSEs at A\*-C grade than those children whose parents did not go to university ([Sutton Trust, 2010](#)). Certainly, there is some evidence of a narrowing of this class gap over a period of two decades, and that the relatively modest equalisation which has taken place accelerated under Labour ([Sullivan et al., 2011](#)). However, it is also apparent that attempts to encourage greater social mobility through improved education and the promotion of greater 'aspiration' among working class children have a very mixed track record ([Perry and Francis, 2010](#); [Kerr and West, 2010](#)). Moreover, even if class differentials in school education in the UK have narrowed moderately over time, they remain exceptionally wide by international standards. In an OECD study of 54 countries ([Machin, 2006](#)), the impact of family background on test scores was found to be greatest in England and third greatest in Scotland (Wales and Northern Ireland were not included in the study). The same study found that expansion of higher education in the UK had clearly favoured individuals from wealthier backgrounds and that this had acted to 'reinforce income persistence across generations and depress the prospects for social mobility' ([Machin, 2006, p. 19](#)).

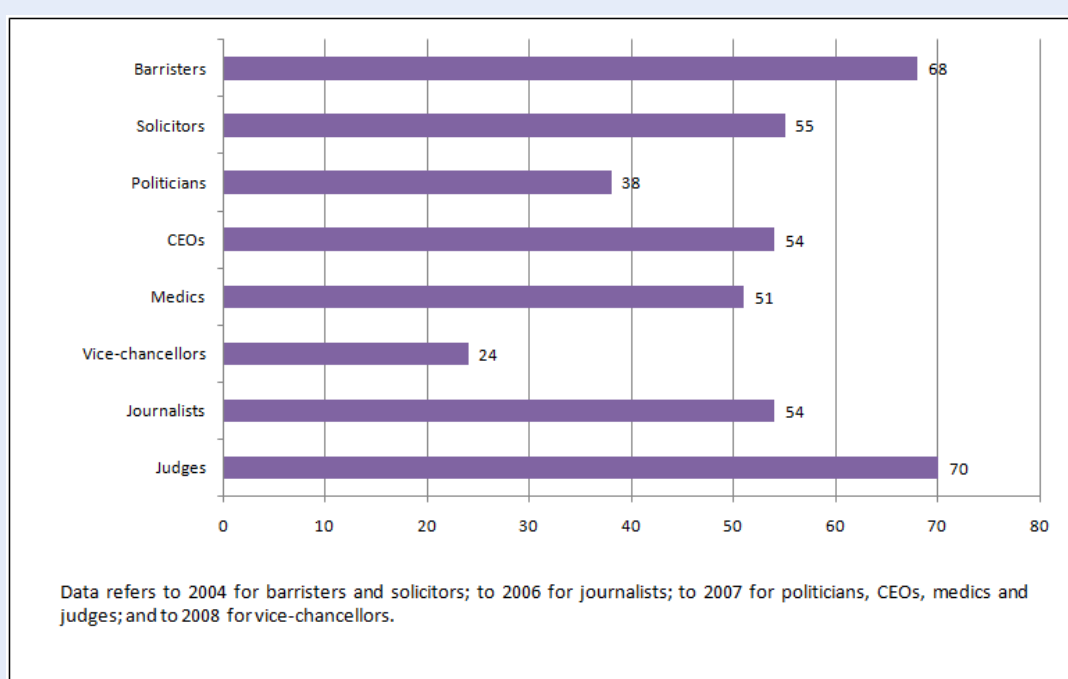
### Higher education

In recent years, the number of young people attending university has increased considerably. In 2008-09, 2.4 million students enrolled in higher education – a clear advance over the time when universities were only available to a minority. Ethnic minority students increased their share of places from 13 per cent in 1994-95 to 23 per cent (a figure broadly proportionate to their size in the young population), and more young people are entering higher education from lower socio-economic backgrounds. Yet, beneath these 'headline' figures, there remain a number of areas of concern. Researchers have found that:

- of students who graduated in 2002-03 from the elite Russell Group universities, 44 per cent came from professional families, compared to 23 per cent from an unskilled family background ([Hills et al., 2010](#));
- at least 44 per cent of graduates from black, Indian and Pakistani/Bangladeshi groups had studied at former polytechnics, while the average for other ethnic groups was around 34 per cent ([Hills et al., 2010](#));
- black students were least likely to attend a Russell Group university, with only 8 per cent of black students attending a Russell Group institution, compared to 24 per cent of white students and 29 per cent of 'other Asians' ([Hills et al., 2010](#));
- participation in higher education for those from lower socio-economic backgrounds remains 'substantially below' that for students from professional backgrounds ([Sutton Trust, 2008](#));
- disabled students are less likely to attend a Russell Group university ([Hills et al., 2010](#)).

Again, it is the social class gap that is the most obvious form of social inequality in higher education. Indeed, the class inequalities observable during childhood education become even more stark in the context of further and higher education. The dominance of private fee-paying schools over state schools in terms of GCSE results is mirrored in A Level exams results, and also in the number of admissions to Russell Group universities (a fact largely responsible for the unequal numbers of students from professional families and those from working class backgrounds). Currently, only three of the 16 Russell Group universities - Liverpool, Sheffield and Southampton - are achieving intakes above their targets for state-educated children ([Higher Education Statistics Agency, 2011](#)). At Oxford, 54.3 per cent of its undergraduate intake for 2009-10 were educated at state schools and colleges, against a target of 70.2 per cent; while at Cambridge 59.3 per cent were state-educated, against a 70.4 per cent target ([Higher Education Statistics Agency, 2011](#)). Given that only about 7 per cent of the school population attend independent, fee-paying schools, the share of places taken by these students at Oxford and Cambridge is hugely disproportionate. Unsurprisingly, the outcome of these educational inequalities is that the highest-paid professional occupations in the UK tend to be dominated by former pupils of independent schools. As Figure 1.4æ shows, 70 per cent of judges and 68 per cent of barristers attended independent schools, as did just over half of solicitors, chief executive officers in major companies, medics and journalists.

Figure 1.4æ: The percentage of leading professionals from independent schools



Source: [Sutton Trust \(2009\)](#)

### Early years education

As noted above, the Sure Start programme was a central element of Labour's efforts to transform the educational prospects of children living in the most deprived areas. The extent to which Sure Start has succeeded in this respect is unclear, and it will of course only be possible to assess the long-term impact many years from now. The national evaluation of Sure Start has reported that children affected by the scheme have not shown any signs of increased 'school readiness' ([Institute for the Study of Children, Families and Social Issues, 2010](#)). But as these same researchers also found, there have been a whole host of other benefits associated with Sure Start. It was discovered, for instance, that disadvantaged children using the programme were less likely to be overweight by the time they were five, were in better health and had less chaotic home lives; and that mothers using the programme reported providing a more stimulating home learning environment for their children, disciplining them less harshly and being more satisfied with life ([Institute for the Study of Children, Families and Social Issues, 2010](#)). An inquiry undertaken by the Children, Schools and Families Select Committee reached much the same conclusion, reporting that:

'The Sure Start programme as a whole is one of the most innovative and ambitious Government initiatives of the past two decades. We have heard almost no negative comment about its intentions and principles; it has been solidly based on evidence that the early years are when the greatest difference can be made to a child's life chances, and in many areas it has successfully cut through the



silos that so often bedevil public service delivery. Children's Centres are a substantial investment with a sound rationale, and it is vital that this investment is allowed to bear fruit over the long term' ([Children, Schools and Families Select Committee, 2010, p. 3](#))

All political parties acknowledge the importance of early years education as a means of tackling poverty and inequality; but Sure Start centres now risk closure in many areas because the coalition government has reduced the grant which funds them by 11 per cent in the emergency budget, and by a similar percentage in the comprehensive spending review before removing the protection from the Sure Start budget. Ministers have argued that too many affluent families were taking advantage of the scheme, and that their aim is to refocus the centres so that they are better-targeted at disadvantaged families. This, of course, will only be possible if the centres stay open - an outcome which looks unlikely, in many cases, given the requirement for local councils to adjust to cuts in their central government funding.

Meanwhile, the abolition of the educational maintenance allowance (EMA), which *did* promise more equality lower down the scale, and the rise in tuition fees (with the 'top' universities clustering around the maximum £9,000 a year charges) do not augur well for the coalition government's commitment to addressing the 'achievement gap' and kick-starting social mobility in the UK. Indeed, while all of the major political parties regard education as the single most important route to improving social mobility, the Sutton Trust - an organisation which studies education and social mobility in the UK - has warned that the cyclical nature of the education and earnings relationship will continue to have a significant impact if more is not done to narrow the gaps in attainment between socio-economic groups ([Sutton Trust, 2010](#)).

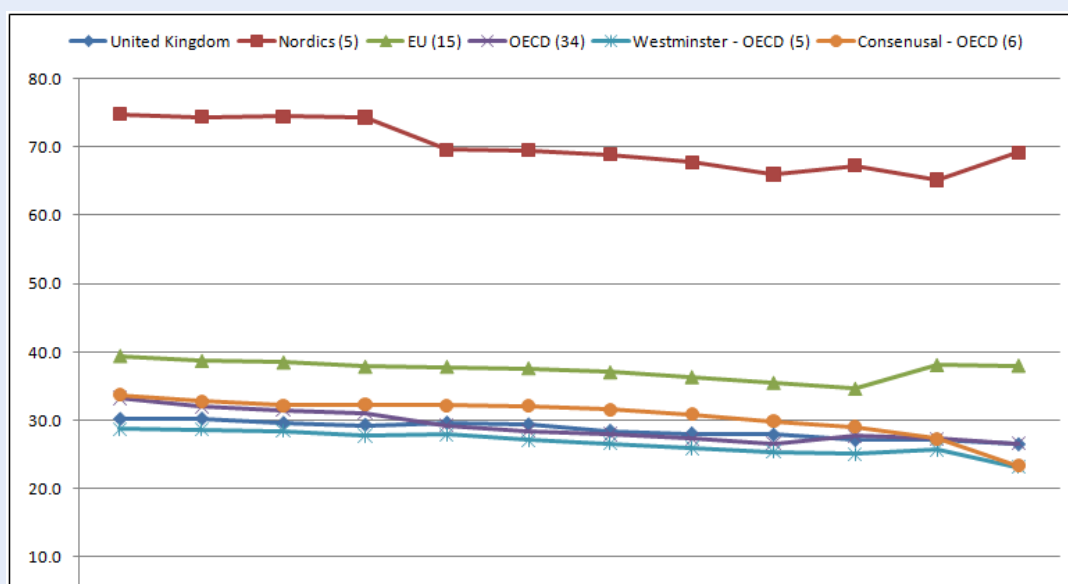
### 1.4.5 Trade union rights

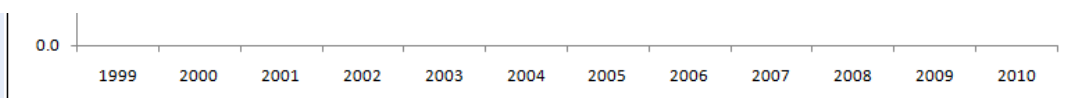
How free are trade unions and other work-related associations to organise and represent their members' interests?

Trade unions play a fundamental role in securing democracy and human rights by providing workers with the means to demand safe working conditions, satisfactory levels of remuneration and state policies that recognise workers' interests. Moreover, the right to organise collectively in trade unions is protected by constitutional law in many countries, as well as by international and regional human rights instruments such as the ECHR, the ICESCR, the International Labour Organisation (ILO), the EU Charter of Fundamental Rights and the European Social Charter (see the [Introduction](#) to Section 1.4). The legal right of individual workers to choose to join, or not to join, a trade union is clearly established in UK law. Where a trade union is recognised by an employer, the union acquires specific legal rights. These rights include a requirement for employers to provide trade union officials with both time off work to carry out their union duties and with relevant information for the purposes of collective bargaining. In addition, the employer is required to consult with the trade union about matter such as health and safety, redundancy proposals and any changes of ownership of the business.

The proportion of the UK labour force who are members of trade unions has declined markedly over recent decades. In 1974, half of the labour force were in a trade union (Butler and Butler, 2000), but as Figure 1.4ø shows, this had fallen to around 30 per cent by the late 1990s. Over the past decade, trade union density in the UK has continued to decline, reaching 26.5 per cent in 2010. While trade union density in the UK is by no means out of line with the average for the OECD or for the consensual and Westminster democracies, it is far lower than the average for the Nordic countries, which stood at 69.2 per cent in 2010.

Figure 1.4ø: Trade union density, UK and groups of comparator democracies, 1999-2010





Source: [OECD \(2011\)](#)

Despite the clear existence of rights for UK workers to organise, the UK has been consistently censured for its record on trade union freedom. As we noted in the introduction to Section [1.3.1](#), the Cingranelli-Richards Human Rights Index records relatively frequent infringements of the rights of UK workers to form associations at their workplaces and to bargain collectively with employers. In addition, as we reported in our last periodic Audit, the European Committee on Social Rights (2000) judged the UK to be 'failing to fulfill its obligations under nearly a third of the EU (Social) Charter's articles' (Beetham et al., 2002, p. 81). In the main, these judgements on the UK's record in relation to workers' rights reflect two sets of concerns. First, while all workers in the UK have the legal right to join a trade union, there is a long-standing problem relating to employers refusing to recognise unions for the purposes of collective bargaining. Second, there are ongoing issues about the extent to which union members have a right to take strike action to defend their interests, since strike action has never been given a clear statutory basis.

### **Union recognition**

Trade union recognition can either be given voluntarily by the employer or, where such consent is not forthcoming, via a statutory process overseen by the Central Arbitration Committee (CAC), with the support of the Advisory, Conciliation and Arbitration Service (ACAS). The statutory process for establishing trade union recognition was introduced by the Employment Relations Act 1999 and is seen as a 'last resort' mechanism. The new system has established itself more successfully than previous attempts to provide a statutory route to union recognition, contained in the Industrial Relations Act 1971 and subsequently in the Employment Protection Act 1975, which proved short-lived. Indeed, no statutory procedure had been operational since 1980 ([Lourie, 2000](#)). In the absence of such procedures, and given a barrage of measures introduced to restrict the power of trade unions in the 1980s, there was a very sharp fall in the proportion of employers recognising unions from 1980-1990 ([Disney et al., 1995](#)). As Table 1.4d shows, the overall percentage of workplaces recognising unions dropped from 64 per cent in 1980 to 53 per cent in 1990, although the decline was much sharper among manufacturing companies. However, as Table 1.4d also shows, this decline in union recognition accelerated in the 1990s so that, by 1998, unions were recognised in just 42 per cent of workplaces.

Table 1.4d: Percentage of workplaces with 25+ employees recognising unions, UK, 1980–2004

	1980	1984	1990	1998	2004
Manufacturing	65	56	44	28	37
Private sector	41	44	36	23	20
Public Sector	94	99	87	87	88
All	64	66	53	42	39

Source: [Blanchflower et al. \(2007\)](#)

Under the current system, a case for union recognition will only be considered by the CAC if at least 10 per cent of the workforce are unionised. If the case is accepted, ACAS then ballot all employees, with a requirement that a majority of those voting, as well as 40 per cent of those eligible to vote, must indicate their support for recognition for collective bargaining. By the end of May 2004, 372 cases had been submitted to the CAC, with unions securing recognition in 96 instances, representing 26 per cent of the total ([McKay and Moore, 2005](#)). By June 2010, the 10th anniversary of the provisions coming into force, the CAC had received 721 applications, of which 229 (32 per cent) resulted in the granting of union recognition ([Gall, 2010](#)).

There is some dispute as to whether the provisions contained in the Employment Relations Act 1999 represent an improvement for the rights of workers to organise ([Gall, 2010](#); [Brodtkorb, 2012](#)). Certainly, as Table 4.1d illustrates, the proportion of workplaces in which unions are recognised continued to fall after the provisions were introduced, although levels of union recognition increased in the manufacturing sector and were stable in the public sector. Similarly, the proportion of employees whose pay is affected by collective bargaining agreements has continued to fall, with a sharp fall from 2008 to 2010. As Table 1.4e shows, 31 per cent of employees were covered by

collective bargaining in 2010, compared to 37 per cent in 1996. Yet, it would also appear that the rapid decline in union recognition has been arrested. Indeed, as [Brodtkorb \(2012, p. 82\)](#) points out, 'many representative unions have achieved recognition through the statutory route, and there is evidence to show that many more have achieved voluntary recognition because employers wanted to avoid statutory recognition'.

Table 1.4e: Proportion of employees whose pay is affected by collective bargaining, UK public and private sector, 1996-2010

	Public sector	Private Sector	All employees
1996	74.4	23.2	37
1997	74.9	22	36
1998	75.1	21.7	35.4
1999	72.7	23	36.1
2000	74.2	22.5	36.4
2001	72.6	21.9	35.5
2002	73.6	21.1	35.2
2003	71.6	21.9	35.5
2004	71.2	20.5	34.7
2005	70.9	20.6	34.9
2006	69	19.6	33.3
2007	72	20	34.6
2008	70.5	18.7	33.6
2009	68.1	17.8	32.7
2010	64.5	16.8	30.8

Source: [Department for Business, Innovation and Skills \(2010\)](#)

### ***The right to strike***

Strikes by workers in the UK will typically constitute a breach of contract under judge-made common law, and thus give rise to liability on the part of the union for inducing workers to break their contracts of employment. As a form of protection from liability for industrial actions (such as strikes) that would otherwise be unlawful, workers and trade unions in the UK have historically relied on legal immunities rather than constitutionally protected rights. First legislated for in the Trade Disputes Act 1906, these immunities apply when industrial action is conducted 'in contemplation or furtherance' of a legally-defined trade dispute. Importantly, the 1906 act also gave trade union funds an almost complete protection against legal action by employers. Nevertheless, outside the scope of these immunities, the rigour of the judge-made common law applies and industrial action may be restrained by an injunction in court proceedings brought by employers - who may also be able to recover damages for losses incurred.

During the period of Conservative government between 1979 and 1997 the law governing strike action became ever more restrictive; and the Labour governments which held office after 1997 were content to leave most of these changes intact (Beetham et al., 2002). Over time, the legal immunity from liability for acts done in contemplation or furtherance of a trade dispute was amended and narrowed so that it now applies only to disputes between workers and their own employer. Thus - as in a recent case involving the NUJ - there is no protection where the trade union takes action against the corporate holding company that makes the decisions implemented by subsidiary companies, through which the workers are employed. Immunity was also withdrawn from certain forms of action which were once protected, such as secondary or solidarity action, and made conditional on certain procedural obligations being met before the action is taken. These obligations include the duty to conduct a secret postal ballot of the workers to take part in the industrial action, and the duty to give various sorts of notice to the employer and to the members of the union. These notice provisions have given rise to difficulties for trade unions in a number of recent cases, not least because the courts have subjected them to such detailed, technical scrutiny as to restrict industrial actions and prevent strikes - even when unions have striven to respect both the spirit and letter of the law, and clear majorities of members have voted in favour of strike action (see Case Study 1.4b).

### Case Study 1.4b: The use of court injunctions to prevent strike action

Trade unions rely on an immunity provided by parliament for the freedom to engage in industrial action. This immunity applies only - in the words of the statute - to 'acts done in contemplation or furtherance of a trade dispute'. Since 1984, this limited immunity has been subject to the condition that the union conducts a secret postal ballot of its members and, since 1993, that the union complies with a number of onerous notice requirements before embarking upon industrial action. These provisions have provided the basis for a number of recent court injunctions to stop industrial action, despite the fact that the industrial action concerned was in furtherance of a trade dispute and fully-supported by a ballot. Prominent cases have included [EDF Energy Ltd v RMT 2009](#) as well as three cases involving Unite, in disputes with Metrobus, British Airways and Milford Haven Port Authority.

The courts were pulled into the BA dispute on two occasions ([British Airways plc v Unite the Union 2009](#); [British Airways plc v Unite the Union, 2010](#)). On the first, the union had balloted its members for industrial action in relation to a dispute about crew levels on certain flights. The ballot led to an overwhelming 92.5 per cent voting in favour of industrial action on a turnout of 80 per cent. Nevertheless, the High Court granted an injunction on the ground that the union had given incorrect information about the number of people who were to be balloted and inaccurate information about the number of people who would be taking industrial action. The information provided by the union included details of an unknown number of people the employer claimed (but did not establish) were likely to take voluntary redundancy and so were unlikely to take part in the proposed industrial action. This is despite the fact that there were only 1,003 such people out of a voting constituency of 10,286 employees, of whom 9,514 voted in the ballot. Even if all 1,003 had voted against the action, their participation would not have affected the outcome of the ballot.

The granting of the injunction on 17 December 2009 led to the holding of a second ballot - said in the Court of Appeal to have been 'impeccably conducted' - in which 9,282 people voted (representing 79.4 per cent of those eligible to vote). Again, the majority in favour of industrial action was massive, with 7,482 in favour and 1,789 against. Here, however, the union was tripped up not because of the ballot or the industrial action notice it had given to the employers, but because of the notice of the ballot result it gave to its members. In this case, an injunction was granted by the High Court in a legal argument relating in part to the way in which the union informed its members (on the website and by text), and to the question of whether all members had been notified of the 11 spoiled ballot papers. Again, neither the method of communication nor the information provided, affected in any way the fact that this was a ballot that had produced an overwhelming majority in favour of industrial action. Nor was there any evidence that any members of the union had not been made aware of the ballot result or that they were concerned about the manner of its communication. Nevertheless, it was only the intervention of the Court of Appeal reversing the High Court which led to the injunction being overturned. Commenting on the case, the Lord Chief Justice observed that 'it does indeed seem curious to me that the employers can rely on a provision designed to protect the interests of members of the Union in order to circumvent their wishes' ([British Airways plc v Unite the Union, 2010](#)).

Source: Edited extracts from Ewing (2012)

Recent developments suggest that at least some of these legal impediments to the right of UK workers to take strike action will be removed. In the landmark case of *Demir and Baykara v Turkey* (2008), the European Court of Human Rights (ECHR) abandoned its previously restrictive view on trade union rights under Article 11, reading the right to association more widely so as to include the right to collective bargaining and thus the right to engage in collective action ([Ewing and Hendy, 2010](#)). Having been reiterated in a number of cases subsequently, the European Court's ruling eventually filtered through to the UK courts. In *RMT v Serco Ltd and ASLEF v Birmingham Railway Ltd* (2011), the UK Court of Appeal recognised the defect in common law which 'confers no right to strike in this country', as well as the importance of 'various international instruments' in which rights to collective action were acknowledged. Most importantly, the Court also accepted the ECHR cases in which 'the right to strike is conferred as an element of the right to freedom of association'. The courts were instructed by the Court of Appeal not to apply trade union legislation strictly against the unions; not to invent additional restrictions on the presumption that parliament intended that the interests of employers should always hold sway; and not to 'set traps and hurdles for the union which have no legitimate purpose or function'.

While the decision in *RMT v Serco Ltd and ASLEF v Birmingham Railway Ltd* represents a considerable victory for trade unions' right to strike, it did not, however, sweep away the body of trade union legislation which has made British labour law the most restrictive in Europe (Ewing, 2012). The court upheld the view that the notice requirements, criticised as being excessively restrictive by ILO and Social Charter jurists, did not violate Article 11.2 of the convention. The prohibition on solidarity and sympathy action (which makes it impossible for unions to take effective action in situations where the 'real' employer with whom the workforce is in dispute can take refuge behind one or more subsidiary companies), will also remain in place. Further, as the European Social Rights Committee has pointed out, the English

courts have excluded collective action concerning a *future* employer and *future* terms and conditions of work when a business is being transferred. The *Viking* decision by the European Court of Justice (ECJ) in 2007, meanwhile, also creates a major hazard for trade unions in the UK and EU nations, as in this case the ECJ held that an industrial action interfering with the freedom of movement between member states was unlawful under the EC Treaty and could give rise to unlimited damages against a trade union.

### **Section 188 notices**

A further development in recent years is that collective bargaining has been bypassed via the use of 'section 188 notices', through which employers - across the public and private sectors - are issuing notices of mass dismissal, and offering to re-employ workers on inferior terms. These new terms are imposed without the agreement of the trade union or the workers, who have no choice but to accept. Sometimes section 188 notices involve a repudiation of a collective agreement, which the union is powerless to defend. Collective agreements in the UK are not legally binding, and the only sanction open to workers and their unions - industrial action - is so fraught with legal dangers as often to be beyond use. It can also be argued that the use of section 188 notices in this way constitutes an abuse of an EU Directive that was designed to protect workers facing redundancy, by requiring the employer to give as much advance notice as possible and to consult with the union to find alternatives to redundancy; to reduce numbers to be made redundant; and to ameliorate the consequences. Instead, legislation intended to protect the rights of workers appears to have become something of a licence for employers to undermine collective agreements and terms and conditions of employment.

It is encouraging that a workable approach for providing a statutory route to union recognition has been established and that the previously sharp decline in the proportion of employers recognising unions has been arrested. Yet, despite the modest improvements we recognise in this section, the conclusions that we drew in our previous Audit regarding the UK's poor record with respect to trade union rights remain largely unchanged. The legal limitations on the rights for workers to take strike action remain a particular concern. The [European Committee of Social Rights \(2005\)](#) concluded that 'the scope for workers to defend their interests through lawful collective action was excessively circumscribed in the United Kingdom'. In reaching this view, the committee reiterated its previous finding that the UK was failing to conform with Article 6§4 of the European Social Charter, which establishes a right for workers to bargain collectively. In addition, the committee found that, in the UK: 'the requirement to give notice to an employer of a ballot on industrial action is excessive' and that 'the protection of workers against dismissal when taking industrial action is insufficient'. In its subsequent report on the UK, the [European Committee of Social Rights \(2010\)](#) found that the UK was still in breach of Article 6§4 of the charter, repeating the very same grounds on which it had reached this assessment five years previously.

More broadly, the evidence of declining trade union density in the UK, and the shrinking proportion of the labour force covered by collective bargaining agreements is highly significant in relation to the wider patterns of social and economic inequality identified in this chapter. The declining capacity of collective bargaining arrangements to mitigate income inequality is a common trend across all developed countries. However, as [Baccaro \(2008\)](#) shows, where labour movements have remained relatively powerful, such as in the Nordic countries, they have at least been able to ensure that a political commitment to a large welfare state is retained, enabling significant redistribution via state transfers which, in turn, reduces income inequality. The UK, by contrast, is characterised by comparatively low levels of 'labour power' and, by the standards of other established democracies, by both a relatively small welfare state and high levels of income inequality. That corporate power appears to have increased significantly in the UK in recent decades, as we observe in Section [1.4.6](#), only serves to accentuate the high levels of inequality which we catalogue in this chapter.

### **1.4.6 Regulation of corporate interests**

How rigorous and transparent are the rules on corporate governance, and how effectively are corporations regulated in the public interest?

Corporate influence on politics is a complex web – being exercised, among other means, through think tanks, donations to political parties, the print media, advisory quangos, consultants, corporate appointments in government, and the 'revolving doors' between government officials and the private sector. Of course, some degree of corporate influence on public affairs has long existed. One feature of the 1960s and 1970s, for example, was the 'policy networks' and 'closed policy communities' through which the organised road lobby determined the Department of Transport's roads policy; and the close influence that similar industrial lobbies - such as farming, defence and food - wielded within other departments of government (Harden and Lewis, 1988). Moreover, our previous Audits of democracy in the UK have described the significant and 'often dominating' role in government policy-making played by organised interests and professional groups; and examined the close and continuing links between these interests and government departments (Weir and Beetham 1999; Beetham et al., 2002).

Yet, while the role played by big business in politics represents a point of continuity between the past and the present, the nature of the relationships between government and the corporate sector has, in fact, been revolutionised since the 1980s. There has been an undoubted rise in corporate power arising from two parallel sets of developments. On the one hand, governments have increasingly lost the

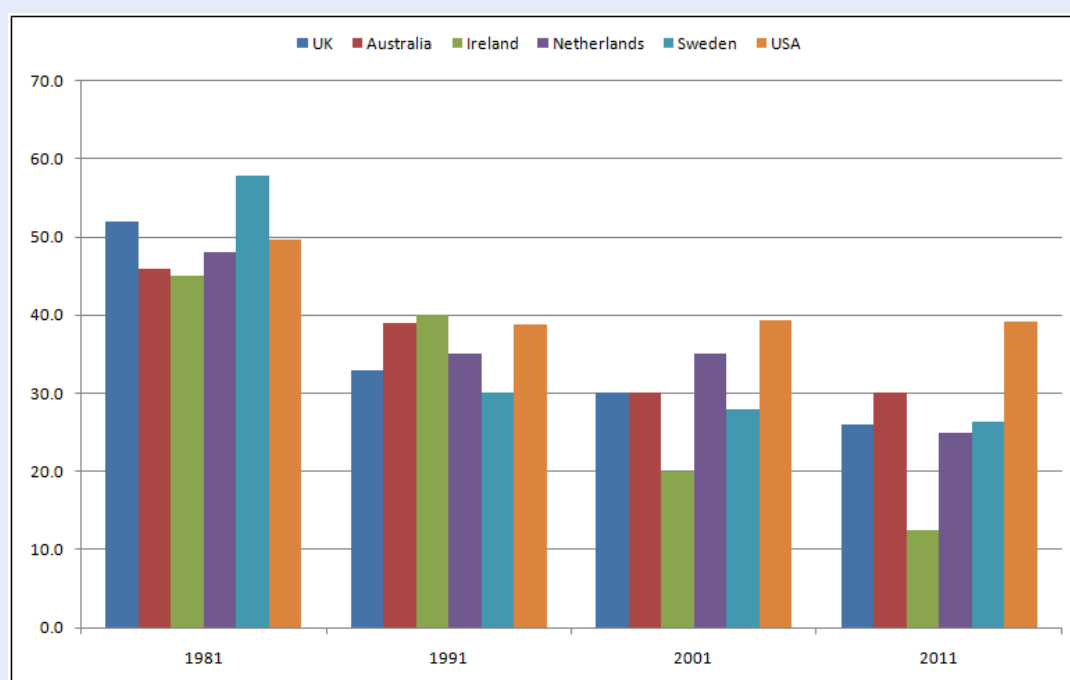
capacity to control key areas of policy, particularly with respect to financial regulation and the economy. On the other hand, the corporate sector as a whole has come to exercise an unprecedented level of influence across all aspects of government and public life by expanding and consolidating its various modes of influence on public policy. As [David Beetham \(2011, p. 5\)](#) puts it 'the range of powers available to the corporate sector to influence or determine government policy has considerably expanded as it has become increasingly enmeshed with government, while potential countervailing powers of a more democratic kind have been correspondingly weakened'. Moreover, as [Beetham \(2011, p. 3\)](#) notes, governments in the UK and across the world have 'often proved all too willing collaborators in these processes', despite the fact that their clear outcome is one of inducing substantial limitations on government autonomy.

The implications of growing corporate power are discussed in detail at a number of points in this Audit. General concerns about corporate and business influence over public policy are identified in Section [2.6.4](#). These issues are also explored in Section [2.3.3](#), which identifies ways in which business enjoys privileged access to government. Meanwhile, in Section [2.2.4](#), we discuss the role which corporate interests and wealthy individuals play in relation to the funding of political parties. In addition, the significant connections between parliament and the corporate world are highlighted in Section [2.6.3](#), which considers the extent to which elected representatives operate independently of sectional interests. In this section, we focus on some of the underlying causes in the 'power shift' from elected governments to corporate interests, as well as some of the key manifestations of this shift in rules about corporate governance and in the regulation of business interests more generally.

### ***National governments in a globalised world***

One of the root causes of the profound shift in power away from national government and *towards* the corporate sector is 'globalisation': the progressive internationalisation of trade, investment and finance, which has created transnational corporations and businesses with the (alleged) capacity to switch their production and investment between countries, and to locate their headquarters in low-tax countries while their main business remains in the UK. These corporations demand conditions which facilitate the profits and progress of their business: low corporation and other taxation; low wages; and light regulation of their activities, working and environmental conditions. It has been widely argued that countries across the developed world now compete to create the business-friendly conditions that these corporations seek - whether by driving down standards of social welfare, restricting trade union freedoms, relaxing the regulation of business, or lowering rates of corporate and personal taxation (Mishra, 1999; Huber and Stephens, 2001). Figure 1.4Å, which shows changes over time in corporate tax rates in the UK and our chosen comparator democracies lends weight to this perspective. As the graph shows, there has been a clear decline in corporate tax rates across the board, with competition between countries seeking to attract inward investors playing a major role in driving tax rates down. The dynamics of this 'race to the bottom' were illustrated by the recent decision of George Osborne, as UK Chancellor of the Exchequer, to reduce corporation tax by one percentage point. This change, he argued, would make the UK's corporate tax rates the lowest in the G7 group of economies and would demonstrate that the UK was 'open for business' to inward investors ([Financial Times, 2011](#)).

Figure 1.4Å: Combined corporate income tax rate, selected countries, 1981-2011





Source: [OECD \(2011c\)](#)

However, downward convergence in corporate tax rates aside, there are very strong grounds to suggest that the 'race to the bottom' is by no means universal. While corporate tax rates may have been cut across the OECD, studies also suggest that income from taxes on corporate profits and capital gains as a proportion of all tax revenue was remarkably stable from 1979-1998 ([Navarro et al., 1998](#)). There is also evidence of some established democracies resisting the logic of 'neo-liberal' labour market strategies ([McBride and Williams, 2001](#)) and maintaining expansive welfare states with high rates of taxation ([Korpi and Palme, 2003](#); [Navarro et al., 2004](#); see Section 4.1.1 for further discussion). What is evident from these, and other comparative studies, however, is that the Anglo-Saxon countries have tended to adopt similar sets of market-conforming policies shaped by the logic outlined above. In this sense, corporate dominance has been underpinned and justified, especially in the Anglo-Saxon world, by neo-liberal economic theory - or 'market fundamentalism', as it is otherwise known. This 'new common sense', as Beetham describes it, consists of two key propositions: 'that unfettered markets constitute a self-regulating and self-correcting device to maximise efficiency and economic growth [...] and that, by contrast, the state is wasteful, incompetent and bureaucratically restrictive on business enterprise' ([Beetham, 2011](#)). It is this theory that has encouraged the aversion to the state's regulatory obligations, the drive towards privatisation, and the wholesale transfer of social provision from the public realm to private business and voluntary alternatives.

The neo-liberal policy trajectory in the UK has been perhaps most obvious with respect to financial services, where it can be traced back to at least the mid-1980s. Through the 'Big Bang' of 1986, the Thatcher government abolished exchange and capital controls, de-regulated the Stock Exchange and eroded safeguards that kept different kinds of banks and financial institution separate. The purpose of the move was to build on the historic strength and international connections of the City of London, in order to realise its ambition to be a global leader in financial services by offering traders across the world the most de-regulated market. This approach developed into the bipartisan 'light touch' regulatory policy followed by successive Conservative and Labour governments, until the 'Big Bang' finally exploded in the banking crisis of 2008, bringing deep recession in its wake. As Case Study 1.4c suggests, a more dramatic illustration of how corporate deregulation has acted against the public interest is scarcely imaginable.

#### Case Study 1.4c: The City of London – financial power and tax avoidance

Robert Peston describes the City of London as 'a state within the state' (Peston, 2008). The central position in the economy that successive governments have given the City endows it with considerable political clout. The resources of the big six banks alone are huge in comparison with the UK economy as a whole. Currently, the top six UK banks control about 90 per cent of all deposits (compared with Germany's top seven with a 68 per cent market share and the US's top eight with 35 per cent) ([BBC News, 2011](#)). As has become evident, the coalition government is in a weak position to satisfy the public by either reforming banking structures; setting new levels of taxation on banks; or restraining the banks' 'bonus culture' in the aftermath of the financial crash. Ostensibly, this is because banks, financial institutions and traders claim to be as mobile as the cash flows they engender, and have on several occasions since the crash warned governments that they would move abroad if pushed too hard. Like national governments across the world, the UK government is anxious not to lead with its chin on governance and taxation issues for fear of taking the damaging blows threatened by financial institutions.

As such, the government has so far declined to undertake the root-and-branch reform of banking and the re-thinking of the financial industry's role in the British economy that Liberal Democrat ministers in the UK's current coalition government, notably Vince Cable, have wanted to pursue - including the separation of the banks' investment activities from the retail business that obliged the UK government to bail the banks out. This is despite the fact that Mervyn King, director of the Bank of England, has described the banking system as 'the very worst it is possible to have'. Negotiations between the government and banks on bank lending and pay produced an agreement that Lord Oakeshott denounced as 'a weak waffly aspiration with vast wriggle-room' as he resigned as the coalition government's Treasury spokesperson in the Lords. In clear defiance of the government's wishes, Stephen Hester, chief executive of RBS, the 84 per cent state-owned bank, received a salary and bonus package worth almost £7 million, in April 2011 ([Daily Telegraph, 2011](#)).

The City meanwhile acts as a global centre for corporate and personal tax avoidance which drains the British economy of tax revenues that could help sustain the public services and employment levels now being severely cut back under the Chancellor's deficit reduction strategy. Journalist Nicholas Shaxson has mapped the rings of the 'spider's web' of tax havens that the City has spun: an inner ring of the Crown dependencies; then overseas territories, such as the Cayman Islands; and an outer ring including Hong Kong (which the Chinese now exploit as their own offshore jewel along with the HSBC), Dubai, the Bahamas, etc., some of which are politically independent of the UK but 'deeply connected' to the City of London (Shaxson, 2011). This network of offshore tax havens, or more properly 'secrecy jurisdictions, as he says, catches international capital flowing to and from different



jurisdictions across time zones and funnels the money and the business of handling it through the City - business possibly illegal in the UK (and certainly illegal elsewhere), but far enough away to be deniable.

Shaxson traces the leading role that the UK, and particularly the Bank of England, has played in establishing the offshore regime since control of the flow of capital across borders gave way to the free movement of capital, which is now 'actively and artificially encouraged to move, lured by any number of offshore attractions - secrecy, evasion of prudential banking regulations, zero taxes and so on.' No one knows how much tax is lost worldwide for developed and developing countries alike; although accountant Richard Murphy, of the Tax Justice Network, reckons that it costs the UK about £97 billion a year - a figure equivalent to 6 per cent of GDP.

### **Corporate governance**

In our last full Audit, we noted that the UK's rules on corporate governance are designed for the purposes of protecting 'the interests of shareholders, other enterprises and the customers of private companies, large or small; to guard against fraud and insolvency; and so on' (Beetham et al., 2002, p. 81). While the UK is by no means unique in defining the objectives of corporate governance in this way, it is nonetheless clear that issues such as the protection of shareholders and creditors feature especially strongly in the legal requirements relating to corporate governance in the UK. Indeed, it is helpful to draw a distinction between shareholder and stakeholder models of capitalism in assessing the extent to which corporations are expected to be governed in the public interest (Hutton, 1995). As one account puts it:

'In the Anglo-American shareholder system, the fundamental objective of corporate governance is the optimal design of incentives and control mechanisms to maximize the return on equity capital given the separation of ownership and control [...] In stakeholder system countries - e.g. Germany, Japan and France - a broader view of corporate governance is often taken; the interests of a firm's other stakeholders, including creditors, employees, customers, suppliers, and government are also considered' ([Fauver and Fuerst, 2006, p. 674](#)).

As such, requirements for companies to be governed in the public interest plays a limited role in the UK although, as we note below, notions of corporate social responsibility have become more important in recent years. There has also been relatively little discussion of the social representativeness of UK company boards. There are, for instance, no requirements relating to employee representation on UK company boards, although such provisions do exist in other European countries, notably Germany ([Fauver and Fuerst, 2006](#)). In addition, the UK has lagged behind efforts elsewhere in Europe to increase the representation of women on corporate boards. As Table 1.4f shows, women made up an estimated 7.8 per cent of board members in 2009, lower than the average for the EU-15 (9.4 per cent) and the OCED (9.7 per cent) and significantly below the average for the Nordic countries (21.3 per cent).

Table 1.4f: Proportion of company board members who are female, UK and groups of comparator democracies, 2009

Nordic countries	21.30%
OECD	9.70%
Westminster democracies	9.50%
EU-15	9.40%
Consensual democracies	8.20%
United Kingdom	7.80%

Source: [Davies \(2011, p. 25\)](#)

### **Corporate pressures for de-regulation**

Companies and banks in the UK are, of course, subject to company law and other statutory and common law measures. However, the corporate lobby maintains constant pressure on governments for extensive measures of de-regulation through the Confederation of British Industry (CBI), the Institute of Directors, the British Chambers of Commerce (BCC) and others bodies. A recent BCC survey of government

policy from 1987 to 2006 found that while both Conservative and Labour governments have been enthusiastic cheerleaders for deregulation, neither have been anywhere near as effective as business would wish ([British Chamber of Commerce, 2007](#)). The Blair government set up Regulatory Impact Assessments, which the BCC survey praises, as well as two regulatory reform acts. In addition, Labour commissioned the Hampton review, published in 2005, which became 'one of the cornerstones of the Government's better regulation agenda' ([National Audit Office, 2008, p. 3](#)).

Hampton's report was intended to identify ways of reducing the 'administrative burden on regulation on business [...] while maintaining or improving regulatory outcomes' ([Hampton, 2005, p. 3](#)). With respect to health and safety regulations, [Tombs and Whyte \(2011, p. 3\)](#) suggest that this agenda has led to a 'collapse in inspection investigation and enforcement' and a clear shift in the role of the Health and Safety Executive's enforcement practices 'away from the use of formal measures towards the less tangible forms of advice, education and encouragement'. The outcome of this process, which Tombs and Whyte describe as 'regulatory surrender', is that over the course of a decade, there was a 69 per cent decline in the number of inspections of business premises, a 63 per cent fall in investigations of reported safety incidents and a 48 per cent drop in prosecutions ([Tombs and Whyte, 2011, p. 2](#)).

A report of the House of Commons [Work and Pensions Select Committee \(2008\)](#) has echoed a number of these concerns. The report highlighted 'a correlation between inspection and safety standards', particularly in the construction sector, where fatalities had increased by 28 per cent under the new regulatory regime ([Work and Pensions Select Committee, 2008, p. 90](#)). It also underlined that prosecutions and convictions for breach of health and safety laws had fallen sharply since the early 2000s. In addition, the committee asserted that 'a robust system of prosecution and convictions is needed to enforce health and safety law and act as a critical deterrent to those not inclined to meet their legal obligations' (*ibid.* p. 91). Tellingly, the committee also warned that the propagation of 'health and safety myths' in the media was tending 'to obscure the importance of sensible measures to protect workers and secure public safety' (*ibid.* p. 89).

Despite these warnings, and the extent to which Labour had already facilitated deregulation in health and safety, the Conservative-led coalition government which took office in May 2010 has sought to go further still. Indeed, David Cameron has regularly derided a supposed culture of 'health and safety gone mad', thereby reinforcing the misleading conceptions to which the [Work and Pensions Select Committee \(2008\)](#) had alluded. This drive to roll back regulation yet further in areas such as workplace health and safety forms part of a broader agenda, launched as the 'Red Tape Challenge' and led by the Cabinet Office. Under this initiative, the government is publishing regulations on-line on a 'rolling thematic basis' and inviting companies to suggest which can be scrapped and simplified. It is David Cameron's stated aim to become the first UK Prime Minister to leave office with less regulation than when he assumed power.

### **Corporate social responsibility**

Alongside this push for formal deregulation, there is a growing emphasis on the notion that businesses have a social responsibility to the communities, the economies, the environment and the common good of the countries within which they are active. The most high-profile example of what has become known as corporate social responsibility, or CSR, is the UN Global Compact. CSR initiatives seek to encourage greater corporate responsibility through a set of social and economic obligations. The Global Compact encourages businesses to adopt sustainable and socially responsible policies in the areas of human rights, labour rights, environmental protection, and transparency.

The UK is one of several European governments that have indirectly promoted CSR by requiring companies trading on their stock exchanges to issue annual reports on their social and environmental practices and encouraging, or in some cases, requiring, public pension funds to consider corporate social and environmental practices in making investment decisions. The UK is said to have a large role to play in establishing good corporate behaviour around the world because London is considered the 'global centre' of corporate social responsibility ([Vogel, 2010](#)).

However, regulations have generally been framed with the interests of shareholders in mind, rather than those of individual people or communities. For example, the Directors' Remuneration Report Regulations 2002 require that bonuses paid to chief executives and senior staff in the UK must obtain shareholder approval at general meetings, but have had no perceptible effect ([Conyon and Sadler, 2010](#)). Occasionally, charities or pressure groups seek to raise remuneration and other issues at meetings. However, they achieve more publicity than purchase. Large financial interests dominate shareholder values and their main concern is profitability. The financial markets remain largely indifferent to a firm's CSR policies. Financial news reports rarely mention a company's CSR performance in relation to share prices. Therefore, while government and business give apparent recognition to public demands for accountability, the ultimate measure of a company's global success remains the value of its share price.

This section has raised serious concerns about the extent to which corporations in the UK operate in the public interest. Indeed, we regard the trends identified here, particularly with regard to pressures to reduce corporate tax rates and to engage in the wholesale deregulation of business affairs, as part of a profound shift in our democratic arrangements. Evidence that corporate power is growing, and imposing ever-greater constraints on core democratic principles, is collated throughout this Audit. We have little doubt that it is also a key driver of the

inequalities identified in this chapter. Yet, we would also underline that political choices have played a crucial role in shaping the extent to which corporate interests have been able to become such a dominant influence on public policy in the UK. As the data presented throughout this chapter establishes, other liberal democracies have been able to ensure more equitable social policy outcomes than the UK.

## Conclusion

In this chapter, we have examined economic and social conditions in the UK in relation to the requirements of international human rights standards, as well as in comparison to other established democracies. While we conclude that the UK does meet the most basic requirements in relation to the economic and social rights which we consider, there are a number of instances in which provision does appear to breach the standards set out in agreements which are binding on the UK. More broadly, comparative analysis of social policy outcomes for the UK and other established democracies highlights the extent to which the UK lags behind most of western Europe on a whole series of measures.

By global standards, the protection of economic and social rights in the UK is relatively advanced. There can be no doubt, for instance, that UK citizens are freely able to access opportunities for paid employment and that social security is available for those unable to work, or unable to find work. Likewise, the availability of free, compulsory education from the ages of five to 16 and the provision of universal health care, free at the point of need, provide clear evidence of the UK guaranteeing key social rights for its citizens. However, closer inspection of how well the UK meets the commitments contained in a range of human rights instruments does highlight genuine grounds for concern. These concerns are perhaps most obvious in relation to the European Social Charter. The European Committee on Social Rights has consistently argued that the UK is in breach of Article 4§1 of the European Social Charter because the level of the national minimum wage is too low to guarantee the 'right to a fair remuneration'. Likewise, the same committee has found that the UK fails to conform with Article 6§4 of the charter by virtue of the severe restrictions on the right of workers to take industrial action.

When we compare the UK to its more direct peers, the other established democracies which are members of the OECD and the EU, its record in promoting economic and social inclusion makes for much less comfortable reading. Throughout this chapter, we have shown how the UK tends to rank poorly on measures such as: income inequality; the incidence of low pay; the gender pay gap; the value of social benefits; the affordability of child care; and levels of child poverty. On all of these measures, and others, the UK tends to perform worse than the EU-15 average and the gap between the UK and the Nordic countries is especially acute.

We do not deny the improvements which are identifiable since our last Audit was completed in 2002. In particular, we have pointed to the record of the Labour governments of 1997-2010 in reducing both child poverty and pensioner poverty, as well as in raising spending on, and standards in, both health care and education. There has also been progress in tackling homelessness and raising levels of employment among disabled people. Indeed, this chapter identifies more areas of improvement than any other in the current Audit. Yet, virtually every one of the improvements we identify is also heavily qualified, and it is telling that we also pinpoint more continuing concerns in this chapter than we do in any other in the Audit. Moreover, while Labour's attempts to improve economic and social conditions while in office were significant, there is always the danger that the current combination of a severe economic downturn and deep cuts in social expenditure will reverse, in a single parliament, most of the progress made over the course of the three parliamentary terms. For example, we have pointed to emerging concerns about:

- rising unemployment and, in particular, high levels of youth unemployment (see Section [1.4.1](#));
- forecasts that child poverty, homelessness and fuel poverty are all set to rise over the next few years, primarily because of the government's proposed changes to the benefit system (see Section [1.4.2](#));
- how the abolition of educational maintenance allowances and a near-trebling in university tuition fees in England will re-enforce the social class divide in education (see Section [1.4.4](#)).

This chapter has also documented the declining significance of trade unions in the UK as well as evidence of growing corporate power, particularly as manifested in the 'light-touch' approach to financial services regulation and in the pressures for deregulation in areas such as health and safety in the workplace. It is our view that the increasingly privileged position of corporate interests in the UK political process, alongside the relative weakness of British trade unions in comparison to their counterparts elsewhere, cannot be divorced from the UK's position as one of the most unequal societies in the OECD. Over the course of three decades, UK governments have counted among the leading exponents of neo-liberal economic and social policies, particularly with regard to the labour market. The reluctance of UK governments of all political complexions to embrace the European Social Charter is particularly telling in this regard, as it is indicative of a strategy predicated, among other things, on keeping wage costs low and reducing the scope for unions to take industrial action. Yet, even under this model, the UK has failed to generate sufficient jobs to tackle high levels of worklessness, particularly in deprived areas. The inevitable result is that poverty levels are significantly higher in the UK than they are under the alternative welfare regimes of other west European countries.

Significantly, the findings presented in this chapter underline the extent to which levels of socio-economic inequality in the UK and the consolidation of corporate power have come to undermine the democratic sphere. The wide social divisions which we catalogue in this chapter pose serious challenges not only in relation to the UK's records in guaranteeing social and economic rights, but also with regard to the core democratic principle of political equality. There can be little doubt, for instance, that the socio-economic disparities we highlight in this chapter give rise to stark contrasts in political engagement among different social groups. As we note in Section [2.1.6](#), the difference in turnout between those in social classes AB and those in classes DE reached 19 percentage points in 2010. Likewise, we have noted how the stalling of progress towards gender equality in the labour market is replicated in the parallel failure to make headway in increasing female representation in parliament (see Section [2.1.5](#)) and in public life more widely (see Section [3.2.3](#)). At the same time, evidence that corporate and financial interests are exerting ever greater influence over UK politics poses even more profound questions in relation to political equality. In what sense can it be claimed that UK citizens have an equal say in shaping the political decisions which affect their lives in light of the apparent scope for individuals representing large business interests, or merely their own personal wealth, to exert disproportionate interest over public policy? These are questions we return to throughout this Audit, most notably in Sections [2.2.4](#), [2.6.3](#) and [2.6.4](#).

It is also likely that the concerns we raise in this chapter with regard to social and economic rights have broader ramifications for democracy in the UK. It would be surprising, for example, to regard growing socio-economic inequality as being entirely unrelated to the progressive loss of public faith in democratic institutions which we chart in this Audit. It seems self-evident that, as democratically-elected governments appear either unwilling or unable to promote social and economic inclusion, there will be a collective loss of confidence in democracy, certainly among the social groups most affected by worklessness and poverty. Likewise, if the programmes of political parties and the decisions of governments appear to owe more to a desire to appease corporate interests than to democratic principles of political equality and popular control, it would appear inevitable that there will be a decline in public trust in democratic decision-making. Intriguingly, though, it might also be asked whether these dynamics with respect to inequality and corporate power are replicated to the same extent in the devolved parliaments and assemblies. Certainly, there are growing contrasts evident in the content of social policies in England in comparison to the devolved nations. The reality of social policy divergence, particularly in education and health, further underlines the questions we pose in this Audit regarding the constitutional tensions and imbalances which asymmetric devolution has given rise to in the UK since the late 1990s.

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## 2. Representative and accountable government

### 2.1. Free and fair elections

#### Executive Summary

This chapter reviews the available evidence relating to the six 'search questions' concerned with free and fair elections in the UK.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Introduction of measures to tackle electoral fraud in Northern Ireland.**

From the 1970s onwards, accusations of electoral malpractice in Northern Irish politics became widespread. The introduction of the Electoral Fraud (Northern Ireland) Act 2002 helped to restore public confidence in the electoral process in Northern Ireland by ensuring that the electoral registers are more accurate and by requiring voters to produce photographic identification at polling stations. (For further details and discussion, see Section [2.1.3](#))

##### **2. Reduction of minimum age for candidature at general elections from 21 to 18.**

The Electoral Administration Act 2006 implemented the Electoral Commission's recommendation that the age of candidacy for all UK elections be reduced from 21 to 18, harmonising the age of candidacy and the voting age, and bringing the UK into line with the west

European norm. (For further details and discussion, see Section [2.1.3](#))

### **3. Increase in the proportion of MPs from ethnic minority backgrounds.**

Ethnic minority representation in parliament has grown slowly but steadily since 1987, when the first MPs from ethnic minority backgrounds in the modern era were elected. Following the 2010 general election, there are now 27 MPs from a minority background, equivalent to four per cent of the Commons (see Figure [2.1r](#)). However, there is still some way to go before the Commons is representative of the ethnic make-up of British society as a whole. Moreover, ethnic minority representation varies enormously across the three largest party groupings in the Commons. (For further details and discussion, see Section [2.1.5](#))

#### ***(b) Areas of continuing concern***

##### **1. The House of Lords, as the second chamber in parliament, remains wholly unelected, despite previous attempts to introduce reforms.**

With 792 members, the House of Lords is the largest parliamentary chamber in any democracy and one of only twelve among democracies globally in which elections play no role at all in determining membership. Following failed attempts at reform in 2003 and 2007, membership of the Lords has increased steadily and could reach 1062 during the current parliament. The current coalition government has published a draft bill proposing to move towards a 300 member, 80 per cent elected chamber over a period of 15 years (see Case Study [2.1b](#)). However, the extent of opposition to these proposals in parliament looks set to block reform once more, leaving the UK out of line with international democratic norms. (For further details and discussion, see Section [2.1.1](#))

##### **2. Ministers drawn from the Lords are unelected and unaccountable to MPs.**

While the vast majority of ministers are drawn from the ranks of elected MPs, virtually all recent cabinets have included at least one peer in addition to the leader of the Lords. Moreover, during the last year of Gordon Brown's premiership, two members of the Lords held significant portfolios in the cabinet - Lord Mandelson as secretary of state for business, innovation and skills, and Lord Adonis as secretary of state for transport. Such appointments create a situation in which individual members of the cabinet cannot be held to account by MPs - particularly significant where a secretary of state is charged with responsibility for a major government department. (For further details and discussion, see Section [2.1.1](#))

##### **3. Continued withholding of the franchise to convicted prisoners.**

As in previous Audits, we continue to be concerned by the UK's denial of the vote to all convicted prisoners serving jail sentences. Not only has the blanket ban become a point of significant conflict between the UK and the European Court of Human Rights (see Section [1.1.1](#)), but it is also at odds with the principle of a universal and inclusive franchise. (For further details and discussion, see Section [2.1.2](#))

##### **4. Incompleteness of the electoral registers.**

In the context of a relatively gradual, long-term decline in the percentage of eligible electors registered to vote, there was an absolute decrease in the number of register entries from 2002-2004, equivalent to 560,000 voters. It would appear, moreover, that the overall growth in the number of entries on the electoral registers failed to keep pace with the growth in the voting-age population from the late 1990s onwards (see Figure [2.1a](#)). Experience from Northern Ireland suggests that the coalition's plans for the introduction of individual voter registration in Great Britain will need to be closely monitored if registration levels are not to be depressed further. (For further details and discussion, see Section [2.1.2](#))

##### **5. Potential use of government spending on advertising for political party ends raises questions.**

Overall government spending on advertising rose dramatically under New Labour (see Figure [2.1f](#)), and available data suggests the possibility of governments increasing spending on advertising in the run up to elections in 2001, 2005 and 2010. (For further details and discussion, see Section [2.1.3](#))

##### **6. Continued dysfunctionality of the 'first past the post' electoral system for the House of Commons.**

There is mounting evidence that the 'first-past-the-post' system of elections for the House of Commons is failing to deliver even against its own supposed merits - notably the claim that it enables voters to easily remove an unpopular government from office and install an alternative majority government in its place. First-past-the-post elections are well-suited to political systems in which there is clear, two-party dominance. However, declining support for the UK's two main parties is prompting the emergence of a multi-party system (see Figure

[2.1i](#)). As voters opt in growing numbers for other parties, elections in the UK are becoming increasingly disproportional (see Figure [2.1i](#)) and the mismatch between voter preferences and the balance of the parties in parliament is way beyond the international norm (see Figure [2.1o](#)). UK electors opted not to replace the current system with the alternative vote (AV) in the May 2011 referendum on electoral reform. However, it is vital to underline that the clear deficiencies of the current system remain and that these would have been only partially addressed by the adoption of AV. (For further details and discussion, see Section [2.1.4](#))

#### **7. Slow progress in moving towards greater gender equality in the make-up of the House of Commons.**

Despite a significant breakthrough for female representation in 1997, the Commons remains overwhelmingly male. The proportion of MPs who are female jumped from five per cent in 1987 to 18 per cent in 1997 but, following three further general elections, the figure has since only risen to 22 per cent (see Figure [2.1r](#)). This stagnation in the number of female MPs leaves the UK lagging behind virtually all other established democracies, where progress towards greater gender equality was far more evident in the 2000s (see Figure [2.1q](#)). Controversies surrounding the use of positive discrimination measures to ensure the selection of female candidates by parties in winnable seats are a major part of the explanation for the UK's poor record in enhancing female representation. There is also evidence to suggest that the nature of the UK's electoral system, focussed on single-member constituencies, plays a role in hampering the selection, although not necessarily the election, of female candidates. (For further details and discussion, see Section [2.1.5](#))

#### **8. Persistence in low turnouts in all types of UK election.**

Turnout fell from a post-war peak of 84 per cent at the 1950 general election to 72 per cent in 1997. Since then, turnout has been significantly below 70 per cent for three general elections in a row, even dropping just below 60 per cent in 2001 (see Figure [2.1s](#)). While turnout is falling in virtually all established democracies, electoral participation in the UK has always compared relatively poorly against other countries, and the gap between the UK and other EU democracies is now wider than ever. Similar trends are evident in relation to local and European elections in the UK. (For further details and discussion, see Section [2.1.6](#))

#### **9. Widening gap in electoral participation among different social groups**

Survey evidence suggests that non-voting is far more prevalent among electors who work in manual occupations or are out of work than it is among those employed in professional and managerial roles. In 1997, an estimated 79 per cent of those classed as social grades A and B cast ballots, compared to 66 per cent of DE voters. By 2010, turnout among those in social grades A and B remained fairly stable, at 76 per cent, but it had dropped to 57 per cent among those in grades D and E. (For further details and discussion, see Section [2.1.6](#))

#### ***(c) Areas of new or emerging concern***

##### **1. Significant use by Gordon Brown of appointments to the Lords for the purpose of appointing individuals to ministerial positions.**

In 2010, the Public Administration Select Committee highlighted its concerns about a growing tendency for prime ministers to use the Lords to make outside appointments into government. At least 10 such appointments appeared to be made under Gordon Brown from June 2007 to May 2010, including Lord Mandelson as secretary of state for business, innovation and skills, with responsibility for a wide-ranging portfolio and a total budget of over £37 billion per annum. (For further details and discussion, see Section [2.1.1](#))

##### **2. Significant strain placed on systems of electoral administration during 2000s, and some serious problems experienced in administration of elections in the UK.**

Attempts to modernise electoral processes after 1997 appear to have placed unprecedented levels of strain on the UK's highly decentralised systems of electoral administration. There were several instances of administrative and technical problems at UK elections between 2000 and 2010, some of which could easily have led to electoral outcomes being called into question. The most serious cases involved problems experienced at the counts for Scottish parliament and local government elections of 2007, and at 27 polling stations in England at the 2010 general election. In the latter case, staff proved unable to deal with lengthy queues, ultimately resulting in more than one thousand electors being denied the right to vote. A number of recent reports have suggested that the UK's system of electoral administration may be 'at breaking point'. (For further details and discussion, see Section [2.1.2](#))

##### **3. New evidence of electoral malpractice associated with the extension of postal voting in Great Britain since 2000.**

Over 100 people have been found guilty of electoral malpractice in the UK since 1994, with the great majority of convictions involving fraud associated with postal or proxy ballots, sometimes in conjunction with attempts to manipulate the electoral registers. Almost all of the convictions, which peaked in the first half of the 2000s (see Figure [2.1c](#)), have related to local elections. There are grounds to suggest that

the provisions contained in the Electoral Administration Act 2006 have helped to reduce the incidence of postal voting fraud. However, accusations of malpractice remain widespread. In 2010, a total of 232 cases were reported to police in Great Britain (see Figure [2.1d](#)), and allegations of fraud were reported to four-fifths of the UK's 52 police forces. (For further details and discussion, see Section [2.1.2](#))

#### 4. The growth of small parties raises important issues about requirements for deposits at elections.

The total number of lost deposits has increased sharply at recent general elections, largely because of the increase in the number of candidates fielded by smaller parties. Lost deposits are one of several features of UK democracy which serve to create an 'uneven playing field' for parties contesting elections (discussed in more detail in Section [2.2](#)). (For further details and discussion, see Section [2.1.3](#))

#### 5. Role of party election broadcasting in doubt in light of the impact of the party leaders' debates in 2010.

Although their significance has been declining for some time, party election broadcasts in the UK have been a relatively successful mechanism for granting parties fair access to the media. The introduction of televised leaders' debates in 2010, and their continuation at future elections, will almost certainly lead to a sharp decline in the relevance, and viewing, of PEB. Such a trend will raise important questions about how broadcasters should allocate time to smaller political parties in future. (For further details and discussion, see Section [2.1.3](#))

## Introduction

It would be difficult to overstate the importance of elections in a representative democracy. Elections are the mechanism through which representatives are chosen by the people, thereby embodying the notion of 'popular control' or government, the first of the two key principles which lie at the heart of the Democratic Audit approach. Just as significantly, by granting a single ballot to each eligible voter, elections should provide the principal expression of the ideal of political equality, the second of the Democratic Audit's core principles. Certainly, elections are not the only means through which popular control and political equality should find expression in a democracy - hence the broad-ranging nature of our Audit framework. Yet, there can be no doubt that voting remains the principal, and in many cases only, direct act of political participation engaged in by the great majority of citizens.

In assessing how well elections in the UK measure up to these principles of popular control and political equality, this section examines a wide range of issues. It assesses the extent to which the electoral machinery and appointment to government office operate without political or governmental interference. It also examines the rules and conduct of elections to evaluate whether they afford all citizens the opportunity to participate, provide for fair electoral competition, and ensure that there is full public confidence in the integrity and accuracy of electoral outcomes. In addition, the section examines the principles of popular control and political equality from the perspective of electoral outcomes. How proportionally do votes translate into seats? Do all votes count equally in determining the results of elections? And how socially representative is parliament of the electorate as a whole?

In our past Audits, we have generally concluded that the mechanics of elections in the UK conform to international standards for the conduct of 'free and fair elections'. In previous studies, much of our concern about elections in the UK centred on the continued presence of an unelected House of Lords and the disproportional results produced by the electoral system used to return members to the House of Commons. These issues continue to loom large in our 2011 Audit, but they are now joined by a host of concerns associated with electoral administration and electoral integrity which did not feature at all in our previous accounts. In addition, our extensive trawl of statistical data sources has enabled us to provide more detailed evidence in relation to concerns which were overlooked, or received less detailed treatment, in previous Audits. As well as providing new statistical detail on matters such as the dramatic increase in spending on advertising by government after Labour took office in 1997, we also provide fuller analysis of how the UK compares to other democracies on a number of our Audit criteria.

As with the 2011 Audit as a whole, much of our assessment of change in this section is effectively an evaluation of Labour's period in office from 1997-2010. However, it is also important to note that a number of the areas considered in this section are the subject of reforms proposed by the current Conservative-Liberal Democrat coalition. A referendum on electoral reform has already taken place, leading to the rejection of the alternative vote as a replacement for 'first past the post'. Yet, as this section demonstrates, the dysfunctional nature of the electoral system remains a core concern for any assessment of the operation of democracy in the UK. In addition, the coalition is currently seeking to take forward its proposals to: replace the House of Lords with an elected second chamber; accelerate the introduction of 'individual voter registration' to tackle concerns about electoral fraud; and reduce the number of MPs from 650 to 600 while also equalising the number of electors in all but four parliamentary constituencies. Future Audits will need to monitor the progress and impact of these reforms closely.

### 2.1.1 The role of elections

How far is appointment to governmental and legislative office determined by popular competitive election, and how frequently do elections lead to change in the governing parties or personnel ?

### ***Role of elections in determining access to office***

The House of Commons is elected on a universal adult franchise, as are the Scottish Parliament, the Welsh Assembly and the Northern Irish Assembly. Similarly, members of all local authorities in the UK, with the notable exception of the City of London Corporation, are also directly elected on the basis of 'one person, one vote'. However, a substantial role is played, at all levels of the UK political system, by appointees and other unelected officials. Indeed, the large number of official bodies which are run by appointees rather than elected representatives has been an issue of long-running concern to Democratic Audit. There are around 22,000 appointed board members of UK public bodies, many of them operating at the regional and local level, as well as a whole host of other official roles which are by appointment only. However, we restrict the discussion here to appointments to UK governmental and legislative office only. (See Section [3.3](#) for further discussion of the role of unelected officials in UK sub-national government.)

With regard to Westminster, we have three related concerns about the roles played by unelected individuals in governmental and legislative office, all of which centre on the role of the House of Lords. These concerns are as follows:

#### **1. The House of Lords, as the second chamber in parliament, remains wholly unelected, despite attempts to introduce reforms in 2003 and 2007.**

As of 1 April 2011, there are 792 members of the House of Lords, 678 of whom are appointed as life peers (86 per cent), 89 hereditary peers (11 per cent) and 25 Bishops (three per cent) ([UK Parliament, 2011](#)). It is not uncommon for parliamentary chambers to contain appointees, particularly in bicameral legislatures. Indeed, 54 (28 per cent) of the 188 countries listed in the Inter-Parliamentary Union's (IPU) [Parline database](#) (2011) have at least some appointed members in their national parliament. Among the 77 countries with a bi-cameral legislature, 38 (49 per cent) have some role for appointed parliamentarians. However, the House of Lords is highly unusual by international standards for two main reasons.

First, the House of Lords is the largest parliamentary chamber in any democracy. It is surpassed in size only by China's National People's Congress (2987 members), and membership of the Lords is growing steadily. Not only has membership of the Lords increased from 662 members in 1999 to 792 in 2011, but it is potentially set to reach 1062 as a result of the coalition's commitment to achieve proportionality in line with the 2010 general election outcome ([Russell, 2011](#)).

Second, the House of Lords is one of a small number of parliamentary chambers globally to include no directly- or indirectly-elected members whatsoever. Just 22 (12 per cent) of the countries in the IPU's Parline database have parliamentary chambers in which elections play no role at all. 10 of these countries are not classified as electoral democracies by Freedom House, while the remaining 12 are all Commonwealth countries in which the Westminster model of democracy remains dominant. Only two of the 22 countries in which appointees make up half or more of the membership of at least one parliamentary chamber - the UK and Canada - are OECD countries with established democratic systems of government. Otherwise, by continuing to allow a significant role for unelected parliamentarians, the UK finds itself in the company of states such as Belize, Lesotho, Madagascar, Oman, Russia and Saudi Arabia.

#### **Case Study 2.1a: House of Lords Reform**

Reform of the House of Lords has been promised by a succession of governments since 1997. It remains one of several pieces of 'unfinished business' associated with Labour's constitutional reform programme from 1997-2010, but which has now become a central plank of the coalition's agenda for constitutional reform.

While two attempts were made under Labour to introduce elections for the second chamber, both were defeated in parliament. In February 2003, the government failed to secure a majority in the House of Commons for any of the seven reform options it put forward (including 100 per cent elected, 100 per cent appointed, and five mixed proportions of elected and appointed). At the same time, the House of Lords voted in favour of a fully-appointed chamber. In March 2007, the House of Commons voted decisively in favour of an elected Lords, with the greatest majority achieved in relation to the option of a 100 per cent elected upper chamber. However, the House of Lords itself remained in favour of the option of being 100 per cent appointed, thereby blocking the option favoured by MPs.

By the time of the 2010 general elections, there was cross-party consensus on moving towards a second chamber which is largely or wholly elected - although opposition to this goal persists within both of the main parties ([Renwick, 2011a](#)). The coalition's 'Programme for Government' made a commitment to establish 'a wholly or mainly elected upper chamber on the basis of



proportional representation' ([HM Government, 2010, p. 27](#)). On 5 May 2011, Nick Clegg, the deputy prime minister announced to the House of Commons that the government would not be proposing a 100 per cent elected second chamber. When the detailed proposals were presented to the Commons by Clegg on 17 May 2011, in the form of a white paper and draft bill, they were for an 80 per cent elected second chamber, to be achieved over three parliamentary terms ([HM Government, 2011a](#)). Specifically, the draft legislation proposes that:

- Membership of the second chamber should ultimately be reduced to 300 members, of which 240 would be elected using the single transferable vote and 60 nominated by the Independent Appointments Commission;
- Elections to the second chamber would be held on the same day as general elections, on a five-year fixed cycle, with 80 seats in the second chamber contested at each election. In addition, 20 appointments would be made in each electoral cycle;
- One-third of the existing members of the House of Lords would retire in 2015, 2020 and 2025 respectively and the number of bishops reduced from 26 to 12;
- New members of the second chamber, whether elected or appointed, would serve single, 15 year terms;
- The functions and powers of the second chamber would remain unchanged.

Despite apparent cross-party consensus on Lords reform, the government's proposals have been met with opposition in both Houses of Parliament from members of all three main parties - prompting many observers to assume that the plans were effectively 'dead in the water'. At the time of writing, a Joint Select Committee, comprising 26 members drawn from both the Commons and the Lords is scrutinising the bill. The committee will report by the end of February 2012.

## **2. A significant minority of government ministers are drawn from the House of Lords and are, therefore, not only unelected but also unaccountable to MPs.**

Although the great majority of ministers are drawn from the ranks of elected MPs, there has been a growing tendency for cabinets to include peers appointed as secretaries of state. Aside from the Macmillan government of 1957-63 and the Heath government of 1970-74, post-war cabinets did not include members of the Lords, other than in the two roles specifically reserved for peers - the leader of the lords and the lord chancellor. While all of Margaret Thatcher's cabinets from May 1979 - July 1989 included at least one additional peer, the practice of appointing members of the Lords to cabinet roles then appeared to die out. Between the replacement of Lord Young as trade and industry secretary in July 1989 and the appointment of Baroness Amos as international development secretary in May 2003, no such appointments were made.

However, while the requirement for the lord chancellor to be drawn from the Lords was removed by the Constitutional Reform Act 2005, virtually all recent cabinets have included at least one peer in addition to the leader of the Lords. Moreover, from June 2009 to May 2010, two members of the Lords held positions as secretary of state in Gordon Brown's cabinet - Lord Mandelson as secretary of state for business, innovation and skills, and Lord Adonis as secretary of state for transport. It was with reference to these developments, that the newly-elected speaker of the House of Commons, John Bercow, expressed the following concerns in a Hansard Society lecture in September 2009:

'I find the fact that backbenchers have no means of directly questioning prominent Ministers of the Crown because they happen to sit in the House of Lords to be less than satisfactory. That is even more true at a time when the Cabinet contains the esteemed Lord Mandelson, whose empire is of a scale not seen since the death of Alexander the Great, and the thoughtful Lord Adonis who presides over the country's transportation network' ([Bercow, 2009](#)).

## **3. Under the Brown government of 2007-2010, there appeared to be a growth in the number of individuals appointed to the Lords with the specific purpose of simultaneously appointing them as ministers.**

During Gordon Brown's tenure as prime minister concerns were raised that a number of individuals were appointed to the Lords with the specific purpose of simultaneously appointing them as ministers. The Public Administration Select Committee (2010) highlighted its concerns about this growing tendency to use the Lords to make outside appointments into government. The committee pointed out that, while such appointments were not new, the incidence of them seemed to be growing. The House of Commons Library ([Maer, 2010](#)) found that at least 10 such appointments appeared to be made under Gordon Brown from June 2007 to May 2010. These appointments (which included that of Lord Mandelson as secretary of state for business, innovation and skills, with responsibility for a wide-ranging portfolio and



a total budget of over £37 billion per annum) were central to the growth of concerns about the lack of direct accountability of such ministers to the House of Commons.

### ***Frequency with which elections prompt changes in personnel***

As we noted in our 2002 Audit, the UK's simple plurality (or first-past-the-post) system of elections delivers less frequent changes of government than is generally supposed. With the exception of the period from 1964-79, the post-war years have been dominated by three long periods of single party rule: the Conservatives were in power from 1951-64 and again from 1979-1997, while Labour governed uninterrupted from 1997-2010. These patterns partly reflect the fact that the benefits of incumbency appear to have become progressively greater over time, as well as the tendency for the growing geographical concentrations of Labour and Conservative support to reduce the number of marginal seats, thereby increasing the 'swing' required for an opposition party to return to power ([Curtice, 2010](#)).

These long periods of single-party rule have also occurred despite the overall decline in electoral support for both the Conservative and Labour parties since the early 1970s (see Section [2.1.4](#)). The electoral system has not only insulated both of the major parties from the effects of growing support for other political forces, it has also rendered unpopular single-party governments difficult to remove. The Conservatives won four elections in a row from 1979-92 without securing more than 44 per cent of the popular vote, while Labour secured large majorities at three successive general elections with a vote share which dropped from 43 per cent in 1997 to 41 per cent in 2001 and 35 per cent in 2005.

The outcome of the 2010 general election, which produced no overall majority for a single party, suggests that it is unlikely that the electoral system will continue to deliver workable majorities for single-party governments ([Blick and Wilks-Heeg, 2010](#); [Curtice, 2010](#)). However, even if minority and coalition governments become more commonplace in future, it is by no means certain that elections will result in party control of government changing more frequently.

## **2.1.2 Registration & voting procedures**

How inclusive and accessible for all citizens are the registration and voting procedures, how independent are they of government and party control, and how free from intimidation and abuse?

### ***Inclusivity and accessibility of registration and voting***

The right to vote in UK elections to the House of Commons, devolved assemblies and local authorities and the European parliament is based, in principle, on a universal and equal adult franchise. All adult residents over the age of 18 are entitled to vote in all types of election providing they are citizens of the UK, Ireland or a Commonwealth country. Citizens of other EU countries who are resident in the UK are entitled to vote in local, devolved and European elections only. Members of the House of Lords are barred from voting in elections to the House of Commons. Meanwhile, the right to the vote at any election is denied to anyone who had been found guilty of electoral offences within the past five years and to all convicted prisoners currently serving jail sentences. (See Section [1.1](#) for further discussion of the latter issue, which has become a point of significant conflict between the UK government and the European Court of Human Rights.)

In our previous Audits we noted the steps taken since the late 1990s to improve the inclusivity and accessibility of voter registration and voting arrangements (see Weir and Beetham, 1999; Beetham et al., 2002). These steps, which were initiated as a result of growing concerns about falling levels of voter turnout, included the following reforms introduced by the Representation of the People Act (RPA) 2000:

- the extension of the right to vote to those without a permanent residential address, including the homeless and travellers, patients in hospitals suffering from mental disorders, and prisoners on remand;
- provisions for 'rolling registration' allowing eligible electors to register to vote throughout the year as well as during the autumn annual canvass of electors;
- allowing any elector to request a postal ballot;
- provisions for pilots of other forms of remote voting, including electronic and telephone voting.

There is mounting evidence that these initiatives have failed in their objective of broadening electoral participation ([Wilks-Heeg, 2008](#)). As we highlight in Section [2.1.6](#), the most that can be claimed is that provisions such as postal voting 'on demand' prevented turnout from falling still further. However, our focus in this section is on three other recent trends associated with registration and voting procedures following RPA 2000. First, we discuss recent research which highlights that registration levels appeared to fall, rather than improve, following the introduction of the act. Second, while we find very few grounds to suppose direct partisan interference in registration and voting procedures, we point to growing concerns about a variety of administrative and technical problems experienced in the running of elections. Third, we highlight evidence that ballot security has been compromised by the widespread availability of postal votes, and by the

vulnerability of the 'trust-based' voter registration system in Great Britain to organised fraud.

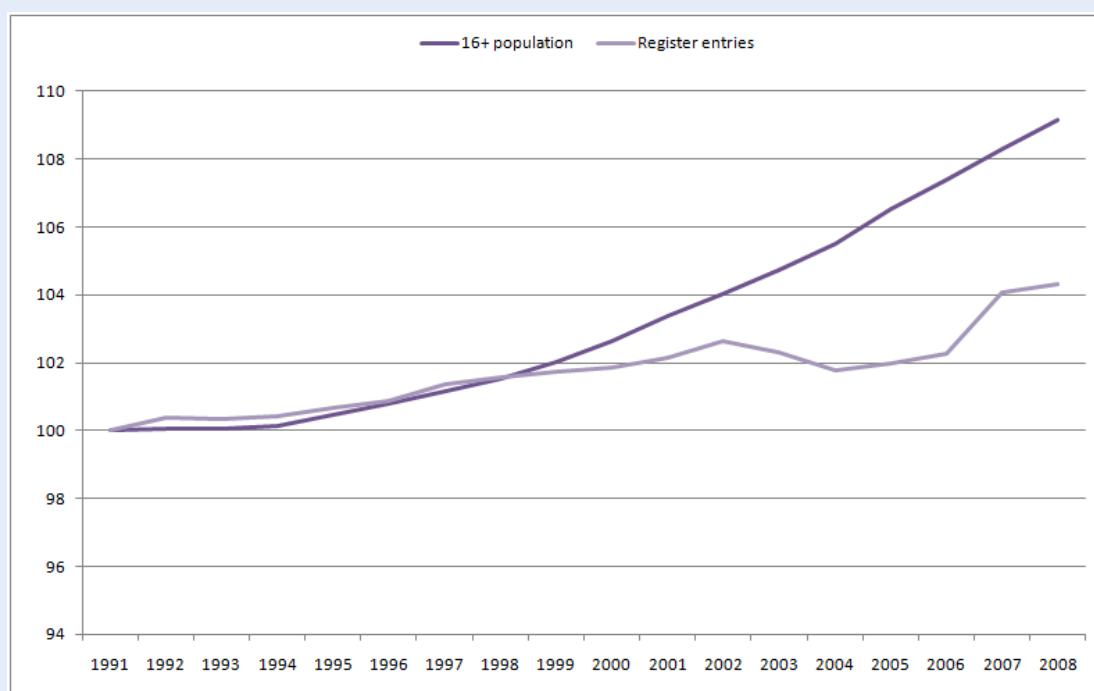
### **Falling registration levels**

In the absence of a comprehensive register of UK citizens, the core mechanism for compiling and updating the electoral registers is the annual canvass of electors, carried out every autumn (although an annual canvass is no longer conducted in Northern Ireland). This canvass of households has proved reasonably effective in identifying eligible voters and updating the registers in light of population movement. However, universal voter registration has never been achieved, and population movement between canvass periods has also had the effect of disenfranchising voters. A recent review conducted by the Electoral Commission (2010a) found that historical evidence, based on comparing the electoral registers against census returns, suggests that:

- in the 1950s and 1960s around four per cent of voters were absent from the registers following the canvass, but registration levels began to decline in the 1980s and, by 2000, around eight per cent of eligible voters were absent from the register following the canvass;
- a significant proportion of voters are effectively disenfranchised each year by moving house and by the end of the registers' lifecycle, around 15-20 per cent of UK electors are likely to be either absent from the registers or registered incorrectly - even allowing for updates made via rolling registration provisions;
- estimated non-registration rates following the 2000 annual canvass varied from six per cent in Wales to 18 per cent in inner-London and were particularly high among members of some ethnic minority groups, notably those of Chinese (30 per cent) and Black African (37 per cent) heritage .

While the long-term decline in registration levels is relatively gradual, it is clear that they took a substantial, if temporary, hit in the early 1990s, when some 600,000 voters de-registered in an attempt to avoid payment of the poll tax. This development was later claimed by Mrs Thatcher to have helped the Conservatives win the 1992 general election (McLean and Smith, 1994). While levels of electoral registration recovered during the 1990s, there was another big drop in registration levels in the early 2000s. Figure 2.1a shows the change in the number of entries appearing on the UK's electoral registers from 1991-2008 compared to the change in the overall size of the voting age population over the same period. As the graph indicates, the number of entries on the electoral registers failed to keep pace with population growth from the late 1990s onwards. While part of the increase in the population aged 16 and above will have been explained by increased immigration (including adults ineligible to vote in the UK), the graph also shows an absolute decrease in the number of register entries from 2002-2004, equivalent to 560,000 voters.

Figure 2.1a: Change in the UK population aged 16 and above and in the number of entries on the electoral register, 1991-2008 (1991=100)

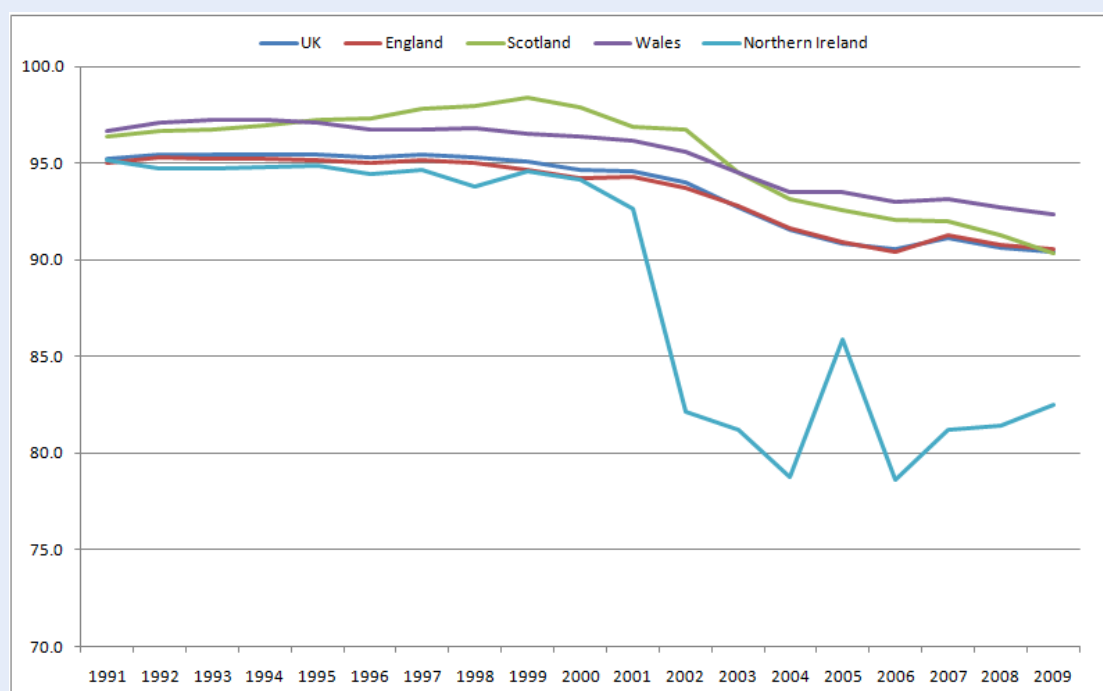


Sources: Calculated from [ONS, Electoral Statistics](#) and [ONS Mid-year Population Estimates](#)

About a quarter of this decline in the number of UK electors was associated with the introduction of individual voter registration in Northern Ireland - an initiative designed to tackle allegations of electoral fraud, which is likely to have removed a number of illegitimate and duplicate entries from the register. However, it would also appear that the use of individual registration in Northern Ireland has served to reduce the overall proportion of eligible voters who appear on the register. As Figure 2.1b shows, the notional registration rate in Northern Ireland (calculated by dividing the number of register entries by the total population aged 16 and over) dropped from just under 95 per cent in 1997 to just 79 per cent in 2004, and has since stabilised at around 82 per cent.

Figure 2.1b also shows that from 1997-2009 the notional registration rate fell in England, Wales and Scotland by four, five and eight percentage points respectively. Increased immigration, which artificially inflates the estimate of the voting-age population, again explains only part of the decline. Electoral statistics point to an absolute loss of 430,000 parliamentary electors in Great Britain from 2002-2004, which has nothing to do with patterns of migration. Ironically, this decline in registration levels followed the introduction of 'rolling registration', designed to improve the state of the registers by enabling individuals to register at any time outside of the canvass period. It is possible that, following RPA 2000, some local authorities opted to reduce expenditure on the annual canvass, on the assumption that electors who failed to respond would take up the opportunity to register via rolling registration. However, recent research by the Electoral Commission (2010a) demonstrates that the take-up of rolling registration is low - with less than a quarter of home-movers making use of the provision.

Figure 2.1b: Notional registration rate for England, Scotland, Wales and Northern Ireland, 1997-2009



Sources: Calculated from [ONS, Electoral Statistics](#) and [ONS Mid-year Population Estimates](#)

The Electoral Commission's (2010a) research also reinforces the findings of previous studies which identified wide variations in registration rates in different parts of the UK and among different social groups. The Commission's surveys of electoral registration across seven case study areas just prior to the 2009 annual canvass revealed that the incompleteness of the registers ranged from 11 per cent in Hambleton, a largely rural area of North Yorkshire, to 27 per cent in the London Borough of Lambeth. By aggregating the data for the case study areas, it was estimated that 31 per cent of eligible black and ethnic minority voters, 49 per cent of tenants in private rented housing and 56 per cent of eligible electors aged 18-24 were not registered to vote. The Electoral Commission report also pointed to evidence of the 'registration gap' widening between metropolitan and non-metropolitan areas, suggesting that 'between them, the English metropolitan districts and unitary local authorities across South Wales, and the central belt of Scotland are [...] likely to account for the lion's share of the dip in registration levels after 1999' (Electoral Commission, 2010a, p. 36).

#### ***Independence of registration and voting procedures from government and party control***

The registration of electors, the redrawing of constituency boundaries and the running of elections in the UK are all fully independent from government and party control. It is exceptionally rare for the independence of UK electoral administrators to be called into question. Only a single general election result has been declared void since 1880 as a result of returning officer irregularity - in Winchester in 1997 where a small number of ballot papers lacked an official mark (Rallings and Thrasher, 2009, p. 253). However, growing concerns have been expressed recently about the capacity of electoral administrators to ensure that elections are run effectively. In addition, there are two further areas in which long-standing concerns about the independence of voting procedures have been highlighted in some quarters. First, it has been suggested in the past that the 'traceable' ballot enables state monitoring of voters supporting 'extremist' parties. Second, there have been periodic accusations of possible partisan influence over the drawing of constituency boundaries, with such concerns being voiced again following the 2010 general election.

The administration of UK elections operates on a highly decentralised basis. In Great Britain, electoral registration is the responsibility of electoral registration officers, who are appointed by local authorities, while elections are run by local returning officers, generally the chief executive or another senior officer within each local authority. In Northern Ireland, however, the two roles are fused; the chief electoral officer for Northern Ireland has responsibility both for registering electors and for overseeing the planning and conduct of elections. Given this decentralised system, two bodies play a particularly important role in providing a national infrastructure for electoral administration:

- The Electoral Commission, itself fully independent, issues guidance to electoral administrators and monitors the effectiveness of electoral administrators via a set of national performance standards. In addition, the commission has a key role in disseminating good practice among electoral administrators and in reviewing electoral law. However, it is crucial to note that the administration of elections is delivered locally, and that the commission has limited powers to direct electoral administrators.
- The Association of Electoral Administrators (AEA) represents electoral administrators nationally, provides training courses leading to recognised qualifications in electoral administration, and reports regularly on the administration of elections and the 'state of the profession'. The AEA has over 1,500 members and has been instrumental in the professionalisation of electoral administration since it was established in 1987.

Meanwhile, the responsibility for reviewing and re-drawing constituency boundaries for parliamentary and, where applicable, devolved elections is tasked to the four separate Boundary Commissions for England, Scotland, Wales and Northern Ireland. Local government boundaries are the responsibility, respectively, of the Local Government Boundary Commissions for England, Scotland and Wales and the Local Government Boundary Commissioner for Northern Ireland. Again, all of these bodies are fully independent of party political influence or control.

While the independence and integrity of the UK's electoral administrators is unquestionable, events in recent years have imposed considerable pressures on the profession. Labour's 'electoral modernisation' agenda, which envisaged 'multi-channel, e-enabled elections' after 2006, saw the introduction of not only postal voting 'on demand' but also trials of all-postal voting and of various forms of e-voting and systems of e-counting (Wilks-Heeg, 2008). For electoral administrators, the period after 1997 was one of persistent legislative change involving new sets of elections, new electoral systems and a constant stream of new regulations - many of which were introduced shortly before election day. However, while the task of preparing and managing elections undoubtedly became more complex, the tendency for electoral administration to exist as an under-resourced 'Cinderella service' within many local authorities arguably became more pronounced ([Wilks-Heeg, 2009](#)).

Perhaps unsurprisingly, then, the past decade has witnessed unprecedented administrative and technical problems at UK elections - some of which could easily have led to electoral outcomes being called into question. Three high-profile cases between 2000 and 2010 are of particular significance:

- The May 2000 elections for mayor of London and the London Assembly, which together constitute the Greater London Assembly (GLA), resulted in an exceptionally high proportion of ballot papers being rejected at the count. A subsequent inquiry by the GLA pointed to pressures placed on electoral administrators by the short planning time-frames, the management of postal voting and to problems with ballot paper design, ballot paper printing and the scanners used for e-counting ([GLA, 2002](#));
- At the Scottish parliamentary and local government elections of 2007, problems with the rejection of ballots at the count again highlighted issues concerning ballot paper design, the volume of postal ballots, the organisation of the count and the operation of the electronic counting system. An independent review concluded that 'the voter was treated as an after-thought' ([Gould, 2007](#));
- At the May 2010 general election, some 1200 voters across 16 constituencies were denied their right to vote after staff at 27 polling stations proved unable to deal with lengthy queues which had built up over the course of the evening. A subsequent report by the [Electoral Commission \(2010b, p. 13\)](#) pointed to 'poor planning, the use of unsuitable buildings, inadequate staffing arrangements and the failure of contingency plans'.

While the events at the 2007 Scottish elections and the 2010 general election were the most dramatic, and hence most widely-reported,

lower-level problems with the administration of elections have become widespread. In 2007, the Association of Electoral Administrators (AEA) report, based on a survey of its members after the devolved and local elections in May that year, reported that a series of potentially major problems were only narrowly averted and suggested that 'the ramifications for a General Election are indeed extremely worrying' (Association of Electoral Administrators, 2007, p. 11). The following year, the [Electoral Commission \(2008a\)](#) issued clear advice to the UK government about the need to address generic problems with electoral administration in the UK, echoing the AEA's assessment that the UK's systems of electoral administration were 'at breaking point'. The commission noted that it was 'unlikely that the current fragmented arrangements for electoral administration would be considered as a serious option if designing a new set of structures from scratch' (p. 19). Identifying the need for immediate action, the report made an explicit case for the establishment of statutory Electoral Management Boards throughout Great Britain with specific legal powers to direct returning officers in their work (see Case Study 2.1b).

### Case Study 2.1b: The Case for Electoral Management Boards

The [Electoral Commission's \(2008a\)](#) report, *Electoral Administration in the United Kingdom*, recommended the establishment of statutory Electoral Management Boards (EMBs) for Scotland, Wales and each of the English regions. Under the proposals, each EMB would have a remit to produce coordinated election plans and timetables for all relevant elections and to report, as required, on matters concerning the planning and delivery of elections to relevant committees of the UK and Scottish parliaments. Each EMB would include all returning officers and electoral registration officers within the country or region, with an experienced senior returning officer to be elected as chair. The EC recommended that the boards should be fully independent from government, but supported by a small secretariat funded directly by the UK government.

A key driver for the proposals was the Gould report's analysis of the problems at the 2007 Scottish elections. However, the [Electoral Commission \(2008a\)](#) took a wider view, arguing that electoral administration arrangements across the UK were 'insufficiently robust and coordinated to meet the challenges of delivering effective elections in the twenty-first century' (p. 6). The report stressed that 'significant changes are needed now, from Returning Officers and Electoral Registration Officers, governments and legislative bodies and the Electoral Commission itself, to improve the delivery of electoral administration' (p. 2).

Following the publication of the Gould report, the Electoral Commission and the Scottish Office had provided funding for the establishment of an Interim EMB in Scotland. While the EC pressed hard for the necessary legislation to establish the Board on a statutory basis, the commission was still expressing concerns about progress more than two years after the 2007 Scottish elections (Electoral Commission, 2009a). In March 2011, just weeks before the Scottish elections, the Scottish parliament passed the Local Electoral Administration (Scotland) Bill to establish the EMB on a statutory basis, to enable Scottish ministers to appoint an EMB convener, and to provide the convener with the powers to direct EROs and ROs.

However, no further progress has yet been made to establish EMBs elsewhere in Great Britain, despite the Electoral Commission's repeated insistence since 2007 that further difficulties would be experienced without reform. Following the problems experienced at the May 2010 general election, the Commission's Chair, Jenny Watson, re-iterated the case for Electoral Management Boards with powers to instruct returning officers, where required. [Watson \(2010\)](#) argued that 'the system of hundreds of independent returning officers making their own decisions with no accountability to anyone other than the courts - including us as the elections watchdog - is past its sell-by date'.

We have never highlighted serious concerns about electoral administration in previous Audits. However, the number and range of problems experienced in the administration of elections in recent years are clearly unprecedented. Serious problems associated with the administration of elections pose a genuine risk of undermining public confidence in how elections are run.

In our past Audits, we have suggested that the use of a ballot-tracing mechanism in the UK potentially undermines the secrecy of the ballot. The recording of each elector's unique number on the counterfoils of the ballot issued to them was introduced as a mechanism to tackle fraud in 19th century elections. Yet, it is questionable whether the so-called 'traceable secret ballot' still has any significant role to play in guarding against electoral fraud, and there is anecdotal evidence of officials using ballot tracing provisions to monitor who is voting for 'extremist' parties on the left and right of the political spectrum ([Guardian, undated](#)). The electoral observation report completed by the Office for Democratic Institutions and Human Rights, following its invitation to observe the 2005 general election, also pointed to ballot tracing as one of a number of areas in which international norms were potentially being breached (OSCE/Office for Democratic Institutions and Human Rights, 2005).

Accusations of political interference in the process of drawing up constituency boundaries are sometimes heard in UK political debate, although there is little, if any, evidence to support such claims - which rarely originate from the mainstream of British politics. However,

while the independence of the respective Boundary Commissions is accepted, and respected, by all the major political parties, boundary reviews nonetheless tend to provoke fierce partisan debate. The nature of the rules governing the sixth periodic review of Westminster constituencies (the 2013 review) has been especially controversial. The coalition's decision to reduce the number of MPs from 650 to 600 while also seeking to equalise the number of voters in each constituency has provoked widespread claims of 'gerrymandering' from some Labour MPs, who have suggested the measures are an attempt to cut the number of MPs representing typically Labour-voting inner-city areas, where under-registration is highest. However, while we would concur with Labour's concern about the risk of under-registration translating into under-representation, Democratic Audit's modelling of the partisan impact of the new rules suggests that it is the Liberal Democrats who stand to suffer disproportionately from the changes ([Baston, 2011](#)).

### ***Freedom of registration and voting procedures from intimidation and abuse***

Past Audits did not highlight any significant issues concerning the abuse of registration and voting procedures. In 1999, our assessment was that UK national elections were 'free of bribery, intimidation and other abuses' (Weir and Beetham, 1999, p. 41). Our 2002 Audit referred to 'various allegations' of abuse associated with postal voting on demand at the 2001 elections, but noted that only one of these cases resulted in a police investigation (Beetham et al., 2002, p. 95). The most serious concern pointed to in our past Audits were associated with the persistent allegations of electoral malpractice and voter intimidation in Northern Ireland. We therefore welcome the changes introduced by the *Northern Ireland (Electoral Fraud) Act 2002*, which the [Northern Ireland Affairs Select Committee \(2004, p. 8\)](#) concluded 'has been successful in reducing both the perception among the electorate of the prevalence of fraud and the actual level of electoral fraud, so far as it can be measured'.

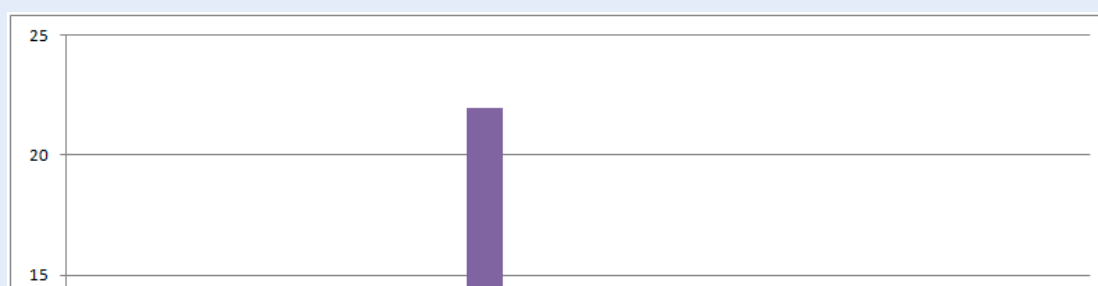
Against this backdrop, the emergence of evidence of malpractice in *English* elections during the 2000s ranks among the most concerning emerging developments identified by this Audit. Evidence of electoral malpractice began to mount from 2005 onwards, after an election court convened in Birmingham found five men guilty of large-scale electoral fraud, involving thousands of postal ballots, at local elections in June 2004. In his written judgment, the election commissioner, Richard Mawrey QC, referred to 'evidence of electoral fraud that would disgrace a banana republic' (Mawrey, 2005, p. 136).

While the Birmingham case represented the most systematic proven case of attempted ballot rigging, there have been numerous other convictions for electoral fraud in the UK since 2000. Court cases relating to large-scale fraud in local elections in Slough in 2007 and Peterborough in 2004 resulted in six convictions each. Following a lengthy police investigation and two re-trials, five men were eventually convicted in September 2010 for electoral fraud offences in the Bradford West constituency during the 2005 general election (the first relating to fraud in a UK general election for almost one hundred years). In total, more than 100 people have been found guilty of electoral malpractice in the UK since 1994. The vast majority of convictions have involved postal or proxy ballots, often in conjunction with attempts to manipulate the electoral registers by registering bogus electors or adding electors to the register at empty properties.

The emergence of electoral fraud as an issue in UK politics cannot be divorced, therefore, from changes in electoral law since the 1990s, which introduced provisions for proxy voting and the widespread availability of postal voting. In particular, the introduction of 'postal voting on demand' via the Representation of the People Act 2000 created obvious opportunities for malpractice, especially when combined with a 'rather arcane' system of electoral registration (Däubler-Gmelin and Gacek, 2008). Outside of Northern Ireland, applications to appear on a local electoral register are largely taken on trust. Electoral Registration Officers (EROs) have no real scope to verify a voter's identity, their eligibility to vote or whether they are already registered to vote elsewhere. In this context, it has been suggested that the practice of 'roll stuffing' is childishly simple to commit and very difficult to detect' (Mawrey, 2008, p. 30).

Figure 2.1c shows the number of known instances where defendants were found guilty of, or pleaded guilty to, electoral offences in a UK court from 2000-10. Although certain to underestimate the extent of fraud, these figures point to a very clear peak in offences in 2004, when all-postal voting trials were run in four English regions for the combined European and local elections. The graph also highlights that half of those found guilty of electoral malpractice over the decade committed their offences at elections in the period from 2003-05.

Figure 2.1c: Persons found guilty of electoral malpractice in the UK, 2000-2010, by year of election





## Democratic Audit



Note: Statistics are based on known cases, as of 22 March 2011. A number of allegations reported to police in 2010 were still under investigation at this time.

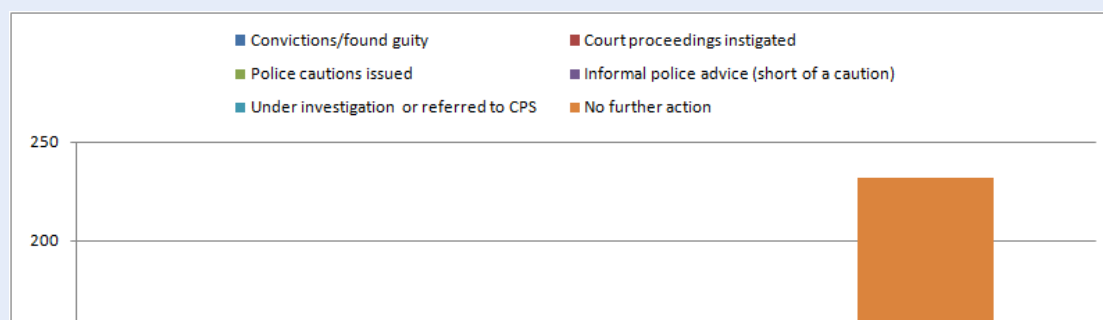
Sources: Base data for 2000-07 is from [Wilks-Heeg \(2008\)](#), appendix C. Additional data from: Electoral Commission/ACPO ([2009](#), [2010](#), [2011](#)); Lords Hansard 26 October 2010, column 252w; Unlock Democracy - Stamp out Voting Fraud.

Following the Birmingham judgment, the Electoral Administration Act of 2006 introduced a requirement for applicants for a postal ballot to supply 'personal identifiers' (their date of birth and signature), as a basis for the subsequent verification of their postal voting statement submitted at the time of voting. There have also been substantial improvements in the guidance provided by the Electoral Commission to electoral administrators and police forces and in the recording and monitoring of fraud allegations reported to the police. The clear decline in the number of convictions for electoral fraud since 2007 therefore suggests that recent efforts to safeguard the system appear to have been at least partially successful.

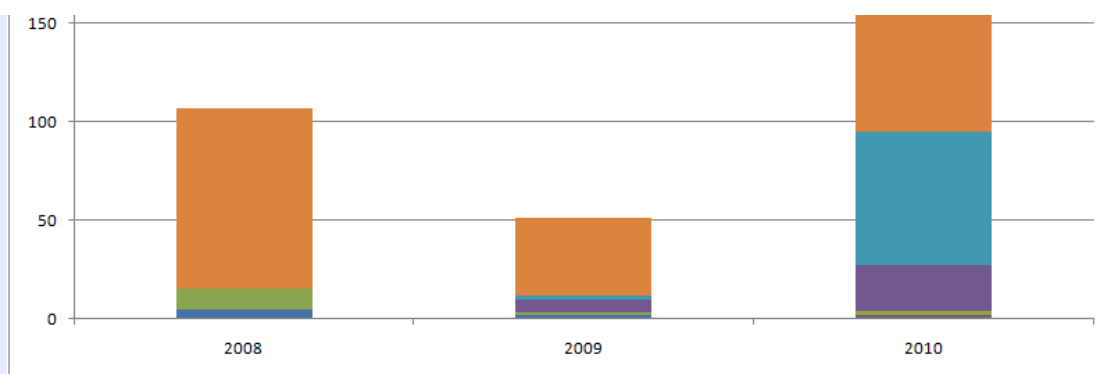
Since 2008, the Electoral Commission has reported annually, in conjunction with the Association of Chief Police Officers (ACPO) on allegations of electoral fraud and their outcomes. However, while the EC/ACPO reports demonstrate that the number of prosecutions for electoral fraud has fallen substantially, they also show that accusations of malpractice remain widespread. Figure 2.1d, based on the EC/ACPO figures, shows that there were over 100 cases reported to police forces in Great Britain in 2008 and a further 50 in 2009. In 2010, a general election year, the number of cases involving allegations of electoral fraud rose sharply. A total of 232 cases were reported to police in Great Britain in 2010 (with a further 25 cases in Northern Ireland), and allegations of fraud were reported to four-fifths of the UK's 52 police forces.

The vast majority of cases resulted in no further action being taken and, as the graph shows, the number of convictions represents a tiny proportion (around two per cent) of all cases investigated. Of the 232 cases reported to police in Great Britain in 2010, 137 resulted in no further action. At the time the commission reported on the allegations in February 2011, just one had resulted in a conviction and two in formal police cautions, while court proceedings had been instigated in one further instance. In addition, 23 allegations had resulted in the police providing informal advice, with a further 68 allegations still under investigation or awaiting advice from the Crown Prosecution Service (Electoral Commission, 2011). However, these figures also hint at wider evidence of malpractice than is captured by the number of convictions. From 2008-10, around one-tenth of cases examined by police resulted in the police issuing either formal cautions or providing informal advice short of a caution.

Figure 2.1d: Outcome of cases involving electoral malpractice allegations reported to the police, Great Britain, 2008-2010







Sources: Derived from Electoral Commission/ACPO ([2009](#), [2010](#), [2011](#))

Based on these findings, the commission's view is that levels of fraud are minimal, and that any repeat of the large-scale cases from 2004 or 2005 is now unthinkable. However, such interpretations are contested by some lawyers, politicians and journalists. In March 2008, passing initial judgment on the Slough case, Richard Mawrey QC, again acting as election commissioner commented that: 'to ignore the probability that [fraud] is widespread, particularly in local elections, is a policy that even an ostrich would despise' (Mawrey, 2008, p. 30). Jerome Taylor, a reporter for the Independent, who had been attacked while investigating allegations of fraudulent registrations in the London Borough of Tower Hamlets in 2010, described the (2011) Electoral Commission/ACPO report on electoral fraud allegations as 'a bizarre exercise in asking Britain's voters to keep calm and carry on', adding that 'for an organisation that is supposed to safeguard the integrity of our voting system, such complacency is shocking' ([Independent, 2011](#)).

To be fair, the Electoral Commission has never been complacent about the risk of electoral fraud and, while it regards the number of convictions and cautions for fraud as minimal, the EC has never claimed that levels of fraud are therefore 'acceptable'. The EC has long recognised the need for further safeguards against fraud and, since 2004, has consistently argued for the introduction of a system of individual voter registration, to replace the existing system of 'household' registration. It was not until Labour's Political Parties and Elections Act 2009 that provisions were made for a phased introduction of individual voter registration in Great Britain over a period of five years. Under this system, which was introduced in Northern Ireland in 2002 alongside others measures to tackle electoral fraud, all electors are required to provide their date of birth, signature and national insurance number when registering to vote.

Part of Labour's reluctance to act more decisively when in government stemmed from the concern that a more secure system of voter registration may have the side-effect of further depressing levels of voter registration. The experience of introducing individual voter registration in Northern Ireland clearly indicated that a sharp drop in registration levels was likely ([Northern Ireland Affairs Select Committee, 2004](#)). In 2010, the incoming Conservative-Liberal Democrat coalition opted to accelerate the introduction of individual voter registration, while introducing wider measures to prevent a sharp decline in registration levels and guaranteeing that no elector will be disenfranchised at the 2015 general election as a result of failing to submit personal identifiers ([HM Government, 2011b](#)). The impact of these reforms on the completeness and accuracy of Great Britain's electoral registers will need to be carefully monitored over the next few years.

### 2.1.3 Candidates & parties: registration and media access

How fair are the procedures for the registration of candidates and parties, and how far is there fair access for them to the media and other means of communication with the voters?

#### *Procedures for registration of candidates and parties*

With a number of specific exceptions, all adult British and Irish citizens resident in the UK have the right to stand as a candidate in elections, as do adult citizens of any Commonwealth country with indefinite leave to remain in the UK. Those precluded from standing for election to parliament, defined by the House of Commons Disqualification Act 1975, as amended, include members of the police and armed forces, serving civil servants and judges, members of the House of Lords and those declared bankrupt. Similar provisions apply for elections to devolved parliaments and assemblies and to the European parliament. There are also a number of specific restrictions for candidacy in local elections relating to connection to the locality and employment in local government.

All candidates must be nominated by electors in the district in which they are standing. Where candidates are standing for a political party, that party must be registered with the Electoral Commission, but no such requirement applies for independents (see Section [2.2.1](#) for further

discussion of the registration process for parties). Deposits of £500 must be lodged by all candidates standing for elections to the House of Commons, the Welsh assembly or Scottish parliament; with a deposit of £150 for the Northern Ireland Assembly. Higher deposits are required of candidates contesting election for the London assembly (£1,000), the European parliament (£5,000) and the mayor of London (£10,000). No deposits are required for candidacy at local elections. In all cases, deposits are returnable if the candidate secures more than a specified percentage of the votes cast (see Table 2.1a for full details). There has been a significant growth in the number of lost deposits at recent elections, which has arisen from a sharp increase in the number of candidates fielded by smaller parties. This development, which is considered in more detail in Section 2.2.1, is one of several illustrations of how the electoral system interacts with other structural features of UK democracy to create an 'uneven playing field' for parties contesting elections.

Table 2.1a: Deposits required by candidates in UK elections

Type of election	Value of deposit required	Threshold for return of deposit
Local elections	None	n/a
House of Commons	£500	5% of votes cast.
Welsh Assembly, Scottish Parliament	£500 for constituency contest; £500 to appear on regional list.	5% of votes cast in the constituency / region.
Northern Ireland Assembly	£150	25% of the quota of the first preference votes cast.
Greater London Assembly	£1,000 for constituency contest; £5,000 to appear on London-wide list.	5% of votes cast in constituency contest; 2.5% of votes cast for London-wide list.
European Parliament	£5,000	2.5% of votes cast in region; in Northern Ireland, 25% of the quota of the first preference votes cast.
Mayor of London	£10,000	5% of first preference votes.

Sources: [Electoral Commission \(2006\)](#); [Electoral Commission \(2008\)](#); [Electoral Commission \(2009b\)](#); [Electoral Commission \(2009c\)](#); [Electoral Commission \(2011a\)](#); [Electoral Commission \(2011b\)](#).

Following a recommendation from the Electoral Commission, the Electoral Administration Act 2006 reduced the age of candidacy for all UK elections from 21 to 18, rectifying the anomaly we had pointed to in our 2002 Audit that 18-21 year olds could vote, but not stand for political office. We therefore welcome this harmonisation of the age of candidacy and the voting age to bring the UK in line with the West European norm ([Electoral Commission, 2003a](#)).

### ***Fair access to the media and other communications***

Promoting 'fair access' in political communications requires the balancing of competing, and possibly contradictory, demands. On the one hand, 'fair access' implies that political campaigns operate in the context of guaranteed freedom of speech and full freedom of the press (the latter characterised by a pluralistic media that is independent of the state; see Section 3.1 for further discussion). On the other hand, it is widely recognised that 'freedom' in political communications will do little to promote 'fair access'. Individual candidates or parties may, for instance, possess far greater financial resources to spend on campaigning, or they may benefit from partisan bias in the media, particularly if media ownership is concentrated in relatively few hands (see Sections 3.1.1 and 3.1.2). To tackle such inequities in election campaigning, the state must therefore intervene in some way.

State intervention intended to promote 'fair access' in political communications can take two main forms. One option is to regulate to limit the scope for individual candidates or parties to gain unfair access to the media or other communications - for instance, by limiting how much can be spent on election campaigns, banning forms of paid political advertising, or requiring party political balance and impartiality in media reporting. Another option is for the state to provide forms of support to candidates and political parties in their efforts to communicate with voters - for instance, by providing grants or indirect subsidies for election campaigning, or by granting air-time via state broadcasters. These two approaches are not mutually exclusive and are often used in conjunction with one another. Electoral law and broadcasting regulations in the UK display precisely this 'mixed' approach, although it is also important to distinguish between the specific measures applying at the constituency (candidate) and national (party) levels in general elections.

At a constituency level, every candidate at a UK general election receives an allowance for free postage (to cover the costs of sending one election communication to each address in the constituency they are contesting) and is entitled to make use of facilities to host public

meetings, again free of charge. Meanwhile, expenditure limits for candidates, in place since 1883, seek to prevent individual candidates securing an unfair electoral advantage by out-spending his or her rivals on election communications during the campaign. However, there are growing, and valid, concerns that these regulations have become increasingly ineffective in recent decades ([Wilks-Heeg, 2008](#); [Wilks-Heeg and Crone, 2010](#)).

A similar approach applies at a national level. Provisions are made for political parties to communicate with voters via the granting of free airtime on both radio and television. Thus, political parties are allocated slots for Party Political Broadcasts (PPBs) at particular points in the annual political cycle and for Party Election Broadcasts (PEBs) during election campaigns (see Case Study 2.1c). Paid political advertising on broadcast media is banned under the Communications Act 2003, although paid advertising in newspapers or billboards is permitted (Scammell and Langer, 2006). Since 2000, limits on local candidate spending at general elections have been supplemented by a national cap on the expenditure of political parties during an election campaign - in large part as a response to the record spending by political parties on advertising at the 1997 general election.

These provisions have evolved over a period of more than a century and, inevitably, have been the subject of ongoing controversy. In this regard, it is important to note a number of long-term trends in party campaigning and political communications which have important implications for measures intended to promote fair access for candidates and parties to media and communications.

1. Over the course of six decades, the large political parties have shifted the focus of their election spending away from local constituency contests and towards the national political stage. There was a surge in party spending on advertising, particularly in the period from 1979-97, which created a significant 'regulatory gap', since only constituency-level spending was capped. The Political Parties, Elections and Referendums Act (PPERA) 2000 has restricted national spending by parties on election campaigns, but has by no means resolved the question of what constitutes 'national' spending by parties and what constitutes 'constituency' spending by candidates.
2. The shift towards a focus on national campaign spending by the large political parties has been accompanied by a parallel tendency towards the centralisation of party operations and substantially increased expenditure on political communications and media-management outside of election periods (commonly referred to as 'spin'). Regarded by the large parties as essential to protecting their interests in an often hostile '24/7' news environment, these dedicated media operations have become central to modern political communications, reflecting the emergence of 'mediated' politics in which political parties and the media operate in a dialectical, yet symbiotic, relationship.
3. Within the context of recent shifts in the UK's traditional 'dual media system', in which broadcasting is tightly regulated and required to demonstrate political balance, but the press is not (see Section 3.1), there is a long-term trend towards television becoming the dominant medium in election campaigns. With newspaper circulation falling sharply, the majority of electors report that television is their principal source of political news. At the same time, however, changes in the broadcasting market have seen audience shares fragment and audience shares for news broadcasts shrink. Meanwhile, the growing significance of the internet and social media is widely recognised, although as yet poorly understood.
4. While the largest two parties, in particular, have become more centralised, and their activities dominated by highly-costly political marketing activities, there has been a notable increase in campaigning and, in some cases, spending by smaller parties. Recent decades have seen a growth in the number of seats contested by smaller parties. As the share of the vote secured by smaller parties has increased, enabling them to gain representation at the expense of the larger parties (particularly in local, devolved and European elections) they have been able to secure a share of air-time allocated for party election broadcasts and a growing profile in general media coverage.

All four long-run trends are exemplified by the live broadcasting of the first ever televised leaders' debates during the 2010 general election, an innovation which prompted fresh controversies, notably regarding the access of smaller parties to the media (see Case Study 2.1c for further discussion).

### Case Study 2.1c: Election Broadcasting in the UK: from political broadcasts to the leaders' debates

Party election broadcasts (PEBs) originate from the political broadcasts transmitted by the BBC on radio during the 1924 general election campaign. Over time, the provisions gradually became more formalised and were adapted in response to changes in both broadcast media technologies and the broadcast media market. A Committee on Political Broadcasting was established in 1947 to oversee the procedures for agreeing the allocation of air-time, the length and format of broadcasts, and other matters. In 1951, the first televised PEBs were broadcast. In 1956, provisions for PEBs were extended to the newly established commercial broadcasters.

In practice, the broadcasters exercise considerable discretion in how they allocate air-time and, since the 1960s, they have had to use this discretion to reach decisions about how to respond to changes in both the UK's party system and its political system. Over time, an increased number of slots have been granted to smaller parties as broadcasters have adopted a relatively flexible approach to defining rules for allocations. Thus, the SNP and Plaid Cymru were first allocated air-time in 1965, a full five years in advance of either party gaining a seat in the House of Commons, while an agreement was quickly reached in the run up to the 1983 general election to allocate slots to the SDP based on their showing in opinion polls and by-elections. At the 1997 general election, eight parties without representatives in the Commons, including the Green Party, the Referendum Party and the BNP, were granted air-time on the basis of a newly-instituted rule that any party contesting at least 50 seats would qualify.

While the threshold for securing UK air-time was subsequently raised to parties who contested at least one-sixth of seats in the Commons, the impact of devolution has also had to be weighed in decisions about the allocations of PEBs. The capacity of the BBC and ITV to split transmission between the constituent parts of the UK thus resulted in the agreement of allocations which differentiated more clearly between England, Scotland, Wales and Northern Ireland. Under the current rules, a party contesting one-sixth of seats in any constituent nation are allocated broadcasts within that nation.

Decisions about allocations of air-time have often been a matter of genuine controversy among the political parties, but the question of whether party election broadcasts have a meaningful role in modern political communications continues to be posed. While many consider that the influence of party election broadcasts has declined in recent decades, surveys carried out by Ipsos MORI indicate that, with the exception of 2001, seven out of 10 voters had seen at least one party election broadcast during each election campaign from 1979-2005 ([Ipsos MORI, 2005](#)). A review by the [Electoral Commission \(2003b, p. 4\)](#) concluded that party political broadcasts 'remain one of the most effective and therefore most important direct campaigning tools available to qualifying political parties'. Significantly, the commission's report added that 'the principle that qualifying political parties should be able freely to publicise their platforms and policies to voters, and that voters should be able to receive such information, remains compelling' (p. 4). Recognising the importance of this function, both the Electoral Commission's report and the government's response to it, suggested that there was no obvious alternative to PPBs, other than paid political advertising - which they both rejected, based on experience in the United States.

In this context, the introduction of televised leaders' debates in 2010 raises fresh questions about the future of PPBs. An estimated 72 per cent of the electorate watched at least one of the debates, with the first debate, broadcast on ITV, attracting close to 10 million viewers (representing an audience share of 37 per cent). It seems evident that televised leaders' debates will, in future, lead to a sharp decline in the relevance, and viewing, of PPBs. As such, the controversy ignited by the leaders' debates in 2010 about the lack of representation for parties such as the Scottish National Party, is likely to require a fresh review of how the broadcasters should allocate time to different political parties.

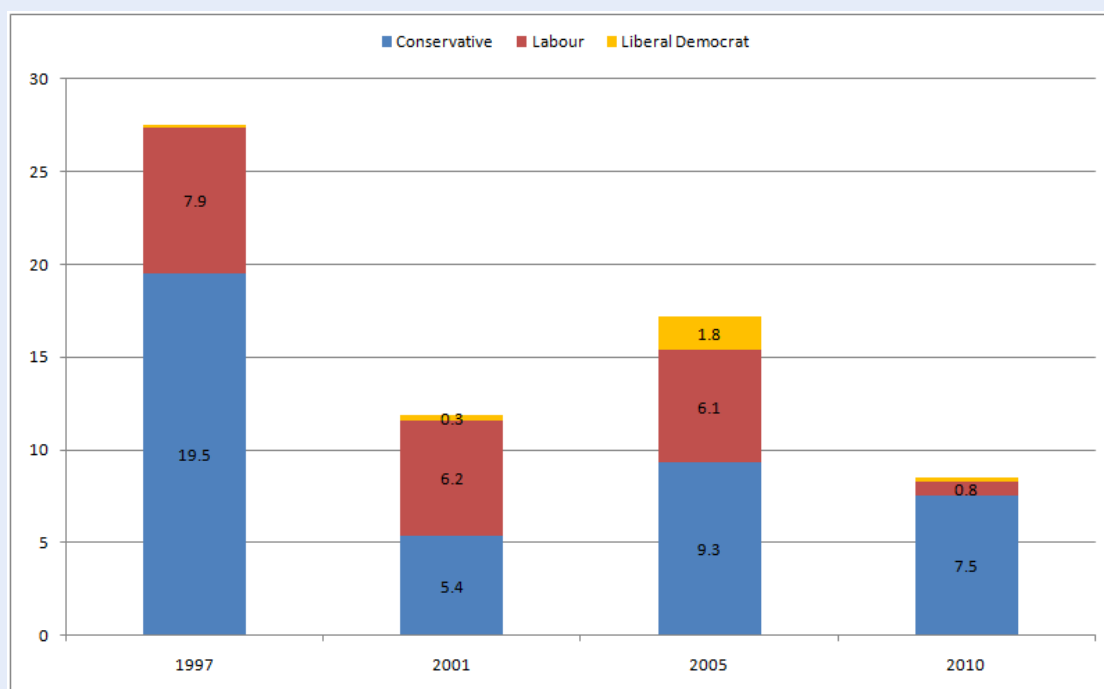
As noted in Case Study 2.1c, a key justification for the granting of free air-time to UK political parties for party election broadcasts has been the desire to limit the need for paid political advertising. The ban on paid broadcasting prevents many of the worst excesses of US-style campaigning, and renders UK elections comparatively cheap by comparison to party and candidate expenditure in the United States. The [Department for Culture, Media and Sport's \(2003\)](#) response to the Electoral Commission's (2003b) report on party political broadcasting suggested that this ban 'has widespread and continuing support', arguing that 'hugely expensive and often simplistic and negative advertising would most likely work against the aim of a well-informed electorate, fairly informed of the range of policies being offered by the various parties standing for election' ([DCMS, 2003, p. 5](#)).

However, it would be misguided to assume that paid advertising plays only a limited role in UK election campaigning, and this is for two key reasons. First, political parties have in the past opted to spend heavily on advertising space in the press and on billboards during general election campaigns, and Conservative election campaigns in particular continue to be characterised by relatively high levels of spending on advertising. Second, during Labour's period of office from 1997-2010, a series of concerns were expressed about the growth of government expenditure on paid advertising, including apparent surges in spending in the period before elections.

The growth of party spending on advertising became particularly evident during the 1980s and 1990s, with general election campaign spending peaking at the 1997 election ([Wilks-Heeg, 2008](#)). The two main parties spent an estimated £20 million on advertising in the run-up to the 1997 General Election, of which £14 million was spent by the Conservatives and £6 million by Labour. Of the £14 million spent by the Conservatives, some £11 million was spent on billboard posters and the remaining £3 million went on newspaper advertising ([Gay, 2000, pp. 49-50](#)). Figure 2.1e, which measures expenditure in 2009-10 prices, shows that party spending on advertising has fallen sharply following the introduction of campaign expenditure limits under PPERA 2000, although it remains a significant component of election expenditure, especially for the Conservatives. Uniquely, Labour out-spent the Conservatives in 2001, during a brief period in which the former secured substantially more donation income than the latter. By the end of the decade, however, it was the Conservatives who once

again had the upper hand in securing donor income - enabling them to out-spend Labour on advertising by a factor of almost 10:1.

Figure 2.1e: Expenditure by political parties on advertising in the year before general elections, 1997-2010 (£ million, measured in 2009/10 prices)



Sources: [Electoral Commission, campaign expenditure register](#); [Gay \(2000, pp. 49-50\)](#).

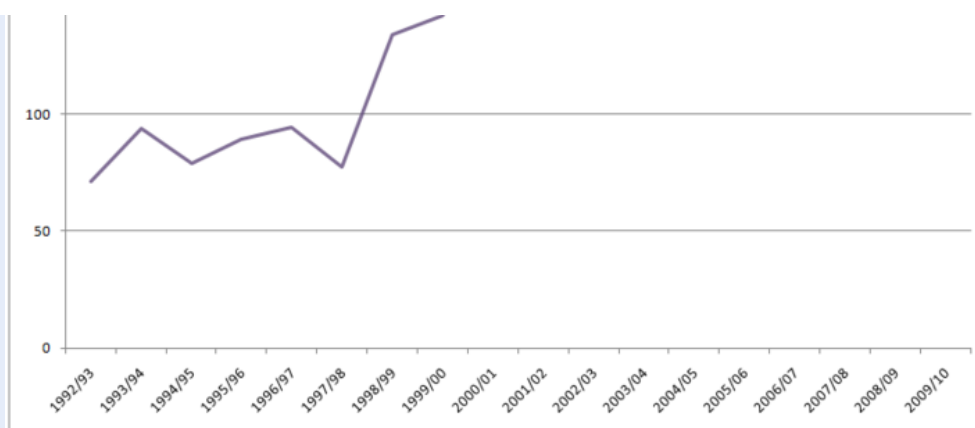
There are also grounds for examining the role which government advertising may play in relation to the election cycle. In our 2002 Audit we highlighted evidence of a sharp increase in government advertising in the period before the 2001 general election, raising concerns about the possibility of government advertising budgets being used for party political ends (Beetham et al., 2002). In the run up to the 2010 general election, fresh accusations emerged that Labour were again planning large advertising campaigns around the electoral cycle. In April 2010, the shadow Cabinet Office minister, Francis Maude, suggested that record monthly spending on advertising demonstrated how 'Labour are trying to buy the election using millions of pounds of taxpayers' money with a last minute state sponsored advertising blitz' ([Daily Telegraph, 6 April 2010](#)).

While it is difficult to evaluate the validity of these claims, there can be little doubt that government spending on advertising rose dramatically under New Labour. Figure 2.1f charts the total income of the Central Office of Information from advertising initiatives commissioned by government departments and agencies from 1992-93 to 2009-10. Measured against 1997-98, when Labour took office, this measure of government advertising had doubled by 1999-2000 and trebled by 2000-01. The government's advertising bill remained high throughout the 2000s, running at roughly double the level it had been in the previous decade and establishing the UK government as the country's largest spender on advertising (ahead of both Unilever and Procter and Gamble). Moreover, the figures do suggest something of a tendency for government spending on advertising to peak in the run up to elections in 2001, 2005 and 2010.

Figure 2.1f: UK government spending on advertising, 1992/93 - 2008/09 (£ million, 2009 prices)



## Democratic Audit



Sources: Central Office for Information Annual Reports and Accounts, 1996/97- 2009/10; converted to 2009 prices using the Retail Price Index. Figures represent COI's income/turnover from government advertising contracts.

There has been much discussion in recent years of the potential significance of the internet and social media for political communications, culminating in widespread claims that the 2010 general election would prove to be the UK's first 'internet election' ([Gibson et al., 2010](#)). With the notable exception of work undertaken by the Hansard Society, little consideration has been given to the scale of internet campaigning, nor the regulatory issues it raises. To some extent, this lack of attention can be explained by the fact that the role of digital campaigning in UK elections remains limited; informed reflection on the 2010 election has confirmed that it was dominated by the rather older medium of television - principally because of televised leaders' debates.

Nonetheless, a number of important trends suggest that internet communications will come to play an increasingly significant role in UK elections, not least because of the way in which the internet interacts with traditional media. For instance, analysis of activity on Twitter at the time of the first leaders' debate established that some 47,000 accounts were engaged in 'real time' discussion of the debates, including substantial activity from journalists with large numbers of 'followers' on Twitter ([Chadwick, 2011](#)). As [Williamson \(2010, p. 24\)](#) notes, 'the internet has become a "business as usual" channel for people and, with this, for politics and political debate'. However, [Williamson et al. \(2010, p. iv\)](#) also argue, rightly in our view, that 'the internet is unlikely to lead to dramatic changes in the electoral landscape in the short-term'. Instead, the experience of digital campaigning to date is principally that it underpins the longer-term development of professionalized, perpetual campaigning by political parties highlighted above and that its scope to promote wider access to political communications is exaggerated (cf. [Williamson et al., 2010](#)).

### 2.1.4 The electoral system

How effective a range of choice does the electoral and party system allow the voters, how equally do their votes count, and how closely does the composition of the legislature and the selection of the executive reflect the choices they make?

As our previous Audits have noted, the single member plurality (SMP) system of elections used for the House of Commons (generally known as 'first-past-the-post' or FPTP) is neither designed to offer voters a wide range of choices at elections nor to ensure a direct relationship between the aggregate sum of votes for a party and its representation in parliament. Instead, FPTP elections are supposed to exhibit the following key features in relation to voter choice, the weighting of votes and the translation of votes into seats:

- FPTP presents voters with a straightforward binary choice: retain the incumbent MP and/or government or 'kick the rascals out' so that they will be replaced by representatives of the principal opposition party. In this way, the system is claimed to render MPs and governments highly accountable to the electorate, since relatively modest swings in support can remove them from office.
- While votes under FPTP count equally at a constituency level, the overall outcomes at the national level tend to reflect either broad continuities or shifts in the 'mood' of the electorate. Because of the way the system tends to magnify 'swings' in electoral support, FPTP empowers voters to replace one single party government with another, or to grant a single party a large majority, where there is popular will to do so.
- Rather than translating votes into seats in a strictly 'fair' or proportional manner, FPTP produces strong and stable single-party governments. Such governments operate with a direct mandate from the electorate to implement their manifesto, rather than on the basis of agreements forged via post-election negotiations, in which electors have no role.

There are clear and obvious differences in emphasis between the question we pose above and the advantages claimed for FPTP by its

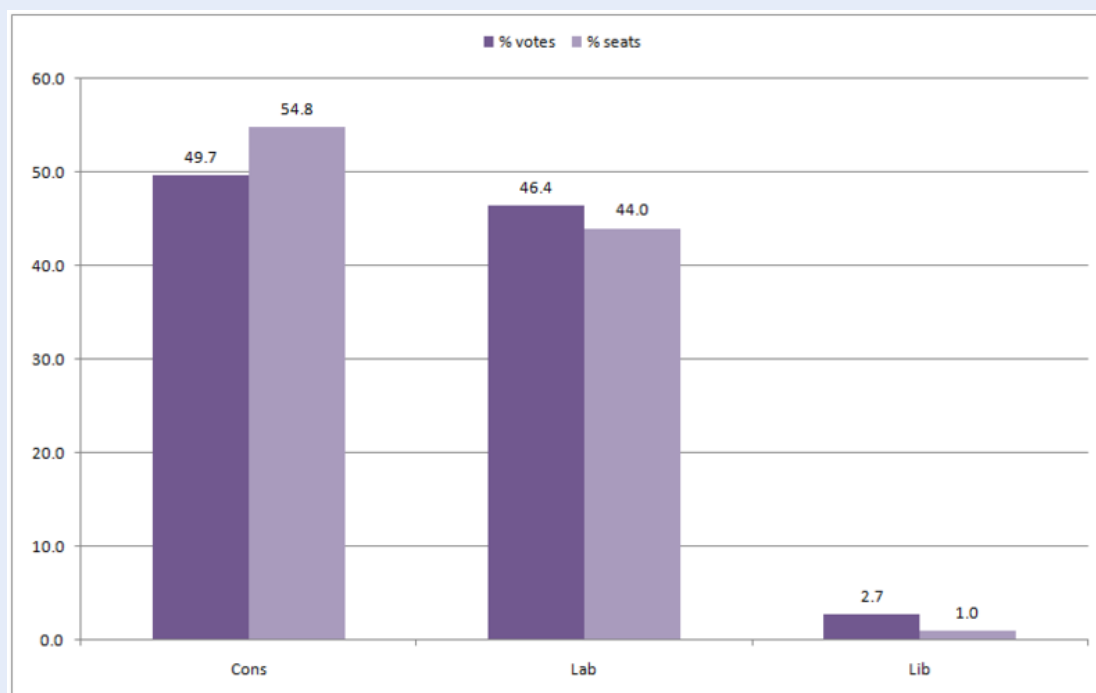
advocates. We accept, therefore, that there is a case for assessing the UK's current electoral system in relation to the criteria which its supporters typically put forward, as well as with reference to our own.

As John Curtice (2010) has noted, for 'first-past-the-post' election to operate in the way outlined above, a number of essential conditions must be met. These may be summarised as follows:

- There must be clear two-party dominance, with both parties commanding roughly equal levels of popular support and with very few votes or seats going to third or other parties.
- There must be a sufficient number of marginal seats to magnify the 'swing' from one of the two main parties to the other - this creates a modest 'winner's bonus' through which a vote share of around 45-50 per cent translates into a majority of seats in parliament.
- Aside from the 'winner's bonus', the relationship between votes and seats should not show any obvious form of bias towards either of the two main parties.

Figure 2.1g provides an historical example of how these dynamics should work in practice. At the 1955 general election, the Conservatives secured just under 49.7 per cent of the votes cast, a little over three percentage points ahead of Labour's share. As the largest party, with the support of close to half of the electorate, the electoral system effectively granted the Conservatives a 'winner's bonus', which enabled them to secure 54.8 per cent of the seats in the Commons. Moreover, while this winner's bonus can be seen to have been at the expense of representation for the other two parties, the overall effect was relatively modest. Consequently, both Labour's and the Liberal's share of seats in the Commons in 1955 were broadly in line with the proportion of votes which they had secured. Thus, while FPTP is not designed to ensure proportional outcomes, the 1955 election underlines that a fairly high degree of proportionality tends to be the by-product of FPTP elections where the conditions specified by Curtice can be shown to hold. In particular, the structuring of voters' options around a straightforward binary choice should mean that votes count relatively equally at a national level and that the composition of parliament will reflect voter choices reasonably well.

Figure 2.1g: Proportion of votes and seats secured by main three parties, 1955 general election



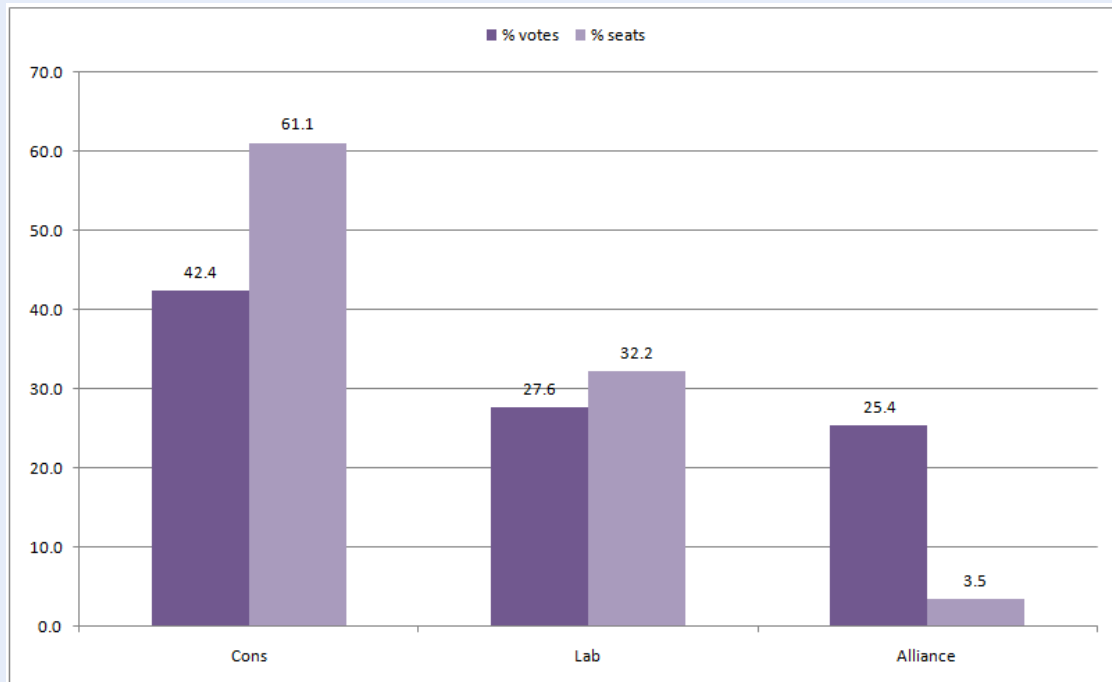
Source: Data from Rallings and Thrasher (2009).

Such outcomes are, however, by no means guaranteed under FPTP. Figure 2.1h presents the results of the 1983 general election for the three main parties, again in relation to both votes and seats. In this instance, the contrast between electoral support and parliamentary representation for each party is highly apparent. On the basis of securing the support of only 42 per cent of the electorate, the Conservatives were able to win 61 per cent of the seats in the Commons. Not only did this represent a huge winner's bonus, it is also clear that it was gained almost entirely at the expense of the SDP-Liberal Alliance - whose 25 per cent share of the votes translated into a mere 3.5 per cent of the seats. Meanwhile, Labour's representation, although broadly in line with their level of electoral support, demonstrates the



existence of what is effectively a 'loser's bonus', again at the expense of the Alliance.

Figure 2.1h: Proportion of votes and seats secured by main three parties, 1983 general election

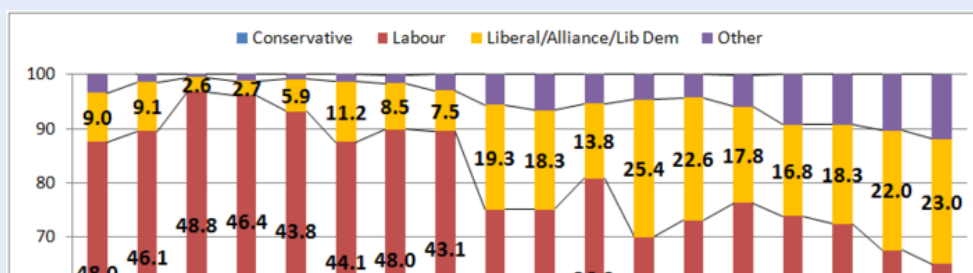


Source: Data from Rallings and Thrasher (2009).

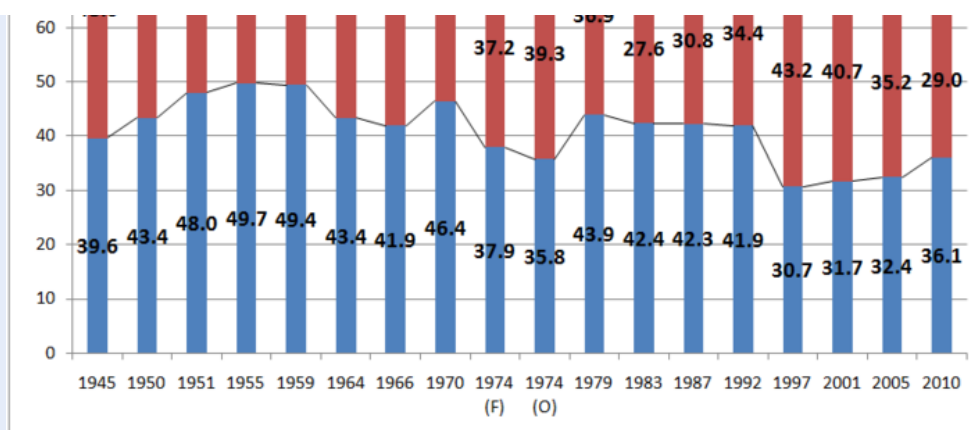
The 1983 election represented a moment of significant third party breakthrough, but it was by no means an exception or an aberration. Compelling evidence has built up over a number of years which casts doubt on whether the essential conditions required for FPTP to function properly still hold for UK parliamentary elections - or indeed if they ever did for sustained periods of time (Curtice, 2010; [Lodge and Gottfried, 2011](#); [Wilks-Heeg and Crone, 2011](#)). Four key trends are highlighted by these accounts which suggest that FPTP is increasingly unlikely to operate as it once did:

**1. Electoral support for the two main parties has diminished sharply since the mid-1970s.** A growing proportion of voters now opt for parties other than the Conservatives and Labour. As Figure 2.1i shows, the Conservatives and Labour won more than 40 per cent of the vote each at successive general elections from 1950 to 1970, with the winning party usually securing 45 per cent or more of the popular vote. Over this period, the average share of the vote obtained by the Liberals and others was a mere eight per cent. However, the pattern since the February 1974 election, which witnessed the resurgence of the Liberal Party and a sharp growth in support for the Scottish and Welsh nationalists, has been entirely different. At no election since 1974 have the two main parties won a combined 80 per cent or more of the vote, with the two-party share falling to just 65 per cent in 2010. For ten general elections in a row, FPTP has failed to prevent a significant proportion of votes being cast for third or other parties. This tendency has been even more obvious since the formation of the SDP-Liberal Alliance in 1983 and the eventual merger of the two parties to form the Liberal Democrats in 1988. Since 1983, the proportion of votes cast for candidates other than those representing the main two parties has averaged 29 per cent.

Figure 2.1i: Party shares of the vote in UK general elections, 1945-2010



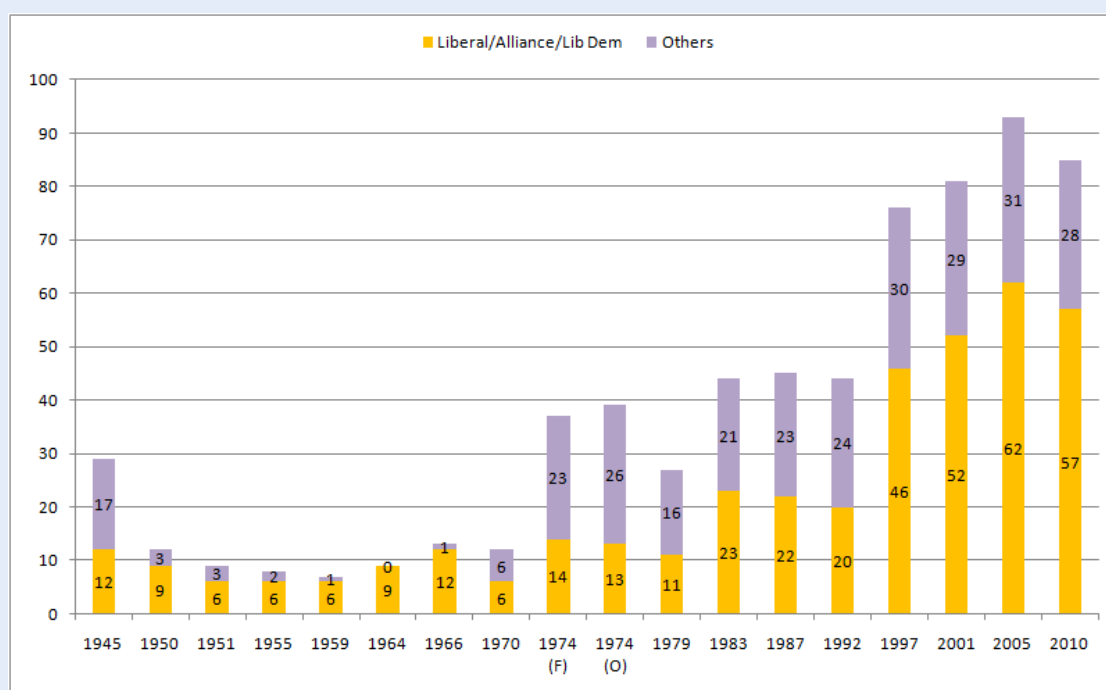
## Democratic Audit



Source: Data from Rallings and Thrasher (2009).

**2. Third and smaller parties have gained seats at the expense of the main two parties.** During the 1950s and 1960s, only about 10 MPs were typically returned from outside of the two main parties. However, as a result of the growing electoral support for them, the number of MPs elected to represent parties other than Labour or the Conservatives has grown slowly but steadily. Despite the strong bias of FPTP against third and smaller parties, Figure 2.1j shows that the number of MPs representing parties other than the main two (or sitting as independents) has risen sharply since 1974, reaching a peak of 94 MPs in the 2005-10 parliament. Whereas third and smaller parties once held a mere one per cent of seats in parliament, their share has now risen to around 13 per cent.

Figure 2.1j: Number of MPs from outside the main two parties, 1945-2010



Source: Data from Rallings and Thrasher (2009).

**3. The number of Conservative-Labour marginals has diminished significantly.** Over time, support for the Conservatives and Labour has become more geographically concentrated, while the Liberal Democrat vote has also become slightly less evenly spread. The partial exception of the Blair years notwithstanding, the tendency for voters in Scotland and the North of England to become more solidly Labour over time is mirrored by the pattern of the Conservatives becoming ever more dominant in the South of England. As a result of these patterns, there are now fewer seats which have any realistic prospect of changing hands between the two main parties. Whereas around

160 seats could be deemed Labour-Conservative marginals at elections from 1955-1966, this figure had been cut in half by the time of the 1983 general election; and while Labour's electoral recovery from 1987 onwards served to increase the number of marginal seats to around 100 from 1992-2005, by 2010 just 86 seats were defined as marginal between the two main parties ([Curtice, 2010](#)).

**4. The relationship between votes and seats has been subject to a greater degree of 'bias'.** Three main components of bias in the electoral system have become evident since 1997: Labour seats tend to contain fewer registered electors than Conservative seats; Conservative majorities tend to be numerically larger than Labour majorities; and there is a growing differential in turnout between Labour-won and Conservative-won seats ([Borisjuk et al., 2010](#)). Boundary reviews had eradicated most, but not all, of the bias associated with variance in the size of constituency electorates by 2010, but the tendency for concentration of party support and turnout differentials to produce numerically larger Conservative majorities is still in evidence. In 2010, turnout was seven percentage points higher in seats won by the Conservatives than it was in seats won by Labour, and the average Conservative majority was 9,470 votes compared to 7,911 for Labour MPs.

These changes in voting patterns and the operation of the electoral system mean that FPTP has become increasingly 'dysfunctional' when measured against its own supposed merits. Far from guaranteeing single-party government, elections in which no party secures an overall majority have become significantly more likely. The so-called 'hung parliaments' of February 1974 and May 2010, as well as the narrow majorities obtained by Labour in October 1974 and the Conservatives in 1992, are indicative of this trend. Ironically, the fact that FPTP elections did return single-party governments with large majorities in five out of 10 elections after 1974 owes much to the breakdown of the other core pre-conditions for the effective functioning of FPTP - notably a fall in the number of marginal seats and the emergence of forms of bias in the system. Indeed, a drop in Labour's share of the vote from 40 per cent in 2001 to 35 per cent in 2005 did not result in voters being able to 'kick the rascals out'. Instead, Labour were returned to power with a reduced, but still sizeable, Commons majority.

The trends described above have had profound effects in relation to voter choice and the translation of votes into seats. Broadly speaking, FPTP operated as it should for the seven general elections which were contested from 1950-70. As Table 2.1b shows, during this 'Golden Age' of first-past-the-post, support for the two main parties was finely balanced, the two-party share of the vote averaged 92 per cent, and elections were won or lost across 150 or more marginal seats. If we compare this 'Golden Age' with the period of seven elections from 1979-2005, we acquire a clear sense of how the operation of the system has changed. In this 'Dysfunctional Period', the two-party share of the vote averaged only 73 per cent and the average number of marginals shrank by a third compared to 1950-70. Distinguishing between these two periods in this way, we may also regard the two elections of 1974 - neither of which produced a clear majority for either party - as a 'transitional year' in which the two-party system began to break down. It is possible that the 'hung parliament' produced by the 2010 general election will also come to represent a transitional year, although following the rejection of electoral reform in the March 2011 referendum, it is by no means clear how the UK electoral and party systems will be transformed in the years ahead.

Table 2.1b: The operation of first-past-the-post, 1950-2010

	The Golden Age, 1950-70	Transitional Year, 1974	The Dysfunctional Period, 1979-2005	Transitional Year, 2010?
Number of elections	7	2	7	1
Average Conservative vote share	46%	37%	38%	36%
Average Labour vote share	46%	38%	36%	29%
Two-party share of the vote	92%	75%	73%	65%

Note: 1955-70 = 5 elections

Sources: Data derived from Rallings and Thrasher (2009); Curtice (2010).

A number of measures deployed by political scientists to monitor and compare the performance of electoral systems can be used to compare the outcomes of UK general elections in the system's 'Golden Age' of 1950-70 against those in the more recent 'dysfunctional period' from 1979-2005. Using these indicators, four key symptoms of the dysfunctionality of FPTP are revealed which highlight significant concerns about how votes count and how they translate into parliamentary representation.

**1. Recent elections have tended to produce excessively large majorities.** In the immediate post-war decades, whichever party came closest to securing 50 per cent of the votes generally secured enough seats to govern with a workable majority. During this 'Golden Age', government majorities varied between six seats (1950) and 99 seats (1959). This pattern clearly changed from the late 1970s onwards. As

Table 2.1c shows, the average share of the vote secured by the winning party from 1979-2005 was 41 per cent, a full six percentage points lower than it had been from 1950-70. Yet, the average size of government majorities from 1979-2005 (103 seats) was more than double that in 1950-70 (45 seats). Indeed, on four occasions since 1979 the winning party has secured majorities of 100, despite securing no more than 43 per cent of the vote - a scenario which would have been unthinkable in the 1950s. In short, recent decades have been characterised by a tendency for FPTP to greatly exaggerate the winner's bonus.

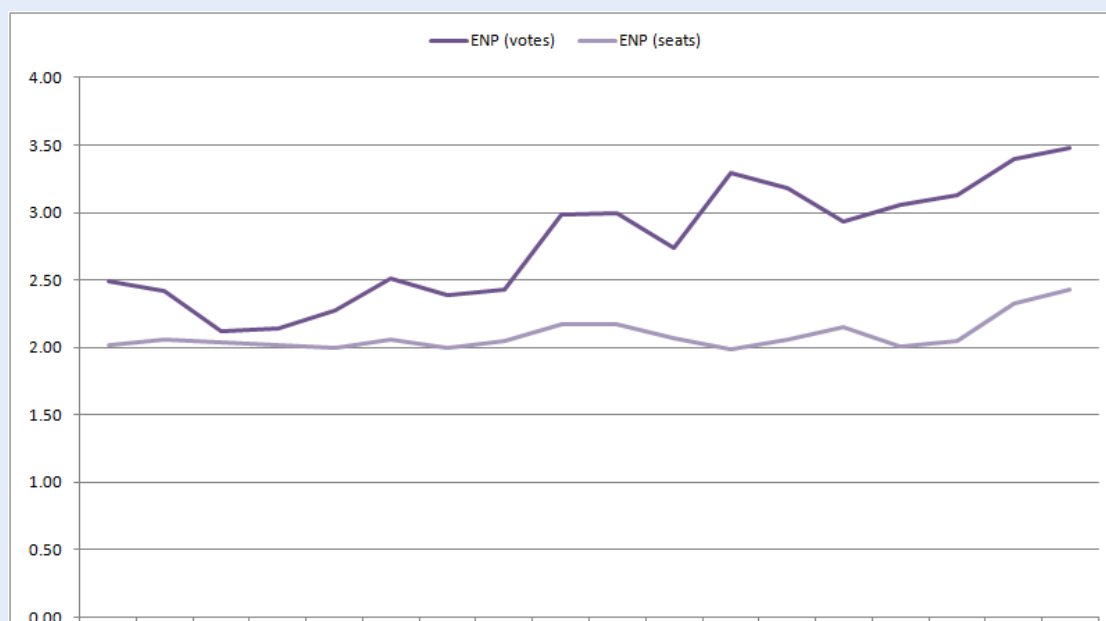
Table 2.1c: The outcomes of first-past-the-post, 1950-2010

	The Golden Age, 1950-70	Transitional Year, 1974	The Dysfunctional Period, 1979-2005	Transitional Year, 2010?
Average government majority	45	---	103	---
Average vote share secured by winning party	47.40%	---	41.40%	---
Average Relative Reduction in Parties (RRP)	8%	28%	32%	30%
Average Deviation from Proportionality (DV) score	12	19	20	23

Source: Authors' calculations using data derived from Colin Rallings and Michael Thrasher (2009) *British Electoral Facts*, London: Total Politics/Biteback Publishing

**2. The electoral system has blocked the emergence of a multi-party system at Westminster.** While third parties have managed to increase their vote and seat share since the 1970s, FPTP nevertheless serves to stifle genuine voter choice by ensuring that the main two parties continue to secure the lion's share of the seats in parliament. The growing contrast between voting behaviour and the allocation of seats in the Commons is illustrated by Figure 2.1k. This graph charts two measures of the 'Effective Number of Parties' (ENP) at UK general elections since 1945, measured firstly by votes and secondly by seats (see note under Figure 2.1k for explanation of the measure). The graph shows that the two measures converged in the 1950s, indicating a close fit between the electoral system and the party system in this period. Voters opted overwhelmingly for either of the two main parties, and the two-party system at Westminster reflected these choices. However, the two measures of the ENP began to steadily widen from the early 1960s onwards. Thus, by 2010, the electorate's desire for a multi-party system had become undeniable, yet the allocation of seats maintained the semblance of a two-party system. Table 2.1c summarises these trends using a further measure - the relative reduction in parties, in which the difference between ENP (votes) and ENP (seats) is calculated as a percentage of ENP (votes). This measure shows that while the squeeze on the representation of third and smaller parties was only 8 per cent from 1950-70, the effect quadrupled to 32 per cent during the period from 1979-2005.

Figure 2.1k: The Effective Number of Parties, as measured by votes and by seats, 1945-2010



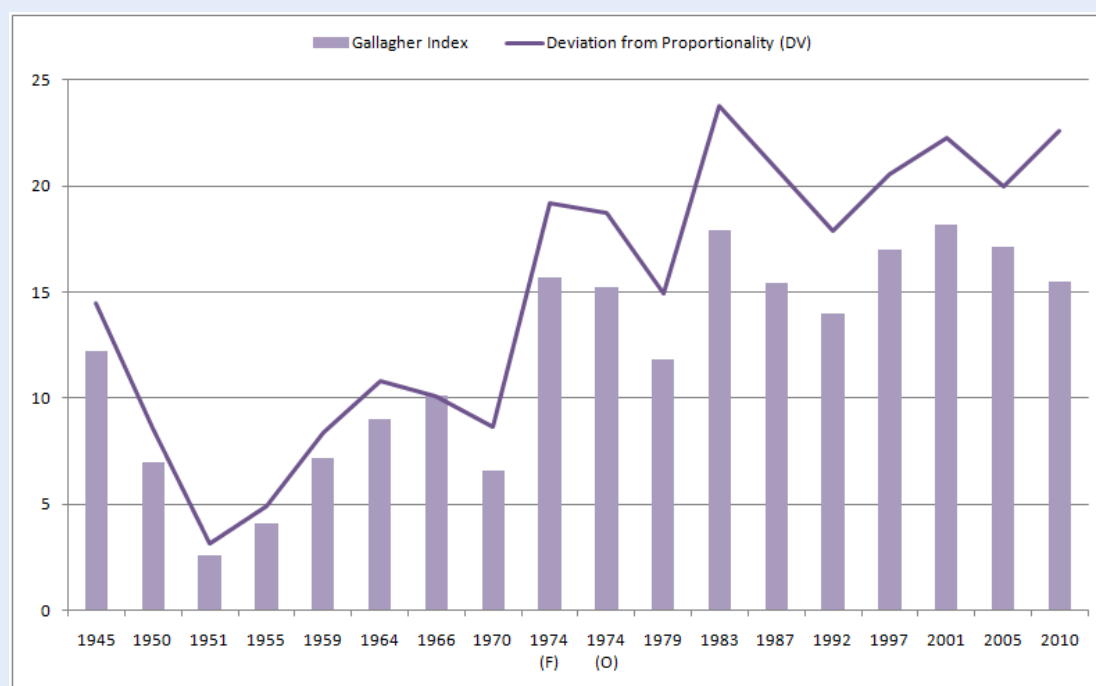
1945 1950 1951 1955 1959 1964 1966 1970 1974 (F) 1974 (O) 1979 1983 1987 1992 1997 2001 2005 2010

Note: The Effective Number of Parties is calculated using the Laakso/Taagepera index and takes into account both the number of parties and their relative size. ENP (votes) is calculated as follows: one divided by the sum of the squared percentage of votes cast for each party in a general election. ENP (seats) is calculated as: one divided by the sum of the squared percentage seats for each party represented in parliament.

Source: Base data from Rallings and Thrasher (2009).

**3. The results of UK general elections have become highly disproportional.** Because of the way FPTP increasingly 'mistranslates' votes into seats, recent elections to the Commons have produced results which are more disproportional than those in the 1950s or 1960s. Figure 2.1l charts the change in two alternative measures of the disproportionality of UK general election outcomes since 1945. The first measure, based on the method devised by Michael Gallagher, uses the 'least squares index' to calculate the disparity between vote shares and seat shares. The second measure, deviation from proportionality (DV), provides a measure of the proportion of MPs occupying seats to which their party's share of the vote would not entitle them. In essence, both measures calculate the extent to which an electoral system mistranslates votes into seats, and the trends for UK elections since 1945 are absolutely clear. Following a brief period in the 1950s when FPTP produced broadly proportional outcomes in which votes and seats were closely matched, both measures of disproportionality began to climb steadily (except in 1970) and peaked in 1983. Despite fluctuations thereafter, elections from 1983 onwards have consistently produced outcomes which are far more disproportional than those in the immediate post-war decades.

Figure 2.1l: The disproportionality of UK general election outcomes since 1945

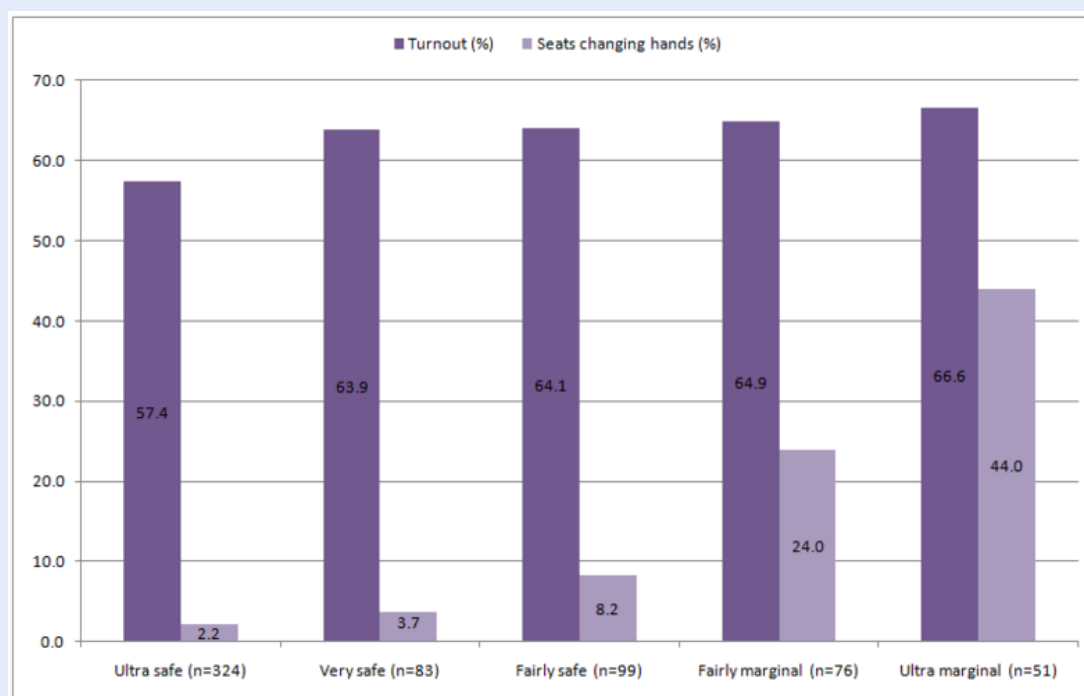


Source: Base data from Rallings and Thrasher (2009).

**4. Rather than votes counting equally, FPTP has rendered voter power highly uneven.** As party support becomes more geographically concentrated, and the number of marginal seats falls, meaningful electoral competition has tended to diminish in the great majority of seats. Instead, elections are won and lost in a few dozen marginal seats, which become the focus for party campaigns. The voters residing in the shrinking number of marginal seats thus exert far greater influence over election outcomes than the vast majority who find themselves in 'safe' seats and are far more likely to vote as a result. As Figure 2.1m illustrates, just 2.2 per cent of the 324 seats classified as ultra-safe changed hands at the 2005 election, compared to 44 per cent of the 51 seats defined as 'ultra-marginal'. Moreover, turnout was almost 10 percentage points higher in ultra marginal, compared to ultra safe, seats. With party campaigns increasingly focused

on marginal seats, research suggests that a diminishing number of voters would need to change their allegiance in order for an election to produce a change of government. At the 1997 general election, it was estimated that around 500,000 individual voters 'could have swung a close election one way or the other' (Weir and Beetham, 1999). In 2007, following the 'General Election that never was', the Electoral Reform Society (2008) estimated that the difference between a Labour and a Conservative victory could have depended on how as few as 8,000 voters across 30-35 key marginals cast their votes.

Figure 2.1m: Turnout and proportion of seats changing hands at the 2005 general election, by marginality of seat (marginality based on 2001 results)

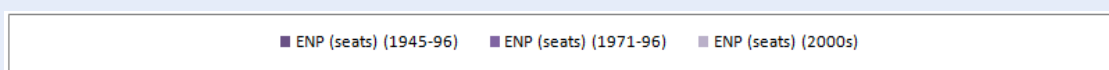


Source: Data derived from [Pippa Norris' British Parliamentary Constituency Database 1992-2005](#), release 1.3; author's calculations.

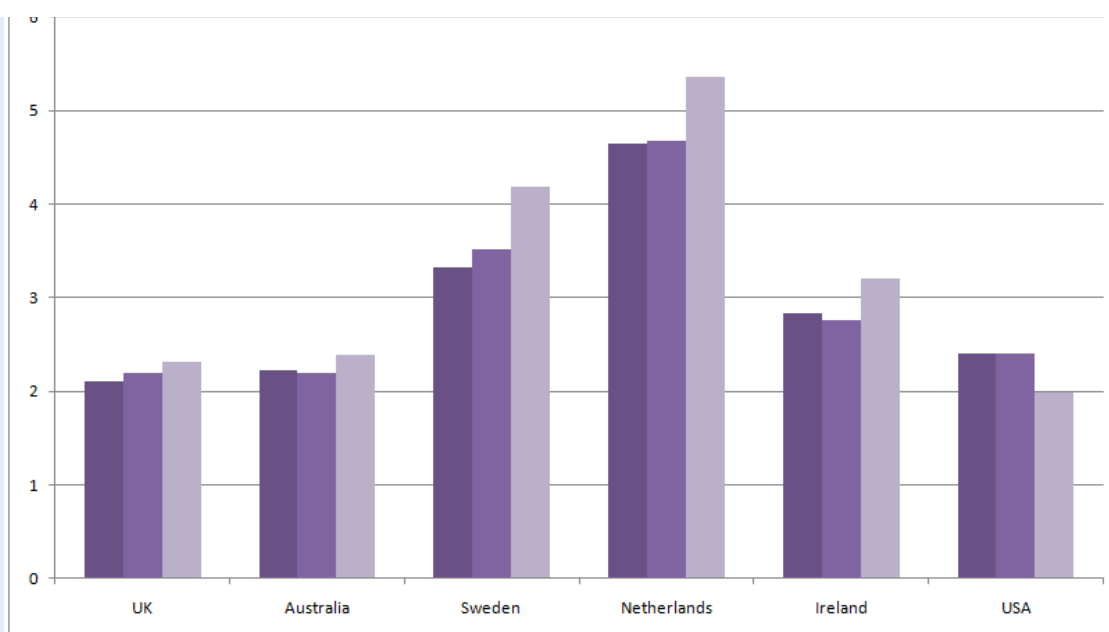
The so-called 'hung parliaments' of February 1974 and May 2010, as well as the narrow majorities obtained by Labour in October 1974 and the Conservatives in 1992, might also be regarded as a symptom of dysfunctional FPTP. It has been widely suggested that falling levels of electoral support for the two main parties points to 'hung parliaments' being more likely in future, even under FPTP ([Blick and Wilks-Heeg, 2010](#)). Yet, as we have noted, the very opposite tendency has also been evident in recent decades - FPTP elections returned single-party governments with majorities of 60 or more at five out of 10 elections from 1974-2010. Ironically, then, the breakdown of the core pre-conditions for the effective functioning of FPTP – notably a fall in the number of marginal seats and the emergence of forms of bias in the system – appears to make both the absence of majorities *and* the existence of excessive majorities more likely.

Some of the statistical indicators cited above can also be used to benchmark the UK against our chosen comparator countries. Here, the evidence points to the UK being increasingly out of line with other established democracies. Figure 2.1n presents data for the 'effective number of parties' (ENP) in the UK and our chosen comparator democracies, measured on the basis of the allocation of seats in parliament. It is evident that, despite the declining levels of support for the two main parties, the UK's electoral system has prevented anything other than a modest increase in the effective number of parties represented in parliament, thereby maintaining what can only be described as the illusion of a two-party system. Notably, Australia and the USA, both of which use majoritarian electoral systems, also retain recognisable two-party systems. By comparison, the three countries operating proportional electoral systems - Ireland, the Netherlands and Sweden - display both higher levels of electoral competition and a pattern of growth in the number of parties represented.

Figure 2.1n: Effective Number of Parties in Parliament: UK and comparators



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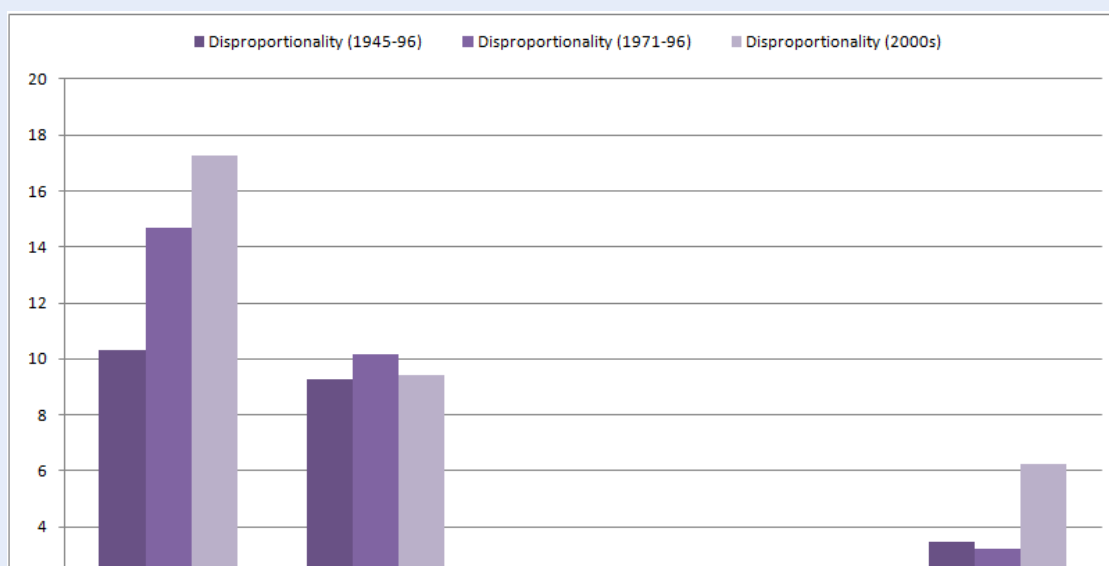


Sources: Data for 1945-96 and 1971-96 from Lijphart (1999); data for 2000s from Farrell (2011).

However, it is also clear that FPTP is more effective in preventing third and smaller parties from securing seats in the UK than it is in preventing them from securing electoral support. The share of the vote secured by the main two parties in UK general elections has fallen to below 70 per cent in recent elections, compared to around 80 per cent in Australia and well over 90 per cent in the USA. If we measure the effective number of parties in relation to votes, rather than seats, as we did in figure 2.1k, it is evident that UK electors have been voting for a three-party system for three decades.

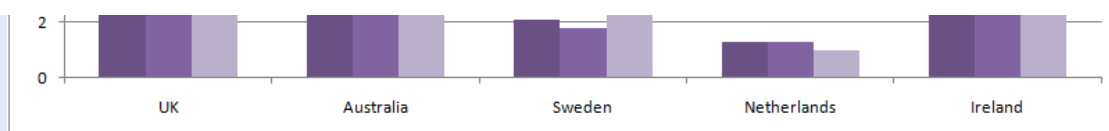
The growing discrepancy between levels of party support, as measured by votes, and the representation of parties in the House of Commons has also rendered elections to the Commons highly disproportional when measured against electoral outcomes in other democracies. Figure 2.1o shows a sharp rise in the disproportionality of UK elections in recent decades (using the Gallagher Index). These outcomes stand in increasingly stark contrast to the proportional systems used in Sweden and the Netherlands and to the outcomes under STV in Ireland, despite a recent rise in disproportionality in the latter instance. Moreover, UK elections under FPTP are revealed to have become increasingly disproportional even in comparison with the outcome of Australian elections under the alternative vote, a closely-related plurality/majoritarian system.

Figure 2.1o: The disproportionality of general election outcomes, UK and comparator countries, 1945-96, 1971-96 and 2000s.





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Sources: Data for 1945-96 and 1971-96 from Lijphart (1999); data for 2000s from Farrell (2011).

## 2.1.5 Social representativeness of Parliament

How far does the legislature reflect the social composition of the electorate?

Our past Audits have noted that the composition of national parliaments is rarely, if ever, representative of society as a whole, and that the UK parliament is certainly no exception. Unsurprisingly, our conclusion in 2002 that both Houses of Parliament 'are essentially white, male, middle-aged, well-educated and comparatively wealthy assemblies' holds true almost a decade later.

### **Age and social class**

Following the 2010 general election, the average age of British MPs was 50, with 20 per cent of MPs aged under 40, 61 per cent aged 40-59, and 19 per cent 60 or over ([Smith Institute, 2010](#)). This age profile is not at all surprising, given the nature of the occupation, and it is likely that the age profile of MPs is similar to that found in equivalent professions or even the voting-age population. Moreover, the average age of MPs has hovered around 50 since 1992 ([Smith Institute, 2010](#)) whereas, by contrast, the average age of local councillors in England has been rising for several years, reaching 59 years in 2008 ([LGA, 2009](#)).

If the age profile of MPs is broadly in-line with that of the voting age population, the same clearly cannot be said of social class. Certainly, long-run data on the educational background and previous occupations of MPs highlights very clear contrasts between the main political parties. Over the course of many decades, Conservative MPs have remained significantly more likely than Labour MPs to have attended a fee-paying school, to be graduates of Oxford or Cambridge, and to have previously worked in non-manual occupations. In general, the educational and professional profiles of Liberal Democrat MPs are closer to those typical among Conservative MPs than among Labour MPs. At the same time, however, the period since 1945 has seen the gradual emergence of a more meritocratic Parliamentary Conservative Party, and the rather more rapid professionalisation of the Parliamentary Labour Party. Indeed, three core trends since 1945 suggest that MPs as a whole are becoming significantly more socially homogeneous.

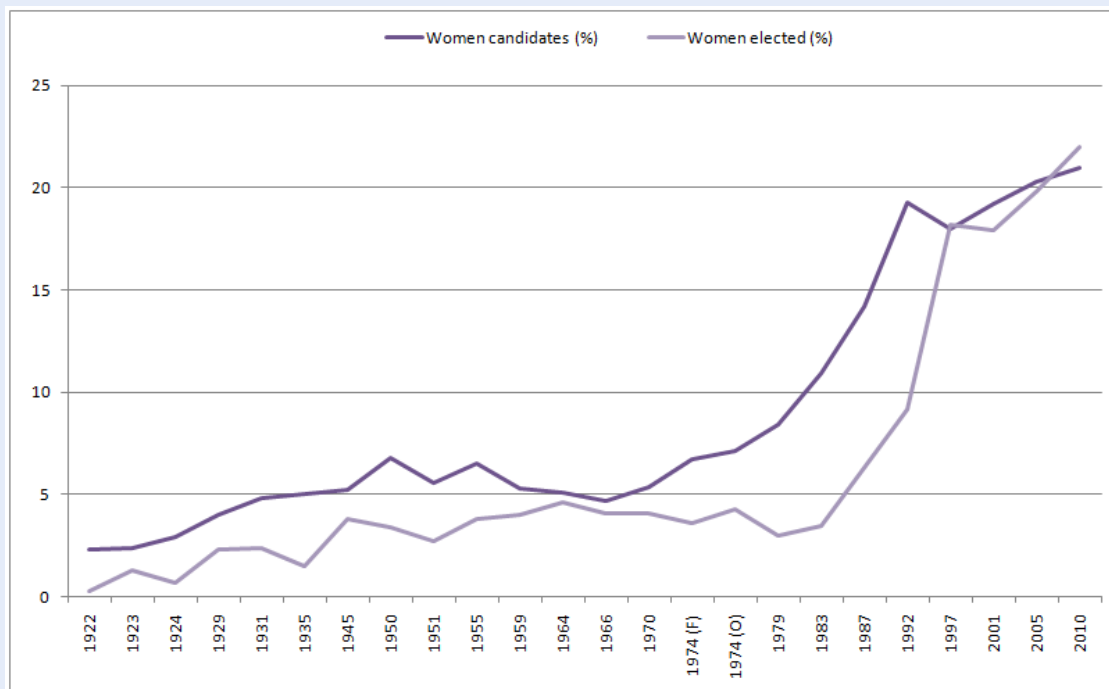
- The proportion of MPs who were educated at fee-paying schools has declined within all parties since 1945, notwithstanding some fluctuation depending on the relative strength of the two main parties in the Commons. Whereas three-quarters of Conservative MPs were privately educated in 1951, the figure now stands at a little over half. Among Labour MPs, the proportion who attended a fee-paying school has fallen from 20 to 14 per cent over the same period ([Crone, 2011](#)). Nonetheless, the contrast with the electorate is striking - just 7 per cent of the UK population have attended private schools ([Ryan and Sibiet, 2010](#)).
- The proportion of MPs with a university education has grown steadily in recent decades, although the percentage who were educated at Oxford or Cambridge has gradually declined. In the current parliament, 73 per cent of Labour, 80 per cent of Conservative and 81 per cent of Liberal Democrat MPs are university educated ([Crone, 2011](#)). In 2010, by comparison, 31 per cent of the UK labour force is educated to degree level (NVQ4) or above ([NOMIS, 2011](#)). For most of the post-war period, around half of Conservative MPs had typically attended Oxford or Cambridge - this has now fallen to around one-third. Yet, with 28 per cent of Liberal Democrat and 17 per cent of Labour MPs educated at Oxbridge, the House of Commons clearly remains unrepresentative of the educational background of the electorate as a whole.
- The proportion of MPs from working-class backgrounds has fallen dramatically since the 1940s. Whereas around 18 per cent of MPs were classified as being from a 'worker' background in 1951, this had fallen to around 4 per cent in 2010. This change was entirely accounted for by the fall in the number of Labour MPs with a working class background, which dropped from 108 to 22 over this period. The proportion of 'Chief Income Earners' in working class occupations (grades C2, D and E) has also fallen over the same period, from an estimated 65 per cent in 1968 to around 45 per cent in 2008 ([Ipsos MORI, 2009](#)). Nonetheless, the tiny share of today's MPs from a working-class background remains hugely out-of-kilter with the population as a whole.

### **Gender**

British MPs remain overwhelmingly male, and progress towards gender equality has been painfully slow. Following the 2010 general election, 22 per cent of MPs are female. While this represents an all-time record for the proportion of women MPs, Beetham et al.'s (2002, p. 102) observation that 'a partial breakthrough in 1997 has not been built on' remains an accurate summary of the situation.

As Figure 2.1p shows, women accounted for less than five per cent of MPs until 1987, before rising sharply to nine per cent in 1992 and 18 per cent in 1997. Since 1997, however, the growth of female representation has slowed dramatically. The principal reason for these trends is not difficult to identify. As Figure 2.1p demonstrates, the main factor constraining or facilitating the election of female candidates since 1922 has been the proportion of female candidates selected to stand.

Figure 2.1p: Women candidates and MPs, 1922-2010

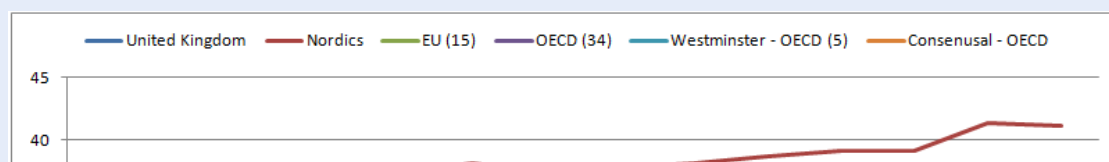


Sources: Rallings and Thrasher (2009); [Centre for Women and Democracy \(2010\)](#).

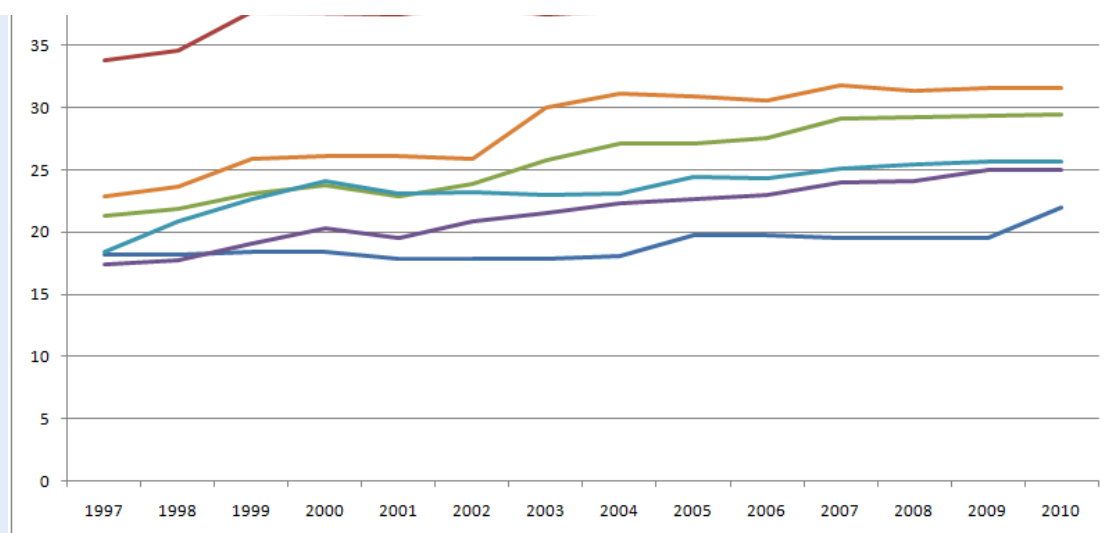
From 1979-92, more women were selected as candidates, but there was only a limited impact on the number of seats won by female candidates, because most of these selections were in seats which the parties had little prospect of winning. The sharp rise in the selection and election of female candidates in 1997 was accounted for overwhelmingly by the growth in the number of female Labour MPs, arising from the party's policy (adopted in 1993) of reserving a proportion of winnable seats for female candidates via 'all-women short lists'. Subsequently deemed to be in breach of the Sex Discrimination Act 1975 by an industrial tribunal in 1996, the party's policy was suspended in 2001. Following a drop in the number of female MPs in 2001, the Labour government passed legislation permitting political parties to use positive discrimination mechanisms when selecting candidates via the Sex Discrimination (Election Candidates) Act 2002 (see Section 2.2.3 for further discussion).

However, the practice of positive discrimination in candidate selection has remained controversial, serving to prevent significant progress in the adoption of female candidates. All-women shortlists prompted significant local opposition among some Constituency Labour Parties in 2005, as did David Cameron's attempts after 2006 to introduce measures, via a Priority (or 'A') List, to ensure that a higher proportion of Conservative Party shortlists included women. Meanwhile, an attempt by the Liberal Democrat leadership to introduce a version of all-women shortlists in the early 2000s was rejected by delegates at the party's conference in September 2001. With none of the three main parties able to agree on measures to ensure the selection of more female candidates, the proportion of general election candidates who are female has been essentially static at around 20 per cent for the past two decades.

Figure 2.1q: Proportion of MPs who are female, UK and comparators, 1997-2010



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Source: Calculated from [Inter-Parliamentary Union \(2011\)](#).

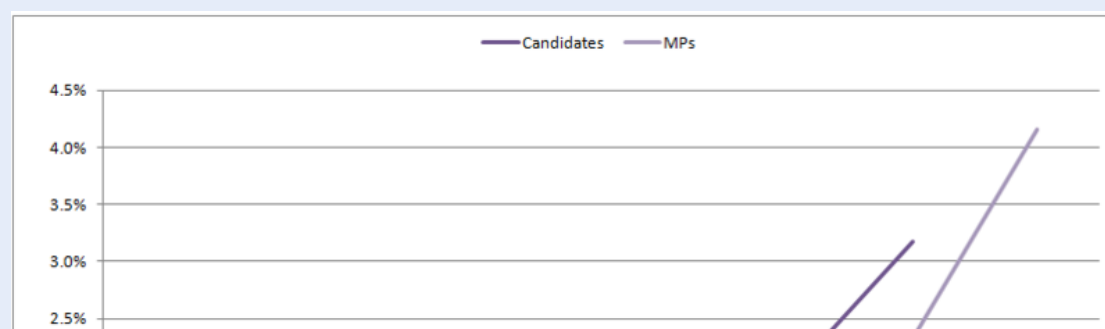
This lack of progress in increasing female representation in the Commons has left the UK lagging further and further behind comparable democracies. As Figure 2.1q shows, the doubling of female representation in the Commons in 1997 had served to bring the UK in line with the OECD average, and within touching distance of the EU average. However, the stagnation in the number of female MPs in the UK after 1997 prompted the gap to widen once more. By the late 2000s, the proportion of elected female parliamentarians in the UK was five percentage points below the OECD average, ten percentage points below the EU average and a full 20 percentage points adrift from the average for the Nordic countries.

The UK's deficit in female representation in parliament is likely to remain while the Commons continues to be elected on the basis of a majoritarian electoral system using single member constituencies. There is compelling international evidence that such electoral systems tend to result in a significantly smaller proportion of female candidates being selected and hence elected (Sawyer, 2010; Renwick, 2011). It is significant in this regard that the use of proportional and semi-proportional electoral systems for non-Westminster elections in the UK since the late 1990s has been associated with levels of female representation on a par with those achieved in the Nordic countries (see Section 3.2.3).

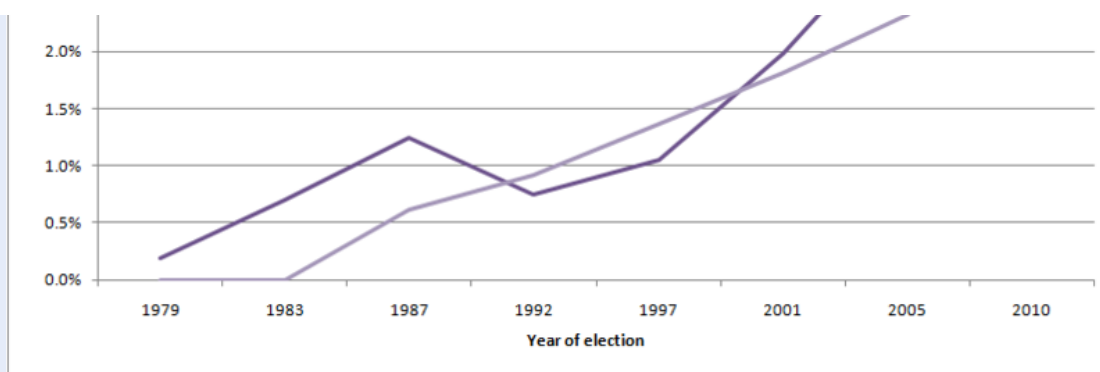
### ***Ethnic minority representation***

The ethnic minority share of Great Britain's population increased from a little over two per cent in 1971 to around eight per cent in 2001, owing largely to migration from the Caribbean, the Indian sub-continent, and Africa (Jeffries, 2005; [Lupton and Power, 2004](#)). This 'non-white' British population is highly unevenly distributed, with the vast majority of British Asian and Black British inhabitants residing in Greater London, Greater Manchester, and urban areas of West Yorkshire, the West Midlands and Lancashire ([Lupton and Power, 2004](#)). However, it has taken several decades for the social composition of the Commons to reflect this growth and geographical concentration of ethnic minority groups in the UK population. Aside from the three MPs of Indian heritage elected to the Commons between 1892 and 1929 ([Anwar, 2001](#)), there were no ethnic minority MPs elected until 1987, when Bernie Grant, Diane Abbot, Paul Boateng and Keith Vaz were elected as Labour candidates in seats with sizeable ethnic minority populations.

Figure 2.1r: Ethnic minority candidates and MPs, 1979-2010



## Democratic Audit



Sources: Rallings and Thrasher (2009); Smith Institute (2010).

The number of ethnic minority MPs has since grown steadily at each election since 1987, reaching a total of 27 following the 2010 general election. As such, the 2010 election may be regarded as being as much of a breakthrough in terms of ethnic minority representation in the Commons as 1997 was for female representation. Despite this evidence of progress, however, only four per cent of MPs are from an ethnic minority background, roughly half the level of ethnic minority representation in British society as a whole. Moreover, ethnic minority representation varies enormously across the three largest party groupings in the Commons. Eighteen of the current 27 MPs with an ethnic minority background represent Labour, nine are Conservatives and none are Liberal Democrats.

It is also evident that, as with female representation in the Commons, the principal barrier to securing greater ethnic minority representation has been the failure of the parties to recruit and/or select ethnic minority candidates, particularly in winnable seats. Figure 2.1r shows that the proportion of candidates from ethnic minority backgrounds was typically one per cent or less up until 1997. The growing efforts of the parties since the late 1990s to diversify their respective candidate bases is evident in the increase in the proportion of ethnic minority candidates from 2001 onwards (although we do not yet have data for 2010). It remains to be seen whether the parties can demonstrate more success in sustaining this progress than is evident in the case of women MPs.

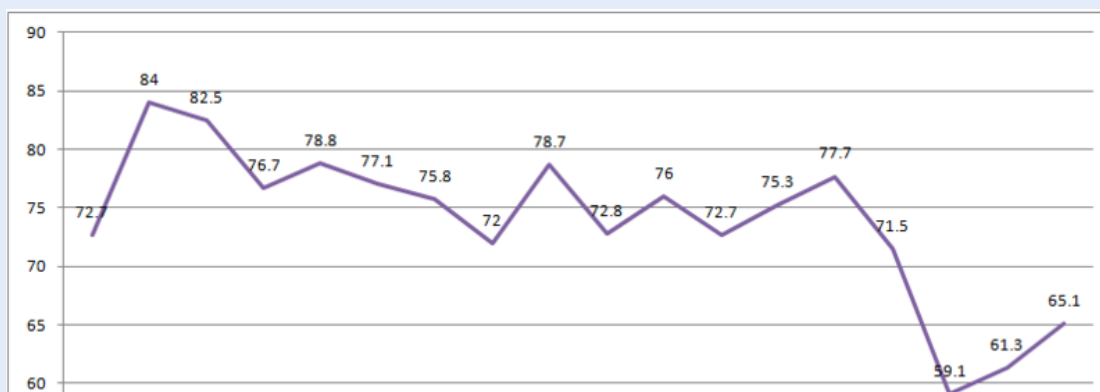
### 2.1.6 Public participation & confidence in elections

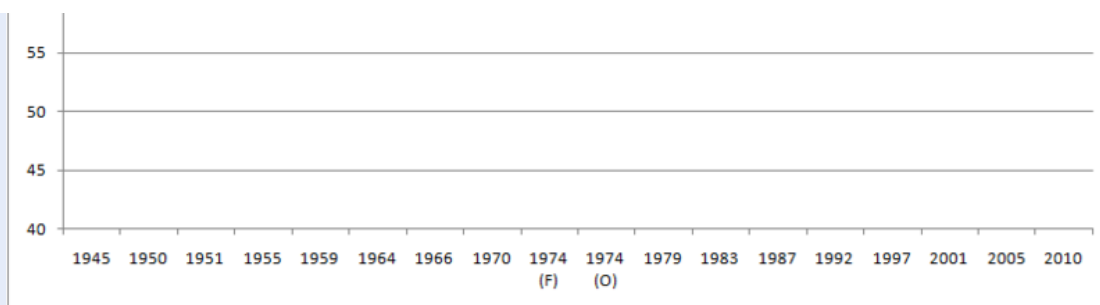
What proportion of the electorate votes, and how far are the election results accepted by all political forces in the country and outside?

#### *What proportion of the electorate votes?*

Turnouts in UK elections have declined dramatically in recent decades. As Figure 2.1s shows, general election turnouts from 1945 to 1992 typically fluctuated between 70 and 80 per cent, with a peak turnout of 84 per cent in 1950. In 1997, turnout dropped to 71.5 per cent, which although not substantially lower than at most elections since the mid-1960s, nonetheless represented a post-war low. This nadir was soon to be eclipsed, however, by the 59.1 per cent of registered electors who cast ballots at the 2001 general election. While turnouts began to recover from this low point, resulting in a modest two point increase in 2005 and a further four point increase in 2010, Figure 2.1s makes plain that the four lowest turnouts in post-war general elections have all been recorded since 1997.

Figure 2.1s: Turnouts at UK general elections, 1945-2010



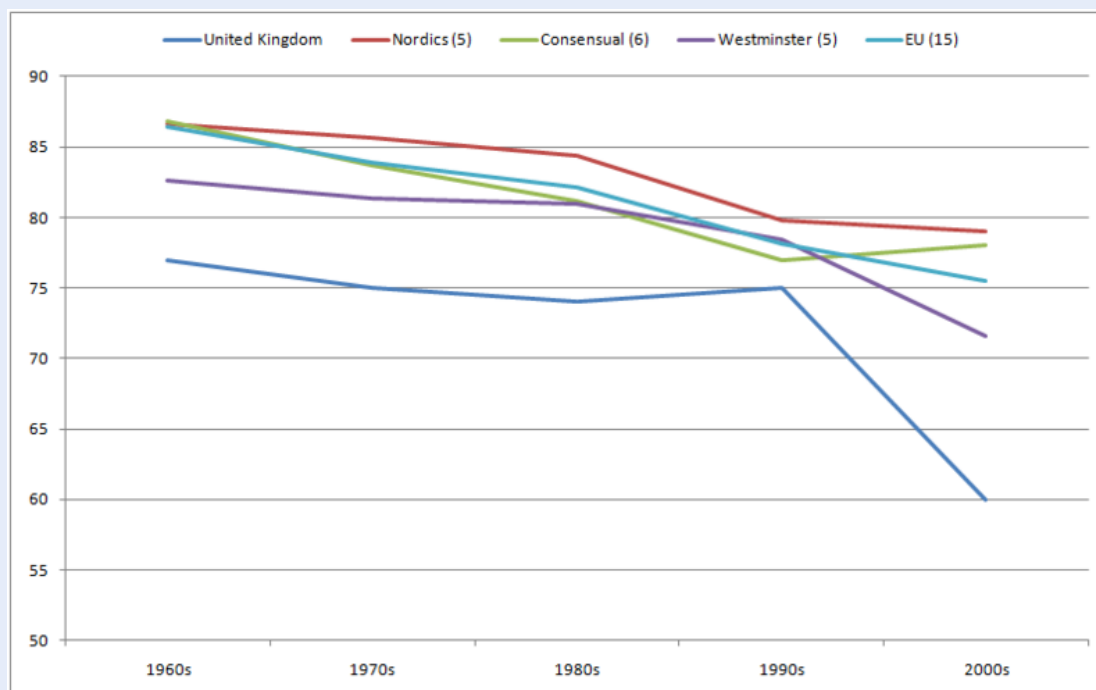


Note: Turnout at UK elections is measured by the number of votes cast divided by the number of entries on the electoral register. Given the observations made in Section 2.1.2, it should be noted that turnout figures measure only the registered electorate and take no account of eligible voters who are not registered. Conversely, it is likely that the electoral registers will contain a number of duplicate and inaccurate entries and, as such, may therefore slightly exaggerate the size of the registered electorate.

Source: Data from Rallings and Thrasher (2009).

While turnout figures from previous decades appear highly impressive in the current UK context, it is important to note that UK election turnouts have been significantly below the international average for most of the post-war period. As Figure 2.1t shows, throughout the 1960s, 1970s and 1980s, UK election turnouts were typically ten percentage points lower than in the Nordic countries and five to ten points below the average for Western Europe (EU15) as a whole. During the 1990s, there was a general decline in turnout internationally, at a time when UK turnouts remained stable, which prompted the UK's relative position to improve. Nonetheless, the UK remained close to the bottom of the international league table for election turnouts. As we noted in our 2002 Audit, the UK ranked 19th out of 25 European countries for turnout in national elections during the 1990s (Beetham et al., 2002). The trend since 2000, moreover, has been for UK election turnouts to fall far more sharply than elsewhere. As a consequence, the turnout 'gap' between the UK and other democracies now stands at around 15 percentage points compared to the West European average and almost 20 points when measured against the average for the Nordic countries.

Figure 2.1t: Turnout in parliamentary elections, UK and comparators, 1960s-2000s

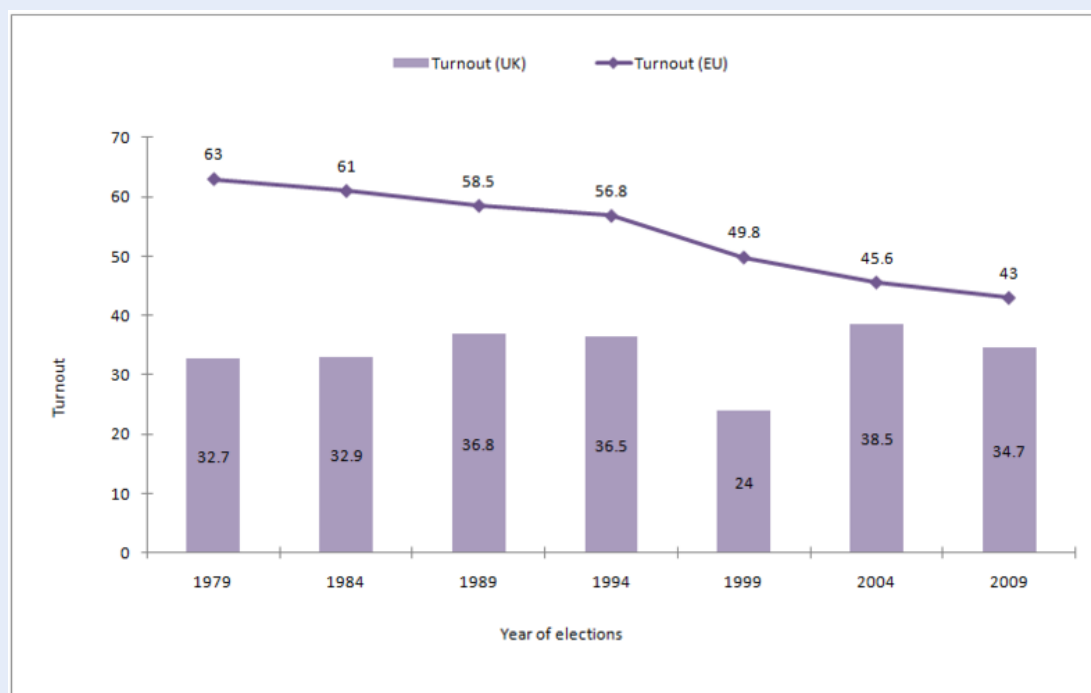


Note: See our methodological note for explanations of the 'consensual' and 'Westminster' categories and the countries contained in each group.

Source: [International IDEA Voter Turnout Database](#)

These patterns are replicated in sub-national elections. Turnouts in local, devolved or EU elections in the UK are typically about half those achieved in general elections. Figure 2.1u shows that about one-third of UK electors tend to vote in European parliament elections, and again highlights a clear difference in turnout between the UK and other European democracies. Once more, while the gap between the UK and the average EU turnout has narrowed over time, this has not resulted from any significant increase in levels of electoral participation in the UK. Rather, the graph shows a decline in the average EU turnout, much of which is accounted for by the low turnouts among the Eastern European states which joined the EU after 2004. Similar patterns are evident in relation to sub-national elections (see Section 3.3.2 for further discussion).

Figure 2.1u: Turnout in European parliament elections, 1979-2009



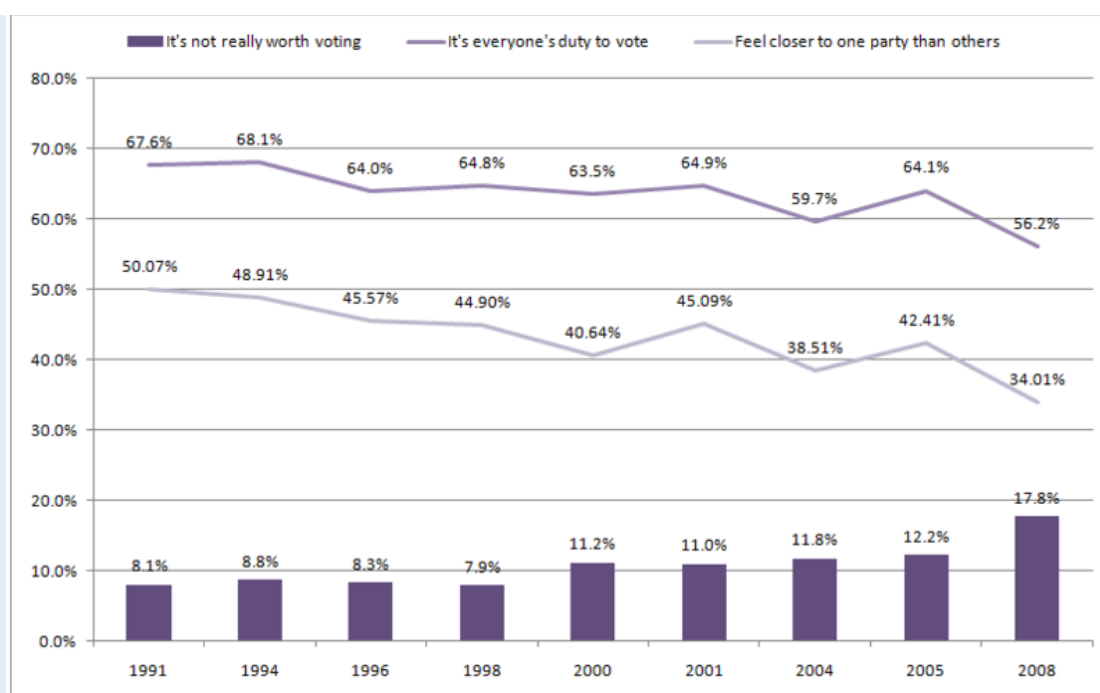
Source: [Mellows-Facer et al. \(2004, p. 12\)](#); [European Parliament \(2011\)](#).

Falling turnouts in the UK are therefore part of a wider trend towards declining electoral participation in established democracies (which are bucked only by the handful of countries which have adopted compulsory voting). Nonetheless, as we have seen, the fall in general election turnout in the UK has tended to be sharper than in most other established democracies, and this decline has occurred from a relatively low base. As such, the dramatic drop in electoral participation in the UK during the 2000s must be regarded as a matter of genuine concern.

A significant body of academic research has emerged which seeks to identify the factors influencing turnout, while politicians, civil servants and campaigners have made various proposals for initiatives which could reverse the decline in electoral participation.

Political scientists have identified a number of factors which are likely to be responsible for this decline in turnout (Denver, 2007; Heath, 2007; Pattie and Johnston, 2009). These factors include: a generalised loss of faith in representative democracy; a declining sense of civic duty about voting; falling levels of voter identification with political parties; and increased ideological convergence in the party system. All of these trends are apparent in the UK context. The British Social Attitudes survey shows a clear fall from 1991 to 2008 in the percentage of respondents saying that 'it is everyone's duty to vote' and a steady rise in those saying that 'it's not really worth voting' (see Figure 2.1v). The same source suggests that the proportion of voters who feel they are closer to one political party than the others has fallen over the same period, from one-half to one-third.

Figure 2.1v: Attitudes towards voting and identification with any political party, 1991-2008



Source: [British Social Attitudes](#).

Within the context of the overall decline in turnout, there is also growing evidence of greater differentials in electoral participation among voters from different social groups. The two most obvious factors influencing whether people vote are age and social class. Surveys conducted since the 1970s have consistently demonstrated higher levels of abstention among younger voters, while more recent surveys have found that those in professional and managerial occupations are significantly more likely to vote than those in manual occupations (Denver, 2007). Turnouts among different ethnic groups also vary significantly, with white British voters far more likely to vote than members of most ethnic minorities. While there is no significant gender divide, men are marginally more likely to vote than women (Ipsos MORI, 2005).

Surveys conducted during the last four general elections by the polling agency Ipsos MORI suggest that differences in turnout between different social groups is widening. Whereas turnout among those aged 65 and above was 28 percentage points higher than among those aged 18-24 in 1997, this differential had increased to 38 percentage points by 2005 (although a notable increase in turnout among younger voters served to reduce the gap to 32 points in 2010). Similarly, the difference in turnout between those in social classes AB and those in classes DE rose steadily from 13 to 19 percentage points in the period from 1997 to 2010.

Table 2.1d: Estimated turnout in general elections by social group, 1997-2010

	1997	2001	2005	2010
TOTAL	71	59	61	65
<i>Gender</i>				
Male	72	61	62	66
Female	70	58	61	64
<i>Age</i>				
18-24	51	39	37	44
25-34	64	46	48	55
35-44	73	59	61	66
45-54	79	65	64	69
55-64	80	69	71	73
65+	79	70	75	76



<i>Social class</i>				
AB	79	68	70	76
C1	75	60	62	66
C2	69	56	57	58
DE	66	53	54	57
<i>Ethnicity</i>				
White		60	62	n/a
Ethnic minority		47	47	n/a
Sources: <a href="#">Ipsos Mori (2010)</a> ; <a href="#">Ipsos Mori (1997)</a> ; <a href="#">Electoral Commission (2005)</a> .				

Efforts to reverse the pattern in declining turnout in UK elections since 1997 have not shown much evidence of success. The approach taken by Labour after 1997 was to promote new forms of 'remote' voting, essentially on the assumption that modernising elections to make voting more convenient would help to reverse the trend of declining electoral participation. However there was little or no research evidence to support this conclusion. Measures such as 'postal voting on demand' and experiments with various forms of electronic voting therefore unsurprisingly failed to demonstrate any potential to increase turnout. Rather, it would appear that remote voting mostly serves to provide a wider range of choices about how to vote to those electors who would almost certainly have voted anyway (Wilks-Heeg, 2008). If turnout in UK elections is to be increased, a much more far-reaching set of changes to the political system are likely to be required.

#### ***How far are the election results accepted by all political forces in the country and outside?***

The results of elections in the UK are rarely, if ever, called into question. With a tiny number of exceptions, election results tend to be universally accepted by the candidates and political parties contesting them. Thus, the principal legal mechanism for contesting an election outcome in a constituency - the election petition - is now rarely used, particularly compared to the mid-nineteenth century. Whereas election petitions were issued after every general election from 1832 to 1910, including 122 petitions following the 1852 election alone, three-quarters of post-war elections have seen no petitions issued and no general election since December 1910 has resulted in more than two constituency outcomes being challenged in this way (Rallings and Thrasher, 2009, p. 245). Meanwhile, electoral observation missions, first permitted at a UK general election in 2005, have not prompted international bodies or observers to question the validity of electoral outcomes ([OSCE/Office for Democratic Institutions and Human Rights, 2005](#); [OSCE/Office for Democratic Institutions and Human Rights, 2010](#); [Royal Commonwealth Society/Commonwealth Parliamentary Association, 2010](#)).

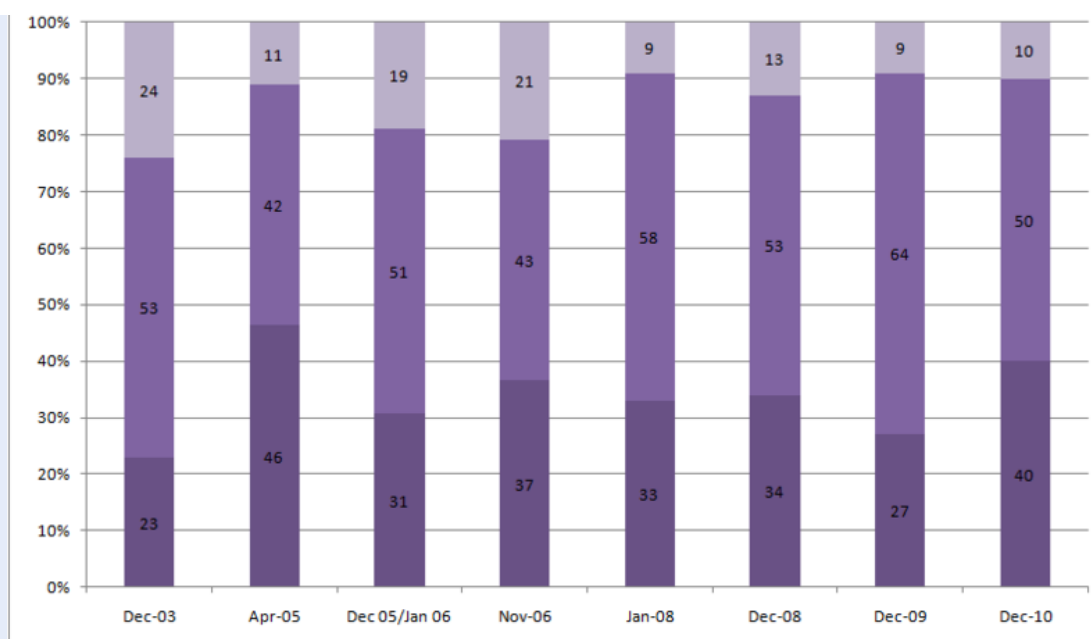
However, while election results in the UK are widely accepted, the developments highlighted in Section 2.1.2, relating to the strain being placed on systems of electoral administration and evidence of electoral fraud, do highlight some grounds for concern. The potential for fraud in UK elections is now clear and, even if it remains isolated, raises the spectre of very tight electoral outcomes being subject to the influence of organised malpractice. Indeed, following the 2010 general election, Conservative Party chair Baroness Warsi suggested, in an interview with the [New Statesman \(2010\)](#), that the outcome of the election in at least three seats had been determined by fraud and that the Conservatives may have been denied a majority as a result.

While there is no evidence at all to support Baroness Warsi's claims, the fact that a senior UK politician should make such a claim suggests that the presence of at least a degree of fraud at UK elections is now widely accepted idea. Such implicit acceptance is also reflected in the coalition government's *Programme for Government* which states: 'We will reduce electoral fraud by speeding up the implementation of individual voter registration' ([HM Government, 2010, p. 27](#)). A significant proportion of the UK population would also appear to share this view that electoral fraud represents a genuine problem. Figure 2.1w presents evidence from regular public opinion research carried out by the Electoral Commission since 2003. While the proportion of respondents who regard electoral fraud as a problem clearly fluctuates, the Commission's surveys point to anywhere between one-quarter and one-half of the population regarding electoral fraud as a 'big' or 'fairly big' problem from 2003 to 2010. Moreover, while public concern appeared to peak in 2005 (the year of the Birmingham judgment cited in Section 2.1.2), the figures for 2010 suggest that there has been no straightforward revival in public confidence that elections are free from fraud as a result of the reforms introduced in 2006.

Figure 2.1w: Public perception of the extent to which electoral fraud represents a problem, 2003-2010

■ Big or fairly big problem   ■ Not very big problem/no problem at all   ■ Don't Know

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Source: [ICM/the Electoral Commission \(2011, p. 12\)](#).

While election petitions have become extremely rare as a means of challenging general election results, the outcome of the 2010 contest in the Oldham East and Saddleworth constituency was successfully challenged in this way by the defeated Liberal Democrat candidate, Elwyn Watkins. In November 2010, an election court upheld Watkins' complaint that the winning candidate, Labour's Phil Woolas, had made false statements about him during the campaign (Woolas had issued leaflets alleging that Watkins had sought the support of Muslim extremists and had received illegal payments from an overseas donor). The court found Woolas guilty of 'the illegal practice of making a false statement about a candidate under Section 106 of the Representation of the People Act 1983', declaring the result void and triggering a by-election ([White, 2010, p. 3](#)). Although Watkins was defeated at the by-election by Debbie Abrahams (Labour), the judgment effectively sets a precedent for future results to be challenged in this way and is therefore likely to make future election candidates more cautious about any claims they make against their opponents.

## Conclusion

As with our previous Audits, this section has raised some serious concerns about the extent to which elections give the people control over governments and their policies in the UK. As we note, the UK political system still affords significant political roles to appointees, while the electoral system continues to produce disproportional results in which voter preferences are mistranslated into seats in the House of Commons. Neither are we able to point to much evidence of elections producing a more socially representative parliament. While the increase in the number of MPs from an ethnic minority background at the 2010 general election is encouraging, progress in moving towards a more equal gender balance in the House of Commons has clearly stalled since 1997. Nor are there many encouraging signs in relation to electoral participation - the lowest post-war general election turnouts have all been recorded since 1997, and levels of electoral registration also appear to have slumped.

Our 2011 Audit also points to a number of emerging, or previously unidentified, concerns. In particular, we have identified clear problems associated with the basic mechanics of UK elections, as well as concerns about the guaranteeing of electoral integrity. We would concur with the views of the AEA and the Electoral Commission that urgent measures are required to ensure that electoral administration in the UK remains 'fit for purpose'. We would also endorse the views of the team of election observers from Commonwealth countries who noted that, while a culture of trust and honesty had been a 'sufficient anchor' for past UK elections, there are now clear grounds for adding additional controls on the basis that 'while the system is not corrupted it is certainly *corruptible*' ([RCS/CPA, 2010](#)).

Finally, it is important to consider all of the findings above in relation to some of the overarching concerns identified in this Audit - widening political and social inequality, and evidence of growing corporate power. That electoral participation is not declining equally among all social groups comes as no surprise given the growing gap between social classes across all forms of political participation which we chart in Section [3.2](#). Rather more difficult to measure, but just as fundamental, is our concern that broader changes in UK politics have served to reduce the scope of elections to give people control over governments and their policies. Democratic elections are rooted in the principle that 'everyone counts for one and none for more than one' (Beetham, 2011). Not only does the evidence presented in this section highlight

doubts about whether the UK's electoral system realises this in practice, but our broader analysis suggests that power in the political process increasingly resides with elites rather than with electors.

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## 2.2. Democratic role of political parties

### Executive Summary

This chapter reviews the available evidence relating to the five 'search questions' concerned with the democratic role of political parties in the UK.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concerns; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Party campaigns are reaching more voters.**

Survey data suggests that political parties are reaching more voters through campaigning than they were in 1979. There are clear long-term increases in the proportion of the electorate claiming to have received a leaflet from a political party, as well as in the percentage who have seen party advertising on billboards (see Figure [2.2e](#)). However, it is almost certain that this apparent success in reaching more voters at election time is a by-product of record levels of election spending by political parties from the late 1980s onwards - a development which we highlight in Section [2.1.3](#) as a significant concern. (For further details and discussion, see Section [2.2.1](#))

##### **2. The party system has, so far, adapted to coalition government.**

Until very recently, the UK party system could be described as being overly-effective in producing and sustaining single-party governments which ensured executive dominance on the back of a minority of the votes cast. The formation of a coalition government in 2010 clearly bucks this trend and, to date, the experience suggests that governmental stability and parliamentary assertiveness can co-exist in the UK political context. (For further details and discussion, see Section [2.2.2](#))

### **3. Experiments with 'open primaries' are encouraging.**

Limited Conservative Party experiments with 'open primaries' to select parliamentary candidates suggest that it may be possible for political parties to both broaden the 'selectorate' and promote the adoption of more female candidates in winnable seats. However, the use of genuinely open primaries, in which all registered electors are able to participate, remains extremely limited and the cost of such exercises (around £40,000 each) represents a significant barrier. (For further details and discussion, see Section [2.2.3](#))

### **4. Membership of smaller parties grew during the 2000s.**

The Greens, the SNP and the BNP all gained members from 2003-2009, and there were clear surges in the membership of both UKIP and Respect in the mid-2000s (see Table [2.2c](#)). However, while the rise in membership levels among smaller parties reflects their growing significance in the UK political system, the numbers concerned are nowhere near sufficient to compensate for the declining membership of the two main parties. Moreover, it is clearly questionable whether a growth in membership of extremist parties such as the BNP is anything to celebrate. (For further details and discussion, see Section [2.2.3](#))

## ***(b) Areas of continuing concern***

### **1. The main UK political parties are still losing members.**

Membership of political parties in the UK continues to decline and both Labour and the Conservatives have lost roughly 100,000 members each over the past decade. Whereas around three million people were members of political parties in the 1960s, the combined membership of all UK political parties had fallen to about 0.5 million by 2010. The share of the UK electorate belonging to a political party (roughly 1-2 per cent) also ranks among the lowest in Europe. (For further details and discussion, see Section [2.2.3](#))

### **2. Levels of party activism are dwindling.**

Levels of party activism appear to have declined in parallel with levels of party membership. While the evidence is somewhat sketchy, it seems evident that party activists are an increasingly rare breed. Available estimates suggest that, in the average parliamentary constituency, election campaigns and other forms of party politics are sustained by no more than a few hundred party activists drawn from across all political parties. (For further details and discussion, see Section [2.2.3](#))

### **3. Internal party democracy remains weak.**

Although there are considerable variations between political parties in the extent to which they are internally democratic, there are few signs of the larger parties allowing members more say in the development of party policy. Indeed, there is evidence to suggest that apparently 'democratising' reforms may have increased the power of party leaders and/or parliamentary parties at the expense of ordinary members. (For further details and discussion, see Section [2.2.3](#))

### **4. The main parties remain over-reliant on big donations.**

The main political parties continue to be heavily reliant on large donations for their funding and there is a steady stream of accusations regarding links between big donations and specific policy decisions and/or the awarding of honours. Although claims of corruption or impropriety are rarely proven, concerns about the influence of big donors on political parties are now widely-held and clearly impact negatively on public confidence in politics more widely. (For further details and discussion, see Section [2.2.4](#))

### **5. The religious divide in the Northern Ireland party system persists.**

Despite the success of power-sharing at an elite level in Northern Ireland, the religious/ethnic divide in the province remains deeply entrenched in patterns of support for its two rival political blocs. With little evidence of support for political parties in Northern Ireland bridging this fundamental social cleavage, there is a risk that the non-sectarian impulse will simply result in dwindling turnouts. (For further details and discussion, see Section [2.2.5](#))

## ***(c) Areas of new or emerging concern***

### **1. Rules on deposits are penalising smaller parties.**

There have been more than 1,000 lost deposits at every general election since 1997. The 1,873 deposits forfeited in 2010, which had a combined total value of almost £1 million, constituted an all-time record. The principal reason for this growth in the number of lost deposits



is the rise in the number of candidates standing for smaller parties, which are especially disadvantaged by the way in which requirements for deposits combine with the electoral system to protect the interests of the largest parties. In 2010, 56 per cent of lost deposits, by value, were accounted for by candidates from UKIP, the Greens and the BNP. (For further details and discussion, see Section [2.2.1](#) and also Section [2.1.3](#))

### **2. Parties may need to adapt further to coalition politics.**

While the experience of coalition government in the UK to date has offered proof of its viability at an elite level, the more serious test will be whether the UK's political parties and party system will be able to adapt to it over the longer-term. Should 'hung parliaments' become the norm, as long-term trends in voting behaviour suggest, the political parties will need to adjust further in order to ensure stable government. (For further details and discussion, see Section [2.2.2](#))

## Introduction

It is very difficult to conceive of representative democracy without political parties. Indeed, political scientists generally concur that if political parties did not exist, we would almost certainly have to invent them (Beetham, 2005). In academic writing, the core functions of political parties in a democracy are clearly defined. Political parties aggregate and weigh-up competing demands from civil society to formulate policy proposals and programmes, and compete at elections to secure a mandate from the electorate to implement their respective programmes. This inter-party competition at elections also offers the best guarantee that effective (whether single party or coalition) governments can be formed and are held to account by an effective opposition. In short, political parties are essential to representative democracy because they provide the link between free civil society and effective, accountable government.

In recognition of their functions, virtually all established democracies, the UK included, grant extensive freedoms to political parties to recruit members, engage with the public and campaign for office. Despite such freedoms, however, political parties are in many ways the weak link in the chain between the electorate and the political system. Indeed, the role of political parties in mature democracies tends to be characterised by some clear, and widely noted, paradoxes. First, while political parties are deemed a democratic necessity by political scientists, they also tend to be deeply unpopular with voters. UK party membership and activism have declined dramatically in recent decades, as has popular identification with, and faith in, political parties. Today, not even the largest two parties can boast an extensive membership base, or claim to be engaging directly with substantial proportions of the public, even at election time.

Second, while they theoretically represent the interface between civil society and government, political parties risk becoming increasingly detached from the grassroots as they seek to centralise and modernise their operations, and as their affairs become interdependent with the activities of the state and the media. Increasingly, the large parties have moved towards a more capital-intensive and professionalised approach to policy development, media management and campaigning operations. Underpinning these changes in party activity has been a parallel shift in their resourcing, which increasingly comes from a combination of large donations, loans and various forms of state support ([Wilks-Heeg and Crone, 2010a](#)).

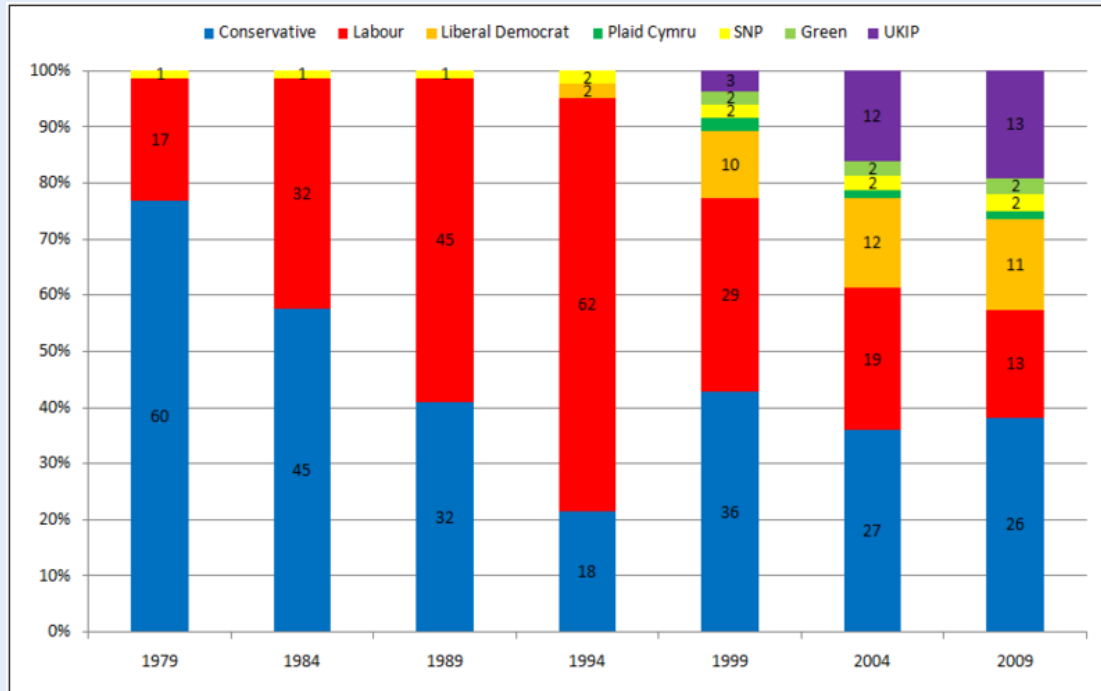
In past Audits, our analysis of the role of political parties in UK democracy has reflected the concerns alluded to above. In particular, we have underlined how the party system and the electoral system interact in the UK to sustain the dominance of the two main parties, despite their diminishing levels of popular support, whether measured by membership levels or votes cast at the ballot box. We have also highlighted the persistence of party funding controversies arising from the main parties' reliance on large donations and have made the case for far-reaching reforms in this area. These concerns continue to dominate the findings of our 2012 Audit, which shows that membership of the two largest parties is continuing to fall and that their dependency on 'big money' is more pronounced than ever. Moreover, while declining party membership and a loss of faith in political parties are common features of established democracies, we present statistical evidence to suggest that the UK ranks poorly on such measures when compared to its European neighbours.

Our 2002 Audit did note some modest improvements in internal party democracy, in particular the granting of a greater say to members in the election of a party leader. We also welcomed the measures contained in the Political Parties, Elections and Referendums Act 2000, which introduced greater regulation of political parties, including a requirement to declare the source of large donations. However, in pinpointing these examples of reform, we also added significant caveats in each instance. We noted how reforms claiming to enhance internal party democracy often showed signs of creating greater centralisation within parties and of increasing the influence of party leaders. The evidence presented in this Audit echoes and adds weight to this assessment, and also points to the possibility that even the Liberal Democrats may be less internally democratic than is generally supposed. Likewise, our earlier assessment that greater transparency alone would not be sufficient to tackle widespread concerns about impropriety in party funding arrangements has proved well-founded; if anything, greater transparency has only served to ensure that party controversies flare up even more regularly.

### ***A changing party system***

Since our last Audit in 2002, there have been some profound changes in the UK party system. The declining support for the two main parties in Westminster elections (documented in Section 2.1.4) and the continued distinctiveness of party politics in Northern Ireland (see Section 2.2.5) are only part of this story. Following the introduction of a more proportional list systems for European elections in Great Britain after 1999, smaller parties have significantly increased their representation. As Figure 2.2a shows, clear two-party dominance in European elections in Great Britain has given way to multi-party representation, with seven British parties now having at least one MEP.

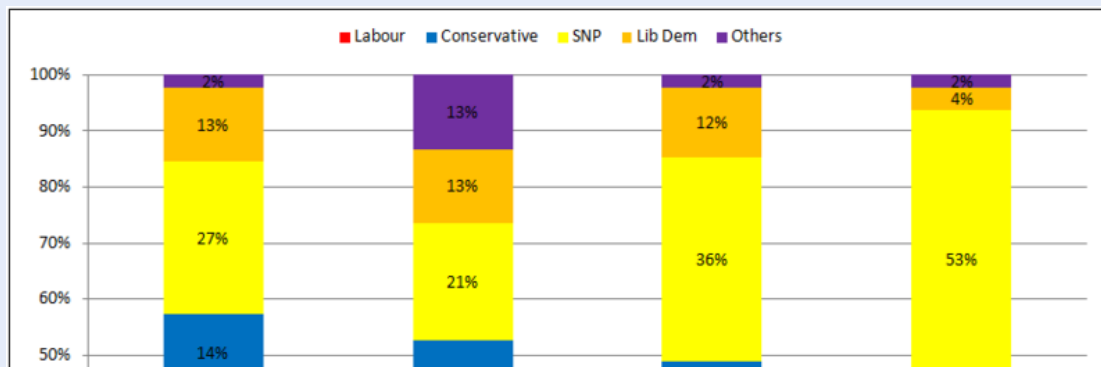
Figure 2.2a: Share of the seats gained, by party, in elections to the European parliament, Great Britain, 1979-2009



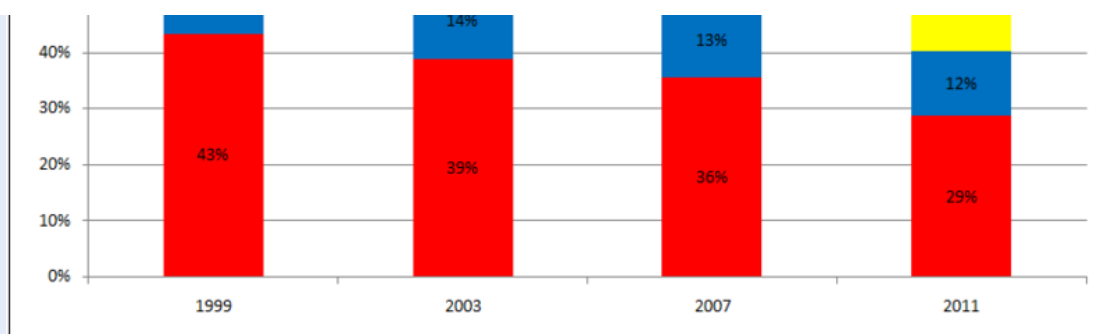
Sources: Derived from Rallings and Thrasher (2009); [BBC News \(2009\)](#)

Similar patterns are evident with devolved elections held under the additional member system (AMS) in Scotland and Wales since 1999. The success of the Scottish National Party (SNP) in securing sufficient electoral support to form a minority Scottish government in 2007 and, subsequently, a majority administration in 2011, is the most dramatic illustration of the changing party system. Figure 2.2a, which shows the distribution of seats in the Scottish parliament underlines that Scotland not only has a multi-party system but also that, over four sets of elections, a 'small' party has overtaken the others to become clearly dominant. In Wales, meanwhile, multi-party politics is just as evident, as illustrated by the share of the seats gained by the parties in the Welsh assembly (see Figure 2.2b). While Plaid Cymru has not been able to match the performance of the SNP, it has emerged as the second largest party at three out of four sets of elections to the Welsh assembly.

Figure 2.2b: Share of the seats gained, by party, following elections to the Scottish parliament, 1999-2011

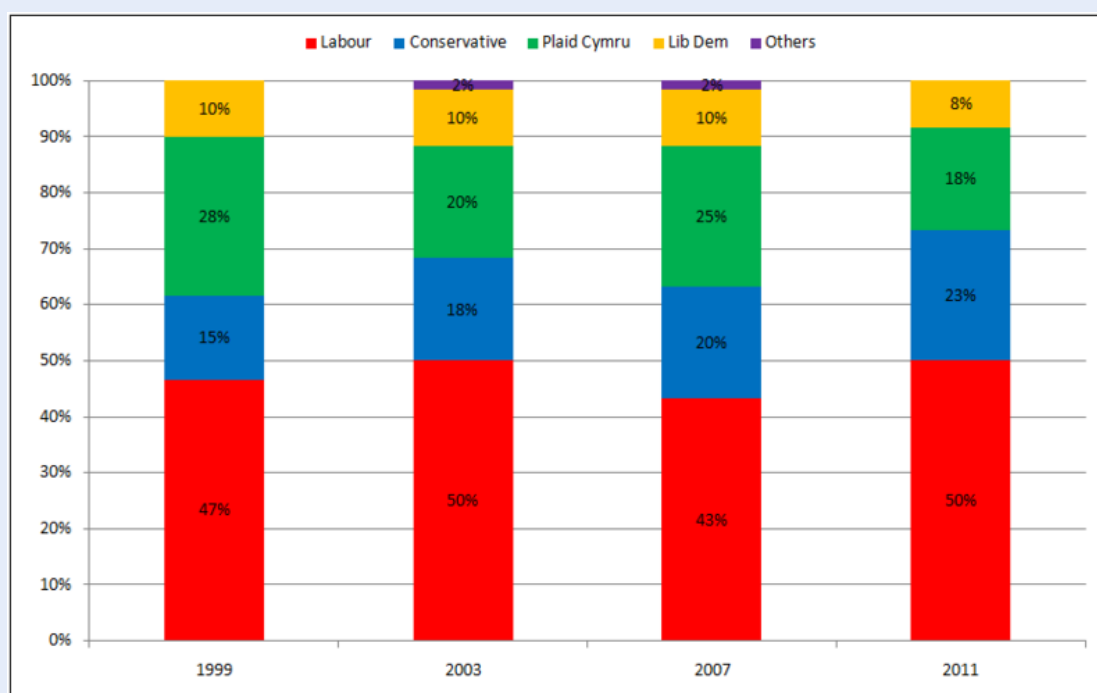


## Democratic Audit



Sources: Driver (2011, p. 182); [BBC News \(2011a\)](#)

Figure 2.2c: Share of the seats gained, by party, following elections to the Welsh assembly, 1999-2011



Sources: Driver (2011, p. 184); [BBC News \(2011b\)](#)

In light of these developments in the party system, this Audit gives greater consideration to smaller parties than was the case in our previous studies. While smaller parties remain understudied by UK political scientists, and the evidence base relating to smaller parties is therefore limited, we identify a number of important contrasts between the main two parties and some of their smaller rivals. Indeed, where we find modest signs of encouragement about the democratic role of political parties in this Audit, it is generally with reference to the smaller parties. In particular, the SNP, UKIP and the Greens have all been able to recruit significant numbers of additional members over the past 10 years, while the SNP, Plaid Cymru and the Greens appear to exhibit a much greater degree of internal party democracy than the two main parties. There are also some possible signs of devolution providing a counterweight to the recent centralisation of UK political parties, a development which may have significant implications for internal party democracy in the main two parties in future.

### 2.2.1 Forming parties and campaigning

How freely are parties able to form and recruit members, engage with the public and campaign for office?

There are few, if any, legal barriers to the formation of political parties in the UK or measures which formally restrict the capacity of parties to recruit members, engage with the public, or campaign for office. Despite such freedoms, however, UK democracy cannot be said to be

characterised by pluralistic competition between multiple political parties which command widespread popular support among the electorate. Indeed, while there is remarkable pluralism in the number of political parties in the UK and in the political positions which they adopt, UK politics continues to be dominated by two large parties.

### ***Forming parties and recruiting members***

We noted in our last Audit in 2002 that the Political Parties, Elections and Referendums Act 2000 had introduced new forms of state regulation to party politics - an area which had previously been characterised by a remarkably laissez-faire approach. Under the act, all political parties intending to stand candidates for elections in the UK must register with the Electoral Commission and adhere to a regulatory framework, particularly with regard to income and expenditure see (Case Study 2.2a for details).

#### **Case Study 2.2a: Registering a political party in the UK**

Since 2000, any political party wishing to contest elections in the UK has been required to register their name and contact details with the Electoral Commission, together with the names and contact details of the party leader, nominating officer and treasurer. The registration process also requires a party to submit a copy of its constitution, evidence that it has financial systems in place adequate to the task of complying with legal regulations covering party finances, and details of any accounting units within the party. Registered parties also have the option to register up to twelve short party descriptions and a party emblem. There are separate registers for Great Britain and Northern Ireland.

The registration process presents no significant barrier to the formation of a party. Registration is relatively straightforward, supported by extensive EC guidance written in 'plain English' and is also inexpensive (the one-off registration fee is currently £150). Indeed, the relative ease of registering a political party is reflected in the number of parties currently registered and the level of turnover on the register. As of 15 February 2011, there were 381 parties registered in Great Britain and 43 in Northern Ireland, while a further 450 parties have also been either deregistered (statutorily or voluntarily) or renamed in the period from 2002-10.

The ease of registration, and the lack of any significant legal barriers to forming a party, is also evidenced by the diversity of registered parties. The range of political positions represented by the UK's registered political parties extends from the far left (e.g. Workers Revolutionary Party, Socialist Labour Party, Communist Party of Britain) to the extreme right (the National Front, the British National Party). The existence of both a wide range of 'single issue' parties (e.g. Reduce Tax on Beer, Pirate Party UK) and a large number of parties with a highly localised focus (e.g. 1st 4 Kirkby, Barlborough First, Sutton on Sea First) is also highly evident.

The growing number of specifically 'local' parties standing candidates in local elections is an especially significant trend. A total of 141 parties stood candidates in the May 2007 English local elections, for instance, with the great majority of these comprising what [Sloan \(2010\)](#) describes as either local 'micro' parties (standing candidates in several wards in a single local authority) or local 'nano' parties (standing a candidate or candidates in a single ward).

Similar patterns are evident in general elections. While only ten political parties are currently represented in the House of Commons, a total of 135 parties fielded candidates at the 2010 general election (compared to 119 in 2005). Some 108 of these 135 parties (80 per cent) contested fewer than ten constituencies. By contrast, only seven parties (five per cent) contested more than 100 of the 632 constituencies in Great Britain. As at previous elections, three parties - the Conservatives, Labour and the Liberal Democrats - contested every seat in Great Britain (with the exception, by convention, of the seat held by the speaker of the Commons - Buckingham in 2010). The next largest party, the UK Independence Party, stood in 558 constituencies, while the British National Party (BNP) fielded 338 candidates and the Green Party 335. The Scottish National Party and Plaid Cymru contested every seat in Scotland and Wales respectively.

There are very few restrictions on the membership of political parties in the UK. The most obvious instances have occurred in relation to political parties adjudged by the authorities to be 'extreme'. As we noted in our 2002 Audit, post-war governments banned members of the Communist Party of Great Britain from working in areas associated with state security. More recently, members of the BNP have been banned from serving as police officers and staff, or as employees of the Prison Service or the Church of England (Goodwin, 2011). Calls for members of the BNP to be banned from a variety of other professions, including teaching, probation and the civil service, have not resulted in any further restrictions, although as Goodwin (2011, p. 139) notes 'individuals who have represented that party in elections have been sacked, expelled from unions or urged to resign'.

Of course, neither the freedom of parties to recruit members nor the enormous plurality of political parties registered in the UK offer any guarantee of mass party membership. In fact, levels of party membership have been declining sharply for several decades - as is detailed

in Section [2.2.3](#).

### ***Engaging with the public and campaigning for office***

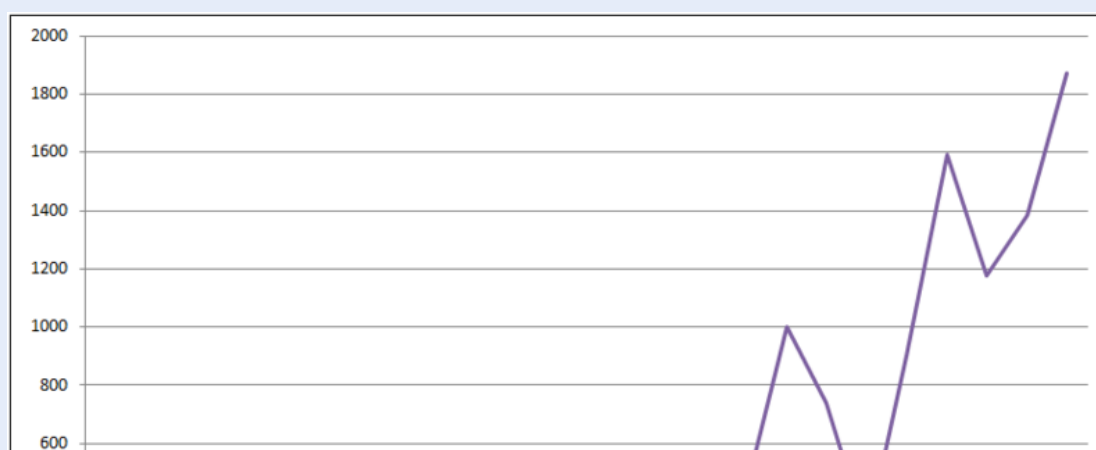
There are very few restrictions on the freedom of UK political parties to engage with the public or campaign for office. Indeed, political parties contesting elections are provided with various forms of in-kind support to facilitate such activity. As detailed in Section [2.1.3](#), such support includes a freepost allowance to distribute election leaflets, free use of public buildings to hold public meetings and, for qualifying parties, free broadcasting time on radio and television. The principles and practices governing the access of UK political parties to the broadcast media, highly significant as a means of engaging voters and campaigning for office, are considered in Section [2.1.3](#). In this section, we largely restrict our discussion to two specific issues. First, we highlight past instances where media access has been restricted, either by the state or by journalists, for political parties judged to be 'extreme'. Second, we identify the requirement for candidates to pay deposits when standing for elections as a potentially significant financial barrier for smaller political parties seeking to contest elections.

During the 1980s, the access of Sinn Féin to the media became the subject of controversy between the Thatcher governments and the broadcasters, particularly following Thatcher's (1985) speech declaring that 'we must try to find ways to starve the terrorist and the hijacker of the oxygen of publicity' ([Edgerton, 1996](#)). Subsequently, a directive was issued to broadcasters by home secretary Douglas Hurd in October 1988 'banning the spoken words of anyone representing any of eleven republican or loyalist paramilitary or political organizations', including Sinn Féin ([Edgerton, 1996, p. 123](#)). Described at the time by Liberal Democrat leader, Paddy Ashdown, as 'potentially dangerous, likely unworkable, and almost certainly ineffective' ([Edgerton, 1996, p. 123](#)), there was initial evidence to suggest that the ban resulted in significant 'self-censorship' by journalists ([Maloney, 1991](#)). However, changes within the Irish Republican movement from the early 1990s onwards were to result in a significant increase in Sinn Féin's media coverage, in the print and broadcast media, and the ban was subsequently lifted, in 1994, following an IRA ceasefire ([Lago, 2000](#)).

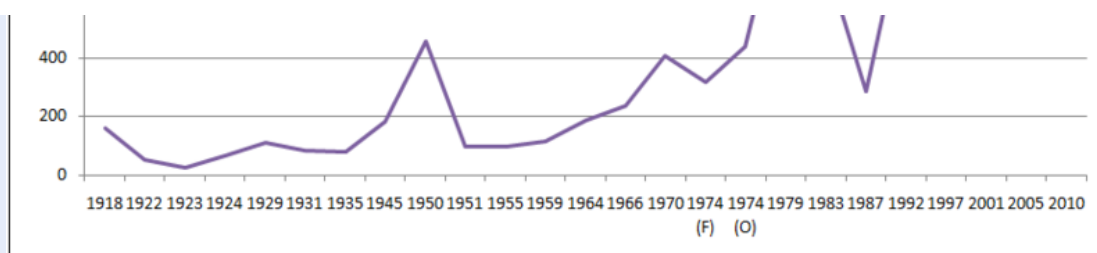
The access of far-right parties such as the BNP to the mass media has also been a significant issue. Although no official ban has even been in place, the 'no platform' policy of the National Union of Journalists severely restricted the access which representatives of far-right parties had to the media for several decades. However, by the early 2000s the 'no platform' policy became increasingly difficult to sustain, due to the election of BNP councillors in a number of local authorities and the party's use of the internet to communicate its views. Between 2001 and 2007, the BNP leader, Nick Griffin, appeared three times on Newsnight and twice on BBC Radio 4's flagship Today programme in June 2003 ([Wilks-Heeg, 2009](#)). The party's media access widened further following the election of two BNP candidates, including Griffin, to the European parliament in 2009, which ultimately resulted in Griffin's controversial appearance on the BBC's Question Time in October 2009 (Goodwin, 2011, p. 98).

As was noted in Section [2.1.3](#), candidates standing at a general election are required to pay a deposit of £500, which is refunded if they secure 5 per cent or more of the votes cast. The number of deposits forfeited at general elections has shown a clear tendency to increase over the last century. Figure 2.2d shows that, with the exception of 1950, when the Liberal vote was squeezed dramatically, fewer than 200 deposits were typically lost at elections from 1918-64. Changes in the party system during the 1970s then prompted a sharp increase in lost deposits, leading to a review of the arrangements after the 1983 general election, when 1,000 candidates lost their deposits. After 1985, the value of the deposit was increased from £150 to the current £500, but the threshold which candidates needed to cross to retain their deposit was reduced from 12.5 to 5 per cent of the (valid) votes cast. While these changes prompted the number of lost deposits to fall dramatically to 289 at the 1987 general election, the impact proved to be short-lived. There have been more than 1,000 lost deposits at every general election since 1997, and the 1,873 deposits forfeited in 2010 constituted an all-time record.

Figure 2.2d: Number of lost deposits at general election, 1918-2010.



## Democratic Audit



Sources: Data from: Rallings and Thrasher (2009, p. 74); [Cracknell \(2010, pp. 12-13\)](#).

The principal reason for this growth in the number of lost deposits is the rise in the number of candidates standing for smaller parties. In 2010, 458 out of 558 UK Independence Party (UKIP) candidates lost their deposits, as did 327 of the 335 Green Party candidates and 267 of the 335 British National Party (BNP) candidates. The total value of lost deposits in 2010 was almost £1 million, 0.4 per cent of which was accounted for by the three largest parties, but 56 per cent by candidates from UKIP, the Greens and the BNP as the three next largest UK-wide parties.

Table 2.2a: Number and value of lost deposits, by party, 2010 general election (ranked by value of deposits lost)

Party	Seats contested	Deposits lost	Value of lost deposits
UKIP	558	458	£229,000
Greens	335	327	£163,500
BNP	339	267	£133,500
English Democrats	104	103	£51,500
Christian Party	67	67	£33,500
Labour	631	5	£2,500
Conservative	631	2	£1,000
Liberal Democrat	631	0	£0
Others (127)	N/a	644	£322,000
<b>Total</b>	---	<b>1873</b>	<b>£936,500</b>

Source: Derived from [Cracknell \(2010, pp. 12-13\)](#).

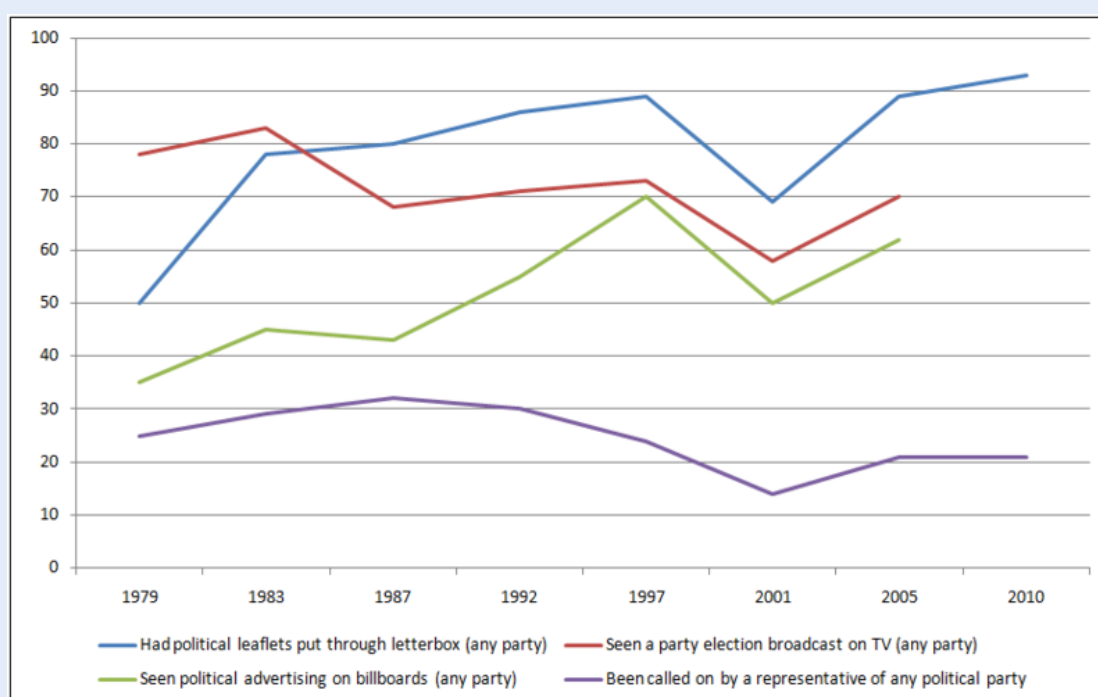
It should, of course, be noted that the £500 deposit entitles the candidate to a freepost allowance (see Section [2.1.3](#)), the notional value of which will run to tens of thousands of pounds in the average constituency. Moreover, some may regard deposits as an effective means of preventing 'extremist' parties such as the BNP gaining a foothold in British politics. However, in both instances, it is important to examine the long-run trends in lost deposits alongside wider changes in the party system. There is clear evidence of the emergence, albeit suppressed, of a multi-party system in the UK in recent decades (see Section [2.1.4](#)). The current rules about deposits for general elections clearly have a disproportional impact on smaller parties - not least because of how they operate in concert with the electoral system to protect the interests of the largest parties. At nine general elections since 1974, the Green (previously Ecology) Party has paid out a total of over £800,000 in lost deposits, measured in 2009-10 prices. UKIP, which secured 3 per cent of the UK vote in 2010, has forfeited almost £900,000 (again measured in current prices) in lost deposits since 1997.

The volume and value of lost deposits aside, growing concern has been expressed in recent years about the capacity of UK political parties to engage with the electorate. While the capacity of parties to engage is evidently a distinct issue from their freedom to do so, the issue clearly merits attention. As we note in Section [2.2.3](#), the principal political parties face declining levels of membership and activism, while the operation of the electoral system has prompted them to focus their campaigning activity on a handful of marginal seats at general elections. The decline of local political parties, in particular, points to a virtual absence of campaigning by even the largest two parties in many local elections, and even in some parliamentary contests (Wilks-Heeg and Clayton, 2006; [Wilks-Heeg, 2010a](#); [Wilks-Heeg, 2010b](#)).

These issues, which also reflect deeper patterns of change in the internal organisation of political parties, as well as the organisational strategies which they adopt, are considered in more detail in Section [2.2.3](#).

Despite these concerns about local parties, survey data since 1979 suggests no straightforward decline in the reach of election campaigning by political parties at general elections. Figure 2.2e summarises data on four forms of 'campaign penetration' collected from Ipsos MORI surveys since 1979. These figures reveal no long-term decline in the extent to which political parties are engaging the electorate (although a dip in the reach of all forms of communication is evident at the lacklustre election of 2001). If anything, the MORI data suggests that political parties are reaching more voters through campaigning than they were in 1979. Whereas only half of those surveyed during the 1979 campaign recalled receiving a leaflet from a political party, the figure had risen to 93 per cent in 2010. There is a similar overall increase in the proportion of voters reporting that they had seen party advertising on billboards - from 35 per cent in 1979 to 62 per cent in 2005 (data for 2010 is not available). Admittedly, there is a gradual long-term decline in the proportion of the population watching party election broadcasts, from 78 per cent in 1979 to 70 per cent in 2005. Yet it should be added that three-quarters of those surveyed in 2010 claimed to have watched at least one of the leaders' debates. Even the proportion of voters saying they have been called on by a party representative during the campaign has not declined significantly.

Figure 2.2e: Campaign penetration at general elections, 1979-2005/2010.



Source: [Ipsos MORI \(2010\)](#)

That political parties have been able to sustain, and possibly even increase, their campaign presence despite being faced with a declining membership and activist base reflects a long-run shift towards more professionalised and more costly forms of campaigning. Indeed, it is no coincidence that the 2001 general election saw both a sharp fall in spending by political parties and a clear decline in the contacts with political parties reported by voters. This shift towards new forms of campaigning has important implications for the ways in which contemporary political parties are both managed and financed (see Sections [2.2.3](#) and [2.2.4](#) respectively).

## 2.2.2 Forming and sustaining governments

How effective is the party system in forming and sustaining governments in office?

In our 2002 Audit, we described the UK's two-party system as 'formidably effective in forming and sustaining governments in office', pointing to only two brief periods of instability in the mid-1970s and the mid-1990s (Beetham et al., 2002, p. 109). Indeed, in light of wider evidence of executive dominance, we previously took the view that the UK system was in many ways 'too effective' at forming single-party governments. As we note in Section [2.1.4](#), from 1979 onwards, electoral landslides became commonplace on vote shares of 43 per cent or below. Until recently, powerful, single-party governments, opposed by a clear majority of the electorate, and with limited accountability to



parliament had appeared to become the norm.

As Table 2.2a shows, of the eight elections fought from October 1974 to 2005, four resulted in government majorities of 100 or more (the Conservative landslides of 1983 and 1987; and the Labour landslides of 1997 and 2001). Only one election in this period resulted in a majority of less than 40 (the Conservative Party's fourth-term victory in 1992). The average government majority from October 1974 to 2005 was 90 and the average length of parliaments in this period was 4 years 5 months.

By contrast, only one election from 1945-70 - the Labour landslide of 1945 - resulted in a three digit government majority (although the Conservatives did gain a 99 seat majority in 1959). During this period, four elections resulted in majorities of less than 40, with the single digit majorities of 1950 and 1964 prompting fresh elections to be called within two years. In this period of clear two-party dominance, the average government majority was 58 and the average length of a parliament was 3 years 6 months.

**Table 2.2b: The length of post-war parliaments**

<i>Date of General Election</i>	<i>Size of majority</i>	<i>Government</i>	<i>Length of Parliament</i>
Thursday 4 July 1945	147	Labour	4 years 4 months
Thursday 23 February 1950	6	Labour	1 year 8 months
Thursday 25 October 1951	16	Conservative	3 years 7 months
Thursday 26 May 1955	59	Conservative	4 years 4 months
Thursday 8 October 1959	99	Conservative	5 years
Thursday 15 October 1964	5	Labour	1 year 5 months
Thursday 31 March 1966	97	Labour	4 years 3 months
Thursday 18 June 1970	31	Conservative	3 years 8 months
Thursday 28 February 1974	None	Labour (minority)	7 months
Thursday 10 October 1974	4	Labour	4 years 7 months
Thursday 3 May 1979	44	Conservative	4 years 1 month
Thursday 8 June 1983	144	Conservative	4 years
Thursday 11 June 1987	101	Conservative	4 years 10 months
Thursday 9 April 1992	21	Conservative	5 years 1 month
Thursday 1 May 1997	178	Labour	4 years 1 month
Thursday 7 June 2001	166	Labour	3 years 11 months
Thursday 5 May 2005	65	Labour	5 years
Thursday 6 May 2010	None	Conservative-Liberal Democrat (coalition)	---
<b>Average, 1945-70</b>	<b>58</b>	<b>4 Labour; 4 Conservative</b>	<b>3 years, 6 months</b>
<b>Average, Oct 1974 -2005</b>	<b>90</b>	<b>4 Labour; 4 Conservative</b>	<b>4 years, 5 months</b>

The typically narrower government majorities of the immediate post-war decades were very much the product of the operation of the two-party system. With the two parties so finely balanced, and each typically receiving 45 per cent or more of the votes cast, election outcomes were more likely to be tight. Nonetheless, British governments from 1945-70 appeared highly stable compared to the early part of the twentieth century, when the growth of the Labour Party had prompted the emergence of a three-party system. There were five elections between November 1922 and October 1931, with the average parliament lasting just two years and two months.

Trends in voting patterns in recent decades, and the failure of any party to achieve an overall majority at the 2010 general election, clearly point to the possibility that the dynamics of government formation and durability will change again. The formation in 2010 of the first UK peace-time coalition in over sixty years therefore presents a significant test of how effective the changing UK party system will prove to be in forming and sustaining governments, should single party majorities become as rare as they were in the 1920s. The experience of the

coalition to date has shown it to be remarkably robust at elite level, yet the greater test will be whether support for the coalition can be sustained in parliament and at grassroots level in the two parties. While our concerns about an over-dominant executive remain (see Sections 2.4.1 and 2.4.2), there are certainly signs that parliament has become more assertive in the context of coalition government. Overall, we would regard these as healthy developments, but clearly it is early days for coalition government in the UK. If the UK political system fails to adapt to coalition government, the exceptionally 'strong and stable' governments characteristic of the period from 1979-2005 may clearly come to represent something of an aberration, and a tendency towards governmental instability, typified by the period from 1922-31, may become more evident.

### 2.2.3 Parties as membership organisations

How far are parties effective membership organisations, and how far are members able to influence party policy and candidate selection?

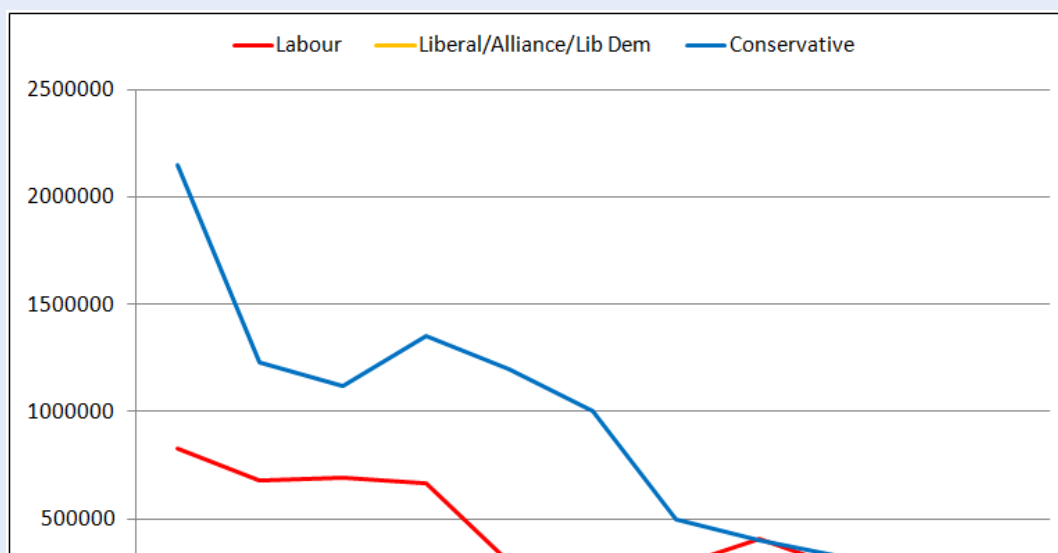
All UK political parties, large or small, operate in the context of a long-run decline in the proportion of the UK population who are party members. While an estimated 10 per cent of the electorate were party members in 1964, this had fallen to around 1 per cent in 2010, and there is also compelling evidence to suggest declining levels of activism among the party members who remain. Despite these common trends, the extent to which members are able to influence party policy varies enormously between parties. Finally, candidate selection has become a matter of controversy between party leaders and some local party units, especially for Labour and the Conservatives.

#### *Parties as membership organisations*

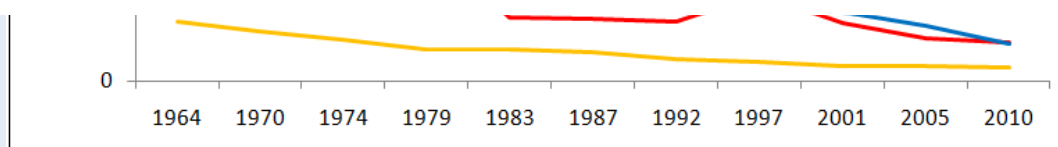
Reliable figures for party membership in the UK are notoriously difficult to obtain. There is a general belief that all parties tend to inflate the number of paid-up members. In addition, the Conservative Party has generally been reluctant to release membership figures at all, and there are particularly strong grounds for assuming that estimates for the period before the 1990s greatly exaggerate Conservative membership. Despite these caveats, by combining the various pieces of evidence available it is possible to construct some reasonable estimates of how membership of the three main parties has changed since 1964. Figure 2.2f, which draws together the figures published in eight different sources, highlights that all three of the UK's main political parties have experienced a dramatic decline in membership levels since the 1960s.

The decline in Conservative Party membership has been most dramatic, falling by over nine-tenths since the mid-1960s. Current figures suggest that the Conservatives now have around 175,000 members, compared to more than 2 million in the mid-1960s. Similarly, there has been almost continual decline in Labour membership since the early 1960s - when there were almost 1 million in the party. Despite a brief surge in membership after Blair became leader in the mid-1990s, Labour's reported membership of 156,000 in 2009 represented about one-eighth of the peak membership figure of 1.2 million reported in 1952 (Flinn et al., 2005). Finally, while Liberal Democrat membership levels have proved more stable over the past decade, the party's current 65,000 members represents less than a quarter of the 280,000 claimed by the Liberals in 1964. Current figures therefore suggest that the three main parties can count a current combined membership of, at most, 450,000 - equating to about one per every 100 electors. If the estimates for previous decades are at least somewhat plausible, then there were some 3.3 million UK party members in 1964, one for every 11 electors.

Figure 2.2f: Membership of the three main parties in general election years, 1964-2010



## Democratic Audit



Sources: *Labour Party* – membership figures to 2000 are from Butler and Butler (2000, p. 159); figures from 2001-2009 are taken from Labour's annual reports and accounts as submitted to the [Electoral Commission](#); the figure for 2010 is the reported number of ballots issued to individual members for the Labour leadership election that year. *Conservative Party* – membership figures to 2001 are derived from Butler and Butler (2000, p.141), Beetham et al. (2002), and T. Bale (2011, p. 143). The latter provides the number of ballot papers issued to members for the 1997 and 2001 leadership contests. Figures for 2005 and 2010 are from [Conservative Home](#). *Liberals/Alliance/Liberal Democrat* – membership figures to 1987 from Beetham et al. (2002, p.113); figures for 1988-2000 are from [Marshall \(2009\)](#); figures from 2001-2009 are taken from the Liberal Democrats' annual reports and accounts as submitted to the [Electoral Commission](#); the 2010 figure represents the [number of ballot papers issued](#) for the election of the party president and Federal Executive.

In our 2002 Audit we suggested that 'British political parties are not likely to increase in size ever again' (Beetham et al., 2002, p. 114). The evidence we have compiled for this Audit reaffirms our past assessment that declining party membership may prove irreversible, not least because the problem may be greater than we were previously aware. In 2002, we estimated that there were a total of around 840,000 members of political parties in the UK, based on the data then available. The membership information contained in the annual accounts submitted by political parties to the Electoral Commission since 2000 has enabled us to revise our estimates. Based on this evidence, we have downgraded our broad estimate of total party membership in the UK in 2002 to 700,000 - of whom about 650,000 were members of the three main three parties. On the same basis, we estimate that the combined membership of all UK political parties in 2010 had fallen to about 0.5 million, about 420,000 of whom were drawn from the three main parties. This decline in combined party membership of roughly 200,000 in under a decade is almost entirely explained by Labour and the Conservatives losing roughly 100,000 members each. As Childs (2006, p. 69) notes, 'the era of mass parties is clearly over'.

It is not just party membership which is in decline, but also party activism (Driver, 2011). Seyd and Whiteley (2004) found that the proportion of Labour Party members who delivered leaflets during an election fell from 77 per cent in 1990 to 61 per cent in 1999. Party members doing at least some door-to-door canvassing (i.e. knocking on doors to talk to voters) fell from 55 to 32 per cent over the same period. James Graham (2006) estimated that 10-24 per cent of local Labour party members were active during the 2005 general election campaign. Labour's experience is by no means unique; available evidence suggests levels of activism among Conservative and Liberal Democrat members declined just as rapidly during the 1990s (Seyd and Whiteley, 2004). The Conservative Party's 2009 membership survey found that only a third of members defined themselves as 'active', prompting Bale (2011, p. 407) to comment that 'even that proportion would come as a surprise to many of those who do actually deliver leaflets and knock on doors'. Even if we make the generous assumption that one third of all UK party members are active, the combined activist base therefore amounts to no more than 160,000 individuals - roughly 250 per parliamentary constituency. Yet, other evidence suggests that this figure almost certainly represents a considerable over-estimate of levels of activism. For instance, based on interviews with local party secretaries in Burnley and Harrogate and Knaresborough, Wilks-Heeg and Clayton (2006) estimated that there were a total of about 100 party activists in each constituency in 2005.

There is evidence of a growth in the membership of smaller parties during the 2000s (Driver, 2011), although on nothing like the scale that would be required to compensate for the loss of members among the main two parties. As Table 2.2c shows, the Greens, the SNP and the BNP all gained members from 2003-2009, reflecting their growing significance in the UK political system (most notably in local, devolved and European elections). Moreover, there were clear surges in the membership of both UKIP and Respect in the mid-2000s - some of which is likely to have arisen from defections from the Conservatives and Labour respectively. Yet, based on the figures available, it would appear that we need to combine the membership of a dozen or so of the more significant smaller parties to obtain a figure broadly equivalent to the membership of the Liberal Democrats.

Table 2.2c: Membership of smaller parties, 2002-2009

	2002	2003	2004	2005	2006	2007	2008	2009
Green Party (England & Wales)	5,268	5,858	6,281	7,110	7,019	7,441	7,553	9,630
SNP	---	9,450	10,854	10,995	12,571	13,944	15,097	15,644
UKIP	10,000	16,000	26,000	19,000	16,000	15,878	14,630	16,252

## Democratic Audit

BNP	3,487	5,737	7,916	6,008	6,281	9,784	9,801	12,632
Respect	---	---	3,751	5,674	5,739	2,472	494	1,085

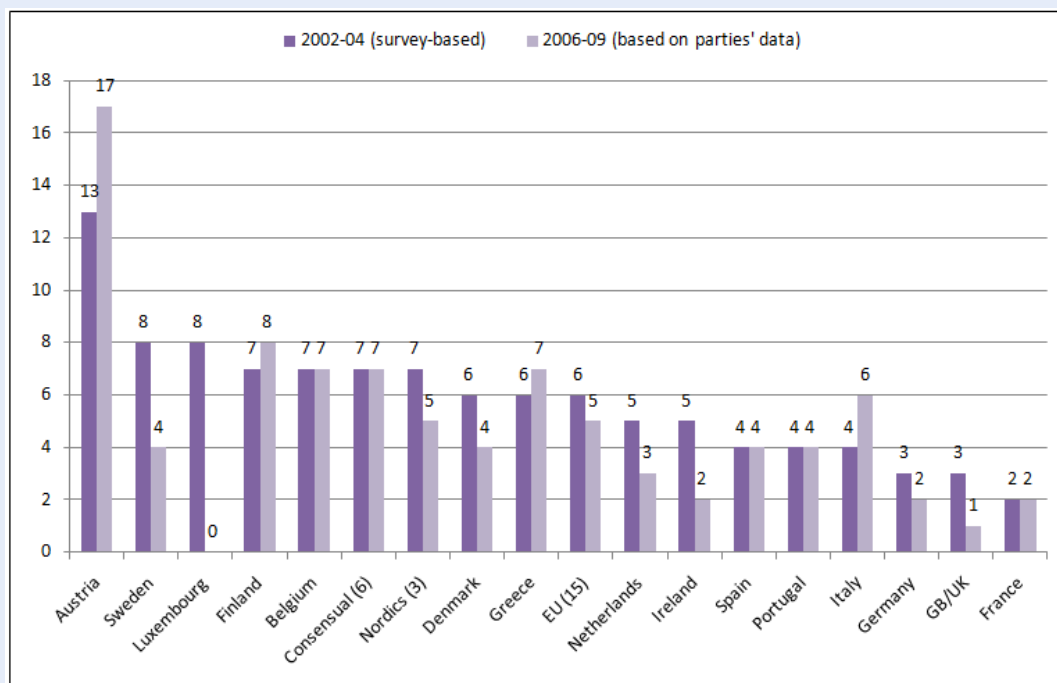
Source: Annual reports and accounts as submitted to the [Electoral Commission](#)

The UK is not alone in witnessing a decline in formal political participation associated with party politics. As with electoral turnout, party membership is declining in virtually all established democracies. [Van Biezen et al. \(2011\)](#) estimate that, since the 1980s, party membership has declined by around 50 per cent or more in France, Norway, Sweden, Finland, Switzerland and Ireland. Nonetheless, the picture in the UK appears especially worrying; our figures suggest a 75 per cent decline in party membership in the UK over the same period. As a consequence, the share of the UK electorate belonging to a political party now ranks clearly among the lowest in Europe (Driver, 2011).

Figure 2.2g compares two sources of information about party membership in Western Europe. The first source is derived from surveys of the general public from 2002-04 and the second from the membership figures published by political parties during 2006-09 (in both cases, the level of party membership is expressed as a percentage of the total electorate). There are some discrepancies between the two sets of estimates for each country. In particular, the figures based on party data almost certainly overestimate levels of party membership in Austria and Italy. Conversely, Figure 2.2g suggests either that survey-based estimates inflate the figures for Sweden, Ireland and the UK, or that party membership in these countries dropped very sharply from the mid-2000s (the latter is highly possible, and clearly true of the UK).

These caveats aside, the pattern which emerges from these estimates is very clear. While as few as two per cent of electors in the UK, France and Germany were members of political parties in the 2000s, the average figure for West European democracies at that time was five to six per cent. The UK compares especially poorly against the 'consensual democracies' of northern Europe and also the Nordic states - notwithstanding the evidence of a rapid decline in party membership in many of these countries. Indeed, even if party membership in the UK now stabilises, probably at less than one per cent of the electorate, it is likely to remain close to the bottom of the international league table for years to come.

Figure 2.2g: Estimates of party membership levels in Western Europe, 2002-04 and 2006-09



Sources: [Scarrow and Gzegor \(2010\)](#); [Van Biezen et al. \(2011\)](#)

Political scientists have put forward both supply-side and demand-side explanations for the decline in party membership and activism (Webb, 2000; Seyd and Whiteley, 2004; Driver, 2011). Supply-side accounts emphasise factors such as reduced personal attachment to

political parties, particularly as a result of declining class-identity (see Section 2.1.6), and the rapid growth of single-issue pressure organisations (see Section 3.2.2). Conversely, demand-side explanations focus on the strategies followed by the political parties themselves, notably the shift from local to national campaigning and the growing dependence of parties on big donations rather than membership fees and member-led fundraising (see Section 2.2.5). Table 2.2d (c.f. Childs, 2006, p. 70) summarises the main factors identified by these competing perspectives.

Table 2.2d: Explaining the decline in party membership and activism: supply- and demand-side accounts

Supply-side factors	Demand-side factors
Voters feel less strongly attached to political parties (partisan dealignment).	Parties have shifted balance of campaigning from local to national stage.
Decline in trade union membership and of working-class communities.	Parties making growing use of modern marketing and communications tools.
Competition from single-issue campaign groups and other membership organisations.	Parties increasingly reliant on large donations for their income.
Changing work and residential patterns – e.g. longer working hours, greater commuting, suburbanisation.	

Source: Adapted from Childs (2006, p. 70)

It would be misleading to see supply- and demand-side explanations as mutually exclusive. It has been widely noted that UK political parties are moving from mass-membership organisations to 'electoral professional parties' (c.f. Webb, 2000). Increasingly, political parties adopt a more centralised and top-down approach centred on maximising electoral prospects via opinion polling and sophisticated political communications (Heffernan, 2009). Underpinning this shift is a mutually-reinforcing cycle of change characterised by the interaction of the supply and demand side factors identified above. As one recent account explains:

'The steady decay of parties as mass membership, activist organisations has had a profound impact on party finances and on campaign strategies. The three main parties have become increasingly reliant on forms of corporate support as membership dues wither away, a tendency accelerated by the steady displacement of 'old style', door-to-door election campaigns by financially costlier, but less labour-intensive, political marketing strategies. This drift towards centralisation within the parties has, in turn, impacted negatively on the scope for, and scale of, local activism' (Wilks-Heeg, 2010, pp. 379-380).

The changing nature of political parties, including their declining significance as membership organisations, therefore has significant implications for the role of those members who do remain. It is to this matter that we now turn.

### ***Influence of members on party policy***

While there is much truth in the characterisation of contemporary UK political parties as 'electoral professional' organisations, it can also be argued that it 'does not quite describe the realities of modern British party politics' (Childs, 2006, p. 69). Indeed, as Childs notes, there is plenty of evidence that party leaders would like to have more members and activists to call on, and that they would prefer their parties to be less reliant on big donors. In many ways, the more significant tension is that 'despite wanting to attract more members, party leaderships remain wary of giving their membership too much power' (Childs, 2006, p. 71).

It is equally important to distinguish between the membership at large and the rather smaller core of party activists who, in the past, mediated much of the interaction between members and leaders. It is widely accepted, for instance, that internal Labour Party reforms from the early 1990s onwards were motivated by a desire to empower members as a check on the influence of activists, who were deemed by party leaders to be more left-wing than either the parliamentary party or the wider membership. In this sense, apparently democratising reforms can be managed by party leaders to help modernise a party and enhance central control (Lees-Marshment and Quayle, 2001; Hopkin, 2009). For these reasons, our 2002 Audit noted that signs of UK political parties becoming more internally democratic tended to co-exist alongside indicators of the very opposite trend (Beetham et al., 2002).

The most obvious sign of increased democracy within UK political parties in recent decades has been in the selection of party leaders. In the period since the mid-1970s all three of the UK's largest political parties have introduced reforms granting party members at least some influence in the process of how a leader is chosen. To some extent, the UK experience appears to reflect a wider international trend. As

[Cross and Blais \(2011\)](#) note, mechanisms designed to enhance the influence of members over decisions about who leads the party have been introduced in a number of English-speaking Westminster democracies. As well as in the UK, there has been a general shift towards political parties in Canada and Ireland expanding the 'selectorate' responsible for choosing the party leader, although such moves have been resisted by parties in New Zealand and Australia.

Within the UK, the Liberal Party was the first to introduce all-member ballots to choose a leader, adopting this mechanism in 1976. The SDP followed suit after its foundation in 1981, and when the Liberals and the SDP merged in 1988, the use of all-member ballots to select the new party's leader was retained. By contrast, Labour moved initially to the use of an electoral college in 1981, in which the votes were cast by individual members of the Parliamentary Labour Party as well as by Constituency Labour Parties and trade unions. In 1993, further reforms resulted in the introduction of 'one member one vote' (OMOV). More recently, the Conservatives introduced reforms under William Hague's leadership in 1998 which allow party members to vote on a short-list of two candidates, as determined by members of the parliamentary party.

In each case, reforms were initially demanded by party members and were met with resistance from the party leadership. This was most evident in the case of the Labour Party, where a group of party members formed the Campaign for Labour Party Democracy in 1973 to push for 'a package of reforms which would have had the effect of curbing the nearly exclusive control of the parliamentary wing' ([LeDuc, 2001, p. 329](#)). Yet, while ballots of members may appear to be an impeccably democratic means of a party electing a leader, there is also evidence to suggest that there is more central or elite control over the process than immediately meets the eye. Heffernan (2009, p. 450) suggests that in both the Conservative and Labour parties 'widening the franchise to elect the party leader beyond the parliamentary party [...] has served to strengthen, not weaken, the party leader'. As the same author also points out, the wider franchise does little or nothing to enable members to remove a leader meaning that, in practice, a leader's survival will still depend on them maintaining the support of their parliamentary party (Heffernan, 2009). Similarly, [Cross and Blais \(2011\)](#) also point to the power which Labour and Conservative MPs retain in determining the leadership of the party, arguing that the role of parliamentary parties is especially significant when a party is in government. Thus, the Parliamentary Labour Party (PLP) effectively decided that Gordon Brown would replace Tony Blair as leader, and therefore as prime minister, since no other MP was able to secure a sufficient number of nominations to stand. There is every chance that the Conservative Party would handle a leadership transition in a similar way at a time when the party is in government.

While the manner in which UK parties select their leaders shows a degree of convergence, mechanisms for involving members and, indeed, non-members in other aspects of party decision-making exhibit quite different trends. The degree of internal democracy within the UK's political parties varies enormously. Prior to the last general election, the campaign organisation [Unlock Democracy \(2010\)](#) evaluated the extent to which the UK's nine largest political parties showed a strong commitment to democracy, including an assessment of the degree to which members and non-members could influence party policy and candidate selection. As Table 2.2e illustrates, this assessment suggested that, among the three main parties, internal democracy is weakest within the Conservative Party and strongest within the Liberal Democrats, although Labour gains some recognition for granting a role for members of affiliated trade unions and socialist societies. Among the smaller parties, internal democracy is generally much stronger – most notably in the cases of the Greens, Plaid Cymru and the SNP, although Unlock Democracy found limited evidence of mechanisms for engaging non-members. The BNP, by contrast, was found to be highly centralised.

Table 2.2e: Unlock Democracy's Evaluation of Internal Party Democracy (2010)

Party	Extent of Member and Non-Member Influence
Conservatives	Limited internal democracy: members have no formal role in shaping policy, which is determined 'almost exclusively by the Leader'. The party's attempts to encourage adoption of more female and ethnic minority candidates has rendered candidate selection increasingly centralised.
Labour	Encourages participation of trade unions and socialist societies in the party, providing for the involvement of civic society in party politics; internal party democracy is not as strong as that of some other parties.
Liberal Democrats	Strong culture of active participation among party members, but less evidence of broadening participation to include non-members.
Green Party	Strong internal democracy within the party but the party's commitment to participatory democracy does not appear to extend to engaging people who are not members.
Plaid Cymru	Internal democracy is strong and allows members to engage in decision-making in the party, but little evidence that the party encourages participation from non-members.
SNP	Exhibits strong internal democracy although it could go further in involving non-members in decision-making.
Respect	Appears to have good internal democracy and it seeks to involve trade unionists in the party.



BNP	While the BNP does have a formal policy-making structure that involves members, power is generally centralised within the party and essentially resides with the party's chairman.
UKIP	Insufficient information provided to enable an assessment to be made.

Source: Derived from [Unlock Democracy \(2010\)](#)

The nature of membership involvement in party conferences offers important clues about the extent of member influence on political parties more generally. The role of party conferences in determining party policy contrasts markedly between the three main parties. These differences have been neatly captured by Peter Facey, Unlock Democracy's Director, in the following terms: 'the Liberal Democrat conference thinks it makes policy and it does, the Labour conference thinks it makes policy but doesn't and the Conservative conference knows it doesn't make policy and doesn't care' (cited in [Graham, 2007](#)). That said, there has been something of a common trend across the three largest parties for conferences to become showcase media events, rather than forums for policy deliberation ([Kelly, 2001](#); Driver, 2011), although this tendency is clearly less pronounced for the Liberal Democrats. To some extent these developments are understandable. Party leaders are keen to avoid what they see as highly damaging media coverage of disunity or adoption of policies which risk being a 'difficult sell' to voters. Yet, the changing nature of party conferences has clearly become a source of frustration for some party members, as Tony Benn expressed in his reflections on Labour's 2000 annual conference:

'Once we had regular and proper argument [...] now we just let off balloons, sing pop songs, greet showbiz celebrities and, if we're lucky, have the odd debate' (Tony Benn, cited in [Kelly, 2001, p. 329](#)).

While Benn's nostalgia for the atmosphere of past Labour conferences will not be universally shared within the party, his observations do help highlight wider issues about how members are supposed to be able to shape party policy. Labour's formal processes for engaging party members in policy development are complex and reflect a wider tendency for party leaders to attempt to recast opportunities for member involvement in a way which shifts policy debate away from party conferences. Reforms were introduced by Tony Blair in 1997 as part of his Partnership in Power agenda, through which 'Labour's policy machinery was completely revamped' ([Laffin et al., 2007, p. 96](#)). Under these arrangements, Labour Party policy is determined by a National Policy Forum, based on reports from six policy commissions and with the process steered by a Joint Policy Committee (see Case Study 2.2b for details, including details of arrangements for devolved matters). As Case Study 2.2b suggests, despite some relatively optimistic initial assessment of these reforms, dissatisfaction with them began to mount during the 2000s - notwithstanding attempts to bolster the role of policy commissions. The mechanisms for policy-making within the party are currently being reviewed as part of the 'Refounding Labour' initiative, overseen by Peter Hain MP.

### Case Study 2.2b: Labour's National Policy Forum

Under the reforms introduced during Tony Blair's leadership of the party, policy-making within the Labour Party was radically overhauled. The centrepiece of Labour's new approach to policy-making was to become the National Policy Forum (supplemented by Scottish and Welsh Policy Forums responsible for policy development on devolved matters). Operating on a two-year rolling cycle, the National Policy Forum (with around 180 members) receives reports from six Policy Commissions, whose work is coordinated by a Joint Policy Committee. Acting as a steering group for the National Policy Forum, the Joint Policy Committee is chaired by the party leaders and comprises members from the party's National Executive Committee, the National Policy Forum and the Parliamentary Labour Party.

Views have always differed on the extent to which the reforms allowed members any genuine influence over party policy. Both Kelly (2001) and Russell (2005) offered relatively positive evaluations in the period after the changes were introduced, while Driver (2011, p. 103) suggests the changes 'reinforced the power of the leadership and allowed it to exert even greater control over the party'. Evidence that party members were unhappy with the arrangements began to mount, particularly as a result of the imposition of policies by senior party figures, such as the abolition of the 10p tax rate, which proved deeply unpopular with members and voters alike. The procedures were subject to further reform following reviews during the 2000s. From 2005, attempts were made to empower the Policy Commissions to play a stronger role in driving the process and to encourage them to engage beyond the party. Further changes followed in 2007, when the party conference was given a clearer role in driving the work of the National Policy Forum; a duty was placed on Constituency Labour Parties to engage with the wider community; and a requirement was introduced that members' endorsement of a policy programme be secured via a postal ballot prior to a general election.

Despite such changes, by the time Labour lost office in 2010 there was a widely-held view within the party that policy-making centred on the National Policy Forum was not working well and that the process had become too distant from ordinary members. Following his election as party leader in Autumn 2010, Ed Miliband appointed Peter Hain to lead Labour's National Policy Forum,



with a view to addressing the concerns which had mounted among members while the party was in government. In an interview with the [Guardian \(2010\)](#), Hain gave clear indications that radical changes were required to the way in which party policy was determined, stating: 'I defend the policy forum principle, but there is a great deal of cynicism amongst party members that we need to address. If you disempower your membership, you start down the road to losing, and that is what happened during our 13 years of power'.

It is widely recognised that, of the three main parties, the Liberal Democrats grant the fullest degree of influence over policy to their members. Formally, the Liberal Democrats are a highly decentralised party, organised on a federal basis, and with considerable autonomy provided to: the state parties (England, Scotland and Wales), regional parties (for the English regions), local parties, and Specified Associated Organisations (e.g. Association of Liberal Democrat Councillors; Ethnic Minority Liberal Democrats). All of these organisational sub-units can, for instance, submit motions to the federal conference, which serves as the sovereign policy-making body for the party. However, it is generally recognised that most substantive policy is developed by the Federal Policy Committee, which is chaired by the party leader. It has also been argued that the reality of policy-making within the Liberal Democrats is that MPs play a far more significant role than is generally recognised: 'the parliamentary party has established a relatively tight grip on the policy-making mechanisms within the Liberal Democrats despite the constitutional limits on its power' ([Russell et al., 2007, p. 96](#)). Much the same argument can be made with regard to the role of the parliamentary party in determining who leads the party, as the 'coups' to oust both Charles Kennedy and then Ming Campbell underline ([Russell et al., 2007](#); Driver, 2011).

The influence of Liberal Democrat MPs and peers in shaping party policy has clearly grown as the size of the parliamentary party has expanded - in part because of the staffing and other resources which MPs, in particular, have access to (Driver, 2011). This tendency for Liberal Democrat parliamentarians to exercise power far beyond that ascribed to them in the party's constitution has almost certainly been strengthened since the Liberal Democrats formed a coalition government with the Conservatives in May 2010. Even the party's 'triple-lock mechanism', designed to provide members with the power of veto over significant changes of strategic direction, is perhaps best understood as a case of party members following the lead of the parliamentary party (see Case Study 2.2c)

### Case Study 2.2c: The Liberal Democrats' 'triple-lock' mechanism

The Liberal Democrats' so-called 'triple lock' mechanism is designed to ensure that the party provides 'positive consent' to any proposals involving significant changes in strategy or positioning, particularly 'any substantial proposal which could affect the Party's independence of political action'. The nature of the mechanism was widely discussed in the run-up to the 2010 general election, when the prospect of a 'hung parliament' raised the prospect of the Liberal Democrats becoming engaged with one or both of the two main parties about forming a government. Subsequently, this 'triple lock' had to be undone after talks with the Conservatives resulted in proposals to form a coalition government following the election.

The three stages which must be negotiated in order to endorse such a change in strategy or positioning are as follows. First, the consent of a majority of members of the parliamentary party in the House of Commons and the Federal Executive must be forthcoming. Second, unless the ratio of those in favour of the proposal to those against is at least 3:1 in both of these groups, a special conference must be convened to discuss and vote on the proposal. Third, if the conference fails to achieve a two-thirds majority in favour of the proposal, the matter is then put to a ballot of all members, with a simple majority being required to provide consent. Writing prior to the election, Steve Richards of *The Independent* predicted that these provisions would make forming a coalition a near-impossibility:

'Clegg would need the agreement of his MPs, the party's executive and the membership. By the time he had secured such agreement a Prime Minister, let alone the rolling television news channels, would have collapsed with impatience. There is no guarantee he would get such agreement anyway. It is not going to happen. There will be no coalition' ([Independent, 2010a](#)).

In the final event, the 'triple-lock' presented no such barrier to the Liberal Democrats forming a coalition. During the evening of 11 May, following Gordon Brown's sudden resignation as prime minister, meetings of both Liberal Democrat MPs and the party's Federal Executive were hastily convened to seek endorsement of the draft coalition agreement with the Conservatives ([Fox, 2011](#)). All but one of the Liberal Democrats' MP's voted to endorse the agreement with the Conservatives (it later emerged that the former party leader, Charles Kennedy, had abstained), while the Federal Executive were unanimous in their support. As such, the third-stage in the process, securing the consent of members, was not required - although a special conference was anyway convened, in great haste, in Birmingham on 16 May, to seek such endorsement. Coming five days after party leader Nick Clegg had accepted the post as deputy prime minister in a coalition government, the vote was largely symbolic, and only about a dozen of the 2000

delegates present voted against accepting the coalition agreement.

Of the three main parties, the Conservative Party grants least influence to members in the formulation of policy. As Bale (2011, p. 16) notes, the party leader dominates the Conservative Party and, in opposition in particular, the party operates as 'an essentially top-down organization'. Indeed, Bale portrays the Conservative Party's vesting of power and autonomy in its leader as almost the polar opposite of the Labour Party's model of organisation, while noting that with this power comes very clear personal responsibility; compared to Labour, the Conservative Party tends to be ruthlessly effective in removing leaders who do not deliver. Nonetheless, disquiet within the Conservative Party is not always restricted to concerns about how a leader is performing. Clear tensions emerged between constituency parties and the parliamentary party after the Conservatives' 1997 election defeat and the, admittedly 'tiny', Charter Movement within the party began to push for greater internal democracy (Bale, 2011, p. 75).

These dynamics were a significant, but by no means the only, factor in William Hague promising delegates at the 1997 party conference that the 'party is going to involve its members more than ever before' (quoted in [Lees-Marshment and Quayle, 2001, p. 205](#)). As well as the introduction of one member one vote elections in the final round of leadership contests (see above), Hague's reforms included the use of regular ballots of the membership to consult on policy development (see Case Study 2.2d for details and discussion) and the introduction of new policy forums. However, these changes were clearly not a response to member demands alone, and it would be naïve to assume either that the measures significantly empowered members, or that they were ever intended to. While designed to assuage disquiet among constituency parties and the party membership at large, the wider package of reforms introduced by Hague are widely recognised to have been motivated by a desire to modernise and centralise the party ([Lees-Marshment and Quayle, 2001](#); Bale, 2011). As Bale (2011, p. 75) notes, 'the reforms also granted unprecedented rights to the centre [...] to intervene in the affairs of associations deemed to be failing to meet specified "minimum criteria" on membership, fund-raising and campaigning'. In a similar vein, Driver (2011, p. 82) finds that neither Hague's policy forums nor the later specialist groups appointed to develop policy under David Cameron have undermined the 'firm grip' of the party leadership on the determination of party policy.

### Case Study 2.2d: Consulting Conservative Party Members on Policy

The Conservative Party has never granted its members any real influence over policy, which has generally been the preserve of senior party figures (albeit with significant influence from leading right-of-centre think-tanks in recent decades). However, following William Hague's elevation to the leadership in 1997, the Conservative Party began to consult its membership on policy via periodic membership ballots. In contrast to the use of OMOV to select a party leader, introduced as part of the same package of reforms, these ballots asked members to endorse anything from a set of principles to a single policy position or an entire draft manifesto. In total, five such ballots took place after 1997, beginning with the October 1997 vote to endorse the principles outlined by Hague following his election as leader under the previous system (in which only Conservative MPs had been able to vote). Further ballots followed in February 1998 on Hague's proposed party reforms (entitled *Fresh Future*) and, in October 1998, on the specific issue of the party's position on EU membership.

Conservative Party Membership Ballots, 1997-2006 (excluding leadership elections)

Subject	Date	Total votes	Yes	No
Endorsement of principles of Hague's leadership	October 1997	176,314	142,299 (80.7%)	34,092 (19.3%)
Endorsement of Fresh Future proposals	February 1998	114,590	110,165 (96.1%)	4,425 (3.9%)
Approving Hague's policy of ruling out UK membership of a single currency in this parliament and the next	October 1998	207,050	175,558 (84.8%)	31,492 (5.2%)
Endorsement of Believing in Britain (draft manifesto)	October 2000	50,499	49,932 (98.8%)	676 (1.2%)
Endorsement of Built to Last (statement of aims and values)	September 2006	65,646	60,859 (92.7%)	4,787 (7.3%)

Sources: [Lees-Marshment and Quayle \(2001\)](#); [ConservativeHome \(2006\)](#).

Relatively high levels of participation in these first three ballots, and the large majorities in support of the central party in each instance, provided a sense of legitimacy for Hague's leadership. However, the fourth ballot in October 2000, in which members were asked to endorse the draft manifesto, *Believing in Britain*, saw a sharp drop in the number of ballots returned to just over 50,000, representing a 'turnout' of around 16 per cent. Moreover, subsequent party leaders were less enthusiastic than Hague about the use of membership ballots on matters of policy. There were no such ballots under Iain Duncan-Smith or Michael Howard and the only time the membership has been balloted by David Cameron was on his *Built to Last* statement of aims and values in September 2006. As Bale (2011, p. 312) notes, this last membership ballot proved to be something of a 'damp squib', with only a quarter of the membership participating. Of possibly greater concern, however, was that the number of ballot papers issued (247,000) seriously undermined the party's earlier claims that membership levels had surged under Cameron (Bale, 2011).

For the main three UK parties there had been suggestions that the creation of new, sub-state arenas for political decision-making might trigger parallel processes of intra-party decentralisation (Hopkin, 2009). However, while the effects of devolution on intra-party dynamics are not particularly well understood, it appears that the process has not resulted in drastic changes with regard to member involvement. Large-scale re-organisations of state-wide party hierarchies have been avoided; and although changes to party structures were witnessed during the period following devolution, these have been evolutionary rather than revolutionary (Hopkin and Bradbury, 2006). Certainly, the Scottish and Welsh units of each of the three major parties have all been ceded a *degree* of control over leadership elections and candidate selection, but the powers of these units vary between parties (Hopkin and Bradbury, 2006).

Within the Labour Party, for instance, the Welsh and Scottish parties can now formulate policies pertaining to areas which fall within the jurisdiction of their respective assemblies (Laffin and Shaw, 2007); enjoy reasonable freedom over campaigning (Fabre, 2008); and have made some effort to differentiate themselves from the national leadership. However, the changes in overall party structure and operations remain fairly small (Hopkin, 2009). Labour's NEC retains the right to formulate candidate selection rules for all elections which the party contests, and also continues to control the party's finances (Laffin and Shaw, 2007). Regional leaders have made some effort to make their own parties distinctive - and have, on occasion, come into conflict with the national leadership over matters of policy. For the Conservatives, it is notable that the Scottish Conservative Party was re-established as a constitutionally sovereign body just before the process of devolution began, although less autonomy has been ceded to the Welsh Conservatives (Fabre, 2008). This asymmetrical approach has not been shared by the Liberal Democrats, however. Instead, the Liberal Democrats' federal structure has allowed it to avoid the difficult political and organisational questions that have exercised others, with the party happy to allow regional branches to develop their own policies (Fabre, 2008).

As with the larger parties, the degree of internal democracy within smaller parties varies enormously. The Leaders of the SNP, Plaid Cymru and the Greens are all elected via a ballot of the entire membership, and national officers are also elected (either by postal ballot or by members at conference). The constitutions of these three parties all invest supreme authority in their party conferences, with policy development taking place between conferences via designated forums or committees. In the case of the SNP, branches are held to have remained the backbone of the party and its 'decentralised political culture' since its foundation in the 1930s (Lynch, 2002). However, other small parties are far less democratic. UKIP's party constitution, for instance, explicitly states that the decisions of party conferences are not binding; whilst the BNP has historically invested all power in the party's chairman (Copsey, 2004).

### ***Influence of members on candidate selection***

Granting local parties the power to select candidates for election is very much the international norm. Bille (2001) found that the vast majority of political parties in Western Europe empowered sub-national party units to select candidates, either by allowing them complete control over the process or through the party units submitting their nominations for approval by the party centrally. In addition, Bille (2001) found that a growing proportion of west European political parties were using membership ballots to select candidates (while under one-fifth had done so in 1960, around a quarter had by 1990).

In the UK context, it has been noted that 'the right to select candidates for Westminster has long been recognised as an incentive that party members value and one which they will robustly defend' (Childs, 2006, p. 73). The trouble with this much-cherished form of internal party democracy, however, is that it may conflict with other democratic objectives - such as ensuring social representativeness in candidate selection. As Bogdanor (1984, p. 113) has noted, where decisions are made by local party selection committees they show a tendency to opt for candidates 'who will be as near to an identikit model of an MP as it is possible to find. The candidate will be white, middle-aged and male'.

It is perhaps not surprising, therefore, that candidate selection has been one of the greatest sources of tension between party leaders and party members over the last decade or so. As we noted in Section 2.1.5, the leaderships of all three main parties have sought to take steps to promote the adoption of more female and ethnic minority candidates. Concerted efforts began with Labour's decision to introduce all-

women shortlists (AWS) in winnable seats from the early 1990s, while the Conservative Party adopted an alternative approach, using a national 'Priority List' of candidates, after 2005. As Childs (2006) notes, such interventions are necessarily top-down in character and involve the central party restricting the autonomy of local parties in their choice of election candidates, essentially out of recognition that, left to their own devices, local party choices will reinforce the usual pattern of selections. While experience suggests that such forms of central direction are almost certainly essential to ensuring the selection of female and ethnic minority candidates, some local parties have, unsurprisingly, resented their 'imposition'.

As was noted in Section 2.1.5, Labour's use of AWS encountered early resistance from some local parties in the run up to the 1997 general election and was subsequently subject to a successful legal challenge. This challenge was brought by two male party members, Peter Jepson and Roger Dyas-Elliot, who sought legal redress after being unable to apply as prospective candidates, for Regents Park and Kensington North, and Keighley, respectively (Russell, 2000). However, the most notable controversy occurred after parliament passed the Sex Discrimination (Election Candidates) Act 2002, thereby enabling Labour to reinstate the use of AWS. This conflict concerned the selection of Labour's candidate to fight the safe seat of Blaenau Gwent at the 2005 general election. In this instance, resistance to AWS was such that the majority of local party members boycotted the selection process. After Maggie Jones was nonetheless selected from the shortlist to contest the seat, the Welsh assembly member for Blaenau Gwent, Peter Law, opted to stand as an independent. Law gained the support of some other local party members in doing so, subsequently winning the contest by a margin of more than 9,000 votes and declaring to the national Labour Party: 'this is what happens when you don't listen' (Cutts et al., 2008).

A similar degree of controversy became evident after 2005 as a result of David Cameron's decision to adopt measures to promote greater diversity among Conservative candidates contesting safe and marginal seats. Under this initiative, announced within the first week of his leadership, the party's Candidates Committee was charged with recruiting 100 especially able candidates. At least 50 of these candidates were to be female and an undefined share from ethnic minority groups. Other than in exceptional circumstances, local parties selecting candidates for safe or winnable seats were expected to choose from this list. Following the announcement, the [Daily Telegraph \(2005\)](#) noted that 'the imposition of a priority list would not be popular with many local Conservative associations, which have jealously guarded their right to select their own candidates'. Quickly dubbed the 'A'-list, dissent among party members duly emerged, particularly as the identities of some of the chosen candidates, initially kept secret by Conservative Central Office, began to leak out. Criticism was especially vocal on the ConservativeHome website, but grumblings were also heard within the parliamentary party and there was early evidence of constituency associations seeking to avoid selections from the Priority List (Bale, 2011). Nonetheless, Cameron retained the policy, later adding a requirement that Conservative Associations should select from a shortlist of four candidates, at least two of whom must be female. The significant increase in the number of female and ethnic minority MPs elected for the Conservatives in 2010 almost certainly owes a great deal to Cameron's determination to face down opposition to the policy within his own party. Indeed, focus groups and surveys of party members suggested that, while there was a willingness to accept the principle of a more socially representative parliamentary party, there was also clear hostility to the use of any 'positive discrimination' mechanism to achieve this goal (Childs et al., 2009).

Uniquely among all political parties, the Conservative Party has also experimented with the use of American-style primaries to select parliamentary candidates. Under this system, candidates are selected either at an open meeting of all local party members (closed primary) or by allowing all electors in the constituency vote for their preferred candidate to represent the party (open primary). Although the promotion of primaries has also been associated with Cameron's leadership, a small number had been held to select candidates for the 2005 general election (Childs, 2006). Since 2005, the party claims to have operated over 100 primaries, although the vast majority of these appear to have taken the form of meetings attended principally by party members (Williams and Paun, 2011). Genuinely open primaries have been especially rare, with the principal examples being the Totnes primary in August 2009 and the Gosport primary in December 2009. In these two instances, all registered voters in each of these constituencies were sent a ballot allowing them to vote for one of three candidates from the local party's shortlist. About one quarter of Totnes voters and just under one-fifth of Gosport voters participated in these primaries, which cost an estimated £40,000 each. In both cases, they resulted in a local female candidate being selected - Sarah Wollaston in Totnes and Caroline Dinenage in Gosport, both of whom were elected for the Conservatives in 2010 (McSweeney, 2010). Although limited, Conservative experiments with open primaries do stand in contrast to the more general trend towards UK political parties becoming more centralised.

While we have noted that some of the smaller parties boast a more internally democratic set of arrangements than their larger counterparts, they do not tend to trust local members enough to make binding decisions on candidate selection. Whilst Plaid Cymru and SNP members are given the responsibility for choosing their local candidates, they can only - in most cases - select candidates who have been approved by the national executive committee. The selection of candidates by UKIP party members are subject to similar 'safeguards'. They too may choose their own council and parliamentary candidates. However, the latter must be drawn from a list of centrally-approved candidates; selections for either can be effectively vetoed by the central party; and the selection procedures for other elections are conducted at the discretion of the UKIP NEC.

### 2.2.4 Funding of political parties

## How far does the system of party financing prevent the subordination of parties to special interests?

The manner in which UK political parties are funded has been a long-standing democratic concern. Indeed, our periodic Audits over the past two decades have highlighted the persistence of a number of serious issues raised by party funding arrangements. Despite widespread recognition of these concerns, and regular attempts to address them via reform, much of what was said more than a decade ago regarding party funding still stands today.

Our second periodic Audit noted that the UK's political parties had long been dependent on big donations, mostly in the form of corporate donations to the Conservatives and trade union funding of the Labour Party (Weir and Beetham, 1999). At the same time, we argued that such funding was unlikely to be the product of corporate or trade union altruism; rather, both sets of interests had come to 'expect the parties to pursue their interests in (and out) of government' (Weir and Beetham, 1999, p. 92). Written in advance of the publication of the findings of the Committee on Standards in Public Life inquiry into party funding, our 1999 Audit raised additional concerns about the growth of large individual donations to the main two parties and the absence, at that time, of any disclosure requirements about such donations. We also found grounds to suggest that this reliance on large donations was fuelling public concern about improper influence over matters such as nominations for honours and decisions about party or government policy. Finally, we pointed to the role of big donations in sustaining a broader set of inequalities in parties' access to funds, partly because of the limited role which state funding plays in ensuring a more 'even playing field' in party political finance (Weir and Beetham, 1999).

Almost without exception, these very same issues remain at the centre of concerns about party funding over a decade later. Yet, ironically, the period since 1999 has witnessed more concerted attempts to resolve the problems of UK party finance than any other in UK political history, including the introduction of major reforms in 2000. Many of our own earlier concerns were echoed in the [Committee on Standards in Public Life's \(1998\)](#) report, which recommended disclosure requirements on donations, limits on party expenditure at general elections and the introduction of state 'policy development grants'. Moreover, in a rare instance of cross-party consensus on party-funding reform, the committee's recommendations were introduced almost wholesale via the Political Parties, Elections and Referendum Act (PPERA) 2000. Following an election where the main parties had spent unprecedented sums during the campaign, and in the light of growing public disquiet about 'sleaze', the parties agreed to a new regime of expenditure controls and a public register of donations. While donations were not to be capped, it was widely believed that public disclosure would shine a purifying light on the murky world of party finance. It was therefore assumed that greater transparency would bring about greater integrity, following the dictum that 'sunshine is the best disinfectant' (c.f. Ewing and Issacharoff, 2006, p. 3).

While PPERA stands as a significant political achievement in the history of party funding reform, the early assessment of the act we offered in our 2002 Audit has proved prescient. Writing shortly after the legislation had been passed Beetham et al. (2002) suggested that, since PPERA did not provide for a significant increase in state support for political parties, a reliance on large donations would remain. Moreover, with disclosure requirements in place, but without any measures to limit the size of donations, we highlighted the risk that 'the new era of openness has fostered more suspicions, rather than dispelling them, since the media question most large donations and link them to government decisions or policies seen as being in the interests of donors' (Beetham et al., 2002, p. 119).

Again, these issues remain at the heart of concerns about party funding. While a great deal more is now known about how parties are funded, disclosure requirements have not reduced their reliance on wealthy donors. Based on their annual accounts, we estimate that donations accounted for 59 per cent of Conservative Party, 44 per cent of Liberal Democrat and 30 per cent of Labour Party central income (i.e. national accounting units) in the period from 2005-09. By contrast, the share of central party income obtained from membership fees over the same period was 14 per cent in the case of Labour, 13 per cent for the Liberal Democrats and just three per cent for the Conservatives ([Wilks-Heeg and Crone, 2010a](#)). The reliance on 'big money' is very striking. Using the Electoral Commission's register of donations, we estimate that, from 1 January 2001 to 30 June 2010, donations of £50,001 or more accounted for 41 per cent of Liberal Democrat, 54 per cent of Conservative and 76 per cent of Labour Party declared donation income. We also found that, from 2001-10, some 39 per cent of the total donation income (£318 million) received by the three main parties combined was sourced from just 224 separate donations. To compound our concerns, these 224 donations originated from fewer than 60 sources - a combination of individuals, companies and trade unions ([Wilks-Heeg and Crone, 2010b](#)).

The extent to which these financial arrangements have rendered the parties subordinate to special interests is, however, difficult to assess. Certainly, if we base our assessment on sources of income alone, there are clear grounds for concern. Democratic Audit research has shown that from January 2001 to June 2010, the Conservative Party sourced £45.5 million, amounting to just under one-third (31.9 per cent) of its total donation income, from just 15 'donor groups', that is clusters of donors who are linked by family ties and/or where the sources of personal and commercial donations appear to overlap ([Crone and Wilks-Heeg, 2010](#)). Further research by the Bureau of Investigative Journalism (BIJ) found that donations from companies and individuals connected to the financial services industry amounted to £11.4 million in 2010, representing 50.8 per cent of all Conservative Party donation income in that year. In total, City interests were found to have donated some £42.8 million to the Conservatives since 2005 ([Mathiason and Bessaoud, 2011](#)). Turning to Labour Party donations, the Electoral Commission's registers of donations reveal that in the period from January 2001 to June 2010, trade unions donated a total of



£98.6 million to the Labour Party, making up 61.8 per cent of their total donation income over this period. By historical standards, Labour was almost certainly less dependent on trade union funding in the 2000s than it had been in previous decades, mostly because of the success of the party, under Blair's leadership, in attracting large personal and corporate donations. In more recent years, however, it would appear that trade union donations have again increased in significance to Labour. In 2010, trade union donations amounted to £17.9 million, comprising 71 per cent of Labour's donation income for the year.

While the patterns of donations are very clear, however, evidence that large individual or organisational donors expect, are promised, or receive anything in return for their gifts is notoriously difficult to pin down. The strongest statement on record by an individual donor was probably made by Stuart Wheeler, who donated £5 million to the Conservatives in 2001. Wheeler told the Committee on Standards in Public Life on 23 November 2010 that it was '[absolutely natural and unobjectionable](#)' that anyone making large donations to political parties expected to gain influence and shape future policy ([Wilks-Heeg, 2010c](#)). There are also frequent assertions that specific cases of policy change are linked to large donations, although impropriety is rarely, if ever, proven (Ewing, 2006). Four key examples of such instances in recent years may be cited as illustrations of such concerns, as well as the difficulty of 'proving' that policy decisions were influenced by donations:

- In November 1997, the newly elected Labour government began to make the case for Formula One to be exempt from a proposed EU-wide ban on tobacco advertising at sporting events. It subsequently emerged that Tony Blair had met with Bernie Ecclestone, head of Formula One, and Max Mosley, president of the Fédération Internationale de l'Automobile (FIA), the governing body of motor sport, on 16 October that year. It was then discovered that Mosley had previously donated several thousand pounds to the Labour, while the party had accepted a total of £1 million from Ecclestone (Ewing, 2007).
- In early 2001, the secretary of state for trade and industry, Stephen Byers, announced his decision not to refer Richard Desmond's £125 million purchase of the *Daily Express* newspaper to the Competition Commission. While no impropriety was ever proven, the Labour Party received a £100,000 donation from Desmond a few days later, shortly before the disclosure regulations introduced by PPERA, 2000 were to come into force (Ewing, 2006, p. 63).
- In 2011 controversies emerged concerning the government's decision to cancel an £80m loan to Sheffield Forgemasters, agreed by the outgoing Labour government. It emerged that Andrew Cook, a Sheffield-based industrialist and chairman of engineering firm William Cook Holdings, had written confidentially to Mark Prisk, the business minister, arguing that the loan was unnecessary. It subsequently emerged that Andrew Cook had himself previously tried to invest in Sheffield Forgemasters ([The Engineer, 2010](#)) and that his email to Prisk began: 'I am the largest donor to the Conservative party in Yorkshire and have been since David Cameron was elected leader. I am delighted you are back in power, albeit in coalition' ([Guardian, 2010](#)).
- Since 2010, concerns have been expressed about the possible influence of John Nash on Conservative Party policy. John Nash has donated £10,000 to the Conservative Party since 2006, with a further £172,000 in donations recorded in the name of his wife, Caroline Nash. Mr Nash, who has substantial business interests in private education, was appointed as a non-executive director at the Department of Education in December 2010 ([Beetham, 2011](#)). He is also the Chairman of Care UK, which was awarded a £53 million contract to deliver health care in prisons in North East England in early 2011 ([Northern Echo, 2011](#)).

In addition to these specific examples where individual donors appear to have 'coincidentally' benefitted from specific policy decisions, there are also wider concerns about whether donations influence policy in a more pervasive sense. For instance, media reporting of the BIJ's research ([Mathiason and Bessaoud, 2011](#)) resulted in widespread debate about whether the government's apparent reluctance to impose tighter banking regulation might be linked to their reliance on donations from financial interests. On the other side of the political spectrum, frequent accusations are made about the influence which trade unions have on the Labour Party as a result of its dependence on union donations. Again, such influence is hard to demonstrate in a concrete way. Indeed, as we have noted in previous Audits, there are strong grounds to question the view that trade unions exert significant influence over Labour's policies (Beetham et al., 2002).

A further, long-running concern is that some donations represent a 'cash for honours' transaction in which wealthy individual are promised a place in the House of Lords or nomination for a knighthood in return for donations. Such allegations are exceptionally hard to prove, as the Metropolitan Police discovered during the lengthy 'cash for honours' inquiry in 2005-06. In this case, it emerged that both Labour and the Conservatives had received a number of large loans from individuals prior to the 2005 general election and that a number of those providing loans had thereafter been nominated for honours ([Fisher, 2010](#)). While the House of Lords Appointments Commission rejected all of these nominations, the scandal prompted the government to make provisions to amend the Electoral Administration Bill, then before parliament, stipulating that loans also had to be declared to the Electoral Commission. The controversy also led to an, ultimately fruitless, attempt to secure party funding reform via a review conducted by Sir Hayden Phillips ([Wilks-Heeg and Crone, 2010](#)).

In the absence of reform, questions about possible 'cash for honours' transactions continue. In late 2010 major donors to all three parties were granted seats in the House of Lords. These included three new Conservative peers (Stanley Fink, Andrew Feldman and Bob Edmiston) who had donated almost £5 million between them over the previous decade; a new Labour Peer (Sir Gulam Noon) who had given £738,000 over the same period; and a new Liberal Democrat Peer (Paul Strasburger) who had contributed £765,000 to his party over a period of five years (BBC News, 2010). In light of these developments, one UK broadsheet argued in its leader column that 'Cash and

honours are as close as ever':

'It appears little has been learnt by our political parties since the 2007 cash-for-honours affair. Two of the new peers, Sir Gulam and Mr Edmiston, were even questioned by the police in that tawdry business three years ago [...] All three parties will doubtless argue that these new wealthy peers merit their place in the upper house because of their public works, and that their donations have nothing to do with their elevation. But it looks appalling'. ([Independent, 2010](#))

In short, while there is little hard evidence of corruption or impropriety in the funding of UK political parties, or of other forms of subordination of parties to special interests, a suspicion of at least some degree of foul play remains. Moreover, the existence of a 'big donor culture' in UK party politics is beyond dispute; all three parties have become embroiled in controversies associated with specific large donations as they strive to generate donation income. Ironically, the introduction of disclosure requirements under PPERA 2000 has if anything only served to heighten awareness, and hence concern, about the wider implications of large donations. The dominance of such concerns in discussion of how UK political parties are funded has significant implications for how the public view political parties ([Wilks-Heeg and Crone, 2010a](#)).

The problems raised by the reliance of the political parties on big donors is specifically recognised in the coalition's 'Programme for Government' which promises to 'limit big donations' and 'take big money out of politics'. Quite how this is to be achieved remains to be seen. The Committee on Standards in Public Life began an inquiry into the issues in mid-2010 and is expected to make recommendations in October 2011. Its task is not an easy one. The most obvious means of addressing concerns about the role of big donations in party politics would be to provide higher levels of state funding to political parties, as the Phillips Review recognised. Indeed, UK party funding arrangements contrast sharply with practice in most other West European countries, where political parties tend to receive a far greater share of their income from the state; and where, in many cases, there are also tight restrictions on the size and sources of donations. However, quite aside from the likely public backlash to proposals for increased levels of state funding to political parties, there is a genuine risk that state funding could weaken the parties' roots in civil society still further. Some means of channelling state funding so that it bolsters the efforts of parties to recruit more members and engage more widely with the electorate is therefore essential ([Wilks-Heeg and Crone, 2010a](#)).

## 2.2.5 Parties and social divisions

To what extent does support for parties cross ethnic, religious and linguistic divisions?

Cleavages associated with ethnic, religious and linguistic divisions tend not to play a significant role in British party politics, with the obvious exception of Northern Ireland and, to some extent, Scotland and Wales. There are higher than average levels of support for the Labour Party among members of most ethnic minority groups, while voters expressing an affiliation with the Church of England tend to favour the Conservative Party more than the population as a whole.

In contrast to the rest of the UK, religion continues to play a vitally important role in the fabric of Northern Irish society. The ESRC-funded [Northern Ireland General Election Survey \(2010\)](#) found that an estimated 57 per cent of the Northern Irish population claimed to attend a religious service at least once per month (in Great Britain the figure is usually estimated at around 15 per cent). At the same time, religion constitutes the principal fault-line in Northern Irish society and politics, albeit one which is reinforced and cross-cut by conflicts over national identity, as well as by socio-economic divisions. The 2010 ESRC survey found that 43 per cent of the population regarded themselves as Roman Catholic and 52 per cent as protestant (for whom affiliations were spread across 14 different denominations), while less than one per cent indicated affiliation to other religions and faiths (four per cent either indicated they had no religious affiliation or provided no answer to the question).

It is this basic social divide which has led to the emergence of a Northern Irish party system which is entirely distinct from that in the rest of the UK. The role of religion as a social cleavage in Northern Ireland is inseparable from the struggles over national identity in the province, and political loyalties are, in turn, closely associated with these deep-rooted sectarian divisions. The two main voting blocs of unionist and nationalist parties, which became dominant in Northern Irish politics from the early 1970s, have proved highly resilient. At the 2010 general election, 42 per cent of votes were cast for the two main nationalist parties (Sinn Féin and the SDLP), while 44 per cent of votes were shared by the three principal Unionist parties (the DUP, UCUNF and the TUV). The non-sectarian Alliance Party secured just 6.3 per cent of the votes, with a further 7.6 per cent of ballots being cast for an assortment of 'others' ([Tonge et al., 2010](#)). There have been significant shifts over time in electoral support for parties within the two respective blocs. However, there is little evidence that the experience of devolution, based around the power-sharing model which was developed following the signing of the Good Friday Agreement in 1998, has served to foster any 'melting of the region's ethnic bloc glaciers' ([Tonge et al., 2010, p. 11](#)).

The extent of association between religion and party support in Northern Ireland is underlined by constituency level analysis of the relationship between religious affiliation and voting patterns. [Tonge et al. \(2010\)](#) found an almost perfect correlation at a constituency level



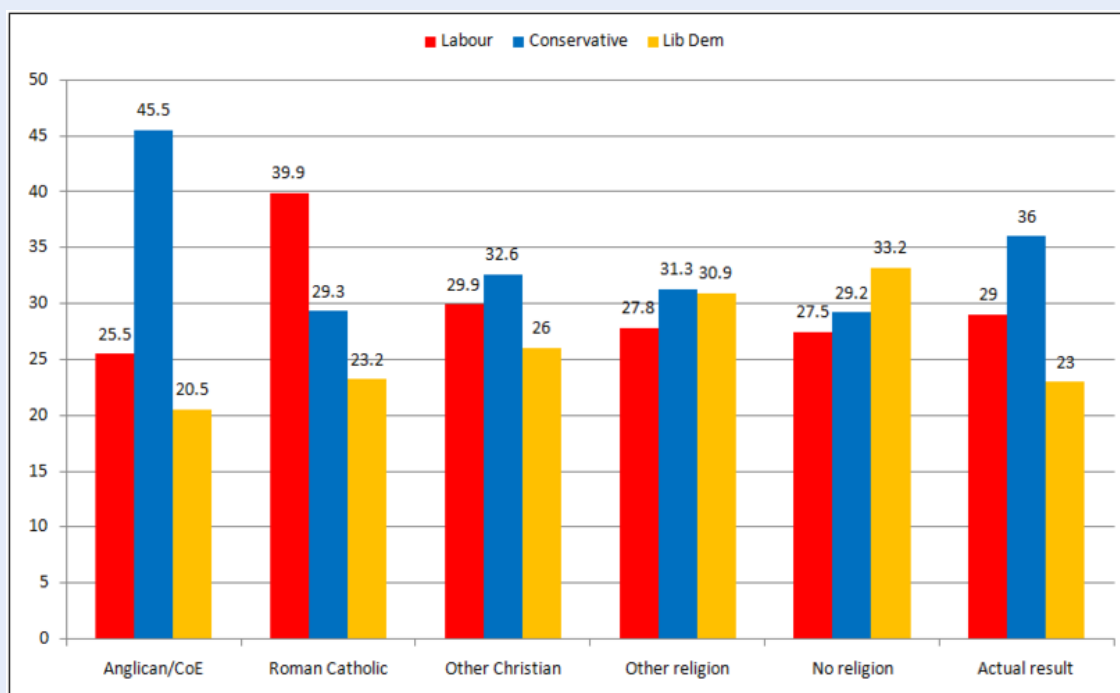
between the size of the catholic population and votes cast for nationalist parties ( $r^2 = 0.987$ ) and an equally clear association between the size of the protestant population and the scale of support for unionist parties ( $r^2 = 0.943$ ). The authors note that, if there are any signs of sectarian impulses being in retreat in Northern Irish politics, they are most likely to be found among the 40 per cent of the electorate who now typically fail to cast ballots in elections in the province. They conclude that 'considerable electoral prizes await a party capable of attracting sizeable cross-community support across Northern Ireland, but that prospect remains distant' ([Tonge et al., 2010, p. 26](#)).

Outside of Northern Ireland, social divisions associated with religion and national identity have had much less salience, although they are by no means irrelevant. The reassertion of Scottish and Welsh national identities since the 1970s has clearly played a significant role in the growth in support for the Scottish National Party and Plaid Cymru. In the case of Plaid Cymru, the campaign to preserve Welsh as a minority language has also played an important role in relation to the emergence of the party as a significant player in Welsh politics, and its electoral support is heavily concentrated in Welsh-speaking areas.

It is certainly true that, beyond Northern Ireland, religious affiliation appears to be of declining significance to Britons. The British Social Attitudes (BSA) surveys document an increase in the proportion of the population declaring no religious affiliation from 32 per cent in 1983 to 45 per cent in 2008, while the British Election Study (BES) of 2010 put the figure at 54 per cent. The BSA surveys also found that the proportion indicating attendance at a religious ceremony or meeting at least monthly declined from 21 per cent to 15 per cent from 1983-2008.

Despite these trends, however, the relationship of religious belief to patterns of party support is by no means entirely irrelevant. Data from the 2010 British Election Study (BES) points to some notable contrasts in party support among those expressing adherence to particular faiths. As Figure 2.2h shows, the quarter of the population describing themselves as Anglicans were more likely to vote in 2010 and significantly more likely to vote Conservative than any other denominational category or faith group, including non-affiliates. Among the 95 per cent of Anglicans who claimed to have voted, 46 per cent said they had voted Conservative, 26 per cent Labour and 21 per cent Liberal Democrat. Conversely, 90 per cent of Roman Catholics participating in the survey said they had voted, of whom 40 per cent had voted Labour, 30 per cent Conservative and 23 per cent Liberal Democrat. Intriguingly, among those who said they were not religious, there were higher levels of support for the Liberal Democrats than any other party. While it would be misleading to claim that such figures suggest any significant form of denominational divide in party support, since religious affiliation overlaps significantly with social class, these figures are nonetheless striking.

Figure 2.2h: Party support by religious affiliation, 2010

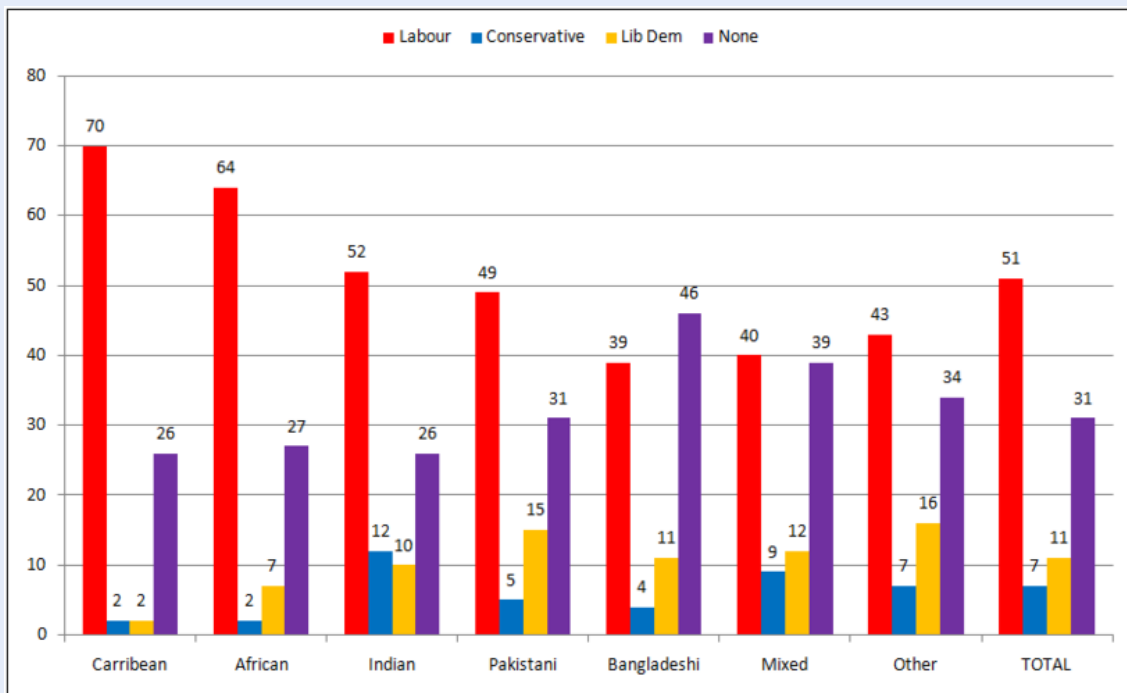


Source: [Clements \(2010\)](#)

There are also clear contrasts in levels of party support among different ethnic groups. Until recently, members of most ethnic minority

groups showed an overwhelming tendency to vote Labour. In 1979, it was estimated that 86 per cent of British Asians and 90 per cent of Black British (Afro-Caribbean) people casting ballots voted Labour, while the figures in 1997 were 60 and 92 per cent respectively (Anwar, 2001, p. 538). Figure 2.2i, which measures broad party identification, rather than actual voting behaviour, among different ethnic groups in 2005 confirms this pattern. Members of all ethnic minority groups were significantly more likely to describe themselves as Labour supporters than as Conservatives or Liberal Democrats, although this pattern is most obvious in relation to those of Caribbean and African descent. Tellingly, significant numbers of respondents expressed no preference for any of the three main parties - a tendency particularly evident among those of Bangladeshi origin.

Figure 2.2i: Party support by ethnic group, 2005



Note: The question asked was: 'generally speaking, do you think of yourself as Labour, Conservative, Liberal Democrat?'

Source: [Ipsos Mori/The Electoral Commission \(2005\)](#).

## Conclusion

As this section has illustrated, political parties occupy something of a paradoxical role in modern representative democracy. They are regarded as the means through which the demands of civil society are translated in policy programmes, although only about one per cent of UK electors are members of one, and fewer still are active members. Moreover, despite their rapidly falling membership levels, the UK's two main political parties have clearly been able to sustain their dominance at Westminster. The two-party duopoly is sustained via a series of factors which combine to limit the extent of party competition, despite the rapid growth in support for smaller parties. The practical barriers faced by parties seeking to challenge this duopoly are considerable. The 'winner-takes-all' electoral system, legal requirements for election candidates to pay deposits, and the criteria for allocating state funding to political parties all present significant hurdles for smaller parties. If party politics is to be revitalised in the UK, these forms of structural bias will need to be removed - as they largely have been in devolved elections, with striking consequences.

The large parties have been able to compensate for their respective shrinking membership and activist bases by sourcing large donations, loans and state support to finance a more capital-intensive and professionalised approach to policy development, media management and campaigning operations. While there are some signs that these developments have enabled the political parties to reach more voters at election time, the large parties' need for financial resources has clearly increased their dependency on 'big donors'. The introduction of declaration requirements in relation to donations to political parties has done nothing to reduce the significance of the 'big donor culture', but has certainly given rise to even greater concern about the influence which large donations have on the political parties.

While there are some, modest signs of encouragement - such as in the growing membership of smaller parties - the evidence presented above does not present an encouraging picture in relation to our overarching question for this section. At a basic level, the party system clearly does assist the working of democracy in the UK. Political parties in the UK are successful in developing policy programmes for elections and in recruiting candidates to contest them. The party system enables governments to be formed and sustained in office including, to date, the first peace-time coalition since the 1930s. Yet, at a deeper level, we have highlighted some profound concerns about the operation of the UK's political parties. Provisions for internal democracy generally remain weak, and recent reforms appear to have reduced the scope for members to exert influence. Perhaps most worrying of all, the growing reliance of the political parties on large donations raises serious concerns about the extent to which influence can be bought.

Trends in the funding of political parties documented in this chapter are a further illustration of the concerns we express throughout this Audit regarding the growth of political inequality and the apparent rise of corporate power in our democracy. All three of the main parties saw a sharp increase in income from wealthy individual donors during the 2000s, although this tendency has been most evident in relation to the Conservative Party in recent years. Moreover, there has been a very clear rise in donations to the Conservatives from companies and individuals connected to the financial services sector, at a time when concerns about the impact of deregulation in that sector have reached their peak. We have underlined throughout this section that impropriety cannot be proven with regard to these, or almost any other, donations. However, it surely cannot be doubted that this reliance on wealthy donors does little to enhance the democratic credentials of the UK's political parties.

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## 2.3 Effective and responsive government

### Executive Summary

This chapter reviews the available evidence relating to the six 'search questions' concerned with government effectiveness and responsiveness in the UK.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings (a) areas of improvement; (b) areas of continuing concerns; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Advances arguably secured through the Civil Service Capability Review.**

The Civil Service Capability Reviews were announced in 2005 as a mechanism for assessing the capacity of individual civil service departments and identifying areas in need of development. By 2009, the Cabinet Office was able to claim that the reviews showed qualified improvements in three key areas: leadership, strategy, and delivery. (For further details, see Section [2.3.1](#) and Case Study [2.3a](#))

##### **2. The introduction of a Civil Service Act (as part of the Constitutional Reform and Governance Act 2010).**

Longstanding calls for a Civil Service Act have become more frequent in recent years. In particular, concerns about the rise of special advisers compromising the impartiality of the civil service have led to demands for legislation to place the civil service on a statutory basis, rather than being managed under the royal prerogative. Provisions included in the Constitutional Reform and Governance Act 2010 go some way to addressing these issues - although not as fully as some would have hoped. (For further details, see Section [2.3.2](#))

##### **3. Greater acceptance at various tiers of governance of public engagement mechanisms.**

Growing use has been made of a variety of public engagement mechanisms in recent years, including citizens' panels, citizens' juries and referendums. The significance of these initiatives at a local level has been significantly enhanced by the Sustainable Communities Act 2007. Meanwhile, referendums have become 'standard practice' when determining issues relating to devolved government and may

become more widely used in determining key constitutional questions for the UK as a whole. While these forms of 'direct' and 'participatory' democracy are welcomed by many democratic reformers, we suggest they also raise a number of democratic problems. (For further discussion, see Section [2.3.3](#))

#### **4. The Freedom of Information Act 2000 becoming fully operational in 2005.**

Despite legitimate concerns about the restrictions contained in the legislation, the Freedom of Information Act has played a crucial role in bringing about greater openness and transparency in official decision-making. Clear support for the principle of freedom of information in the courts, and widespread use of the mechanism in the media, have ensured that the legislation has been used to good effect in challenging the culture of secrecy in UK government. (For further details, see Section [2.3.5](#))

#### **5. More independence for official statistics.**

A series of measures introduced since the mid-1990s have helped to ensure the independence of official statistics from government. The creation of the Statistics Authority as an independent body under the Statistics and Registration Service Act 2007 is a particularly welcome development in ensuring the integrity of official statistics. (For further details, see Section [2.3.5](#))

#### **6. The increased use of measures to secure greater public involvement in or influence over public service delivery, albeit measures which are often controversial.**

Government has shown greater interest in consulting more systematically with public service users and involving them in the delivery of public services. There remain reservations about certain issues including the possibility of 'capture' of public services by particular interest groups. Also controversial is the idea of empowering users through the creation of quasi-markets in public services. Services can become more responsive through effective redress mechanisms. The Tribunals, Courts and Enforcement Act 2007 created a new, simplified statutory framework for tribunals; but concerns remain about the quality of complaints handling. (For further details, see Sections [2.3.3](#) and [2.3.4](#))

### **(b) Areas of continuing concern**

#### **1. Problems with skills and organisation in the civil service.**

Longstanding concerns about the skills and organisation of the civil service persist. A number of high-profile reviews highlight ongoing doubts about whether the personnel and structures at the heart of UK government are as effective as they should be. (For further details, see Section [2.3.1](#))

#### **2. Tensions in the relationship between special advisers and permanent civil servants.**

The number of special advisers appointed by governments rose sharply following New Labour's victory at the 1997 general election. By the mid-2000s, there were growing concerns about how the activities of special advisers were impacting upon the day-to-day work of career civil servants. These concerns have included widespread claims that special advisers are compromising the impartiality of the civil service. (For further details, see Section [2.3.2](#))

#### **3. The continued existence of the 'MP filter' for complaints to the parliamentary and health service ombudsman.**

Despite repeated recommendations that it be reformed, service users cannot complain directly to the ombudsman, an arrangement which is an international peculiarity. They must still, in the first instance, approach their local MP, who forwards on the complaint. (For further details, see Section [2.3.4](#))

#### **4. High degrees of government discretion over policy consultation**

Though the principles embodied in the *Code of Practice on Consultation* are sound, there remains scope for discretion about how they are applied in practice; and the code lacks a statutory basis. (For further details, see Sections [2.3.3](#) and [2.3.4](#) and Case Study [2.3d](#))

#### **5. Inequalities of access to government when consulting on policy, and the role of lobbyists in facilitating such access.**

The possibility for significant informality and discretion in the policy consultation process can contribute to differential levels of access to government. While a wide variety of organisations engage in lobbying, there remains cause for concern that commercial organisations have an advantage over their not-for-profit equivalents, as a consequence of their greater financial resources, despite recent limited steps



towards greater regulation of the public affairs sector. Furthermore, there is concern about the 'revolving door' between the public and private sectors, and the lack of transparency around lobbying. (For further discussion, see Section [2.3.3](#))

### **6. Evidence of less than exceptional performance of public services.**

International comparative research suggests that when the quality of government in areas such as educational attainment, health, transparency, crime and public satisfaction with public services is considered, the UK is not ranked top for any indicators. It is mostly in the middle third when compared to 13 comparable countries. (For further discussion, see Section [2.3.4](#))

### **7. Low levels of public confidence in government efficacy and in personal political efficacy.**

Data can be traced back to the 1970s which demonstrates positive public attitudes regarding the efficacy of government, although there is some evidence this was linked to satisfaction with the particular government of the day. It suggests that levels of satisfaction are lower now than they were in the 1970s, but that they have not shifted greatly since the 1990s. In recent polling, only a narrow plurality disagree with the statement: 'When people like me get involved in politics, they can really change the way that the country is run'. However, there is no obvious trend in levels of personal political efficacy over time in a particular direction. (For further details, see Section [2.3.6](#))

### ***(c) Areas of new or emerging concern***

#### **1. The failure of financial regulation and the apparent inability of governments to guarantee stability in the financial system.**

The banking crisis of 2007 and the subsequent global economic downturn illustrated the deficiency of the UK central government (which it shared with many of its international counterparts) in guaranteeing certain basic requirements to its population, such as stability in the financial system. Part of the problem is a lack of effective global governance of multinational banks. Regulation and supervision cannot be effective at national level alone, but it is at national level that failures are largely dealt with. However, there were definite failures at a national level, in the UK as elsewhere; and it is far from clear that the crisis has led to effective change to practical and philosophical approaches to the regulation of markets. (For further details, see Section [2.3.1](#))

#### **2. Evidence of the abuse of short-term civil service contracts as a vehicle for ministerial patronage.**

It is a fundamental value of the permanent civil service in the UK that appointments are made on the basis of merit, through open competition, and not on the personal patronage of ministers. There are signs that the coalition government sought to bypass this principle through the use of short-term civil service contracts. (For further details, see Section [2.3.2](#))

#### **3. The government's mishandling of the consultation on the future of nuclear power.**

In July 2006 the government announced that 'Nuclear has a role to play in the UK's future generating mix'. A high court judgment on 15 February 2007 ruled that the Energy Review consultation preceding this decision was procedurally flawed, and that the Department for Trade and Industry (DTI) had therefore acted unlawfully by including new nuclear build in the future energy mix. The DTI launched a new consultation in May 2007, which included a series of 'citizen deliberative events'. However it was found by the Market Research Standards Board to have breached the board's code of conduct in the handling of these events. (For further details, see Case Study [2.3d](#))

#### **4. A rise in the proportion of requests refused under the Freedom of Information Act.**

The broad trend in central government is for 'non-routine' information requests to grow in quantity, and for central government bodies to be increasingly likely to refuse them in full or in part. (For further details, see Section [2.3.5](#))

## Introduction

### **Why does democracy require effective and responsive government?**

A key feature of democracy is that governments have the capacity to deliver on promises that are presented to the electorate; and that between elections, the views of the public are taken into account. However, the international credit crisis which began in 2007 demonstrated how circumscribed government in the UK (as elsewhere in the world) can be in its ability to provide for seemingly basic requirements such as a stable banking sector.

To assess these issues, it is necessary to establish how far governments can influence important matters, and whether they possess the necessary tools to do so. The effectiveness of the executive machinery and its openness to scrutiny must be considered, along with the

procedures used for public consultation and the equality of access to such consultation that is facilitated. The accessibility and reliability of public services for those who use them, and the way those users are consulted over their delivery is significant - as is the access of citizens to official information, and the confidence of the public in government to deliver what is needed.

The previous full Audit noted that, in relative terms, the UK is a wealthy country which in theory possesses sufficient resources to provide for the central needs of its population, though there were some issues around the effectiveness of bureaucratic organisation. It recorded the development of ideas about public engagement, though observing that their implementation was inconsistent; and the attempt to formalise consultation practice. This Section shows how, in the period since the last Audit, civil service reform has continued: a Civil Service Act has passed into law; various measures have been attempted to improve public services; and the Freedom of Information Act has come fully into effect. Yet, alongside these arguable examples of progress, other features of UK democracy in these areas have been static or even worsened. Perennial criticisms of Whitehall skills and organisation persist. Government retains discretion over how, whether and with whom it can consult, with clear grounds for suspicion that the views of certain groups are in practice favoured over others. The official tendency towards secrecy has not fully been eradicated. Public scepticism remains regarding the efficacy of government, and of the ability of individuals to impact upon it. The inability of government to exert control in crucial areas involving the global economy has been emphasised further by events surrounding the banking crisis.

Key current debates around these issues include ongoing doubts, following the credit crisis and its aftermath about whether and how regulators can guarantee greater stability in the financial sector; and uphold the public interest in other sectors, such as energy. The 'big society' programme, central to the agenda of David Cameron, prime minister since May 2010, has ensured the debate about the appropriate role for the public in service delivery remains salient. Meanwhile, the Coalition pledge to introduce a statutory register for lobbyists - which has yet to be acted upon - has been made at a time when concerns are widely voiced about the equality of access to official policy-makers, alongside more general concerns about corporate influence in the UK.

### 2.3.1 Government capacity

How far is the elected government able to influence or control those matters that are important to the lives of its people, and how well is it informed, organised and resourced to do so?

#### ***Controlling matters important to the lives of people***

The 2002 Audit noted that (Beetham et al., 2002, p. 124):

'The United Kingdom is a very rich country with extensive and varied resources, not least in its human capital [...] There is therefore no question about the country being sufficiently resourced to deal with issues that are important to the lives of its people'.

This statement remains true. Yet, in some senses, the ability of government to influence or control those matters that are important to the lives of its people has declined significantly, particularly since the 1980s, partly as a consequence of a trend broadly labelled the 'hollowing out of the state'. The privatisation programme instigated by the Thatcher governments and continued thereafter saw various publicly owned utilities and services (such as electricity, gas and eventually railway transport) transferred into the private sector. The impact of government on these sectors is now achieved more indirectly, through various statutory regulators - although the degree to which public corporations before privatisation were subject to effective political control should not be exaggerated (for a discussion of these issues, see, for example, Parker, 1999; Rhodes, 1994).

A further significant development, which can be traced to the 1970s, is the growth of both ideological and practical restraints upon government economic intervention in securing such goals as high levels of employment or the redistribution of wealth (see Section [1.4](#)). This shift was brought about by the increased acceptance across the political spectrum of free market values, combined with international trade liberalisation and currency convertibility (see, for example, Haseler, 2010).

With such developments in mind, a recent Democratic Audit study by David Beetham referred to a tendency whereby 'governments have increasingly lost capacity to control key areas of policy, particularly economic' (Beetham, 2011, p. 3). The banking crisis of 2007 and the subsequent global economic downturn illustrated well the deficiency of the UK central government (which it shared with many of its international counterparts) in guaranteeing certain basic requirements to its population such as stability in the financial system. Part of the problem is a lack of effective global governance of multinational banks. Regulation and supervision cannot be effective at national level alone, but it is at the national level that failures are largely dealt with. In the words of Lord Turner's review of the banking crisis:

'The crisis revealed fault lines in the global regulation and supervision of some of these cross-border firms, which raise fundamental issues about the appropriate future approach [...] When crises occur, it is national central banks which have to provide lender-of-last-resort (LOLR) support and national governments that provide fiscal support, and that if there is a failure, bankruptcy procedures are

national and it matters with which specific legal entity a creditor has their claim' ([The Turner Review, 2009, p. 36](#)).

There were definite failures at the national level (in the UK as elsewhere), and it is far from clear that the crisis has led to effective changes in the practical and philosophical approaches to the regulation of markets. As the Commons Treasury Committee found in its 2009 assessment of the statutory regulator of the banking sector, the Financial Services Authority (FSA, absorbed into the Bank of England in 2010):

'By any measure the FSA has failed dreadfully in its supervision of the banking sector [...] We note that the regulatory philosophy of the FSA has changed. It has less faith in market forces than before; it is more willing to challenge firms' business decisions; it now considers the competence of new bank directors and appears more willing to remove 'the punchbowl from the party'. All of this is good, but all of this is also fashionable. The FSA must develop the confidence to take unpopular decisions when the economic boom begins again, in the face of both industry and the political class' ([House of Commons Treasury Committee, 2009, p. 3](#)).

Moreover, there is a wide acceptance across the political spectrum that the surge in the public deficit which followed the bail-out of the banking sector (again, a widespread international tendency) must be corrected on terms dictated by international financial markets and credit rating agencies. The main area of disagreement is over the precise speed at which those markets require the deficit to be eliminated (see, for example, [Mulholland, 2010](#)). The acceptance of the need for retrenchment has, in turn, substantial implications for the ability of government to serve the public.

### **Information and organisation**

When considering how well informed and organised government to deliver, the primary focus of interest must be the team of administrative personnel working across various central government departments known collectively as 'Whitehall' or the civil service. A traditional criticism of the civil service (dating back at least as far as the 1960s) is that it is 'still fundamentally the product of the nineteenth-century philosophy of the Northcote-Trevelyan Report' of 1854 and 'based on the philosophy of the amateur' (Report of the Committee, 1968, p. 11). It has been argued variously by proponents of this school that the civil service lacks specialist knowledge and skills, and that it is not organised appropriately to fulfil its many responsibilities (see, for example, Blick, 2004). Prompted by such criticisms, a number of Whitehall reforms have been pursued over the years, striving to meet such objectives as recruiting greater expertise and incorporating private sector management techniques. During the Labour era of government, there were attempts to encourage 'joined-up government' (that is, cross-departmental working to address complex social problems (see Bogdanor, 2005)) and 'delivery' (that is, a focus on achieving specific performance targets and reform objectives, tied to resources made available by the Treasury (see Barber, 2007)).

An important initiative in the period since the last Audit came when the incoming cabinet secretary and head of the home civil service, Sir Gus O'Donnell, launched in 2005 the 'Capability Review', which was intended to assess the capacity of departments to meet present and possible future challenges, against a central capability model (See Case Study 2.3a).

### **Case Study 2.3a: The findings of the Civil Service Capability Reviews**

Commenting on the early findings of the Capability Review in 2007, the House of Commons Public Administration Select Committee (PASC) remarked that:

'The Capability Reviews paint a bleak picture of Civil Service performance. They suggest a lack of leadership and serious deficiencies in service delivery' ([Public Administration Select Committee, 2007, para. 33](#)).

By late 2009 (Capability Reviews Team, 2009) the Cabinet Office was claiming qualified improvements had been achieved in three key areas:

- **Leadership.** Departments were said to have 'improved the way they lead delivery and change, and are taking much greater ownership of improving capability'. But more work was needed across the Civil Service 'to develop skills for the future and manage performance effectively' (p. 12).
- **Strategy.** The capability of the Civil Service to develop strategy was said to have improved since the initial Capability Reviews. But departments, it was noted, needed to continue to improve cross-boundary working (p. 19).
- **Delivery.** Delivery capability, it was held, had improved and departments were said to be better at 'prioritisation and managing organisational performance'. There was a need identified for departments to further develop their understanding of 'delivery models and the way they work with delivery partners' (p. 25).

Despite the many efforts at reform, observers still identified deficiencies in Whitehall. In an assessment of the skills of civil servants, the House of Commons Public Administration Select Committee (PASC) concluded in 2007:

'It is clear that the Government cannot currently assess its existing skill levels, let alone identify how to fill gaps. Government Skills needs to concentrate on developing a robust means of assessing individuals' skills. Accredited vocational qualifications would certainly help, and there may also be a case for expanding the use of academic qualifications in assessing the skills of people at the higher levels of the service' ([PASC, 2007, para. 57](#)).

In a report published early in 2010 ([Parker et al., 2010](#)), the Institute for Government called for further reform still in order to ensure civil service effectiveness. It advocated:

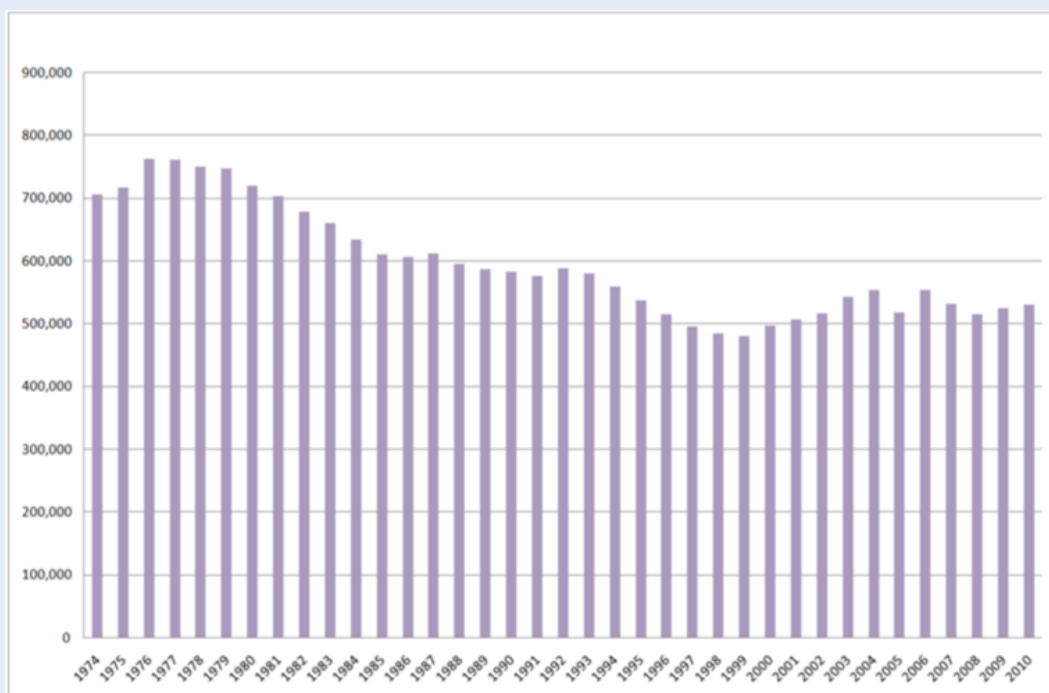
- A 'stronger, more focused centre' (p. 10), which would include a strategy for the whole of government, with a maximum of 20 shared targets;
- 'Well-managed departments' (p. 11), to be led by newly-formed strategy boards, which would bring together ministers, senior officials and non-executive directors, developing policy and the long-term strategy of departments; as well as the establishment of management boards which could focus on 'delivery, performance management, finance and corporate performance'.
- 'Better joined-up government' (p. 11). Collaboration should be made a government priority. Budgets should be allocated to cross-cutting goals - in particular, to priorities which were established as part of the overall strategy of the government.

The broad approach advocated by the Institute seems to some extent to be shared by the coalition government. One possible problem with such initiatives is that, within the UK constitutional setting, parliament primarily focuses on individual ministers in seeking to secure government accountability. Both centralisation and cross-departmental collaboration, while they may seem desirable from a managerial perspective, can undermine democratic accountability through reducing clarity over who is responsible for particular executive activities (see Blick and Jones, 2010).

### Resources

A key measure of the resources at official disposal is the number of administrative staff. The total was not historically huge, even before the implementation of the coalition retrenchment programme, which raises the possibility of a lack of human resources in Whitehall in the future. In 1970, there were approximately 700,000 full-time staff (including about 490,000 who were 'non industrial'). In 1980, the respective figures were about 700,000 and 550,000; in 1990, the total (following the transfer of most industrial civil servants to the private sector) was 500,000; in 2000, about 450,000; in 2010, about 490,000 ([Civil Service Statistics](#), various editions). (See Figure 2.3a.)

Figure 2.3a: Civil Service headcount of permanent staff, 1974-2010



Source: [Civil Service Statistics](#).

### 2.3.2 Democratic control of government

How effective and open to scrutiny is the control exercised by elected leaders and their ministers over their administrative staff and other executive agencies?

#### *Civil service values*

The civil service has a long-standing tradition of political impartiality, which means that permanent officials are appointed on the basis of merit, not personal ministerial patronage, and that they remain in office regardless of changes in the party of government or of particular holders of ministerial office. Officials are expected to serve different ministers of various party complexions with equal loyalty. At the same time, they must not act in a way that would compromise their ability to serve future ministers – and this must not be required of them by ministers. (See key excerpts from the [Cabinet Office's Civil Service Code](#) in Case Study 2.3b)

#### Case Study 2.3b: The Civil Service Code

The current, third, edition of the [Civil Service Code](#) was laid before parliament under the Constitutional Reform and Governance Act 2010. The first edition appeared in 1996. Key excerpts from the code follow:

'The Civil Service is an integral and key part of the government of the United Kingdom. It supports the Government of the day in developing and implementing its policies, and in delivering public services. Civil servants are accountable to Ministers, who in turn are accountable to Parliament...'

'As a civil servant, you are appointed on merit on the basis of fair and open competition and are expected to carry out your role with dedication and a commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality...'

- 'integrity' is putting the obligations of public service above your own personal interests;
- 'honesty' is being truthful and open;
- 'objectivity' is basing your advice and decisions on rigorous analysis of the evidence; and
- 'impartiality' is acting solely according to the merits of the case and serving equally well Governments of different political persuasions.

Source: [Cabinet Office \(2010a\)](#).

According to UK constitutional doctrines, civil servants are directly accountable to ministers and only to ministers, not to parliament - an exception here is that the accounting officer of a department answers directly to the House of Commons Public Accounts Committee. It is arguable that, in practice, ministers cannot reasonably be expected to maintain control over thousands of staff, many of whom they will never meet. The relationship between ministers and the departments for which they are responsible - within UK constitutional understandings - has been made increasingly tenuous and difficult to sustain. The 'Next Steps' reforms, initiated in the 1980s, led to the establishment of a large array of arms-length executive agencies without the day-to-day direct control of ministers. Although this shift was probably sound from a managerial perspective, it has called increasingly into question the extent to which ministers can genuinely control administrative staff and executive agencies. (For discussion of these issues, see, for example, [Barberis, 1998](#); [Broadbent and Laughlin, 1997](#).)

Reflecting on these tendencies, the 1999 Audit found that (Weir and Beetham, 1999, p. 189):

'ministers are able to exercise control over senior officials, but largely only in the limited areas where they take a direct interest. The process of political control, however, cannot be said to be effective, as it is largely confined to ministers asserting, and if need be, imposing their own broad aspirations and policy aspirations. In so far as the huge majority of departmental actions and policies is concerned, ministers are too dependent on senior officials, especially in terms of information, to act as an effective check'.

Moreover, 'the idea that ministers can be responsible for the huge and diverse company of executive agencies, executive and advisory quangos [...] is absurd' (p. 231).

### **Special advisers**

The party political impartiality of the civil service and the permanent employment of its staff have sometimes led to it being portrayed as a self-serving institution which pursues its own objectives, regardless of the official policies of whichever party or parties holds office at a given time. Partly in order to correct this perceived deficiency, governments have made increasing use of special advisers - aides appointed from beyond the permanent civil service on the personal patronage of individual ministers, who are not bound by the requirements of impartiality and objectivity contained in the *Civil Service Code*. (For details on the development and role of special advisers, see Blick, 2004. For an official description of some of their functions, see Case Study 2.3c.)

The number of special advisers has increased considerably over recent decades, peaking in the middle of the last decade and gradually decreasing since. A high proportion of the total has been employed at No.10, and could be seen as facilitating a higher degree of prime-ministerial involvement in government.

There is a long-established general principle that special advisers are employed to support ministers but not directly to manage permanent officials. The only specific legal exception to this rule was at No.10 between 1997 and 2007, when, under Tony Blair, provision was made for up to three special advisers to wield executive powers. It was only ever taken up by two: Blair's chief of staff, Jonathan Powell; and his media aide, Alastair Campbell. When Gordon Brown became premier in 2007, he removed the provision under Order in Council for such executive special advisers. However, in 2005, the legal and other documents describing the roles of all special advisers were changed in such a way as to apparently allow for a substantial impact upon the day-to-day activities of career officials (see Case Study 2.3d).

#### **Case Study 2.3d: Relations between special advisers and permanent civil servants - excerpts from the Code of Conduct for Special Advisers**

##### ***Relations with the Permanent Civil Service***

*7. In order to provide effective assistance to Ministers, special advisers should work closely with the ministerial team and with permanent civil servants, and establish relationships of confidence and trust. Special advisers may, on behalf of their Ministers:*

*i. convey to officials Ministers' views and work priorities, including on issues of presentation. In doing so, they must take account of civil servants' workloads and any priorities Ministers have set;*

*ii. request officials to prepare and provide information and data, including internal analyses and papers;*

*iii. hold meetings with officials to discuss the advice being put to Ministers.*

*But special advisers must not:*

*iv. ask civil servants to do anything which is inconsistent with their obligations under the Civil Service Code;*

*v. behave towards permanent civil servants in a way which would be inconsistent with the standards set by the employing department for conduct generally;*

*vi. authorise the expenditure of public funds, have responsibility for budgets, or any involvement in the award of external contracts;*

*vii. exercise any power in relation to the management of any part of the Civil Service (except in relation to another special adviser);*

*viii. otherwise exercise any statutory or prerogative power;*

*ix. suppress or supplant the advice being prepared for Ministers by permanent civil servants although they may comment on such advice.*

Source: [Cabinet Office \(2010b\)](#).

A particular advantage of the use of special advisers is that they can provide transparency. They are specifically defined as staff appointed on the basis of personal ministerial patronage and allowed to some extent to perform party political functions. In practice, if it were not possible for ministers to appoint special advisers, they would probably attempt to force supposedly impartial permanent officials to perform party political functions; or they would seek to appoint allies from outside the civil service to officially impartial civil service posts. Indeed, there is some evidence that, because of self-imposed restrictions on the number of special advisers it may appoint, the coalition has been following the latter course of action and is abusing the system of temporary civil service appointments (see, for example, [Stratton, 2010](#)).

### **A Civil Service Act**

The rise of special advisers has been associated with claims that the impartiality of the civil service, including in the provision of official information, has been compromised. Fears of this type led to increased calls for legislation placing the civil service on a statutory basis. Previously, it was managed under the Royal Prerogative. The idea of a Civil Service Act was proposed as long ago as 1854 in the 'Northcote-Trevelyan' report; but it did not become a reality until being included in the [Constitutional Reform and Governance Act 2010](#). This act arguably introduces greater transparency into the relationship between ministers and civil servants. It created a statutory power for the minister for the civil service (by tradition, the prime minister) to manage the civil service (and for the foreign secretary to manage the diplomatic service) as well as creating a statutory requirement for the publication of a code for civil servants enshrining the core Whitehall values of 'integrity, honesty, objectivity and impartiality'. It also placed the Civil Service Commission on a statutory basis, and required appointments to the civil service to be made on merit on the basis of fair and open competition. The act also provided a basis for existing rules for special advisers.

However, as this legislation passed through parliament, concerns were raised, including that:

- it did not provide an overall definition of the civil service;
- the Intelligence and Security Agencies were without its remit;
- the political impartiality of the civil service was possibly insufficiently clearly enshrined;
- there was not a wider duty to parliament placed on civil servants alongside that of serving the government of the day; and
- the exceptions to the principle of appointment on merit were too widely defined.

([Select Committee on the Constitution, 2010](#))

## **2.3.3 Public consultation**

How open and systematic are the procedures for public consultation on government policy and legislation, and how equal is the access for relevant interests to government?

The second full Audit (Beetham and Weir, 1999) found that:

'Government consultation of interests and the general public is unsystematic and opaque. Much formative consultation takes place within policy communities of officials and interests which are generally closed to outside scrutiny and may subvert formal public consultation exercises and parliamentary decision and scrutiny [...] Overall certain issues get preference over others, thus blocking political equality in government policy-making and, in some areas, seriously harming the public interest' (p. 297).

### **Open and systematic consultation**

As well as some statutory requirements for consultation, there has existed in the UK a publicly available *Code of Practice on Consultation* since 2000, which applies to government departments and agencies (although not other public sector organisations, unless they choose to adopt it). It was revised in 2004, then again in 2008. The last full Audit (Beetham et al., 2002) concluded that:

'The new code broadly seeks to improve Whitehall's traditional reliance on written consultative exercises and introduces standard procedures across all departments. While it is hardly innovative, and fails to 'deepen' consultation, the code does fill the previous vacuum in guidance on how departments and agencies should consult the public' (pp. 233-34).

(For the seven consultation criteria in the current edition of the code, see Case Study 2.3e.)



## Case Study 2.3e: Code of Practice on Consultation

### *Criterion 1 When to consult*

*Formal consultation should take place at a stage when there is scope to influence the policy outcome.*

### *Criterion 2 Duration of consultation exercises*

*Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.*

### *Criterion 3 Clarity of scope and impact*

*Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.*

### *Criterion 4 Accessibility of consultation exercises*

*Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.*

### *Criterion 5 The burden of consultation*

*Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.*

### *Criterion 6 Responsiveness of consultation exercises*

*Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.*

### *Criterion 7 Capacity to consult*

*Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.*

Source: [Better Regulation Executive \(2008\)](#)

The 'small print' of the code merits attention, since it suggests much discretion for ministers and officials. It has been noted that '[t]he Code does not have legal force' and that 'ministers retain their existing discretion not to conduct formal consultation exercises under the terms of the Code' ([Better Regulation Executive, 2008, p. 5](#)). In relation to a key policy - the possibility of new nuclear power generation - the government has been found repeatedly to have conducted consultation inappropriately (see Case Study 2.3f).

## Case study 2.3f: Consultation on nuclear energy

In February 2003 in its energy white paper, 'Our Energy Future', the government stated: 'We do not propose new nuclear build', but at the same time did not rule it out. The paper pledged that any decision on new nuclear build would be subject to the 'fullest possible consultation'.

Following a consultation, in July 2006 the government announced (in 'Energy Challenge Energy Review Report') that 'Nuclear has a role to play in the UK's future generating mix'. Greenpeace sought a judicial review of this decision. A high court judgment on 15 February 2007 ruled that the Energy Review consultation preceding this decision was procedurally flawed, and that the DTI had therefore acted unlawfully by including new nuclear build in the future energy mix. The judge, who felt that 'something had gone clearly and radically wrong', ruled that the consultation process in 2006 failed to provide 'fullest public consultation'. In particular it was found that there was a failure to consult on the specific question of whether or not there should be new build; that insufficient information was provided for an informed response; that the consultation was not held open long enough for significant evidence to be taken into account, with no more than the minimum 12 week consultation period allowed. ([\[2007\] EWHC 311 \(Admin\) IN THE HIGH COURT OF JUSTICE QUEEN'S BENCH DIVISION ADMINISTRATIVE COURT](#))

Following the high court decision, the Department for Trade and Industry (DTI) launched a new consultation in May 2007, which included a series of 'citizen deliberative events' which were held in nine locations across the UK on 8 September 2007. Following these events Greenpeace made a complaint to the Market Research Standards Board on the grounds that the stimulus materials

used at these events were not of appropriate quality. The board decided that 'there were a number of examples where they considered that objectively viewed, information was inaccurately or misleadingly presented, or was imbalanced, which gave rise to a material risk of respondents being led towards a particular answer', in breach of the board's code of conduct ([Market Research Standards Board, undated](#)).

Often, some of the most significant government actions are not preceded by formal consultations (or indeed any meaningful consultation at all) - such as the decision to attempt to abolish the ancient office of lord chancellor in 2003, and the initial constitutional reform plans of the coalition government in 2010 (including legislation to hold a referendum on shifting to the alternative vote system and for fixed-term parliaments; see Section [1.1.5](#)). Public Service Agreements did not involve formal public consultations, nor did their replacements under the coalition; departmental business plans.

A particular concern expressed in the 2002 Audit regarding consultation was that the government was considering means of reducing the role of public consultation in large-scale national planning issues (Beetham et al., p. 237). Both the [Planning and Compulsory Purchase Act 2004](#) and the [Planning Act 2008](#) were intended to accelerate decisions over such infrastructure projects. The latter piece of legislation enabled the government to produce broad policy statements in different areas of planning such as energy and transport, with final decisions over particular planning decisions taken by a newly created quango, the Infrastructure Planning Commission. The nature of the inquiries to be carried out by the commission over its decisions was criticised for having the effect of replacing the existing right of 'people to present their case in person and to call witnesses and cross examine opposing witnesses with a short open floor session at the end of the examination' ([Friends of the Earth, 2007](#)). A second line of criticism was that the commission was not subject to democratic accountability, since it was without direct ministerial control. The coalition government has now abolished the commission, transferring final responsibility for decisions to the secretary of state.

### ***Public engagement mechanisms***

In 2008, the Labour government issued a discussion paper ([Ministry of Justice, 2008](#)) which considered how best to integrate various instruments of direct democracy - referendums, citizens' juries, citizens' summits, deliberative forums, and petitions - into representative democracy at a national level. Of these devices, the most important is the referendum. (For more details, see Section [1.1.5](#). For a consideration of local level public engagement mechanisms, see Sections [3.3.2](#) and [3.3.3](#))

### ***Equal access***

As has been suggested, government enjoys significant discretion in the way it consults over policy formation. Indeed the Code of Practice on Consultation ([Better Regulation Executive 2008, p. 5](#)) states that:

'At times, a formal, written, public consultation will not be the most effective or proportionate way of seeking input from interested parties, e.g. when engaging with stakeholders very early in policy development (preceding formal consultation) or when the scope of an exercise is very narrow and the level of interest highly specialised. In such cases an exercise under this Code would not be appropriate. There is, moreover, a variety of other ways available to seek input from interested parties other than formal consultation'.

When more informal consultation exercises of the sort envisaged here are conducted, the government clearly has the initiative in choosing who it will involve. Consequently, issues of equality of access and, by implication, of influence are raised. Since the last Audit, concerns in this area have often centred on the role of lobbyists in ensuring differential levels of access to decision-makers (for a discussion of the role of lobbyists, see John, 2002). While a variety of different organisations engage in lobbying, [PASC \(2009\)](#) has described the existence of concerns:

- that 'commercial corporations and organisations have an advantage over not-for-profit bodies, an advantage which is related to the amount of money they are able to bring to bear on the political process rather than the cogency of their case.' (p. 5)
- regarding 'the freedom with which people are able to move to and fro between roles in industry on the one hand and ministerial and civil service posts in which they can benefit those industries on the other: a process that has become known as the "revolving door"' (p. 5); and
- 'about the use of 'lobbyists for hire' (who have no legal obligation to make public who their clients are) to keep secret from the public the identity of those involved in lobbying decision-makers.' (p. 5).

The committee recommended reforms to ensure: that lobbyists behave ethically, and that there are consequences for the breaking of rules; that lobbying takes place in a manner both more public and transparent; and to make it harder for politicians and public servants to make use of the contacts and information to which they previously had privileged access, in order to be able to benefit subsequently ([PASC](#),

[2009, p. 42](#)). At the 2010 general election, all three main parties promised measures along these lines. In March 2011, a voluntary register was introduced, though it has been criticised as inadequate (see [Beetham, 2011, p. 14](#)). The statutory register of lobbyists promised by the coalition has yet to be implemented.

### 2.3.4 Accessibility of public services

How accessible and reliable are public services for those who need them, and how systematic is consultation with users over service delivery?

Determining the accessibility and reliability of public services in the UK is a difficult task, but relevant data exist. Professor Christopher Hood has conducted a comparative study of the quality of UK government using 13 international indicators, drawn from [World Bank data](#), covering areas including educational attainment, health, transparency, crime, and public satisfaction with public services. In his words:

'the UK does not come out top in any of these indicators. In the world ranking mostly it is in what you might call the Premier League. If you compare it: relative to 13 selected countries, which were basically advanced countries (I put in a number of Asian ones as well as European countries), the modal position is roughly in the middle third of that group' ([PASC, 2008a, Q238](#)).

Over recent decades increasing importance has been attached within Whitehall to visibly securing tangible returns for taxpayer's money in the delivery of public services, often through the setting of measurable targets. The New Labour governments made 'delivery' – that is, the introduction of performance targets covering the whole of government – a central objective. (For a discussion of public service targets in the UK, see Hood, 2006.) The 1998 Comprehensive Spending Review introduced the regime of Public Service Agreements (PSA) which contained these targets (see [James, 2004](#); [Robinson, 2000](#)). The number of central government targets peaked with the 2002 Review at 250 and was scaled back thereafter. While the PSA system can be seen as a definite attempt to make services more reliable and accessible, it brought with it difficulties. PSAs have been criticised on a number of grounds ([Treasury Committee, 2007, pp. 53-4](#)):

- They were 'too top-down and unwieldy, so that, for example, 14 Public Service Agreement targets and measures for health in England were translated into 206 health targets and measures for NHS Trusts and Primary Care Trusts';
- The capacity to measure with accuracy the extent to which PSA targets had been achieved was lacking;
- Time-lags in the availability of data and changes to PSAs created confusion; and
- Particular problems were created by targets held jointly between different departments within a system largely designed for targets attached to individual departments.

The present coalition government remains committed to the idea of delivering measurable improvements in public services, replacing PSAs with departmental business plans. It is, however, unclear whether the business plans avoid replicating the difficulties associated with PSAs, including their 'top-down' nature.

#### **Redress**

If public services are to be more reliable and accessible for, and more responsive to, users, an effective system of redress - handling both complaints and appeals - is required. As argued by the groundbreaking report produced for the National Audit Office on the subject:

'Citizen redress procedures have an importance for the overall quality of public services that goes far beyond their direct costs. Complaints are an important source of feedback to central departments and agencies about where things are perceived by citizens as going wrong [...] Similarly the availability of appeals and tribunals options is intended to provide an effective incentive for officials to make considered decisions which are right first time' ([Dunleavy et al., 2005, p. 8](#)).

Yet, as the report noted, problems arose because:

'public sector redress systems have developed piecemeal over many years and in the past they have rarely been systematically or comprehensively reviewed. The dichotomy between complaints and appeals is a central organizing theme for redress arrangements [...] [Citizens] have to grapple with two very different concepts of redress, instead of a more integrated concept of redress in order to "get things put right"' (p. 26).

Over the period since the last full Audit, attempts have been made at reform. In 2002, the parliamentary ombudsman began working with government towards creating more certainty around the legal status of more flexible and faster ways of resolving complaints, and promoting complaint handling as central to the improvement of service delivery. In 2004, the Department for Constitutional Affairs announced a long-term plan to create a single Tribunal Agency which could achieve standardised operating practices more accessible and understandable for citizens. Part one of the Tribunals, Courts and Enforcement Act 2007 created a new, more simple statutory framework

for tribunals, intended to create coherence and facilitate future reform. It combined the tribunal judiciary under a senior president; and it replaced the Council on Tribunals, the supervisory body for tribunals, with the Administrative Justice and Tribunals Council, which was granted a broader remit.

Clear problems remain. In 2008, PASC ([PASC, 2008b, p. 39](#)) called on the government: 'to explore the scope for a common access point nationwide for all non-emergency public services'. It noted it was 'disturbed that a poor standard of complaint handling is raised by so many complaint reviewers. This suggests a systemic problem with first-tier complaint handling by government organisations' (p. 16). Its other recommendations included that government organisations 'should also be obliged to ensure that they systematically monitor the complaints they receive in order to inform service delivery' (p. 22).

The parliamentary and health service ombudsman, the primary national-level route for redress in regard to government departments and a wide variety of public bodies, remains hampered (as noted in earlier Audits) by the 'MP filter' which means that many complaints must be raised through an individual's local MP, not directly with the ombudsman. As well as being organizationally unsatisfactory this procedure can act as a serious deterrent to the raising of issues. PASC found that in 2010: 'Members of the public have direct access to all other UK public sector Ombudsmans and all Ombudsman systems in countries with comparable systems except France. The abolition of the 'MP filter' is long overdue' ([PASC, 2010, pp. 3-4](#)).

The conclusions of the ombudsman are not always acted on properly by government. In 2009, the ombudsman issued a report to parliament complaining about the official response to its report on inadequate regulation of the Equitable Life Assurance Society ([Parliamentary and Health Service Ombudsman, 2009](#)). This was only the fifth report of this kind since the ombudsman office was created in 1967.

### **Consultation with users**

Provision for consulting with public service users at the local level was, in the words of the 2002 Audit (Beetham et al., 2002, p. 242), 'patchy'. Government has shown an interest in making such involvement more systematic. Engagement mechanisms such as participatory budgeting and the 'duty to involve' (described above) entail public engagement in various decision-making, including over service provision. Other means of involving users in service delivery have included the introduction of directly elected members of NHS bodies.

However, there are limitations to and problems associated with providing users 'voice' in public services, as noted by the National Consumer Council in a [memorandum to PASC](#) in 2004, which stated that:

- The extension of voice is dictated and managed by providers;
- Consultation processes can conflict with efficiency if the desired ends are not clear or if they are unrealistic;
- Stakeholder processes are subject to capture by unrepresentative groups if not carefully managed;
- Involvement and consultation that doesn't affect outcomes can increase cynicism and contribute to "consultation fatigue";
- User involvement in governance needs to be matched by a mature understanding of risk sharing if individuals are to take on greater responsibility for decisions that directly affect others;
- Processes involving the public need to develop in sophistication and appropriate use if they are to build public confidence.

A further, and probably more controversial, means of empowering service users is through providing 'choice' - that is, creating quasi-market mechanisms within public services which grant users the 'power of exit'. Criticisms of the 'choice' agenda include: that it is likely to be exercised to the advantage of already more privileged groups, and that it is wasteful of resources. (For a discussion of these issues favourable to the quasi-market approach, see Le Grand, 2006)

The coalition government signalled its early intent to pursue ideas emanating from an agenda of public involvement and choice, through its proposed NHS reforms, as well as its free school and 'Big Society' initiatives.

Whatever the merits or otherwise of all of these particular initiatives, there is a problem with the lack of public desire to participate. The [Hansard Society \(2010, p. 48\)](#) *Audit of Political Engagement* has found consistently that 'around half the population simply do not want to get involved in decision-making at either the national or local level; [that] a lack of time is the greatest barrier to participation; [and that] a clear distinction is drawn between 'having a say' and being involved in decision-making, [with] influence [...] favoured but not involvement.' However, it might be claimed that if consultation with service users was seen to be more effective, it might become more popular. Hansard found that 'people feel they lack influence in decision-making above all because "nobody listens to what I have to say"; the more efficacious any form of political action is perceived to be, the more highly it is valued' ([Hansard Society, 2010, p. 48](#)).

## 2.3.5 Access to information

## How comprehensive and effective is the right of access for citizens to government information under the constitution or other laws?

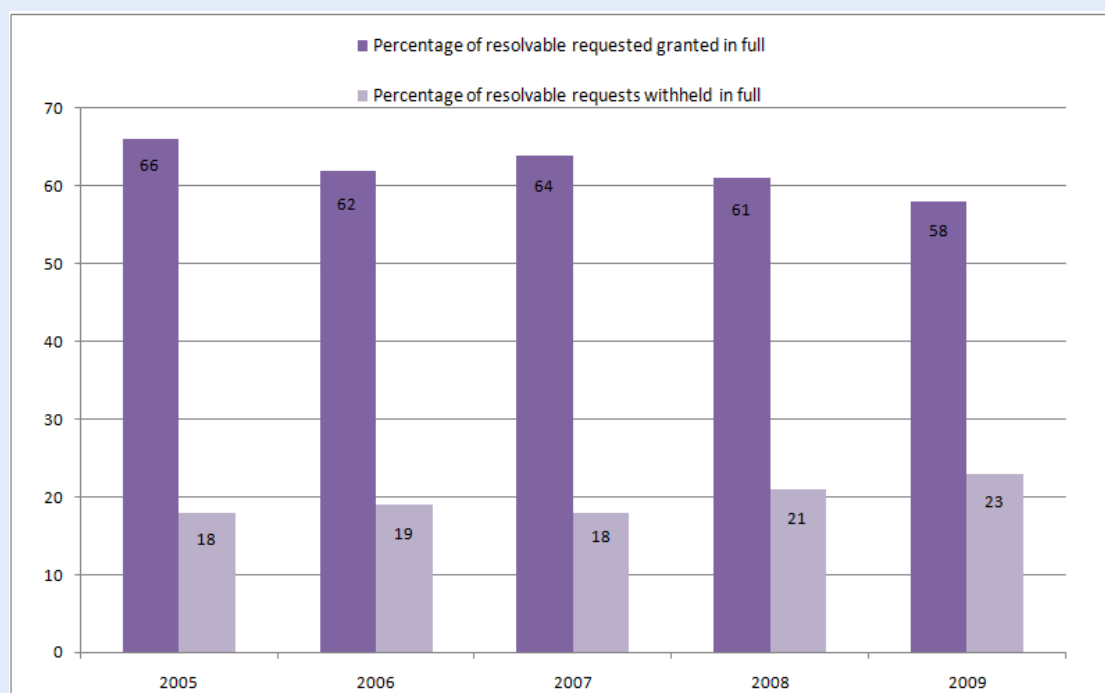
The Freedom of Information Act 2000 provided for the first time a statutory right to apply for official information. It came fully into force on 1 January 2005. The 2002 Audit (Beetham et al., 2002, p. 148) put it that:

'it is a moot point whether it is more or less liberal than John Major's code of practice for access to government information [...] The Act creates a statutory right of access, but also sets strict limits on access: 23 clauses in the Act specify 36 separate exceptions to disclosure, some more stringent (or 'absolute') than others. Other Acts, such as the Data Protection Act 1998, and more than 300 other Acts, orders and statutory instruments prohibit disclosure. All in all, ministers and officials retain hundreds of reasons to keep official information secret'.

The act created the new post of information commissioner, who can reconsider the executive view of what exemptions apply and whether they have applied tests properly. Both the public authority and the applicant can appeal against the commissioner's findings to an information tribunal (and ultimately on to the courts). However, as the 2002 Audit noted 'the public authority can also trump any Commissioner decision that information should be released by way of a signed certificate from [...] a Cabinet minister [...] that prevents the decision from taking effect' (p. 149). This executive veto may be subject to judicial review, but has not been yet.

How has the regime created by the act operated over time? Figures 2.3c and 2.3d show that the broad trend in central government is for 'non-routine' information requests to grow in quantity, and for central government bodies to be increasingly likely to refuse them (in full or in part).

Figure 2.3d: Freedom of Information: proportion of resolvable requests granted in full and proportion withheld in full (per cent), 2005-09 (derived from annual statistical reports produced by Ministry of Justice on Freedom of Information Act 2000)



Source: [Ministry of Justice \(various years\)](#).

Doubts have been raised about the effectiveness of the Information Commissioner's Office. In 2009, a survey conducted by the Campaign for Freedom of Information found 'long delays by the ICO in completing investigations' ([Frankel and Gunderson, 2009, p. 1](#)). It took on average 19.7 months from the date on which a complaint was made to the ICO to the issuance of a decision notice. 46 per cent of cases took between one and two years; 25 per cent took between two and three years; and 5 per cent took more than three years.

The ministerial veto has been exercised twice, in February 2009 and December 2009. On both occasions, the purpose of the veto was to

prevent the publication of cabinet materials relating, respectively, to the decision to invade Iraq and the introduction of devolution to Scotland. These were the only instances in which the commissioner had overruled decisions not to release cabinet materials. For the Iraq case, the commissioner took legal advice and was informed that an application for judicial review was unlikely to succeed. For the devolution case, the commissioner decided to 'wait and see' whether the government was pursuing a policy of refusing to release all such cabinet materials, or whether it was using its veto only in exceptional circumstances ([Information Commissioner, 2009; 2010](#)).

The limitations of the freedom of information regime were exposed by the MPs' expenses crisis. Under the [Freedom of Information \(Parliament and National Assembly for Wales\) Order 2008](#), certain information relating to the home addresses of MPs was made exempt from disclosure. This meant that the controversial practice of 'flipping' addresses to maximise claims would not have been exposed by the official release of information on expenses in June 2009, except through the unofficial leaking of information to the press which had already taken place earlier in the same year.

Nonetheless, the significance and value of the Freedom of Information Act should not be underestimated. One authoritative analysis of the act concludes:

'Any assessments of the effects of the Act are at this stage likely to be exploratory and qualified. However, there are signs of optimism. The first Information Commissioner (IC) has had a robust and positive influence in advancing openness and transparency [...] The Information Tribunal [...] is producing a steady stream of jurisprudence [...] The courts have been supportive of the principles of openness and transparency in their judgments concerning appeals [...] A powerful legal culture of openness and transparency has been developed. FOI has gained strong support across all spectrums of the press [...] In a short time, the FOIA has become a fixture of public life in the UK' (Birkshaw, 2010, p. 13).

A further opening up of official information might be achieved by the implementation of the provision contained in the [Constitutional Reform and Governance Act 2010](#) for the reduction of the 'thirty year rule' on the opening of public records, to a 'twenty year rule'.

The coalition has rapidly implemented the practice of proactively publishing large amounts of data about public spending on-line. While this move is unprecedented, it takes a narrow approach towards accountability, focusing almost exclusively on the idea of avoiding waste, rather than understanding broader policy decisions. Such a vast quantity of information is also difficult to process and analyse; and the decision to publish it appears to be motivated partly by a desire to expose the supposed profligacy of the previous government.

### **Presentation of official information**

The 2002 Audit expressed concern that 'the current government has rolled up presentation and policymaking into the same process and [that] the information released is designed to justify and promote government policies' (Beetham et al., 2002, p. 151). Concerns focused in particular on the centralising role of Alastair Campbell as director of communications and strategy at No.10, a special adviser given executive powers (see above).

The most controversial use of official information followed soon after the 2002 Audit, in relation to government claims about weapons of mass destruction in Iraq in the lead-up to the invasion of 2003. A particular subject of contention was the role played by Campbell and No.10. The *Review of Intelligence on Weapons of Mass Destruction*, commonly known as the 'Butler Report', was critical in its assessment of the government dossier published in September 2002 ([Butler Review Team, 2004](#)). The Butler Report found that:

'The Government wanted an unclassified document on which it could draw in its advocacy of its policy. The JIC [Joint Intelligence Committee] sought to offer a dispassionate assessment of intelligence and other material on Iraqi nuclear, biological, chemical and ballistic missile programmes [...] [I]n translating material from JIC assessments into the dossier, warnings were lost about the limited intelligence base on which some aspects of these assessments were being made. Language in the dossier may have left readers with the impression that there was fuller and firmer intelligence behind the judgements than was the case: our view, having reviewed all of the material, is that judgements in the dossier went to (although not beyond) the outer limits of the intelligence available [...] We conclude that it was a serious weakness that the JIC's warnings on the limitations of the intelligence underlying its judgements were not made sufficiently clear in the dossier' ([Butler Review Team, 2004, p. 154](#)).

In the period since the Iraq War, there have been changes that could be regarded as increasing the impartiality of official information provision. Following the departure of Alastair Campbell in 2003, no special adviser responsible for media issues wielded the special executive authority he possessed; and in 2007 the order in council, which had made his unusual status possible, was revoked. Also following the departure of Campbell, a high powered post of permanent secretary for government communications was created in the Cabinet Office, tilting responsibility for presentation slightly away from No.10 and towards the government as a whole.

### **Official statistics**

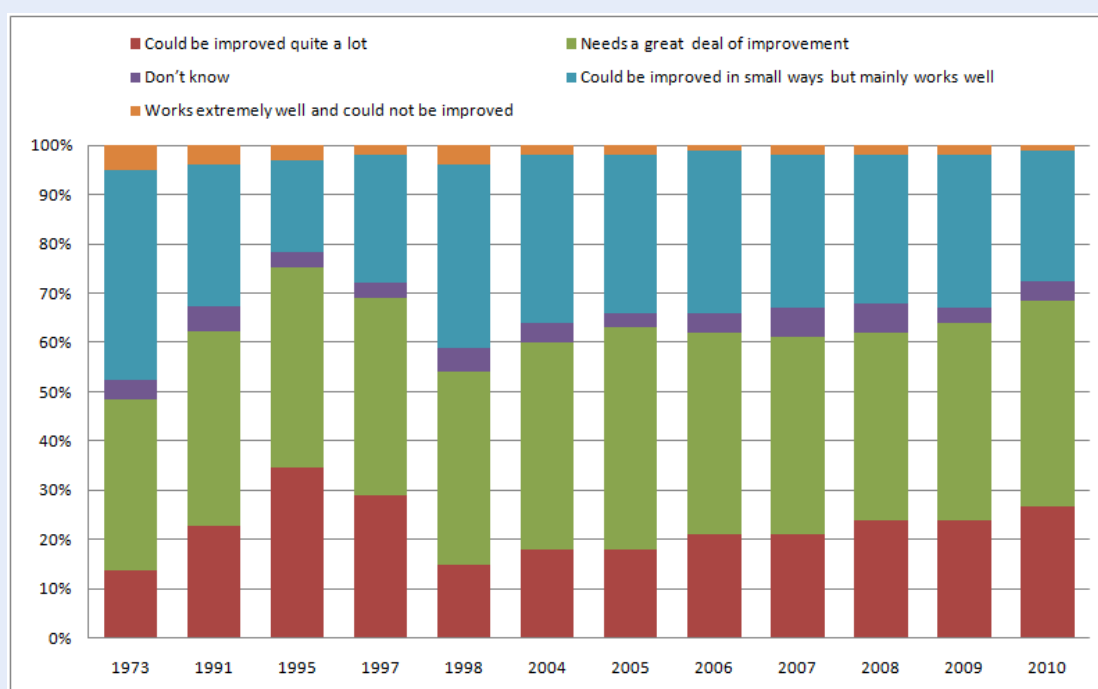
If the public are to receive an accurate picture of government policies and their impact, the integrity of official statistics is essential. There have been some institutional improvements in this respect. In 1996, the Office for National Statistics (ONS) was established, as an executive agency with a line of accountability to the chancellor of the exchequer. In 2000, the Framework for National Statistics added to the role of the government's chief statistical adviser that of national statistician, possessing operational independence from ministers. It also introduced greater regulation with the concept of 'National Statistics'. Finally, it established a new independent entity to protect the integrity of statistics - the Statistics Commission. A further development came with the Statistics and Registration Service Act 2007, which created another independent institution, the UK Statistics Authority. The authority promotes and protects the production and publication of official statistics; and has oversight of good practice and quality, as well ensuring that the statistics are comprehensive.

### 2.3.6 Public confidence in government

How much confidence do people have in the ability of government to solve the main problems confronting society and in their own ability to influence it?

Data can be traced back to the 1970s which demonstrates positive public attitudes regarding the efficacy of government, although there is some evidence that this was linked to satisfaction with the particular government of the day. It suggests that levels of satisfaction are lower now than they were in the 1970s, but that they have not shifted greatly since the 1990s (see Figure 2.3e).

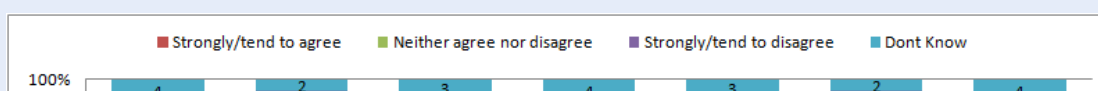
Figure 2.3e: Public faith in the system of government, 1973-2010 ('Which of these statements best describes your opinion of the present system of governing Britain?')



Source: [Hansard Society \(2010, p. 27\)](#)

Since 2004, the [Hansard Society's Audit of Political Engagement](#) has asked people how far they agree with the statement: 'When people like me get involved in politics, they can really change the way that the country is run'. A plurality tend to disagree with this statement, although there is no obvious trend over time in a particular direction (see Figure 2.3f).

Figure 2.3f: Public belief in capacity to influence political change, 2004-10 ('When people like me get involved in politics, they can really change the way that the country is run')





## Democratic Audit



Source: Ipsos MORI

Interestingly, when the statement 'voting in a general election gives me a say in how the country is run' was put to respondents in the 2010 Hansard Society poll, considerably more people agreed (58 per cent) than those who felt a sense of political efficacy, and fewer (28 per cent) disagreed ([Hansard Society, 2010, p. 86](#)).

## Conclusion

### How effective and responsive is government in the UK?

This Section has considered the effectiveness and responsiveness of government. It has noted improvements secured through the civil service Capability Review; the introduction of a statutory basis for the civil service; greater acceptance of the value of public engagement at various tiers of governance; the full implementation of the Freedom of Information Act 2000 in 2005; greater independence for official statistics; and more public involvement in public service delivery - albeit by often controversial means. Continuing areas of concern include problems with skills and organisation in the civil service; tensions between the roles of special advisers and permanent civil servants; the persistence of the 'MP filter' for complaints to the parliamentary and health service ombudsman; high degrees of government discretion of policy consultation; inequalities of access to government when consulting on policy, and the role of lobbyists in this area. There is evidence of less than exceptional public service performance; and low levels of public confidence in government and personal political efficacy. Late in the last decade, there was a failure in financial regulation and governments worldwide proved unable to guarantee stability in the financial system. On a less dramatic scale, there is evidence of the abuse of short-term civil service contracts as a vehicle for ministerial patronage. The government improperly handled the consultation on the future of nuclear power. There has been a rise in the proportion of requests refused under the Freedom of Information Act 2000.

All five of the overarching themes of this Audit are engaged by the findings of this Section. Theme one, involving unstable constitutional arrangements, is significant because reforms introduced over the last decade or so, including the Freedom of Information Act 2000 and the codification of consultation practice, have encouraged greater scrutiny of official activity and brought about some degree of democratic enhancement; but have not fully achieved a cultural change in the direction of greater official openness within government, where there have been attempts to reduce their impact. Theme two on public faith in democratic institutions is engaged by indicators about public confidence in official and personal political efficacy. The problems involved in ensuring meaningful and fair consultation over public policy relate to theme three on political equality; as well as theme four, corporate power, since it is financially well-resourced commercial interests which are best placed to secure the services of professional lobbyists. Finally, theme five, the decline of representative democracy, is potentially accelerated by the rise of public engagement mechanisms, which are associated with direct democracy. While there is scope for integrating the two, doing so effectively while ensuring that both are exercised meaningfully is a challenging proposition.

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## 2.4. The democratic effectiveness of parliament

### Executive Summary

This chapter reviews the available evidence relating to the eight 'search questions' concerned with the democratic effectiveness of the UK parliament.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concerns; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. The reduction in the role of the whips, including the shift to MPs electing Commons select committee chairs and members**

At the end of the last parliament, the Select Committee on the Reform of the House of Commons made proposals that would serve to enhance the autonomy of the Commons, in particular by reducing the power of the whips. Following the 2010 general election, elections were held for chairs and members of select committees, and the Backbench Business Committee was established. It is as yet too soon to ascertain the full practical impact of these changes, but in themselves they already represent an important principled movement towards greater legislative independence. (For further discussion and details, see Section [2.4.1](#) and Case Study [2.4b](#))

##### **2. Pre-appointment hearings for major public appointments by select committees**

A recent innovation in parliamentary practice has been the introduction of pre-appointment hearings by select committees for major public appointments - a part of Gordon Brown's Governance of Britain agenda. However, there are limitations upon this process and committees do not have the power to block an appointment of which they do not approve. By the end of 2009, there had been 18 hearings covering 19 appointments. (For further discussion and details, see Section [2.4.3](#))

##### **3. The introduction of Public Bill Committees for legislative scrutiny**

Public Bill Committees (PBCs) were introduced in the 2006-07 session to replace the 'standing committee' system for legislative scrutiny. As well as carrying out line-by-line scrutiny of bills, the task that had been undertaken by standing committees, PBCs were empowered to receive oral and written evidence. (For further discussion and details, see Section [2.4.2](#) and Case Study [2.4c](#))

##### **4. The formalisation of post-legislative scrutiny**

There has been a greater formalisation of the process of post-legislative scrutiny. However, the process formally set out by the government in 2008 leaves it with a degree of discretion as to which acts will be subject to such scrutiny. (For further details and discussion, see Section [2.4.2](#))

##### **5. Some curtailment of the extent of the royal prerogative**

There is a range of executive powers, decisions over the exercise of which neither the Commons nor the Lords normally has a specific right to be involved in, since they are within the remit of the royal prerogative (though the government may choose to consult parliament over its exercise on terms it sees as appropriate). This is a significant limitation on the extent of parliamentary oversight and accountability for the executive. The royal prerogative includes within its scope decisions to enter into armed conflict and the conferral of royal charters. The Constitutional Reform and Governance Act 2010 reduced the reach of the royal prerogative in two key areas, through placing the civil service on a statutory basis and creating a limited power for parliamentary oversight of treaties. (For further details, see Section [2.4.3](#) and Case Study [2.4f](#))

##### **6. More resources for parliamentary committees and for parliamentarians**

Though they remain modest compared to committees in legislatures such as the US Congress, the resources available to select committees have increased significantly over the last decade. One important development in this area has been the establishment of the Scrutiny Unit in the 2003-04 session, which provides additional support to parliamentary committees. The staff allocation to individual members has increased. (For further discussion and details, see Sections [2.4.3](#) and [2.4.7](#) and Figure [2.4.k](#))

### **7. Greater systemisation of the work of Commons select committees**

In 2002 a set of 10 'Core Tasks' were introduced to attempt to systematise the work of select committees. (For further discussion and details, see Section [2.4.3](#))

### **8. Greater transparency in public accounting**

In recent years the government has introduced various measures intended to improve financial transparency, including Public Service Agreements; Whole of Government Accounts; Resource Accounting and Budgeting; and most recently the Treasury Alignment (or 'Clear line of sight') Project, proposed by the government in 2009. (For further discussion and details, see Section [2.4.4](#) and Case Study [2.4j](#))

#### ***(b) Areas of continuing concern***

##### **1. The in-built government dominance of the Commons, bolstered by the power of patronage and enforced by the whips**

Governments - whether single-party or coalitions - normally enjoy by definition a majority in the Commons. This basic fact of UK constitutional arrangements, involving the tradition of the fusion rather than separation of powers, restricts the potential impact of parliamentary reforms, unless the decision to make substantial structural alteration to the UK settlement is taken. (For further discussion, see Section [2.4.1](#))

##### **2. The undemocratic composition of the House of Lords**

One of the two chambers of parliament, the House of Lords, is completely unelected. Whatever contributions it may make to the democratic process, this basic lack of legitimacy is problematic. (For further details and discussion, see Section [2.4.1](#))

##### **3. The growth of the total volume of primary and secondary legislation**

There is an ongoing overall rise in the quantity of legislation, stretching the capacity of parliament to scrutinise it effectively. (For further details, see Section [2.4.2](#), Figures [2.4d](#) and [2.4e](#), and Case Study [2.4d](#))

##### **4. The persistence of parts of the royal prerogative**

Despite the reforms to the royal prerogative discussed above, important parts of it - including the power to commit the armed forces to potential or actual hostile action - remain. (For further discussion and details, see Section [2.4.3](#) and Case Study [2.4f](#))

##### **5. Limitations on the ability of parliamentary committees to obtain access to officials and official papers**

Parliament possesses a right to send for 'persons, papers and records' that is theoretically unlimited. Yet there are strong conventions that the executive can resist such calls if it feels it necessary to do so. (For further discussion and details, see Section [2.4.2](#))

##### **6. Unsatisfactory government responses to committee reports**

A reflection of the unequal power relationship between the legislature and the executive is the regular complaint by Commons select committees of long delays in receiving government responses to their reports, or of the poor quality or evasiveness of those responses. (For further discussion and details, see Section [2.4.3](#))

##### **7. Weaknesses in financial scrutiny**

Effective oversight of taxation and expenditure is fundamental to all democratic accountability. But even within the context of the weakness of the UK parliament relative to the executive, financial accountability in the UK is flawed. Problems include the lack of participation of parliament in developing the budget; the failure of lessons learned during the course of the work of the National Audit Office/Public Accounts Committee to be applied properly across Whitehall; select committees not being effectively integrated into public finances; and a

lack of capacity and interest on the part of parliamentarians, preventing them from becoming properly engaged. The particular areas of shortcoming are the authorisation and scrutiny of future expenditure plans, with parliament better at investigating past expenditure. The House of Lords is not sufficiently involved in financial scrutiny. (For further details, see Section [2.4.4](#) and Case Studies [2.4i](#), [2.4j](#) and [2.4k](#))

**(c) Areas of new or emerging concern**

**1. Ongoing increase in the size of the 'payroll vote'**

The government has a guaranteed bloc of support in parliament comprising ministers, who by convention must vote with the government in divisions or resign. This so-called 'payroll vote' is in long-term increase in the Commons. (For further discussion and details, see Section [2.4.1](#) and Figure [2.4b](#))

**2. Undermining of the perceived value of parliamentary inquiry**

The perceived value of parliamentary inquiry itself has arguably been undermined by government decisions to hold a number of major investigations - including those related to the Iraq war - outside parliament. (For further details, see the [Introduction](#) to Section 2.4)

**3. Evidence of an overstretching of parliamentary committees, combined with poor attendance by members**

Some observers have warned that the work capacity of committees (and the MPs who serve on them) are being stretched by ever-increasing committee responsibilities. At the same time, low attendance levels of MPs on select committees is a particular cause for concern, and can to some extent be attributed to the wide range of competing demands which MPs have on their time. (For further discussion and details see Section [2.4.3](#) and Figure [2.4h](#))

**4. Dependence on the House of Lords**

The House of Lords makes an increasingly valuable contribution to parliamentary processes through legislative scrutiny and committee work. However, this dependence on an unelected body lacking in democratic legitimacy is problematic. (For further discussion and details, see Sections [2.4.1](#), [2.4.2](#) and [2.4.3](#) and Case Study [2.4h](#))

**5. Inequity of the resourcing of parties within parliament**

Opposition parties receive financial support for their parliamentary activities known as 'Short Money', which is determined on a formula relating to their past electoral performance. In so far as it is partly based on seats held in the Commons, this system arguably reinforces the distorting impact of the first-past-the-post electoral system used for the House of Commons. (For further discussion and details, see Section [2.4.5](#), Case Study [2.4i](#) and Figure [2.4i](#))

**6. The inability of parliament to determine who forms a government after an inconclusive general election.**

A consequence of the persistence of the royal prerogative is that the appointment of the prime minister is a personal power of the monarch. There is no formal vote to determine who is prime minister, even in circumstances of no overall majority in the House of Commons, as occurred in May 2010. Legislatures are able to determine their head of government through an investiture vote in countries such as Germany and, within the UK, in Scotland. However the Westminster parliament was unable to meet to express a view until deals had been struck at elite level, with appointments made and approved by an unelected, unaccountable head of state. (For further discussion and details, see [Introduction](#), Section [2.4.3](#) and Case Study [2.4f](#))

## Introduction

Parliament is responsible for a variety of functions crucial to the effectiveness of UK democracy. They include holding government to account; scrutinising, amending and passing legislation; and authorising the government to raise and spend taxation. As the body from which the government is drawn, the confidence of parliament (or, more precisely, that of the House of Commons) is also required in order for the government to remain in office. Finally, parliament raises with the government issues brought to it by members of the public; and can act as a forum for public debate.

The following section considers the independence of parliament from the executive and the freedom of its members to express their opinions; the powers of parliament to oversee and hold to account the executive; the extensiveness of procedures for the approval and supervision of taxation and public expenditure; the freedom of parties and groups to organise within parliament; parliamentary procedures for consulting the public and relevant interests; the accessibility of elected representatives to constituents; and the performance of

parliament as a forum for public deliberation. It does not deal directly with the MPs' expenses scandal, which is covered elsewhere (see [Introduction](#) to Section 2.6).

There are important restraints upon the democratic effectiveness of parliament. Of the two chambers of the UK parliament, only the House of Commons possesses direct democratic legitimacy (albeit via a disproportionate electoral system), as every elector in the UK is represented there by a single MP based in the constituency in which they live. Given that the House of Lords is, by contrast, wholly unelected, it follows that the constitution of parliament could not be said to be entirely democratic.

Moreover, the principle of parliamentary sovereignty - a doctrine central to the UK constitutional tradition - is not generally conducive to the existence of a strong, autonomous parliament capable of discharging its various democratic functions. Because of the fusion rather than separation of powers that the notion of parliamentary sovereignty produces, it is associated with an unhealthy concentration of power at UK executive level - in practice, meaning the sovereignty of the executive under the control of whichever party (or parties) holds office at a given time.

There have been significant reforms to the way parliament operates in the period of the present Audit. They include changes to the way the membership of select committees is determined and the way these committees operate; and mechanisms for legislative scrutiny and financial oversight. However, the potential impact of all these shifts is limited by the broader structural constraints set out above. Consequently, the fundamental problem of an executive-dominated legislature helping facilitate over-centralised government remains; as does that of an unelected second chamber.

A major alteration to this problematic framework would be achieved if the current coalition proposal for a wholly or mainly elected second chamber is implemented. However, there is resistance to this idea from within both chambers of parliament and within the Conservative Party. It is also unclear how determined the government as a whole is to achieve this reform objective, or whether it will be abandoned.

Circumstances surrounding the Iraq War of 2003 served to highlight the pitfalls associated with the concentration of power at the executive level, and the difficulties that parliament can experience in contributing to the democratic process (see Case Study 2.4a below). The revelations produced by the war about the place of parliament within the UK constitution helped trigger certain, ameliorative reforms. But there remains significant room for improvement. Indeed, the establishment of the coalition government in May 2010 revealed how parliament can be of little direct relevance to momentous political developments. While in countries such as Germany - and, within the UK, in Scotland - legislatures are able to determine their head of government through an investiture vote, the Westminster parliament was unable to meet to express a view until deals had been struck at elite level, with appointments made and approved by an unelected, unaccountable head of state. Although there was some role for less formal inter- and intra-party politics, parliament as such was simply required to endorse a *fait accompli*.

### Case Study 2.4a: The Iraq War and parliament

Parliament was unable to recall itself from recess in the autumn of 2002, when it seemed an invasion of Iraq was looming, because the power to reconvene it effectively resides with the executive.

The votes that were held in the Commons in advance of the operation in February and March 2003 took place not because they were formally required, but because the government decided they were politically necessary. Furthermore, ministers - and in particular the prime minister - enjoyed significant flexibility over such matters as the timing of the votes, the information that was provided to parliamentarians and the motions that were put.

Parliament could not obtain expert advice of its own on the international legality of the action, and did not have a right to view all the work of the government's most senior law officer, the attorney general.

Finally, when the time came to investigate the Iraq War, inquiries held outside parliament obtained better access to witnesses and evidence, and received more public attention, than those held within parliament.

Source: Burall et. al. (2006); Blick (2005).

## 2.4.1 The independence of parliament from the executive

How independent is the parliament or legislature of the executive, and how freely are its members able to express



their opinions?

### ***Independence of parliament from the executive***

The general nature of the relationship between the House of Commons and the executive has been expressed in previous full UK Audits. The 1999 Audit referred to (Weir and Beetham, p. 495) 'a House of Commons which is reluctant to assert its own rights against the executive, preferring to accept the executive's views of the conventions which govern their relationship rather than provoke it to insist on something worse'. In a similar vein, the 2002 Audit (Beetham et. al., p. 134) noted that:

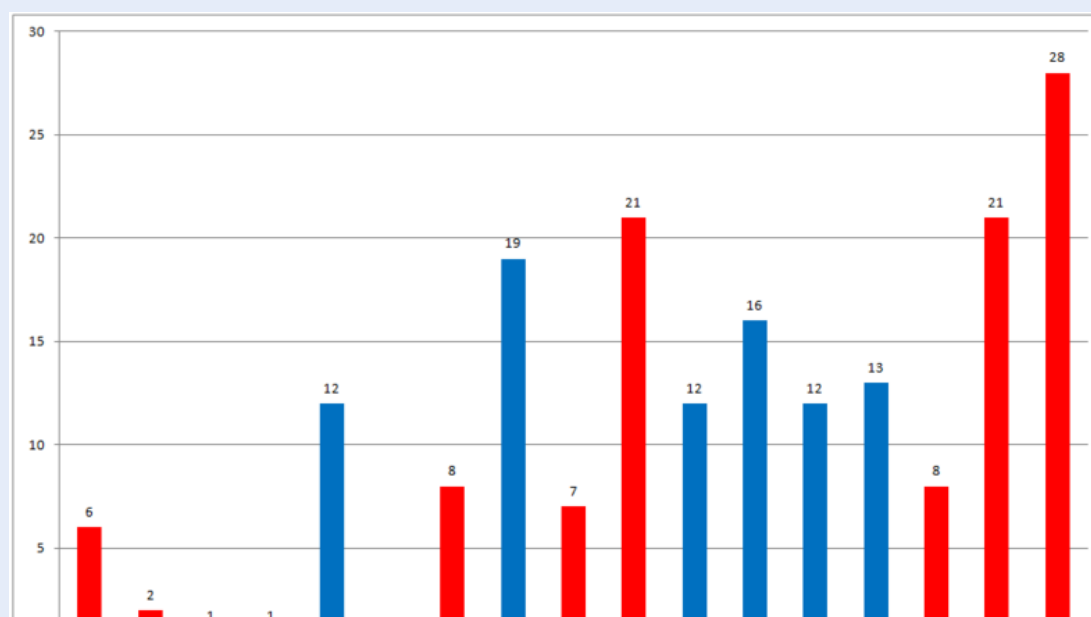
'government usually commands a party majority in the Commons, swelled by an electoral system that gives it more seats than its votes justify; in most circumstances, government MPs support its policies, actions and legislation out of loyalty and self-interest'.

Developments since 2002 suggest that while certain qualifications must be made, the basic premise that the government dominates the Commons - and through the Commons, parliament - has not been altered. Indeed, this position arises from the fundamental nature of the UK constitution as a parliamentary system with a fusion, rather than separation, of powers. To alter this arrangement would be a massive constitutional shift, raising various problems of its own. In its absence reforms to the legislature - though they have been, and arguably will continue to be, necessary - seem likely to yield only marginal, and possibly diminishing, returns (for discussion of these issues see, for example, [Flinders and Kelso, 2011](#)).

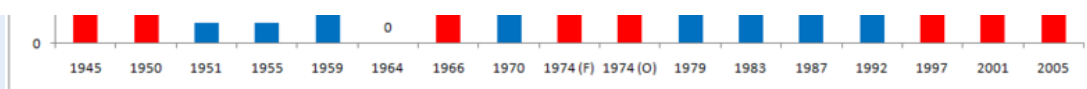
Parliament - and in particular, the House of Commons - continues to be dominated by the government (or rather governing party/parties) and the party system as a whole. Parliamentary business is largely determined by agreements between the respective whips. Among MPs of the governing party (or parties), the possibility of future appointments to ministerial posts acts to discipline those who sit on the backbenches; while ministers (drawn predominantly from the Commons) provide the government with a guaranteed bloc of support in parliament due to the convention of collective responsibility, which stipulates that they must either vote with the government in divisions or resign. The embedded importance of party discipline in parliamentary proceedings is reflected in the public funding made available to support the activities of government and opposition whips as part of the 'Short Money' allocated to parties represented in the House of Commons (for further discussion of which, see Section [2.4.5](#)).

There has been no strong evidence of an increase in independent behaviour by the backbenches. While the noted increase in rebellions by MPs on the government side (see Figure 2.4a) might be said to provide a *prima facie* case for the increased independence of parliamentarians, the act of defying the whip does not in itself amount to meaningful independence - particularly in circumstances where it is highly unlikely to lead to a defeat for the government. Indeed, increasing rebellions may partly be a symptom of poor communications between government and backbench MPs; or of ideological shifts within parties (for instance, resistance to New Labour from some Labour backbenchers, and Euroscepticism on the Conservative backbenches), rather than a sign of increasing autonomy on the part of the backbenchers.

Figure 2.4a: Backbench rebellion rate, by parliament, 1945-2005 (percentage of divisions to see a rebellion by at least one government backbencher)



## Democratic Audit



Source: Cowley and Stuart, as presented by [Cowley \(2011\)](#).

During the period from 2002 until the end of the Blair premiership in 2007, no reforms substantially affecting the institutional independence of parliament from the executive were introduced. Some relevant measures were initiated as part of Gordon Brown's 'Governance of Britain' programme, launched when he first arrived at No 10 in 2007. They included alterations to the Intelligence and Security Committee (ISC), responsible for oversight of the intelligence and security agencies, to make it more closely resemble a proper parliamentary committee than a creature of the executive (see [Ministry of Justice, 2007, pp. 31-32](#); and for further discussion, Section [2.5.2](#)).

At the end of the last parliament, the Select Committee on the Reform of the House of Commons made proposals that would serve to enhance the autonomy of the Commons, in particular by reducing the power of the whips (see Case Study 2.4b). Following the 2010 general election, elections were held for chairs and members of select committees, and the Backbench Business Committee was established. It is as yet too soon to ascertain the full practical impact of these changes, but in themselves they already represent an important principled movement towards greater legislative independence.

### Case Study 2.4b: The Wright Committee proposals

The Select Committee on the Reform of the House of Commons was established, under the chairmanship of Tony Wright MP, in July 2009 and in the wake of the MPs' expenses scandal (for further details of the latter, see Section [2.6](#).) Its terms of reference were to investigate the appointment of members and chairs of select committees; the scheduling of business in the house; and the ability of the public to initiate debates and proceedings. Its recommendations, issued in November 2009, included that:

- 'Chairs of departmental and similar select committees be directly elected by secret ballot of the House using the alternative vote'.
- 'Members of departmental and similar committees should be elected from within party groups by secret ballot'.
- Backbench business should be organised by a 'Backbench Business Committee, responsible for all business which is not strictly ministerial'.
- The 'primary focus of the house's overall agenda for engagement with the public' should be shifted towards 'actively assisting a greater degree of public participation'.

Source: [House of Commons Reform Committee \(2009\)](#).

Another coalition change is for the introduction, through the Fixed-term Parliaments Act 2010, of fixed-term parliaments of five years, with earlier general elections being possible only if 66 per cent of all MPs support a dissolution (with provision for an election to take place if there is a deadlock following a no-confidence vote against a government). In a sense, this change would represent a shift in power away from the prime minister and towards parliament - as previously the prime minister enjoyed the sole right to request dissolutions at the time he or she chose. However, as discussed elsewhere, five years is an unusually long fixed term, and this shift in the UK constitution should arguably have been subject to wider and fuller consultation. The outcome will be that general elections - the main means by which the UK population participates in democracy - become less frequent (for discussion of the Fixed-term Parliaments Bill, now an Act, see [Political and Constitutional Reform Committee, 2010](#); [House of Lords Constitution Committee, 2010a](#)).

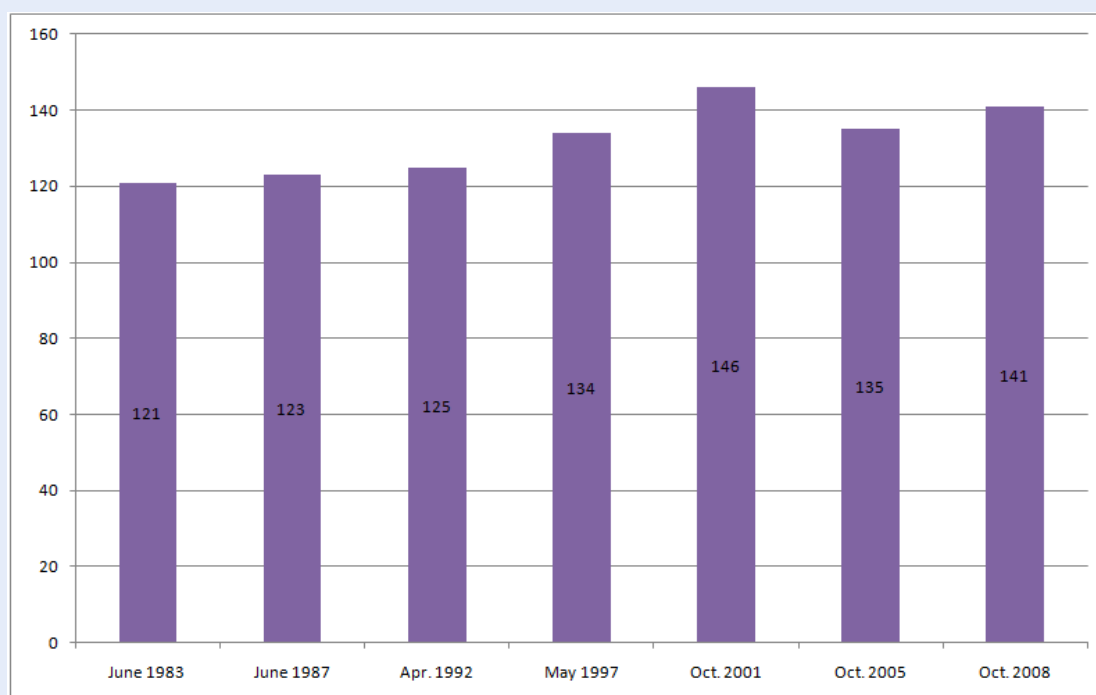
Yet, despite the need for qualification, the 2002 critique of the executive/parliament relationship quoted above has by no means been rendered redundant and in some areas has become more apt.

Even with select committee chairs and members being elected, the allocation of chairships between parties is made in advance; and the elections for committee members take place within party groups, arguably providing them with a partisan rather than a cross-parliamentary mandate (although there are strong practical justifications for both of these methods).

Another tendency serving to undermine the independence of parliament is the long-term increase in the so-called 'payroll vote' - that is, of members of the government bound by convention to vote with it in divisions or resign - in the Commons (see Figure 2.4b). The size of this block is also relatively high when placed in international comparison (see [PASC, 2010](#)). The proportion of ministers to MPs in the

Commons is likely to grow further with the reduction in the number of MPs from 650 to 600, which will be brought about by the Parliamentary Voting System and Constituencies Act 2011 (for an assessment of this and other legislation, see Section [1.1.5](#)).

Figure 2.4b: Size of payroll vote in the Commons, 1983-2008



Source: [Powell and Lester \(2010\)](#).

### ***The House of Lords***

Historically, a democratic problem with the Lords (aside from its being unelected) was that it contained an inbuilt majority for one party, the Conservatives, regardless of which party had formed the government. Under New Labour, following the removal of most of the hereditary peers from the House of Lords in 1999, the Lords came not to be dominated by any one party, and enjoyed in this sense a degree of independence from the executive. However, the coalition has decided that, pending further reform of the House of Lords, the composition of the house should reflect the vote share received by parties in the most recent election to the Commons. Consequently, the coalition government enjoys a majority in both chambers, undermining the independence of the Lords and potentially detracting from its value as a check on the executive.

### ***Freedom of members to express their opinions***

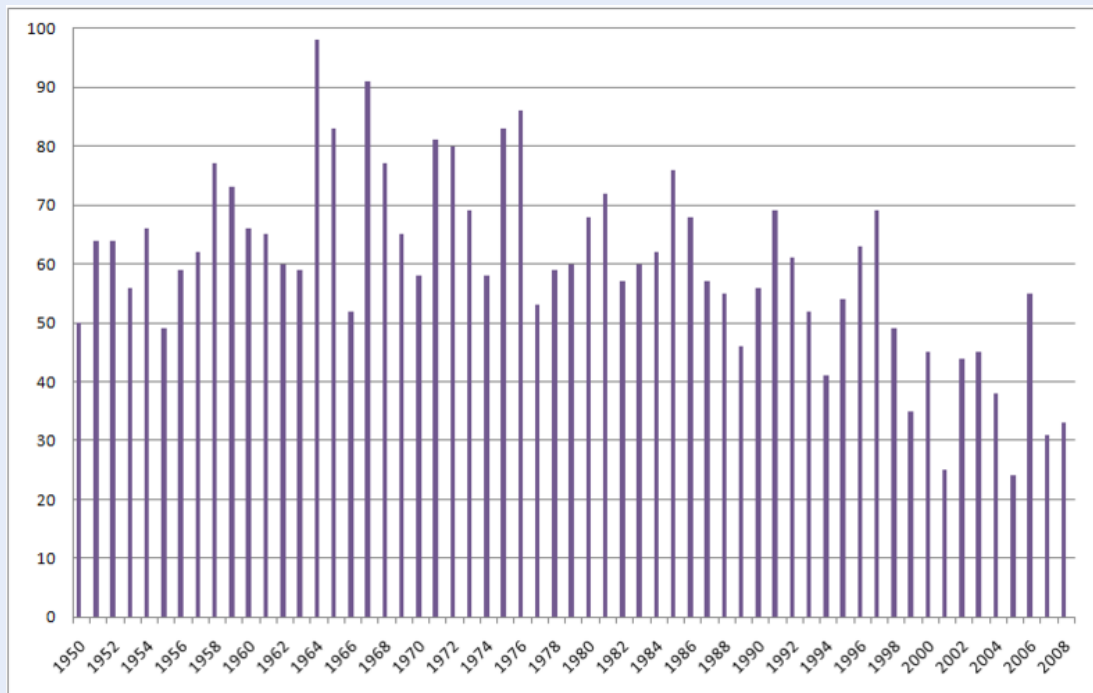
The freedom of speech of parliamentarians - part of the set of rights known as 'parliamentary privilege' - is provided for by Article IX of the Bill of Rights of 1689 (See [Joint Committee on Parliamentary Privilege, 1999](#)). They are constrained by arguably archaic rules on the way in which they speak; and are subject to *sub judice* rules (for instance over issues related to the Hutton Inquiry when it sat in 2003). It could be argued as well that things that parliamentarians say in parliament (as well as the way they cast their vote) may be held against them by their respective whips, with a detrimental effect on their careers.

## **2.4.2 Parliament's powers over legislation**

How extensive and effective are the powers of the legislature to initiate, scrutinise and amend legislation?

In practice it is the executive, not the legislature, which initiates the overwhelming majority of legislation. For instance, in the 2006-07 session, 30 government bills became law, compared to only 3 private members' bills (that is, bills initiated by backbenchers). There is an ongoing overall rise in the quantity of legislation, stretching the capacity of parliament to scrutinise it effectively. There has been a deceptive trend for a decline in the number of acts of parliament for a period of three to four decades (see Figure 2.4c).

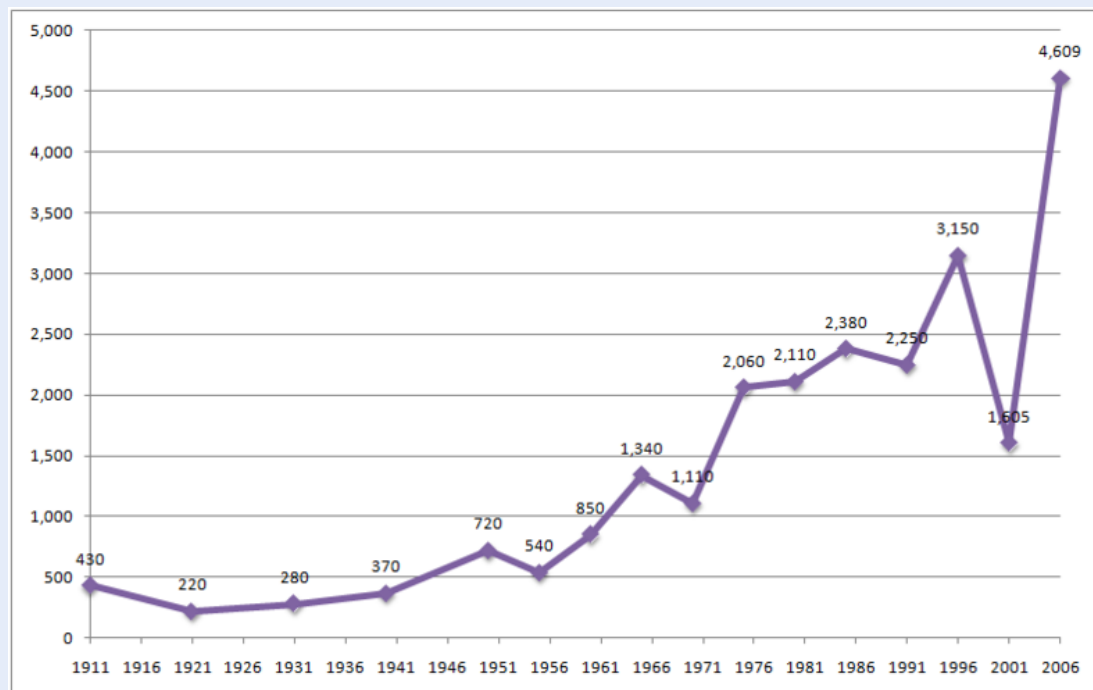
Figure 2.4c: Acts of parliament, 1950-2008



Source: [Lighthdown and Smith \(2009\)](#).

But the number of *pages* of primary legislation passed has grown substantially (see Figure 2.4d).

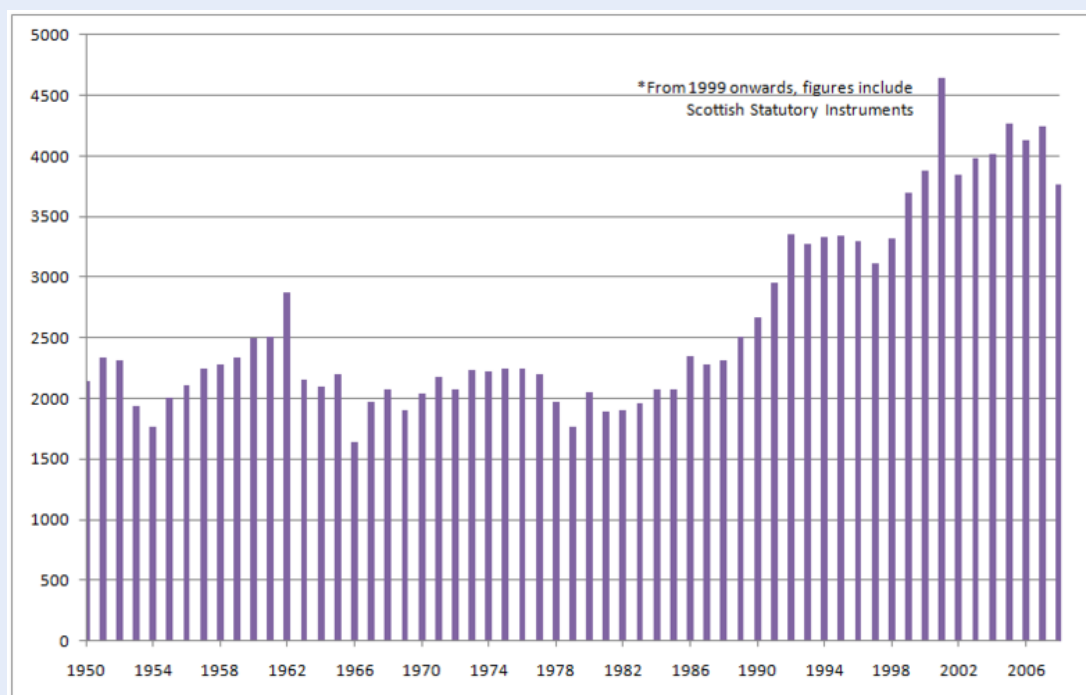
Figure 2.4d: Pages of primary legislation by selected years, 1911-2006



Source: [Lighthdown and Smith \(2009\)](#).

Another significant growth area over time has been in secondary legislation (see Figure 2.4e).

Figure 2.4e: Statutory instruments, 1950-2008



Source: [Lighbown and Smith \(2009\)](#).

### Legislative committees

Primary legislation in the form of acts of parliament is in theory scrutinised line-by-line, and possibly amended, in bill committees. But the quality of this oversight is subject to timetabling restrictions; lack of expertise (and often interest) among MPs drafted onto committees; and the influence of the whips. The previous full audit (Beetham et al., 2002, p. 134) stated that:

'the ad-hoc "standing" committees that scrutinise legislation in the Commons are purely partisan bodies on which the governing party majority sit simply to assist the fast passage of government bills'.

Recognition of this area of weakness led to the replacement of the old 'standing committee' system with the Public Bill Committee (PBC) in the 2006-07 parliamentary session. In addition to carrying out line-by-line scrutiny, the task that had been undertaken by standing committees, PBCs were empowered to receive oral and written evidence (see Case Study 2.4c).

### Case Study 2.4c: Public Bill Committees: excerpts from review of initial operation by the Constitution Unit

In 2009 the Constitution Unit produced an initial assessment of the impact of Public Bill Committees (PBCs). It found that:

- *The appearance of expert witnesses before PBCs has increased the quality and quantity of information available to committee members. The reforms have enhanced transparency of briefing by outside organisations, providing an official platform to inform and influence parliament's consideration of legislation.*
- *Members of PBCs are...more engaged with the task of legislative scrutiny, and backbenchers are becoming more confident participants in the committee stage.*
- *Debate is more fruitful, and the flexibility of each PBC to divide its time between witness and detailed scrutiny sessions as it sees appropriate, is welcome.*

While concluding that 'the new committees should certainly be welcomed and encouraged', the Constitution Unit report also

identified problems with PBCs, including:

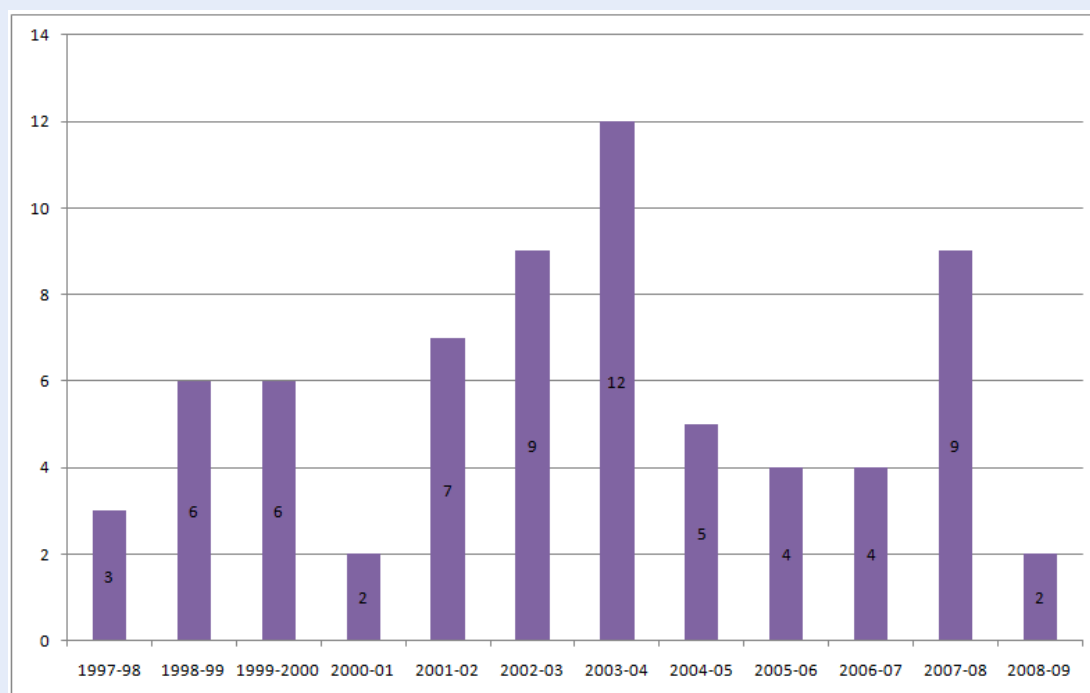
- *Their timetabling limits members' ability to deliver effective scrutiny, with insufficient time to prepare for the committee stage, or to reflect on what is learnt through evidence-taking before moving to line-by-line scrutiny.*
- *A lack of committee ownership over witness selection, at present an opaque process orchestrated via the usual channels, is a key grievance. This report recommends that the committee itself should determine its timetable and list of witnesses.*
- *Concerns that committee memberships fail to reflect the balance of opinion in the House of Commons also need to be addressed. One possible reform would be to alter the composition of the Committee of Selection to diminish whip influence.*

Source: [Levy \(2009\)](#).

### Pre- and post-legislative scrutiny

Recent attempts to improve the quality of legislative scrutiny have included the increased use of pre-legislative scrutiny, which involves consideration of a bill in draft form. However, the amount of pre-legislative scrutiny that can be conducted depends on the quantity of legislation that the government chooses to publish in draft form, which has been variable (see Figure 2.4f).

Figure 2.4f: Draft Bills published since Session 1997-1998



Source: [House of Commons Liaison Committee \(2010\)](#).

The [Liaison Committee \(2010\)](#) has recently complained that: 'of the seven draft bills announced by the government for the 2008–09 session, only two [...] were published in time for scrutiny within that session.'

Another development has been the greater formalisation of the process of *post-legislative* scrutiny. However, the process formally set out by the government in 2008 leaves it with a degree of discretion as to which acts will be subject to such scrutiny (see [Office of the Leader of the House of Commons, 2008](#)).

### Secondary legislation

Overwhelmingly, secondary legislation (legislation issued under powers provided for by primary legislation) is neither debated nor voted on by parliament. Even the minority of secondary legislation - or statutory instruments (SIs), as they are more commonly known - for which

express approval of the legislature is required cannot be amended, but only accepted in full or rejected. The Commons has not rejected an SI since 1979; the Lords last did so in 2000 (see Case Study 2.4d for details of how parliament processes SIs).

### Case Study 2.4d: Statutory instruments and parliament

About 200 statutory instruments (SIs) a year require express approval from parliament ('affirmative procedure'); about 1,100 pass unless parliament specifically objects ('negative procedure'); with around 2,200 being subject to no parliamentary control at all.

There is a Joint Committee of both houses on statutory instruments. It is concerned with whether a particular statutory instrument exceeds the powers provided for by the parent legislation; and whether it represents an 'unusual or unexpected' use of this authority. The committee does not concern itself with the merits of secondary legislation; nor does it scrutinise powers as they are being created in primary legislation. These latter two tasks are the responsibility of House of Lords committees.

The House of Lords Committee on the Merits of Statutory Instruments has a responsibility to draw the attention of the House to measures that are politically or legally important; if changed circumstances render them inappropriate; if they implement EU legislation improperly; or if they achieve their policy objectives imperfectly. The Lords Select Committee on Delegated Legislation and Regulatory Reform advises on 'whether the provisions of any Bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny'. This latter committee also scrutinises draft secondary legislation produced under the authority of the Legislative and Regulatory Reform Act 2006.

No equivalent committees operate in the Commons (although the Commons Regulatory Reform Committee scrutinises draft orders under the 2006 act). The Commons Procedure Committee has since 1996 recommended the introduction of a Commons committee performing the same function as the Lords Merits of Statutory Instruments Committee.

The European Scrutiny Committee in the Commons and the European Union Committee in the Lords both play a part in scrutinising proposals for European legislation, some of which is ultimately enacted in the UK through SI under the European Communities Act 1972.

Source: [Blick \(2010\)](#); [UK Parliament \(undated\)](#).

SIs vary greatly in their significance. They can be used for controversial measures. For instance the Identity Cards Act 2006 created various powers to extend the scope of the National Identity Register by SI. When scrutinising the granting of secondary powers in primary legislation, it can be difficult for parliament to assess precisely the uses to which it will be put.

A particular area of concern has been over the creation of so-called 'Henry VIII' powers, enabling ministers to amend primary legislation through SI. The House of Lords Constitution Committee recently took issue with the Public Bodies Bill produced by the coalition because it creates such powers (see Case Study 2.4e).

### Case Study 2.4e: House of Lords Constitution Committee report on the Public Bodies Bill: excerpts

*3. The Bill grants extensive powers to Ministers to abolish, to merge, to modify the constitutional arrangements of, to modify the funding arrangements of, to modify or transfer the functions of, or to authorise delegation in respect of a very significant number and range of public bodies, as listed in the Schedules to the Bill.*

*4. The majority of these public bodies were created by statute (some were created by Royal Charter). Thus, the Bill vastly extends Ministers' powers to amend primary legislation by order. Such powers are commonly referred to as 'Henry VIII' powers. We have several times in recent years reported on the extended use of such powers. As we have previously acknowledged, while they may have become an established feature of the law-making process in this country, they remain a 'constitutional oddity'. That is: they are pushing at the boundaries of the constitutional principle that only parliament may amend or repeal primary legislation.*

*5. Where the further use of such powers is proposed in a Bill, we have argued that the powers must be clearly limited, exercisable only for specific purposes, and subject to adequate parliamentary oversight. When assessing a proposal in a Bill that fresh Henry VIII powers be conferred, we have argued that the issues are 'whether Ministers should have the power to change the statute book for the specific purposes provided for in the Bill and, if so, whether there are adequate procedural safeguards'. In our view, the Public*



*Bodies Bill [HL] fails both tests.*

Source: [House of Lords Select Committee on the Constitution \(2010b\)](#).

### ***The House of Lords and legislative oversight***

In a bicameral system such as that of the UK parliament, it might be appropriate to expect the upper chamber to act as a check upon legislative proposals emerging from the government-dominated Commons. This function could be seen as particularly valuable given the growing quantity of laws being produced. But the role of the House of Lords in the legislative processes of parliament is restricted by the principle of House of Commons primacy. The justification usually offered for this subordination of the Lords is its unelected nature. While it is certainly the case that there are democratic problems with the Lords, reform in this area, which would legitimise a more active role for the second chamber, has been exceptionally slow to come about; and one of the blocks on such a change has been the reluctance of the Commons to create a chamber with a rival democratic mandate to its own.

Commons primacy is underpinned both by legislation and convention (for Commons primacy in financial matters, see Section 2.4.4). Under the Parliament Acts 1911 and 1949 the most important types of legislation over which the Lords possesses an absolute veto are any bill first introduced to parliament in the Lords; any bill extending the duration of parliament beyond the present maximum of five years; and any secondary legislation. Any other public non-money bill (for money bills, see Section 2.4.4) passed by the Commons in two successive sessions will, if rejected by the Lords on both occasions, be sent for Royal Assent anyway. In practice the Lords can delay legislation of this sort for not less than thirteen months after it first receives a second reading in the Commons.

The Parliament Acts have been used to force through legislation without the consent of the Lords on seven occasions, by Liberal, Labour and Conservative governments. The most recent such use occurred during the current Audit period, for the Hunting Act 2004. There followed a legal challenge to this act, on a basis that the Parliament Act 1949 was invalid, because it both amended the Parliament Act 1911 and was passed into law against the wishes of the Lords using the 1911 act. In the challenge to the Hunting Act 2004 it was argued that the Parliament Act 1911 was not intended to be used to amend itself, and that therefore the Parliament Act 1949, and by extension the Hunting Act 2004 which was passed using the 1949 act, were invalid. While this particular challenge failed, comments made by some law lords when giving their judgements in the case suggested that there might be limits to the uses to which the Parliament Acts could be put in forcing through legislation. For instance, a court might hold that the acts could not be used to remove the ability of the Lords to veto extensions to the life of a parliament. The removal of this veto ability would then leave the way open for the Commons to use the Parliament Acts to extend the life of a parliament: clearly contrary to the purpose of parliament in passing the 1911 act. It seems appropriate that, in the absence of a written UK constitution setting out the fundamental democratic rules, the judiciary should be prepared to resist such potential flagrant abuses of the Parliament Acts by a government using its Commons majority ([House of Lords Select Committee on the Constitution, 2006](#); see also the [Introduction](#) to Section 2.4).

As well as legislation, the House of Lords is restrained by constitutional convention in its ability to resist the will of the Commons. The so-called 'Salisbury-Addison doctrine', dating to 1945, requires the Lords not to obstruct legislation enacting pledges included in the general election manifesto of the governing party. The existence since 2010 of a coalition government with no single manifesto to draw upon has cast doubt upon the continued relevance of Salisbury-Addison. There are, however, claims (often made in particular by the governing party or parties of the day) that there exists some kind of principle that the Lords should be reluctant to resist any government legislation. There also appears to be a convention that the Lords will be sparing in its use of its ability to veto secondary legislation. This veto power has been used on only three occasions, and in each case the Lords backed down when asked to pass the secondary legislation again ([Joint Committee on Conventions, 2006](#)).

Yet while it is subject to Commons primacy, the Lords has been portrayed as playing an increasingly constructive and valuable role in the legislative process. A Constitution Unit report analysing the work of the Lords during 2006 found that the government was defeated there 52 times; and substantial concessions were made by the government to the Lords. It noted that the Lords was able to work in conjunction with the Commons to bring about alterations to legislation. Areas of success identified included the Identity Cards Bill, the Police and Justice Bill and the Racial and Religious Hatred Bill ([Russell and Sciara, 2007](#)). In such cases, a perverse phenomenon has developed: the Lords is being relied upon to resist legislation which might undermine democratic principles, yet in so doing it could be seen as an unelected chamber seeking to frustrate the will of an elected one.

### **2.4.3 Parliament's powers over the executive**

How extensive and effective are the powers of the legislature to oversee the executive and hold it to account?

The ability of the UK parliament to hold the government to account is hindered by the organisational complexity of central government and certain discretionary powers possessed by the executive. As recognised in previous audits (Weir and Beetham 1999; Beetham et al., 2002), reconciling the doctrine of ministerial accountability to parliament with the size and sophistication of the bureaucratic machines, executive agencies and quangos for which ministers are formally responsible is difficult. However, it is a task made more complicated by the existence of executive powers exercised under the royal prerogative, which delimits a significant set of powers - including to make decisions to enter into armed conflict and confer Royal Charters - in which neither the Commons nor the Lords normally has any *specific right* to be involved at all (for further details, see Case Study 2.4f).

These concerns are both longstanding. Yet during the period of the present Audit, new developments have also served to further muddy the waters of ministerial accountability. During the 2000s, for instance, a quasi-department of the prime minister began to emerge more clearly than before, employing record numbers of staff and engaging in various new functions - despite the fact that, traditionally, the office of prime minister has few specific policy responsibilities. Given that the established position has always remained that secretaries of state are responsible for policy (money is voted to secretaries of state by parliament; many of their powers derive from statute; and parliamentary accountability mechanisms are primarily focused on secretaries of state), this development has created a blurring of responsibility and an additional difficulty in securing parliamentary accountability through traditional routes (see Blick and Jones, 2010; [House of Lords Select Committee on the Constitution, 2010c](#)).

### Case Study 2.4f: The royal prerogative

The royal prerogative is a set of powers once wielded personally by monarchs, and now in practice exercised largely by ministers and officials. These powers are non-statutory, meaning that parliament has never approved them; and it largely has no formal role in their exercise. They include:

- War powers
- Organising and controlling the armed forces
- The Prerogative of Mercy
- Powers in the event of a severe national emergency
- Powers to keep the peace in the absence of an emergency
- Granting charters, including the BBC Royal Charter
- To call independent public inquiries
- Issuing and revoking passports
- Recognising states and acquiring and ceding territory
- Conducting diplomacy
- Treaty-making (subject to the provisions of the Constitutional Reform and Governance Act)
- Governing British territories overseas

There also exist certain powers which remain personal to the monarch. Some are exercised solely on advice - often from the prime minister - including the appointment of ministers; while others may conceivably be exercised with some personal discretion, including the appointment of the prime minister when, in circumstances of a Commons with no overall majority, there is more than one candidate. As part of the Governance of Britain programme launched by the Labour government in 2007, the Constitutional Reform and Governance Act 2010 reduced the scope of the royal prerogative in two key areas. It placed the civil service on a statutory basis and gave parliament a limited power to oversee treaty-making, though this function nonetheless continues to be exercised under the royal prerogative (for further details, see Section [4.2.4](#)).

Source: [Ministry of Justice \(2009\)](#).

It is from within this vaguely Kafkaesque context of bureaucracy and discretionary executive power that parliament must seek to secure an appropriate degree of oversight over the actions and policies of government. To this end, it possesses a number of useful tools, including parliamentary questions, debates, votes (or 'divisions') and committee work. Yet the effectiveness of these various mechanisms is variable. Furthermore, all parliamentary efforts at achieving accountability take place within a constitutional system configured in such a way as to produce what is often termed 'strong government', whereby the government normally has an inbuilt dominance of the primary parliamentary chamber, the House of Commons ([Flinders and Kelso, 2011](#)). There have been a number of significant improvements, set out below, in the way parliament operates during the period under consideration in the present Audit. There may well remain scope for further change still. But the opportunities for enhancing parliamentary oversight and accountability remain limited by the overall framework within which it is exercised.

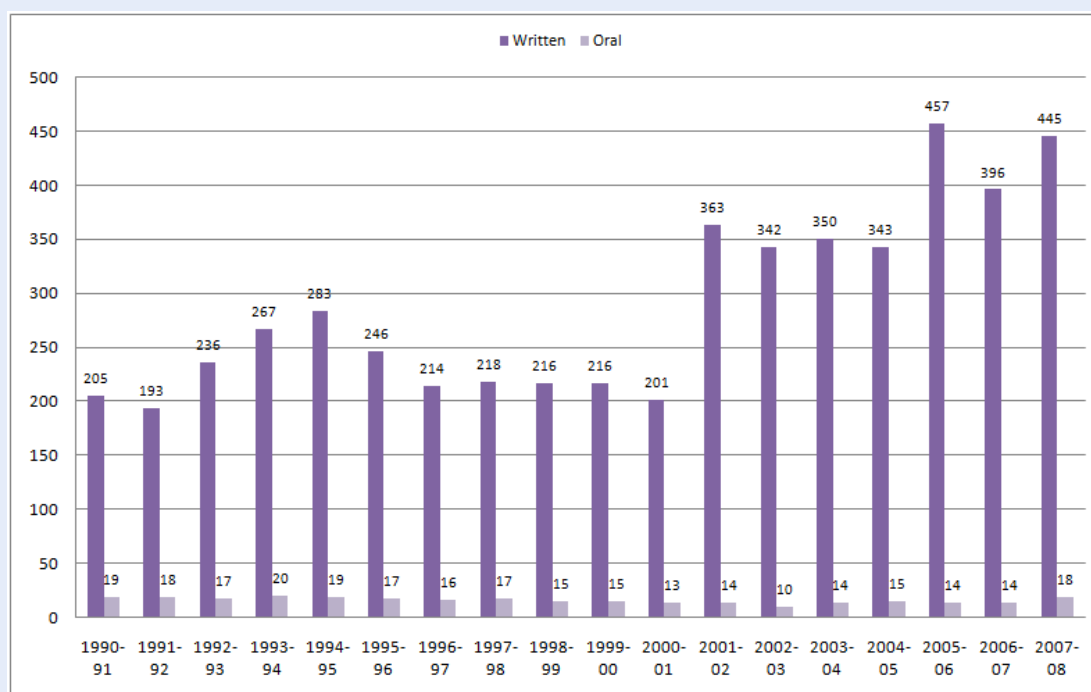
### Debates, divisions and parliamentary questions

Debating and voting in parliament are perhaps the most publicly-visible ways in which MPs and peers scrutinise and oversee the work of government. The precise contribution of these practices to democratic effectiveness is difficult to measure, but their symbolic importance cannot be questioned. Debates can be held by the government, opposition parties or by backbenchers, and since 1999 have been made available for backbenchers to hold in Westminster Hall, where they receive a response from a minister. Yet with parliamentary proceedings dominated by the governing party, there is often no guarantee of a full and frank debate. Equally, a vote - while a fundamental prerequisite for meaningful democracy - does not in itself amount to effective democratic oversight when the government of the day has an inbuilt majority (for rebellions, see Section 4.2.1 above). Furthermore, although the number of divisions in the Commons rose steadily after the Second World War, there has in any case - been a subsequent decline in recent years, meaning that the Commons is being asked to assent specifically to particular propositions less often.

Parliamentary questions can also be an effective means of eliciting important information from the government. A particular value of oral questions is that they can provide more discursive analysis of policy; while written questions offer the opportunity for obtaining detailed responses. However, these means of oversight suffer from weaknesses in practice. There is a notorious tendency for the government to provide evasive answers to questions, or to be asked questions that are simply sycophantic in nature (many of which are planted by the government itself). The number of written questions answered per day is rising, possibly meaning that more information about government activity is being obtained; but the number of oral questions, which are subject to time constraints of the parliamentary day, is static (see Figure 2.4g).

There exist other methods of supposedly achieving oversight and accountability which are of questionable value, including Early Day Motions (EDMs). All-Party Parliament Groups (APPGs) can achieve a valuable impact, as did the APPG on rendition, but they are of exceptionally variable nature and quality (see [Weir, 2007](#)).

Figure 2.4g: Written and oral questions answered per sitting day in Commons, 1990-91 to 2007-08



Source: [Lighbown and Smith \(2009\)](#).

### Select Committees

Parliamentary select committees are the most important vehicles for detailed oversight of government activity. At the heart of the system are the specialist select committees in the Commons, first introduced in their present form in 1979, that shadow particular departments. Alongside them there exist various thematic committees such as the Environmental Audit Committee (in the Commons), the Human Rights

## Democratic Audit

Committee (a joint Commons/Lords committee), and the various House of Lords select committees. Each Commons departmental select committee exists to scrutinise the policy, expenditure and administration of government departments, and to assist parliament by producing reports which inform debate and decision-making. This is an unusual role when placed in comparative international perspective - under many other parliamentary systems standing committees are primarily focused on legislation rather than policy. Consequently it is harder to establish 'good practice' for UK parliamentary select committees than it might otherwise be.

As noted previously by Democratic Audit, the introduction of select committees in 1979, which allow for systematic, ongoing scrutiny of government policy, has proved to be an advance for parliamentary accountability and oversight of the executive, albeit subject to limitations discussed below (Weir and Beetham, 1999, p. 494). However, potential improvements to the select committee system have regularly been identified by organisations such as the Hansard Society, in its sustained engagement with this issue (see [Hansard Society, undated](#)). Partly under the influence of such reform proposals, a series of changes to the way these committees operate were introduced during the current Audit period.

In 2002, a set of 10 'Core Tasks' for select committees was introduced, arguably rendering their work more systematic and methodical (see [Brazier and Fox, 2011](#)). There has also been a significant increase in the resources available to committees (although they remain modest compared to committees in legislatures such as the US Congress). One particularly notable development in this area has been the establishment of the Scrutiny Unit in the 2003-04 session, which exists to:

- support select and other committees, primarily but not only in the areas of government expenditure, reporting on performance and pre-legislative scrutiny;
- provide staff for joint committees of both houses set up to scrutinise draft bills; and
- assist evidence-taking by Public Bill Committees.

Other valuable innovations to select committee activity include the evidence sessions that the Liaison Committee (which comprises the chairs of Commons committees) holds twice-yearly with the prime minister, which have been held since 2002. In 2003, payment in addition to the salary of an MP was introduced for select committee chairs, enhancing the status of the role and perhaps creating a career path in the Commons that does not necessarily involve being appointed a minister. In 2008, pre-appointment hearings by select committees for major public appointments were inaugurated as part of Gordon Brown's Governance of Britain agenda. Under this system, the Commons can consider the suitability and priorities of the favoured candidate as well as the selection process employed. Perhaps most significantly of all, elections for select committee chairs and members were introduced in 2010, in a change which enhances the independence of select committees from government (for further details of the proposals which led to this change, see Case Study 2.4b).

These developments have not all been unalloyed successes. The Liaison Committee's evidence sessions with the prime minister, for instance, have been criticised by a number of MPs as ineffective - a problem which some of them attribute to the unwieldy size of the committee ([Simons, 2011](#)). Pre-appointment hearings by committees, meanwhile, are subject to the limitation of being unable to block an appointment of which the committee does not approve (for further details, see [House of Commons Liaison Committee, 2008](#)). This is a significant handicap. A report into the initial operation of the pre-appointment hearings procedure up until the end of 2009 ([Waller and Chalmers, 2010](#)) found that in the only instance where a select committee did not endorse an intended appointment (the candidate for children's commissioner for England), the secretary of state confirmed the appointment regardless. The report found that while parliamentarians view the process as a valuable, if not spectacular, development, they have little confidence that negative recommendations will be acted upon; and that many MPs would like a power of veto over the preferred candidate of the government, or for the committee to see a range of candidates.

In addition, some of the old weaknesses of committees remain. For instance, their composition reflects the party balance in the Commons, meaning that bodies charged with overseeing the executive have a government majority. There is a problem with the obtaining of information as well. In 1999, Democratic Audit complained that (Weir and Beetham, 1999, p. 494):

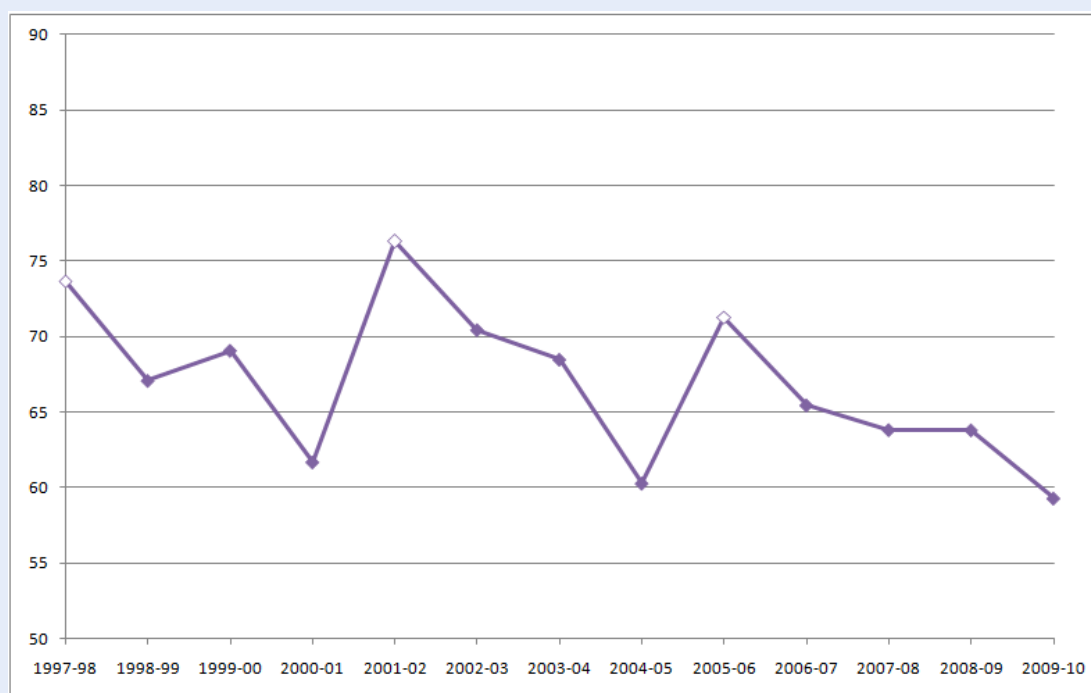
'[select committees] do not have effective powers to insist that ministers, MPs or named officials attend their hearings; they cannot demand government documents as of right [...] and officials give evidence under the direction of ministers'.

The overall configuration of the UK constitution once again lies at the heart of this particular problem. Parliament possesses a right to send for 'persons, papers and records' that is *theoretically* unlimited. Yet there are strong conventions that the executive can resist such calls if it feels it necessary to do so. Moreover, it would require a full Commons vote to force a government to relent, which is unlikely to pass given government dominance of the Commons. The regulations stipulating how governments handle evidence-giving to committees, commonly known as the 'Osmotherly Rules' were, however, revised in 2005, the new wording of which suggested a shift in the direction of a greater presumption of cooperation with parliamentary inquiries on the part of the executive ([Cabinet Office, 2005](#)); though the difference that has

been made in practice is debatable.

Another reflection of the unequal power relationship between legislature and executive is the regular complaint by Commons select committees of long delays in receiving government responses to their reports, or of the poor quality or evasiveness of those responses ([House of Commons Liaison Committee, 2010](#)). Indeed, the perceived value of parliamentary inquiry itself has arguably been undermined by government decisions to hold a number of major investigations - including those related to the Iraq war - *outside* parliament (see Blick, 2005; Burall et al., 2006). Calls to enhance the powers of select committees remain among the most prominent of the many demands made by those in favour of democratic reform (see, [Power Inquiry, 2006](#)).

Figure 2.4h: Average attendance levels on departmental select committees



Source: [House of Commons Sessional Returns](#).

Yet a lack of procedural powers is not the only handicap on the effectiveness of committees as scrutinisers of government. Joint working between select committees remains limited, despite the fact that it has been shown to be particularly effective in a number of instances. Others, meanwhile, have warned that the work of committees (and the MPs who serve on them) are being stretched by ever-increasing committee responsibilities (see [Brazier and Fox, 2011](#)). Low levels of attendance by MPs on select committees are a particular cause for concern. Figure 2.4h suggests that attendance at select committees peaks in the first session of each parliament and then declines as the next general election approaches. Poor attendance can to some extent be attributed to the wide range of competing demands which MPs have on their time. However, The [Liaison Committee \(2010\)](#) has argued that cultural change would in fact make the biggest contribution to changing the way committees work. In its words:

'The House must recognise that the work of select committees is fundamental to the discharge of its democratic function, and individual Members must recognise that service on a select committee is both a privilege and a core part of their role as democratic representatives. It demands consistent concentration and commitment'.

It is clear that there remain constraints on select committee effectiveness, most importantly those of a cultural and structural nature; and recently there have been calls for a review of their operation (see [Brazier and Fox, 2011](#)). Yet over the past decade this area has nonetheless seen a series of significant reforms, albeit within the limitations of the existing system. The ability of Commons select committees to make an important contribution to the quality of UK democracy should not be understated, as suggested by a recent assessment of their policy impact conducted by the Constitution Unit (see Case Study 2.4g).

#### Case Study 2.4g: The policy impact of House of Commons select committees

The Constitution Unit recently published research based on analysis of the activities of seven departmental select committees over the period 1997-2010. It found that:

- Committees are producing a large and growing number of reports.
- The government accepts and implements about 40 per cent of committee recommendations. Small proposals for change are more likely to be accepted; with about a third of more substantial recommendations succeeding.
- Other means of achieving influence are: contributing to debate; compiling evidence; highlighting issues and altering the priorities of ministers; 'brokering', meaning improvements to the transparency of departments and between departments; through bringing about accountability, exposure and the generation of fear.
- Maximum influence is achieved by select committees through a strategic approach, timeliness or tenacity. More could be done to follow-up previous work and implementation of proposals. The media can be useful in shaming government, but can also encourage 'ambulance chasing' by committees.

Source: [Russell and Benton \(2011\)](#).

### **House of Lords Committees**

Alongside the Commons select committees, there exist a set of Lords select committees and joint committees of both Houses, which seem to have been more effective during the present Audit period than at any earlier point. Though there is a problem of a lack of legitimacy, committees composed wholly or partly of peers are often able to contribute a more strategic, long-term approach to a variety of issues (partly because they do not shadow particular departments) and provide an outlet for the expertise present in the second chamber. An example of where the Lords committees fill a gap left by the Commons is in the meaningful scrutiny of European Union affairs and policy. Case Study 2.4h sets out the Lords and joint committees which are the most significant in terms of bringing about oversight and accountability of government.

#### **Case Study 2.4h: Significant House of Lords and joint policy oversight committees in the UK parliament**

- Communications Committee;
- Constitution Committee;
- Economic Affairs Committee (and its Finance Bill Sub-Committee);
- European Union Select Committee, including: Sub Committees A - Economic and Financial Affairs; B - Internal Market, Energy and Transport; C - Foreign Affairs, Defence and Development Policy; D - Agriculture, Fisheries and Environment; E - Justice and Institutions; F - Home Affairs; G - Social Policies and Consumer Protection;
- Human Rights (Joint Committee);
- National Security Strategy (Joint Committee); and
- Science and Technology

### **2.4.4 Parliamentary oversight of taxation and public spending**

How rigorous are the procedures for approval and supervision of taxation and public expenditure?

Effective oversight of taxation and expenditure is fundamental to all democratic accountability (for an outline of its operation in the UK, see Case Study 2.4i). But even within the context of the weakness of the UK parliament relative to the executive, financial accountability in the

UK is flawed. In 2006 the Hansard Society ([Brazier and Ram, 2006, p. 9](#)) described how:

'In the field of taxation and public expenditure, government dominance over Parliament is particularly marked. When it comes to giving the government authorisation to raise and spend money Parliament is seen by many people as little more than an interested and acquiescent bystander [...] the UK is considered to have among the weakest systems for parliamentary control and influence over government expenditure in the developed world'.

Problems include the lack of participation of parliament in developing the budget; the failure of lessons learned during the course of the work of the National Audit Office/Public Accounts Committee to be applied properly across Whitehall; select committees not being effectively integrated into public finances; and a lack of capacity and interest on the part of parliamentarians, preventing them from becoming properly engaged. The particular areas of shortcoming are the authorisation and scrutiny of future expenditure plans, with parliament better at investigating past expenditure. The House of Lords is not sufficiently involved in financial scrutiny either (for further details of which, see Case Study 2.4k).

### Case Study 2.4i: Financial scrutiny by the UK parliament

Financial scrutiny by the UK parliament falls into three categories:

**Scrutiny of Financial Legislation and Taxation**, taking in the Budget and the Finance Bill, debated and scrutinised by the House of Commons and considered by its Treasury Select Committee, which considers the pre-budget report as well. In the House of Lords, the Economic Affairs Committee carries out limited scrutiny of taxation legislation and financial proposals.

**Scrutiny of expenditure plans**, such as departmental annual reports, spending reviews and estimates.

**Scrutiny of government expenditure**, traditionally the primary task of the Commons Public Accounts Committee. Unlike any other parliamentary committee it has a substantial organisation to support it, in the form of the National Audit Office. The combined role of the two is to ensure that public money is spent on what it was voted for, in accordance with legal and other norms, and that value for money is obtained.

Source: [Brazier and Ram \(2006\)](#).

In recent years, the government has introduced various measures which have served to improve financial transparency, including Public Service Agreements; whole of government accounts; resource accounting and budgeting; and most recently the Treasury Alignment (or 'Clear line of sight') Project, first proposed by the government in 2009 (see Case Study 2.4j).

### Case Study 2.4j: The Treasury Alignment Project

The purpose of this project was to make consistent: the information included in budgets set within government for individual departments; estimates of government spending put to parliament to approve; and the accounts of departmental spending as audited by the National Audit Office. In the past, the information included has differed substantially. For instance, there was £129 billion in the departmental budgets for 2008-09 which was not part of the estimates presented to parliament. The House of Commons Liaison Committee broadly supported the Treasury Alignment Project on the grounds that it would:

'allow the controls exercised by Parliament to reflect those exercised within Government, and enable the House to track spending plans clearly as they are translated from plans for future years into precise figures requiring legislative authority for each year, and into actual spending recorded in the accounts'.

The Committee argued the change would:

'be a significant contribution to remedying one of the major gaps identified by this and other committees, that of the House's inability to examine effectively the spending plans of the future years of each Government Spending Review. Existing procedures are closely geared towards examination by the House of the current year's spending plans. Given that this is usually after the year has started, it is generally too late to have any effect. Better aligned and clearer figures will enable the various select committees of the House to examine the budget figures provided for years to come on the basis that they are



'draft Estimates' for those future years'.

But this in itself is not enough. The opportunities for committees and the House to debate and influence these figures need to be developed further.

Source: [House of Commons Liaison Committee \(2009\)](#).

Since its establishment in 2002, the House of Commons Scrutiny Unit has supported committees in their financial scrutiny work; and the 'Core Tasks' of select committees, also introduced in 2002, include considering departmental spending proposals (see Section 2.4.3). Reforms to the governance of the National Audit Office - including a maximum term limit for the comptroller and auditor-general (of ten years) and a new oversight board for the National Audit Office, as recommended by the Public Accounts Commission - will be provided for by the coalition's Budget Responsibility and National Audit Bill.

### ***House of Commons Financial Privilege***

The House of Commons has primacy in financial matters, partly founded in convention dating to the seventeenth century, and also set out in Section one of the Parliament Act 1911 (see Case Study 2.4k).

#### **Case Study 2.4k: Excerpt from text of the Parliament Act 1911, Section 1, Powers of House of Lords as to Money Bills**

(1) If a Money Bill, having been passed by the House of Commons, and sent up to the House of Lords at least one month before the end of the session, is not passed by the House of Lords without amendment within one month after it is so sent up to that House, the Bill shall, unless the House of Commons direct to the contrary, be presented to His Majesty and become an Act of Parliament on the Royal Assent being signified, notwithstanding that the House of Lords have not consented to the Bill.

(2) A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, [the National Loans Fund] or on money provided by Parliament, or the variation or repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this subsection the expressions "taxation", "public money", and "loan" respectively do not include any taxation, money, or loan raised by local authorities or bodies for local purposes.

(3) There shall be endorsed on every Money Bill when it is sent up to the House of Lords and when it is presented to His Majesty for assent the certificate of the Speaker of the House of Commons signed by him that it is a Money Bill. Before giving his certificate, the Speaker shall consult, if practicable, two members to be appointed from the Chairmen's Panel at the beginning of each Session by the Committee of Selection.

The [House of Lords Constitution Committee \(2011, p. 6\)](#) recently noted 'one particular difficulty with money bills'. It was:

'The fact that money bills are certified only upon completion of all their Commons' stages means that there is likely to be a minimal length of time between such certification and introduction of a bill into this House. There is therefore a risk that a certification which was not anticipated by Members of the Commons or Lords may give rise to concerns that a bill may not, as a result, receive appropriate parliamentary scrutiny. For example, MPs scrutinising a bill in the Commons might select some aspects on which to concentrate in the expectation that Members of the Lords would focus on others'.

## **2.4.5 The freedom of parties within parliament**

How freely are all parties and groups able to organise within the parliament or legislature and contribute to its work?

There is no specific bar on any party organising in parliament, but there is inequity in the support made available for parties to facilitate their

parliamentary roles. Opposition parties receive financial support for their parliamentary activities known as 'Short Money', which is determined on a formula relating to their past electoral performance (see Case Study 2.4i and Figure 2.4i). In so far as its value is partly based on the number seats held in parliament, this system arguably reinforces the distorting impact of the first-past-the-post system used for elections to the Commons (the parliamentary activities of the main parties are subsidised further because the government and official opposition whips offices in parliament also receive public funding - the latter under Short Money). Another effect of these rules is that very small parties can receive no support. The Ulster Unionist Party, for instance, ceased to qualify for Short Money after the 2005 general election because it had only one seat and secured less than 150,000 votes.

Sinn Fein, as Irish republicans, do not recognise the authority of the UK parliament and do not take up their seats or vote. This stance once meant that they were denied access to parliamentary facilities and services and were unable to claim members' allowances. A Commons motion of late 2001 overturned this ban. Following a recommendation by the Northern Ireland Independent Monitoring Commission, allowances were suspended for one year from April 2005, although in November of the same year allowances were restored and backdated. In February 2006, the Commons voted to provide Sinn Fein with funding analogous to Short Money, which was previously denied to the party. However, Sinn Fein is still not permitted policy development funding under the Political Parties, Elections and Referendums Act 2000 (see [Kelly, 2010](#)).

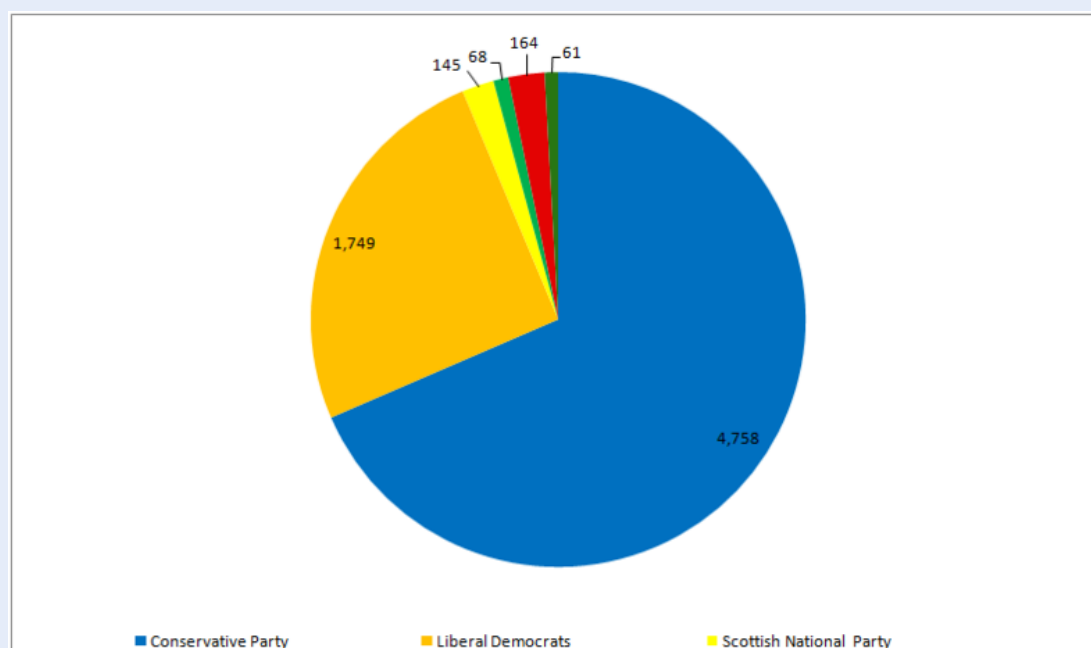
### Case Study 2.4i: Short Money

Short Money was introduced in 1975 as a means of funding the parliamentary business of opposition parties. It falls into three categories (the following figures cover 2009-10 tax year):

- General funding for opposition parties, paid at a rate of £15,039.85 for each seat won at the most recent general election, plus £30.04 for every 200 votes won by the party.
- Travel expenses for opposition parties at a rate of £165,218 divided between the parties in proportion to the amount they each receive for general funding.
- Support for the Leader of the Opposition's Office at £700,699. In addition, the leader of the opposition, the opposition chief whip and a maximum of two assistant opposition whips receive a salary from public funds. The salaries are: leader of the opposition £63,098; opposition chief whip £33,002; assistant opposition whip £19,239.

Source: [Kelly \(2011\)](#).

Figure 2.4i : Allocations under the Short Money scheme, 2009-10 (£000s)



■ Plaid Cymru

■ Democratic Unionist Party

■ Social Democratic and Labour Party

Source: [Kelly \(2010\)](#).

The nature of the parliamentary oath could theoretically be a barrier to the organisation of a party in parliament. It requires a pledge of allegiance to the monarch. A party which objected to the content of the oath and whose members felt unable to take it would consequently be denied the ability to take part in the proceedings of the house (though Sinn Féin's policy of not taking up seats is motivated by concerns broader than an objection to the oath).

There are difficulties for smaller parties in influencing the parliamentary agenda. Only 20 'Opposition Days' days are available every parliamentary session, meaning that a number of the smaller parties are not allotted a debate every session. The system of 'Opposition Day Debates' has other weaknesses. The debates tend to follow a rigid standard pattern of three-hour discussions of particular subjects. Ideas such as the discussion of opposition legislative proposals have been floated but not yet implemented. Opposition parties lack flexibility over when they can choose to hold debates.

There exist groups such as the 1922 Committee (for the Conservatives) and the Parliamentary Labour Party, which provide backbenchers from within parties the opportunity to discuss and raise issues.

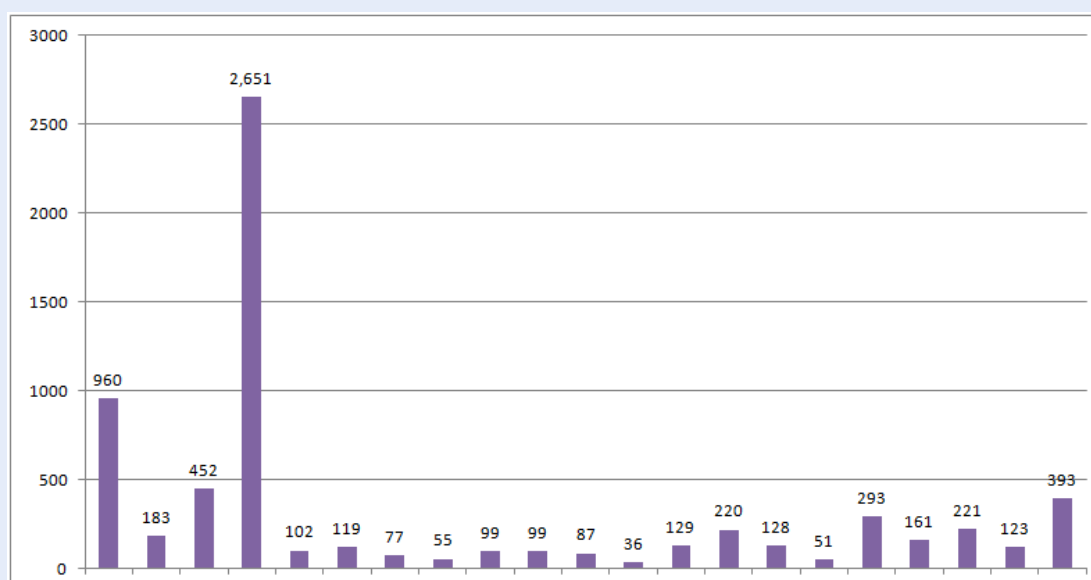
The problems experienced by smaller parties in making an impact upon parliamentary proceedings apply in even greater measure to all-party parliamentary groups (APPGs). Funding for APPGs is also scarce, unless they are able to receive substantial outside support, which creates a bias towards those APPGs with links to business and industry.

## 2.4.6 Parliament's relationship with the public and relevant interests

How extensive are the procedures of the parliament or legislature for consulting the public and relevant interests across the range of its work?

Over this Audit period there have been some limited improvements in parliament's relationship with the outside world. In particular, select committees now utilise online forums; and all written petitions sent to an MP who agrees to present them to parliament receive official replies from the government. The number of petitions presented to parliament each year fluctuates enormously, although there was a clear decline after the early 1990s (see Figure 2.4j). However, it seems likely that public petitions will become more frequent in future. The coalition government has introduced measures to ensure e-petitions receiving 100,000 signatures within a year are eligible for formal debate in parliament, with the final decision whether to hold a debate resting with the Backbench Business Committee. The coalition has also established a 'public reading stage' for bills, enabling online comments on proposed legislation, with a 'public reading day' where those comments are debated by the bill committee (see Section [2.4.2](#)).

Figure 2.4j: Petitions presented to parliament, 1989-90 to 2007-08



## Democratic Audit

1989-9  
1990-9  
1991-92 (a)  
1992-93 (b)  
1993-9  
1994-9  
1995-9  
1996-97 (a)  
1997-98 (b)  
1998-9  
1999-2000  
2000-01 (a)  
2001-02 (b)  
2002-03  
2003-04  
2004-05 (a)  
2005-06 (b)  
2006-07  
2007-08  
2008-09  
2009-10

Note:

- a. Short sessions (October 1991 to March 1992; October 1996 to March 1997; December 2000 to May 2001; November 2004 to April 2005)
- b. Long sessions (April 1992 to October 1993; May 1997 to October 1998; June 2001 to November 2002; May 2005 to November 2006)

Source: [Lightbown and Smith \(2009\)](#).

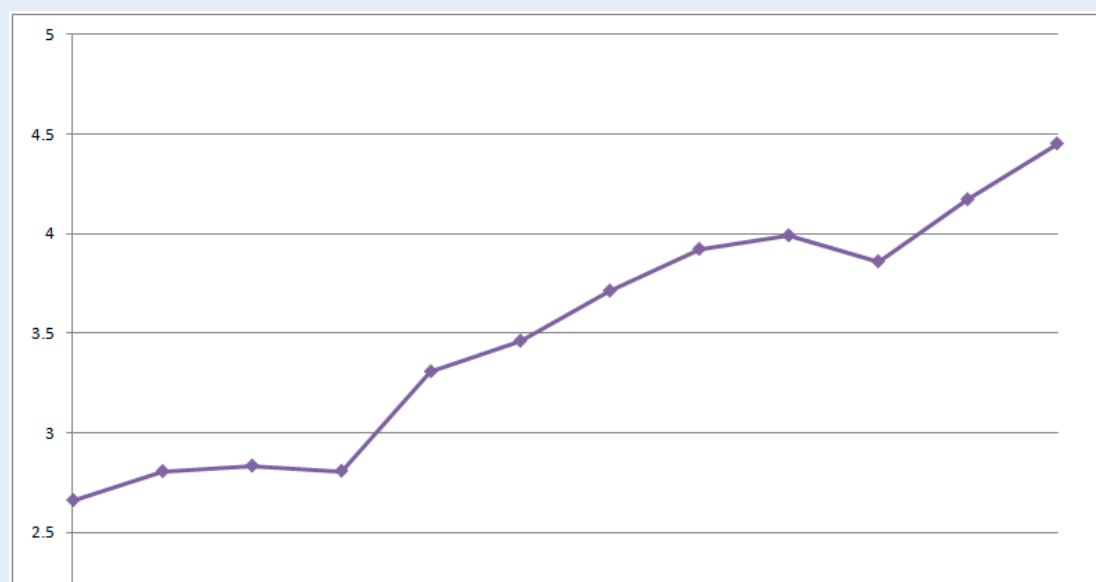
Yet while parliament has devoted additional resources to facilitating public awareness of its work, there remain worrying levels of professed public ignorance about its basic functions - thereby making wider involvement more difficult. Data from a survey commissioned by the Hansard Society in 2008 ([Kalitowski, 2008, p.4](#)) shows that just 32 per cent of respondents said they had a 'good understanding of the way Parliament works'. The most recent Hansard Society Audit of Political Engagement ([Hansard Society, 2011](#)) showed an increase in those saying that knew 'a fair amount' or 'a great deal' about Parliament, from 37 per cent in 2010 to 44 per cent in 2011, but this figure - under half of those questioned - could still be regarded as unsatisfactorily low. As far as interest groups are concerned, there is a tendency for parliamentary committees to take evidence repeatedly from limited circles of individuals and organisations, with attempts to reach more widely by committees often proving unsuccessful. It could be that these two deficiencies are mutually re-enforcing, with the lack of public awareness causing and being perpetuated by the reliance of select committees on small groups of individuals.

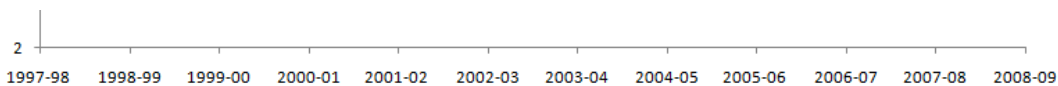
### 2.4.7 Accessibility of elected representatives to constituents

How accessible are elected representatives to their constituents?

One of the longest established principles of parliament is that it is a means by which members of the public can raise issues of concern. There is a strong convention for MPs in the UK to hold regular surgeries in their constituencies, at which they can be approached directly without appointments being made; although there is no specific guidance as to how (or even how often) these events should take place. Increases in staffing allowances over recent decades make it more possible for MPs to take up casework that arises at surgeries and generally carry on communications with their constituents (See Figure 2.4k). The introduction of the communications allowance in 2007 has provided MPs with up to £10,000 per year for non-party political communications with constituents, and can be used for purposes such as newsletters, contact cards and websites. However, it has been argued that such staff and allowances are, in practice, a means of protecting the incumbency of MPs, by making continuous electoral campaigning possible.

Figure 2.4k: Number of staff per MP, 1997-98 to 2008-09





Source: [Department of Information Services \(2011\)](#).

To some extent the work carried out by MPs is self-generated, or arises because of the constitutional restrictions on local government; the shortcomings of appeal and complaints mechanisms in the public services; or the lack of resources provided for Citizens Advice. Yet it would be a cause for concern if members of the public felt there was no point at all in contacting their local MP. The Hansard Society's 2010 *Audit of Political Engagement* showed that nine per cent of the public had contacted their local MP in the past twelve months - a similar figure to previous years ([Hansard Society, 2010](#)). However, the Parliamentary Voting System and Constituencies Act 2011 will probably have a negative impact here. It is likely that the rise in the average population size of a parliamentary constituency this legislation will bring about - combined with a higher than average likely rise in areas such as inner cities that generate the most casework - will mean that the ability of MPs to deal with issues raised by their constituents will decline (see Section [2.1.2](#) for further discussion of the new rules for the drawing of constituency boundaries).

## 2.4.8 Effectiveness of parliament as a forum for public concerns

How well does the parliament or legislature provide a forum for deliberation and debate on issues of public concern?

In the middle of 2011, parliament demonstrated that it can provide a focus for public concern about major issues, when two Commons select committees held high profile evidence sessions in relation to the News International phone-hacking scandal. Moreover, parliament achieved this exposure in the face of an attitude on the part of central government that was at best ambivalent about the rising level of interest in this issue. However, in some ways this unusual event was the exception that proved the rule about the ability of parliament to act as a public forum.

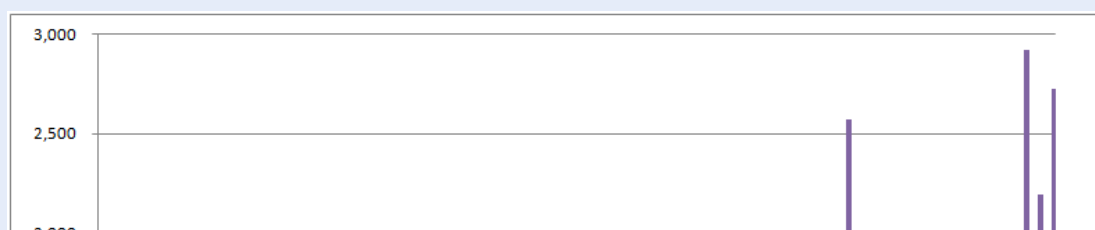
There is a clear connection between the issue of control of the time of the House of Commons (discussed in Section [2.4.1](#)) and the sense that parliament sometimes fails to address issues of public concern. The [House of Commons Reform Committee \(2009, p. 71\)](#) found that there was a strong case for arguing that the Commons was:

'insufficiently responsive to pressures from outside to debate or consider some issues of concern to the population. These often do not seem to be reflected in what is visible of parliamentary proceedings. If the Government and the Opposition do not want an issue debated, it will not be, save as a result of the exertions of individual members; and the options open to individual members are limited. It may be thought that debate on issues such as assisted suicide or organ donation or same-sex partnerships was largely absent from the parliamentary agenda at a time they were being actively canvassed outside the House. In foreign affairs, a country or region of concern can easily fall off the political agenda'.

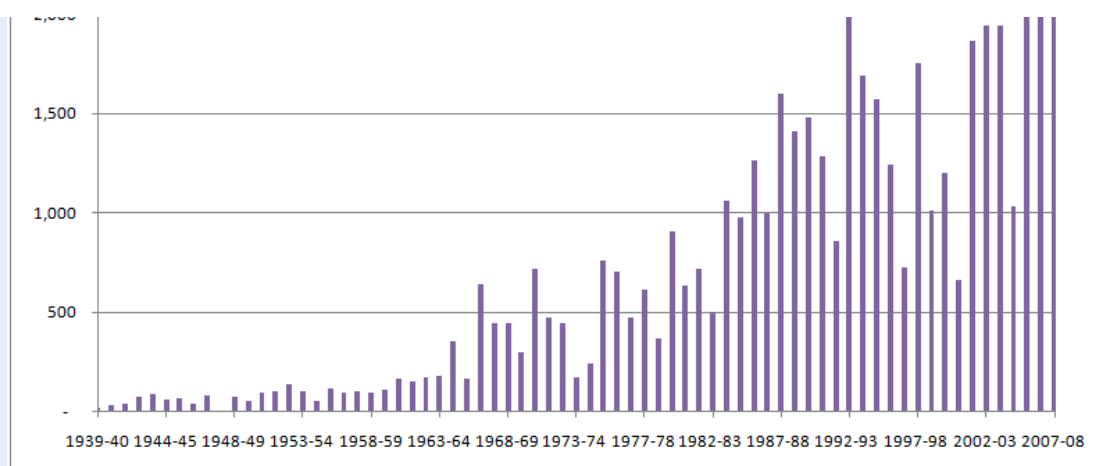
There was introduced into the Commons a new category of 'topical debate' in 2008. Yet a marked decline took place in the number of debates held between the first year of their operation (2008-09) and the second (2009-10) ([House of Commons Reform Committee, 2009, p. 45](#)).

One means of permitting MPs to rapidly express a view on topical issues, though which rarely achieves significant impact, is through early day motions (see Section [2.4.3](#)). The use of EDMs has accelerated, perhaps partly indicating the inability of parliament to provide other more effective means of addressing current subjects, and the desire of MPs to be seen to be engaging with these subjects while actually doing very little (see Figure 2.4I).

Figure 2.4I: Early Day Motions tabled, 1939-40 to 2007-08



## Democratic Audit



Source: [Lighthown and Smith \(2009\)](#).

## Conclusion

Many of the most significant democratic reforms of the Labour period of office, such as devolution, the Freedom of Information Act and the Human Rights Act, were not directly concerned with parliament - although they did involve it. However, there were some shifts. They included the introduction of the 'Core Tasks' for select committees; the establishment of the Scrutiny Unit; experiments with pre- and post-legislative scrutiny; the introduction of public bill committees; and greater transparency for public accounts. Demands for further reform grew, particularly in the wake of the Iraq War. The accession of Gordon Brown to No 10 and the constitutional reform programme he adopted provided some impetus, leading to a reduction in the scope of the royal prerogative and changes such as the introduction of pre-appointment hearings for major public appointments.

The public scandal over MPs' expenses helped generate circumstances in which more substantial reform was possible, even if it did not have a direct relationship to the expenses issue. The introduction of elections for members of select committees and their chairs and the possibility of the Commons gaining more control over its own timetable may help produce substantial changes in the ability of parliament to contribute meaningfully to democratic processes.

But there remain deficiencies. There is a relationship of dependency upon the executive, a lack of powers in key areas still covered by the royal prerogative, a growth in the length of acts of parliament and the volume of secondary legislation, and weaknesses in financial scrutiny. Moreover, there is room for improvement in the way parliament interacts with and responds to the outside world.

This consideration of the democratic effectiveness of parliament engages two of the overarching themes emerging from the present UK Audit in particular. First, it is suggestive of an unstable constitutional settlement (theme one), in which there are continual calls for reform which, when acted upon, are limited in their impact by the nature of the overall framework within which they are introduced. Second, the pressures upon representative democracy are clearly a problem for parliament, reflected in its difficulties in achieving meaningful engagement with the public (theme four).

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## 2.5. Civilian control of the military and police

### Executive Summary

This chapter reviews the available evidence relating to the four 'search questions' concerned with civilian control of the military and police in the UK.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. The 'normalisation' of security arrangements in Northern Ireland.**

The success of the peace process, allied with the power-sharing model of devolution, enabled the UK to end its 38 year 'counter-insurgency' military operations in Northern Ireland in 2007 (for further details, see Section [2.5.1](#)). Security arrangements in Northern Ireland are now fully in the hands of the Police Service for Northern Ireland, which stands out within the UK for its strong institutional arrangements for accountability and responsibility for human rights. (For further details, see Section [2.5.2](#))

##### **2. Modest improvements in the scope for parliament to hold the intelligence and security services to account.**

Parliament has gained the right to propose potential members of the Intelligence and Security Committee (ISC) to the prime minister. More

significantly, the coalition has accepted, in principle, the broad recommendations of the ISC to undergo reforms which would establish it as a committee of parliament. (For further details, see Section [2.5.2](#))

### **3. Moderate improvement in the social representativeness of the armed forces and police.**

While the makeup of both the armed forces and the police remains far out of line with the composition of the UK population as a whole, there has been a small rise in the proportion of armed services and police personnel who are female and a similarly modest increase in the proportion from ethnic minority backgrounds. There has also been a far more dramatic, and welcome, increase in the proportion of police officers in Northern Ireland originating from Roman Catholic backgrounds. (For further details, see Section [2.5.3](#))

### **4. Sharply diminished paramilitary activity in Northern Ireland.**

In the period since the early 1990s, the membership and activity of paramilitary groups in Northern Ireland has declined sharply. As a result, the number of deaths attributable to the activities of paramilitary organisations in the province has fallen dramatically. Whereas an average of around 300 people per annum died as a result of sectarian violence in the province during the early 1970s, the number of deaths per annum attributable to 'the troubles' has been in single figures for around a decade. (For further details see Section [2.5.4](#))

#### ***(b) Areas of continuing concern***

##### **1. Inadequate parliamentary oversight of military policy and operations.**

Parliament retains the formal power to either maintain or disband the UK's armed forces, both through the passage of Armed Forces Bills every five years and the annual approval of defence spending. However, in practice, it is the government which controls the military on a day-to-day basis. Parliament is not required to approve of military interventions sanctioned by the government, and stands out within Europe as a legislature with extraordinarily weak powers of military oversight and control. (For further details see Section [2.5.1](#))

##### **2. Evidence of a 'democratic deficit' in police accountability.**

The declining significance of police authorities within the tripartite system of police accountability in England and Wales, particularly in light of the growth of central targets and controls, has given rise to concerns about the effectiveness of mechanisms designed to ensure police forces are accountable to the communities they serve. The result is an increasingly obvious 'democratic deficit' in police accountability which, we would argue, is unlikely to be resolved via plans for directly-elected police commissioners. Meanwhile, proposals for the creation of a national police force for Scotland highlight that concerns about local accountability remain just as significant north of the border. (For further details see Section [2.5.2](#))

##### **3. Concerns remain about the independence and effectiveness of police complaints procedures.**

There is little evidence to suggest that reform of police complaints procedures and the replacement of the Police Complaints Authority by the Independent Police Complaints Commission (IPCC) in 2004 has served to convince either the public or parliament that complaints against the police are dealt with fairly and impartially. These perceptions have not been helped by a number of high profile cases where IPCC investigations appear to have been bungled. (For further details see Section [2.5.2](#))

##### **4. The accountability of the intelligence and security services to parliament remains inadequate.**

Pending the realisation of the reforms proposed in the Justice and Security green paper (2011), the Intelligence and Security Committee (ISC) continues to meet in secret, and reports directly to the prime minister, who is largely responsible for determining its membership. While the case for reform is widely recognised, the failure to implement changes proposed by Labour in the 2007 Governance of Britain green paper suggests a need to reserve judgement on the coalition's proposed reforms until there is a clearer indication that they will be realised in practice. (For further details, see Section [2.5.2](#))

#### ***(c) Areas of new or emerging concern***

##### **1. Isolated evidence of military deviation from the tradition of political neutrality.**

Personnel in the armed forces are strictly prohibited from taking an active role in political organisations, or making public statements that are liable to embarrass the government or bring the neutrality of the forces into question. Some feel that these rules may have been broken by former head of the Army, Sir Richard Dannatt, who became an identified critic of the former government's military policy and later agreed to serve as an advisor to the Conservatives, despite the fact that he remained on the Army's payroll at the time. (For further details, see

## **2. Police accountability structures have not kept pace with the growing international focus of policing operations.**

In recent decades, national police forces have been drawn into closer cooperation, and international policing agencies such as Europol have come to play a growing role. While these developments are a necessary response to the internationalisation of crime, they also raise significant questions about accountability structures, which remain weakly developed in relation to these forms of police activity.

## **3. The scope for government to deploy troops in domestic contexts appears to have been broadened.**

It has long been suggested that the ability of UK governments to deploy troops at home is ill-defined and potentially broad-ranging. The passage of the Civil Contingencies Act 2004 provides for potential military deployment in a far wider range of domestic contexts, and with fewer safeguards, than was the case under previous emergency powers legislation. (For further details, see Section [2.5.2](#))

## **Introduction**

Almost without exception, all established democracies maintain armies, security and intelligence agencies and police forces. There are good reasons for the near-universal presence of such institutions in modern democracies. As our 2002 Audit noted, 'the first duties of the state are to defend the realm against foreign aggression and other external dangers, and to maintain law and order within its boundaries' (Beetham et al., 2002, p. 154). Without such protections from external aggression, terrorism or criminal disorder, it would be difficult, if not impossible, for democracy to flourish. At the same time, however, it is essential that armed forces, security services and the police operate under clear civil control, and that they can be held to account for their actions. There is also a strong democratic case for these agencies to be as socially representative as possible in order to ensure that they command the confidence of the population as a whole and have a legitimate claim to act in the interests of society.

In light of these principles, this section examines:

- the provisions through which civil control over the armed forces is achieved, as well as the extent to which political and civil life is free from military involvement;
- how fully the police and security services are publicly accountable for their activities;
- the degree to which the makeup of the armed forces, police and security services reflects the composition of UK society as a whole;
- the extent to which the country is free from the operation of paramilitary groups and other destabilising violent forces

Our 2002 Audit concluded that the military in the UK is under formal civilian control, and that military involvement in civilian affairs, normally confined to emergencies, has not tended to be politically controversial. However, we expressed a number of democratic concerns in relation to the police and security services. First, we highlighted how growing central control of policing was undermining traditional mechanisms of local accountability. Second, we drew attention to concerns about the operation of the police complaints system, particularly with regard to transparency and independence. Third, we found there to be insufficient accountability of the intelligence and security services to parliament, owing to the requirements placed on the Intelligence and Security Committee to report directly to the prime minister. In addition, our 2002 Audit also highlighted that the composition of the armed forces and police was insufficiently representative of British society as a whole.

Against this backdrop, the improvements we highlight in this Audit are modest. There have been some improvements in the social representativeness of the military and police. It is also possible to point to an emerging consensus that the Intelligence and Security Committee should provide for greater accountability of the intelligence and security services to parliament, although concrete reforms to achieve this have yet to be realised. Otherwise, the concerns which we expressed almost a decade ago continue to be evident. In particular, we find growing evidence of a 'democratic deficit' in relation to police accountability and highlight mounting criticism of the role of the Independent Police Complaints Commission, established in 2004 as part of a major reform of the police complaints system.

### **2.5.1 Civilian control over the armed forces**

**How effective is civilian control over the armed forces, and how free is political life from military involvement?**

Civilian control of the military through the medium of elected representatives is one of the cornerstones of democracy. It is essential to maintaining the accountability of armed forces personnel to the people, and also provides a vital - if not in itself sufficient - prerequisite for the legitimisation of military entanglements by the state both at home and abroad. Fortunately, in the UK there are few serious concerns as to the likelihood of the armed forces ever wresting completely free of democratic control - for example, in a *coup d'état* aimed at controlling the state, in the same way that the military does openly in other countries. However, there are longstanding concerns that the balance between

executive and legislative power over the military may not be configured in such a way as to ensure the highest possible level of democratic, accountable and transparent military decision-making.

The legal authority under which the UK armed forces operate is complex, involving a mix of statutory powers, which are within the formal remit of parliament, and royal prerogative powers, through which the executive can act without parliamentary approval. Formally speaking, the UK's armed forces are accountable to parliament. Each year, it must vote either in favour of or against the level of defence expenditure; and every five years, it must renew the legal basis for the existence of the armed forces and the UK's system of military law through the passage of an Armed Forces Bill. Taken together, these arrangements satisfy the stipulation, set out in Article VI of the Bill of Rights 1689, 'That the raising or keeping of a standing army within the kingdom in time of peace unless it be with the consent of Parliament is against the law.' However, beyond these provisions, parliament's powers arguably amount to very little.

The government, by contrast, enjoys virtually untrammelled power over the day-to-day running of the military by virtue of the powers vested in it through the royal prerogative (see Section 2.4.3 for general discussion of these powers). Under the royal prerogative, the government has the authority to 'recruit members of the armed forces; appoint commanders and grant commissions to officers; establish the Defence Council; and make agreements with foreign states about stationing troops on their soil' ([Ministry of Justice, 2009, p. 13](#)). There is no legal requirement for parliament to ratify military commitments which the executive proposes or commences; and even where parliamentary votes are granted at the discretion of the executive, the decision-making of parliament is liable to be handicapped by its ineffective powers of scrutiny over government, as well as a general lack of resources (see [Blick et al., 2007](#)).

Table 2.5a: Typology of parliamentary war powers in 25 European democracies

Extent of Parliamentary War Powers	Description of typical powers	No. of cases	Countries
Very strong	Prior parliamentary approval required for each government decision relating to use of military force; parliament can investigate and debate use of military force	11	Austria, Estonia, Finland, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, Slovenia
Strong	Prior parliamentary approval required for government decisions relating to use of military force but exceptions for specific cases (foreign troops on national territory, minor deployments, arrangements with international organisations); parliament can investigate and debate use of military force	4	Denmark, Ireland, Netherlands, Sweden
Medium	Ex post parliamentary approval, i.e. parliament can demand troop withdrawal; parliament can investigate and debate the use of military force	2	Czech Republic, Slovakia
Weak	No parliamentary approval but deployment notification to parliament required; parliament can investigate and debate use of military force	4	Belgium, Poland, Portugal, Spain
Very weak	No parliament-related action required for use of military force; no specific parliamentary control or debate relating to use of military force	4	Cyprus, France, Greece, UK

Source: Derived from [Dieterich et al. \(2010\)](#).

Among other European countries, the UK parliament has long stood out, in this regard, as a legislature with extraordinarily weak powers with respect to either determining military policy, or otherwise circumscribing the war-making capabilities of the executive ([Dieterich et al., 2010](#)). As Table 2.5a shows, [Dieterich et al.'s \(2010\)](#) survey of parliamentary war powers placed the UK among four European democracies in which such powers were found to be 'very weak', alongside Cyprus, France and Greece. It is notable, moreover, that 15 of the 25 European democracies surveyed, a clear majority, have either 'very strong' or 'strong' parliamentary war powers. Among the three European comparators used throughout this Audit - Ireland, the Netherlands and Sweden - parliamentary war powers were defined to be

'strong'.

It was only following the invasion of Iraq that the issue raised by the UK's almost 'exceptional' constitutional arrangement became a significant focus of domestic political debate. Prior to the invasion in 2003, alarming intelligence claims publicised by the government had formed a crucial part of the case for war - undoubtedly influencing many MPs in advance of the Commons' vote in favour of military action in March that year. When those claims were later shown to be either exaggerated or false, however, various proposals - including a number of ultimately unsuccessful private members' bills - were put forward to strengthen the role of parliament in deciding whether or not to deploy troops in future instances. In 2004, a report by the House of Commons Public Administration Select Committee, which investigated the use of prerogative powers in general, recommended that legislation be quickly introduced to increase parliamentary control over their use ([Public Administration Select Committee, 2004](#)). In 2006, meanwhile, an investigation by the House of Lords Select Committee on the Constitution on the subject of Parliament's role in war-making specifically concluded that 'the exercise of the royal prerogative by the government to deploy armed forces overseas is outdated' and recommended the establishment of a parliamentary convention outlining the role which parliament ought to play in such instances ([House of Lords Select Committee on the Constitution, 2006a](#)).

Previous research by Democratic Audit and partner organisations has shown that around 85 per cent of the public believe that 'parliament as a whole' should decide Britain's foreign policy objectives ([Blick et al., 2007](#)). Yet talk of giving parliament an entitlement to approve troop deployments - whether by statute or some other means - has thus far amounted to nothing. The Blair government was unmoved by appeals to establish such a right, arguing bluntly that 'it must be the government which takes the decision' to make war, not parliament ([House of Lords Select Committee on the Constitution, 2007](#)). And while Gordon Brown on a number of occasions indicated his desire to give parliament a codified role on troop deployment - as part of a wider review of the royal prerogative - this did not materialise during his time as prime minister, either ([Flinders, 2010](#)). Since its formation, the coalition government has itself appeared sympathetic to the idea of creating an explicitly legal commitment for government to consult parliament before engaging in military action. However, it seems that little has been done so far to bring forward the legislation necessary to do so ([Allen, 2011](#)). Indeed, while the government did seek the approval of parliament to use military force in the case of the Libyan intervention in 2011, it is arguably telling that it did so only after attacks against Muammar Gaddafi's forces had already begun.

It is also worth noting that the royal prerogative extends to cover the conduct of diplomacy, which has a direct association with military policy. Until 2010 and the Constitutional Reform and Governance Act 2010, parliament had (with certain exceptions) no formal role in treaty-making. Once again, this is an area of government activity with a direct bearing on the deployment of the armed forces - for instance UK involvement in Afghanistan since 2001 has been in fulfilment of its obligations under the North Atlantic Treaty mutual defence clause. Under the 2010 act, parliament was given a statutory part in treaty-making, but one which seems unlikely to make a substantial difference to its practical power (see [Blick et al., 2007](#); for more details, see Sections [2.4.3](#) and especially Section [4.2.4](#)).

### ***Political neutrality of the armed forces***

Generally speaking, military involvement in political affairs is not of a manner subversive to the UK's democratic processes or institutions. Standards of conduct for all servicemen and women enlisted in the UK's armed forces are laid out in the Queen's Regulations (of which there are separate volumes for the Army, the Navy and the Air Force). These regulations forbid personnel from taking an active role in political organisations, and set out strict rules for the acceptance of appointments outside the armed forces, both during and after service. In addition, they place clear restrictions on the information which personnel are permitted to release into the public domain - whether through speeches, printed material, comments to the media or any other channel. According to the regulations, personnel are not permitted to comment on 'politically controversial' topics, or indeed make any contribution to public debate which is likely to embarrass the government or bring the impartiality of the armed forces into question (see Ministry of Defence, 1975). For the most part, the chiefs of the UK's armed forces tend to abide by this formal requirement for political neutrality; although questions are occasionally raised about senior service personnel who appear to act as exceptions to the rule. One prominent recent example concerned the relationship between Sir Richard Dannatt and the Conservative Party (see Case Study 2.5a).

#### **Case Study 2.5a: The Sir Richard Dannatt controversy**

In the years before his retirement in 2009, former head of the British Army, Sir Richard Dannatt, became an outspoken - and somewhat controversial - critic of the former Labour government's handling of the wars in Iraq and Afghanistan, accusing it of not doing enough to resource front-line military operations. Later, in October 2009, it was announced that Dannatt, following his retirement from the army in August, was to become an advisor to the Conservative Party on military issues and a prospective Conservative peer in the House of Lords - despite the fact that he was still on the Army's payroll. There was much criticism, subsequently, from retired generals and serving officers in the military - with some observers suggesting that Dannatt's behaviour had constituted a violation of the Queen's Regulations (see Coates, 2009). However, the former general did not ultimately face any disciplinary sanction for his actions - in the end electing to sit in the Lords as a crossbencher.

### ***Military involvement in political life***

The threat posed to democracy and civil society in the UK by the armed forces, acting of their own volition, is generally regarded as extremely remote. Various unproven conspiracy theories involving the armed forces and other elements of the state security apparatus have surfaced in the past. Most notably, claims that the military were poised to seize power from Harold Wilson in 1974 have been aired on a number of occasions, including in a BBC2 documentary, *The Plot Against Harold Wilson*, screened in March 2006. But, conspiracy theories aside, most observers would accept that military involvement in UK civil affairs is restricted to those instances where it occurs at the behest of the UK's democratically-elected government. Various schemes exist for the state-sanctioned intervention of the armed forces domestically. Given the umbrella term Military Assistance to the Civil Authorities (MACA), they include:

- Military Aid to the Civil Power (MACP). This involves military assistance in the maintenance or restoration of public safety or law and order, and has been used as the basis for army intervention in Northern Ireland.
- Military Aid in the Civil Community (MACC). This allows the armed forces to provide unarmed support to the public in the event of event of emergencies, such as floods or other rescue operations. Although it must, in many instances, be authorised under Section 2 of the Emergency Powers Act 1964, MACC may also be provided without approval from the government.
- Military Aid to Other Government Departments (MAGD). This allows the armed forces to be deployed in work deemed to be of urgent national importance, and has been used in the past during industrial disputes such as the Miners' Strike of 1984. The legal basis for MAGD derives from Section 2 of the Emergency Powers Act 1964.

Some of these provisions, notably those covered by MACC, have been uncontroversial and are widely regarded as providing for valuable mobilisation of armed forces personnel at times of national or local emergency. However, the role of the military in Northern Ireland, in particular, has been the focus of much dissent. More generally, the potential for governments to abuse the provisions outlined above remains a cause for considerable unease. The ability of the government to deploy troops at home is arguably ill-defined and vast in scope, resting on a complex combination of prerogative and common law powers. This ability is augmented by the UK's emergency powers legislation, which presents an additional cause for concern - especially since the passage of the Civil Contingencies Act 2004.

The Civil Contingencies Act, 2004 arose from a major review of emergency planning arrangements in light of concerns about the risk of terrorist attacks and following the problems experienced with emergency planning associated with three sets of events in 2000-01: the fuel crisis in 2000, large-scale flooding in 2000, and the outbreak of foot and mouth disease in 2001. A replacement for much of the pre-existing civil defence and emergency powers legislation, including the Emergency Powers Act 1920, the Civil Contingencies Act allows the executive almost unlimited power in situations which qualify as an emergency under the extremely broad criteria of the act, while doing little to clarify the government's existing common law and prerogative powers. During its passage through parliament, the legislation was described by the Guardian as 'potentially the greatest threat to civil liberties that any parliament is likely to consider' in light of the wide-ranging contexts in which it could be invoked (see Neal, 2010, p. 17). Although the bill was amended in light of some of the most serious concerns about its potential implications and there has yet to be a situation in which the provisions of the act have been enacted, it has nevertheless been described by experts as a 'massive threat' to civil society and a potentially 'grave danger' to the constitution and human rights (Walker and Broderick, 2006). Indeed, in the view of Bradley and Ewing (2011, p. 585) the act's definition of an emergency is so broad that 'it ought not to be necessary for governments to take additional ad hoc powers to deal with war should such an event arise'. The same authors go on to note that 'Unlike the 1920 Act, these emergency powers can be invoked without a state of emergency being declared and without the need to invoke the Act being considered by Parliament' (Bradley and Ewing, 2011, p. 585).

### ***UK military operations in Northern Ireland***

'Operation Banner', the British Army deployment in Northern Ireland which began in August 1969, ended at midnight on 31 July 2007 and responsibility for security was transferred to the Police Service of Northern Ireland. The numbers of troops based in Northern Ireland and the number of army bases had been on a downward trend since the first IRA ceasefire in 1994, and particularly so following the lasting IRA ceasefire in 1997 and the start of decommissioning of paramilitary weapons in 2001. A joint publication by the British and Irish governments, the Implementation Plan of August 2001, set out their intention to see 'normalisation' in the security situation. This was defined as:

'Ultimately the normal state would mean the vacation, return or demolition of the great majority of army bases, the demolition and vacation of all surveillance towers, no further army presence in police stations and the use of Army helicopters for training purposes only' (*Implementation Plan*, para 14).

The measures proposed in the Implementation Plan were introduced as the broader situation improved, beginning with the winding down



of army operations that had closed border crossings to the Republic of Ireland. By 2007, the remaining army establishment in Northern Ireland of 5,000 was on the same basis as the army presence in Great Britain, and the military presence has virtually ceased to represent a target for insurgency (although in 2009 two British Army soldiers were killed in an attack on a base by dissident republicans).

While the last fatalities resulting from British Army action in Northern Ireland were in 1992, issues remain regarding accountability for earlier actions. The Saville Inquiry into the shootings on Bloody Sunday in 1972, which reported in June 2010 after 12 years work, is of particular significance given its highly critical account of the army's role in the incident ([Saville et al., 2010](#)). Questions remain about 'collusion' with loyalist paramilitaries between the 1970s and the 1990s.

## 2.5.2 Accountability of police and security services

### How publicly accountable are the police and security services for their activities?

The police possess the power to injure, detain, incarcerate or even - in some instances - kill members of the public in the course of their professional duty to maintain law and order. As such, it is imperative that the individual officers and policing organisations which exercise this power are publicly accountable for their actions - not merely to prevent abuses of power, but also to inspire wider public trust in the police service. Yet how exactly the police should be rendered accountable to the public is far from clear. Partly, this is because the police accountability framework encompasses so many different elements - including the law relating to police conduct; oversight of local forces by police authorities; complaints bodies such as the Independent Police Complaints Commission; performance monitoring by government; and even the scrutiny of media and non-governmental organisations, such as Liberty or Inquest ([Mawby and Wright, 2005](#)). However, debate over the means to best ensure police accountability also stems from fundamental disagreements over how to strike the right balance between local and national actors within the police governance structure; as well as over the question of what constitutes an appropriate level of direct political control over policing. These twin problems of complexity and contestability make it difficult to assess overall police accountability with either precision or authority; but there are nonetheless a number of areas in which there have been developments clearly either to the benefit or detriment of accountability in recent years.

#### ***Police governance structures and accountability***

Police governance structures are one - very important - way in which police accountability can be provided for in practice. However, aside from the complexities about police accountability highlighted above, there are also significant contrasts in the formal arrangements for police governance in the constituent countries of the UK. In England and Wales, as well as in Scotland, there are widely acknowledged shortcomings with the existing arrangements, but rather less agreement about how they might best be reformed. In Northern Ireland, by contrast, recent reforms have produced what one may regard as a model set of arrangements for police accountability.

The manner in which police governance structures are now broadly configured in England and Wales is widely acknowledged to be democratically defective, although there is no consensus about how to address this problem. Officially, policing is managed under a tripartite system of governance, in which local police authorities, chief constables and the home secretary occupy positions of rough equality within a localised operational structure of 'constabulary independence'. This regime, first laid out in the Police Act 1964, has continued in principle to this day. However, reforms during previous decades have disturbed the relative equilibrium which once existed between each partner in the tripartite structure - with ever greater power being accrued by central government over time (see Jones, 2008; [Mawby and Wright, 2005](#)). This process was reflected during the long period of Conservative government from 1979 until 1997, in legislation such as the Police and Magistrates' Courts Act 1994 and the Police Act 1996; and was later continued under successive Labour administrations, for instance through the Police Reform Act 2002 and the Police and Justice Act 2006.

The changes made to police governance structures by previous governments (the effects of which left the tripartite system in a state summarised in Table 2.5b below) had an ostensibly democratic rationale - concerned, as they were, with improving police performance and service delivery. However, their concern for centrally-driven performance improvements came at the clear expense of other democratic criteria such as participation and the distribution of power (Jones, 2008). In recent decades, the powers of local police authorities have declined steadily, despite a limited number of concessions made to them in recent legislation; while chief constables have been subjected to an ever-increasing volume of Home Office directives, monitoring and statutory powers of control. Taken together, these developments have led to criticism of a 'democratic deficit' at the local level of police governance (see [IPPR, 2008](#)), and recurring fears that policing itself may have become 'politicised' to a degree incompatible with traditional Peelian notions of an impartial service, independent of political interference. These fears of politicisation were brought into stark focus in 2004, when the then home secretary David Blunkett attempted to force chief constable of Humberside Police, David Westwood, to resign over the sweeping criticism his force received in the Richard Report on the murder of Holly Wells and Jessica Chapman; and also in 2008, when mayor of London, Boris Johnson, effectively forced Metropolitan Police commissioner, Sir Ian Blair, to resign by refusing to publicly back him.



Table 2.5b: The tripartite system of police accountability under the Police and Justice Act 2006.

Home Secretary / Home Office	Local Police Authority	Chief Constable
Determines strategic policing priorities (in National Community Safety Plan)	Responsible for maintaining an effective force	Responsible for direction and control
Power to 'give directions to police authority or chief officer'	Determines local policing objectives	Responsible for operational control
Can order amalgamations and intervene in forces	From 2008 produces, annually, a three-year rolling plan that reflects local needs and national policing priorities.	Drafts policing plan (with local authority)
Issues codes of practice (to local police authorities and chief constables)	Determines public consultation arrangements	Responsible for achieving local and national policing priorities
Can require the local police authority to call for the chief constable to resign	Appoints (and dismisses) chief constable	Responsible for resource allocation
Approves appointment of chief constables	Can hold the chief constable accountable for the exercise of his / her functions	On fixed term contract
Determines cash grants to authorities	Membership of 17 (usually): comprising councillors, independent members and at least one magistrate	

Source: Mawby and Wright (2008).

There were noises in favour of a less centralist, and more 'localist', approach to policing towards the tail end of the previous Parliament; but these did not, in the end, lead to any substantive change in the power relationship between police authorities and central government (Jones, 2008). The coalition response to the perceived problem of overbearing government influence has been to aim to reduce central targets and, through the Police Reform and Social Responsibility Act 2011, to introduce in England and Wales directly-elected police and crime commissioners, replacing the police authorities currently responsible for overseeing police forces. The commissioners will themselves be accountable to newly-established Police and Crime Panels, mainly composed of local councillors. However, concerns have been expressed about the implications of this change for the police's operational independence, with some worrying about the potential for undesirable 'politicisation' at a local level (see [Liberty, 2010](#)).

Police authorities in Scotland currently perform a similar set of functions to those in England and Wales, although their governance arrangements are somewhat different, as they consist wholly of local authority members, without the presence of independent nominees or magistrates. Six of the eight police forces in Scotland are overseen by a Joint Police Board made up of representatives of each council in the force area, while two (Dumfries & Galloway and Fife) cover the same area as a single local authority. In addition, there are a number of centralised police functions, such as training, the holding of criminal records, forensics and specialist squads, which were brought under a new Scottish Police Services Authority (SPSA) in 2007. The SPSA is governed by a board comprising the conveners of the local police boards, the chief constables and lay members appointed by the Scottish minister after the usual public appointment process. It is a non-departmental public body under the Scottish Ministry of Justice.

While the establishment of the SPSA in 2007 has improved accountability in relation to national policing, an independent review of policing in Scotland found significant flaws in the governance arrangements for the police in Scotland ([Her Majesty's Inspectorate of Constabulary for Scotland, 2009](#)). Among the key criticisms advanced by the review were that police boards lacked influence over local policing and that they were insufficiently resourced and supported to deliver 'the degree of scrutiny, challenge and accountability required' ([Her Majesty's Inspectorate of Constabulary for Scotland 2009, p. 6](#)). The review also pointed to flaws in the co-ordination of local and national decision-making in policing.

In response to the review, the Scottish government announced in September 2011 that it proposed to pass legislation to create a single national police service. However, the proposal has attracted some controversy. The Confederation of Scottish Local Authorities has indicated that it is opposed a national police force and there have been significant objections raised in the consultation phase about the loss of local accountability and democratic control which the proposals will result in.

There have been significant changes to policing in Northern Ireland since the last Audit in 2002, although the process was underway following the report of the Patten Commission on Policing in Northern Ireland in 1999 ([Independent Commission on Policing for Northern](#)

[Ireland, 1999](#)). The Patten Report was legislated in the Police (Northern Ireland) Act 2000 and changes in the name and governance of a new Police Service for Northern Ireland (PSNI) followed with effect from November 2001. Subsequently, the Northern Ireland assembly was granted overall responsibility for policing in the province in April 2010 as a result of police and criminal justice powers being transferred to the devolved government. The significance of these reforms cannot be underestimated. Prior to 2001, policing had been the responsibility of the Royal Ulster Constabulary, established in 1922 as an armed force, based around barracks rather than dispersed as part of local communities, and with a clear remit to combat paramilitary forces. Moreover, following the introduction of direct rule in 1972, the RUC had been accountable to the secretary of state for Northern Ireland in the UK government.

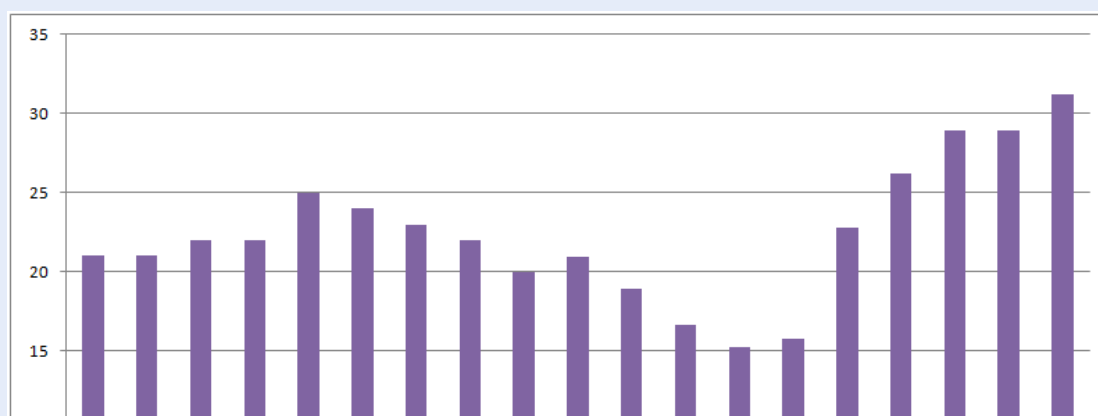
Police accountability in Northern Ireland has been greatly strengthened as a result of these reforms, which centred on the establishment of a new policing board and a policing ombudsman. The Northern Ireland Policing Board acts as the equivalent of a local police authority for the PSNI. It makes appointments and dismissals to the post of chief constable and other senior ranks, establishes priorities and budgets, monitors the police and consults with local people. It also has a specific legislated role to ensure that the PSNI complies with the Human Rights Act 1998. The board comprises ten members of the legislative assembly, drawn in proportion to the political parties' strength in the assembly, and nine independent members appointed by the secretary of state subject to a process of open competition, under the Nolan Principles, and balanced in composition between the two communities. While Sinn Féin did not take up its seats on the board, its participation since 2007 has ensured, for the first time, a much greater degree of consensus about policing in the province. Meanwhile, the police ombudsman provides for independent investigation of complaints against the police in Northern Ireland which, unlike in England and Wales (see below), are investigated by the police ombudsman rather than being handled by the police force itself. Taken as a whole, these arrangements provide for stronger and clearer lines of police accountability than are found in the rest of the UK. Indeed, the chief constable of the PSNI suggested in June 2005 that 'the Police Service of Northern Ireland is possibly one of the most closely scrutinised police services in the world. It is undoubtedly one of the most accountable' ([Northern Ireland Policing Board, 2006](#)).

### ***Police complaints procedures***

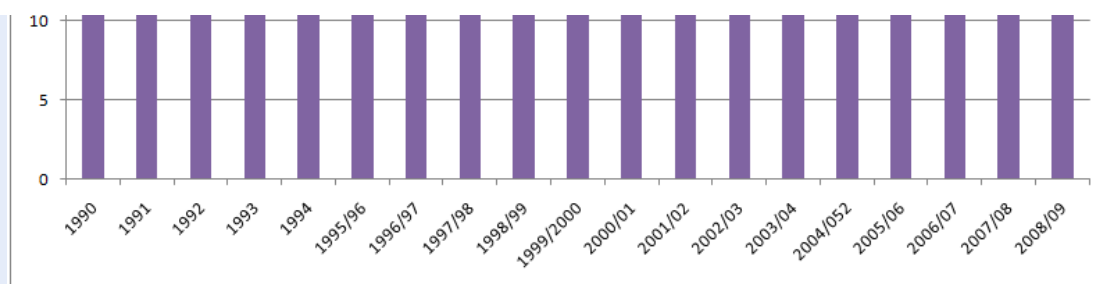
Given that an important part of holding the police to account is through police complaints systems, it is essential that existing procedures deliver fast, effective and fair solutions to those citizens who believe that they have been failed, or otherwise ill-treated, by the police. Currently, in England and Wales, complaints can be dealt with either at a local level, by police forces' internal disciplinary arrangements, or at an external level by the Independent Police Complaints Commission (IPCC). In the minority of cases where complaints cannot be resolved at a local level, appeals may be lodged with the IPCC. In 2008-09, appeals to the IPCC represented two per cent of all complaints which could not be resolved locally, while in 2009-10 the figure was three per cent ([IPCC, 2011b](#)).

Having been established in 2004 through the Police Reform Act 2002, the creation of the IPCC was part of a wider reform of police complaints procedures. The IPCC has almost certainly improved on the previous body responsible for handling police complaints - the Police Complaints Authority (PCA) - which was widely considered to lack both independence and transparency (Smith, 2004). An increase in public awareness and confidence in the police complaints system following the creation of the IPCC is arguably evidenced in the increasing number of annual complaints recorded by police forces in England and Wales (as shown in Figure 2.5a), and has been attested to - albeit rather meekly - by a combination of academic and parliamentary evaluation (see Jones, 2008; [Public Accounts Select Committee, 2009](#)). Yet, alongside evidence of modest improvements in the police complaints system, there has also been worrying evidence of systemic underperformance at the IPCC, as well as occasional catastrophic errors. Moreover, the case that there has been increase in public confidence is not entirely borne out by the commission's own surveys. These reveal a largely static picture, with confidence in the impartiality and fairness of the IPCC - and differential confidence rates between white and ethnic minority survey respondents - changing little overall between 2004 and 2011 ([IPCC, 2011a](#)).

Figure 2.5a: Total complaints recorded by police forces in England and Wales, 1990 - 2008/09 (000s).



## Democratic Audit



Source: [ONS \(2010\)](#).

In addition, the commission has been subject to fierce criticism in relation to a number of well-publicised cases of incompetence - the most notable among them being the cases of Jean Charles de Menezes and Ian Tomlinson (for details of the latter, see Case Study 2.5b below). In late 2011, similar concerns began to arise in relation to the investigation into the fatal shooting by the Metropolitan Police of Mark Duggan, an incident which had helped trigger widespread rioting in London in August that year ([Guardian, 2011a](#)). Statistics suggest, moreover, that the commission's underperformance is far from isolated to a limited number of cases. Indeed, the vast disparity across force areas between the percentage of complaints declared substantiated and those declared unsubstantiated rather suggests that the IPCC is failing, on a massive scale, to deal with complaints consistently and effectively ([Crawley, 2009](#)).

### Case Study 2.5b: The Ian Tomlinson Case

Ian Tomlinson, a newspaper vendor, died on the evening of 1 April 2009 after falling to the ground as a result of becoming caught up in the G20 protests in the City of London on his way home from work. An initial statement released by the Metropolitan Police shortly after Mr Tomlinson's death claimed that officers were first aware of the incident when a member of the public approached a police cordon and notified officers that a man (Mr Tomlinson) had collapsed. The statement added that police were attacked by protestors throwing missiles while they went to Mr Tomlinson's aid.

This version of events was immediately questioned by eye-witness accounts. However, despite immediate calls for them to investigate, the IPCC initially left the investigation in the hands of the City of London Police. The IPCC resisted calls to intervene for six days, only assuming control of the investigation after photographs and, subsequently, a video of the incident was released on the website of the Observer and Guardian newspapers. This video clearly showed that a police officer had hit Mr Tomlinson forcibly with a baton and pushed him to the ground. Three further videos were made public by media organisations over the next two weeks, two via the Guardian and one via Channel 4 News.

It subsequently emerged that three Metropolitan Police officers had informed supervisors, prior to the release of the video footage, that they had witnessed a fellow officer attack Mr Tomlinson. The Metropolitan Police had passed this information on to the City of London Police who chose to withhold it from the IPCC, the pathologist, the media and the victim's family.

Conflicting medical evidence about the causes of Mr Tomlinson's death originally led the Crown Prosecution Service (CPS) to determine there were insufficient grounds to bring a prosecution against the officer, described as this time as PC "A". Despite the clear evidence that PC "A" had used force against Mr Tomlinson and that Mr Tomlinson 'did not pose a threat to PC "A" or any other police officer', the Director of Public Prosecutions, Keir Starmer, argued that it would not be possible to 'prove beyond reasonable doubt that Mr Tomlinson's death was caused by PC "A" pushing him to the ground'.

However, in May 2011 there were further developments. The IPCC published three reports about the incident concluding there was no evidence of a 'cover up' by police or of police officers or personnel setting out to mislead. However, the IPCC also confirmed that they would be undertaking further inquiries into specific aspects of the case, including the apparent failure of the City of London police to pass information onto the IPCC. At the same time, an inquiry jury set up to consider the case subsequently delivered its verdict of 'unlawful killing'. As a result of this verdict, the CPS brought charges of manslaughter against PC Simon Harwood, with the case due to be heard in June 2012.

Aside from the many issues which the case highlights about police accountability, it raises particularly significant questions about the role played by the IPCC, as a Guardian leader from 10 May 2011 explained:

'Why did the IPCC not start its investigation immediately as it learned of Mr Tomlinson's death on 1 April, or on 3 April when it

learned that members of the public saw the pushing incident, or on 5 April when the Observer published the first photographs of the police assault? Why, if the IPCC now knew about the three police witnesses when it finally took over the investigation on 8 April, has it released a report more than two years later which fails to acknowledge their evidence at all?' ([Guardian, 2011c](#))

Significantly, the Tomlinson case has not been the only recent incident to give rise to concerns about the independence and effectiveness of the IPCC. In an adjournment debate in the House of Commons on 15 November 2011, David Lammy MP called for major reforms of the IPCC 'to ensure that we can maintain confidence in the police complaints system' ([Hansard, 15 Nov 2011, Column 813 onwards](#)).

Sources: [Yates \(2009\)](#); [Starmer \(2010\)](#); [Guardian \(2011b\)](#); [Guardian \(2011c\)](#); [Greer and McLaughlin \(2011\)](#).

Underlying these concerns about performance in dealing with complaints are broader fears about the independence of the complaints process. As has been noted, the role of the IPCC in dealing with complaints is modest, since the bulk of complaints are dealt with directly by local forces. As the [Home Affairs Select Committee \(2010, p. 5\)](#) explained '99 times out of 100 and despite the existence of the IPCC, the complaints procedure remains the "police investigating the police"'. Yet, doubts about independence also extend to the IPCC itself. The commission may not be part of any government department, but the Home Office remains responsible for its overall budget allocation; and could, by restricting the IPCC's income, inhibit its ability to investigate complaints. Similarly, whilst IPCC commissioners cannot, by law, have previously worked for the police, this does not apply to those investigating complaints - thus allowing 'former police and customs officers [to] fill many investigatory and management roles' ([Crawley, 2009](#)). The [Home Affairs Select Committee \(2010\)](#) noted that around 30 per cent of IPCC investigators were former police officers and that there were no procedures in place to prevent a scenario whereby ex-police officers were undertaking investigations into a police force which they had previously been employed by. In view of this situation, the committee concluded that:

'the state of affairs described by our witnesses is clearly inappropriate - ex-police officers should not end up investigating possible ex-colleagues in their former force. Public confidence in the impartiality of the IPCC is bound to be damaged by these practices. We are shocked that this situation has been allowed to develop and recommend that steps are taken to prevent this occurring and to remove any hint of impropriety' ([Home Affairs Select Committee, 2010, p. 15](#)).

### ***National and international police structures and their accountability***

The increasing concern about international organised crime, and how best to combat it, has led to the creation of a number of national agencies such as the Serious Organised Crime Agency (SOCA), as well as international policing agencies such as Europol. Yet the creation - and progressive empowerment - of national and international policing agencies has led to understandable concerns over accountability. In the case of Europol, for instance, greater power has not been accompanied by a concomitant enhancement of accountability structures - with some considering the irregular supervision of the EU's Justice and Home Affairs Council to be a poor substitute for effective scrutiny by the European parliament ([Den Boer and Bruggeman, 2007](#)). Meanwhile, the coalition's plan to create a new national policing body, the National Crime Agency (which will combine the functions of SOCA and the Association of Chief Police Officers) means that further change could be on the way, but without any real guarantee that the move will increase police accountability.

### ***Accountability of the intelligence and security services***

The role of intelligence and security services inevitably creates a tension between the need for such work to proceed with a high degree of secrecy and the demand that the state agencies charged with such functions remain fully accountable to elected politicians. Since our last full Audit in 2002, however, debate on this issue has shifted decisively towards concerns to ensure greater accountability - a development which we welcome. In particular, a growing consensus has emerged in the UK that a means must be found to ensure that the intelligence and security services are accountable to parliament.

As we noted in our previous Audit, it was only relatively recently that the UK's intelligence and security services were recognised in statute. The Security Services Act 1989 provided a statutory basis for the existence of the Security Service (MI5), while the Intelligence Services Act 1994 performed the equivalent function in relation to the Secret Intelligence Service (MI6) and the Government's Communication Headquarters (GCHQ) ([Beetham et al., 2002](#)). The 1994 act also established the Intelligence and Security Committee (ISC) to provide a degree of scrutiny for the operation of these secret services, marking a key development in a process which [Bochel et al. \(2010, p. 483\)](#) describe as a gradual lifting of the 'veil of secrecy'.

Recent debates about the accountability of the intelligence and security services have centred on the role of the ISC. The ISC has a mandate to examine issues concerning the administration, policy and expenditure of the intelligence and security services. Its members are

drawn from both houses of parliament and are appointed by the prime minister following consultation in secret with the leader of the opposition. Described as a statutory committee rather than a select committee, the ISC is in truth 'a constitutional anomaly, being a committee of parliamentarians, but not a committee of Parliament' ([Bochel et al., 2010, p. 484](#)). The committee meets in secret, is staffed by Cabinet Office officials rather than parliamentary clerks and has restricted power to request information from the agencies it is supposed to scrutinise. The ISC publishes annual reports but these are vetted by the prime minister prior to publication and tend to be heavily redacted as a result. As we noted in our 2002 Audit, there are therefore serious questions about the extent to which the ISC is independent from government and there have also been long-standing concerns that information is withheld from the committee (Beetham et al., 2002).

There has been growing pressure on government in recent years to bolster the role of the ISC, especially in view of concerns about the role of intelligence and security services in framing the justification for UK involvement in the war in Iraq. There have also been attempts by select committees to undertake inquiries in areas which might ordinarily be regarded as the remit of the ISC ([Bochel et al., 2010](#)). Two notable examples include an investigation into the government's presentation of the case for war in Iraq conducted by the [Foreign Affairs Select Committee \(2003\)](#) and the inquiry initiated by the [Joint Committee on Human Rights \(2009\)](#) into allegations of UK intelligence personnel being complicit in the use of torture.

In 2007, the Governance of Britain green paper sought views on how the role of the ISC could be 'amended to bring the way in which it is appointed, operates and reports as far as possible into line with that of other select committees, while maintaining the necessary arrangements for access to, and safeguarding of, highly-classified information on which effective security depends' ([HM Government, 2007](#)). At the same time, the green paper suggested that a number of changes could be made while this consultation was taking place, including more transparent procedures for the appointment of committee members, permitting the committee to meet in public, possibly in parliament, scheduling parliamentary debates on ISC reports, and separating the committee's secretariat from Cabinet Office personnel.

These proposals were, however, to be watered down in the subsequent Governance of Britain white paper (HM Government, 2008). In particular, the proposal for the ISC to meet in public was dropped in favour of the committee holding public briefing sessions. What did emerge was a commitment to open up the appointments process and, in July 2008, the House of Commons passed a standing order stating: 'The Committee of Selection may propose that certain members be recommended to the Prime Minister for appointment to the Intelligence and Security Committee under section 10 of the Intelligence Services Act 1994' (cited in [Almandras and Strickland, 2009, p. 13](#)).

However, the case for going further in reforming the ISC continued to be made. The [House of Commons Reforms Select Committee \(2009\)](#) took the view that allowing parliament to make nominations to the prime minister was not enough and proposed that members of the ISC should be elected, on similar basis as it proposed for select committees (see Section [2.4.1](#)). Under these proposals, members of the House of Commons seeking election to the ISC would require the formal consent of the prime minister to do so, but would be appointed by parliament rather than by the prime minister. However, while the majority of the select committee's recommendations were eventually adopted, its recommendations relating to the ISC were not. In light of these developments, the special status of the ISC has become increasingly difficult to justify. As [Kelso \(2010, p. 490\)](#) notes, wider reforms to the House of Commons will mean that 'parliamentarians and the public will now more easily see the anachronism of the ISC in comparison to the rest of parliament's increasingly robust scrutiny infrastructure'.

As a result of these pressures, fresh proposals have emerged which would bring an end to 'the strange extraparliamentary twilight status of the ISC' (c.f. [Kelso, 2010, p. 490](#)). Significantly, these proposals originate from the ISC itself. In its 2010-11 annual report, the ISC sets out what it describes as 'radical proposals for change' (see Case Study 2.6c for further details). Under these proposals, the ISC would become a committee of parliament, with greater powers to request information and with a remit to examine operational aspects of the work of the security and intelligence services.

### Case Study 2.5c: The Intelligence and Security Committee's proposals for reform (extract)

The Intelligence and Security Committee was established under the Intelligence Services Act 1994, and has now been in existence for over 16 years. We therefore considered that it was right to review whether the structure, remit and powers of the Committee were still sufficient in the context of the current intelligence machinery. It is clear that the current provisions are outdated and that the status quo is unsustainable. We have therefore submitted radical proposals for change that will ensure strengthened, more credible oversight of the UK intelligence and security Agencies and provide greater assurance to the public and to Parliament. We recommend that these form the basis for the proposals for reform of the ISC in the forthcoming Green Paper on the handling of intelligence material in judicial proceedings.

Our proposals to the National Security Council are based on the following key principles:

- the Intelligence and Security Committee should become a Committee of Parliament, with the necessary safeguards, reporting both to Parliament and the Prime Minister;
- the remit of the Committee must reflect the fact that the ISC has for some years taken evidence from, and made recommendations regarding, the wider intelligence community, and not just SIS, GCHQ and the Security Service;
- the Committee's remit must reflect the fact that the Committee is not limited to examining policy, administration and finances, but encompasses all the work of the Agencies;
- the Committee must have the power to require information to be provided. Any power to withhold information should be held at Secretary of State level, and not by the Heads of the Agencies; and
- the Committee should have greater investigative and research resources at its disposal.

Source: [Intelligence and Security Committee \(2011, p. 82\)](#).

In its Justice and Security green paper, published in October 2011, the government acknowledged criticisms that the ISC is insufficiently independent; that it has insufficient knowledge of the agencies it is supposed to scrutinise and the process through which appointments are made to the committee lacks transparency ([HM Government, 2011a](#)). In the green paper, the government indicated its support for almost all of the ISC's proposals for reform, and expresses the view that the ISC should become a statutory committee of parliament (rather than a select committee). The green paper goes on to note that it would follow as a 'natural consequence' that the ISC should be 'accommodated in suitably secure premises on the parliamentary estate'; that its staff would be parliamentary staff rather than civil servants; and that its budget would be allocated to parliament rather than to the Cabinet Office ([HM Government, 2011a, p. 43](#)).

In short, it is widely recognised, including by the committee itself, that the ISC, as currently configured, is an inadequate mechanism for ensuring that the intelligence and security services are publicly accountable for their activities. These concerns persist despite a degree of recent reform. It remains to be seen whether the proposals contained in the most recent green paper will provide the basis for more-far reaching reforms of the ISC within the lifetime of this parliament, not least because issues of national security will remain paramount in the current process of consultation. However, there is now widespread acceptance of the view, asserted over a decade ago by the [Home Affairs Committee \(1999\)](#), that 'the accountability of the security and intelligence services to parliament ought to be a fundamental principle in a modern democracy'. As such, the pressures for the ISC to become a committee of parliament appear to have reached the point at which further reform seems inevitable in the near-future.

### 2.5.3 Social representativeness of the army, police and security services

How far does the composition of the army, police and security services reflect the social composition of society at large?

#### *The armed forces*

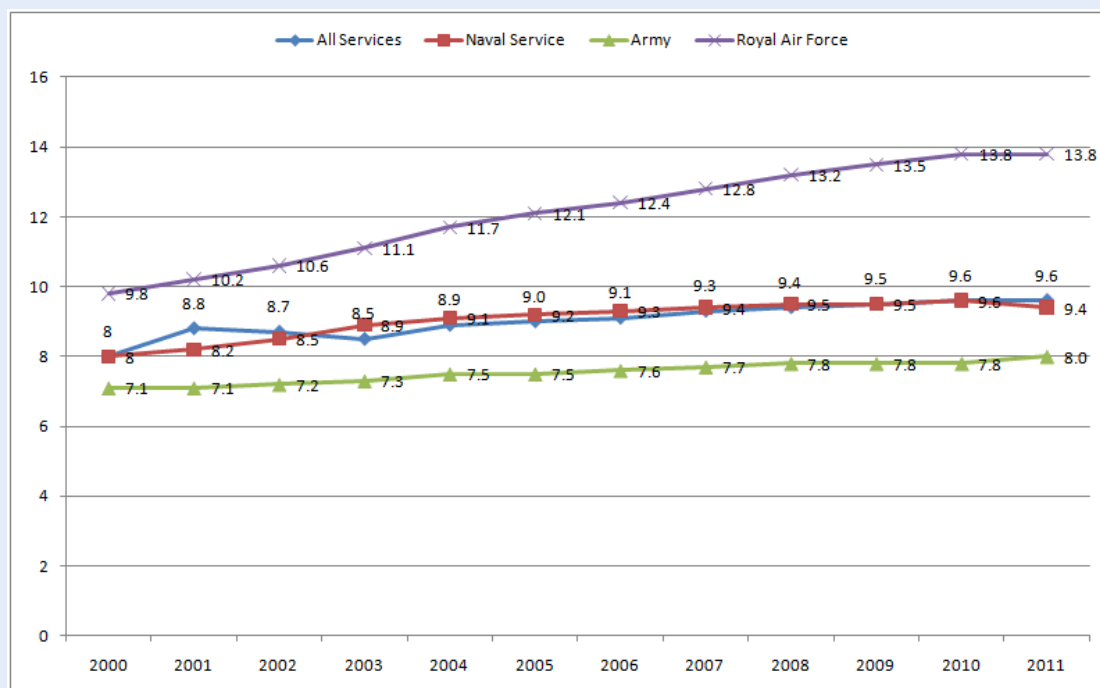
In our 2002 Audit, we expressed concerns that the culture of the military had given rise to armed forces which were unrepresentative of British society, both in relation to gender and ethnicity (Beetham et al., 2002). In 2000, women made up just eight per cent of armed services personnel, a modest increase from six per cent in 1990 ([Oakes, 2001](#)). Meanwhile, a mere 1.5 per cent of British military personnel in 2000 were from black and minority ethnic groups, despite the fact that these groups then constituted around seven per cent of the UK population (Beetham et al, 2002). Efforts since then to recruit more women and ethnic minorities into the armed forces have been met with some degree of success. Women now account for nearly 10 per cent of armed forces personnel as a whole, while ethnic minority representation in the armed forces also grew steadily during the 2000s, reaching 4.9 per cent in 2004 and 6.8 per cent in 2011 ([DASA, 2006](#); [DASA 2009](#); [DASA 2011a](#)).

These incremental improvements in the social representativeness of the armed forces are of course welcome. However, there still remain a number of areas of concern, as well as potential barriers to further improvements in the inclusiveness of the forces in the future. Figure 2.5b shows that the Royal Air Force has been far more successful in recruiting greater numbers of women than the Army or the Navy and that the Army, in particular, evidences only a very gradual increase in the proportion of personnel who are female. The trends in relation to senior military personnel are rather more encouraging, however. As Figure 2.5c indicates, women now account for 12.3 per cent of officers in the military, compared to 8.9 per cent in 2000. Again, the greatest progress is evident in the Royal Air Force, where the percentage of female officers has increased from 10 to 15.6 over the course of a decade. However, there has also been a clear rise in the proportion of



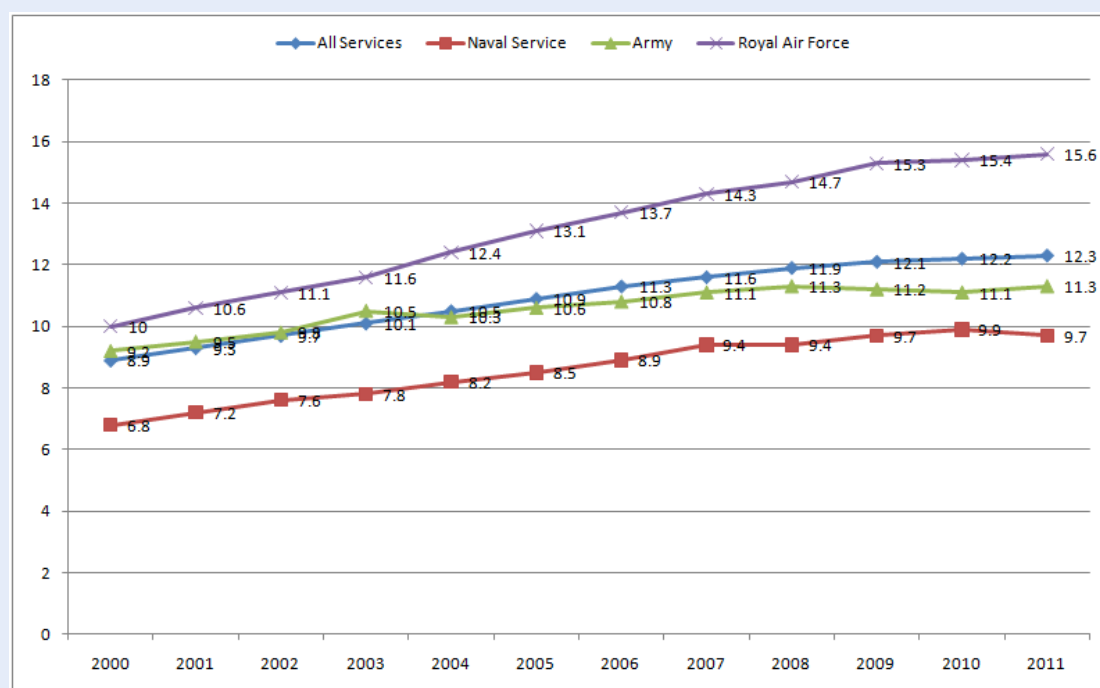
Army and Navy officers who are women, rising from 9.2 and 6.8 per cent, respectively, in 2000, to 11.3 and 9.7 per cent, respectively, in 2011.

Figure 2.5b: Women as a proportion of UK regular forces personnel, 2000-11.



Source: [DASA \(2011b\)](#).

Figure 2.5c: Percentage of military officers who are female, 2000-11.



Source: [DASA \(2011b\)](#).



Figures for gender representation in the military clearly require some contextualisation. For women, there would appear to be formidable practical limits on the extent to which further gender parity might be achieved. Currently, women are not permitted to serve in any role where the primary duty is 'to close with and kill the enemy' - thereby restricting them to 67 per cent of Army posts, 71 per cent of posts in the Royal Navy, and 96 per cent of posts in the Royal Air Force. Although many countries - including Denmark, Canada and Germany - place no restrictions on the military occupations in which women can serve, the debate on whether the same right should be extended to women in the UK has yet to be decisively resolved. The policy of excluding women from combat roles was reviewed in 2009-10. However, the review's final report concluded that the 'inconclusive' nature of the evidence available militated against an end to the ban ([Ministry of Defence, 2010](#)). Yet, even with these restrictions in place, the representation of women in the UK armed forces compares reasonably favourably with most other NATO member state, as Table 2.5c shows.

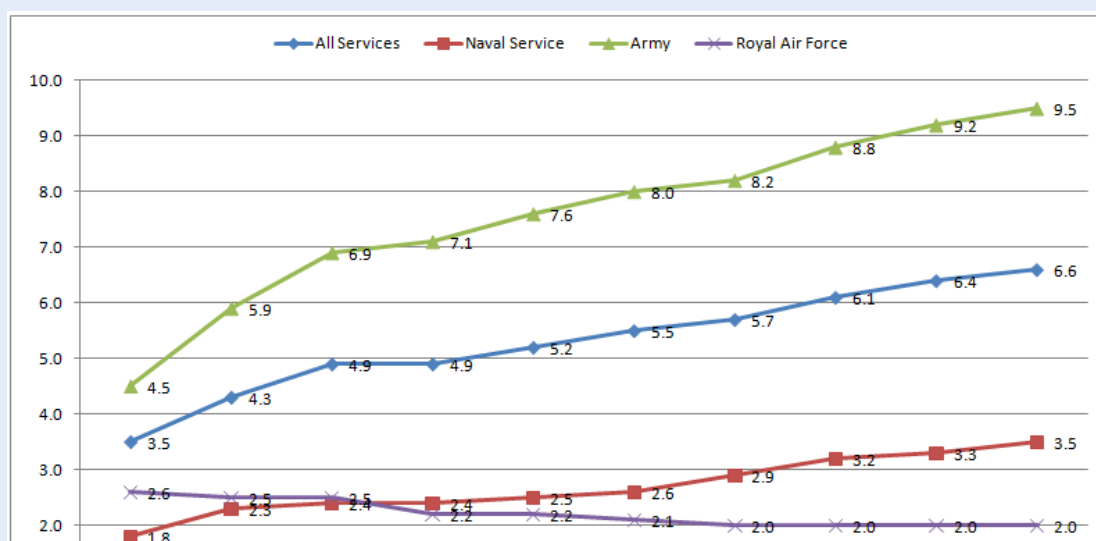
Table 2.5c: Women as a percentage of armed forces personnel, selected NATO countries, c.2009-10.

	Women as a % of armed forces
Belgium	8
Canada	15
Denmark	5.2
Germany	8.9
Italy	13.5
Netherlands	9
Norway	8.6
Portugal	13.9
UK	9.5

Source: Reports of members states to [NATO Committee on Gender Perspectives \(2010\)](#).

For ethnic minorities, meanwhile, it is clear that the overall increase in armed forces representation throughout the 2000s masks a number of perturbing underlying trends. As Figure 2.5d shows, while there has been a considerable increase in the percentage of ethnic minority personnel in the Army, and to a lesser extent in the Navy, the percentage of ethnic minorities in the Royal Air Force has actually declined over the period surveyed - from 2.6 per cent in 2002 to 2.0 per cent in 2011. Furthermore, as Figure 2.5e indicates, there has effectively been no change in the proportion of officers in the armed forces from a black or minority background, which has been static at around 2.5 per cent in the armed forces as a whole since 2005.

Figure 2.5d: Ethnic minority composition of UK regular forces, 2002-11.

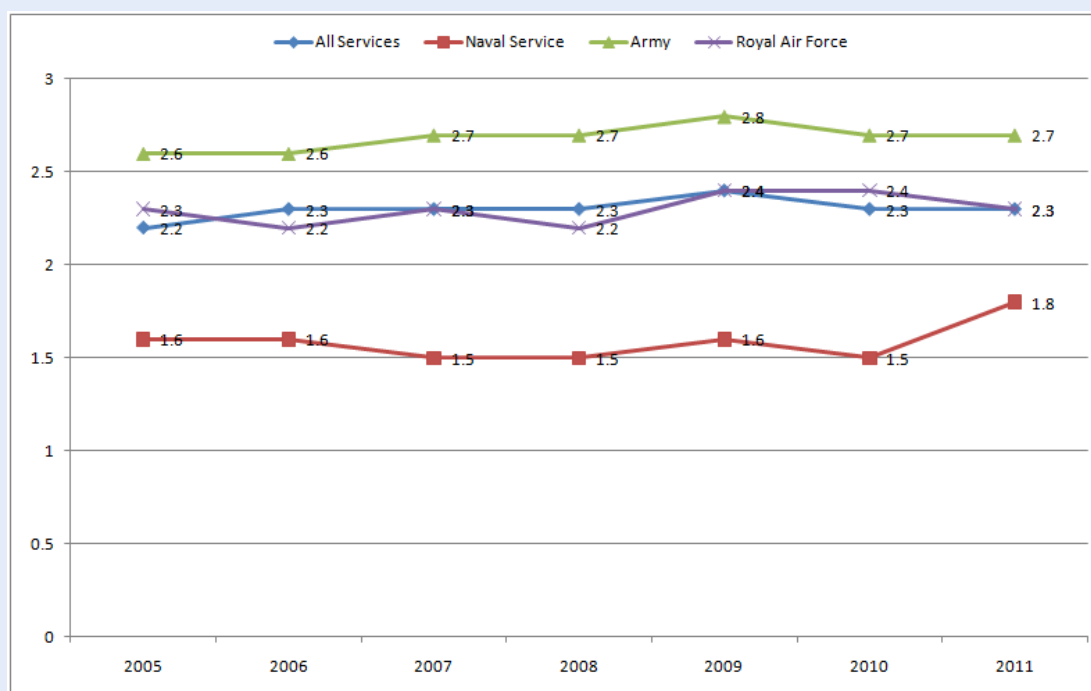


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Source: [DASA \(2011b\)](#).

Figure 2.5e: Percentage of military officers from ethnic minority backgrounds, 2005-11.



Source: [DASA \(2011b\)](#).

### The police

The overall social representativeness of the police force improved steadily during Labour's time in office. In 1997, just 1.7 per cent of police officers in England and Wales were from ethnic minority backgrounds, and only 15 per cent were women; whereas by 2010, 4.6 per cent of police officers in England and Wales came from ethnic minority backgrounds and 25 per cent were women (see Figure 2.5f below). In Greater London, easily the most ethnically diverse region of the UK, 9.6 per cent of officers in the Metropolitan Police staff are from ethnic minority backgrounds ([Home Office, 2011](#)). Encouragingly, some of the most rapid of these increases occurred at the very highest ranks of the police. Since 1999, the proportion of officers from ethnic minority backgrounds serving at the rank of superintendent or higher increased more than five fold - from 0.5 per cent to 2.7 per cent ([Equality and Human Rights Commission, 2009](#)). In addition, nine of the 223 officers ranked Chief Constable or above in March 2010 were from ethnic minority backgrounds, representing 4 per cent of the total ([Berman, 2010](#)). Meanwhile, the number of women serving either as an inspector, chief inspector or superintendent has more than trebled since the late 1990s ([Home Office, 2010](#)). Nonetheless, there is still significant room for improvement in the social representativeness of senior police officers, particularly in relation to gender; only 14.3 per cent of officers in England and Wales currently ranked Chief Superintendent or above are female.

Figure 2.5f: Women and ethnic minority police officers as a percentage of all officers, England and Wales, 1997-11.



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Source: [Berman \(2010\)](#); [Home Office \(2011\)](#).

The gender composition of Scottish police officers has shifted in line with the trends in England and Wales over the same period. As Figure 2.5g shows, women accounted for 24.2 per cent of police officers in Scotland in 2009, compared to 14.9 per cent in 1998. While the growth in the number of ethnic minority police officers in Scotland was far less evident than in England and Wales, rising from 0.3 to 1.1 per cent, it should be noted that this has taken place in the context of ethnic minority groups making up an estimated two per cent of the population of Scotland as a whole

Figure 2.5g: Women and ethnic minority police officers as a percentage of all officers, Scotland, 1998-09.



Source: [Berman \(2011\)](#).

Of course, despite these advances in recent years, women and ethnic minority officers remain disproportionately clustered in less senior positions; and there is still evidence to suggest that the police have not yet fully eradicated internal problems of prejudice and

discrimination, which may well act as a barrier to further progress. A reputation for racism persists despite comprehensive changes to the way police forces operate and widely-acknowledged improvements in the way in which the problem is dealt with ([Foster et al., 2005](#); [Equality and Human Rights Commission, 2009](#)). Likewise, women and LGBT officers also face prejudice and discrimination at work - including the use of sexist or homophobic language by work colleagues, which a 2005 report for the Home Office found was 'increasingly tolerated' within police forces ([Foster et al., 2005](#)).

Available statistics for Northern Ireland indicate that women are represented to roughly the same level among police officers in the province as they are in England and Wales (27 per cent in 2011). While there are very few police officers from black and ethnic minority backgrounds in Northern Ireland (0.5 per cent), it is vital to note that this figure is closely in line with the ethnic composition of Northern Irish society. Of particular significance in the context of Northern Ireland, however, is the evidence of a dramatic change in the composition of the police by religious background. In the decade since the Royal Ulster Constabulary was replaced by the Police Service of Northern Ireland, the proportion of police officers perceiving themselves as Roman Catholic has grown from 8 to 30 per cent of the force (see Table 2.5d). As a result, the Northern Irish police are now far more representative of the society which they serve.

Table 2.5d: Social composition of police officers in Northern Ireland, by religious background

	2001		2011	
	No.	%	No.	%
Perceived Protestant	8305	87.9	4830	67.5
Perceived Roman Catholic	756	8.0	2168	30.3
Undetermined	385	4.1	157	2.2
Total	9446	100.0	7156	100

Sources: [Hansard \(2011\)](#); [Police Service of Northern Ireland \(2011\)](#)

### ***Social composition of the security services***

There is minimal information available about the social composition of personnel in the intelligence and security services. While we made direct requests to MI5, MI6 and GCHQ for information about the composition of their staff by gender and ethnicity, these requests were refused on the grounds that all three bodies are exempted from the Freedom of Information Act.

However, while there are no published statistics, a limited amount of commentary on the social makeup of staff at GCHQ is available. For instance, the [Capability Reviews Team \(2009, p. 8\)](#) found that 'delivery against diversity targets' for staffing at GCHQ was poor, noting that:

'The ratio of women in the Senior Civil Service (at GCHQ) is low compared to other government departments and it is also falling short of its targets on numbers of black and minority ethnic and disabled staff. The Department needs to understand better the reasons underpinning its performance in this area, and the Board must take greater responsibility for, and drive, significant improvement'.

The ISC's annual report for 2010-11 notes that the GCHQ Board adopted a set of diversity initiatives in response to this review, including 'mandatory diversity training for all staff, awareness-raising events, and consulting other organisations to identify best practice' ([Intelligence and Security Committee, 2011, p. 21](#)). The ISC also noted a modest increase in the proportion of GCHQ junior and middle managers from black and minority ethnic backgrounds, from 2.5 to 2.8 per cent.

We were not able to identify any official information about the social representativeness of staff at MI5 or MI6. However, in response to our request to MI6, we were directed to an interview with an 'undercover MI6 officer', which appeared in the Birmingham Post in March 2010 as part of the agency's efforts to recruit more female and ethnic minority operatives. In this interview, the MI6 representative revealed that:

'We want to recruit people that are representative of our society. There are far more female operatives these days. When I joined there was just one on the course. We also want to attract more people from black and ethnic minority backgrounds [...] The last intake of 80 operatives came from 30 different universities. The intake was 35 per cent female and eight per cent black and ethnic minority. The great challenge we face is that more boys want to be spies than girls' ([Birmingham Post, 2010](#)).

## 2.5.4 Freedom from armed and/or violent anti-democratic forces

How free is the country from the operation of paramilitary units, private armies, warlordism and criminal mafias?

All established democracies tend to be relatively free from destabilising or 'anti-system' forces such as paramilitary units, private armies and warlords. However, the UK has experienced several decades of paramilitary violence in Northern Ireland, as well as violent extremism associated with far-right and 'neo-Nazi' political movements. In more recent years, concerns about domestic terrorism associated with small cells of radical Muslim movements have also heightened considerably.

### *Northern Ireland*

The activities of paramilitary organisations in Northern Ireland have presented a serious and sustained threat to the democratic process in the province since the early 1970s. Described by one expert as 'by far the worst [conflict] seen in Western Europe since the Second World War' (Tonge, 2006, p. 1), around 3,600 people are estimated to have died as a result of paramilitary activity in Northern Ireland since 1969 (Sutton, 1994; CAIN, 2011). Analysis of the data contained in the 'Sutton Index' reveals that of those killed, a little over half have been ordinary members of the civilian population; a third have been members of the British or Irish security forces; and the remainder have been paramilitaries.

At the height of The Troubles from 1971-76, deaths attributable to sectarian violence ran at an average of around 300 people per annum - peaking at 479 deaths in 1972 (Sutton, 1994). While the level of violence fell during the late 1970s, the number of deaths per annum continued to average around 100 from 1977-1994, with peaks of violent activity in both the early and the late 1980s (Sutton, 1994). Concerted attempts to negotiate a peace from the early 1990s onwards prompted levels of violence to fall further, despite sporadic increases in paramilitary activity associated with the breakdown of peace talks or with the splintering of both republican and loyalist groupings. From 1995-2003, deaths associated with paramilitary activity dropped to around 10-20 per annum - with the exception of 1998, the year of the Omagh bombing, in which 29 people were killed (CAIN, 2011). Paramilitary activity has thus diminished substantially in recent years, and the membership of individual paramilitary organisations is now reckoned to amount to no more than a few hundred. It is generally agreed that the number of deaths each year associated with sectarian violence has been in single figures since 2004; and it is possible that many of these incidents relate to the settling of old scores or to the organised criminal activities of the residual membership of paramilitary groups.

Table 2.5e: Principal paramilitary groups in Northern Ireland, 1969-present

Organisation	Year founded	Alignment	Estimated no. fatalities caused, 1969-2001	Volume of claimed/suspected attacks
Provisional IRA	1969 – formed from split in IRA (is main Republican paramilitary organisation thereafter)	Republican	1826	Claimed/suspected responsibility for 2670 incidents from 1970-2008
Ulster Volunteer Force (UVF)*	1966	Loyalist	481	261 incidents from 1970-2005
Ulster Defence Association/Ulster Freedom Fighters**	1971	Loyalist	262	252 incidents from 1972-2007
Non-specific Loyalist Groups	n/a	Loyalist	247	n/a
Irish National Liberation Army	1974 – split from Provisional IRA	Republican	123	Claimed/suspected responsibility for 123 incidents from 1975-2007, including the Ballykelly disco bombing in 1982 (16 killed, 66 injured).
Official IRA	1969 – from split in IRA	Republican	55	Claimed/suspected responsibility for 40 incidents from 1971-1979, including the bombing of military barracks in Aldershot

				in 1972 (7 killed).
Real IRA/32-County Sovereignty Movement	1998 – in opposition to Good Friday Agreement	Republican	29	Suspected to be responsible for 31 reported incidents from 1998-2008, including the Omagh bombing in 1998 (28 killed, 220 injured)
Loyalist Volunteer Forces	1996	Loyalist	18	26 incidents from 1997-2000
The Red Hand Defenders	1998	Loyalist	8	19 incidents from 1999-2003
Continuity IRA	1986 – split from Provisional IRA	Republican	5	Suspected to be responsible for 24 reported incidents from 1996-2008, including the Enniskillen hotel bombing in 1996 (24 injured)
Direct Action Against Drugs	Assumed to be a cover name for IRA activity	Republican	4	4, 1995-96
Orange Volunteers	1998	Loyalist	0	10 incidents from 1998-2005
Sources: <a href="#">Global Terrorism Database</a> (accessed March 2011); <a href="#">Sutton (1994)</a> ; updates to Sutton (1994) on the Conflict and Politics in Northern Ireland ( <a href="#">CAIN, 2011</a> ) Web Service.				
Notes: * UVF includes killings claimed by Protestant Action Forces and the Protestant Action Group, as well as Red Hand Commandos; ** The UDA did not claim any killings during The Troubles, instead using the name Ulster Freedom Fighters in such circumstances.				

Nevertheless, paramilitary groups do continue to exist and a degree of paramilitary activity remains evident. The Global Terrorism Database recorded 25 terrorist incidents in Northern Ireland in 2008, ranging from attacks on police to petrol bombs being thrown at private addresses or commercial premises. While only one of these attacks resulted in a paramilitary group (the Continuity IRA) claiming responsibility, and no deaths occurred as a result, it is clear that violent attacks involving guns and makeshift bombs have by no means been eradicated from Northern Irish society. Moreover, there is still widespread public concern about the continued operations of both loyalist and republican criminal gangs. A recent Northern Ireland Omnibus Survey found that 72 per cent of Protestants and 57 per cent of Catholics held paramilitary organisations responsible for organised crime in the province ([Wilson, 2009](#)).

### UK mainland

The UK mainland has not, in recent decades, been subject to the activities of terrorist and paramilitary groups in the same way that Northern Ireland has. However, that is certainly not to say that Great Britain is *free* from secretive terrorist cells and paramilitary groups; or indeed that acts of political violence and terror are unknown in England, Scotland and Wales. From 1972 onwards, the Provisional IRA, for instance, waged a sporadic but damaging bombing campaign against English targets which lasted until the late 1990s. Between them, these terrorist incidents in London, Manchester and elsewhere killed dozens of people, injured many hundreds more, and caused billions of pounds worth of damage. While the last attack by Northern-Ireland related terrorist groups on Great Britain occurred a decade ago, in 2001, this threat still remains today. Indeed, the government announced in September 2010 that the threat of attack to the mainland from these groups had been upgraded from 'moderate' to 'substantial' - meaning that an attack is now considered to be a 'strong possibility' ([BBC News, 2010](#)).

In addition to the danger presented by Northern-Irish terrorist groups, the UK also faces the threat of organised acts of violence and terror from a number of 'homegrown' extreme ideological and religious factions - some of them long-established. One of the oldest of these threats is the extreme right. Acknowledged by the government's latest terrorism prevention strategy document, *Prevent*, to be among the most dangerous potential sources of terrorism in the UK (HM Government, 2011b), the extreme right consists of a number of loose but extensive networks of fascists and neo-nazis which have been targeting minority groups and political opponents for decades (Gable and Jackson, 2011). The danger that they pose to the lives of ordinary people was tragically demonstrated in 1999, when the explosion of three bombs planted by David Copeland - a former member of the British National Party and National Socialist Movement - led to the deaths of three people and the injury of more than a hundred others. Thankfully, the scale of the fascist atrocities of 1999 has to yet to be matched in the UK by other like-minded individuals. However, the frequent discoveries by police of weapons caches and explosives belonging to members of the extreme right - together with various, smaller-scale examples of coordinated violent attacks - clearly demonstrate that the

threat they pose to citizens of the UK remains a grave one.

Of course, the greatest terrorist threat to domestic security today is generally held to emanate not from either Northern Ireland-related groups or the extreme right, but rather from Islamic extremists - particularly those who either belong to, or are in some way affiliated with Al Qa'ida (see HM Government, 2011b). Prior to the London bombings of 2005, in which 52 people were killed and more than 700 injured, the threat posed by Islamic extremism was perceived primarily by western nations as an external, or 'foreign', problem. However, the events of 7 July 2005 changed that perception. All four of the suicide bombers involved in the plot were UK nationals, leading the UK government - and other governments in the west - to increasingly recast the potential threat posed by radicalised muslims as an internal, or 'domestic', problem (Crone and Harrow, 2011). Subsequent terrorist plots planned by Islamic extremists have also involved radicalised UK nationals.

## Conclusion

It is clear that the military and police forces in the UK are under civilian control. While we have expressed clear concerns in this section about the potential scope for military deployment in civilian affairs, especially since the passage of the Civil Contingencies Act 2004, military intervention in domestic matters remains exceptionally rare in the UK. If anything, government emergency powers are now used more rarely than they were in previous decades, owing to the decline of industrial action, with military involvement tending to be restricted to instances of genuine emergency where troops provide aid to the civil community. We are also encouraged by the progress, albeit modest, in the social representativeness of the armed forces and police. The increase in the proportion of female and ethnic minority personnel in both the military and the police reflects genuine efforts to diversify recruitment and is to be welcomed in a modern democracy - although there is clearly still room for improvement.

Meanwhile, in Northern Ireland, the power-sharing model of devolution enabled the UK to end its 38 year 'counter-insurgency' military operations in Northern Ireland in 2007. The normalisation of the security of Northern Ireland under the PSNI, a police service with particularly strong accountability in terms of its institutions of governance and responsibility to human rights, can only be seen as an area of considerable progress since the previous Audit. We are also encouraged by the success of efforts to ensure that the social composition of the Police Service of Northern Ireland reflects the makeup of Northern Irish society as a whole.

However, by no means does this section of the Audit present a 'clean bill of health' with regard to the accountability of the armed forces and the police. Indeed, aside from the dramatic improvements noted in Northern Ireland, we must repeat almost all of the concerns expressed in previous Audits about the extent to which existing mechanisms serve to ensure that the military, police and security services are publicly accountable for their actions. With regard to the military and the security services, the role of parliament remains exceptionally weak. Key decisions about military affairs, including whether to engage in war, remain in the control of the executive as a result of the continuation of royal prerogative powers. And, while reform has again been promised, the lack of provision for parliament to hold the security and intelligence services to account remains a key concern. With regards to police accountability, we have highlighted the continued erosion of the role of police authorities in ensuring that police forces are accountable to the communities they serve.

A whole host of events over the past decade illustrate why these are not just theoretical concerns. From the decision to go to war in Iraq, and the nature of the intelligence used to justify it, though to high-profile controversies about how police officers have responded to major incidents, questions about the extent of democratic control and accountability loom large in relation to the military, police and security and intelligence services. We are, moreover, surprised by the relative paucity of academic research into these issues.

As with other sections of this Audit, this section has highlighted some notable contrasts between the constituent parts of the UK, particularly with regard to police accountability. Here, as elsewhere, there may be much that the UK government can learn from the experience of devolution in Scotland and Northern Ireland. At the same time, the growing contrasts in models of police accountability within the UK, which will be heightened by the coalition's policy of moving to elected police commissioners in England and Wales, arguably provides further evidence of the constitutional instabilities arising from asymmetric devolution. Another of the core themes highlighted in this Audit, the failure of reforms to stem the decline of public confidence in key institutions, is equally significant in this regard. It is particularly striking that serious concerns persist about the police complaints system, despite the establishment of the Independent Police Complaints Commission almost a decade ago. Moreover, while measures of public confidence in the police derived from the British Crime Survey were relatively stable in the 2000s, there is clear evidence of sharp, long-term decline compared to previous decades (Crawford, 2008; Bradford, 2011). We would question whether a move to elected police commissioners is likely to improve the situation.

Finally, the analysis presented in this section adds further evidence of parliament becoming more assertive in its relationship with the executive in key aspects of decision-making, including the role of the military and the accountability of the security and intelligence services. While the balance is yet to shift towards greater powers for parliament in these areas, the dynamic towards greater democratic oversight of the military and security services suggests that demands for reform will prove increasingly difficult to resist.

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## 2.6. Integrity in public life

### Executive Summary

This chapter reviews the available evidence relating to the five 'search questions' concerned with integrity in public life.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concerns; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. The establishment of an independent body to oversee MPs' expenses, pay and pensions.**

In response to the public scandal over MPs' expenses, the government announced in May 2009 that it would bring forward legislation to create an independent body to oversee the expenses regime for MPs. The Parliamentary Standards Act 2009 established the Independent Parliamentary Standards Authority (IPSA) (covering the Commons only). Significantly, the Commons has surrendered its previous ability to make decisions on expenses. The act also gave the independent regulator responsibility for maintaining the register of financial interests and for an accompanying statutory code of conduct on financial interests, to operate alongside the house's existing non-statutory code of conduct on other issues; and created a new commissioner for parliamentary investigations to investigate breaches of the code of conduct. The Parliamentary Standards Act 2009 was amended in 2010 to give IPSA responsibility for members' pay and pensions; and to relinquish functions in relation to MPs' financial responsibilities. (For further details and discussion, see Case Study [2.6b](#))

##### **2. The appointment of an independent adviser on ministerial interests.**

Rules of propriety for ministers are found in the ministerial code. An independent adviser on ministerial interests has been in place since 2006. (For further details and discussion, see Section [2.6.1](#))

##### **3. The provision of a statutory basis for the civil service code and the civil service management code.**

Both the civil service code and the civil service management code have arguably been strengthened since the Constitutional Reform and Governance Act 2010 provided them with a statutory basis for the first time. (For further details and discussion, see Section [2.6.1](#))

##### **4. The establishment of a House of Lords commissioner for standards.**

In 2008 the House of Lords Committee for Privileges recommended more detailed guidance on conduct for peers. Early in 2009, a press investigation exposed four peers as offering to secure amendments to legislation in exchange for large sums of money. The police decided not to pursue charges. Alongside the MPs' expenses scandal a number of allegations emerged in mid-2009 regarding improper expenses claims by peers. In May 2009, a House of Lords leader's group was convened to consider the code of conduct for members of the Lords and related issues. Its recommendations, accepted by the Lords, included the creation of a commissioner for standards, functionally independent but appointed by the house, the remit of which would include investigating complaints about financial support arrangements along with complaints under the code. (For further details and discussion, see Section [2.6.1](#))

##### **5. The establishment through the Bribery Act 2010 of a new statutory regime for preventing bribery.**

Before the passing of the Bribery Act 2010, the legal framework in this area was provided by the common law offences of bribery and attempted bribery; with the main statutes dealing with corruption being the Public Bodies Corrupt Practices Act 1889; the Prevention of

Corruption Act 1906; and the Prevention of Corruption Act 1916. The previous full Audit noted both that the law was 'obsolete, ad-hoc and inconsistent'; and that official processes that might lead to a new statute had been instigated, but were not proceeding rapidly. The inadequacy of the old framework was suggested by the fact that, until 2009, only one company had been successfully prosecuted in the UK courts. In 1998 the Law Commission recommended a new statute; but the Draft Corruption Bill of 2002-03 was rejected by the joint committee charged with scrutinising it. The Law Commission opened a new consultation in 2007 and produced a new draft bill the following year, which eventually became the Bribery Act 2010. The purpose of this act, as stated in the explanatory notes, is: 'to provide for a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom (UK) and abroad'. (For further details and discussion, see Section [2.6.2](#))

## **6. The withdrawal of the prime minister from the honours system (excluding peerages).**

On 23 March 2006 Tony Blair announced that he would no longer make any changes to future honours lists; and this withdrawal seems to have become a convention accepted by subsequent prime ministers. However, it remains possible for parties to make appointments to the House of Lords, meaning that suspicions about the purchase of peerages will remain hard to dispel. (For further details and discussion, see Section [2.6.2](#))

### ***(b) Areas of continuing concerns***

#### **1. The lack of a statutory, independent basis for the ministerial code.**

Despite provisions, since 2006, for an independent adviser on ministerial interests, the ministerial code is still drawn up by the prime minister (assisted by the cabinet secretary/head of the home civil service); and the premier has ultimate responsibility for enforcing it. The system is not independent, nor does it have a statutory basis. (For further details and discussion, see Section [2.6.1](#))

#### **2. The retention of some self-regulation in parliamentary standards in the Commons, including over prevention of bribery; and total self-regulation in the House of Lords.**

While the system of self-regulation for MPs which has operated since time immemorial has been fundamentally challenged via the establishment of IPSA, many forms of regulation continue on a non-statutory basis, conducted by the Commons itself. The basic principles by which MPs are expected to abide are the 'seven principles of public life' (see Case Study [2.6a](#)). In 2001, following recommendations by the Committee on Standards in Public Life, a code of conduct and a mandatory register of interests was introduced in the House of Lords, although it was only accepted by a narrow margin. The system is again based on self-regulation and is overseen by the House of Lords Committee for Privileges and its relevant sub-committees. (For further details and discussion, see Section [2.6.2](#))

#### **3. Difficulties in policing financial probity around the conferral of peerages.**

There have long been suspicions that wealthy individuals have been able to purchase honours indirectly (including peerages, which may be seen as an honour but entail membership of the legislature) through donations to political parties. While such a practice could be regarded as a form of bribery, proving direct connections and securing prosecutions is exceptionally difficult. The legal framework prohibiting the sale of honours and peerages is provided by the Honours (Prevention of Abuses) Act 1925. Though this law is more than eighty years old it has only ever resulted in a single prosecution, as long ago as 1933. The so-called 'cash for honours' scandal of 2006-07 highlighted the complexities of investigating suspected corruption in this field. (For further details and discussion, see Section [2.6.2](#))

#### **4. The failure of the Political Parties, Elections and Referendums Act 2000 to resolve long-standing controversies about the regulation of election spending.**

The Political Parties, Elections and Referendums Act 2000 represented an important milestone in the regulation of election spending in the UK, providing belated recognition of the need to regulate party, as well as candidate, spending. While the provisions introduced by the act have helped to reduce levels of election spending compared to 1997, spending levels at the last three general elections have remained high by post-war standards (see Figure [2.6a](#)). Moreover, the growth of unregulated spending by candidates outside of the official campaign period, much of it funded by special interests, became a major issue after 2005. While the Political Parties and Elections Act 2009 has gone some way to addressing this latter issue, concerns about a variety of loopholes in the 2000 act persist. (For further details and discussion, see Section [2.6.3](#))

#### **5. Extensive linkages between MPs and large corporations, on a scale which is exceptional among established democracies.**

There is a long-standing view that parliament benefits from MPs maintaining 'outside interests', which dates back to the period in which members of the Commons were unpaid. Despite significant increases in MPs' pay, particularly since the mid-1990s, substantial numbers of

MPs also act as company directors or as paid consultants. One study has established that corporate-parliamentary connections in the UK are far more extensive than in any other OECD country (see Figure [2.6d](#)). These linkages with major companies are significantly more common among Conservative MPs. For much of the twentieth century, there was an implicit acceptance that these corporate connections on the Conservative benches would be counterbalanced by significant numbers of Labour MPs receiving direct financial sponsorship from trade unions. However, the latter practice ended in the mid-1990s, suggesting that any such implicit counter-balance has ceased to exist. (For further details and discussion, see Section [2.6.4](#))

## **6. The interchange of personnel between government and the public sector and weaknesses in the way it is regulated.**

The separation of public and private interests goes beyond what ministers and officials do while they hold office; the roles which ministers and civil servants hold before and after they are employed within government also need to be considered. There are democratic and other grounds (for instance efficiency) for arguing that there should be interchange of personnel between government and outside organisations, including in the private sector. However, the volume of traffic passing through the 'revolving door' between government and business has grown substantially in recent decades, and presents particular challenges. (For further details and discussion, see Section [2.6.4](#))

### ***(c) Areas of new or emerging concern***

#### **1. The extent of the abuses and weakness of the parliamentary expenses regime.**

In spring 2009 details of MPs expenses claims were leaked to the press. The scandal which followed revealed that the expenses system was open to abuse by MPs seeking to subsidise activities that, by any reasonable standard, were not directly associated with them performing their professional duties. There were also a number of claims which violated the rules, as loose as the rules were. Many political careers were destroyed and criminal charges were made against parliamentarians. There are some grounds for arguing that media coverage was distorting and that many individual MPs were subject to an unreasonable level of scrutiny regarding relatively trivial expense claims. But there can be little doubt that genuine and systematic abuse was revealed, not least because of the successful criminal prosecutions that followed (at the time of writing, four MPs and two peers had been imprisoned for crimes such as false accounting and fraud). (For further details and discussion, see Case Study [2.6c](#))

#### **2. The apparent subversion of the rule of law over the BAE Systems/Al-Yamamah investigation.**

In September 2003 claims were made in the press that BAE Systems was using a £20 million 'slush fund' for the bribery of Saudi officials. The Serious Fraud Office (SFO) stated that it was considering a criminal investigation. In December 2006 it was reported that the Saudi government had warned that if the investigation was not ceased, the UK would lose the Eurofighter contract. On the 15 December, the SFO announced that it was discontinuing its inquiry. The explanation offered by the SFO was that there was a need 'to balance the need to maintain the rule of law against the wider public interest'. There was also a fear, the attorney general, Lord Goldsmith, explained, 'that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation' with repercussions for the achievement of UK foreign policy objectives. In April 2008, the high court ruled that the SFO decision was unlawful; but in July 2008 the SFO successfully appealed against this decision in the House of Lords. (For further details and discussion, see Case Study [2.6f](#))

#### **3. A continuing decline in public confidence in the integrity of public life.**

The Committee on Standards in Public Life has conducted surveys on public attitudes towards standards in public life in 2004, 2006, 2008 and 2010. Though not dealing specifically with corruption, they provide evidence of declining public confidence in standards. There have been significant rises in dissatisfaction at the way parliament works and MPs in general do their jobs, which may reflect to some extent a lack of faith in public life being free from corruption. (For further details and discussion, see Section [2.6.5](#) and Figures [2.6a](#), [2.6b](#), [2.6c](#) and [2.6d](#))

#### **4. The UK's diminished reputation internationally in relation to corruption.**

There is evidence that the UK's international reputation for being relatively free of corruption is declining, at least in relative terms. The Transparency International 'Corruption Perceptions Index' uses a variety of data sources to rank countries based on how corrupt their public sectors are perceived to be. Their data show a marked decline in the UK's absolute and relative performance since 2008. After a long period of being broadly just outside the top ten of countries worldwide, the UK is now placed twentieth out of 178 countries. The UK's ranking is significantly below that of the average for the Nordic countries, the European consensual democracies and the English-speaking Westminster democracies. (For further details and discussion, see Section [2.6.5](#) and Figure [2.6m](#))

## **Introduction**



## Democratic Audit

For a liberal democracy to function effectively it is essential that those in positions of official authority - as well as others operating in the private sector - are not able to exploit their situation for financial or other gain. As the previous Audit noted (Beetham et al., 2002, p. 170), abuses of public power are especially damaging to a democracy. They corrode the bonds of trust between the people and their elected representatives - a process which can in turn undermine the legitimacy that all democratically elected governments require in order to operate successfully. To prevent such a clearly undesirable scenario from developing, it follows, therefore, that there is a need for all democratic states to enforce practical measures for the separation of personal and business interests from public office, and for steps to be taken to protect office holders and the public from involvement in bribery. It is also likely that rules to prevent elections from becoming subordinated to sectional interests will be required; as will separate measures to keep powerful business interests in check. These are safeguards that, taken together, help to keep corruption to a minimum and thus reassure the public that officials can be trusted to act in the public interest, rather than those of the office holder or any other private grouping.

This chapter considers the extent to which these various objectives are secured, as part of a broad assessment of the integrity of public life in the UK. It considers five key sets of issues, as follows:

- the effectiveness of the rules bearing on the separation of the private interests of public servants from their official duties;
- the effectiveness of provisions for protecting against the involvement of office holders and public officials in bribery;
- how far the system of party finance regulation serves to prevent elections from becoming subordinate to sectional interests;
- the extent to which the power of corporations and business interests over public policy is kept in check;
- the degree to which the public is confident that high levels of integrity are being maintained in public life.

Since the previous Audit, there have been a number of significant improvements on some of these measures. The Parliamentary Standards Act 2009, for example, has established independent machinery for the pay, pensions and expenses of MPs; the House of Lords has been brought under a (different) regime on the conduct of members; the civil service code has been put on a statutory footing; the law on bribery has been clarified by the Bribery Act 2010; and the ministerial code has been published, with an independent adviser established. However, there still remain serious concerns about the separation of public and private interests despite these reforms - particularly in the areas of party political finance, appointments to peerages, 'revolving doors' between Whitehall and the private sector, ministerial advisers and the enforcement of the ministerial code more generally.

These concerns over standards of conduct in public life have not always had the currency that they do at present. Indeed, from the 1940s until the 1970s, a combination of a lack of transparency and high levels of trust had kept public estimations of the standards of conduct in public life fairly high. The perception of UK politics as 'clean' faced its first serious challenge in the 1970s, when it emerged that the architect, John Poulson had won a series of contracts in local government and the nationalised industries through corrupt methods (Doig, 1984). Poulson's associates were eventually revealed to include three MPs, although limited action was taken against only one of them, John Cordle (Baston, 2004). The institutional response to the Poulson affair was focused on local government, notably the (1975) Redcliffe-Maud report reviewing the rules and disclosure for councillors. The parliamentary implications were largely ignored, other than in the establishment of the voluntary (and incomplete) register of members' interests in 1974 and the Select Committee on Members' Interests in 1975.

Public confidence in the integrity of public officials became a salient issue in the mid-1990s, following revelations of 'sleaze' and apparently corrupt behaviour among Conservative MPs during John Major's governments from 1990-97. These scandals shook public trust and provided the impetus for a proliferation of bodies and codes intended to rebuild and fortify standards of conduct in public life. The most prominent institution to appear in this field was the Committee on Standards in Public Life, which since 1995 has played a lead role in monitoring issues concerned with integrity in government and politics, based on its 'seven principles of public life' (for details of which, see Case Study 2.6a).

### Case Study 2.6a: Text of The Seven Principles of Public Life

#### THE SEVEN PRINCIPLES OF PUBLIC LIFE

##### SELFLESSNESS

Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

##### INTEGRITY



Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

#### **OBJECTIVITY**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

#### **ACCOUNTABILITY**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

#### **OPENNESS**

Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

#### **HONESTY**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

#### **LEADERSHIP**

Holders of public office should promote and support these principles by leadership and example.

Source: [Committee on Standards in Public Life \(1995\)](#).

Yet, despite the growth of bodies and rules bearing on the conduct of public officials, major political scandals have continued to occur since the 2002 Audit and public confidence has continued to wane. The police investigation associated with the 'cash-for-peerages' allegations in 2006 (see Section [2.6.2](#)) is one such example of apparent corruption, as is the credible evidence of police corruption uncovered during investigations into the 'phone-hacking' affair (see [Home Affairs Select Committee, 2011](#)). The MPs' expenses scandal of 2009 (see Case Study [2.6b](#)) has been quite possibly the biggest of all these scandals - with the damage done to public confidence in political integrity yet to fully repair. In the absence of robust quantitative data on the incidence of corruption, it of course remains difficult to estimate the true extent of corrupt behaviour among public officials in any country. Yet it is clear nevertheless that, in the case of the UK, there remain gaping holes in the patchwork of laws and regulations designed to prevent corruption; and that there is at the very least a very strong *perception* - shared by experts and the general public alike - that standards in public life have declined further in recent years, both in absolute terms and relative to other countries.

### **2.6.1 Separation of public office from personal interests**

How effective is the separation of public office from the personal business and family interests of office holders?

Prior to the 1970s, there was no requirement for the disclosure of private interests in government either at a local, parliamentary or executive level. Indeed, there was hardly any regulation of public office in any recognisable form at all. However, since then the mechanisms for separating public and private interests have become increasingly rule-governed rather than based purely on trust - a gradual change that has occurred partly in response to various political scandals. As noted in the introduction to this section, the mid-1970s witnessed tighter regulation of local government affairs and the first, ineffective steps towards disclosure of interests by MPs, in light of the Poulson affair. In the mid-1990s, meanwhile, the 'cash for questions' scandal and general concerns over 'sleaze' led to the general (or 'Nolan', after Lord Nolan, the first chair of the Committee on Standards in Public Life) principles of public life (for which, see Case Study [2.6a](#)) and tighter regulation of MPs. This was followed soon after by the Blair government's legislation pertaining to political finance (most notably, the Political Parties, Elections and Referendums Act 2000) and the establishment of the Standards Board for England through the Local Government Act 2000, to oversee local government. In the late 2000s, the fallout from the 'expenses scandal' prompted the introduction of a far-reaching and detailed set of regulations for MPs. Rules for ministers have also been published since 1992, ultimately becoming the ministerial code, but remain less independent and transparent than those for other areas of public life. This section examines

the extent to which these rules are, cumulatively, effective at enforcing standards.

### ***The ministerial code***

Propriety regulation for ministers is underpinned by the constitutional doctrine of ministerial responsibility (Marshall, 1989). Under this doctrine, ministers are expected to inform and explain to the house about their actions; apologise for errors; take remedial action where required; and, ultimately, resign if necessary ([Gay and Powell, 2004](#)). During the premiership of John Major (1990-1997), there were nine calls for resignations over financial scandals, five of which were heeded; while under Tony Blair (1997-2007), the respective figures were 21 and four. For issues classified as 'personal error', meanwhile, the figures are (Major) 17 and four; and (Blair) 28 and four ([Dowing and Subrahmanyam, 2007](#)). The clear trend, during this period, was therefore towards more demands for resignations with a lower proportion of them being successful. There are different ways of interpreting this tendency. It could be, for instance, that there was a genuine increase in inappropriate behaviour, accompanied by increased resistance to resignation; or that there was simply more scrutiny of the personal activities of ministers, to which the Blair government - mindful of the experience of Major - was reluctant to yield. A part of the problem here is that, like various other features central to the unwritten UK constitution, the doctrine of ministerial responsibility is not clearly defined and its interpretation in any given circumstance falls to the judgement of the particular minister involved (as well as the prime minister, who can remove ministers from office). If we do not know precisely what the rules are, it is hard to make judgements about their application.

The publication of the ministerial code ([Cabinet Office, 2010b](#)) since the 1990s has offered some public clarification of the appropriate conduct of ministers. This document has its origins in the beginnings of systematized cabinet government, as introduced by David Lloyd George after becoming prime minister during the First World War in 1916. The embryonic code grew in length and complexity over time, often in response to particular problems and scandals, but was not introduced into the public domain (under the name of 'Questions of Procedure for Ministers') until 1992, as part of the open government agenda of the then-prime minister John Major. In 1997, the document was re-issued by Tony Blair under its current title, since which time it has been used increasingly by the media as a means of holding ministers responsible for conduct perceived as inappropriate (for the history of the code see Baker, 2000. For its use by the media, see also [Blick and Hennessy, 2011](#)).

In this way, the code *does* provide opportunities for achieving informal accountability. However, it is lacking as a means of ensuring more formal responsibility, for two reasons. First, in the words of the 2002 Audit, 'the rules governing the conduct of ministers belong in the realm of the Prime Minister,' (Beetham et al., 2002, p. 174). Since 2006, there has been an independent adviser on ministerial interests. However, the adviser can only investigate issues referred to him or her by the prime minister, who draws up the code (assisted by the cabinet secretary/head of the home civil service) and has ultimate responsibility for enforcing it. Second, the system lacks a statutory basis. Given that the civil service code, as discussed below, now has a footing in an act of parliament, the ministerial code is beginning to appear increasingly anomalous in this respect. The code itself is arguably weakened further as a guarantor of standards because of the disparate range of matters with which it deals. As well as integrity issues, other important and divergent subjects are covered such as the approach to cabinet business and the presentation of policy.

The 2010 ministerial code ([Cabinet Office, 2010b, p. 13](#)), states that: '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'. In a subsequent section, which provides detailed guidance on a range of issues associated with how ministers should prevent such conflicts of interest, the document emphasises:

'It is the personal responsibility of each Minister to decide whether and what action is needed to avoid a conflict or the perception of a conflict, taking account of advice received from their Permanent Secretary and the independent adviser on Ministers' interests' ([Cabinet Office, 2010b, p. 14](#)).

One means of assessing the merits of the code as a means of preventing such conflicts of interest is through a consideration of the Fox/Werritty scandal. In autumn 2011, revelations emerged about the role of Adam Werritty, an informal aide to Liam Fox, then secretary of state for defence. Fox was found to have violated the ministerial code (see Case Study 2.6b for details); but the way in which the scandal unfolded illustrated defects in the system of accountability associated with this document. First, not only had Fox felt able to behave in this way, but the activities which gave cause for concern took place over more than a year, despite concerns within the Ministry of Defence. Second, when information first became public suggesting a clear breach of the code, Fox did not feel obliged immediately to resign. Third, the matter was then referred not to the independent investigator, Sir Philip Mawer, but the cabinet secretary, Sir Gus O'Donnell, to report. The cabinet secretary, as a civil servant, has in practice no constitutional status separate from the government of the day and there are clearly problems with the idea that this office-holder should be engaged in an investigation which could be seen as quasi-judicial, 'clearing' or 'condemning' a minister. Fourth, Fox's ultimate resignation pre-empted O'Donnell's report and was prompted by further media revelations about his and Werritty's relationship. This development underlined that compliance with the ministerial code seems to be reliant to an unhealthy extent upon the work of investigative journalists rather than official mechanisms or the self-restraint of ministers.

It is not clear that the code itself will be amended at all to reflect these events; but even this change, if it occurred, would seem to be

insufficient to eliminate the structural problems revealed by the scandal. More broadly, this episode suggested difficulties with the emphasis within UK constitutional doctrines on the resignation of a particular minister as closing off an issue. In the case of Fox, it enabled the government to seek to end scrutiny of matters which were wider in their scope than the personal conduct of a particular secretary of state, taking in matters discussed elsewhere in this section, such as the ability of outside commercial interests and individuals to use their financial resources to influence government (see Sections [2.6.3](#) and [2.6.4](#)).

### Case Study 2.6b: The cabinet secretary investigation into the Liam Fox/Adam Werritty scandal and the ministerial code

Liam Fox MP was secretary of state for defence in the coalition government from May 2010 until his resignation in October 2011. His departure from office followed the uncovering by the Guardian, and subsequently other media outlets, of various details about the role performed by his informal aide, Adam Werritty.

The features of the relationship between Fox and Werritty that engaged the stipulations of the code regarding conflicts of interest, real or perceived, were identified by the official investigation by the cabinet secretary as:

- Werritty's visits to Fox in the Ministry of Defence main building on 22 separate occasions, including a meeting arranged by Werritty with a representative of the Sri Lankan ministry of foreign affairs; and with the ambassador designate to Israel. The cabinet secretary, Sir Gus O'Donnell noted that this latter meeting highlighted the 'blurring of lines between Dr Fox's private and official responsibilities which he has since acknowledged was not appropriate and not acceptable'.
- The 18 overseas visits by Fox on which he met with Werritty. During some of these visits, Werritty was present with Fox at meetings with foreign officials, including two at which, according to O'Donnell 'a member of his [Fox's] private office should have been present because of the likelihood that government business would be discussed'. Werritty was offered a private office presence, but declined it. O'Donnell noted the existence of a 'clear risk that some of Mr Werritty's international contacts may have gained the impression that he was speaking for and/or representing the UK Government'.
- The access that Werritty had to details of Fox's diary, which raised security concerns.
- Funding for Werritty's activities. Werritty was supported by what he described as a 'not for profit' organisation, Pargav. Pargav had various corporate and individual donors, some of whom had previously given funds to Mr. Fox and the Conservative Party. Werritty had his own company, Tohida Ltd., which invoiced Pargav for Werritty's services. Fox arranged a meeting between a donor and Werritty.
- Werritty's use of business cards describing himself as an adviser to Fox.
- O'Donnell concluded that Fox had clearly violated the ministerial code; and that there was a need for clearer guidance around these issues. Both Fox's private office and permanent secretary had previously raised concerns about the role of Werritty, but Fox's response was restricted to instructing Werritty to stop distributing the business cards. The Cabinet Office was unaware of Werritty's role.

Source: [Cabinet Secretary \(2011\)](#)

### ***The civil service***

The UK civil service is unusual internationally in that it has a strong tradition of its staff being appointed by open competition on a basis of merit, often remaining within Whitehall for their entire careers. Officials generally remain in particular posts regardless of changes in the holder of ministerial office, or even the party of government. The spoils system of the US, which sees mass clearouts of officials upon changes of administration; or the cabinet system of France, where ministers determine their own inner teams, have never been introduced to the UK (for a history of the civil service and its values, see Hennessy, 2001). The so-called Northcote-Trevelyan report of 1854 recommended an act of parliament to underpin civil service values, but this idea was not acted upon until 2010, through the [Constitutional Reform and Governance Act 2010](#), which states the general principle that (part 10 [2]): 'a person's selection must be on merit on the basis of fair and open competition'.

The unusual nature of bureaucratic employment in the UK has been criticised as associated with a civil service closed to the outside world,

serving its own interests rather than implementing the policies of the democratically elected government of the day, and lacking in expert knowledge (see also, Section [2.3.2](#)). But its values have served as a barrier to corruption, restricting (but, it should be emphasised, not eliminating) both the development of problematic links between civil servants and outside commercial interests and the extent to which ministers can engage in 'cronyism' (that is, finding employment for personal allies or friends). However, despite the statutory enshrinement of open competition on merit, challenges are posed to the integrity of the civil service by the increased use of special advisers, who are appointed on temporary contracts on the basis of individual ministerial patronage (see Blick, 2004; and Section [2.3.2](#)); and more generally by the 'revolving door' between Whitehall and employment in the private sector (see Section [2.6.4](#)).

The 'core values' of the civil service, as contained in the civil service code ([Cabinet Office, 2010a](#), first issued in 1996) underline how civil servants are expected to ensure that their role as public officials is not compromised by personal business or family interests. One of the four core values, 'integrity', is defined as 'putting the obligations of public service above your own personal interests'. Another is 'honesty', which includes not being 'influenced by improper pressures from others or the prospect of personal gain'. The status of the civil service code was arguably strengthened when, in 2010, the [Constitutional Reform and Governance Act 2010](#) provided it with a statutory basis for the first time. These principles are also reinforced by section four of the civil service management code (CSMC) which deals with matters of 'conduct and discipline'. This document, which also has a statutory basis under the [Constitutional Reform and Governance Act 2010](#), sets out the general principle that:

'civil servants must not misuse their official position or information acquired in the course of their official duties to further their private interests or those of others. Conflicts of interest may arise from financial interests and more broadly from official dealings with, or decisions in respect of, individuals who share a civil servant's private interests (for example freemasonry, membership of societies, clubs and other organisations, and family). Where a conflict of interest arises, civil servants must declare their interest to senior management so that senior management can determine how best to proceed' ([Cabinet Office, 2011, p.19, para 4.1.3c](#)).

### **Parliament**

Following the MPs' expenses scandal (see Case Study 2.6c), the self-regulation system for MPs that has operated since time immemorial was ended, to some extent, by the establishment of the Independent Parliamentary Standards Authority. However, others aspects of regulation continue on a non-statutory basis, conducted by the Commons itself (for issues involving bribery of MPs, see Section [2.6.2](#)).

#### **Case Study 2.6c: The MPs' expenses scandal**

With the provisions of the Freedom of Information Act (for details of which, see Section [2.3.5](#)) due to come into effect on 1 January 2005, there already appeared to be a battle looming over the secrecy surrounding the expense claims of MPs. In October 2004, the speaker of the House of Commons had published some information about MPs' allowances, limited to wide categories and total amounts paid. However, the disclosure failed to satisfy those journalists and members of the public with an interest in the subject; and once the Freedom of Information Act came into force at the turn of the year, hundreds of inquiries for more detailed information soon began to build. Yet despite this, parliament consistently refused to reveal any in-depth information on the expenses claims of MPs - preferring instead to fight through lengthy legal proceedings and appeals to the Information Commissioner's Office and the Information Tribunal. Indeed, during the 2006-07 parliamentary session, there was even a failed attempt to exempt both houses from the Freedom of Information Act through a private member's bill.

Eventually, information pertaining to MPs' expenses was placed into the public domain via a leak to the press in May 2009. This revealed what some had perhaps suspected: namely, that the expenses system was being routinely abused by many MPs seeking to subsidise activities that, by any reasonable standard, were not directly associated with their professional duties. Most of these claims did not technically break the rules. However, some did and there were even a small number of parliamentarians against whom criminal charges were made (at the time of writing, four MPs and two peers have been imprisoned for crimes such as false accounting and fraud, and many more political careers have been ruined). The subsequent review of the additional costs (or 'second homes') allowance by Sir Thomas Legg (see [House of Commons Members Estimates Committee, 2010](#)) identified a number of flaws in the system of expenses that might have accounted for the widespread abuse uncovered, including, in particular, the finding that 'there was no audit of any kind of the individual use by MPs of the ACA or any other Parliamentary Allowance'.

The public furore over MPs' expenses prompted far-reaching and almost immediate changes to the House of Commons' system of self-regulation. The Parliamentary Standards Act 2009 was enacted in July, chiefly to establish an independent body, the Independent Parliamentary Standards Authority (IPSA), to regulate the expenses system; but also to make provision for a separate commissioner for parliamentary investigations to investigate alleged breaches of any new rules introduced. However, the remit of the former was revised, and the latter replaced with a compliance officer within IPSA, following criticisms of the 2009 Act by the [Committee on Standards in Public Life \(2009\)](#) and its subsequent amendment by the Constitutional Reform and Governance Act

2010. Yet the main thrust of the original law remains the same: MPs themselves no longer have any role in determining the details of the expenses scheme. Under the law as it now stands, it is IPSA that has responsibility for drawing up and administering the scheme for MP expenses, as well as for monitoring compliance with the scheme, paying MPs' salaries and pensions, and setting MPs' salary levels.

The parliamentary commissioner for standards oversees the application of the code of conduct and other rules relating to MPs, including registration of their financial interests. The commissioner for standards also investigates complaints about any alleged breaches of these rules by MPs, and reports these findings to the Committee on Standards and Privileges, which determines what action, if any, should be taken as a result. Table 2.6a provides an overview of the cases referred to the parliamentary commissioner for standards from 2002-03 to 2010-11. The figures show a clear increase in the number of complaints made against MPs peaking, unsurprisingly, in 2009-10, the period covered by the MPs' expenses crisis. It is clear from the more detailed figures which are available for the period after 2005-06 that the vast majority of complaints are deemed to require no further action. Among those complaints which are investigated, generally between one-quarter and one-third of the total, a few dozen are typically upheld each year. In both 2009-10 and 2010-11, two cases resulted in court cases - again reflecting the impact of the expenses scandal.

Table 2.6a: Cases referred to the parliamentary commissioner for standards 2003-2010

	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10	2010/11
Complaints	52	96	118	129	176	226	192	317	115
Investigated and resolved	-	-	-	15	74	51	46	51	33
Upheld	-	-	-	0	48	22	33	34	24
Not upheld	-	-	-	15	26	29	16	17	7
Court	-	-	-	0	0	0	0	2	2

Note: pre-2005 figures were compiled on a different basis. 'Court' refers to proceedings suspended or abandoned because of action in the criminal courts.

Source: [Annual reports of the Parliamentary Commissioner for Standards, 2002-03 - 2010-11](#).

In 2000, following recommendations by the Committee on Standards in Public Life, a committee established under the then-leader of the House of Lords, Lord Williams of Mostyn, proposed the introduction of a code of conduct for peers; and a mandatory register of interests. This package was accepted by the Lords - but by only a narrow margin - in 2001. The system is overseen by the House of Lords Committee for Privileges and its relevant sub-committees - in other words, self-regulation. Disciplining peers, who are unsalaried and cannot be stripped of their peerages without an act of parliament - which has not happened since 1919 - is difficult.

In 2008, the Committee for Privileges recommended more detailed guidance on conduct for peers. Early in 2009, a press investigation exposed four peers as offering to secure amendments to legislation in exchange for large sums of money. The police decided not to pursue charges. Alongside the MPs' expenses scandal there were a number of allegations in mid-2009 regarding improper expenses claims by peers. In May 2009 a House of Lords leader's group was convened to consider the code of conduct and related issues. Its recommendations, accepted by the Lords, included the creation of a commissioner for standards, functionally independent but appointed by the house, the remit of whom would include investigating complaints about financial support arrangements along with complaints under the code. The leader's group also proposed that there should be a ban on peers holding 'parliamentary consultancies'; and that the code should be shorter and more general, but accompanied by more detailed guidance. However, the speaker's committee decided that the House of Lords should not be brought within the remit of IPSA (see [Gay, 2010](#)).

The code of conduct for the House of Lords, as it came into force after the 2010 general election, states the general principle of separation between private and public interests in the following terms:

'In the conduct of their parliamentary duties, Members of the House shall base their actions on consideration of the public interest, and shall resolve any conflict between their personal interest and the public interest at once, and in favour of the public interest'

([House of Lords, 2010, p. 3](#)).

## Local government

At local authority level, a variety of measures are currently in place to ensure a separation of public and private interests, although wholesale reform of these provisions has recently been introduced via the Localism Act 2011. There is no code of conduct for local authority employees for the whole of England, although the introduction of such a document, which exists in Wales, has been considered. Propriety is enforced by contracts and in some cases codes issued by individual authorities. However, a model code of conduct (see [The Local Authorities \[Model Code of Conduct\] Order 2007](#)) for local authority members (a consolidation of four different local level codes that was introduced in 2007) currently applies in England. With a basis in statute (provided by the Local Government Act 2000), this code is currently enforced in England by Standards for England (formerly the Standards Board).

Since May 2008, following the [Local Government and Public Involvement in Health Act 2007](#), complaints about possible breaches of the code have been devolved to local authority level standards committees, with Standards for England only intervening in the most serious instances. The text of the model code of conduct states that council members must (paragraph six) 'not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage'. Part two of the code defines 'personal interests' and sets out in detail the requirements for their declaration and whether they require withdrawal from particular proceedings. Part three provides for the registration of interests (for excerpts from the model code of conduct on the handling of personal interests, see Case Study 2.6d).

### Case Study 2.6d: Local authority members' model code of conduct on personal interests

Part two of the model code of conduct ([The Local Authorities \[Model Code of Conduct\] Order 2007](#)) provides a wide and detailed definition of 'a personal interest in any business of your authority' and then requires that (9 [1]):

'Where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent'.

The code then goes on to note that (12 [1]):

Where you have a prejudicial interest in any business of your authority -

(a) you must withdraw from the room or chamber where a meeting considering the business is being held -

[...]

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

Finally it is noted that (13 [1]):

you must, within 28 days of -

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later), register in your authority's register of members' interests (maintained under section 81[1] of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2)...you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.



The coalition has opted to undertake major reform of these provisions. The Localism Act, which received Royal Assent in November 2011, will abolish Standards for England; remove the national code of conduct for councillors; dispense with the requirement for local authorities to have a standards committee; allow councils to choose whether or not they wish to have a local code; and create a criminal offence relating to failure to register or declare interests.

A recent report published by Transparency International UK (TIUK) has raised concerns about these plans for English local government ([Krishnan and Barrington, 2011](#)). The authors take the general view that 'local government was the most tightly regulated area of public life and that standards of ethical conduct in government were very high'. However, the report notes that the proposal to replace a statutory with a voluntary code have attracted criticism, and that the Localism Bill would create 'inconsistencies between England and the rest of the UK and will also lead to increased pressures on local government ombudsmen'. They also concluded that 'the proposed abolition of Standards for England and introduction of a voluntary code of conduct for local government could have serious adverse consequences for ethical standards in English local government' ([Krishnan and Barrington 2011, p. 12](#)). The same authors also raised the issue of the coalition plan, again through the Localism Bill (now Act), to abolish the Audit Commission, which has a role in auditing and investigating corruption and fraud in local government and the National Health Service. The report recommended 'that the proposed abolition of the Audit Commission should be put on hold until there has been proper consultation and a thorough assessment of alternative options for the auditing of local government and the NHS' ([Krishnan and Barrington, 2011, p. 13](#)).

## 2.6.2 Protection of office holders from involvement in bribery

How effective are the arrangements for protecting office holders and the public from involvement in bribery?

While bribery involving office holders and the public is not a day-to-day part of life in the UK in the way it is in some other countries, there are nevertheless some grounds for concern in this area. First of all, the legislative framework for the prevention of bribery has long been inadequate, and has only recently been replaced by a new act of parliament, which has yet to be tested. Second, there are certain parts of the public sector - including prisons and parliament - in which arrangements for the prevention of bribery are inadequate.

### *The legal framework*

Before the passing of the [Bribery Act 2010](#), the legal framework in this area was provided by the common law offences of bribery and attempted bribery; with the main statutes dealing with corruption being the Public Bodies Corrupt Practices Act 1889; the Prevention of Corruption Act 1906; and the Prevention of Corruption Act 1916. The previous full Audit noted both that the law was 'obsolete, ad-hoc and inconsistent' and that official processes that might lead to a new statute had been instigated, but were not proceeding rapidly enough (Beetham et al., 2002, p. 179). In 1998 the Law Commission recommended a new statute; but the Draft Corruption Bill of 2002-03 was rejected by the joint committee charged with scrutinising it. The Law Commission opened a new consultation in 2007 and produced a new draft bill the following year, which eventually became the [Bribery Act 2010](#). The purpose of this act, as stated in the explanatory notes, is: 'to provide for a new consolidated scheme of bribery offences to cover bribery both in the United Kingdom (UK) and abroad.' It creates:

'two general offences. The first covers the offering, promising or giving of an advantage (broadly, offences of bribing another person). The second deals with the requesting, agreeing to receive or accepting of an advantage (broadly, offences of being bribed). The formulation of these two offences abandons the agent/principal relationship on which the current law is based in favour of a model based on an intention to induce improper conduct. The Bill also creates a discrete offence of bribery of a foreign public official and a new offence where a commercial organisation fails to prevent bribery' ([House of Commons, 2010, p. 1](#)).

It is clearly too soon fully to judge the effectiveness of the act, which came into force in July 2011. The potential implications of the act are certainly significant. It has been described by one commentator as being among the strictest legislation relating to bribery internationally with an approach which is 'very broad in scope, capturing both bribery within the private sector and bribes paid to overseas government officials' ([Wilkinson, 2010, p. 1](#)). The same author also notes that the 'jurisdictional reach' of the act is extensive in that it allows 'almost no hiding place for companies which for some misguided reason decide to pay bribes' ([Wilkinson, 2010, p. 1](#)). However, as we discuss in Section [2.6.4](#), there are issues concerned with the implementation of the act, which may restrict its effectiveness in practice.

### *Preventing bribery in parliament*

If MPs are bribed to pursue particular courses of action in the house, a serious attack on democratic principles has taken place. The danger of such malpractice is real and longstanding, as indicated by the attempts to prevent it dating back over the centuries.



## Democratic Audit

The 2002 Audit noted that a problem with the then-existing legal framework for preventing bribery was that 'there is doubt whether MPs accepting bribes can be dealt with under the statutory framework or the common law - which means that MPs can continue to claim the protection of parliamentary privilege, with punishment for parliamentary contempt resting with the House itself' (Beetham et al., 2002, p. 179). Parliamentary privilege is in part derived from the Bill of Rights 1689. Article IX of the Bill of Rights states that: 'freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament'. This article seems to have the effect of shielding MPs from prosecution for taking bribes in return for pursuing certain courses of action in parliament, in addition to the more appropriate democratic purpose of protecting their freedom of speech in the chamber. In 1999, the Joint Committee on Parliamentary Privilege recommended the introduction of legislation to clarify privilege, but this proposal was not acted upon. One of the committee's recommendations thus not introduced was that 'Members of both Houses should be brought within the criminal law of bribery by legislation containing a provision to the effect that evidence relating to an offence committed or alleged to be committed under the relevant sections shall be admissible notwithstanding article 9' ([Joint Committee on Parliamentary Privilege, 1999](#)).

Initially it was intended that the new Bribery Act would address the issue of parliamentary privilege, but ultimately it did not. Consequently, in the area of prevention of bribery, members of parliament are self-regulated. While the Independent Parliamentary Standards Authority (IPSA) was at first charged with overseeing members' financial interests, on the advice of the Committee on Standards in Public Life this role was removed. The parliamentary commissioner for standards and the Committee for Standards and Privileges play the central role in enforcing the code of conduct and various other rules. The Guide to the Rules relating to the conduct of Members ([House of Commons, 2009](#)) explains that 'paid advocacy' - including through speaking, voting, asking questions, tabling motions, introducing bills or moving amendments or encouraging colleagues or ministers to likewise - is prohibited. However, the system does not:

'prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to membership of the House. Nor does it prevent a Member from being sponsored by a trade union or any other organisation, or holding any other registrable interest, or from receiving hospitality in the course of his or her parliamentary duties whether in the United Kingdom or abroad' ([House of Commons, 2009, p. 34](#)).

The rules on disclosure were tightened with effect from 1 July 2009, requiring all MPs to register, for the first time, matters such as the precise amount of each individual payment received (rather than the band of earnings into which the payment fell) and the number of hours worked with respect to the payment.

The development of the code of conduct for the House of Lords and the establishment of a commissioner for standards are discussed above. The code clarifies that peers are forbidden from accepting 'any financial inducement as an incentive or reward for exercising parliamentary influence' or from seeking to profit from their membership of the house 'by accepting or agreeing to accept payment or other incentive or reward in return for providing parliamentary advice or services' ([House of Lords, 2010, p. 4](#)). The code of conduct also sets out that peers must:

'register in the Register of Lords' Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions [...] declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion' ([House of Lords, 2010, p. 4](#)).

Bribery is clearly a potential problem in the House of Lords as well as the Commons. As noted above, in mid-2009 allegations were made about four peers offering to secure amendments to legislation in exchange for payment. While the police decided not to pursue the case, the Committee for Privileges investigation found that a number of violations of the code of conduct, proposed or actual, had taken place. In theory, parliament has the power to fine and imprison members. But in practice the punishments the House of Lords chose to use were only suspensions for the duration of the parliament (which some, including the then attorney general, argued it did not have the power to do) or inviting or requiring peers to apologise to the house ([House of Lords Committee for Privileges, 2009](#)).

### ***The purchase of honours?***

There have long been suspicions that wealthy individuals have been able to indirectly purchase honours (including peerages, which may be seen as an honour but entail membership of the legislature) through donations to political parties. While such a practice could be regarded as a form of bribery, proving direct connections and securing prosecutions is exceptionally difficult.

The legal framework prohibiting the sale of honours and peerages is provided by the Honours (Prevention of Abuses) Act 1925. Though this law is more than eighty years old it has only once successfully been used to prosecute someone, as long ago as 1933 ([Public Administration Select Committee, 2006](#)). The so-called 'cash for honours' scandal of 2006-07 highlighted the complexities of investigating suspected corruption in this field. Late in 2005, reports began to emerge that certain nominees to the House of Lords had been blocked by the House of Lords Appointments Commission. In March 2006, the names of these nominees came into the public domain. All four had

made undeclared loans to the Labour Party in 2005. A police investigation commenced, taking in the activities of other parties as well. Over 16 months there were 90 interviews with representatives of Labour (35), the Conservatives (29) and the Liberal Democrats (four). Amongst those questioned were the then-prime minister, Tony Blair, the former leader of the opposition, Michael Howard, and various prime-ministerial aides (some of whom were placed under caution by the police). The investigation cost around £1 million. A file was handed over to the Crown Prosecution Service on 2 July 2007; but no one was charged ([Public Administration Select Committee, 2007b](#)).

On 23 March 2006, Tony Blair announced that he would no longer make any changes to future honours lists; and this withdrawal seems to have become a convention accepted by subsequent prime ministers. However, it remains possible for parties to make appointments to the House of Lords, meaning that suspicions about the purchase of peerages will remain hard to dispel (see [Public Administration Select Committee, 2007b](#)).

### ***Corruption in prisons***

Transparency International UK has described an apparent lack of concern within the prison service, the Ministry of Justice and parliament towards corruption in prisons ([Krishnan and Barrington, 2011](#)). Problems include involvement in organised crime and intimidation and threats from unsatisfactorily trained staff. A leaked police report in 2006 suggested there were about 1,000 corrupt prison officers and a further 600 who had inappropriate involvement with a prisoner ([Krishnan and Barrington, 2011](#)). Transparency International UK identifies two key issues. First, there is a problem with prisoners - assisted by staff - being given access to communications technology in order to continue organised criminal activities from inside prison. Second, there is also an issue of contraband being brought into prisons, often seemingly with the help of staff. A systemic problem exists because, in return for obtaining cooperation from prison officers and other personnel, organised criminals agree to 'behave themselves' and help the institutions achieve their targets. Yet in the midst of these problems, resources dedicated to preventing corruption have over time been reduced ([Krishnan and Barrington, 2011](#)).

## 2.6.3 Regulation of election finance

How far do the rules and procedures for financing elections, candidates and elected representatives prevent their subordination to sectional interests?

There is widespread agreement that democracy requires some form of control over the amount of money parties and candidates can spend, as well as what they can spend that money on, in attempting to win votes. Admittedly, there is no consensus about whether higher levels of spending *per se* provide political parties with any clear electoral advantage. Yet, there is general recognition that some degree of regulation of election expenditure is essential if elections are to be 'free and fair'. As Birch (2005, pp. 6-7) argues, 'if there is one way in which modern democratic politics can be said to be manifestly unfair, it is in the financial requirements of standing for office in many countries and the advantages afforded candidates and parties by campaign spending'. To this we should also add that unregulated election spending carries the risk of corrupt electoral practices, including the bank-rolling of campaigns by special interests, or attempts to bribe or reward voters in return for their support.

Since the role of money impinges on various aspects of democratic elections, some of these issues concerning party and election finance are dealt with in other sections of this Audit. For instance, the extent to which candidate and party spending rules provide for a relatively level-playing field in communications with voters is considered in the chapter on elections (see Section [2.1.3](#)). Likewise, the chapter on political parties considers the extent to which the general system of party funding - and, in particular, the regulation of donations - prevents the subordination of parties to special interests (see Section [2.2.4](#)). In order to complement the analysis offered in these other sections, the focus here is on two specific issues. First, we examine the operation of the rules and procedures governing the financing of election campaigns both locally (by candidates) and nationally (by parties). Second, we summarise the current arrangements for the payment of MPs and consider whether any particular issues are raised by evidence of MPs receiving financial remuneration from outside interests.

### ***Financing elections and candidates***

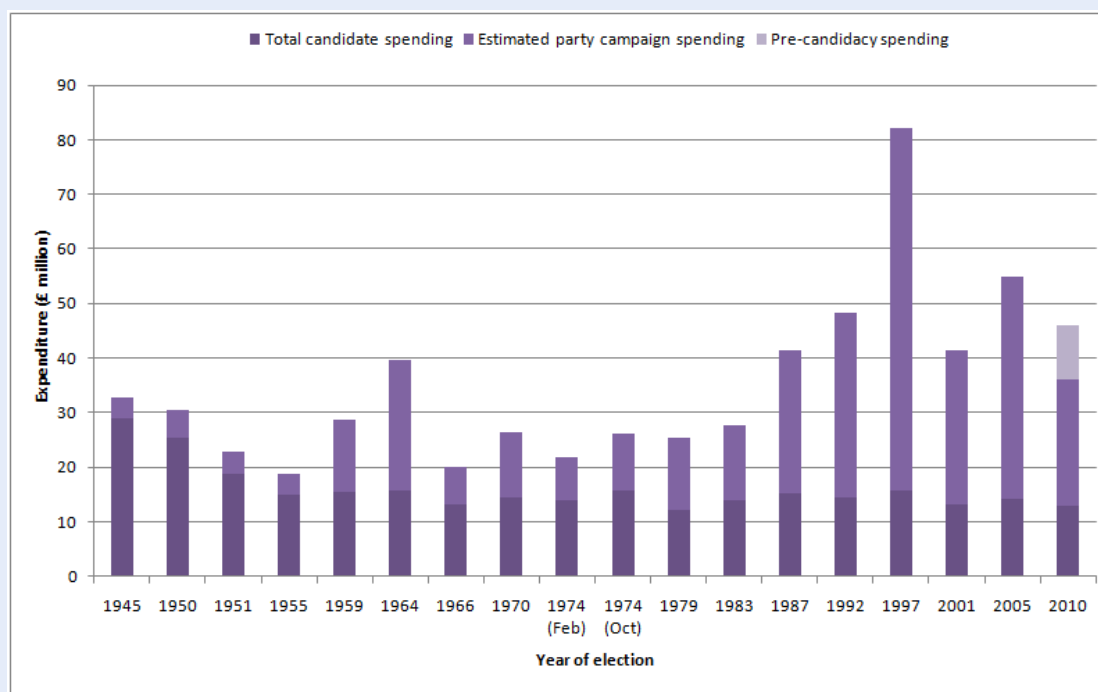
Much election finance legislation internationally takes its original inspiration from the UK, where reforms were introduced in the nineteenth century to counter the widespread use by candidates of methods intended to 'buy' votes, either directly or indirectly. The Corrupt Practices Act 1854 outlawed bribery, treating and intimidation at elections, and its consolidation by the Corrupt and Illegal Practices Act 1883 saw the introduction of limits on individual candidate expenditure. These limits on what candidates could spend on an election campaign not only helped tackle malpractice, but also served to create a relatively level playing-field for electoral competition. The focus here is on the latter of these concerns, since it is this which dominates contemporary debates about the rules surrounding election spending, rather than issues associated with the possible subordination of election candidates to improper interests. It should, of course, be noted that there are significant questions concerning the influence of outside interests which fund parties and candidates, and these are dealt with in our discussion of the 'big donor culture' (see Section [2.2.4](#)).

As with many other aspects of UK electoral law, the Victorian provisions for regulating candidate spending have been left largely untouched, and remain in place today with the spending limit up-rated to take account of inflation at each election. Currently, candidates are typically limited to an expenditure of £10-12,000 during the campaign period (the precise amount depending on the number of electors in a constituency and whether it is predominately rural or urban in character). However, the 1883 legislation has also been supplemented in two significant ways over the last decade. First, the Political Parties, Elections and Referendums Act (PPERA) 2000 introduced limits on national expenditure by political parties during election campaigns. Second, the Political Parties and Elections Act 2009 made provisions for supplementary limits on what candidates could spend prior to the start of the official campaign.

The introduction of limits on national party spending in 2000 was a belated recognition of the growth of unregulated election spending during the second part of the twentieth century. Following the clarification in the case of *Rex v Tronoh Mines* (1952) that candidate spending limits applied only to expenditure supporting a named candidate, the doors were opened for political parties and, indeed, 'third parties' to spend unlimited amounts provided that it related to the national campaign.

The impact of the *Rex v Tronoh Mines* judgement is shown in Figure 2.6a, which presents the broad trends in party and candidate spending at general elections since 1945, measured in 2005 prices. While the data on which this figure is based are subject to a number of caveats, some very clear trends can be identified. First, combined expenditure by election candidates, when measured in real terms, fell sharply between 1945 and 1955 but thereafter stabilised, with only very minor fluctuations between £14 million and £15 million (measured in 2005 prices). Second, the balance of election spending has shifted from expenditure incurred by candidates *locally* to expenditure incurred by parties *nationally*. In 1945, individual candidates accounted for around 90 per cent of total election spending, but by 1997, the candidate share of election spending had fallen to approximately 20 per cent. Third, central spending by political parties on election campaigns began to grow from the 1950s onwards, although it was from the late 1980s that this form of expenditure began to rise rapidly, peaking in 1997, when the three main parties spent a combined total of almost £70 million in 2005 prices.

Figure 2.6a: Estimated spending at UK general elections, 1945-2010 (measured in 2005 prices)



This figure is presented primarily to illustrate broad trends, particularly in relation to party spending. Political parties were not required to report on their levels of election spending prior to 2001. Data on party spending for the period 1945-1987 are derived from a common methodology (Pinto-Duschinsky 1981, 1985, 1989), although the author of these works notes particular difficulties estimating Conservative spending in 1945, 1950 and 1966. Since 2001, figures for party spending have been compiled by the Electoral Commission; changes in regulations since 2001 render strict comparison between 2001 and 2005 problematic. All spending has been converted to 2005 prices using the Retail Price Index.

Sources: Ewing (2007); Pinto-Duschinsky (1981, 1985, 1989); Linton (1993); Committee for Standards in Public Life (1998); Electoral Commission (2005); [Electoral Commission \(2011\)](#).

Election spending by political parties dropped sharply in 2001. In part, this fall in spending was due to the introduction of caps on national party spending in 2000, with no party able to spend more than £20m during the regulated period (which, for general elections, is the 365 day period that ends with the date of the poll). However, since all three main parties spent well within the imposed limits in 2001, it is highly likely that the sharp drop in spending reflected mostly on the perilous financial state of the parties. Spending rose again in 2005 and, as Figure 2.6a shows, recent UK general elections have remained expensive by historical standards. Indeed, Figure 2.6a suggests that the six most expensive post-war elections have all been fought since 1987; although the 2010 general election only falls into this category by virtue of the inclusion of 'pre-candidacy spending' limits (see below for further details).

Some have portrayed the patterns of election spending outlined above as the culmination of a 'spending arms race' between Labour and the Conservatives (c.f. Ewing, 2007), although the accuracy of this description has been disputed by others (most notably, [Pinto-Duschinsky, 2008](#)). What is beyond dispute, however, is that overall election spending rose from 1987 onwards because of Labour's attempts to match Conservative spending levels, particularly with regard to advertising (see Section 2.1.3). Concerns that escalating election spending was working against the principles of a level-playing field were a significant motivation for the introduction of expenditure limits under the PPERA 2000. However, it remains questionable whether the regulations have been effective in this regard. Spending by the two main parties continues to dwarf that committed by the Liberal Democrats or the smaller parties and the 2010 general election saw the Conservatives out-spend Labour by a ratio of 2:1.

A further concern about the effectiveness of the regulations arose from Michael Ashcroft's strategy at the 2005 and 2010 general elections of channelling financial support to prospective Conservative candidates contesting marginal seats. Ashcroft, who was the party's treasurer from 1998-2001 and deputy chairman from 2005-10, worked in concert with other donors to fund 'long campaigns' by candidates in the period before the official campaign began. The strategy was based on extensive evidence that local campaigning by candidates is highly effective in securing votes and underpinned by opinion polls commissioned by Ashcroft himself. Moreover, under the definitions specified in PPERA 2000, spending undertaken by adopted candidates prior to the dissolution of parliament was not subject to any cap. Labour and Liberal Democrat candidates contesting marginals where this 'Ashcroft money' had been invested were generally unable to match the levels spent by their Conservative opponents over the long campaign. Despite the Conservatives making very little headway at the 2005 general election, the success of Ashcroft's strategy appeared to be evidenced by the impressive swings from Labour to the Conservatives in a number of key marginals, as well as in the successful defence of a number of Tory-held marginals from Liberal Democrat challengers ([Wilks-Heeg, 2008](#)).

This channelling of resources to marginal seats not only raised concerns that Conservative candidates were gaining an unfair advantage through the exploitation of loopholes in the legislation, but also that individual candidates were being supported via specific wealthy individuals and business interests. From July 2004 to June 2005, a combined total of £3.3 million was donated to local Conservative parties - double the sum given to all Constituency Labour Parties and four times the amount received in donations by the Liberal Democrats' sub-national parties ([Wilks-Heeg, 2008](#)). Of the £3.3 million given to Conservative Associations in the year prior to the 2005 general election, £1.3 million (39 per cent) originated from three donors. Bearwood Corporate Services, owned and controlled by Ashcroft, distributed a total of £806,200 between 73 local parties; the Midlands Industrial Council donated a sum of £376,040 to 76 local parties; and a further 5 local parties shared £95,907 between them, courtesy of Lord Leonard Steinberg ([Wilks-Heeg, 2008](#)).

The role of both the Midlands Industrial Council (MIC) and Bearwood Corporate Services (BCS) in providing financial support to individual candidates became the subject of particular controversy. With regard to MIC, questions were raised about both the sources of its funds and the purpose of the financial support which it provided to a company called Constituency Campaigning Services (CCS), from which local Conservative parties in marginal seats purchased services such as leaflet distribution and telephone canvassing. Although the MIC revealed the names of 22 of its members in October 2006, its status as an unincorporated association effectively meant that 'no-one knows who is giving the money to MIC or how much they are giving, unless the Council itself agrees voluntarily to be transparent' ([Ewing, 2008](#)). The issue with MIC's funding of CCS concerned a quite separate issue of whether the MIC was, in effect, subsidising the company's activities so that its services could be purchased by local parties for below-commercial rates (thereby enabling additional campaign services to be bought without exceeding the expenditure limit). However, following an investigation by the Electoral Commission, it was concluded that there had been no breach of electoral law.

The Electoral Commission also undertook a lengthy investigation of Bearwood Corporate Services (BCS), following complaints that it was not a permissible donor. The Commission found no evidence that the law had been breached, noting that, as a company registered in the UK, BCS was a fully permissible donor. However, the Commission also highlighted its own limited powers of investigation, as well as its lack of any power to compel Conservative Party staff and officials to attend interviews, despite several requests for them to do so. In addition, the Commission's case summary noted that, while there is no requirement in law that the funds a company donates to a political party must be generated from its own trading, the source of the money donated by BCS appeared to originate from overseas:

'BCS' accounts indicate that the funds used for BCS' donations were not generated wholly from BCS' own trading activities. Funds

passed on three occasions to BCS by way of share purchases. On two occasions, funds passed from a Belizean based company, Stargate Holdings Limited (Stargate), to a UK based company known as Astraporta UK (AUK). Funds then passed through share purchase from Astraporta UK to Bearwood Holdings Limited, another UK based company. The final step was for the funds to be passed through share purchase from Bearwood Holdings Limited (BHL) to BCS. There was subsequently a third purchase of shares in BCS - this time directly by Stargate. Stargate is registered in Belize and the Commission was unable to obtain any meaningful information about the sources of its funding' ([Electoral Commission, 2010b, p. 4](#)).

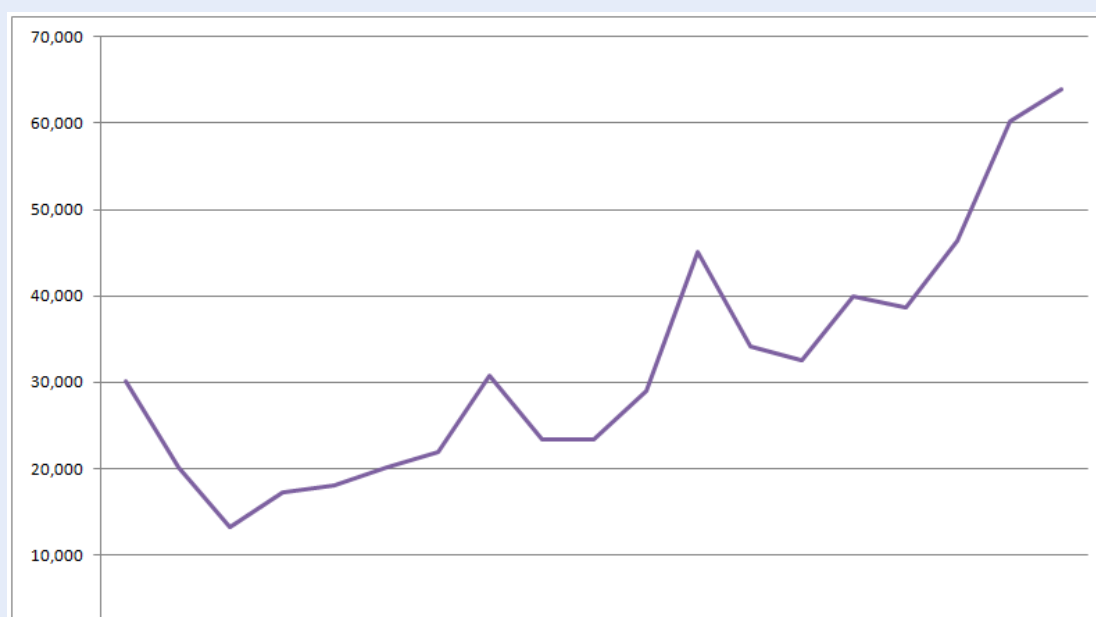
In view of these, and other, developments, it can legitimately be argued that the PPERA 2000 'is riddled with loopholes, which undermine its underlying purposes' ([Ewing, 2008](#)). Attempts have been made in recent years to tackle some of these shortcomings. The Political Parties and Elections Act 2009 introduced pre-candidacy limits on spending which are applied on a 'sliding-scale' providing parliament is not dissolved before 56 months. Under the scenario of parliament running for a full five-year term, this means that a candidate would be allowed to spend a maximum of around £30,000 in the period before the official campaign. These rules were first applied at the 2010 general election and revealed that just under one quarter of all election spending was committed by candidates in advance of the official campaign (see Figure 2.6a). In addition, the Political Parties, Elections and Referendums (Civil Sanctions) Order, passed by parliament in December 2010, provides the Electoral Commission with additional powers to investigate and to enforce compliance. However, it remains to be seen how successful these measures will prove to be without progress in introducing wider reforms to party political finance.

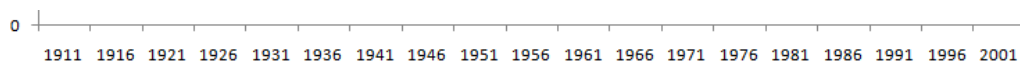
### **Financing elected representatives**

There is a long tradition of elected representatives in the UK drawing income from activities 'external' to their work in parliament or, in the case of Labour until 1995, from trade union sponsorship. In part, this tradition reflects the belated acceptance of a need to pay MPs a full salary. While proposals to pay MPs date back to 1780, parliament voted against introducing payments on at least six occasions in the nineteenth century ([House of Commons Information Office, 2009](#)). Indeed, MPs did not receive any payment for their role as parliamentarians until allowances of £400 per annum were introduced by David Lloyd George in 1911. As Doig (1984, p. 201) notes, this provision was advocated by Lloyd George not as remuneration or a salary but as 'a means of opening the door to those who could offer great and honourable public service but had not the means to do so'.

While allowances paid to MPs did gradually become defined as a salary, their value was only raised sporadically over the next 50 years, causing their real financial worth to decline. Only in 1946, when pay was raised from £600 to £1,000, was the real value of these payments restored to their 1911 level. Thereafter, as Figure 2.6b shows, MPs' salaries fell again in real terms during the 1950s. By the 1960s, it was clear that some MPs were suffering genuine financial hardship. Yet, the view that MPs should not expect their income to come solely from a parliamentary salary persisted. In 1961, Harold Macmillan was to dismiss complaints about poor pay and facilities by suggesting 'an MP was free to conduct his personal affairs himself, subject to the accepted rules and conventions' (Doig, 1984, p. 201). Such a state of affairs was, moreover, seen to be of benefit to parliament itself. According to Whig conceptions of representation, which remained dominant for most of the twentieth century, 'MPs' professional and business interests gave them experience of the wider world, which could then be better represented at Westminster' ([Allen, 2011, p. 215](#)).

Figure 2.6b: MPs' salaries, 1911-2001, measured in 2009 prices





Source: Compiled from [House of Commons Information Office \(2009, p. 12\)](#) and converted to 2009 prices, based on the Retail Price Index, using <http://www.measuringworth.com/>.

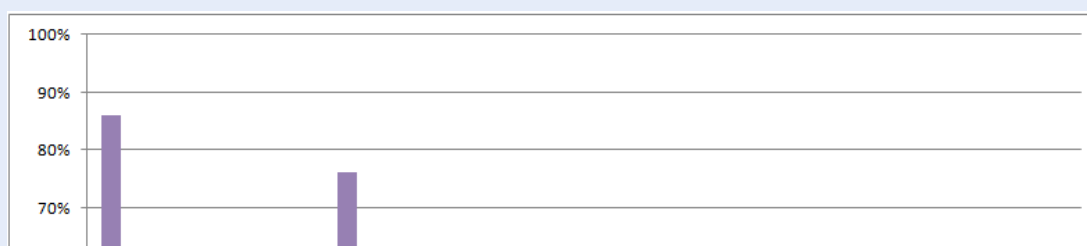
In recognition of the failure of MPs' pay to keep pace even with the level at which allowances had been introduced in 1911, the recommendations of the independent Lawrence Inquiry for an increase from £1,750 to £3,250 were accepted by government and passed by parliament in 1964 (Doig, 1984; [House of Commons Information Office, 2009](#)). However, the Lawrence Inquiry also reiterated the long-standing view that parliament benefitted from the fact that many MPs earned income from other sources and that the increase in pay was primarily to ensure that members without access to such income could continue to serve in the role. Thereafter, the issue of how to determine MPs' pay remained a controversial issue. The real value of MPs' salaries began to fall again from the mid-1960s and while recommendations for MPs' pay were to be made by the independent Top Salaries Review Body (TSRB) from 1971 onwards, its recommendations for significant increases in pay were generally rejected by government. A similar pattern arose with the TSRB's successor, the Review Body on Senior Salaries (RSSS) from 1993 onwards, although agreement was eventually reached in 1996 to set MPs' pay in relation to senior civil service pay bands ([House of Commons Information Office, 2009](#)). The result, as Figure 2.6b shows, has been a sustained increase in the real value of MPs' pay since the mid-1970s, which accelerated sharply from the mid-1990s.

It is important to note that the period since the mid-1970s has also witnessed significant changes in attitudes towards MPs earning income from outside employment or interests, and in the nature - and volume - of work undertaken by MPs. As noted in the introduction to this section, a register of members' interests was first established in 1974, in response to the revelations associated with the Poulson affair (Doig, 1984). Over the same period, the workload of the typical MP grew substantially, notably as a result of the growing importance of select committees, established in 1979, as well as the continued growth in the volume of casework brought to them by constituents.

While the new register of members' interests required only that the sources of outside income were declared, and not the amounts earned, it was immediately apparent that MPs had substantial outside interests. The 1976 register revealed that 29 per cent of MPs held company directorships and 21 per cent were employed in another capacity (Doig, 1984). In a landmark book, Hollingsworth (1991) found that a total of 384 MPs had at least one form of commercial interest, holding 522 directorships and 452 consultancies between them. Yet, even at this point, concern that such connections might impinge on the integrity of MPs was still readily dismissed, reflecting the historical view that it was a 'necessary or even desirable part of institutional duties for MPs to represent business, labour or other interests in Parliament, and [that] it was equally proper for them to have financial links, where appropriate, to such interests' ([Allen, 2011, p. 216](#)). Indeed, it was not until 1994 that this perspective was seriously challenged, as a result of the 'cash for questions' affair, in which Conservative MPs were accused of accepting payments and gifts to table questions in parliament. As Allen ([2011, p. 216](#)) notes, this controversy suggested that 'now, an unknown number of MPs were pursuing financial relationships with various interests simply to advance their own wealth'.

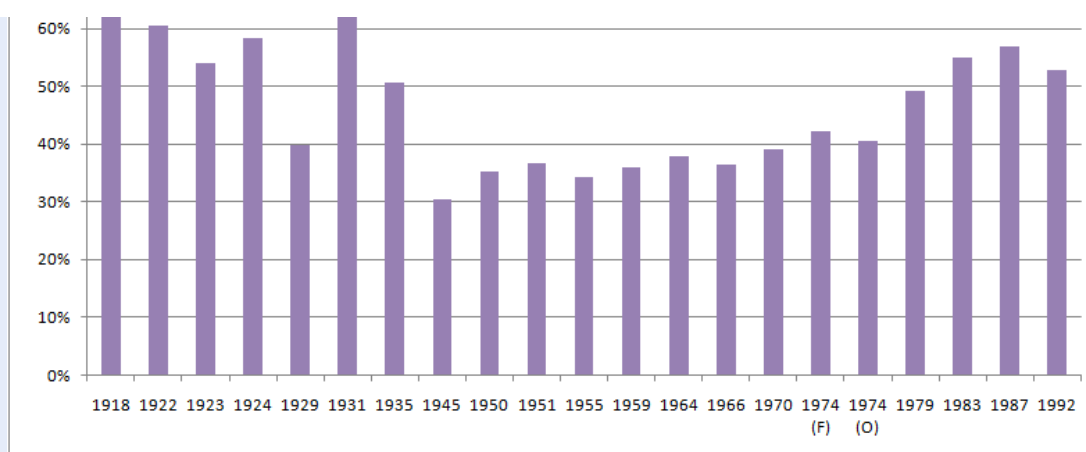
In the wake of the 'cash for questions' affair, the [Committee on Standards in Public Life \(1995, p. 3\)](#) noted that 'It reduces the authority of Parliament if MPs sell their services to firms engaged in lobbying on behalf of clients. This should be banned'. The committee also raised concerns about trade union sponsorship of individual Labour MPs, prompting the Labour Party to consent to ceasing the practice from 1995 onwards (despite, as Figure 2.6c shows, its seemingly growing importance to Labour MPs at that time). However, the committee again reiterated the argument that MPs should not be discouraged from pursuing paid outside interests, suggesting 'The House of Commons would be less effective if all MPs were full-time professional politicians, and MPs should not be prevented from having outside employment' ([Committee on Standards in Public Life, 1995, p. 3](#)). The committee proposed the introduction of a new code of conduct for MPs, as well as a new office of the Parliamentary Commissioner for Standards and the replacement of the Members' Interests Committee with a new Standards and Privileges Committee ([Allen, 2011](#)). The committee also recommended that the register of members' interests should include details of how much income MPs received via their external interests, and that it should be monitored more closely.

Figure 2.6c: Percentage of Labour MPs with trade union sponsorship, 1918-1992





## Democratic Audit



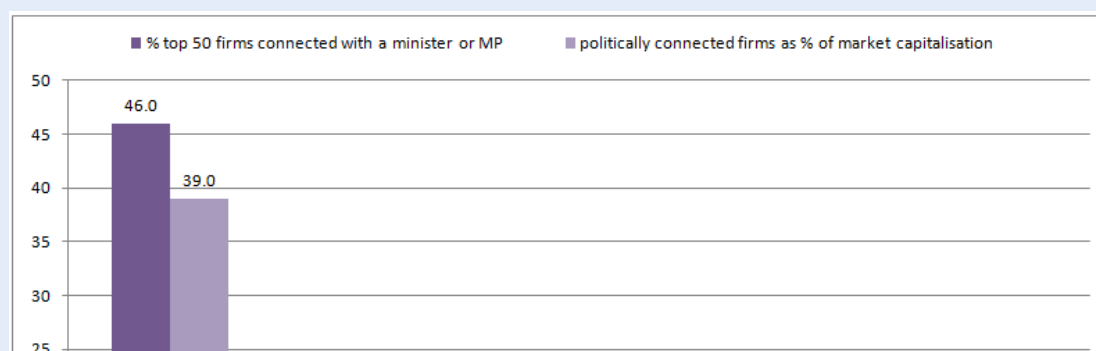
Note: No Labour MPs have been directly sponsored by a trade union since 1997.

Source: Calculated from Butler and Butler (2000, p. 162).

Under the new system, it has remained commonplace for MPs to earn money from other sources, despite the very clear rise in the value of their salaries and the requirements placed upon them to declare outside earnings and interests. It emerged in July 2008 that a confidential report, written by the deputy leader of the Commons, Helen Goodman, had found that second jobs were held by 66 per cent of Conservative MPs, 37 per cent of Liberal Democrats and 19 per cent of Labour MPs ([Independent, 2008](#)). It should be noted that these stark contrasts between the three parties will, in part, reflect the fact that Labour were in government at this time, with more than 100 of their MPs engaged in additional (paid) roles as members of the executive. Nonetheless, the tendency for Conservative MPs to be disproportionately likely to retain paid outside interests is very clear. In their analysis of the register of members' interests at three points in time, [Eggers and Hainmueller \(2009\)](#) found that about half of Conservative MPs in 1975 and 1990 also held company directorships and about half were engaged as consultants. While fewer than 10 per cent of Labour MPs were engaged in such roles, between one-third and one-half were in receipt of trade union sponsorship (see Figure 2.6c for long-run trends in union sponsorship of Labour MPs from 1918-1992). The number of Labour MPs with trade union sponsorship then fell to zero, owing to the practice being discontinued after 1995, while the proportion holding directorships or consultancies remained very low. By contrast, around 30 per cent of Conservative MPs were listed as company directors in 2007, and some 40 per cent were engaged as paid consultants.

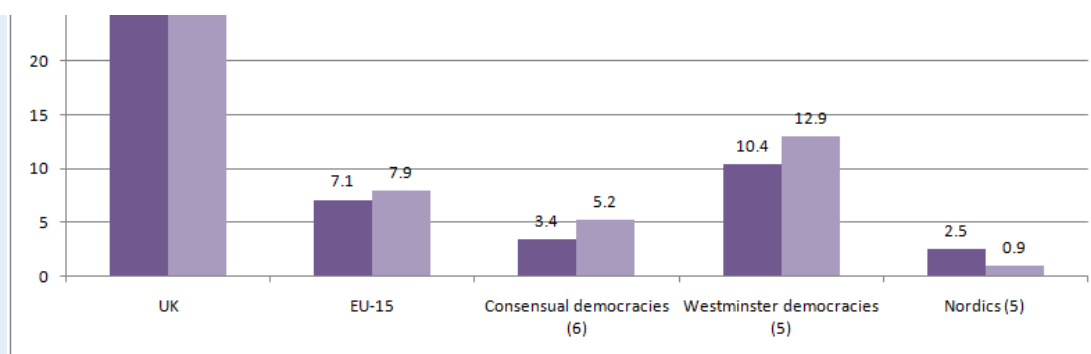
While the number of British MPs currently serving on corporate boards is by no means unusual by historical standards, there are clear grounds to suggest that it is out of line with international practice. In her analysis of connections between parliamentarians and corporations internationally, [Faccio \(2006\)](#) found that 46 per cent of the top 50 publicly traded firms had a British MP as a director or shareholder - the highest for all 47 countries studied (the next highest-ranked OECD country was Italy with 16 per cent). Faccio also found that the aggregate 'corporate value' of firms with such connections to an MP accounted for 39 per cent of total market capitalisation. In this instance, the UK ranked third out of the 47 countries studied, behind Russia (87 per cent) and Thailand (42 per cent), and again significantly ahead of the next ranked OECD nation, Ireland (23 per cent). Figure 2.6d, which is derived from Faccio's data, shows that the UK's corporate-parliamentary connections are of an order which is exceptionally rare among established democracies - running at four times the average for the Westminster democracies, six times the average for Western Europe (EU-15) and over ten times the average for the Nordic countries.

Figure 2.6d: Corporate-parliamentary connections, UK in comparative perspective





## Democratic Audit



Source: Derived from [Faccio \(2006\)](#).

A House of Commons resolution dating from 1695 defines offers of money or other benefits to persuade an MP to promote an issue in parliament as 'a high crime and misdemeanour' (Barnett, 2004, p. 475). Despite this principle being reiterated on numerous occasions since then, the patterns of financial interest highlighted above have given rise to consistent concerns about possible conflicts of interest associated with the actions of individual MPs (Doig, 1984; Hollingsworth, 1991; Rowbottom, 2010). In his analysis of the 169 reports published by the Standards and Privileges Committee from 1995-2010, [Allen \(2011\)](#) concludes that there were 23 serious cases of MPs failing to register an interest, 10 serious cases of MPs failing to declare a relevant interest and five serious cases of MPs engaging in paid advocacy.

Inevitably, there is also a steady stream of accusations made in the media which never reach the stage of being formally investigated by parliament. For instance, the Bureau of Investigative Journalism ([2011a](#), [2011b](#)) has highlighted a number of specific instances where MPs appeared to be 'vulnerable to accusations of conflicts of interest' despite abiding by parliamentary rules. Arising from its analysis of both the register of members' interests and the nature of contributions to parliamentary proceedings made by individual MPs, the [Bureau of Investigative Journalism \(2011b\)](#) published details of twelve MPs who it suggested had 'been found to have taken part in committees, contributed to debates or asked question in parliament that are closely related to their personal financial interests'. Given the sheer number of business and professional interests which British MPs maintain, it can be expected that such claims will continue to be heard on a regular basis.

### 2.6.4 Business influence on public policy

How far is the influence of powerful corporations and business interests over public policy kept in check, and how free are they from involvement in corruption, including overseas?

It has long been recognised that powerful corporations and business interests limit the practical reach of democratic decision-making (Lindblom, 1977). Yet, in more recent decades, there has been growing concern expressed about the potential threat to democracy arising from growing corporate power (Beetham, 2005, [2011](#)). Clearly, where corporate interests are engaged in corrupt behaviour they represent a challenge to the rule of law. Yet, most modes of business influence over political decision-making in the UK are entirely legal, generally regarded as legitimate, and often directly encouraged by elected politicians. But, as these forms of corporate power grow, they begin to undermine the two core democratic principles of popular control and political equality (Beetham, 2005).

Inevitably, the extent of corporate influence, and the extent to which it undermines democracy, is difficult to measure, not least because it involves, in part, activities that are covert and forms of power which are indirect and systemic. However, a recent and dramatic illustration of far-reaching corporate influence, including likely corruption, was provided by the phone hacking scandal (also discussed in Sections [2.5.2](#) and [3.1](#)). Given the wider evidence of how corporate power operates (which is discussed in the remainder of this section) it seems reasonable to assume that the News International scandal was not an entirely isolated case, and that it is probably indicative of broader - if often concealed - democratic problems.

The phone-hacking scandal, which finally broke in mid-2011 following years of allegations, provided ample evidence that employees of News International - and other media groups - had habitually used illegal and unethical methods to obtain stories; and of corrupt relations between the media and the police, going to the highest level within both groups (for the policing dimensions see [Home Affairs Select Committee, 2011](#)). Furthermore, there were grounds for concluding that News International had for some time used its powerful position within the media and its ability to cause problems for governments, parties and individual politicians in order to influence official decision-making. The desire to appease News International seems to have played a part in major strategic policy decisions made by successive UK governments. To pick one important example, the Eurosceptic orientation of the media group encouraged hesitancy on the part of New

Labour about the possibility of joining the European single currency. (For evidence of the importance of News International, see Campbell, 2008). While News International publications were open about their position over certain policy issues, the precise manner of the organisation's influence was not made public.

### ***Policy influence***

A recent Democratic Audit study by David Beetham argues that corporate and financial interests have, since the 1980s, inserted themselves increasingly into government and its decision-making processes, over which they now exercise substantial influence ([Beetham, 2011](#)). As well as exercising indirect power on governments, Beetham identifies two broad categories of direct business influence over public policy, as follows:

1. *The buying of influence*: via donations to political parties and the funding of think tanks, through lobbying activities, the provision of corporate hospitality and financial support for individual parliamentarians and parliamentary groups.
2. *The operation of a variety of revolving doors*: through which individuals move, in both directions, between senior positions in government and senior roles in big business, and government-corporate ties are strengthened via membership of regulatory, advisory and partnership bodies.

The scope for corporate interests to buy political influence through donations to political parties and the financing of election campaigns is highlighted in detail elsewhere in the Audit (see Sections [2.2.4](#) and [2.6.3](#)). However, it is vital to underline that influence can also be bought through others means, such as the funding of think tanks and lobbying organisations. Financing think tanks, for instance, offers a potential means of influencing the policy agenda via organisations which purport to be impartial and non-partisan, but tend, in reality, to have clear ideological leanings and close links with a particular political party. Donating money to a think tank can also provide a means of bypassing the legal regulations placed on direct financial contributions to political parties, particularly those relating to disclosure, thus preserving the anonymity of the donor.

Lobbying organisations, meanwhile, have become increasingly professionalised and sophisticated, offering not only access to decision-makers, but also design and implementation of public relations strategies aimed to secure particular policy outcomes. As a consequence, lobbying has become an increasingly costly activity, further advantaging well-resourced business interests over other groups (for further detail on attempts to regulate lobbying, see Section [2.3.3](#)). The imbalance of access to ministers enjoyed by different types of organised interests was made clear by data analysis published by the Guardian in October 2011 on meetings between coalition ministers and individuals and groups outside government ([Guardian, 2011](#)). These data showed that that between May 2010 and March 2011 there had been 1,537 meetings between ministers and representatives of corporate interests; 1,409 with trade groups, think-tanks and other interest groups; 833 with charities; and 130 with trades unions. These data do not include 'private' meetings, which it can be assumed showed at least as great a bias.

In its more narrow sense, the 'revolving door' is understood as the interchange of personnel, as salaried employees or consultants, between public and private sectors. The 'revolving out' of government ministers and senior civil servants to the private sector is perhaps the one area of government-corporate linkage for which there is sufficient evidence available to assess its scale and significance. The nature of this evidence, which exists largely because of the regulations governing such movements of personnel, in particular the Business Appointment Rules, is considered in more detail below. However, it is also important to note two further means through which corporate influence can be directed as a result of the interchange between governmental and business interests. These are, first, through membership of advisory bodies, whereby leading private sector representatives are recruited to official taskforces and committees. Illustrating the kind of tilt towards particular interests that can take place, [Beetham \(2011, p.17\)](#) has shown that '[a]ll three reviews following the 2007 [financial] crash [...] into UK banking governance, British offshore financial centres and the UK international financial services respectively, were chaired by bankers, the last with membership drawn entirely from the City of London'. Second, business interests frequently form joint partnerships with government. These partnerships may be designed either to obtain private sector access to public sector business; to help obtain access to foreign markets for UK businesses; or to promote UK businesses abroad. Such entities seem to blur the line between public and private sectors, to the advantage of the latter.

### ***The revolving door from government to business***

There are democratic and other grounds (for instance, efficiency) for arguing that there should be an interchange of personnel between government and outside organisations, including in the private sector. However, such practices, which have grown substantially in recent decades, present particular challenges. Transparency International UK has identified five different kinds of conflict of interest that can arise in connection with the 'revolving door' ([David-Barrett, 2011](#)), set out in Case Study 2.6e.

## Case Study 2.6e: The 'revolving door' – five types of conflict of interest

Abuse of office, involving the use of an official position to favour a particular private sector organisation;

Undue influence, whereby an individual uses connections established when they were once in an official position to achieve desired outcomes for their private sector employer;

Profiteering, when an individual uses knowledge acquired when in an official post for personal financial gain;

Switching sides, that is an individual leaving the public sector to take up a private sector role which involves them opposing a government policy they previously represented on a given issue; and

Regulatory capture, where individuals charged with regulating a particular sector tend to be overly sympathetic towards it because they are recruited from it.

Source: [David-Barrett \(2011\)](#).

The civil service management code outlines a set of 'rules on the acceptance of outside appointments by Crown servants', the purpose of which is twofold. First, the rules are intended to prevent suspicions of serving officers being influenced in their advice or decisions because they aim or expect to be employed in future by a specific company or organisation. Second, the rules are intended to prevent the scenario that individual companies could employ former civil servants whose specific knowledge about government policy would provide the new employer with unfair or improper advantages over their competitors ([Cabinet Office, 2011](#)). These rules apply to all senior officials for the first two years after they leave crown employment, although decisions can be overridden by a minister on national interest grounds (see Case Study 2.6f). The application of the rules is overseen by the Advisory Committee on Business Appointments (ACOPA), first set up in 1975 and appointed by the prime minister. ACOPA comprises individuals who are appointed because of their experience of the intersection between Whitehall and the private sector.

With regard to former politicians, meanwhile, a system for monitoring appointments for ex-ministers was set up following a recommendation in the first Committee on Standards in Public Life report in 1995. Consequently, former ministers were also brought within the remit of ACOPA (though, notably, while ex-ministers are covered by the Advisory Committee, it does not extend to cover the taking up of posts by all ex-MPs). The general principles applying to ministers are contained in the Guidelines on the acceptance of appointments for employment outside government by former ministers of the Crown ([Advisory Committee on Business Appointments, undated](#)). These guidelines stipulate the same possible concerns as apply with the appointment of senior civil servants to outside appointments - namely that a serving minister might be influenced by the hope or expectation of future employment and that a firm or organisation may be able to obtain and make improper use of official information by virtue of employing a former minister.

In instances where an appointment may mean that former officials - and in particular, ministers - will be lobbying their previous colleagues, ACOPA can recommend that individuals refrain from lobbying activity for 12 months (a minimum period of two years now applies to ministers). There are some other important distinctions between how the rules and procedures operate with respect to former civil servants and former ministers although, in both cases, the powers of ACOPA are ultimately limited. Senior crown servants are obliged by their contracts of employment to obtain the approval of ACOPA before taking up an outside appointment. Even officials below the highest level must seek permission either from the head of the home civil service/cabinet secretary, or their department. The committee will either accept the request outright; seek to impose conditions or a waiting period; or describe it as completely unsuitable. In practice, officials are not forced to accept the decisions of ACOPA, which they generally follow voluntarily ([David-Barrett, 2011](#)). In addition, while ministers are required by the ministerial code to seek and abide by the advice of ACOPA, the code is non-statutory and the [Advisory Committee \(2009, p. 9\)](#) has noted that it: 'has no remit to police compliance with the ministerial code or the observance of the advice we give to individuals. Nor could we carry out such a function'.

As Figure 2.6e shows, the number of applications handled by ACOPA annually tends to be fairly considerable. Typically somewhere in the range of 400-800 former civil servants will seek permission to take up outside appointments in any given year. Figure 2.6e also reveals that there has been a rise in the proportion of cases in which crown servants have conditions imposed on them by ACOPA. Whereas conditions were imposed with regard to just over 20 per cent of applications in 1998-99, the figure had risen to around 40 per cent of applications by 2008-09. This trend may be indicative of rules being applied more strictly, or of more problematic appointments being taken up, or some combination of the two. In some cases, a waiting period or conditions are imposed that are so stringent as to mean that the individual involved does not take up the post at all - but the data does not record non-take-up, so how often it happens cannot be determined.

Figure 2.6e: Crown servants seeking approval for outside appointments, 1998-99 to 2008-09



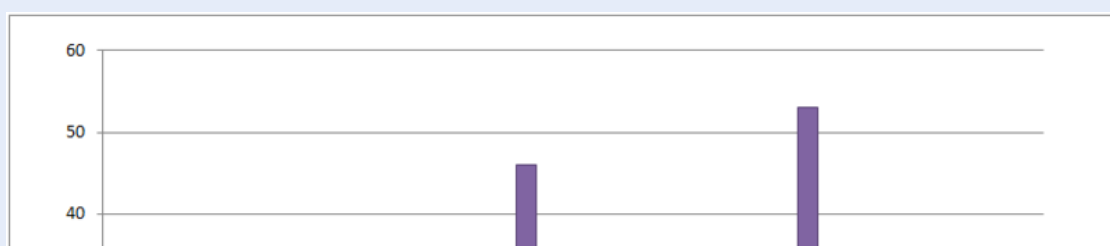
Source: [Reports by Advisory Committee on Business Appointments \(various years\)](#).

The information contained in ACOBA's reports suggests that around one-third of movement out of the civil service is from defence-related work into the defence sector. In 2008-09, of 394 applications for outside employment, 39 were classed as Defence (Civilian); 91 as Defence (HM Forces); and 11 as Defence (Science and Technology Laboratory). Taking this tendency into account, ACOBA has noted particular concerns about suspicion of impropriety in relation to the close relationships between civil servants and defence contractors, where there may be particular expectations 'of post-retirement jobs in an industry where applicants have had close contact with their prospective employers' ([Advisory Committee for Business Appointments, 2004, p.10](#)).

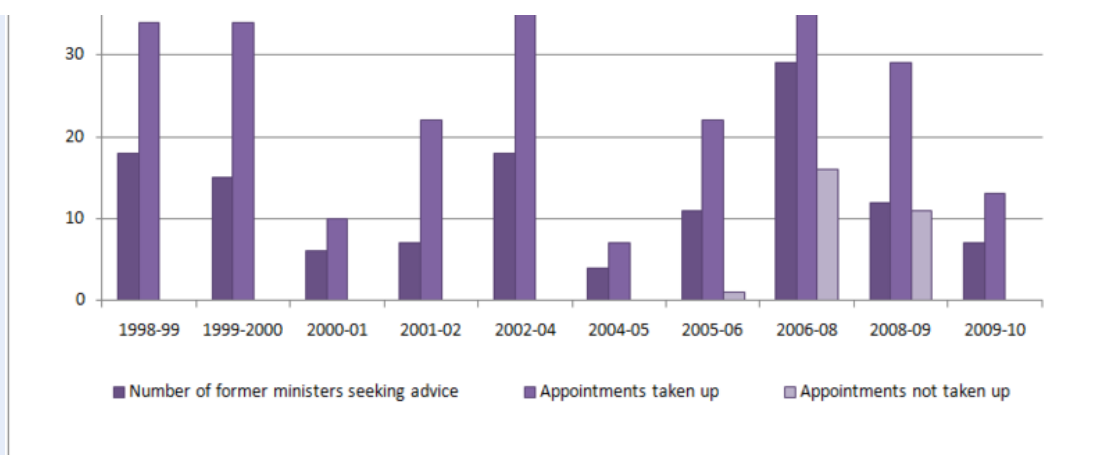
These concerns are not just theoretical. A number of specific cases relating to the defence industry have been the subject of particular controversy. Sir Kevin Tebbit, formerly permanent secretary at the Ministry of Defence, joined the board of armaments manufacturer Finmeccanica. While Tebbit was in his earlier role in 2005, a daughter company of Finmeccanica had been awarded a contract by the ministry. Tebbit also joined the board of Smith Industries a month after it received a ministry contract in May 2006 (although the award was made after Tebbit, who departed in November 2005, left the ministry).

The number of former ministers seeking advice from ACOBA is smaller than that for former civil servants and, owing to the nature of the parliamentary cycle, there is greater annual fluctuation in the volume of applications, as Figure 2.6f shows. Figure 2.6f also points to a tendency for some ministers since 2005-06 not to take up appointments having received advice on them, a development perhaps influenced by the fate of David Blunkett, who was forced to resign from a cabinet position in 2005 because of an earlier failure to seek ABOBA's advice during a period outside of government (see below).

Figure 2.6f: Former ministers seeking advice on appointments from Advisory Committee on Business Appointments, 1998-99 to 2009-10.



## Democratic Audit



Source: [Advisory Committee on Business Appointments \(1999; 2000; 2001; 2002; 2004; 2005; 2006; 2008; 2009; 2010\)](#).

The change of government of May 2010 brought with it a large set of new appointments. In its most recent account of 107 appointments for 52 former ministers since 1 April 2010, ACOBA has noted that seven positions were taken up by six different ex-ministers without first notifying the committee ([Advisory Committee on Business Appointment, 2011](#)). In four of these instances it expressed 'concern' about this failure to notify, although it would have cleared them all, in some cases with conditions. The ex-minister employed in the most different jobs (eight in total) was Lord Davies of Abersoch, formerly minister for trade promotion and investment at the Department for Business, Innovation and Skills, which perhaps suggests that holding a government job with a clear commercial orientation could be of most use to future employment prospects. Certainly, concerns about ex-ministers taking up lucrative roles in industries with which they had developed a close relationship in government have been shown to be more than just theoretical, as two recent cases illustrate:

- From 2003 onwards, the former secretary of state for health, Alan Milburn, took on a number of posts with private health organisations as well as with an equity firm, Bridgepoint Capital, which won a number of contracts with the National Health Service.
- In January 2008, Stephen Ladyman, a former minister of state at the department of transport, was appointed an adviser to ITIS Holdings, a firm which provides travel and transport information. It had held a contract with the government during the time Ladyman was at the department. Ladyman was told by the Advisory Committee on Business Appointments that he could not lobby government for 12 months after leaving office; yet he corresponded with the Highways Agency before this period had lapsed ([David-Barrett, 2011](#)).

In light of cases such as these, a number of significant concerns have been expressed about the operation of the current system and about the role of ACOBA, in particular. First, the work of ACOBA is predicated on the assumption that, in the words of the Civil Service Management Code: 'It is in the public interest' that those with ministerial or public administration experience should be able to 'move into business or other bodies, and that such movement should not be frustrated by unjustified public concern over a particular appointment', while 'there should be no cause for any suspicion of impropriety' ([Cabinet Office, 2011](#)). This wording is replicated in the guidance for ministers. The idea that such interchange is 'in the public interest' is debatable; and it would arguably be better were the rules neutral over this issue and focused purely on ensuring propriety.

Second, given this framing of their task, it could be argued that the requirement for members of ACOBA to have direct experience of the interface between government and business should be regarded as a cause for concern. It is equally possible, however, that the membership of ACOBA represents 'a worst of both worlds' scenario. In its report, *Lobbying: Access and Influence in Whitehall*, the [Public Administration Select Committee \(2008\)](#) noted that all of ACOBA's members had been in place for a period of 5-10 years and that collectively they could boast only limited recent experience in government or business between them. The report went on to describe the operation of the committee in words which appear to portray it as little more than an extension of an 'Old Boy's' network:

'They are unpaid, and no doubt as a result, are drawn exclusively from the great and the good. It is noticeable, though by no means their fault, that they are all white, male and of a certain age. They meet extremely rarely. Their decisions are generally agreed by correspondence' ([Public Administration Select Committee, 2008, p. 68](#)).

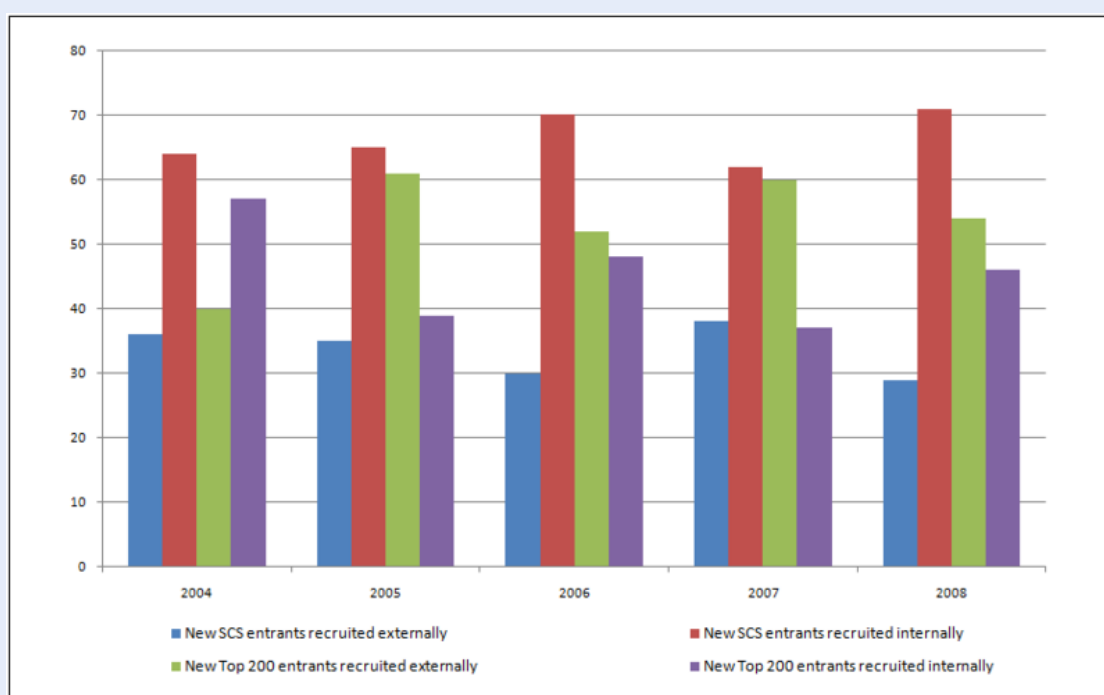
Third, in its report for 2008-9 ([Advisory Committee on Business Appointments, 2009, p. 10](#)), ACOBA itself complained that the rules it applied were now ten years old; and that the government had failed to fulfill the pledge it made in 2007 to update them. ACOBA has subsequently been engaged in an ongoing redrafting process for the rules. The committee has noted that former ministers who subsequently take on roles such as special representatives, envoys, 'Tsars' or other advisory posts are not subject to the Rules when they

leave office ([Advisory Committee on Business Appointments, 2010, p. 8](#)).

Fourth, the provisions in relation to former civil servants and ministers acting as future lobbyists are highly problematic. Aside from the fact that there is no real mechanism to ensure that ACOPA's recommendations with regard to former official refraining from lobbying are enforced, the committee has itself highlighted that 'there is no simple definition of the term lobbying'. While the government has now agreed to define lobbying in a new set of rules ([Advisory Committee on Business Appointments, 2009, p.9](#)), the idea that it becomes acceptable, after an arbitrary period, to engage in lobbying activities that were not appropriate up to this point is clearly questionable.

Fifth, it is apparent that 'revolving out' by senior civil servants often follows the act of the same individual 'revolving in' some years previously. A significant number of the officials leaving the civil service for outside employment were recruited from 'outside' in the first place. As Figure 2.6g illustrates, the extent of outside recruitment to the senior civil service (which numbers roughly a little over 4,000 in total) is greatest at the top level.

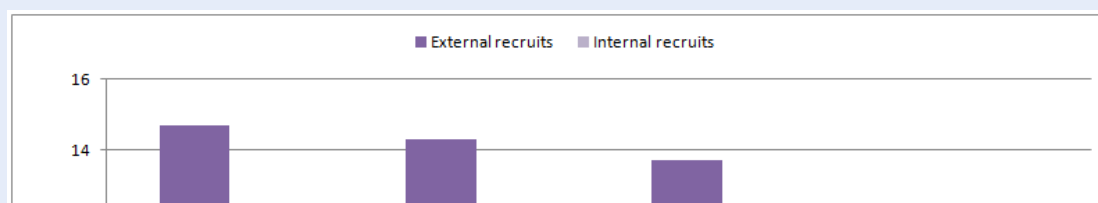
Figure 2.6g: New entrants to the senior civil service and the 'Top 200' of the senior civil service – % of external and internal recruits



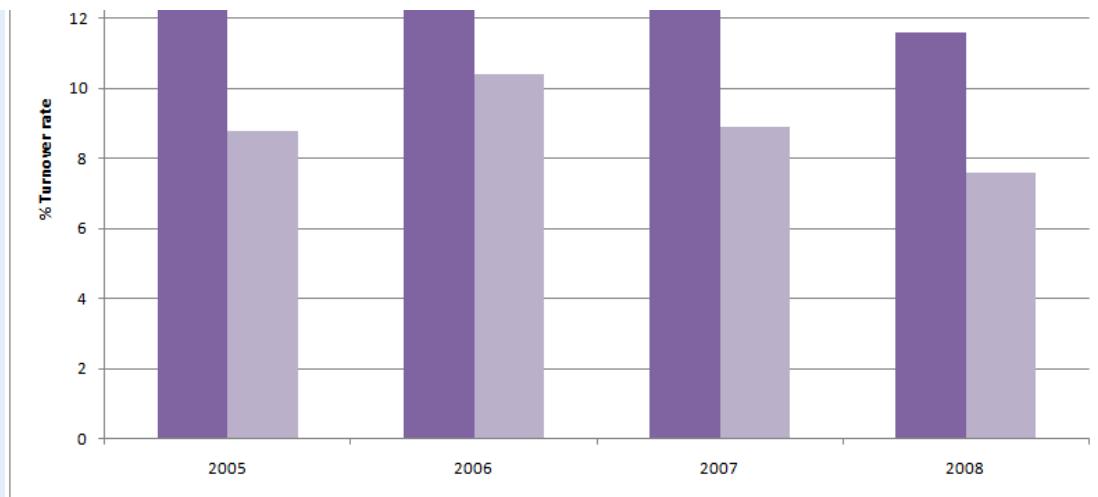
Source: [Public Administration Select Committee \(2010\)](#).

As Figure 2.6h shows, the turnover rate for these outside recruits has been consistently higher than that for internal recruits over a number of years. Of external recruits to the senior civil service in the year to April 2004, 49 per cent were still in place by April 2008. The percentage retention for internal recruits over the same period was 68 percent. Furthermore, the most common reason for outside recruits leaving was resignation; while for internal recruits, it was retirement ([Public Administration Select Committee, 2010, pp. 16-17](#)). The long-term rise in the number of special advisers, who are by definition only passing through the civil service (except in the limited number of cases where they subsequently secure permanent positions) is noted in Section [2.3.2](#).

Figure 2.6h: Turnover rate (%) for external and internal recruits to the senior civil service



## Democratic Audit



Source: [Public Administration Select Committee \(2010\)](#).

Sixth, ministers have in the past sometimes failed even to seek the advice of the Advisory Committee. For instance, in November 2005 it emerged that the then-work and pensions secretary, David Blunkett, had not obtained the views of ABOBA when - during a spell outside of cabinet, before which he had been home secretary - he had taken up a directorship at DNA Bioscience (in which he also owned shares). His ultimate resignation came about seemingly not because of a strict enforcement of the rules by the prime minister, but as a consequence of political pressure. The next edition of the ministerial code, issued under Gordon Brown in 2007, was reworded to make it more explicit that ministers needed to seek advice (and were expected to follow it).

In short, there is clear evidence to suggest that the mechanisms for regulation of 'revolving out' are not working in such a way as to secure public confidence.

### Corruption

The Bribery Act 2010 came into force in July 2011, largely replacing a piecemeal and anachronistic legal framework for the prevention of corruption (for further discussion of the act, see Section [2.6.2](#)). Prior to the act, the complexity of the law made an assessment of the extent of corruption in the UK difficult. Between 2003 and 2007, for instance, 33 guilty verdicts were delivered under the Prevention of Corruption Act 1906 and four under the Public Bodies Corrupt Practices Act 1889. However, there are various other criminal offences that can cover corruption - including fraud, false accounting, perverting the course of justice and misconduct in public office. Civil cases can also involve corruption.

The Bribery Act 2010 has brought a welcome degree of clarity to these complex legal arrangements. However, the official guidance issued on the law in March 2010 was criticised as having diluted the Act through the creation of various loopholes to enable companies to avoid being covered by it ([Hickey and Macaulay, 2011](#)). As well as the content, the tone of the notes and supporting documentation was worrying - actually going as far as to provide suggestions on how to avoid the scope of the act. For instance, in its 'Quick start guide' to the Bribery Act the government went to considerable lengths to explain that 'Hospitality is not prohibited by the Act', and went on to affirm that:

'The Government does not intend that genuine hospitality or similar business expenditure that is reasonable and proportionate be caught by the Act, so you can continue to provide bona fide hospitality, promotional or other business expenditure [...] as a general proposition, hospitality or promotional expenditure which is proportionate and reasonable given the sort of business you do is very unlikely to engage the Act. So you can continue to provide tickets to sporting events, take clients to dinner, offer gifts to clients as a reflection of your good relations, or pay for reasonable travel expenses in order to demonstrate your goods or services to clients if that is reasonable and proportionate for your business' ([Ministry of Justice, 2011, p. 7](#)).

Away from the legislative position, another arguable problem is that there is a lack of institutional focus on tackling corruption. Rather than one single anti-corruption agency, multifarious bodies have responsibility in this area ([Hickey and Macaulay, 2011](#)). There is also evidence that the growing threat from organised crime could produce an increase in corruption in the UK ([Krishnan and Barrington, 2011](#)).

A particular problem is the involvement of UK firms in international corruption, a practice which can be argued to result in the UK making a negative impact on democracy beyond its borders. In opinion research recently conducted by [KPMG \(2011, p. 8\)](#), corporate executives were asked whether 'anti-bribery and corruption regulations ignore the fact that, in many countries, bribery is simply the way business is



done'. Over half (54 per cent) of respondents indicated that they either agreed or strongly agreed with this statement, while only 24 per cent indicated either disagreement or strong disagreement. In addition, 73 per cent of those surveyed agreed that there are 'places in the world where business cannot be done without engaging in corruption', with 27 per cent disagreeing ([KPMG, 2011, p. 18](#)).

These data could be construed as suggesting that the involvement of UK business in corruption overseas is endemic, or at least accepted as inevitable in some areas; and that the Bribery Act in itself will be insufficient to prevent it. Furthermore, the 'Al-Yamamah' case, set out in Case Study 2.6f, involved an official move to shield a UK business from investigation. This affair also provides evidence of inappropriate influence wielded by powerful business interests upon UK government.

#### Case Study 2.6f: The BAE Systems/Al-Yamamah case

BAE Systems has been associated with various allegations of impropriety. In 2010, the company pleaded guilty to failing to keep reasonably accurate accounting records in relation to its activities in Tanzania, and agreed to pay £30 million (see [Jarett and Taylor, 2010](#)).

The company has long enjoyed a close relationship with government. In 2004, the then-prime minister Tony Blair overruled advice given by the Advisory Committee on Business Appointments over the appointment of commander-in-chief of RAF Strike Command, Chief Marshal Sir John Day, as a military adviser to BAE Systems, on the grounds that the appointment was in the national interest. Sir John had, the Advisory Committee noted, 'been involved with Air Force Board decisions that would have had a direct bearing on the MOD's business with the company'. As such, the Advisory Committee decided that 'on the basis of the normal propriety principles and criteria we apply through the Rules, he should wait one year from his last day in post as commander-in-chief, Strike Command to ensure that the appointment was not open to criticism'. However, the prime minister ruled that only the standard three-month wait should apply, with certain conditions ([Advisory Committee on Business Appointments, 2004](#)).

Al Yamamah ('the dove') is an agreement between the UK and Saudi Arabian governments, which involves the former supplying the latter with military equipment and associated material. BAE Systems is the main contractor in an arrangement which began in 1985. As part of the deal, a further agreement was signed in 2005 to provide 72 Eurofighter Typhoon fighter jets.

There were in September 2003 claims in the press that BAE Systems was using a £20 million 'slush fund' for the bribery of Saudi officials. The Serious Fraud Office (SFO) stated that it was considering a criminal investigation. In December 2006, it was reported that the Saudi government had warned that if the investigation was not ceased, the UK would lose the Eurofighter contract. On the 15th of that month the SFO announced that it was discontinuing its inquiry. The explanation offered by the SFO was that there was a need 'to balance the need to maintain the rule of law against the wider public interest'. There was a fear, the attorney general, Lord Goldsmith, explained, 'that continuation of the investigation would cause serious damage to UK/Saudi security, intelligence and diplomatic co-operation' with repercussions for the achievement of UK foreign policy objectives (see [Jarett and Taylor, 2010](#)).

In April 2008, the high court ruled that the SFO decision was unlawful; but in July 2008 the SFO successfully appealed against this decision in the House of Lords.

In October 2008, the OECD Working Group on Bribery in International Business Transactions noted that its lead examiners were worried about the involvement of government ministers in the SFO decision, and considered ([Working Group on Bribery in International Business Transactions, 2008](#)):

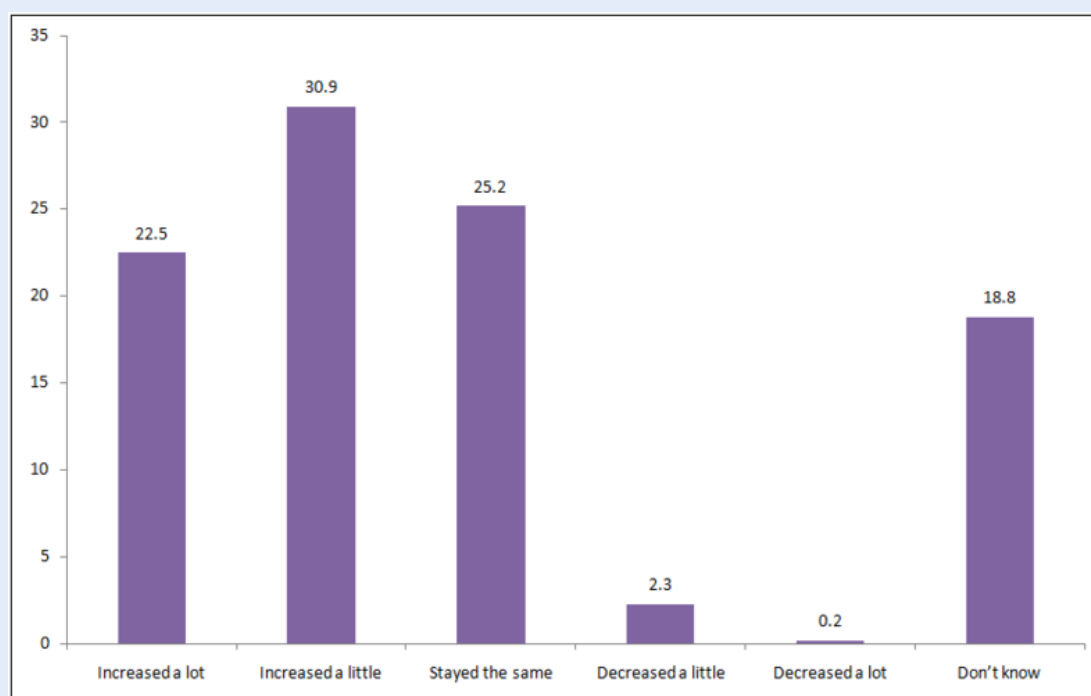
'that the UK government did not engage in sufficient efforts to develop and explore alternatives to terminating the Al Yamamah investigation [...] The lead examiners are also not convinced that the prosecutorial authorities sufficiently scrutinised the national security justifications with regard to the Al Yamamah case [...] They consider that the new developments since then, including the additional information gathered in the context of the on-site visit and provided in connection with the judicial review proceeding, have reinforced and intensified the serious concerns with regard to its consistency with the Convention [on Combating Bribery of Public Officials in International Business Transactions]. They do not believe that the decision of the House of Lords in the Al Yamamah case allays these concerns'.

### 2.6.5 Popular confidence in the integrity of public officials

How much confidence do people have that public officials and public services are free from corruption?

Since the previous Audit reported in 2002, there has been a serious decline across a range of measures of public confidence in the probity of public officials and public services. These trends are likely to reflect the influence of events such as the cash-for-honours affair and the scandal over MPs' expenses (see Case Study 2.6c). Opinion research conducted by Transparency International UK in July 2010 (Barrington, 2011), for instance, showed that more than half of respondents believed that corruption generally (not just in the public sector) had increased in the UK over the previous three years. As Figure 2.6i shows, 53.4 per cent of respondents felt corruption had increased to at least some degree and almost a quarter said that it had 'increased a lot'. By contrast, only 2.5 per cent felt confident that corruption had decreased over this time period.

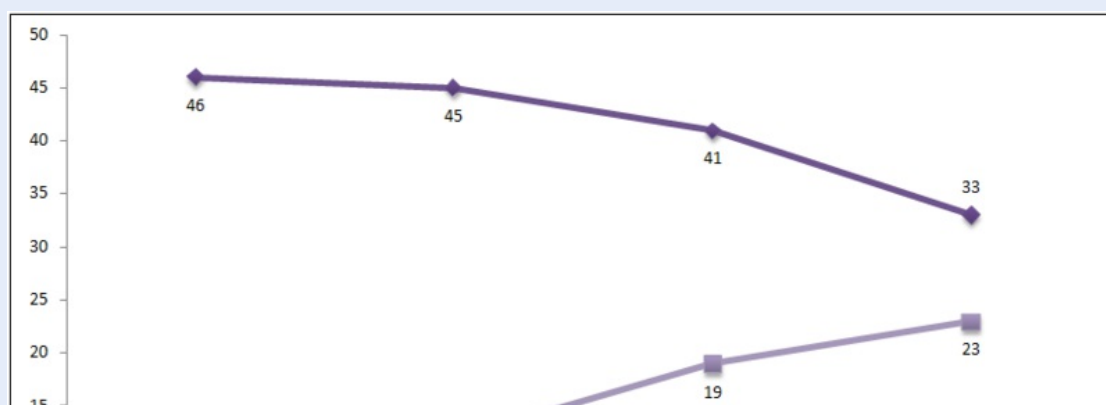
Figure 2.6i: Public perceptions of the extent to which corruption has changed in the UK in the past three years



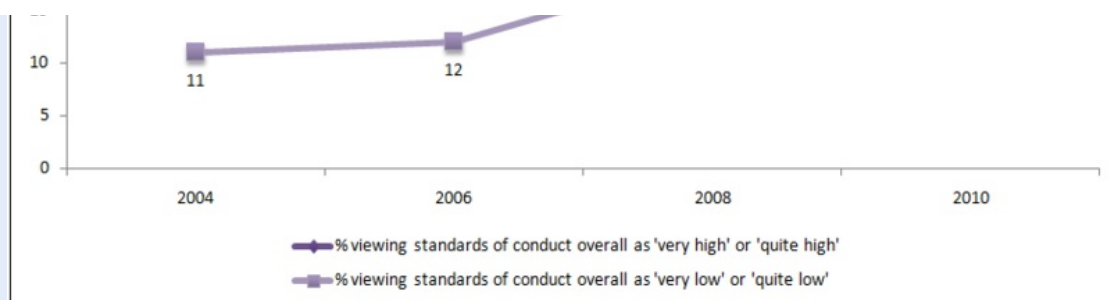
Source: Barrington (2011).

Though not dealing specifically with corruption, regular surveys by the Committee on Standards in Public Life on public attitudes towards standards in public life also provide evidence of declining public confidence in standards, from levels which were not particularly high to begin with. Figure 2.6j shows that, between 2004 and 2010, the proportion of respondents perceiving standards of conduct in UK public life as either 'very high' or 'quite high' declined from 46 to 33 per cent. Meanwhile, those respondents regarding standards of conduct in public life as either 'very low' or 'quite low' rose from 11 to 23 per cent over the same period.

Figure 2.6j: Overall perception of standards of conduct in UK public life



## Democratic Audit

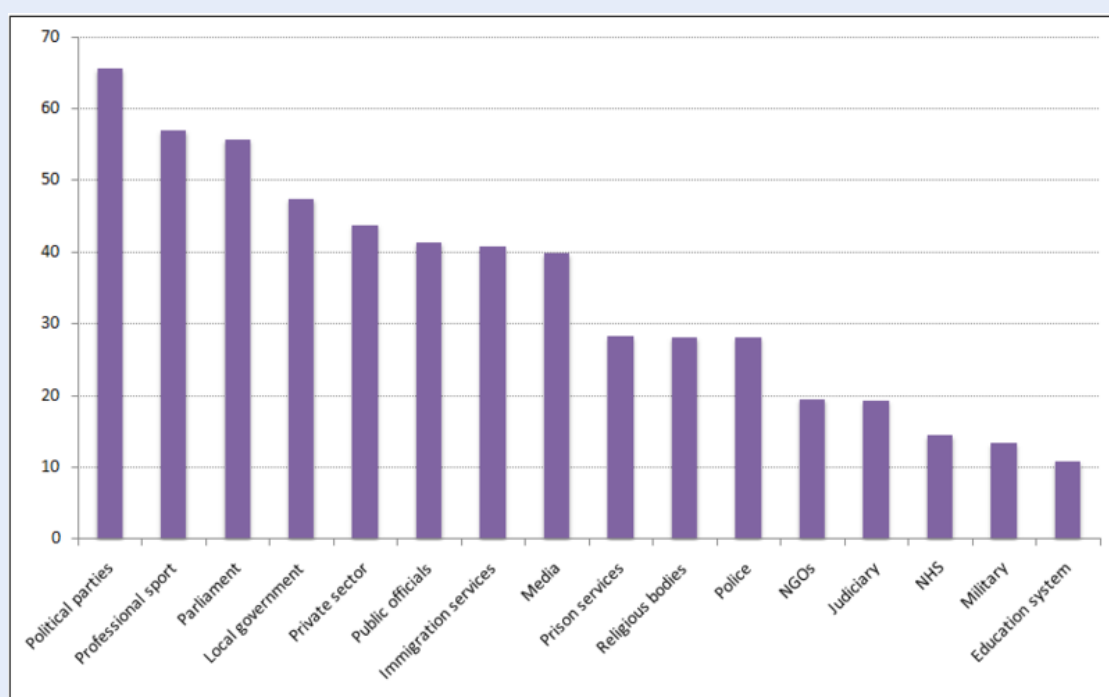


Note: Percentage response figures for 'neither high nor low' and 'don't know' have been omitted.

Source: [Committee on Standards in Public Life \(2011\)](#).

Of course, not every public service or group of public officials is distrusted to the same extent. As Figure 2.6k shows, political parties and parliament are regarded as corrupt by over half of the respondents surveyed for Transparency International UK's study. However, fewer than 15 per cent of respondents felt that the education system, the military and the National Health Service, the three institutions least suspected of corruption, suffered such problems. Nonetheless, Figure 2.6k points to a fairly pervasive sense of corruption across a variety of bodies, including local government, the private sector, the media and the police. Moreover, it seems likely that the media and police would perform worse if the survey had been repeated in the wake of the phone hacking scandal.

Figure 2.6k: Perceptions of corruption in specific sectors



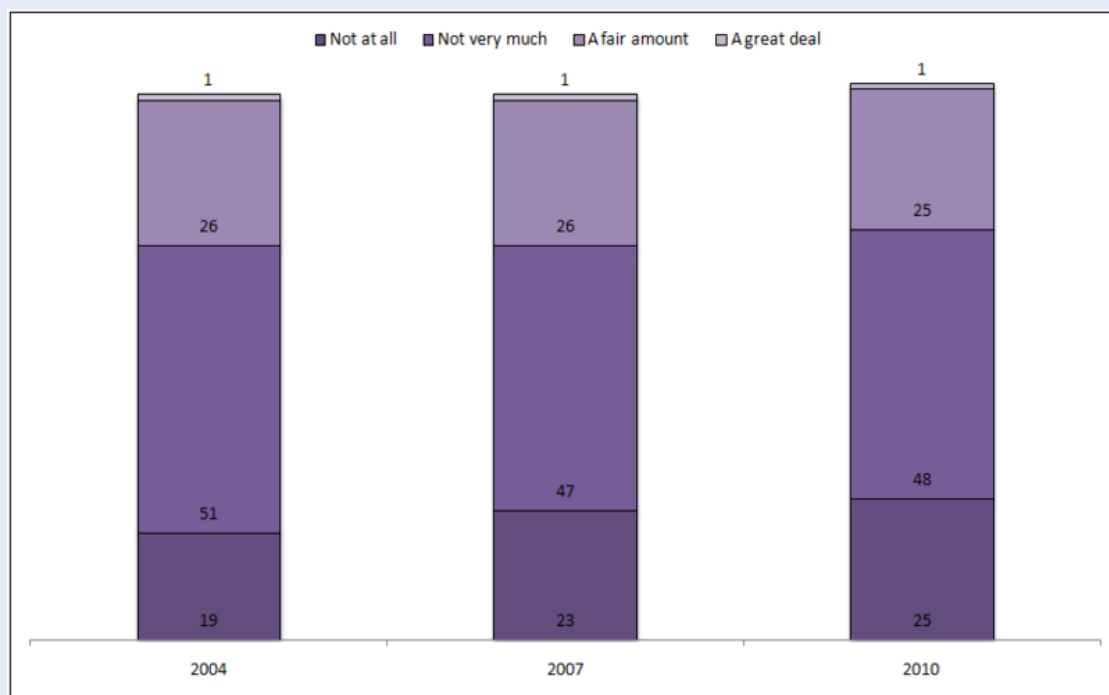
Source: [Barrington \(2011\)](#).

There are, however, some strong grounds to suggest that corruption in the UK is more of a public confidence problem rather than a regular feature of many people's lives. In the Transparency International UK survey, only 13.7 per cent said they had been personally affected by corruption (although 33 per cent suspected that corruption had taken place in a specific transaction). A further problem relating to confidence was suggested by the fact that only 1.4 per cent believed that the government was 'very effective' at tackling corruption; while 17.9 per cent believed it was 'very ineffective' and over half were grouped between 'somewhat' ineffective and effective ([Barrington, 2011](#)). As has been observed with opinion polls on the quality of public services, there is often a significant difference in what survey respondents regard as a 'general' situation and what they experience personally. Similarly, members of the public tend to evaluate their own MP far

more favourably than MPs in general ([Hansard Society, 2010](#)).

However, these caveats aside, there can be little doubt that distrust of politicians is a long-standing problem. Indeed, as the Hansard Society's Audits of Political Engagement (and other studies) suggest, the revelations over MPs' expenses did relatively little to alter public perceptions - probably because levels of trust were already exceptionally low. As Figure 2.6l shows, levels of public trust in politicians have languished at similar depths since 2004, with around three-quarters saying that they trust politicians either 'not very much' or 'not at all'.

Figure 2.6l: Percentage trust in politicians



Source: [Hansard Society \(2010\)](#).

### ***International perceptions of the UK***

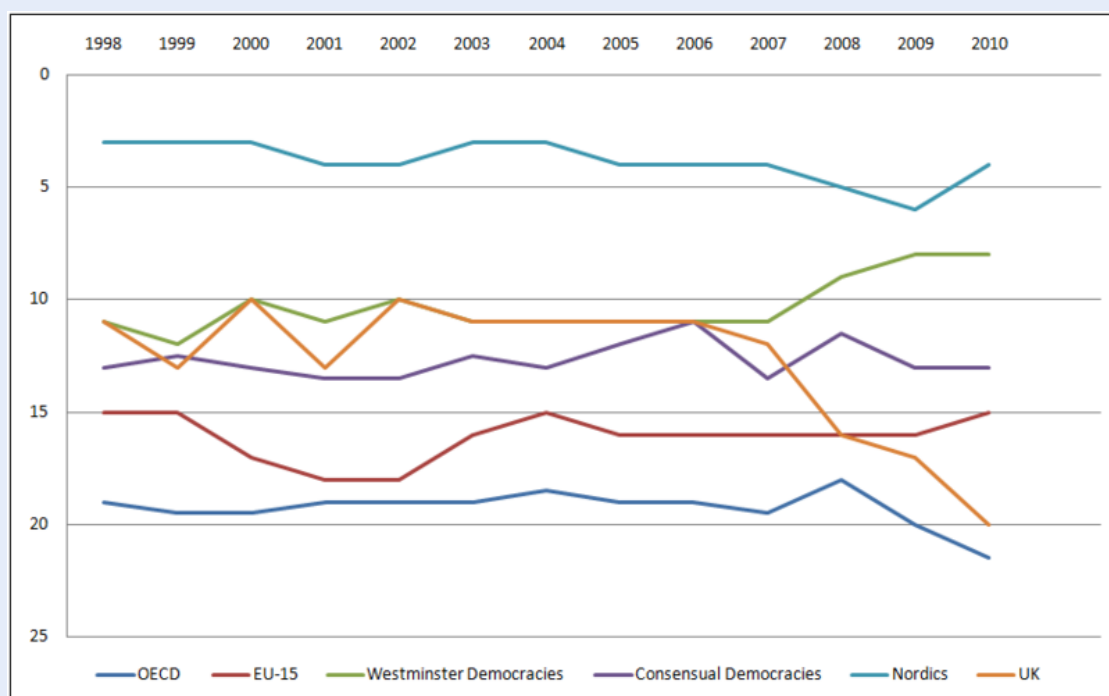
There is evidence that the international reputation of the UK for being corruption-free, measured in comparative international terms, is declining. The Transparency International 'Corruption Perceptions Index' ranks countries based on how corrupt their public sectors are perceived to be, drawing on a variety of different data sources and assessments. Because corruption is by its very nature hard to measure objectively, the index reflects levels of corruption perceived among local populations and international businesses. Index numbers are not intended to be comparable over time or used for time series analysis, but broad trends can be ascertained from the data – including the relative placement of comparable countries in the rankings.

Prior to 2008, the UK was usually somewhere around 11th in the world rankings of 'clean' countries - making it broadly comparable to places such as Australia and sometimes Canada, but placing it significantly behind world leaders such as Denmark, Sweden, Finland, Singapore and New Zealand. There was an abrupt decline in the UK's performance on the index in 2008, linked to the dropping of action against BAE (see Case Study [2.6f](#)), failure to bring forward promised anti-corruption legislation and growing concern in politics about 'cash for honours' allegations and MPs' expenses (see Case Study [2.6c](#)). Since then, the UK has ranked between 15th and 20th - a position broadly comparable to that of France, Japan, the USA and Ireland, but below that of Germany.

Figure 2.6m shows how the UK has performed since 1998 in the index rankings against the averages for the main groups of established democracies used as comparators throughout this Audit. As can be observed from the chart, the United Kingdom's reputation has significantly deteriorated in relative terms. While the UK's ranking has always tracked significantly below the average for the Nordic countries, it was closely in line with the average for both the Westminster and the consensual democracies from 1998-2007 and very clearly above the average for both the EU-15 and the OECD. However, the steady decline in the UK's relative position after 2008 has seen its ranking fall below the average of the other established democracies and also that of the EU-15. While the UK's current ranking by this measure is not in itself disastrous, it does appear to reflect a clear decline in confidence in the ethical basis of UK institutions. Indeed, the

fact that it has been possible for the highest-ranking countries to maintain their reputations makes the UK's relative decline all the more concerning, and is a corrective to the common UK perception that standards in foreign countries are lower than in the UK.

Figure 2.6m: Transparency International's Corruption Perceptions Index Rankings: UK's and comparators' performance, 1998-2010



Source: [Transparency International \(2010\)](#).

## Conclusion

Over the period of this Audit there have been some clear improvements in the systems designed to ensure integrity in public life - partly, it must be said, as a result of scandals serving to highlight failures in those systems. Changes include the establishment of an independent body to oversee MPs' expenses, pay and pensions; the appointment of an independent adviser on ministerial interests; a statutory basis for the regulation of the civil service; a House of Lords commissioner for standards; an overhaul of bribery legislation; and the withdrawal of the prime minister from the honours system (excluding peerages).

However, a number of problems have persisted since the publication of the last Audit. Ensuring probity in the conferral of peerages, for instance, continues to pose difficulties; while measures for preventing commercial and other interests achieving inappropriate influence over political processes are clearly not yet fully effective. Though admittedly a complex task, particular problems in this latter area include the various direct and indirect means by which parties and politicians can be funded by sectional interests; as well as the weakly-regulated interchange of personnel between Whitehall and the private sector (referred to in this section as the 'revolving door'). Given all this, it is perhaps not surprising that overall public confidence in the integrity of public life remains low, and indeed appears to have fallen since the last Audit reported.

The findings reported in this section are central to a number of the overarching themes of the current Audit as a whole. Most obviously, our concerns about a general pattern of declining faith in public institutions are strongly borne out by the evidence presented in this section. Declining public confidence in the integrity of office holders reflects a wider lack of faith that public institutions are free from corruption and that problems of corruption are being tackled in the public sector and beyond. However, the issues we identify in this section go beyond what is technically defined as corruption. There is also evidence of a more general trend towards particular groups and individuals wielding clearly disproportionate influence over political and policy-making processes, which reflects the wider patterns of widening political inequality we highlight throughout the Audit. Corporate interests and wealthy individuals, in particular, appear to have established increasingly privileged positions within circles of governmental, underlining the issues we raise throughout this Audit about the corrosive impact of corporate power on UK democracy.

Taken together, these findings strongly reaffirm what is perhaps the most important of our five overarching theme: that representative democracy as we know it is in long-term decline. Key representative institutions, most notably parliament, are fatally undermined if they are perceived to be riddled with corruption and if policy decisions are seen to be taken 'behind closed doors' between ministers and lobby groups. Yet, if we are to be able to address the democratic concerns we identify throughout this Audit, this section also highlights a quandary that policy-makers must somehow address: the welcome growth of transparency and independent regulation in political affairs has, to date, done little or nothing to restore public faith in democratic institutions; if anything it has undermined it still further.

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## 3. Civil society and popular participation

### 3.1. The media in a democratic society

#### Executive Summary

This chapter reviews the available evidence relating to the five 'search questions' concerned with the media in a democratic society

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. The Communications Act 2003 gives recognition to the need for an integrated regulatory framework in light of growing media convergence.**

Rapid technological developments are serving to blur the distinctions between telecommunications and broadcasting and are serving to reconfigure long-established media business models. These dynamics of media convergence have also rendered the tasks of measuring and maintaining media pluralism significantly more complex. The new regulatory provisions introduced by the Communications Act 2003, including the creation of Ofcom as an integrated regulator of all communications industries, sought to respond to these new realities. However, the legislation was controversial from the outset, particularly in view of its deregulatory ethos, and is already widely regarded as inadequate, less than a decade after it received royal assent. (For further details and discussion, see Case Study [3.1b](#))

##### **2. Access to media reporting has been enhanced by digital services.**

UK citizens have long enjoyed excellent access to media reporting via a relatively diverse press and extensive public service broadcasting provisions. This access has widened in recent years as a result of digitalisation. Around 80 per cent of UK households had access to the internet in 2010, which compares well with other established democracies (see Figure [3.1k](#)). The leading UK internet news sites are well developed and receive high levels of traffic (see Figure 1.3e). Meanwhile, the successful roll out of digital television in the UK has seen the proportion of households with access to digital services grow from under 10 per cent in 2000 to over 90 per cent in 2012 (see Figure [3.1j](#)). Despite this evidence of improved access to news reporting, however, it is important to note that the growth of digital news poses huge economic challenges for news providers. All newspapers are struggling to find a viable business model to manage the transition from print to digital. Meanwhile, viewing figures for television news are falling, placing broadcast news under growing economic pressure. (For further details and discussion, see Section [3.1.2](#))

##### **3. Modest rebalancing of libel law in favour of the press.**

The UK's libel laws have long been seen as a threat to media freedom, owing to the manner in which they impose the burden of proof on the defendant. Recent court cases have redressed the balance to some degree, particularly since *Reynolds vs Times Newspapers* (1999), by strengthening the 'public interest' defence in cases where journalists can demonstrate they have acted responsibly. In addition, the coalition proposes to give statutory recognition to this common law understanding via its draft Defamation Bill. However, concerns that UK libel laws continue to stifle the press continue to be widely heard, not least because of the enormous costs associated with defending a defamation case in the courts. (For further details and discussion, see Section [3.1.4](#))

#### **4. Increased willingness of the courts to use the Human Rights Act 1998 to protect against media invasions of privacy.**

As well as providing statutory recognition of the right to freedom of expression, the Human Rights Act (HRA) 1998 introduced a counterbalancing right to privacy. While concerns about media invasions of privacy remain at least as prevalent as they did in the 1990s, the courts have shown some willingness to use the HRA to prevent the publication of stories in the press which contravene this right to a private life. The principal mechanism which the courts have applied to this end, namely the granting of injunctions, has proved both controversial and, in some cases, unenforceable. Moreover, injunctions do not amount to a privacy law; the cost of applying for injunctions means that they would remain beyond reach for the vast majority of citizens. Nonetheless, we take the view that the willingness of the courts to grant injunctions with reference to the HRA represents an improvement, however modest, in restricting the harmful effects of media intrusions into the private lives of citizens. (For further details and discussion, see Section [3.1.5](#))

#### **(b) Areas of continuing concern**

##### **1. The UK scores relatively poorly compared to other established democracies on international measures of press freedom.**

Indexes of press freedom compiled by both Freedom House and Reporters Without Borders confirm that a free press operates in the UK. Reforms introduced prior to our last full Audit enhanced existing press freedoms, most notably through the establishment of a statutory right to freedom of expression under the Human Rights Act 1998 and the granting of greater journalistic access to information via the Freedom of Information Act 2000. However, the UK continues to perform relatively poorly when measured against other established democracies, particularly within northern Europe. Over the last decade, the UK has generally ranked outside the top 20 countries in the world for press freedoms; in 2010, the UK was ranked equal 26th globally by Freedom House, and 19th by Reporters Without Borders (see Table [3.1a](#)). The gap between the UK and the Nordic countries on the Freedom House index remains almost as great as it was two decades ago (see Figure [3.1a](#)). (For further details and discussion, see Section [3.1.1](#))

##### **2. Media ownership remains highly concentrated, albeit no more so than in other established democracies.**

Conventional measures of media concentration in the UK underline the continued dominance of four publishers of national newspapers, who control almost 90 per cent of market share between them. News International alone accounts for one-third of all national newspaper circulation (see Table [3.1b](#) and Figure [3.1c](#)). A similar pattern is evident with regard to the regional press, where five publishing groups account for three-quarters of circulation (see Table [3.1c](#)). In television and radio, the BBC remains dominant, although due consideration must be given to the nature of public service broadcasting which provides for 'internal pluralism' as well as political balance in BBC output (see Tables [3.1d](#) and [3.1e](#)). It is also important to underscore that the UK's levels of media concentration are by no means unusual by international standards (see Figure [3.1d](#)) and that cross-media ownership is increasing in the UK and elsewhere. (For further details and discussion, see Section [3.1.1](#))

##### **3. Economic pressures on media providers may well lead to a loss of media diversity.**

There is powerful evidence of a rapid undermining of the business models which have for decades sustained the press and news broadcasting in the UK and other established democracies. The problem is most apparent with regard to newspapers, which have lost income as a result of declining sales and reduced advertising revenue, while struggling to move to viable models of generating income from online content. To date, the greatest impact has been felt in the regional press, where a number of titles have merged, been discontinued, or moved from daily to weekly publication. However, it is widely recognised that many national newspaper titles are loss making, and that it is a matter of time before one or more established broadsheet is forced into closure on economic grounds. Similar pressures on broadcasters also raise concerns about television news programming, particularly in light of intense competition for audience share. (For further details and discussion, see Sections [3.1.2](#) and [3.1.3](#))

##### **4. Periodic conflicts between governments and the BBC raise issues about media independence.**

Periodic tensions between the BBC and governments have been a feature of UK politics since at least the 1980s. Previous conflicts have raised concerns in some quarters about the possibility of the BBC engaging in 'self-censorship' in response to government criticism, partly

for reasons of self-preservation. The fallout between the BBC and the Blair government of 2001-05 over the corporation's reporting of the war in Iraq was particularly acute. The focal point of this conflict, Andrew Gilligan's report on the changes allegedly made to the Joint Intelligence Committee's dossier on Iraq's weapons of mass destruction at the behest of 10 Downing Street (see Case Study [3.1c](#)), highlights important, but complex, questions about government-BBC relations. While we find no grounds to assume that the independence of the BBC was threatened over the long-term by the 'Gilligan affair', it nonetheless signals that the BBC's autonomy from government is by no means without challenge. (For further details and discussion, see Section [3.1.1](#) and Case Study [3.1c](#))

## **5. Pressures on investigative journalism.**

The dynamics of the new media economy continue to raise concerns about the extent to which journalists have the time to research, rather than merely reproduce, stories and the degree to which media outlets are able to ensure resources, including staff time, are available for investigative journalism. While there is clearly still scope for newspapers and broadcasters to undertake some detailed media investigations, as exemplified by the Guardian's sustained focus on the phone-hacking (see Case Study [3.1g](#)), there is genuine concern about the degree to which the media has the capacity to respond to the growth of the public relations industry, particularly with regard to the latter's scope to set the news agenda in business and financial affairs. (For further details and discussion, see Section [3.1.3](#))

## **6. The Communications Act 2003 does not provide sufficient protection for media pluralism.**

We recognise the rationale for integrated regulation of communications industries, as well as the need for media ownership regulations to recognise the challenges of maintaining pluralism during a period of profound change in media markets. However, the concerns we expressed in our last Audit with regard to the deregulatory impetus of New Labour's reforms have been borne out. Cross-media ownership has increased under the new legislative framework provided by the Communications Act 2003, adding to, rather than reducing, media concentration. Most significantly, News Corporation's bid to take full control of British Sky Broadcasting (see Case Study [3.1d](#)) revealed significant problems with the regulatory framework, particularly with regard to the operation of the 'public interest test' provided for by the act. (For further details and discussion, see Section [3.1.1](#) and Case Study [3.1d](#))

## **7. UK libel laws continue to act as a restriction on press freedom.**

While there has been some shift in UK libel laws to give greater recognition to the 'public interest' defence in press reporting, concerns within the media about the restrictive implications of libel law continue to be widely heard. Perhaps most significantly, fundamental problems remain owing to the enormous costs associated with defamation cases in the UK, particularly in comparison to other European countries (see Figure [3.1m](#)). As a result, newspaper may refrain from contesting libel cases, even if confident that they would win, because of the huge financial implications of doing so. (For further details and discussion, see Section [3.1.4](#))

## **8. Continued evidence of press intrusion and harassment and of the failure of self-regulation of the press.**

Long-standing concerns about press intrusion and media harassment of private citizens have reached new heights over the last decade. The scale of phone-hacking at the News of the World only became apparent in 2011, despite the fact that initial evidence of its use dates back to 2005 (see Case Study [3.1g](#)). The details revealed by the phone-hacking scandal may yet establish that phone-hacking has been practised widely in the UK press. It is certainly clear from the Operation Motorman investigation that a huge range of publications were using private investigators to obtain information about individuals, illegally, in the early 2000s (see Table [3.1k](#)). Despite the fact that the creation of the Press Complaints Commission (PCC) was widely described as the 'last chance' for the press to avoid statutory regulation, the revelations about phone-hacking reveal that the press has failed to make 'self-regulation' work. However, while it is accepted that the PCC will be abolished, it is by no means clear what it will be replaced with. (For further details and discussion, see Section [3.1.5](#))

### ***(c) Areas of new or emerging concern***

#### **1. Media convergence has created growing uncertainty about how to approach media regulation.**

The role of digitalisation in eroding the distinctions between the press and broadcasting was a key rationale for the establishment of Ofcom as an integrated regulator of telecommunications. Yet, the rise of the internet as a medium creates regulatory dilemmas which go far beyond those envisaged by the Communications Act 2003. The growth of online reporting and news consumption raises serious questions about conventional approaches to measuring market share across different media platforms (see Section [3.1.1](#)). Meanwhile, the rise of social media has raised serious questions about the scope to enforce injunctions designed to protect individuals from intrusions of privacy. (see Section [3.1.5](#))

#### **2. Newspaper circulation is declining rapidly and consumption of television news is falling.**

Newspaper circulation, which began to decline in the 1990s, is now falling rapidly (see Figure [3.1g](#)). Virtually all newspapers have experienced steep declines in circulation over the last decade, partly as a result of the shift towards (free) online content. The decline of the print media has bolstered the relative significance of television as the dominant source of news for UK citizens. However, total viewing of television news is also falling. Over the last decade, television viewing in general has fragmented enormously as a result of the growing availability of digital services (see Figure [3.1h](#)). With audience shares no longer restricted to a small number of outlets with public service broadcasting commitments, television news viewing has dropped from an annual average 103 hour per person in 2001 to 88 hours per person in 2010. (For further details and discussion, see Section [3.1.2](#))

### **3. The use of court injunctions to prevent media reporting of corporate activity.**

Recent debates surrounding the granting of injunctions and 'super-injunctions' by English courts have centred on attempts by celebrities, notably Premiership footballers, to prevent newspapers publishing details of extra-marital affairs. We reject the view that these injunctions, generally granted with reference to the right to privacy provided for by Article 8 of the Human Rights Act, constitute a threat to the freedom of the press. However, this debate has obscured evidence that injunctions have been granted which prevent the media reporting on the activities of major corporations, despite clear public interest grounds for publication. The super-injunction initially obtained by Trafigura to prevent the Guardian from reporting on allegations of the company dumping toxic waste in West Africa has been the most high-profile case to come to light. (For further details and discussion, see Section [3.1.4](#) and Case Study [3.1f](#))

### **4. Restrictions on media freedom arising from anti-terror legislation.**

The impact of anti-terror legislation on media freedom has become a concern across most established democracies in recent years and the UK is no exception. The investigative powers which police have over journalists, including the requirement on journalists to disclose information relating to actual, or potential, terrorist activity raises particular concerns in the UK context. (For further details and discussion, see Section [3.1.4](#))

## **Introduction**

It is widely recognised that democracy requires 'the availability of alternative and relatively independent sources of information' if citizens are to develop an enlightened understanding of key political issues, participate effectively in political debate and be able to influence the political agenda (Dahl, 2000, p. 97). The evolution of liberal democracy alongside rapid developments in communication technologies over the last century has given rise to varied forms of such alternative and independent sources of information, notably newspapers, radio, television and, most recently, the internet. Collectively, these 'mass media' have come to be seen as absolutely integral to democratic politics, providing for freedom of expression, ensuring that citizens are informed, their concerns identified (and, where necessary, amplified) and helping to hold governments and elected representatives to account (Norris, 2000; Beetham et al., 2002; Rowbottom, 2010).

In order for the media to operate in this way, there must be extensive media freedoms in a democracy. The media must be fully independent from government and must be able to operate without censorship. Journalists must be free to investigate those who wield power, including governments and large corporations, and be able to legally request and obtain information to this end. However, while guarantees of basic press freedom must be regarded as a necessary condition for ensuring that the democratic functions of the media can be carried out, they are by no means a sufficient basis for doing so. Indeed, the development of the mass media has given rise to widely-expressed concerns that, far from fulfilling the idealised democratic functions outlined above, the media 'exerts political power on behalf of its owners, staff or advertisers' (Rowbottom, 2010, p. 171). Issues such as the concentration of media ownership, evidence of sustained political bias in media coverage and the impact of partisan media reporting on voting behaviour have all been raised as examples of how a 'free media' can itself become one of the dominant centres of political power, rather than a space for democratic debate (Beetham et al., 2002). There are also long-standing concerns, dramatically illustrated by the emergence of the phone-hacking scandal in 2011, about how press freedom should be balanced against the need to ensure that private citizens are protected from media intrusion and harassment.

The questions addressed in this chapter are derived directly from the issues raised by the need to strike an appropriate balance in a democracy between media freedom and media regulation. We begin by assessing the extent to which the UK media operate freely, with full independence from government, and the degree to which media ownership can be described as pluralistic. The chapter then examines the extent to which media outlets in the UK provide for a diversity of opinion and evaluates whether the information and analysis they provide are widely accessible to UK citizens. In addition, we assess the degree to which the media in the UK is able to hold powerful interests to account and whether journalists are able to operate without constraints imposed by unnecessarily restrictive laws or exposure to intimidation or harassment. Finally, we examine the issues associated with media respect for privacy by asking how far citizens are free from media intrusion and harassment.

### ***Media functions and media systems***

## Democratic Audit

Before turning directly to the specific issues raised by the search questions in this section of the Audit, it is important to contextualise the nature of the UK's media system with regard to the range of media functions we have alluded to above. Despite widespread misgivings about media power in established democracies, it would be churlish to deny that the media fulfils a number of essential democratic roles, however imperfectly they are achieved in practice. Following Norris (2000), the media's democratic functions can usefully be captured using a threefold classification. In this view, the media in a democratic society acts as:

- **A civic forum** - by providing for pluralistic competition among those seeking political office; acting as a focal point for public deliberation and debate; and functioning as a conduit for communications between government and the governed.
- **A mobilising agent** - by promoting informed public participation in political debate; encouraging citizens to learn about, and take part in, politics; and enabling the public to help shape the political agenda, including via support for, and instigation of issue-specific campaigns.
- **A watchdog** - by scrutinising the actions of those with power and seeking to hold the powerful to account; investigating potential abuses of power, including cases where governmental, corporate or other actors appear to have engaged in corrupt or illegal practices; challenging the government on issues of key social concern; and protecting the interests and rights of citizens, including vulnerable and minority groups within a society.

It is highly unlikely that the activities of all sections of the media could ever be described with reference to these functions. Clearly, the extent to which individual media outlets fulfil each of these functions, as well as the manner in which they interpret and seek to realise them, will vary enormously. Inevitably, some of these roles may also be contradictory, or at least become matters of democratic controversy. For instance, one media outlet's activities as a 'mobilising agent' on a particular activity may result in another outlet, operating in 'watchdog' mode, ringing alarm bells about such examples of media campaigning. In this sense, it is also crucial to note that there are contrasting models through which the media as a whole may operate to fulfil these functions in a democracy. In particular, it is useful to distinguish between 'partisan' or 'polarised' media systems, on the one hand, and 'public service' media systems, on the other (c.f. Rowbottom, 2010).

In the partisan/polarised model, a diversity of perspectives are provided for by a range of overtly biased media outlets, which engage in debate and critique with one another. Under this model, a citizen will receive a relatively full overview of key issues and perspectives, so long as a broad spectrum of different viewpoints are reflected in the media and they themselves, as citizens, choose to engage with, and reflect on, at least a cross-section of them. By contrast, in the public service model, media outlets do not adopt political positions but instead act as 'a space for different views to be heard alongside one another' (Rowbottom, 2010, p. 176). In the public service model, news reporting and discussion of current affairs are governed by notions of impartiality and political balance. There are clear contrasts to the way in which partisan/polarised and public service media systems are assumed to provide for pluralism and diversity. In the partisan/polarised model, there is assumed to be 'external pluralism', whereby a diversity of information and viewpoints is provided for via the existence of a wide range of competing media outlets. Conversely, in the public service model, the emphasis is on providing for 'internal pluralism', whereby a broad and balanced spectrum of political viewpoints are represented within the coverage offered by a relatively small number of media organisations (Rowbottom, 2010; [Hanretty et al., 2011](#)).

The UK's media system is effectively a hybrid between these two contrasting models, due to its sharp demarcation between the respective roles of the print and broadcast media (Scammell and Langer, 2006). On one hand, the UK print media has tended to be characterised by a privately-owned and self-regulating press, which is both relatively pluralistic and highly partisan in character - something which it shares with the 'liberal' free-market media system in operation in the United States (c.f. Hallin and Mancini, 2004). UK broadcasting, on the other hand, has been more tightly and formally regulated, dominated by public-service broadcasters, most obviously the BBC, and guided by often highly prescriptive rules about editorial impartiality and party political balance in coverage of news and current affairs. In this regard, the UK also has much in common with what Hallin and Mancini (2004) describe as the 'democratic corporatist' media systems of Northern Europe. One inevitable consequence of this 'dual media model' is that the politics of the UK press has tended to be a matter of far greater controversy than the politics of UK broadcasting. It is generally agreed that the UK press is 'highly partisan by most western standards' ([Newton and Brynkin, 2001, p. 267](#)) and that, with the notable exception of the Blair years, newspaper owners have overwhelmingly sided with the Conservative Party (Wright, 2000). By contrast, political consensus about the impartiality requirements in broadcasting has ensured that 'UK television has been remarkably free from politicisation' in comparison to much of western Europe ([Humphreys, 2009, p. 198](#)).

### *Developments since our last Audit*

In our last Audit, we raised specific concerns about patterns of media ownership in the UK and, in particular, about the extensive interests of News Corporation/News International, which span the print and broadcasting sectors (Beetham et al., 2002). We also expressed serious reservations about the manner in which quality news reporting and investigative journalism was being 'squeezed out' by the combined impact of de-regulation and economic pressures associated with intensifying market competition. In this regard, we found it difficult to be sanguine about the likely impact on the broadcasting sectors of the legislative proposals which were later to make up the Communications Act 2003. In particular, we warned that further market concentration was virtually inevitable and that the new regulator, Ofcom, might well



'find it impossible to reconcile the government's twin aims of more competition and greater pluralism of content' (Beetham et al., 2002, p. 297). Meanwhile, with regard to the print media, we noted that no solution had been found with regard to the issue of intrusion and harassment in some sections of the press, and that the scale of the problem was almost certainly escalating, despite the fact that concerns about it had been recognised for decades.

These same issues feature strongly in our current Audit, although we also place emphasis on two additional core sets of concerns. The first of these arises from the profound significance of the challenges posed by changing patterns of news production and news consumption. Newspaper circulation is declining, audience shares in broadcasting are fragmenting, particularly in television, and the internet is rapidly growing in significance as a source of news and information about politics, blurring the boundaries between print and broadcasting. As we discuss in Sections [3.1.1](#) and [3.1.2](#), these trends, which are by no means unique to the UK, pose significant challenges for the traditional business models of established media outlets. As such, they also have potentially serious implications for the maintenance of a diverse and pluralistic media; for the balance of opinions presented in the UK media; and for the manner in which UK citizens access them. We also find evidence to suggest that the increasingly unfavourable economic context in which newspapers and news broadcasters operate has further restricted the scope for investigative journalism (see Section [3.1.4](#)).

Our second set of additional concerns, compared to our last periodic Audit, relate to issues operating at the intersection of press freedom and press intrusion. As this Audit was being finalised, the Leveson Inquiry into the culture, practice and ethics of the press, established in response to the phone-hacking revelations of 2011, had just begun its work. While the Leveson Inquiry's report is not expected before the end of 2012, the witness sessions to date have already pointed to a huge volume of evidence relating to illegal practices in the media, including phone-hacking, email-hacking, as well as numerous forms of journalistic harassment. Meanwhile, the period since our last Audit has also witnessed ongoing concerns about the scope for investigative journalism to fall foul of libel law as well as associated issues raised by the growing use of court injunctions to prevent the press reporting on specific matters. As we note in Sections [3.1.4](#) and [3.1.5](#), the considerations arising from these developments are genuinely complex and raise significant democratic tensions with regard to the balance between the right to privacy and the protection of freedom of expression.

### 3.1.1 Media freedom and pluralism

How independent are the media from government, how pluralistic is their ownership, and how free are they from subordination to foreign governments or multinational companies?

If the media are to provide the core democratic functions outlined in the introduction to this chapter, it is essential that they operate in a context in which they are independent from government, and that they enable a plurality of perspectives to be expressed. It is equally vital that editorial independence is not usurped by proprietors exercising control over content. In an era of globalised media ownership and reporting, the danger of media coverage becoming subordinate to major multinational corporate interests or to control via foreign governments, for instance for the purposes of propaganda, also needs to be taken into account. Taken together, these concerns underline the core importance of media freedom in a democracy and we therefore begin with a consideration of the UK's relative performance in widely-used international measures of the freedom of the press. While this analysis confirms that media organisations in the UK operate in the context of a free press, it also identifies a number of specific concerns about press freedom in the UK, particularly in comparison to other north European democracies. Each of the concerns identified is considered in more depth in the remainder of the chapter, beginning with a fuller consideration in this section of issues surrounding media ownership and media independence.

#### **Media freedom**

There are two principal indexes which seek to measure press freedom globally. The first, and longest established is produced by the American organisation Freedom House, which has run since 1980. The Freedom House measures are updated annually, based on surveys of journalists and human rights organisations, as well as on reports produced by governments, multilateral bodies and other organisations. This information is considered with respect to three main categories, encompassing the legal, political and economic environments in which the media operates (see Case Study [3.1a](#) for further details). Initially, the Freedom House measures placed each country into one of three groups ('free'; 'partially free' or 'not free') but, since 1994, numerical index scores have been added. Under this scoring system, a country is categorised as 'free' if its score is between 0 and 30, 'partially free' if the score is between 31 to 60 and 'not free' if it receives a score of 61 to 100. These scores are also used to rank the countries studied - a total of 196 in 2010.

#### **Case Study 3.1a: Freedom House assessment of press freedom**

The Freedom House index is derived from the assumption that a free press primarily involves ensuring that the media enjoys 'freedom from' various types of restriction on their activities. Scores are therefore an indicator of the presence of factors which restrict press freedom, meaning that a country with a free press receives a lower score than a country where the press is not free. The



criteria used by Freedom House are grouped under three main headings, relating to restrictions on media freedom which may be either legal, political or economic in nature. Each country is allocated a separate score for each of these areas, as well as an overall aggregate score which is used to compile the final rankings. The three headings and the areas they cover are as follows:

**1. Legal environment - this measures the extent to which there are:**

- legal mechanisms through which governments can seek to influence media content;
- restrictions on reporting imposed by security legislation or other statutes;
- restrictive requirements for media outlets and journalists to register, or on the scope for journalists' groups to operate freely;
- instances of governments seeking to use such laws and regulations to restrict media reporting;
- excessive legal penalties issued for libel and defamation which may effectively prevent media reporting, particularly of the wealthy and powerful;
- defined legal and constitutional protections for freedom of expression;
- legal provisions for freedom of information;
- mechanisms for legal appeal and review, either through the judiciary or official media regulatory bodies, which are independent of government.

**2. Political environment - this measures the extent to which there is:**

- political control over news reporting;
- editorial independence among media outlets (state- and privately owned);
- access for journalists to official information and sources;
- official censorship or self-censorship by journalists;
- vibrant and diverse news reporting;
- scope for all journalists, including overseas reporters, to operate freely and without harassment;
- journalistic freedom from intimidation by the state or others, including freedom from detention, imprisonment, violent assault, and all other threats.

**3. Economic environment - this evaluates factors such as:**

- the overall business structure of the media, including concentration and transparency of ownership;
- the extent to which the costs of establishing and maintaining media outlets restricts market access;
- evidence of the state or other actors engaging in selective withholding of subsidies or advertising;
- evidence of corruption and bribery influencing the content of media reporting;
- the degree to which the economic context impacts on the development and sustainability of the media.

The second index is the 'Press Freedom Index', which has been produced annually by the Paris-based organisation, Reporters Without Borders (RWB), since 2002. The RWB methodology is very similar to that adopted by Freedom House. The data is gathered via a survey of freedom of expression groups, journalists, researchers, lawyers, and human rights activists. The survey includes 44 criterion covering: the extent to which journalists are subjected to physical violence, intimidation or harassment; forms of ownership and control and their impact on editorial and journalistic independence; the extent of censorship and self-censorship; and the wider governmental and legal environment. This information is converted into numerical scores (ranging from 0 to 105) for a total of 179 countries in 2010. Again, the scores are used to produce rankings of press freedom for all the countries studied, with the lowest score indicating the highest levels of press freedom.

**Table 3.1a: UK Ranking in Freedom House and Reporters Without Borders indexes of press freedom, in comparison to top 10 countries, 2010**

Freedom House			Reporters without Borders		
Rank	Country	Score	Rank	Country	Score
1=	Finland	10	1=	Finland	0
1=	Iceland	10	1=	Iceland	0
1=	Norway	10	1=	Norway	0

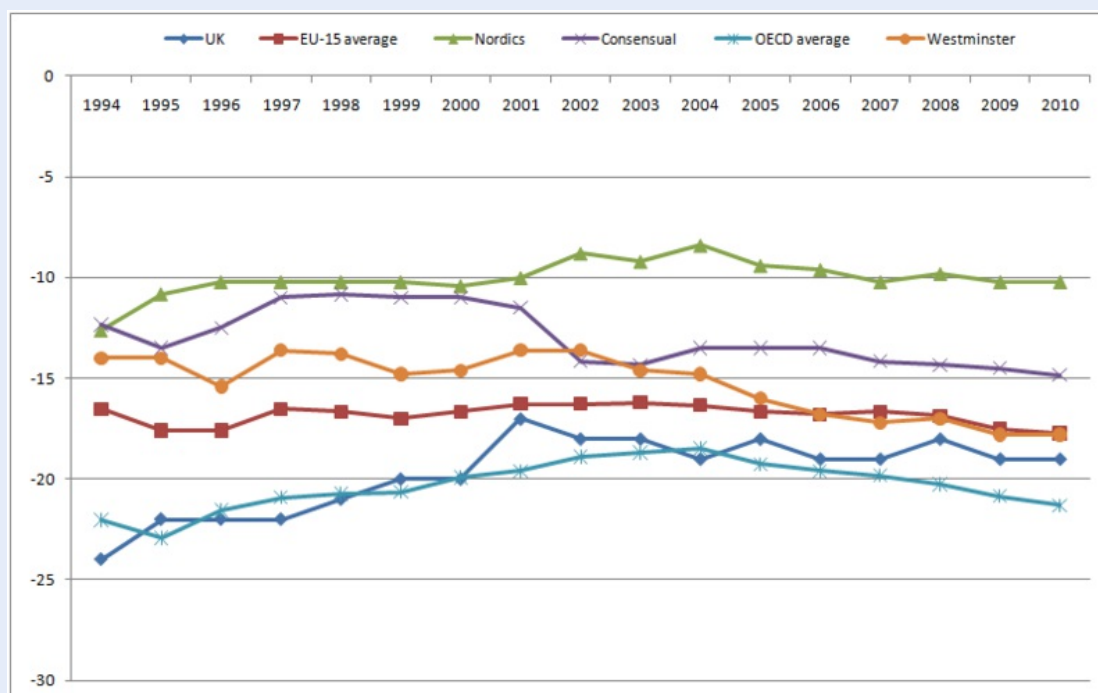
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1=	Sweden	10	1=	Netherlands	0
5	Denmark	11	1=	Sweden	0
6=	Belgium	12	1=	Switzerland	0
6=	Luxembourg	12	7	Austria	0.5
8=	Andorra	13	8	New Zealand	1.5
8=	Switzerland	13	9=	Estonia	2
10	Liechtenstein	14	9=	Ireland	2
26=	<b>United Kingdom</b>	<b>26</b>	<b>19</b>	<b>United Kingdom</b>	<b>6</b>

Sources: [Freedom House \(2011\)](#); [Reporters without Borders \(2011\)](#)

Despite the slight differences of approach, the two indexes produce very similar rankings. As Table 3.1a shows, the democracies of northern Europe dominate the top 10 rankings in both indexes, with Finland, Iceland, Norway and Sweden included among those placed joint first in both cases. This broad pattern is consistently repeated, albeit with some movements in the relative positioning of the countries, year on year. The UK, meanwhile, was ranked equal 26th in the Freedom House index in 2010 and 19th in the Reporters Without Borders index. Again, the UK's position is relatively consistent; since 2002 its ranking has averaged 30th on the Freedom House studies and 24th in those produced by Reporters Without Borders. Figure 3.1a charts the UK's numerical score in the Freedom House index since 1994, in comparison with the average score for each of our chosen groups of comparator democracies. The scores have been shown as negative numbers in this instance, to illustrate that a score of '0' would represent perfect press freedom. As with most datasets presented in this Audit, the graph underlines the gap between the Nordic countries and the other groups of democracies for which we have collected data. Once again, the UK is also ranked some way below the consensual democracies and also falls short of the average for the EU-15. However, it is also evident from the graph that the UK's scores on the Freedom House index improved markedly from 1994 to 2001, raising its global ranking from 40th to 27th. Since 2001, however, the UK's score has been stable and it is only as a result of an apparent deterioration in press freedom in other countries that the gap between the UK and both the Westminster and consensual democracies has narrowed over the past decade.

Figure 3.1a: Freedom House press freedom score, UK and groups of comparator democracies, 1994-2010



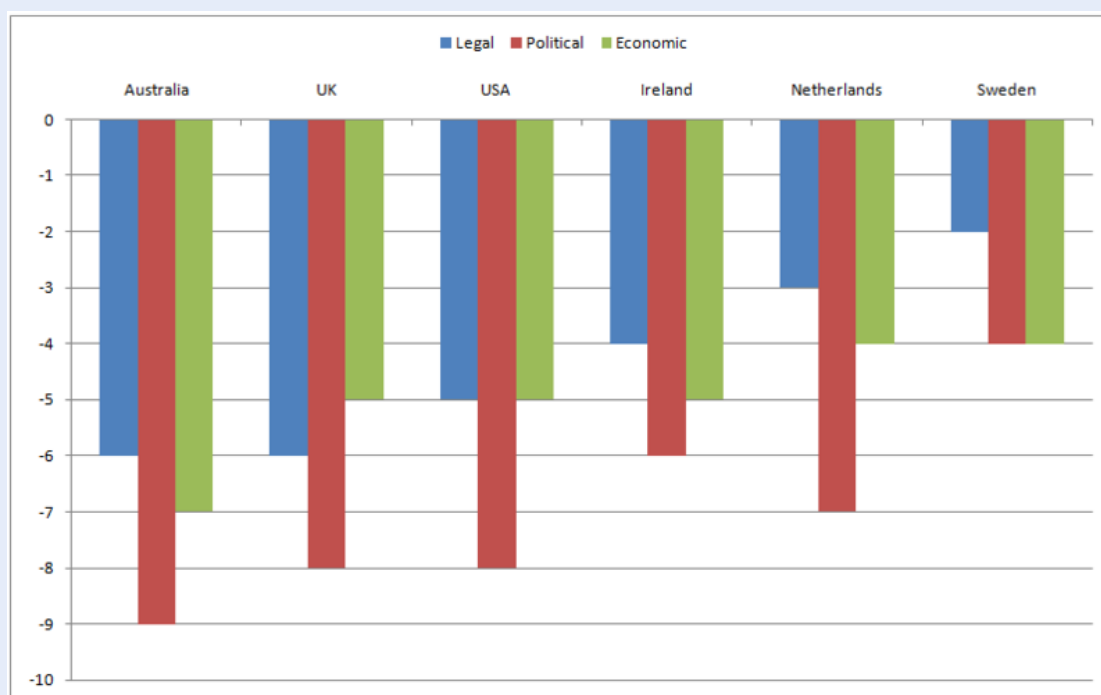
Source: [Freedom House \(1994-2011\)](#)

Two of the key factors responsible for the UK's improved scores in the Freedom House index were the Human Rights Act of 1998 and the Freedom of Information Act 2000, both of which were passed by the first Blair government. The Human Rights Act (see Section [1.2.2](#)) establishes a statutory right to freedom of expression, while the Freedom of Information Act (see Section [2.3.5](#)) greatly enhanced the legal scope for journalists to obtain information from public bodies. It would also appear that improvements in the Freedom House assessment of UK press freedom from 1994 onwards reflects the decline in governmental attempts to censor the media in the post-Thatcher years ([Humphreys, 2009](#); see also [Introduction](#) to Chapter 1.3 for cases of censorship recorded in the Cingranelli-Richards Human Rights Index). At the same time, it is possible to identify the factors which have prompted Freedom House to consistently rank the UK below the great majority of other established democracies ([Humphreys, 2009](#); Freedom House, 2009; 2010). While the UK is recognised to respect the freedom of the press, and receives significant credit for its tradition of independent public broadcasting, the principal concerns identified by Freedom House include:

- the concentration of media ownership, including the national and regional press, most notably with regard to titles and outlets owned by Rupert Murdoch's News Corporation (see below);
- occasional governmental pressure on media outlets, especially broadcasters, for instance during the Iraq war (see below);
- the existence of specific exemptions from freedom of information provisions (see Section [3.1.3](#));
- the restrictive nature of the UK's libel laws, which heavily favour the plaintiff and place the burden of proof on the defendant (see Section [3.1.4](#));
- legislation which can be used to compel journalists to reveal information in court, if it is deemed essential to a police investigation (see Section [3.1.4](#));
- unlawful intimidation encountered by journalists when reporting in Northern Ireland (see Section [3.1.4](#));
- potential restrictions on freedom of expression and media reporting arising from anti-terrorism legislation and measures intended to prevent incitement to religious hatred (see Section [3.1.4](#)).

These observations span the criterion contained in all three categories (legal, political and economic) used by Freedom House to measure press freedom. As Figure 3.1b illustrates, in 2010 the UK performed less well than two of our chosen comparator democracies, Sweden and the Netherlands, in all three of these categories. The contrasts between the UK and Sweden are particularly clear with regard to the legal and political environments in which the media operate. Moreover, while the differences between the six countries can be regarded as relatively modest, particularly with respect to the wider international picture, Figure 3.1b also highlights that the UK, USA and Australia have remarkably similar profiles.

Figure 3.1b: Measures of press freedom with regard to legal, political and economic environments, UK and comparator democracies, 2010



Source: [Freedom House \(2011\)](#)

## Media ownership and pluralism

In our previous Audit, we noted how, in common with other established democracies, ownership of the mass media in the UK 'is steadily moving into fewer corporate hands in the wake of accelerating technological change' (Beetham et al., 2002, p. 192). In particular, we noted the dominance of News International, as the UK arm of Rupert Murdoch's global News Corporation group, particularly in the national newspaper market. We also pointed to the prospect that further relaxation of the rules on cross-media ownership would increase the scope for individual corporations to control large sections of the media. In the context of rapidly developing communication technologies, notably the growth of digital services, we also pointed to the intensification of anti-BBC lobbying by commercial providers who were keen to break up the dominant position the corporation has obtained by virtue of its unique status as a public service broadcaster. Finally, we expressed concern about Labour's proposals, as contained in what was then the Communications Bill (now Act), to engage in further deregulation of media ownership as a route to protecting and enhancing media pluralism (see Case Study 3.1b). Despite the inclusion, in the Bill (Act), of plans for a new, integrated communications regulator (Ofcom), with a duty to monitor media pluralism, we suggested the proposals carried the very real danger of further enhancing already high levels of media concentration and of diluting media pluralism as a result. We issued a particular warning about how robust the provisions for protecting media pluralism were likely to be in face of a concerted bid from News International to increase its share of the broadcasting market, suggesting that 'the prospect of any government being quite so foolhardy as to confront the UK's most powerful press baron in such stark terms is frankly remote' (Beetham et al., 2002, p. 195).

### Case Study 3.1b: The Communications Act 2003

The regulatory environment in which the UK media operates was substantially reformed by the Communications Act 2003. The act introduced new rules relating to media ownership, particularly with regard to cross-ownership of press, radio and television outlets, and established Ofcom as an integrated, independent regulator for the communication industries. The profound significance of the legislation for the development and operation of the UK media is undeniable. Indeed, it has been suggested that the act 'ushered in a sweeping programme of regulatory change in the communications industries and is the most comprehensive legislation of its kind in British history' ([Doyle and Vick, 2005, p. 75](#)).

The rationale for the introduction of radical and comprehensive new legislation for the communications industries had a number of elements. In particular, it was argued that there was a need for a new regulatory framework which would take account of:

- the dynamics of 'media convergence', particularly those associated with digitalisation, which were seen to be eroding the boundaries between once distinct media and telecommunication sectors;
- the complexities of defining or measuring media pluralism, and of protecting media diversity, in the context of this process of media convergence;
- the need to ensure that UK media law was consistent with EU competition regulations;
- the desire of government and the communications industry to capitalise on the economic opportunities offered by the UK's perceived strengths in the cultural and creative industries.

In light of these developments, the act sought to switch the focus of regulation from ownership to content. As part of this rationale, the act had a strong deregulatory focus, which included the abolition of:

- the 15 per cent upper audience limit which any one UK television company may control;
- the rule banning the two ITV London licenses being owned by a single entity;
- the 'points system' limiting ownership of UK-wide radio broadcasts to a maximum 15 per cent share of the commercial audience;
- rules preventing non-EU media companies from holding UK broadcasting licenses;
- a variety of cross-ownership rules, including the ban on common ownership of national television and radio licenses;
- the rule preventing joint ownership of a national ITV license and Channel 5;
- the rule precluding common ownership of a regional ITV license and a local radio license for the same area;
- rules which had prevented a national newspaper proprietor with more than a 20 per cent market share from also owning Channel 5.

In addition, the act established the Office of Communications (Ofcom) as an integrated regulator for the broadcasting and telecommunications industries. Ofcom absorbed the functions of what had previously been five separate agencies and was given specific powers to regulate broadcasting content via a new three-tier system of broadcasting regulations. These regulations distinguish between basic obligations applying to all broadcasters (tier 1) and those applying to public service broadcasters (tiers 2

and 3). It has also been suggested that the act gave Ofcom 'unprecedented powers in relation to the BBC', including the scope to impose financial penalties on the corporation ([Doyle and Vick, 2005, p. 82](#)).

As a result of pressure in the House of Lords, in particular as a result of a campaign led by Lord Putnam, the act also introduced arrangements for a 'public interest test' in media mergers. Under this regime, mergers which raise concerns about market concentration or a reduction in media pluralism can be referred to Ofcom to make recommendations if the secretary of state issues an intervention notice.

All of the issues we identified in 2002 remain central to debates about UK media ownership a decade on from our last full Audit. Media concentration remains a significant issue, particularly with regard to the size of News International's share of the daily newspaper market. Cross-media ownership has intensified, predictably, following the relaxation of the ownership rules introduced by the Communications Act 2003 (see Case Study 3.1b). Moreover, the attempt by News Corporation during 2010-11 to acquire full control of British Sky Broadcasting (BSkyB) came to constitute a major test of the legal framework introduced by the Communications Act and of Ofcom's powers to intervene where the new 'public interest' test was invoked (see Case Study 3.1b). As we note in Case Study 3.1d, while News Corporation's bid was referred to Ofcom, whose report recommended investigation by the Competition Commission, the process revealed that much discretion rested with the secretary of state responsible. Indeed, it would appear that the regulatory framework was relatively toothless in the face of apparent political support for the takeover within the Conservative Party. It is widely accepted that News International's bid was ultimately only stopped as a result of the revelations of the phone-hacking scandal in 2011 (see Section [3.1.5](#)).

The view that proprietors seek to exert political influence via their ownership of media organisations is a widely held one - although, as we discuss in Section [3.1.2](#), the forms and extent of such influence remain a matter of some dispute. Nonetheless, the House of Lords [Select Committee on Communications \(2008, p. 7\)](#) has concluded that 'owners can and do influence the news in a variety of ways [...] They are in a position to have significant political impact'. In this context, the committee took a clear view that patterns of media concentration in the UK serve to enhance 'the risk of disproportionate influence':

'In the United Kingdom, the national newspaper industry is run by eight companies - one of which has over 35% of the national newspaper market. The regional and local press has seen a particularly marked concentration of ownership where four publishers now have almost 70% of the market share across the United Kingdom. Radio news is dominated by the BBC, which accounts for over 55% of radio listening and the commercial radio sector is dominated by four companies which have a 77% share of the commercial radio market. National television news in the United Kingdom is produced by three companies: the BBC, ITN and BSkyB. There may now be many new channels but only these three companies produce national content. At the same time there have been increasing levels of cross-media ownership' ([Select Committee on Communications 2008, p. 7](#)).

The evidence collated by the [Select Committee on Communications \(2008\)](#), which we summarise below, provides a valuable overview of the scale of media concentration in the UK on a sector by sector basis. The committee's forensic analysis, which we have updated in the light of developments since 2008, also offers significant insight into the growing extent of cross-media ownership. There are, however, some genuine difficulties with seeking to measure media plurality in this way, as we note following our discussion of the evidence.

The extent of concentration in the UK newspaper industry is revealed in Tables 3.1b and 3.1c. Both the national and regional newspaper markets exhibit high levels of ownership concentration and are effectively oligopolistic in nature. As Table 3.1a shows, the national newspaper market in the UK is dominated by four major players, each of which owns multiple titles. News International is the largest of these groups, with 35.5 per cent of all newspaper circulation in 2008, derived from its ownership of The Times, the Sunday Times, the Sun and the now defunct News of the World. Trinity Mirror, publisher of the Daily and Sunday Mirror and a number of other titles, accounted for 20.3 per cent of circulation in 2008, its position bolstered by its portfolio of Sunday titles. Meanwhile, the circulation of the Daily Mail and Mail on Sunday were sufficient to secure a 19.3 per cent market share for Daily Mail General Trust. Finally, Northern and Shell, owners of the Star and Express titles (Daily and Sunday), accounted for a further 11.9 per cent of circulation in 2008. As the smallest of the 'big four', Northern and Shell could still boast a market share almost as great as the combined 13.1 per cent claimed by the remaining four publishers, who have seven national titles between them.

Table 3.1b: Publishers of major UK national newspapers (daily and Sunday titles), 2008

Publisher	National newspaper titles	Total national market share (% circulation)
News International (a wholly owned subsidiary of News Corporation plc)	The Times; Sun; The Sunday Times; News of the World (1)	35.5%

## Democratic Audit

Trinity Mirror	Daily Mirror; Sunday Mirror; The People; Daily Record; Sunday Mail	20.3%
Daily Mail and General Trust	Daily Mail; The Mail on Sunday	19.3%
Northern and Shell	Daily Express; Daily Star; Sunday Express; Daily Star Sunday	11.9%
Telegraph Media Group	The Daily Telegraph; The Sunday Telegraph	6.1%
Guardian Media Group	The Guardian; The Observer	3.4%
Independent News & Media	The Independent; The Independent on Sunday	1.8%
Pearson	Financial Times	1.8%

Source: [Select Committee on Communications \(2008, pp. 42-5\)](#).

Note: (1) News International opted to close the highly profitable *News of the World* in July 2011 in response to the phone-hacking crisis (see Case Study [3.1g](#)).

Similar patterns of concentration are evident with regard to the publishers of regional newspaper titles. In 2008, five publishing groups accounted for 831 of the UK's regional titles between them, representing a 70 per cent combined market share by circulation. As Table 3.1c illustrates, the largest of these groups, Trinity Mirror, was responsible for a 16.7 per cent market share in 2008, followed closely by Newsquest Media Group (14.4 per cent), Associated Newspapers (13.5 per cent), Johnston Press (13.2 per cent), and Northcliffe Media (11.8 per cent). Trinity Mirror's acquisition, in February 2010, of the regional titles previously held by the Guardian Media Group has further boosted its market share, to around 20 per cent of circulation.

Table 3.1c: Major publishers of UK regional newspapers, 2008

Publisher	Key titles	Number of titles	Combined weekly circulation (m)	Total group market share (based on circulation)
Trinity Mirror plc	Birmingham Post; Coventry Evening Telegraph; Liverpool Echo; Western Mail; Newcastle Sunday Sun	185	11.2	16.7%
Newsquest Media Group Ltd (wholly owned subsidiary of Gannet plc).	The Argus; Northern Echo; The Herald	215	9.7	14.4%
Associated Newspapers (owned by DMGT plc)	Evening Standard; Metro; London Lite	13	9.1	13.5%
Johnston Press plc	The Scotsman; Yorkshire Post; Lancashire Evening Post; Halifax Courier	283	8.8	13.2%
Northcliffe Media Ltd (owned by DMGT plc)	Nottingham Evening Post; Leicester Mercury; Western Daily News	135	7.9	11.8%
Guardian Media Group (1)	Manchester Evening News; Stockport Times; Macclesfield Express; and Rochdale Observer	43	2.6	3.9%
News International Newspapers	The London Paper	1	2.4	3.5%
The Midland News Association	West Midlands Express and Star; Shropshire Star	19	2	2.9%

DC Thomson & Co Ltd	Aberdeen Evening Express	6	1.9	2.8%
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**Notes:** (1): The Guardian Media Group sold all of its regional titles to Trinity Mirror plc in February 2010

**Source:** [Select Committee on Communications \(2008, pp. 47-8\)](#).

Given our observations in the introduction to this section about the nature of the UK's dual media system, it is unsurprising that the market for television news is very differently structured to that for the press. As a legacy of public service broadcasting requirements, the total number of television news providers in the UK is restricted, with two broadcasters, BBC and ITV, accounting for a combined total of almost 90 per cent of total news viewing. As Table 3.1d illustrates, the BBC is by far the most dominant player in TV news, with 60 per cent of total viewing in 2006. Meanwhile, despite the widely acknowledged, and often acclaimed, content of their coverage, Channel 4 could only boast a 4.5 per cent share of news viewing in 2006. As a relatively new entrant, BSkyB has also struggled to take significant market share away from the principal public service broadcasters, in particular the BBC. However, while these viewing patterns do suggest very strong market concentration in television news, it would be a mistake to infer a lack of media pluralism from this market profile. As Hanretty et al. (2011, p. 1) note, the BBC is characterised by considerable internal pluralism whereby it 'broadcasts or otherwise conveys a wide range of diverse viewpoints on important political and social controversies of the day'. The same authors note that there are clear arrangements in place to assess whether the scale of the BBC's operations risk 'crowding out' private investment in broadcasting.

**Table 3.1d: Television news broadcasters and producers**

Broadcaster	Share of UK TV news viewing (1)	Major shareholders
BBC	60.4 % (2)	Public Corporation established by Royal Charter.
ITV plc	26.8% (3)	The largest shareholder is BSkyB (7.5%). (5)
Channel 4	4.50%	Established by statute as a public corporation.
Five	2.80%	Wholly owned by Northern and Shell.
BSkyB	4.90%	News Corporation (39%)
ITN	N/a (4)	ITV (40%), Thompson Reuters (20%), Daily Mail & General Trust (20%) United Business Media (20%)

Notes: (1) Viewing shares are for October 2006; (2) BBC's viewing share breaks down as follows: BBC1—50.6%; BBC2—4.6%; BBC News—5.2%; (3) ITV's news viewing share relates to ITV1 only; (4) ITN makes national news for ITV and Channel 4; (5) From December 2006 to Jan 2010, BSkyB had a 17.9% stake in ITV.

Source: [Select Committee on Communications \(2008, pp. 50-1\)](#), with details updated for BSkyB's shareholding in ITV and for ownership of Five.

Similar patterns of market concentration are evident in radio broadcasting, with the BBC accounting for 55.5 per cent of all radio listening in the last quarter of 2011 (see Table 3.1e). While commercial radio broadcasters make up the remaining 44.5 per cent of audience share, only two other radio groups, Global Radio and Bauer Radio, account for 10 per cent or more of total radio listening, despite some recent consolidation (in June 2008, Global Radio completed a £375m takeover of GCap Media plc, increasing its market share of all radio listening from five to 16 per cent). The BBC's share of listening is comprised of multiple outlets, including five principal UK networks, separate networks for Scotland, Wales and Northern Ireland, and 40 local stations in England. Again, the BBC's content is characterised by internal pluralism, not only with regard to ensuring the expression of a range of political views, but also in the diversity of content provided across BBC Radio as a whole.

**Table 3.1e: Radio news broadcasters: listening share and ownership**

Radio Group	Share of total radio listening	Major shareholders/owners
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(2011)		
BBC Radio	55.5% (1)	Public corporation established by Royal Charter.
Global Radio	16.30%	UK private limited company and wholly owned subsidiary of GRG. Tabor family trusts indirectly held 87.7% shares in GRG in 2008. The remaining approximately 12.3 % of GRG's shares are held by the Global Radio Directors.
Bauer Radio	10.40%	Bauer Radio Ltd is the wholly owned subsidiary of German private company, H Bauer.
GMG Radio	4.50%	Wholly owned subsidiary of Guardian Media Group (owned by the Scott Trust).
UTV Radio (Inc. TalkSport)	3.20%	Wholly owned subsidiary of UTV Media (a UK plc)
Absolute Radio	1.10%	Times Infotainment Media Ltd (a wholly owned subsidiary of Times of India Group).

Notes: (1) BBC's listening share comprises 46.6% from national networks (Radio 1, 2, 3, 4, 5 and 6) and 8.9 per cent local radio; 2) Absolute Radio was formerly known as Virgin Radio

Source: [Select Committee on Communications \(2008, pp. 53-4\)](#), with details updated for Global Radio following its takeover of GCap Media plc in 2008; for Absolute Radio following its rebranding in 2008; and for all radio listening shares using [Rajar quarterly listening figures](#) from December 2011.

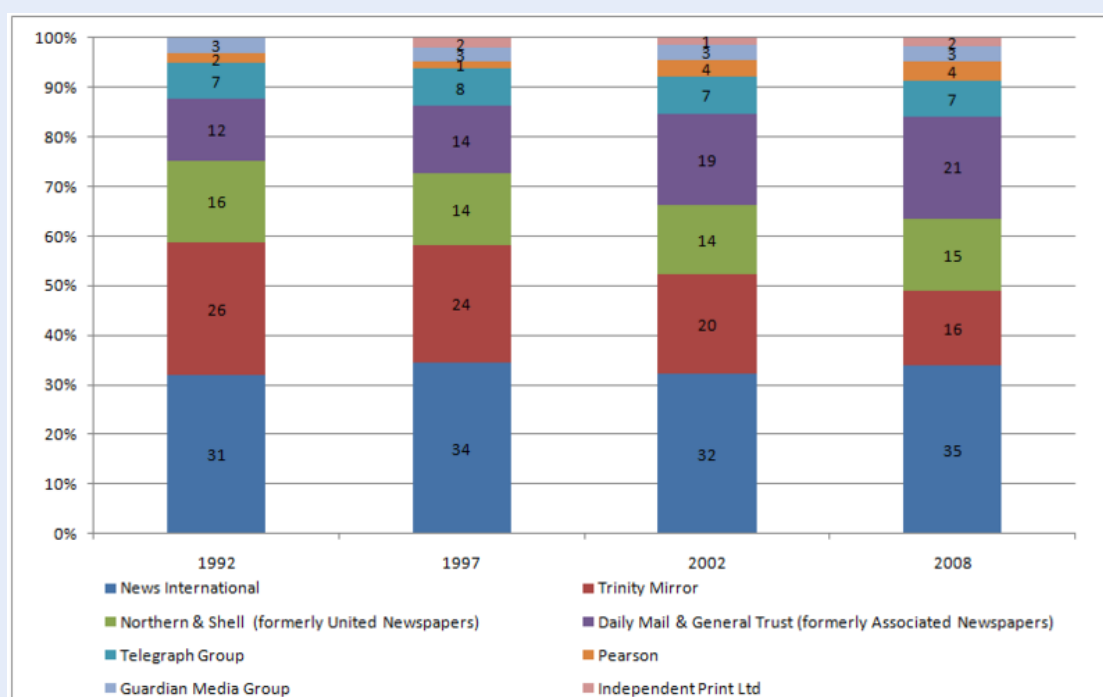
Aside from market concentration within each media sector, the ownership details contained in Tables 3.1b to 3.1e also reveal numerous examples of cross-media ownership. Among the most significant instances of overlapping ownership across media sectors are the following:

- Trinity Mirror, which has a 20 per cent share of UK newspaper circulation, is also the largest UK regional newspaper publisher (See Table 3.1c). Trinity Mirror currently has an estimated 23 per cent share of regional newspaper circulation after acquiring GMG Regional Media from the Guardian Media Group in February 2010 ([Financial Times, 2010](#));
- Daily Mail and General Trust, which has a 19.3 per cent share of national newspaper circulation, has held a 20 per cent stake in ITN, which makes news for ITV and Channel 4, since 1996 (see Table 3.1d);
- News Corporation, which accounts for over one-third of the circulation of the UK's national press via its News International subsidiary, also owns a 39 per cent controlling stake in BSkyB (see Table 3.1d). News Corporation launched a bid to acquire full control of BSkyB in 2010, which was close to agreement before it was withdrawn in July 2011 in the wake of the phone hacking scandal (see Case Study 3.1d);
- BSkyB owns a 7.5 per cent share in ITV1 (in December 2006, the company acquired 17.9 per cent of shares in ITV1, but was ordered by the court of appeal in January 2010 to reduce its stake to a maximum of 7.5 per cent) (see Table 3.1d);
- Northern and Shell acquired Five Group, which owns Channel 5, from RTL in July 2010 (see Table 3.1d);
- Guardian Media Group (owned by the Scott Trust), has a 3.4 per cent share of UK national newspaper circulation and also owns GMG Radio, which has a 4.5 per cent share of all radio listening.

While the above analysis points to significant evidence of market concentration and cross-ownership in the principal media markets, it is important to contextualise this evidence in three ways. First, there is nothing particularly new about media concentration in the UK. Second, the UK is far from exceptional in exhibiting such concentrations of media ownership. Third, the most significant contemporary danger to media plurality, particularly in the national and regional newspaper sectors, is arguably not the economic strength of the principal market players, but rather the extreme economic vulnerability of individual media outlets and organisations.

The dominance of a relatively small number of media groups has been evident in the UK for several decades. As Figure 3.1c shows, the combined market share of the four largest publishers of UK national newspapers (currently News International, Trinity Mirror, Northern and Shell and Daily Mail and General Trust) has remained virtually unchanged since 1992, at about 85 per cent. The single most dominant newspaper group, News International, has maintained a consistent market share, by circulation, of about one-third of the total. Similarly, the share of circulation accounted for by Northern and Shell (formerly United Newspapers) has remained constant at around 15 per cent. The most significant shift has been in the relative position of the two other largest newspaper groups, Trinity Mirror and Daily Mail and General Trust, within the context of the continued market dominance of the 'big four' newspaper groups. Trinity Mirror was the biggest loser in this process, seeing its market share drop from 26 to 16 per cent from 1992 to 2008. The biggest gainer was, without doubt, Daily Mail and General Trust, whose market share rose from 12 to 21 per cent over the same period.

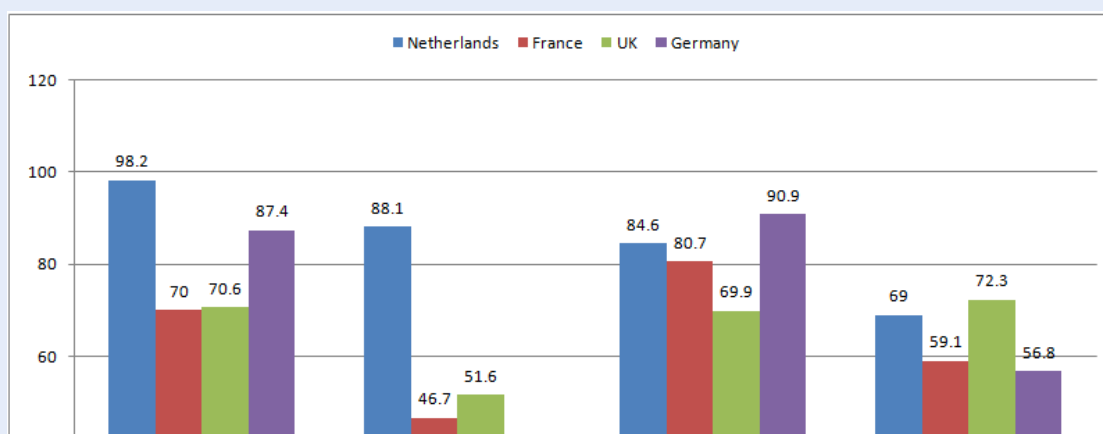
Figure 3.1c: Market share of UK national daily newspaper market (%), by ownership group, selected years, 1992-2008.



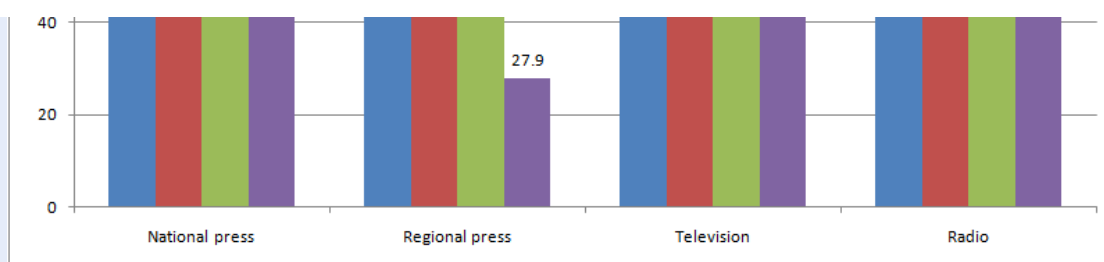
Sources: Marsh (1993); [Co-ordinating Committee for Media Reform \(2011\)](#)

Concentrated ownership is not only a well-established feature of media markets in the UK; the same pattern is very much in evidence in most, if not all, established democracies (Doyle, 2002; [Ward, 2004](#); [Just, 2009](#)). Indeed, in comparison to other west European media economies, the UK can be argued to have relatively low levels of ownership concentration. In his study of media concentration in ten European countries, [Ward \(2004\)](#) calculated the combined market share taken by the three largest players, which he terms the 'C3 calculation', in each of the four main media markets (national press, regional press, television and radio). Based on these calculations, the UK was ranked third out of five countries for market concentration in which national newspaper markets can reasonably be said to exist, and fifth out of 10 countries with regard to concentration in the regional newspaper market. With regard to broadcasting, where linguistic sub-markets in Switzerland and Belgium increased the total number of cases to 13, the UK was found to have the lowest market concentration in television and was ranked sixth out of 13 for market concentration in radio. Figure 3.1d compares Ward's C3 calculations for the UK and the three other countries in his study for which measures could be derived for all four media sectors. As the graph shows, concentration of media ownership in the UK is significantly below that found in the Netherlands and is by no means out of line with the levels in France or Germany.

Figure 3.1d: Market concentration in the principal media sectors in four European countries (% of market share taken by largest three players).



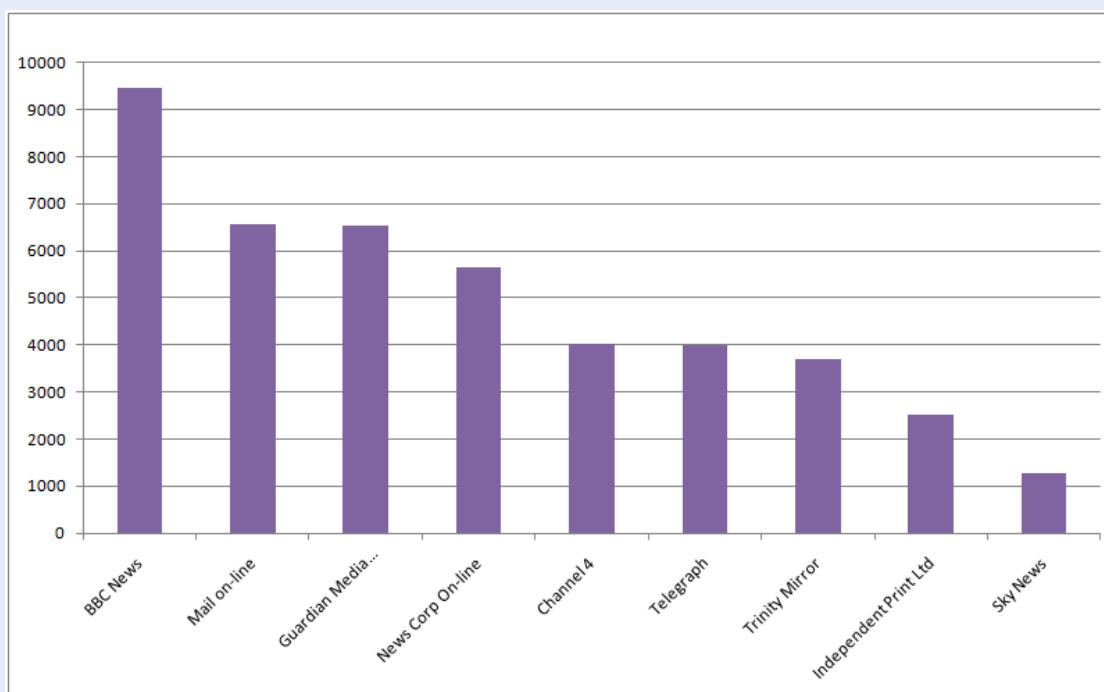
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Source: Collated from [Ward \(2004\)](#)

The extent of market concentration and cross-media ownership in press and broadcasting are, however, only part of the dynamic impacting on media pluralism. Changes in communication technologies and formats are also playing a crucial role particularly, although by no means exclusively, with regard to the print media. Newspapers and broadcasters have increasingly embraced the internet as a medium over the past decade and a half. In doing so, media outlets have sought to benefit from the opportunities the web offers for augmenting print or broadcast content and for expanding their audience reach. A number of UK media organisations have been hugely successful in realising these objectives. As Figure 3.1e shows, the BBC News website was visited by just under 9.5 million unique web browsers in the UK in December 2011, making it easily the most-visited news website. More striking, perhaps, are the web visits recorded by both the Guardian and the Daily Mail websites, both of which secured around 6.5 million UK visitors in December 2011. The Guardian's position as one of the leading UK news websites is especially noteworthy in view of its modest 290,000 print circulation. Yet, while all newspapers have sought to re-position themselves, with varying degrees of success, by offering both print and digital content, they have also struggled to find a way of compensating for declining circulations and print advertising with sufficient income from their online offerings. As we detail in Section 3.1.2, both the national and regional press appear to be locked into a precipitous decline, which has accelerated rapidly since 2008. The threat to media plurality in regional news is already highly apparent, and it is widely assumed to be only a matter of time before one or more of the UK's principal 'quality' national newspapers ceases to exist.

Figure 3.1e: Unique UK visitors (web browsers) to principal media sites, December 2011 (000s).



Source: [UKOM \(2012\)](#)

With the re-ordering of the media market posing particularly stark challenges to the business models of most national newspapers, vertical and horizontal integration has become increasingly common as media owners attempt to sustain loss-making outlets. This process of

concentration has, moreover, been facilitated by governments and regulators moving to relax existing rules about cross-ownership and market share, over a number of decades, in an avowed attempt to preserve media plurality ([Humphreys, 2009](#)). In addition, the associated dynamics of media convergence have led policy-makers in the UK and other established democracies to take the view that new approaches are required, combining integrated regulation with a relaxation of media ownership rules ([Just, 2009](#)). As in the USA, Germany, Austria and elsewhere, media policy debate in the UK from 2000 onwards began to reject previous assumptions that sector-specific controls were the best means of preventing media concentration and promoting media plurality. Instead, the view was increasingly taken that new legal frameworks would be required in which regulations relating to ownership would be scaled back, with greater competition becoming the protector and driver of media plurality. At the same time, the role of regulators would become one of actively monitoring media plurality via 'indices of concentration' or 'plurality tests' and proposing action, where necessary, to protect the diversity of the media ([Just, 2009](#)). The reforms introduced by the Communications Act 2003 (see Case Study 3.1a) are an archetypal example of these wider international developments in media regulation.

There can be no doubt that the News Corporation bid to take full control of BSkyB highlighted significant weaknesses in the framework introduced by the Communications Act 2003, as well as unresolved difficulties about how media plurality should best be defined, measured and protected (see Case Study 3.1d). After the News Corporation bid was withdrawn, the secretary of state for culture, media and sport, Jeremy Hunt, wrote to Ofcom in October 2011 asking the regulator to assess the options for measuring plurality across different media and to submit its recommendations to the Leveson Inquiry (see the Introduction to this section) by June 2012. Among other matters, Ofcom was asked to assess whether it was practical or advisable to set limits based on market shares; what role websites should play in assessing media plurality; and how the BBC's presence should be factored into any assessment of plurality. As part of its review of media plurality, Ofcom invited comments on the questions posed by the secretary of state, prompting one respondent to ask whether 'Ofcom may now be acknowledging that the methodology it used in judging the BSkyB case was inherently deficient' ([Elson, 2011](#)).

Taking just two of the submissions to the Ofcom plurality review underlines how contested concepts of plurality are within the media sector. The [Guardian Media Group \(2011\)](#) suggests the News Corporation bid for BSkyB, together with developments such as Northern and Shell acquiring Channel 5, the changing ownership of several national newspapers and the closure of regional press titles, underline the 'clear need to review both media ownership rules and processes by which public interest concerns are defined and addressed'. The [Guardian Media Group \(2011\)](#) also stresses that any failure to take account of the role of online media would 'exacerbate current problems'. By contrast, [News Corporation's \(2011\)](#) submission to the review contends that the regulatory framework put in place by the Communications Act 2003 'provides adequate protection for plurality' and that 'markets are working [...] the clear trend since 2003 has been towards a greater plurality of voices available to UK audiences and a more plural consumption of news'. In addition, [News Corporation \(2011\)](#) contends that since competition offers the best guarantee of plurality, the BBC's dominance in broadcast and on-line news should be reviewed, and that it would be a mistake to set limits on market share for commercial media providers.

One issue raised by such contrasting perspectives, as [Elson \(2011\)](#) elaborates, is that there is simply no consensus about any of the measures Ofcom uses to measure media plurality, whether by 'reach', 'news consumption', 'references' or 'main source of news'. Just as importantly, there has been a highly problematic tendency for the debate to be couched in terms of market plurality, without any recognition of the dynamics of political influence. There are, however, signs that the regulatory debate is finally shifting to consider how economic power in media markets may give rise to political influence. Indeed, Ofcom's chief executive, Ed Richards, has expressed the view to the Leveson Inquiry that the plurality test was deficient on the grounds that it did not consider the possible political influence a company could exercise by virtue of its market position. In doing so, Richards appeared to give belated recognition to the fact that media ownership can be a source of significant political power:

'we're obviously going to look at the issue of measurement and how you assess plurality from the perspective of things that you can actually quantify [...] the other dimension which we will also consider in light of the events of the last 12 or 18 months [...] which is also at the heart of people's concerns about plurality, is the risks around concentration of ownership and media influence [...] we can now see there is another analysis, which is what influence in the political process might I have by virtue of a control of particular media assets' ([Richards, 2012, pp. 59-60](#)).

### ***Independence from government***

On the other side of the coin from the debate about the potential political power of those who 'own the news' is the question of the extent to which media outlets operate independently of government. Given our above observations about the nature of the press in the UK, we have very few concerns indeed about the degree of its independence. However, the question of the autonomy of UK media organisations from the government does matter in one very important respect. Given the character of the UK's 'dual media' system (see the introduction to this section), as well as the dominant position occupied by the BBC as a public service broadcaster, the potential for government interference in broadcasting has been widely noted (Beetham et al., 2002; Wring, 2006; Hanretty, 2011). As Wring (2006, p. 243) notes, politicians have shown an increasing tendency to 'appease rather than confront editors and proprietors' in the print media. By contrast, the nature of the regulatory regime requiring public sector broadcasters to report current affairs impartially has meant that elected politicians have been far

more willing to challenge these media outlets. Given its hugely dominant role in news broadcasting, it is the BBC that has been subject to the vast bulk of these challenges.

The BBC's independence from government has been hard-won, developing from the struggle its predecessor, the British Broadcasting Company (1922-27) had to secure governmental permission to include any coverage of political matters in radio broadcasts. Following its establishment as a public corporation under a royal charter in 1927, the BBC's first director general, John Reith, was able to progressively expand the BBC's political coverage as a result of its development of notions of impartiality and expertness. Over time, these values became the basis for codes governing output and the foundation for high levels of public confidence, both domestically and internationally, in the accuracy of the BBC's reporting and the balance of its coverage (Hanretty, 2011). However, with these principles underpinning the BBC's development into 'the largest, most important and most influential PSB in the world' (Hanretty, 2011, p. 89), conflict between the government and the BBC has been virtually inevitable. Briggs (1979) identified ten significant cases of government interference in the BBC from 1934 to 1972, while Hanretty (2011) points to the particularly tense period of government-BBC relations from 1984 to 1986, associated with broadcasts such as *Maggie's Militant Tendency* and *Real Lives*. Such moments of conflict have frequently prompted the BBC to exercise caution. As we noted in our last full Audit, 'though fiercely guarding its journalistic independence most of the time, there have been instance of BBC self-censorship throughout the BBC's history' (Beetham et al., 2002, p. 195; see also Case Study 3.1c). The basis for this caution and periodic self-censorship is not difficult to identify, given the potential influence of the UK government over its operations and funding. As one recent account notes:

'The BBC has often felt particularly vulnerable to government pressures, not least because the government is responsible for appointing members of the BBC board of governors, setting increases in the level of the television licence fee and, crucially, periodically approving renewal of the BBC Charter' (Wring, 2006, p. 243).

In the period since our last Audit, the relationship between the BBC and the Labour governments of 1997-2010 has raised particularly significant issues about the independence of the media from government interference. New Labour's strategies of media management including, where required, robust media rebuttal, were masterminded by Alastair Campbell and Peter Mandelson in opposition, as a means of limiting the political damage which might be done to Labour as a result of a hostile press. Yet, once elected, Labour's concern in government to 'spin' its communications and control media messaging reached new heights (Lloyd, 2004; Wring, 2006). Moreover, the BBC became an increasingly important focal point for New Labour's efforts at media management. These issues came to a head in the shape of the so-called 'Gilligan affair', perhaps the most serious case of conflict between the government and the BBC since the corporation was founded. The affair stemmed from a broadcast featuring the BBC's defence correspondent, Andrew Gilligan in May 2003, and ultimately resulted in a judicial review which exonerated the government and prompted the resignations of both the director general of the BBC, Greg Dyke, and its chairman, Gavyn Davies (for full details, see Case Study 3.1c).

However, the Gilligan affair was arguably just the most dramatic manifestation of a deeper shift in relations between the government and the BBC during New Labour's period in office, which happened to be centred on the BBC's coverage of the government's highly controversial decision to go to war in Iraq. In his autobiography, Dyke (2004) revealed that Tony Blair had sent several letters to himself and Gavyn Davies prior to the Gilligan affair complaining about the BBC's coverage of Iraq. Similarly, [Hanretty \(2006\)](#) notes that 'government pressure on the BBC was at least as insistent before Gilligan as after [...] Campbell actually wrote more letters to the BBC in the three weeks surrounding the war in Iraq than he or other Labour MPs did in the three weeks after Gilligan's broadcast'. In this particular instance, it appears that the aggressive stance adopted by Labour backfired. As Case Study 3.1c documents, the legacy of the Gilligan affair was to prove far more negative for the government than it did for the BBC. The Gilligan affair is perhaps best interpreted as a warning sign, rather than as evidence of the BBC's independence being diminished. As Hanretty (2011, p. 123) suggests, while such cases 'call into question the degree of the BBC's independence, we should not let this overshadow the realization that the BBC is amongst the more independent PSBs'.

### Case Study 3.1c: The Gilligan affair

On 24 September 2002, during the run-up to the war in Iraq, the government published a dossier on Iraq's weapons of mass destruction (WMD) prepared by the Joint Intelligence Committee (JIC). The document, which carried a foreword by Tony Blair and was published on the day that parliament was recalled to debate its contents, alleged that Iraq possessed chemical and biological weapons and that it had recommenced its nuclear weapons programme. In addition, the dossier asserted that some of these WMD were capable of being launched at 45 minutes' notice. The publication of such a JIC assessment prior to war was unusual. As Blair put it in his foreword to the dossier 'it is unprecedented for the Government to publish this kind of document' (Blair, 2003 p. 3). This innovation had little or nothing to do with the government's desire to promote transparency. Rather, it can be argued that 'the dossier was a form of propaganda intended to build or consolidate support for the government's policy' ([Humphreys, 2005, p. 156](#)). That said, it was arguably also highly unusual that such a high-profile government publication was not finalised within Downing Street, particularly given the political context at the time.

Despite widespread public opposition to military intervention in Iraq, the dossier attracted little controversy upon its publication. Indeed, following media coverage in the wake of its publication, in which the 45-minute claim featured significantly, little further reference was made to the dossier until February 2003, when a second dossier, prepared by the Communications Information Centre within the Foreign and Commonwealth Office, was published. This second dossier proved to be a significantly less credible document, not least because it included substantial material reproduced without proper attribution of sources, including a doctoral thesis which had been posted on the internet (Wring, 2006). In light of these reservations about what was to be dubbed the 'dodgy dossier', concerns about the reliability of the earlier 'September dossier' also began to be expressed. Indeed, as it became increasingly clear, following the US-led military invasion of Iraq in March 2003, that Iraq did not possess weapons of mass destruction, growing scepticism was expressed about the contents of both dossiers. There was also a common tendency to conflate or confuse the February and September dossiers ([Humphreys, 2005](#)).

On 29 May 2003, with the search for WMD continuing, BBC Radio 4 broadcast an item on its flagship *Today* programme in which the BBC's defence correspondent, Andrew Gilligan, told presenter John Humphrys about high-level claims that the government had instigated significant changes to the September dossier shortly before its publication. Specifically, Gilligan reported that he had been told by 'one of the senior officials in charge of drawing up [the September] dossier' that Downing Street had 'ordered it to be sexed up, to be made more exciting and ordered more facts to be [...] discovered'. During the same feature, Gilligan referred to his source suggesting that the dossier's claim about Iraq being able to launch WMD within 45 minutes had been added at a late stage and that 'the government probably knew that the 45 minute figure was wrong, even before it decided to put it in' (cited in Lloyd, 2004, p. 3). Similar claims that the dossier had been embellished by Downing Street were also made by BBC journalists Gavin Hewitt on the 10 O'clock news on the evening of 29 May 2003 and by Susan Watts on *Newsnight* on 2 June 2003, both of whom had spoken independently to the same source. Perhaps most significantly of all, however, Gilligan also published an article in the *Mail on Sunday* on 1 June, in which he pointed the finger at Alastair Campbell, the prime minister's director of communications and strategy, as the person responsible for 'sexing up' the dossier (Wring, 2006).

On 6 June, Alistair Campbell wrote to the BBC's director of news, Richard Sambrook, challenging the story and demanding an apology. With the BBC initially standing by the story and defending its reporting, Campbell was joined by government ministers and Labour MPs in placing the BBC under concerted pressure about its coverage (Wring, 2006; Hanretty, 2011). Central to these communications was the claim that the BBC had violated its own guidelines by relying on a single source (Hanretty, 2011). As the row escalated, both Gilligan and Campbell were called to give evidence to the Foreign Affairs Select Committee and speculation grew about who the source might be. On 30 June, Dr David Kelly, a weapons expert at the Ministry of Defence, informed his line manager that he was the source. On 9 July, press officers at the Ministry of Defence confirmed Kelly as the source when his name was put to them by newspaper journalists. Kelly was subsequently called to give evidence to the Foreign Affairs Select Committee on 15 July and to the Intelligence and Security Committee on 16 July. On the following day he was found dead in a field near his home, having apparently committed suicide.

On the day after David Kelly's death, the government announced that a judicial inquiry into the matter would be carried out by Lord Hutton, starting in August. When Hutton reported in January 2004 he cleared the government of any wrongdoing and concluded that there were no grounds at all to believe that Kelly's death was anything other than suicide. Hutton did accept that Alastair Campbell, who had stood down from his role as the prime minister's director of communications and strategy in August 2003, had made it clear to John Scarlett, the Chair of the JIC, that the government wanted the document to make as strong a case as possible that Iraq possessed WMD. He also noted that the intelligence purporting to show that Iraq could launch WMD at 45 minutes' notice only came to light in late August 2002 and had indeed been added to the dossier shortly before its publication. However, Hutton nevertheless concluded that the BBC's claims had been unfounded. He took the view that the BBC's editorial system had been defective and also that its management system had been at fault for failing to properly investigate the government's complaints (Hanretty, 2011). On publication of the Hutton report, Alistair Campbell 'made a rather ungracious victory speech [in which] he effectively called for the resignation of four key BBC people: the Chairman, the Director General, the journalist Andrew Gilligan, and [...] John Humphrys' (Barnett, 2006, p. 61). While Humphrys was to survive, there were to be three resignations from the BBC: Greg Dyke as director general, Gavyn Davies as chair of its governing body, and Andrew Gilligan as the journalist who had broken the story.

The Hutton report and the high-profile BBC resignations were far from the end of the story, however. In June 2005, John Humphrys was to comment on the affair in an after-dinner speech at the Communication Directors' Forum, stating that: 'The fact is that we got it right. If we were not prepared to take on a very, very powerful government, there would be no point in the BBC existing - that is ultimately what the BBC is for' (cited in Barnett, 2006, p. 58). These comments subsequently came to light after *The Times* obtained a video of the speech, and ran a two-page feature on 3 September 2005 under the headline 'Radio's king of rude launches another salvo at Labour "liars"'. It transpired that Humphreys' speech had been recorded by Richmond Events, the PR company that had approached the presenter to speak at the event and that, according to Richmond Events, the only possible source of the story was Alastair Campbell, who had managed to obtain a copy of the video (Barnett, 2006).



Views on the Gilligan affair are strongly polarised. Upon resigning, Greg Dyke immediately rejected Hutton's findings and drew strong support from BBC staff. Much of the print media, with the exception of titles owned by Rupert Murdoch's News International, reacted with harsh criticism of the Hutton report and backed the BBC. *The Independent* was particularly forthright, running a front page on which the word 'Whitewash' appeared without any other text or imagery. By contrast, Lloyd (2004) presents the BBC's reporting of the 'sexing up' of the September dossier as a primary exemplar of what has gone wrong with British journalism. In Lloyd's account, Gilligan's report was carelessly introduced and presented, making a grave charge without sufficient basis, and was subsequently defended by the BBC in a manner which was defiant but, at least initially, refused to admit any fault whatsoever on the part of the corporation. Lloyd asserts that it was the sheer strength of the BBC, rather than the facts of the case, which allowed it 'to justify to its critics and to itself a report of huge significance, which broke most of the proclaimed rules of journalistic inquiry' (Lloyd, 2004, p. 8).

While there is unlikely to ever be consensus about who was at fault for the breakdown in relations between the government and the BBC which arose from the episode, it is clear that its impact was felt more keenly by the Blair government than by the corporation. It is widely agreed that the swift decisions of Dyke and Davies to resign were crucial to minimising the damage to the BBC's reputation or independence (Barnett, 2006; Wring, 2006; Hanretty, 2011). By opting to stand down, Dyke and Davies 'ensured the pressure and media coverage remained on Blair, the intelligence services and wider government's conduct' (Wring, 2006, p. 244). While it would appear that the BBC was initially more cautious in its coverage, possibly exercising a degree of 'self-censorship' in the short-term, it seems equally clear that there was no lasting effect on its journalism (Barnett, 2006, p. 61). Meanwhile, opinion polls demonstrated that a clear majority of the British public sided with the BBC rather than the government (Barnett, 2006; Hanretty, 2011). It also seems clear that the perceived one-sidedness of the Hutton report was to damage Labour's performance at the 2005 general election and served to 'crystallise the doubts across various media about Blair's judgement over Iraq' (Wring, 2006, p. 244).

### **Freedom from subordination**

As in our last Audit, we have found no evidence to suggest that the UK media are subject to subordination to foreign governments. However, in an era of globalisation (see Section 4.1.1), it is inevitable that sections of the UK media are under the ownership of multinational corporations or other overseas interests. Since 2009, the Russian billionaire, Alexander Lebedev, has acquired the *Evening Standard*, the *Independent* and the *Independent on Sunday*, and has also launched the *i*, a cut-price daily with a circulation of over 150,000. All of these titles are currently loss-making and there have been no concerns expressed about Lebedev, who is also the owner of Russia's major opposition newspaper, *Novaya Gazeta*, interfering with the editorial independence of the titles.

Of more substantial concern, however, is the extent of News Corporation's media assets in the UK. Headquartered in New York, News Corporation is the second largest global media conglomerate by revenue and has extensive media assets in the USA, Australia and the UK in particular. News Corporation owns, among others, the *New York Post*, the *Wall Street Journal*, and Fox Broadcasting, as well as approximately 150 national and regional newspaper titles in Australia. It would be misleading, of course, to assume that either News International's newspaper titles in the UK or News Corporation's shareholdings in BSkyB constitute automatic evidence of these outlets being subordinate to multinational corporations. The extent to which the Murdoch family, or News Corporation's senior executives, seek directly to influence the editorial line of newspapers or broadcasters controlled by the company is difficult to establish. In the case of News Corporation's Australian interests, for instance, it has been suggested that editorial influence on the part of the owners is much diminished compared to previous decades (Sawer et al., 2009). Yet, it has also been established that Rupert Murdoch's personal support for the war in Iraq was echoed by all of the 175 newspaper titles which he controlled globally in 2003, leading Roy Greenslade to note that not a single editor 'has dared to croon the anti-war tune. Their master's voice has never been questioned' ([Guardian, 2003](#)).

Perhaps the more significant point with regard to News Corporation is that Murdoch's vast international media empire has been built upon, and continues to disseminate, a particular set of social and political values, which might be describe as broadly neo-liberal in character. The influence of Rupert Murdoch's political views on the editorial line of *The Australian* newspaper between 1976 and 1983, which played 'a pioneering ideological role' in 'changing and challenging the prevailing post-war consensus', has been catalogued by [McKnight \(2003, p. 356\)](#). During the same time period, Murdoch's close relationship with Margaret Thatcher in the UK, which [McKnight \(2003, p. 348\)](#) describes as 'mutually beneficial and based on a shared outlook', saw his acquisition of *The Times* and *The Sunday Times* in 1981 also becoming an apparent mechanism for the propagation of his own particular set of political values. According to Andrew Neil, who became editor of *The Sunday Times* in 1983:

'Rupert expects his papers to stand broadly for what he believes: a combination of right-wing Republicanism from America mixed with undiluted Thatcherism from Britain [...] the resulting potage is a radical-right dose of free market economics, the social agenda of the Christian Moral Majority and hardline conservative views on subjects like drugs, abortion, law and order and defence' (Neil, 1996, cited in [McKnight, 2003, p. 349](#)).



Rather than amounting to subordination to multinational companies, it might be argued that News Corporation's extensive media holdings have led to a range of media outlets in the UK and elsewhere becoming subordinate to a particular ideological viewpoint over a period of several decades. It is within this context that the controversy surrounding News Corporation's bid to take full control over BSkyB (see Case Study 1.3d) is best understood.

### Case Study 3.1d: News Corporation's proposed acquisition of BSkyB

On 15th June 2010, News Corporation, a minority shareholder in BSkyB, announced its plans to purchase the remaining 60.9 per cent of shares it did not already own, in a deal estimated to be worth £7.8 billion. Although the proposed deal stalled over differences in the share valuation, negotiations were set to resume once News Corporation had gained regulatory clearance. On 3rd November 2010, News Corporation notified the European Commission of the proposed transaction under the EU Merger Regulation. The following day, Vince Cable as the secretary of state for business, innovation and skills, referred the proposed acquisition to Ofcom and to the Office of Fair Trading ([Barasso and Long, 2011, pp. 267-68](#)). The intervention by Vince Cable was prompted by complaints from News Corporation's competitors in the UK, including the BBC, Channel Four, the *Daily Telegraph*, the *Daily Mail*, the *Guardian* and the *Daily Mirror*, that the deal should be blocked on the grounds that it could reduce media diversity and plurality in the UK. Nevertheless, on 21st December 2010, the European Commission unconditionally cleared the proposed acquisition with regards to the competition aspects of the deal, but highlighted the unresolved issues of the impact on media plurality in the UK, which was beyond its remit ([European Commission, 2010](#)).

During the European Commission's consultation, Vince Cable was secretly recorded by undercover *Daily Telegraph* journalists making disparaging remarks about the coalition government. In further revelations, released on the day of the European Commission's announcement, Cable was also reported to have made personal remarks about the proposed acquisition, saying that he had affectively 'declared war on Mr Murdoch [Rupert Murdoch, chairman and chief executive of News Corporation] and I think we're going to win' ([Daily Telegraph, 2010a](#)). Following his comments about News Corporation, Cable was stripped of responsibility for media competition, which was consequently transferred over to Jeremy Hunt, secretary of state for culture, olympics, media and sport.

In January 2011, Ofcom's report was released. Its conclusion stated that:

'it reasonably believes that the proposed acquisition may be expected to operate against the public interest since there may not be a sufficient plurality of persons with control of media enterprises providing news and current affairs to UK-wide cross-media audiences [...] there is, therefore, a need for a fuller second stage review of these issues by the Competition Commission to assess the extent to which the concentration in media ownership may act against the public interest' ([Ofcom, 2010, p. 15](#)).

Moreover, the report by the Office of Fair Trading, released at the same time, recommended that:

'the Secretary of State has jurisdiction to make a reference to the CC [Competition Commission] under Article 5(3) of the Order to address any media plurality concerns if the Secretary of State believes that the conditions set out in Article 5(3) of the Order are satisfied' ([Office of Fair Trading, 2010](#)).

In response to Ofcom's and the Office of Fair Trading's concerns, News Corporation offered undertakings in lieu of reference to the Competition Commission that would require Sky News to be 'spun off' to a separate company, Newco, independent of News Corporation and BSkyB control. On 3rd March 2011, Jeremy Hunt announced to the House of Commons that:

'the independent media regulator, Ofcom, had advised me that undertakings in lieu offered by News Corporation would address the plurality concerns that Ofcom had identified in its report to me of 31 December 2010. I also announced that the OFT considered the undertakings to be practically and financially viable for up to 10 years. In the light of this independent advice, I propose to accept such undertakings instead of referring the matter to the Competition Commission [...] However, I will of course reach a final conclusion on that and other aspects of the undertakings only after the consultation is complete' (cited in [Seely, 2011, pp. 23-4](#)).

On 30 June 2011, following the first consultation in which minor amendments were made to the undertakings in lieu, Jeremy Hunt announced that the measures taken would 'remedy, mitigate, or prevent the threats to plurality' (cited in [Seely, 2011, p. 27](#)) and that, as such, he would accept the proposals after a further consultation. However, throughout 2011, a string of phone-hacking allegations appeared concerning the *News of the World*, a News Corporation publication. These allegations reached a critical point on 5th July,

when the Guardian newspaper published reports that *News of the World* journalists had hacked the phone of murdered schoolgirl Milly Dowler ([Guardian, 2011](#)).

Following a wave of political and public condemnation, the News of the World was closed down on 7th July. As the furore increased, the secretary of state wrote to both the Office of Fair Trading and Ofcom asking each whether 'any new information that has come to light causes you to reconsider any part of your previous advice' ([Hunt, 2011](#)). Any response to the letter was pre-empted when News Corporation announced the withdrawal of the undertakings in lieu, resulting in the secretary of state referring the deal to the Competition Commission. Then on 13 July 2011, News Corporation officially announced the withdrawal of their bid to purchase the remaining shares of BSkyB that they did not already own. During the Commons debate that day, MPs lined up to vent their anger at News Corporation, including former prime minister Gordon Brown, who defended himself from charges that he had been complicit in relinquishing regulatory control at the bequest of News Corporation, by making an impassioned speech, testifying that:

'[i]t is no secret that the 2009 MacTaggart lecture given by Mr James Murdoch, which included his cold assertion that profit not standards was what mattered in the media, underpinned an ever more aggressive News International and BSkyB agenda under his and Mrs Brooks' leadership that was brutal in its simplicity. Their aim was to cut the BBC license fee, to force BBC online to charge for its content, for the BBC to sell off its commercial activities, to open up more national sporting events to bids from BSkyB and move them away from the BBC, to open up cable and satellite infrastructure market, and to reduce the power of their regulator, Ofcom. I rejected those policies' (Hansard, 13 July 2011, column 399).

While News Corporation's bid for BSkyB ultimately failed because of the fallout from the hacking scandal, the charges levelled against News Corporation and some of its senior figures in the days after it abandoned the deal highlight the possibility that the threat to media plurality was significantly underestimated. Although measures were proposed that seemingly resolved the issue, certainly from the perspective of the secretary of state, Ofcom and the Office of Fair Trading, the allegations that emerged after the failure of the bid suggest that methods for assessing potential impacts on media diversity and plurality are far from adequate. In particular, it is clear that Ofcom were unable to provide any clear assessment of the likely future effects of a News Corporation acquisition of BSkyB, either in terms of media plurality or in relation to the broader political implications of a shift in media ownership.

### 3.1.2 Media diversity and accessibility

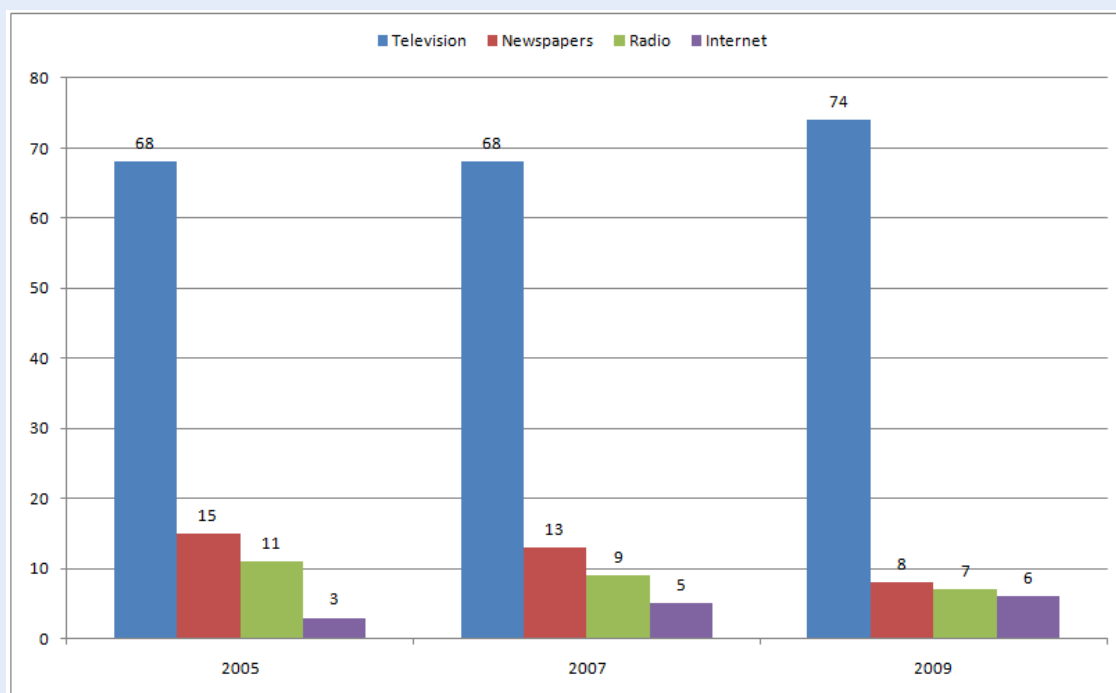
How representative are the media of different opinions and how accessible are they to different sections of society?

The nature of the UK's dual media system has important implications for the extent to which the media is representative of different opinions. As noted in the introduction to this chapter, the British newspaper market is dominated by large national titles which tend to adopt a clear editorial line, favouring one political party over others. By contrast, the broadcast news media are required, as part of their public service broadcasting commitments, to give representation to a range of political viewpoints. Given these contrasts, it is significant that surveys consistently reveal television to be the dominant, and also most trusted, source of news and information about politics. However, the rapid reshaping of the UK's dual media system as a result of digitalisation and media convergence (see Section [3.1.1](#)) also has important implications, both for the balance of opinion in media reporting and for access to the media. The volume of news dissemination via the internet has grown enormously, but its relative importance in overall news consumption appears to be more modest than is commonly supposed. Meanwhile, the decline of newspaper readership has reached a point at which the future of a number of national print titles, and the news websites they sustain, is in serious doubt. Over the short-term, at least, these shifts have served to enhance the relative significance of television as a medium, but they have done so within the context of an overall decline in news consumption.

#### **Patterns of UK media consumption**

Given the contrasting ways in which they provide for a plurality of political opinions, the relative balance of the press and broadcasting in UK news consumption is a significant issue. Surveys show that television is by far the most dominant news medium for UK citizens, and that its importance compared to newspapers and radio has increased since the mid-2000s. In 2009, 74 per cent named television as their main source of news in 2009 - up from 68 per cent in 2005 and 2007 (see Figure 3.1f). By contrast, newspapers were named as the principal source of news by just eight per cent of those surveyed in 2009, down from 15 per cent in 2005. There also appears to be a decline in the relative significance of radio, described by seven per cent as their main news source in 2009, compared to 11 per cent in 2005. Taking a longer view, the shifts are even more dramatic. In 1962, television was cited as the main source of news by 58 per cent of the population, compared to 33 per cent for newspapers and 17 per cent for radio (Eldridge, 1995, p. 44).

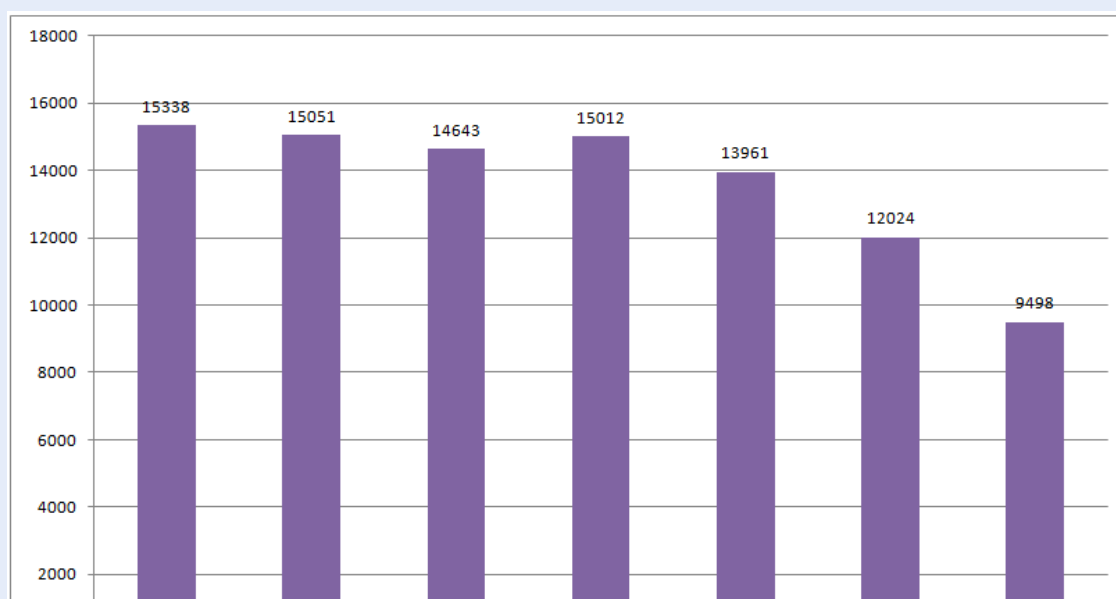
Figure 3.1f: Main sources of news, 2005-09



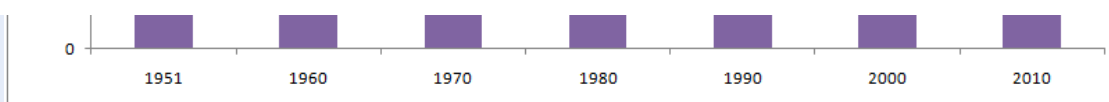
Source: [Ofcom \(2009\)](#)

Figure 3.1f suggests that the growth in the relative significance of the internet as a news medium has so far been relatively modest. In 2009, just six per cent said that the internet was their main source of news - although this represented twice the level reported in 2005, and put it on a par with both radio and newspapers. However, it is likely that the key significance of the rise of the internet as a news medium to date has been its impact on the print sector. As we discuss in Section 3.1.3, while newspapers have been at the forefront of the shift towards new media, they have also been placed under intense pressure by these developments. As Figure 3.1g illustrates, national newspaper circulation has been declining rapidly since the 1990s. Whereas the combined average daily circulation of UK daily newspapers was relatively stable at around 15 million from 1951-1980, it had fallen to 9.5 million by 2010. In the period from 2000-10, every newspaper other than the *Daily Star* experienced a drop in circulation. Declining circulation was most obvious at the *Daily Mirror* (-44 per cent), the *Daily Express* (-31 per cent) and the *Daily Telegraph* (-30 per cent), closely followed by *The Times* and the *Guardian* (both -25 per cent).

Figure 3.1g: Combined circulation of national daily newspapers, UK, 1951-2010 (000)s



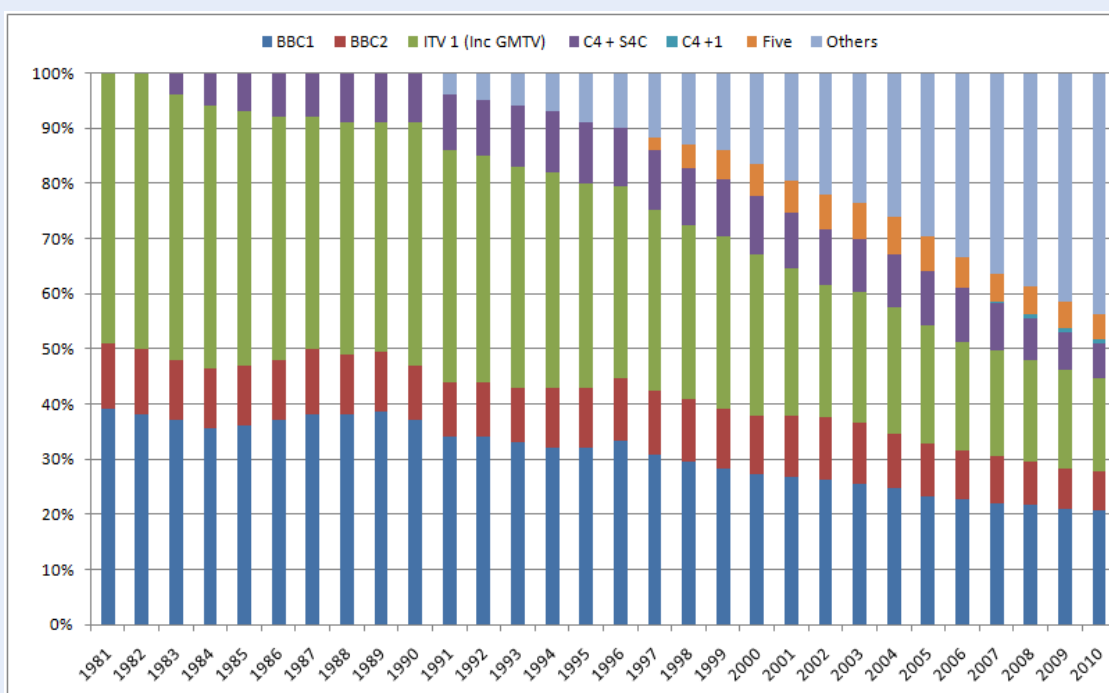
## Democratic Audit



Sources: Calculated from Butler and Butler (2000); [Guardian \(2010\)](#)

Meanwhile, there is clear evidence to suggest that, despite its dominant position, television news viewing is in decline and is becoming increasingly fragmented (Currah, 2009). Figure 3.1h, which shows the trends in overall television viewing (not just news) by channel since 1981 illustrates the overall nature of this audience fragmentation. In 1981, the BBC and ITV accounted for roughly 50 per cent each of all television viewing. During the 1980s, Channel 4 ate into ITV's share of viewing, securing almost 10 per cent of audience share by the end of the decade, with the BBC's overall share remaining at around 50 per cent throughout the decade. However, with the rapid growth of satellite and cable services from the early 1990s, the viewing shares attributed to ITV1 and BBC1 declined dramatically, with BBC2's and Channel 4's viewing figures also being squeezed substantially. By 2010, the combined audience share accounted for by the five terrestrial channels with public service broadcasting commitments represented a little more than 50 per cent of the total. With audience shares fragmenting in this manner, news consumption has unsurprisingly fallen. Currah (2009, p. 23) notes that average annual consumption of television news dropped from 103.3 to 90.8 hours per person in the period from 2001 to 2006. While this decline has since slowed, Ofcom (2011) found that the figure had declined to 88 hours per person per annum by 2010. This decline has affected all terrestrial channels other than BBC1, with ITV1 showing an especially dramatic drop in news viewing (Currah, 2009; Ofcom, 2011).

Figure 3.1h: Annual share of television viewing by channel, 1981-2010



Source: [BARB \(2011\)](#)

### The representativeness of media opinion

There is rarely any significant concern expressed about the extent to which UK news broadcasting is representative of different political opinions. As we note in Section 3.1.1, the BBC's own codes and guidelines have been highly successful in maintaining its reputation for balanced reporting and for ensuring that a platform is provided for a range of political views to be heard. In addition, Section 2.1.3 considers the arrangements for party election broadcasts, and more recently with respect to televised leaders' debates, for which there are clear rules about the allocations to each political party based on their respective levels of electoral support. While there have been occasional controversies, these should not deflect attention from the widespread consensus that the BBC provides impartial and balanced coverage. A survey conducted by [Ipsos MORI \(2008\)](#) found that levels of public trust in the BBC were far higher than those for the media in general and

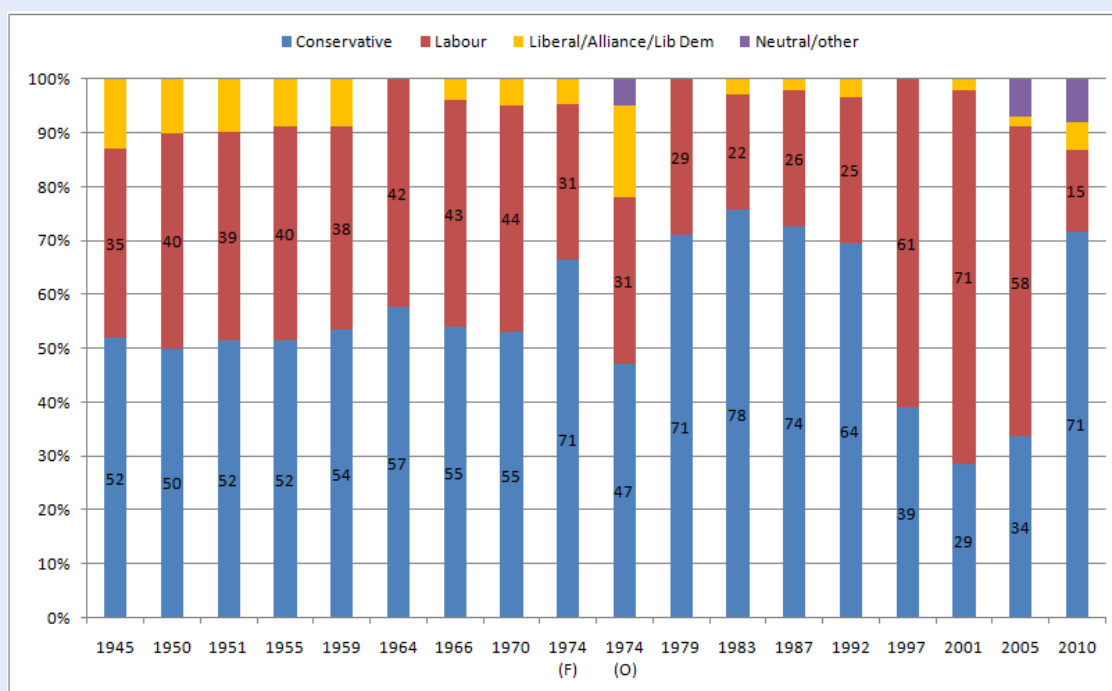
that the BBC was regarded as the most trusted of seven organisations, which included the NHS, the Church of England and the military. We therefore concentrate here primarily on the issue of the balance of political opinion in the UK national press and its potential political implications.

Given the absence of any requirements for individual newspapers to offer balanced news reporting and comment, the range of views on offer in the British press derived largely from the extent to which there is pluralism of ownership and, in turn, the degree to which owners seek to influence editorial direction. As we noted in Section 3.1.1, newspaper ownership in the UK, as elsewhere, is strongly concentrated and there have been widespread concerns expressed about the extent to which this has restricted a plurality of viewpoints. Writing almost two decades ago, Marsh (1993, p. 335) noted that 'the press overwhelmingly supports the Conservative Party'. Likewise, Wright (2000, p. 163) suggests that 'the businessmen and corporations who own newspapers have generally felt their interests coincided with Conservative policies and their editors have reflected this view'. That most newspaper owners should seek to define the political stance taken by their publications is not especially surprising. As Marsh (1993, p. 336) suggests, newspapers are rarely profitable and it is therefore difficult to avoid the conclusion that 'the press barons are in newspapers for power, influence and easy access to the establishment'. Likewise, the mechanisms through which owners can, and do, interfere with or shape content to promote particular viewpoints are not difficult to identify; they range from directly dictating the line a newspaper should follow on particular issues, to appointing senior staff with a shared political outlook, as well as forms of indirect influence over the ethos of the organisation which may prompt journalists to engage in 'self-censorship' (Rowbottom, 2010).

Yet, it would also be misleading in the extreme to assume that the UK press as a whole presents a unified, default pro-Conservative position, as dictated by their owners. The extent to which proprietors interfere with content is entirely unquantifiable, but there are also clear limitations on the extent to which they will be able to do so. The size and complexity of national newspapers and broadcasters, and the competing professional values and political views of journalists, editors and producers ensure that a media organisation represents far more than simply 'the voice of its owner' (Rowbottom, 2010, p. 179). Just as importantly, there is also evidence to suggest that the political affiliations of the UK's national newspapers has become significantly more fluid. With voters increasingly de-aligned from political parties, there is a powerful rationale for the press to follow suit, if only to avoid alienating their own readers (Wright, 2000).

Figure 3.1i shows the partisan orientation of the UK national press, by share of circulation, at general elections from 1945 to 2010. Measured in this way, the Conservatives typically enjoyed 50-55 per cent of press support by circulation, Labour between 38 and 44 per cent and the Liberals 5 to 10 per cent. However, this relatively stable pattern of partisan support was clearly disrupted from the mid-1970s. There was an initial shift of support towards the Conservatives, who could count on the endorsement of around three-quarters of press circulation from 1979 to 1987. However, from 1997 to 2005, the proportions were essentially reversed, owing partly, but by no means entirely, to Tony Blair's success in persuading Rupert Murdoch to switch the allegiance of his newspapers.

Figure 3.1i: Newspaper partisanship at General Elections, by % of circulation, 1945-2010



Sources: Butler and Butler (2000, p. 537); Butler and Butler (2006, p. 274); Wring and Ward (2010, p. 806).

There has been much debate about the extent to which press bias impacts on voting behaviour (Marsh, 1993; Denver, 2007). The *Sun*'s infamous claim following the 1992 general election that 'It's the Sun Wot Won it' is widely known. Yet, as Price (2010, p. 16) notes, in almost half of all general elections since 1918 'one newspaper or another has claimed to have swung the result'. Indeed, Price (2010, p. 16) argues that the case for media supremacy in politics is far from proven and that 'elections are won or lost by parties and their rival candidates for the post of prime minister, not by the media'. There are certainly significant methodological difficulties which arise from any attempt to establish the degree of cause and effect in media reporting and voting behaviour (Denver, 2007). It has been found, for instance, that 68 per cent of *Sun* readers at the time of the 1979 general election were unable to correctly identify that the paper advocated voting Conservative (Marsh, 1993).

Clearly, there is a relationship between the partisan position of newspapers and voting preferences among their readers. As Table 3.1f shows, only nine per cent of *Guardian* readers voted Conservative in 2010, compared to 70 per cent of *Telegraph* readers. Similarly, the strongly Labour-supporting *Mirror* was the only tabloid with a majority of readers (59 per cent) voting Labour in 2010. What is also evident from Table 3.1f is that, while the voting swing among readers of all newspapers, other than the *Guardian*, was broadly in line with the national result, the shift was much stronger among readers of the *Sun* and the *Star*. However, it should also be underlined that the spread of party support among readers of different newspapers is such that, in 2010, one-third of readers of the staunchly pro-Conservative *Daily Mail* voted either Liberal Democrat or Labour, while the same proportion of *Mirror* readers opted for either the Liberal Democrats or the Conservatives. Moreover, even if we accept that there is, broadly speaking, a clear fit between the political views expressed by newspapers and those held by their readers, it is by no means clear how this relationship should be interpreted: '[it] might indicate either that readers' political views are shaped by the paper that they read or that they choose to take a paper which is politically congenial to them' (Denver, 2007, p. 142).

Table 3.1f: Party choice by newspaper readership, 2005 and 2010

	Labour		Conservatives		Liberal Democrats		Swing (Lab-Con)
	2005	2010	2005	2010	2005	2010	2005-10
Result	35	29	32	36	22	23	5
The Guardian	43	46	7	9	41	37	*3.5
The Independent	34	32	13	14	44	44	1.5
The Times	27	22	38	49	26	24	8
The Telegraph	13	7	65	70	17	18	5.5
The Star	54	35	22	21	15	20	10
The Daily Express	28	19	48	53	18	18	7
The Daily Mail	22	16	57	59	14	16	4
The Sun	45	28	33	43	12	18	13.5
The Mirror	67	59	11	16	17	17	

Note: \* swing among Guardian voters was from Liberal Democrat to Labour.

Source: [Wring and Ward \(2010, p. 808\)](#)

### Citizens' access to the media

There is no doubt that news media have long been highly accessible to UK citizens under the dual press/broadcasting model. Levels of newspaper readership have long been relatively high by international standards. Norris (2000) found that the UK's newspaper circulation per 1000 of population was the sixth highest in the OECD, despite having suffered the second largest fall in circulation from 1952-96.

Meanwhile, television ownership has long been near universal. As Figure 3.1j shows, 97 per cent of UK households have a television, a figure which has been virtually static since 2000.

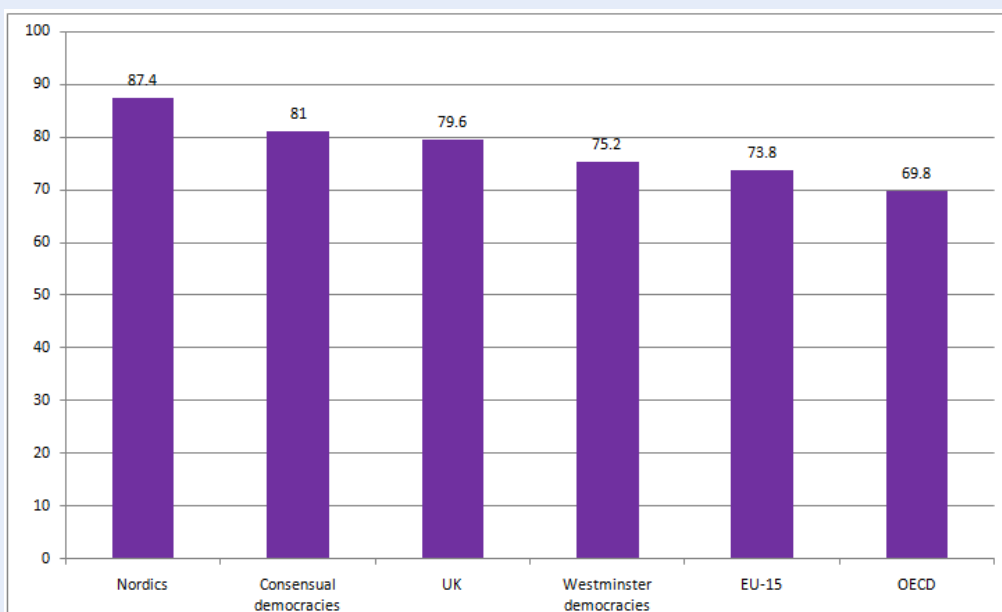
Figure 3.1j: UK households with a television and with digital television, 2000-2012



Source: [BARB \(2012\)](#).

In addition, UK citizens are clearly well placed in relation to the digital revolution in communications. Whereas less than 10 per cent of households had access to digital television in 2000, the proportion has grown rapidly on an annual basis ever since and, as of 2012, virtually all households now receive digital television services (see Figure 3.1j). Meanwhile, levels of access to the internet are high by international standards, at around 80 per cent. As Figure 3.1k demonstrates, internet access is available to a higher proportion of households in the UK than the average for the EU-15 and the OECD, although it still lags about eight percentage points behind the average for the Nordic countries.

Figure 3.1k: Households with access to the Internet, UK and groups of comparator democracies, 2010 (or nearest available year)





Source: [OECD \(2011\)](#)

Given the high levels of access across all media, the more significant questions for the UK concern which sources are most widely used, and to what extent they are trusted, by citizens. In addition to the patterns of news consumption reported at the beginning of this section, evidence about how voters obtain information during general election campaigns provides some useful insight into how UK citizens choose to access media reporting on politics. A survey carried out during the 2001 general election campaign by [Ipsos Mori \(2001\)](#) found that 88 per cent of those surveyed obtained information about politics and current affairs from television, 74 per cent from national daily newspapers, 54 per cent from Sundays newspapers, 42 per cent from leaflets, 48 per cent from radio and 13 per cent from the internet. In 2010, a similar survey carried out by YouGov suggested that the significance of all sources other than the internet had fallen, in some cases dramatically. In 2010, 76 per cent of those surveyed said they had used television to learn about the general election, compared to 49 per cent for national newspapers, 29 per cent for national radio and 14 per cent for local radio. The increase in the proportion accessing information about the election from the internet between 2001 and 2010 is difficult to determine because the YouGov (2010) survey allowed respondents a choice between more than five categories of websites. However, the increased use of the internet is clear from the figures as the proportions reporting they had made use of newspaper websites and television websites were 20 and 19 per cent respectively.

**Table 3.1g: Role of television and newspapers as sources of information about politics during election campaigns, 2001 and 2010**

	2001		2010	
	%	Rank	%	Rank
Used TV as a source of information	88	1	76	1
Used national newspapers as source of information	74	2	49	2
TV was main or most influential source of information	48	1	41	1
Newspapers were main or most influential source of information	28	2	n/a	n/a
Trusted TV most to be accurate & impartial/TV presented issues most fairly	49	1	40	1
Trusted newspapers most to be accurate & impartial/TV presented issues most fairly	12	2	7	2

Sources: [Ipsos MORI \(2001\)](#); [YouGov/Deloitte \(2010\)](#).

Nonetheless, it is evident from the 2010 survey that television remains the dominant medium in election campaigns, and that its significance relative to the press continues to grow. While national newspapers remained the second most commonly cited source of information about the 2010 general election, Table 3.1g shows that the 'gap' between television and newspapers increased from 14 to 27 percentage points from 2001 to 2010. There can be little doubt that the hosting of the first televised leaders' debates in 2010 were central to ensuring the dominance of television as a medium, despite widespread speculation that it could prove to be the 'first internet election' (Wring and Ward, 2010). Yet, it also seems likely that television's continued dominance as a source of information at election time is, at least in part, associated with its superior reputation for presenting issues fairly and impartially. When asked by MORI in 2001 which source they trusted most to provide accurate and impartial information, 49 per cent opted for television compared to just 12 per cent each for daily newspapers and radio. In response to a similar question in 2010, 40 per cent of those taking part in the YouGov survey said that television presented election issues mostly fairly, compared to just seven per cent each for newspapers or radio.

With the evidence presented in Table 3.1g providing additional grounds to be sceptical of press influence on voting behaviour, it seems clear that the role of television in UK general elections will be a focal point for future research, particularly in light of the leaders' debates. The televised debates brought an entirely different, and frequently unpredictable, dynamic to the election campaign (Kavanagh and Cowley, 2010) and there is evidence to suggest that they may have been particularly influential in helping 18-39 year olds decide who to vote for (Coleman, 2011). Whether this is a healthy development, from a democratic perspective, is far from clear. As we have shown in this section, while the access which UK citizens have to news reporting is greater than ever, overall news consumption appears to be falling. It is far from clear that the innovation of televised leaders' debates, and the huge volume of media analysis which they generated in 2010, offer any kind of solution to the issue of declining engagement with news media outlined above.

### 3.1.3 Media's role in holding the powerful to account

How effective are the media and other independent bodies in investigating government and powerful corporations?

The ability of the media and other independent bodies to effectively scrutinise government and powerful corporations clearly depends, to a great extent, on the extent of media freedom and level of media plurality (see Section [3.1.1](#)) and also on the degree to which journalists are free from restrictive laws and intimidation (see Section [3.1.4](#)). Here, however, we are less concerned with what might be considered to be some of the legal and structural prerequisites for a robust, independent 'fourth estate' than with the empirical assessment of its actual practices and output.

#### *Traditional news media under siege*

As we have noted in Section [3.1.1](#) and Section [3.1.2](#), newspapers and television news broadcasters - the 'old' news media - are facing increasingly difficult economic circumstances. Readerships and audiences are declining alongside advertising revenues, and the emergence of the internet and other 'new' media is stimulating further competition and upheaval within an already convulsive and fiercely-contested marketplace. Long-term commercial pressures - whether from corporate owners, market competition or new technology - have led to fundamental changes in both the editorial orientation of many outlets *and* the wider news production process itself; while short-term pressures flowing from the recent recession have led to a spate of closures and job losses.

Of course, most of these problems - and the unhappy consequences that they lead to - are far from new. The 2002 Audit, for instance, also noted the severity of the commercial pressures faced by newspapers and news broadcasters, as well as the detrimental effects which these pressures were having on the quality of news reporting and the volume of serious investigative journalism (Beetham et al., 2002). Yet the results of recent empirical studies have arguably given these concerns even greater urgency. In 2006, for example, researchers at Cardiff University performed a content analysis of domestic news stories published by a handful of high-quality UK national daily newspapers (and the *Daily Mail*) over the course of two weeks ([Lewis et al., 2006](#)). Worryingly, the results (see Table 3.1h below) showed that most of the stories printed by these newspapers consisted entirely - or almost entirely - of copy derived from newswires or PR releases; that most statements of fact within stories went uncorroborated; and that only 12 per cent of the stories appeared to have been composed entirely by the journalists themselves (Davies, 2008; see also Phillips, 2010 for a study which reaches similar conclusions). The findings were also largely replicated - albeit to a slightly lesser extent - in the Cardiff University study's sample of broadcast news ([Lewis et al., 2006](#)). Other studies, of the local press and online news, have all come to similar conclusions. In 2008, an analysis of local newspaper content in West Yorkshire reported that, on average, over three quarters (76 per cent) of news reports were based on a single source only (O'Neill and O'Connor, 2008). More recently still, a content analysis of online news by researchers at Goldsmiths College found that reporting by major news groups is systematically 'cannibalised' and largely homogenous (Redden and Witschge, 2010).

Table 3.1h: Stories with content deriving from PR, news wires / other media (per cent)

	Press	Broadcast
All from PR, wires / other media	38	21
Mainly from PR, wires / other media	22	13
Mix of PR, wires / other media with other information	13	25
Mainly other information	7	20
All other information	12	18
Unclear	8	3

Source: [Lewis et al. \(2006, p. 25\)](#)

In a way, these deficiencies in our news 'diet' should not come as a surprise, given the pressures which the traditional news media are under. As Table 3.1i shows, the average editorial output of newspapers (and the journalists that they employ) has increased enormously since the mid-1980s (Davies, 2008). Similar pressures are being felt by news broadcasters - with the result that many journalists in both sectors now feel they no longer have the time to do their job properly (Lewis et al., 2006; Redden and Witschge, 2010). Indeed, in the well-publicised book *Flat Earth News*, journalist Nick Davies argues that much of what is published now is not journalism at all, but rather

'churnalism' - a mode of journalistic practice which is said to involve:

'cutting out human contact and with it the possibility of finding stories; cutting down time and with it the possibility of checking; [...] producing stories in greater numbers at greater speed and of much worse quality' (Davies, 2008, p. 62).

It would clearly be inaccurate to claim that *all* contemporary broadcast and newspaper journalism fits this definition: after all, the mainstream media has produced a number of important exposés in recent years - including the *Guardian's* lengthy investigation into phone-hacking at the *News of the World*, and Panorama's investigation into the abuse of patients at Winterbourne View care home. However, the evidence uncovered by academics at Cardiff, Goldsmiths and elsewhere does suggest that journalism of this kind is now the exception rather than the norm - and that, if anything, it is likely to become even more exceptional in the future (Lewis et al., 2008).

Table 3.1i: Average editorial staff and output levels at national newspapers (selected years)

Year	Average number of editorial staff	Average number of pages (minus ads)
1985	786	14.6
1995	533	26.4
2004	741	39
2006	-	41

Source: [Lewis et al. \(2006, p. 25\)](#)

### ***Unfulfilled promise? The role of the internet and new media***

Since the publication of the previous Audit in 2002, a whole host of technologies have emerged or matured which have effectively revolutionised the way the media works. Yet, contrary to the expectations of many, not all of these innovations have strengthened the hand of news broadcasters, newspapers and other bodies with an interest in holding government and powerful corporations to account. Indeed, in many ways, competition from the internet and other 'new media' can be said to have contributed to the *deterioration* of standards among professional journalists working in the mainstream media, by catalysing (or perhaps acting as a pretext for) the frantic - and seemingly ceaseless - search for ever more efficient organisation and ever greater output (Freedman, 2010; Davis, 2010).

Major news groups quickly came to dominate the online news sphere (see Section [3.1.1](#)); but journalistic standards have arguably suffered, as a result of this hegemony. As industry figures point out, involvement in online news media means that many professional journalists must now produce copy for two different formats - thus stretching their already thin resources even further (Phillips, 2010). In addition, the immediacy of online journalism, and the way in which it allows instant awareness of competitors' practices, has exacerbated the 'pack mentality' that leads to greater convergence of coverage (Davis, 2010), while at the same time diminishing the commercial incentive for investigative journalism - as any 'exclusive' story can now be stolen by a competitor within minutes (Phillips, 2010). This is a situation which is clearly not economically sustainable. As the *Guardian's* editor, Alan Rusbridger, put it to the House of Lords Communications Select Committee, the 'truth about our market is that, with the exception of the *Daily Telegraph*, we all exist on some form of subsidy' (cited in Freedman, 2010, p. 50).

Of course, the impact of new media and technology has not been entirely harmful. As Alan Rusbridger has also pointed out, the internet has facilitated the mobilisation of the *Guardian's* readership as an invaluable investigative resource during a number of its investigations - including those into tax avoidance, police brutality and MPs' expenses ([Rusbridger, 2010](#)). Were it not for the modern mobile phone, meanwhile, video footage of the police attack on Ian Tomlinson may never have emerged; the official version of events surrounding Mr Tomlinson's death might never have been challenged; and the wider media narrative of 'protestor violence' at the G20 demonstrations might have lain intact ([Greer and McLaughlin, 2010](#); see also Section [2.5.2](#)). On a global scale, the success of sites such as Wikileaks shows perhaps best of all that new technology, such as the internet, has genuine potential as a platform for organisations that are critical of governments or major corporations (Couldry, 2010).

All of these instances attest to the potential which the internet and new media has to empower members of the public with an interest in investigating government and powerful corporations. Yet it ought to be stressed that this is a potential which, for the most part, remains underdeveloped. Certainly, there is little evidence, so far, to suggest that 'citizen journalists' would be capable of shouldering the investigative burden of professional journalists working for newspapers and television stations (Barnett, 2009). Online news remains dominated, for the most part, by the same corporations that dominate print-based and broadcast news (Fenton, 2010): few blogs or smaller,

independent news sites have succeeded in producing valuable investigative reporting (or influencing the news agenda to an appreciable degree), and most lack the time and resources to do so (Couldry, 2010).

### ***The growth of the public relations industry***

As the strength of the mainstream media has been depleted, that of the public relations industry has swelled. Indeed, since the 1970s, the number of public relations professionals has grown at such an exponential rate that where once a few large companies, government departments or local authorities employed press officers, now almost all of them do (Davies, 2008; see also Davis, 2002). If one considers one of the media's most important roles to be that of the public 'watchdog' then this is undoubtedly an unhealthy development: after all, journalists can hardly be expected to effectively investigate powerful institutions if their 'opposite numbers' in press offices possess increasingly superior, and in some cases overwhelming, resources (Davis, 2002). Indeed, Davis (2002, p. 172) is emphatic that changes in the relative size of the two industries have 'clearly undermined the independence of journalists' and that 'Journalists are being outnumbered and outsourced by their PR counterparts'.

And yet the growing strength of the PR industry (relative to that of a declining news media) not only hinders the ability of the media to investigate government and corporate elites, but has also led to a flood of PR material into the news. This influx would not necessarily be a bad thing if it facilitated expansive public debate through the dissemination of accurate, newsworthy information from a range of viewpoints (Phillips, 2010). But there is little evidence to suggest that it has. Indeed, the Cardiff study of news content (cited above) found that articles based on PR material were markedly less likely to be of high news value (Lewis et al., 2006). Other research, meanwhile, suggests that it is typically the larger organisations, with deeper pockets, that are most successful in getting their message across via the media (Davis, 2002; Fenton, 2010). To an extent, the preference given to bigger organisations is also because journalists, under great constraints of time, tend to favour sources which are better-known and therefore judged to be 'safe' (Phillips, 2010).

Recent events demonstrate the damage that can result from PR colonisation of sections of the news media. According to Aeron Davis of City University, the stifling of critical and independent financial journalism by the power of the City was the main reason why journalists in the sector largely failed to forewarn the public of the possibility of the financial crisis which hit in 2007 (Davis, 2011). In this case, control over the news agenda was possible because, as Davis explains, financial and business journalism is not like general reporting: it is almost entirely dependent on financial and business interests, both for information and advertising revenues, and is aimed almost exclusively at an audience of financial and business elites (Davis, 2002; Davis, 2011).

The mainstream media cannot be expected to effectively investigate government or powerful corporations if its journalists are confined to their desks and made to work under wholly unreasonable constraints of time. As Davies states bluntly, this simply leads to a situation where 'Most of the time, most journalists do not know what they are talking about' (Davies, 2008, p. 42). Clearly, the drip-feed of 'information subsidies' from news agencies (themselves understaffed) and PR professionals is no substitute for independent investigative journalism - especially when such sources are used by journalists in isolation. While new technologies have in many ways complemented the investigative role of professional media outlets, there is no evidence thus far to suggest that enthusiastic amateurs could replace newspapers or television news; or that their impact has managed to compensate for the seemingly massive reductions in the volume of professional investigative journalism. As Kelly (2009, p. 4) writes 'the health of the Western news media, newspapers especially, is failing faster than new forms of news gathering and revenue can arise to fill the gap.'

## **3.1.4 Journalistic freedom**

How free are journalists from restrictive laws, harassment and intimidation?

By international comparison, the work of journalists in the UK is relatively safe and unfettered. As we noted in Section 3.1.1, Freedom House's *Freedom of the Press* surveys consistently place the UK alongside other western democracies of similar stature - albeit usually some way below the likes of Finland, Sweden, Denmark and a number of other countries within the EU15. Physical harassment and intimidation, though not uncommon in Northern Ireland, is far rarer on the British mainland (Freedom House, 2010). As a result, concerns over press freedom in the UK raised by both Freedom House and Reporters Without Borders centre for the most part on legal matters such as defamation law, anti-terrorist measures and the compelled disclosure of journalistic sources (see Section 3.1.1). We elaborate on each of these concerns below. In addition, we give consideration to the issues of whether court injunctions impose restrictions on journalists, an issue which we return to in Section 3.1.5 in relation to the privacy of citizens.

### ***Libel law***

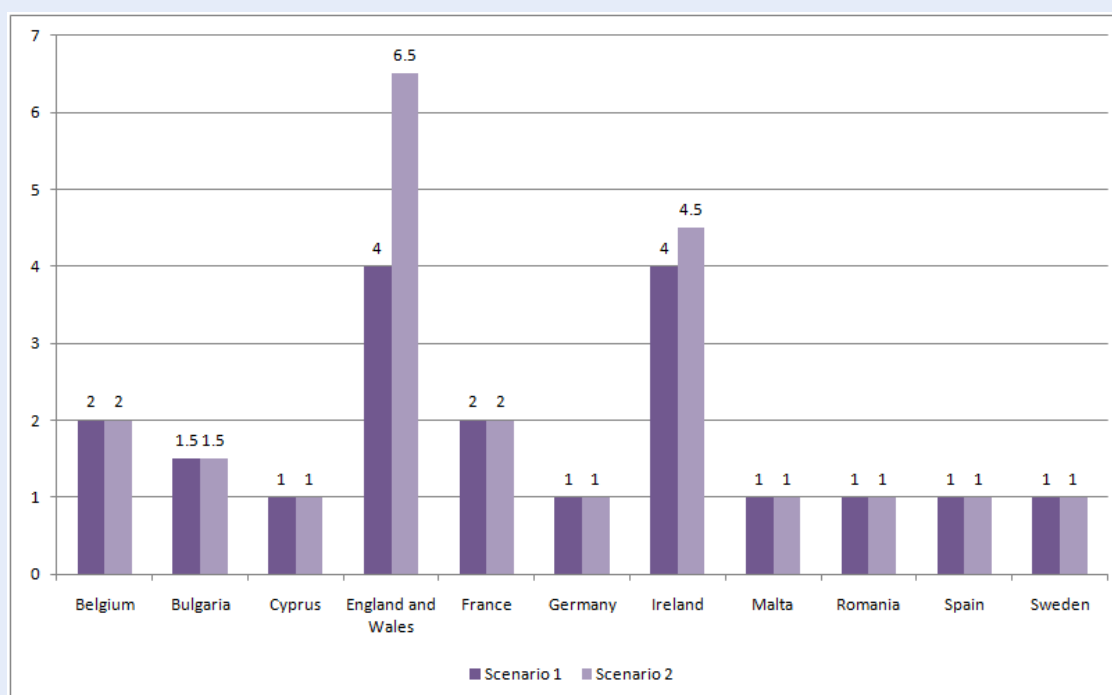
Under UK libel law, the burden of proof lies not with the claimant but with the defendant, who must prove that the allegedly defamatory material is either true; a fair comment on a matter of public interest; or otherwise protected by 'privilege' (Kenyon and Marjoribanks, 2008, p. 375). While it is often claimed that this state of affairs unduly constrains the UK media, court rulings during the past decade or so have

shifted the balance in its favour to some degree ([Kenyon and Marjoribanks, 2008, p. 373](#)). For instance, since the case of *Reynolds vs Times Newspapers* in 1999, journalists can, most notably, escape legal punishment for publishing untrue statements, providing that they can convincingly demonstrate that they acted 'responsibly' and that there was a clear public interest in the publication of the story concerned ([Tambini, 2010](#)). In handing down its judgment, and giving grounds to what would henceforth be known as the '*Reynolds* defence', the House of Lords explicitly sought to champion the freedom of the media against the individual's right to reputation - an intention since reaffirmed by its judgment in *Jameel vs Wall Street Journal Europe*.

Perhaps unsurprisingly, views differ as to whether these judicial developments have helped strike the right balance between media freedom and the right to reputation: some argue that *Reynolds* now provides adequate cover to journalists, while others - particularly those within the media - disagree and continue to campaign for more far-reaching reform of the UK's libel laws. In a lecture at City University in May 2011, *Guardian* editor Alan Rusbridger argued, for instance, that despite the innovation of the 'responsible journalism' defence for defamation trials, '[i]t is still comparatively easy to stifle the press' ([Rusbridger, 2011](#)). However, Mullis and Scott (2010) argue quite the opposite, expressing scepticism as to whether 'the substantive law of libel contributes at all directly to the existence of the perceived problems' with defamation proceedings. Indeed, they argue that libel law has become significantly more media-friendly in the past 15 years, and that the *Reynolds* defence - as reinforced by *Jameel* - provides an adequate and appropriate public interest defence for journalists ([Mullis and Scott, 2010](#)). Yet for now, at least, there appears little chance of a change on the size and scale envisaged by reform advocates. Although the coalition government's draft Defamation Bill, published in March 2011, will give a statutory basis to the 'public interest' defence, it does not appear - in most respects - to be a very radical departure from the approach which has evolved thus far through common law ([Guardian, 2011f](#); [Rozenberg, 2011](#)).

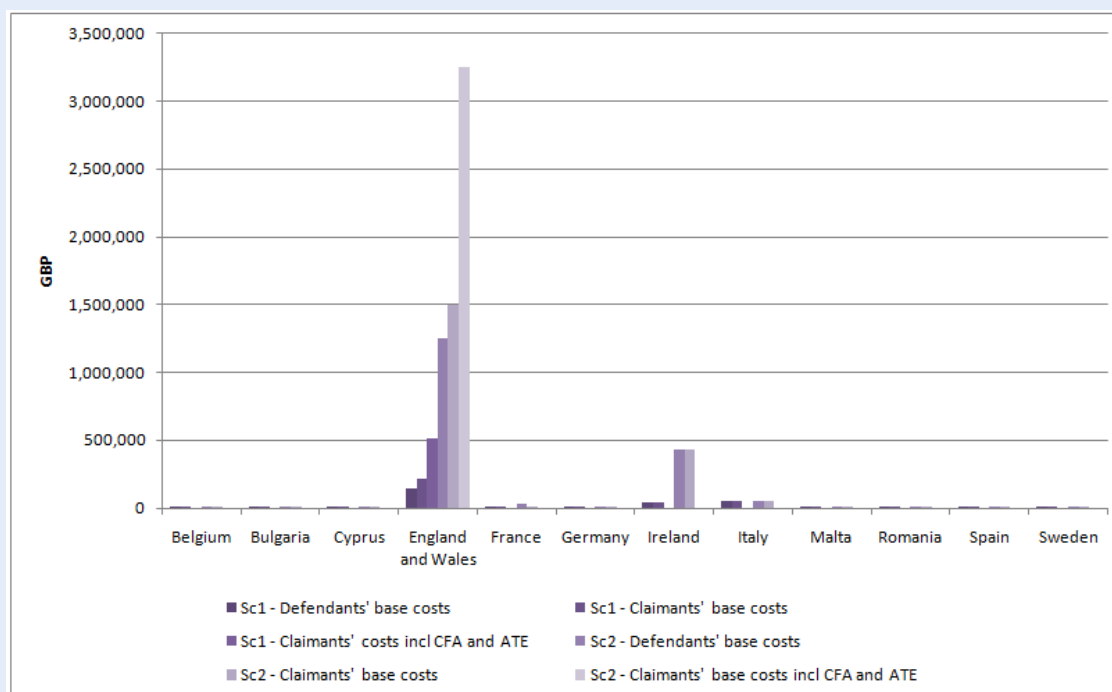
Recent legal changes aside, debates over libel reform often seem to ignore what is arguably the real elephant in the room: namely, the astronomic costs associated with fighting or defending a defamation case through the courts. The cost of defamation proceedings is often cited as a major problem for the media - an understandable grievance when one considers that, according to one recent study, libel cases in England and Wales can cost 140 times more than the European average ([Centre for Socio-Legal Studies, 2008, p. 3](#)). It is not entirely clear why civil litigation is such an expensive business in the UK, but some inflationary factors are evident. For instance, the number of lawyers typically involved in defamation trials is markedly higher in England and Wales than in other European countries ([Centre for Socio-Legal Studies, 2008, p. 171](#)); similar cases have the potential to take much longer in courts in England in Wales than they would elsewhere ([Centre for Socio-Legal Studies, 2008, p. 176](#)); and conditional fee agreements (CFAs) have caused costs to balloon while at the same time effectively rendering some libel cases 'no win' situations for the unfortunate newspaper or broadcaster concerned (see Case Study 3.1e below).

Figure 3.1l: Number of lawyers representing each party in libel cases in two hypothetical scenarios, England and Wales in comparison to 10 other European countries



Source: [Centre for Socio-Legal Studies \(2008, p. 176\)](#).

Figure 3.1m: Defendant and claimant costs (£s) in two hypothetical libel scenarios (Sc1 and Sc2), England and Wales in comparison to 10 other European countries.



Source: [Centre for Socio-Legal Studies \(2008, p. 4\)](#).

Government action in this area has been generally ineffective ([Culture, Media and Sport Select Committee, 2010](#)). The previous government published consultation papers on the high cost of defamation cases ([Ministry of Justice, 2009](#); [Ministry of Justice, 2010](#)) - narrowly failing to pass a measure to reduce the recoverability of success fees by 90 per cent before the dissolution of parliament in 2010 ([Daily Telegraph, 2010b](#)); while Lord Justice Jackson published a lengthy and authoritative report on the costs of civil litigation, generally, in January 2010. This latter initiative has fed into the coalition government's own proposals - at the centre of which are plans to stop the recovery of 'success fees' and after-the-event (ATE) insurance payments from losing defendants sued by CFA-supported claimants ([Lidbetter et al., 2011](#)). The current regime, in which success fees under CFAs are recoverable from defendants, looks doomed in any case, following the verdict handed down by the European Court in *MGN vs UK* in January 2011.

The government has suggested that their proposed scheme will restore some degree of 'balance to the system' ([Ministry of Justice, 2011](#)), but its provisions - perhaps like those of its draft Defamation Bill - seem, at best, likely to ameliorate, rather than solve, the problems which they address. Although it is true that the media will be shielded to some extent from bearing the punitive costs of the former CFA regime, the underlying problem of hugely costly litigation is unlikely to be solved ([Novarese, 2011a](#)). At the same time, it is possible that changes to the CFA funding arrangement will deter poorer claimants from bringing cases, thus preventing citizens of more modest means from seeking redress through the court system. As one critic of the proposals has argued, 'libel will remain expensive in general and increasingly even further beyond the reach of most individuals' ([Novarese, 2011b](#)).

### Case Study 3.1e: Conditional fee agreements (CFAs)

Conditional fee agreements were introduced by the Conservatives in the early 1990s, and later modified by the Labour government in 1999 so as to allow the recovery of 'success fees' and after-the-event insurance premiums from losing defendants ([Ministry of Justice, 2011, p. 9](#)). As the most well-known form of 'no win no fee' arrangement, the scheme was intended to widen access to justice for those who were too rich to qualify for legal aid, but too poor to incur sizeable legal costs. However, for newspapers and broadcasters, the CFA regime has made libel cases significantly more onerous. This is partly because, as shown by Figure 3.1m, CFAs have an in-built tendency to exacerbate the problem of exorbitant litigation costs. Yet it is also because in a case between, say, a newspaper and a CFA-backed litigant, the embattled newspaper knows not only that the costs of defeat will be greater, but



that their enormous legal fees may not be recovered even in the event of a successful outcome. This was amply demonstrated in the case of *Musa King vs The Telegraph Group*: here, the paper argued that, even in the event of its vindication, it would still be faced with a bill for around £400,000 as King did not have the requisite financial means to foot the legal bill ([Centre for Socio-Legal Studies, 2008, p. 12](#)).

### **Court injunctions**

In October 2009, the law firm Carter-Ruck obtained a court injunction, on behalf of its client Trafigura, preventing the *Guardian* from reporting details of an internal report commissioned by the London-based firm with regard to its alleged dumping of toxic waste in West Africa (see Case Study 3.1f). Only following citation of the case in parliament, and subsequent legal challenge from the *Guardian*, was the newspaper able to publish details of the report, which it had obtained as a result of its ongoing investigation into the incident. In the wake of the affair, the *Guardian* suggested that the case was by no means unusual: 'the use of "super-injunctions", under which commercial corporations claim the right to keep secret the fact that they have been to court, has been growing' ([Guardian, 2009](#))

#### **Case Study 3.1f: Court injunctions and journalistic freedom - the Trafigura case**

On 12 October 2009, Labour MP Paul Farrelly submitted a written question to the then secretary of state for justice, Jack Straw, enquiring about threats to press freedom. The question related to two cases where injunctions obtained in the high court had placed restrictions on investigative media reports of those cases ([Guardian, 2009](#)). The second of these cases specifically concerned the publication by the *Guardian* newspaper of an internal report commissioned by a commodities trading firm based in London, Trafigura, which referred to the alleged dumping of toxic waste by the company in West Africa that led to a personal injuries claim by 31,000 registered claimants in 2006 ([Cox, 2010](#)). The case for the injunction was made on the basis that publication of the report would unfairly harm Trafigura's interests. The company argued that the report was subject to legal professional privilege, its contents were inaccurate and outdated, and that it had been unlawfully leaked to the *Guardian*. Crucially, Trafigura also claimed that publication of the report risked derailing negotiations about a comprehensive settlement being reached with regard to the personal injury claimants who had brought actions against the company ([Spearman, 2011](#)).

The specific nature of the injunction obtained by Trafigura not only prohibited the *Guardian* from publishing the details of the report, but also prevented them from acknowledging that an injunction even existed. As Nick Cohen (2012, p. xii) put it: 'the censors censored the fact of censorship'. It was only through the parliamentary privilege of absolute freedom of speech, enshrined in the 1689 Bill of Rights, that Farrelly was able to raise the question in the Commons. In response, Trafigura's legal representatives sought to extend the injunction to prevent the media reporting the contents of Farrelly's question; a clear contravention of the Parliamentary Papers Act 1840 which provides absolute immunity for all reporting of parliamentary proceedings by the media without interference. Only after widespread public condemnation and criticism by a variety of organisations and individuals, as well as a European-wide internet campaign, were the restrictions lifted when Trafigura's lawyers withdrew their application to have the injunction extended to cover parliamentary proceedings. Following these events, the term 'super-injunction' became an irrevocable part of the public lexicon in the UK, although it was to be cases involving the extra-marital affairs of Premiership footballers, rather than the Trafigura case, which became the focal point for debates about press freedom (see Case Study [3.1g](#)).

However, beyond the pages of the *Guardian*, the Trafigura case, and the wider issues which it raises about the scope for commercial interests to use the courts to suppress media reporting, have received very little coverage. Instead, the debate about the restrictions which court injunctions impose on the UK media has overwhelmingly focussed on cases involving celebrities seeking to prevent press reporting of their private lives (see Section [3.1.5](#)). Since the passage of the Human Rights Act 1998, the UK courts have shown a growing willingness to grant injunctions to prevent the media from reporting on matters of a personal nature where there is no clear public interest for publication. As we suggest in Section [3.1.5](#), the actions of the courts in intervening to protect against the invasion of privacy by the press are in many ways a welcome development, offering further evidence of the significance of the Human Rights Act 1998 (see Section [1.2.2](#)). It is, of course, undeniable that the use of injunctions highlights a dynamic tension between Article 8 (right to privacy) and Article 10 (freedom of expression) of the Human Rights Act. Yet, the debate surrounding injunctions cannot be divorced from more fundamental questions about access to justice and whether the UK should adopt stronger privacy laws and establish more robust, possibly



statutory, regulation of the press (see Section [3.1.5](#)).

### ***The effects of anti-terror legislation***

There is no question that, as it stands, UK anti-terror law grants police greater investigative power over journalists involved in the research of terrorist organisations and activities ([Cram, 2006, p. 339](#)). In the case of terrorist investigations, police seeking access to journalistic material are governed not by the Police and Criminal Evidence Act (PACE) 1984, but by the Terrorism Act 2000 (Cram, 2009, p. 112). Unlike under PACE, a journalist who is subject to a production or disclosure order under the auspices of the Terrorism Act need not be given any prior notice, and can also be ordered to submit to the order by a certain deadline (Cram, 2009, p. 113). The broad and vaguely-worded remit granted by the Terrorism Act - as it pertains to disclosure - means that journalists who investigate terrorist activity are more vulnerable to production orders than ordinary journalists (Cram, 2009, p. 112; [Banisar, 2009, pp. 58-61](#)).

In addition, journalists who are involved in the research or investigation of terrorism are also subject to a number of liabilities which other journalists are not. For instance, it is currently an offence to fail to disclose information on terrorist activity to the police; to disclose information which may prejudice ongoing or *proposed* terrorist investigations by the police; and to make or possess any record which might be judged to 'be useful to a person committing or preparing an act of terrorism', unless in each of these cases a defendant can prove that they had 'reasonable excuse' for failing to observe the law ([Banisar, 2009, p. 61](#); Cram, 2009, p. 115).

The UK media are, of course, not *alone* in having been affected by the introduction of anti-terror legislation during the past decade; media across Europe, and beyond, have *also* fallen under the ambit of similar laws, imposed in the name of national security following the events of 11 September 2001 ([Banisar, 2009](#)).

### ***The protection of journalistic sources***

A journalist's protection from source disclosure is frequently cited as one of the defining features of a free press (Wallace, 2009, p. 268). Without it, advocates claim, potential whistleblowers would be discouraged from coming forward to the media with information, and powerful individuals who abuse their positions would go unpunished (Wallace, 2009, p. 269). While *absolute* immunity from journalistic source disclosure would not necessarily be desirable ([Castiglione, 2007, p. 118](#)), an increasing number of countries have come to recognise the importance of protecting journalistic sources - and, as a result, now afford some degree of qualified protection to journalists in this area (Youm, 2006).

The UK does not appear to deviate drastically from the trend which can be observed among other comparable democracies. As is the case elsewhere, journalists caught up in civil litigation *can* be compelled to disclose their sources under certain legally-defined circumstances; but these circumstances are exceptional. The incorporation of the European Convention on Human Rights (ECHR) into law has afforded greater protection to journalistic sources than was previously the case (Wallace, 2009, p. 278; Cram, 2009, pp. 125-7), and recent rulings by UK courts demonstrate a keen awareness of the state's Convention obligations (Wallace, 2009, p. 283). Interestingly, as far as *criminal* cases and source disclosure are concerned, the reverse is true (Wallace, 2009, p. 285) - with the ECHR generally unsympathetic towards journalists in such instances. However, domestic cases such as that involving Irish journalist Suzanne Breen have shown that, even here, disclosure requirements are not absolute, and that it is still possible for a journalist - under certain circumstances - to appeal successfully against production orders (Wallace, 2009, p. 285; [Independent, 2009](#)).

## **3.1.5 Media respect for privacy of citizens**

How free are private citizens from intrusion and harassment by the media?

Achieving an appropriate balance between the media's right to freedom of expression and the private citizen's right to privacy has always been a difficult task. However, the uncertainty created by recent developments in the law, technology and media practice has arguably made this task more intractable than ever. As clamorous - and frequently irascible - public debate rages over the thorny issue of privacy, arriving at an 'objective' judgment has become close to impossible; but some broad trends in freedom from media intrusion are identifiable nonetheless.

### ***'Feral beasts'***

In one of the last speeches before he left office, Tony Blair argued that the changing environment in which the media operates is leading it to act - more so than ever before - like a 'feral beast [...] tearing people and reputations to bits' ([Blair, 2007](#)). In the absence of a reliable gauge of media intrusiveness, Blair's theory of *increasing* media rabidity is difficult to test. However, the results of various opinion polls do seem to suggest that the public agrees with the former prime minister's general characterisation of the media - particularly with respect to tabloid newspapers ([Committee on Standards on Public Life, 2008](#); [Media Standards Trust, 2009](#)). On the question of the press and

privacy, specifically, a poll conducted on behalf of the Media Standards Trust in 2008 - just over a year after the former prime minister made his 'media' speech - found that an overwhelming majority (70 per cent) of the public felt that newspapers were indeed invading people's privacy too often (see Table 3.1j). However, as Table 3.1j also shows, almost half of those polled also took the view that there are circumstances where it *would* be appropriate for newspaper journalists to violate this right, in the pursuit of the legitimate aim of getting at the truth.

Table 3.1j: Public attitudes to privacy and the press, 2008.

	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree	Don't know
There are times when it is justified for newspaper journalists to invade people's privacy in order to get at the truth	9%	35%	20%	21%	11%	4%
There are far too many instances of people's privacy being invaded by newspaper journalists	32%	38%	18%	8%	2%	3%

Source: [Media Standards Trust \(2009, p. 40\)](#).

Invasions of privacy by the media can, of course, take many forms. Some - such as the publication of a person's personal life on the front page of a newspaper, or physical harassment by a tabloid journalist - are more brazen and perhaps more obvious. However, it is revelations of the more secretive and surreptitious methods of the media - those which we cannot observe so easily - which have arguably provoked the greater level of opprobrium in recent years. The ongoing *News of the World* phone-hacking scandal (see Case Study 3.1g) is perhaps the best-known example of what have been called the 'dark arts' of the press; but it was not the first time that allegations have arisen in connection with illegal data-gathering by the media since the last Audit reported in 2002. Indeed, in 2003, an investigation by the Information Commissioner's Office - code-named 'Operation Motorman' - found that almost every major newspaper group had, at some stage or another, paid a private investigator, Steve Whittamore, to retrieve personal information on their behalf ([Culture, Media and Sport Select Committee, 2010](#)). Mr. Whittamore was subsequently convicted under Section 55 of the Data Protection Act ([Independent on Sunday, 2010](#)). However, the newspapers and journalists implicated by the report escaped unscathed ([Culture, Media and Sport Select Committee, 2010](#)).

### Case Study 3.1g: The News of the World phone-hacking scandal

The *News of the World* phone-hacking scandal began in November 2005, when suspicions that the mobile phones of aides to Prince William had been hacked prompted a police investigation ([BBC News, 2011a](#)). This investigation subsequently led to the arrest, trial and prosecution in 2007 of Clive Goodman, the *News of the World's* then royal editor, and Glenn Mulcaire, a private investigator ([BBC News, 2011b](#)). Throughout the affair, the newspaper adamantly maintained that Goodman had acted alone. Yet, in 2009, fresh allegations emerged through the press that appeared to blow this argument apart - revealing not only that hacking had taken place on a far wider scale than was initially thought, but that the inadequate police response to the scandal had effectively obfuscated this fact from the wider public ([Culture, Media and Sport Select Committee, 2010](#)). Indeed, the ([Culture, Media and Sport Select Committee, 2010, p. 103](#)) felt that it was 'inconceivable that no-one else at the *News of the World*, bar Clive Goodman, knew' about the illegal practice. A major report by the *New York Times* in September 2010 reached much the same view, quoting anonymous former employees who alleged that the practice was endemic - so much so that apparently even 'the office cat knew' ([New York Times, 2010](#)).

In the wake of new press revelations, a slew of high-profile public figures either threatened, commenced or concluded legal proceedings against the *News of the World* in relation to alleged phone-hacking - a steady stream of litigation which undoubtedly influenced the Metropolitan Police's decision to re-open its own investigation in January 2011, after twice closing it ([BBC News, 2011b](#)). From April 2011, the pressure on both the *News of the World* and the Metropolitan Police intensified. Three *News of the World* journalists - Ian Edmondson, Neville Thurlbeck and James Weatherup - were arrested on suspicion of involvement in phone-hacking ([Guardian, 2011a](#)). Meanwhile the *Guardian* revealed that, during the first four years of the scandal the Metropolitan Police had contacted just 36 of the 4,000 people whose information was supposedly discovered among Mulcaire's notes in 2006 ([Guardian, 2011b](#)).

On 4 July 2011, the scandal reached dramatic new heights, with the *Guardian* reporting that the voice mail of the mobile phone belonging to missing schoolgirl, Milly Dowler, had been hacked by the *News of the World* in 2002 ([Guardian, 2011c](#)). A string of further shocking revelations followed over the next few days, including that other victims of phone-hacking by the *News of the World* may have included the relatives of soldiers who had died in Iraq and Afghanistan and those who died or were injured during the terrorist bomb attacks on London on 7 July 2005 ([BBC News, 2011b](#)). In addition, evidence emerged to suggest that Metropolitan Police officers had accepted payments from *News of the World* journalists in exchange for information ([Guardian, 2011d](#)), raising serious concerns about the closeness of the relationship between the Metropolitan Police and the *News of the World* at a time when the former was supposed to be investigating the latter's activities.

In the wake of these revelations, and the decisions of large numbers of companies to cease to take out paid advertisements in the paper, News International took the decision to discontinue publication of the *News of the World* following a final edition on 10 July 2011. Three days later, News International's parent company, News Corporation, announced that it was withdrawing its bid to take full control of BSkyB (see Section 3.1.1). There was also a series of high-level resignations including those of the News International's chief executive, Rebekah Brooks and its chief legal officer, Tom Crone, and those of Sir Paul Stephenson and John Yates, respectively commissioner and assistant commissioner of the Metropolitan Police (Baston, 2012). Andy Coulson, a former *News of the World* editor, had already resigned from his post as the prime minister's director of communications in January 2011, stating: 'Unfortunately, continued coverage of events connected to my old job at the *News of the World* has made it difficult for me to give the 110% needed in this role' ([Guardian, 2011e](#)).

As of February 2012, the full extent of phone-hacking at the *News of the World*, and the degree to which it was practised at other newspapers, including the *Daily Mirror*, the *Sun* and even the *Sunday Times*, remains unknown. Civil litigation, police inquiries and the Leveson Inquiry into the culture, practice and ethics of the press are all still ongoing. In January 2012, News International reached settlements with 37 victims of phone-hacking ([Guardian, 2012a](#)), with a further 17 settlements announced the following month ([Guardian, 2012b](#)). By 11 February 2012, the Metropolitan Police had made a total of 30 arrests relating to its two parallel investigations into the affair - Operation Weeting (into phone-hacking) and Operation Elveden (into illegal payments to police officers) - including the arrests on 11 February 2012 of five senior journalists at the *Sun* newspaper ([Guardian, 2012c](#)). Meanwhile, the evidence heard by the Leveson Inquiry to date has led to growing accusations that phone-hacking was rife in large sections of the UK press, including those made by actor Hugh Grant who claimed that he could not 'think of any conceivable source' for a *Mail on Sunday* story from 2007 other than an intercepted voicemail messages ([BBC News, 2011c](#)).

Based on the information uncovered by Operation Motorman and the details that continue to emerge in relation to phone-hacking at the *News of the World* (see Case Study 3.1g), it may well be demonstrated that illicit information-gathering practices operate on an almost endemic level within certain sections of the press - and perhaps even within the media, more generally. Indeed, it may well be that Whittamore and Mulcaire - the private investigators at the centre of Motorman and the *News of the World* cases - represent just the 'tip of the iceberg' in a far more extensive network of journalists and the fraudsters that they employ. Though this argument might appear conspiratorial to some, it is one which has the support of a number of experienced investigative journalists - including the *Guardian*'s Nick Davies and David Leigh ([Whittle and Cooper, 2009](#)). Whilst Nick Davies concedes that there has always been a degree of corruption among members of the press, he contends that the use of private investigators and bribery expanded markedly in the 1980s - the beginning of a new wave of corrupt practice which has now, in his opinion, reached 'epidemic' proportions (Davies, 2008). Although it was the *News of the World* that hit the headlines so dramatically in 2011, Davies (2008) claims that journalists at both the *Daily Mail* and the *Daily Telegraph* have confessed to him personally that either they or their colleagues have been involved in the payment of cash bribes to police officers and civil servants, in the past.

Table 3.1k: Publications which had contracted the services of private detective, Steve Whittamore, as identified by 'Operation Motorman'

Publication	Number of transactions positively identified	Number of journalists / clients using services
Daily Mail	952	58
Sunday People	802	50
Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	182	19

Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
Sunday Times	52	7
The People	37	19
Daily Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
Sunday Mirror Magazine	6	1
Real Magazine	4	1
Woman's Own	4	2
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	4
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1

Source: [Information Commissioner's Office \(2006, p. 9\)](#).

### ***Privacy law and injunctions***

Prior to the Human Rights Act of 1998, there was - as the previous Audit put it - 'a patchwork of civil actions and legislative measures' pertaining to privacy, but no legal right to privacy per se (Beetham et al., 2002, p. 53). The Human Rights Act gave citizens such a right, through the incorporation of the European Convention on Human Rights into UK law; but its practical effects should not be overstated. As the Select Committee on Culture, Media and Sport argued in 2010, the limited number of cases brought before the courts concerning breaches of privacy means that the law has yet to take a clear form ([Culture, Media and Sport Select Committee, 2010](#)). Indeed, even if it were the case that, through the decisions of the European court, the UK is moving steadily closer to a privacy law similar in form to those found in France and Italy ([Tomlinson, 2011](#)), one would be excused for wondering whether such a shift might result in any appreciable reduction in press intrusion and harassment. The case of Max Mosley is a telling one, in this respect. Through appealing to Article 8 of the convention, Mosley was able to win his high court privacy action against the *News of the World* and was awarded £60,000 in damages - a landmark ruling. Yet this was a Pyrrhic victory, in many ways: the massive cost of the action left Mosley out-of-pocket despite the considerable damages awarded, and there was, of course, no way of recapturing the offending information once it had been released into the public sphere ([Mosley, 2010, pp. 52-66](#)). Indeed, the unflattering video footage of Mosley is said to have been viewed 1,424,959 times on the *News of the World* website on the day of its publication alone ([Callender Smith, 2011](#)) - a factor which weighed heavily in the judge's decision that to grant an injunction, even so shortly after publication, would have been futile ([BBC News, 2008](#)).

In Mosley's case, there was no prior notification by the *News of the World* and thus little opportunity to prevent a breach of privacy. However, where such opportunity does exist, celebrities and other wealthy individuals have increasingly turned to injunctions as an

expedient way to stop details of their private lives being splashed across the news (see Case Study 3.1h). Indeed, so popular have injunctions become in recent years, that they have been dubbed the 'new libel' ([Callender Smith, 2011](#)). Yet developments in cyberspace have shown that, now, even the most formidable injunctions and super-injunctions cannot always be furnished into impenetrable fortresses of privacy. Private information relating to an individual, which a newspaper may consider either too dangerous or otherwise unfit to print, can quite easily find its way onto a blog, a gossip site or a social network - a fact demonstrated in dramatic style in May 2011, when a small army of Twitter users defied the courts by revealing footballer Ryan Giggs as one of the several public figures that had applied successfully for a privacy injunction.

### Case Study 3.1h: Super-injunctions and privacy law

In the aftermath of the Trafigura controversy (see Case Study 3.1f) and another high-profile super-injunction case involving England football captain John Terry (see below), a judicial committee headed by Lord Neuberger was set up to examine the application and perceived growth of super-injunctions. The subsequent report, released in May 2011, defined a super-injunction as:

'an interim injunction which restrains a person from: (i) publishing information which concerns the applicant and is said to be confidential or private; and, (ii) publicising or informing others of the existence of the order and the proceedings (the "super" element of the order)' ([Master of the Rolls, 2011, p. 20](#)).

An important contrast is made here between a super-injunction and an anonymised injunction, which is defined as:

'an interim injunction which restrains a person from publishing information which concerns the applicant and is said to be confidential or private where the names of either or both of the parties to the proceedings are not stated' ([Master of the Rolls, 2011, p. 20](#)).

Though both forms of injunction can be anonymous, the key distinguishing feature of the super-injunction is the non-disclosure requirement of the order. Nevertheless, the term super-injunction has been frequently used to refer to anonymised injunctions, which are more commonly granted by courts than super-injunctions. It must also be underlined that both forms of injunction are temporary and short-term, with adjudication of a final injunction relinquishing any third party from being bound to non-disclosure, except in the rarest of circumstances. Interim injunctions must contain a return date when they are scheduled for final adjudication. Problems may arise when the return date is not contained in the order and it has not gone past the interim stage. In such cases, parties subject to the order can raise the issue with either the applicant's solicitors or the court involved. However, Lord Neuberger's report concluded that it was unable to verify whether any super-injunctions or anonymised injunctions were indefinitely held at the interim stage either prior to or since the committee's investigations began ([Master of the Rolls, 2011, p. 30](#)).

The John Terry case came to light in January 2010 when the married footballer was granted a super-injunction to prevent the details of an extramarital relationship he was having becoming public knowledge. His application for a super-injunction stated that by revealing details of the affair, his right to privacy under Article 8 of the Human Rights Act 1998 was being contravened. Though the initial injunction contained no return date, a week after it was issued, the judge revoked the super-injunction on the grounds that the freedom of expression outweighed Terry's right to suppress the reports. Judge Tugendhat went on to state that the injunction was not 'necessary or proportionate' and that, rather than due to the infringement on his privacy, the motive for the injunction was to protect his commercial reputation ([Guardian, 2010](#)).

Since the Terry case, and a similar case in 2011 involving an anonymised injunction obtained by another footballer, Ryan Giggs, there has been a significant reduction in the number of applications for super-injunctions, with some parties applying for anonymised injunctions specifically stating that they are not seeking a super-injunction ([Master of the Rolls, 2011, p. 28](#)). Despite the overestimation of the extent of super-injunctions, widespread concerns have been raised in sections of the press about the media being subjected to an increasing number of other forms of injunctions and 'gagging orders'. There has also been much discussion of the viability of these legal mechanisms as a means of protecting privacy. At the height of this debate, in May 2011, the existence of an anonymised-injunction obtained Ryan Giggs was widely referred to on the social media site, Twitter. In addition, Giggs was named directly, under parliamentary privilege by a Liberal Democrat MP, John Hemming, in the House of Commons on 23 May.

These cases serve to highlight a growing tension between Articles 8 and 10 of the Human Rights Act 1998, which effectively pitch the right to privacy against the right to freedom of expression. Prior to the Human Rights Act 1998, there was no consistent recognition in UK law for the right to privacy. Instead, media excesses were seen to be held in check by strict libel laws that created a situation where media could 'publish now [...] but be damned later in damages if you fail to substantiate a defence' ([Melville-Brown, 2011, p. 41](#)). This rationale may well be suitable for defamation, but is wholly inadequate to protecting the right to privacy. Once privacy has been breached it is not possible to correct the infringement so easily.

As such, the absence of an explicit privacy law in the UK has led to a situation in which those with sufficient wealth have the power to seek to impose injunctions to protect their privacy against media intrusion, whether it is justified or not. Furthermore, the responsibility for privacy has been left to individual judges in their interpretation of the Human Rights Act, leading critics to accuse judges of creating a 'privacy law by the back door' ([Daily Telegraph, 2011](#)). Such ambiguity should not take away from the fact that the rights of privacy and freedom of expression are both inviolable and do not take precedence over each other. Rather, a balance must be struck in each case where there is a collision between the two rights, with the proportionate impact of each subjected to careful consideration. Lord Hope sets out the basis for proportionality testing as being:

'whether the publication of the material pursues a legitimate aim, and whether the benefits that will be achieved by its publication are proportionate to the harm that may be done by the interference with the right to privacy. Any restriction of the right to freedom of expression must be subjected to very close scrutiny. But so too must any restriction on the right to privacy' ([House of Lords, 2009, pp. 9-10](#)).

However, even when decisions are scrutinised thoroughly and the tensions between privacy rights and rights to freedom of expression are balanced, questions are still raised about equal access to justice. Without provision in UK law for ensuring privacy, injunctions and super-injunctions, like libel actions, will continue to be the preserve of the wealthy, while for those less well-off, protecting their privacy when it is under threat will continue to be out of reach. As [Haines \(2011, p. 30\)](#) observes: 'You'd never get either injunction or legal aid'.

### ***The effectiveness of media regulators***

In the UK, broadcasters are answerable to a statutory regulator, Ofcom, while the job of regulating press standards is performed by the industry-appointed Press Complaints Commission (PCC). Yet while both perform broadly similar duties, it is the PCC which seems to receive the lion's share of criticism, and the PCC alone which has been regularly taken to task for its under-performance in protecting privacy. Of course, this is partly because the press has a far greater appetite for sensational details of people's private lives than most broadcasters - thus arguably leaving the PCC with the more difficult job of the two regulators. However, many would argue that there are also clear problems with the structure of the PCC itself.

First, while the PCC does recognise the citizen's right to privacy from unwarranted press intrusion and harassment in its editors' code of practice - a voluntary agreement that outlines the standards by which all members of the press are expected to abide - it is still primarily a complaints-handling body with little interest in directly policing press conduct ([Media Standards Trust, 2009](#)). As such, it cannot, generally speaking, do much to prevent infringements of privacy by the press until long *after* they have occurred. This was most notably demonstrated between 2007 and 2008, when the commission's failure to calm the frenzy of (often libellous) press reporting regarding the disappearance of Madeleine McCann led to heavy and widespread criticism ([Culture, Media and Sport Select Committee, 2010](#)).

Moreover, many would argue that - in the McCann case and others like it - the fact that the PCC has failed to intervene decisively in the interests of the public and, more importantly, the unfortunate individuals concerned, is not only suggestive of the commission's lack of organisational ambition but also its inherent bias. For while the PCC claims to be independent, the fact remains that it is funded by the press, appointed by the press, and indeed constituted to a great extent by newspaper editors ([Coad, 2009](#)). These arrangements invariably cast doubts over the PCC's independence - doubts that were hardly assuaged by its toothless, and roundly-condemned, investigation into alleged phone-hacking at the *News of the World* in 2009 ([Coad, 2009](#); [Media Standards Trust, 2009](#)). The PCC's apparent lack of organisational independence is matched, moreover, by a lack of transparency. Despite performing many of the functions of a public body, the PCC refuses, for instance, to be bound by the Freedom of Information Act; does not allow lay members to sit on the committee which drafts its code of practice; and declines to allow complainants a right to attend adjudications ([Coad, 2009](#)).

A number of proposals have been put forward recently to enhance the PCC's efficacy, transparency and accountability - some by the Culture, Media and Sport Select Committee, and others by the Media Standards Trust. However, the PCC's response to their suggestions has been somewhat underwhelming. Although the commission established its own independent review of PCC governance in 2009, the changes which the PCC has subsequently introduced have - for some reformers - been rather paltry, piecemeal and inadequate ([Media Standards Trust, 2011](#)). Most would concede that the PCC does a lot of good work ([Culture, Media and Sport Select Committee, 2010](#)), for instance, in the issue of 'desist notices' where individuals complain of press harassment ([Media Standards Trust, 2009](#)). However, the [Media Standards Trust \(2009\)](#) has also clearly shown that, even if the will to regulate proactively existed, the fact is that the PCC simply do not have enough money to do so: its budget has failed to rise in line with inflation since its creation in 1991 and is a fraction of that of similar bodies, such as the Advertising Standards Authority.



The problems associated with press regulation are long-standing. Indeed, there is a powerful sense of *deja-vu* about current debates on how best to regulate the press, which are strongly reminiscent of those played out during the Calcutt Committee's inquiry into Privacy and Related Matters, which reported in 1990. When the Calcutt Committee recommended the abolition of the Press Council, and its replacement with a new Press Complaints Commission, it was clear that it regarded this as the final chance for the press to demonstrate that voluntary self-regulation could work ([Munro, 1991](#)). Yet, the criticisms of press behaviour, and of the failings of self-regulation, have continued unabated. Even with the Leveson Inquiry ongoing, as of February 2012, it is apparent that 'self-regulation' has failed and that the case for replacing the PCC with a more independent and robust regulatory body has largely been accepted by the press. However, given the concerns on virtually all sides about how state regulation might compromise press freedom, it remains to be seen what form the PCC's successor will take.

## Conclusion

The analysis presented in this chapter has led us to identify a worrying cluster of issues relating to the role of the media in the UK democratic process. International indices continue to highlight that there are greater restrictions on press freedom in the UK than in most other north European countries. Moreover, levels of media concentration remain high and there is no evidence that the deregulatory measures introduced via the Communications Act 2003 have provided a framework suitable for maintaining pluralism in a period of media convergence. Meanwhile, the intensification of economic pressures on media outlets carries genuine risks that high-quality reporting, particularly that based on investigative journalism, will suffer disproportionately. News consumption appears to be falling and the first major victim of the painful transition in media business models will almost certainly be one of the UK's daily broadsheet newspapers. Yet, it is the generally profitable tabloid press which has been the primary focus of concerns about media regulation – and not without reason. Despite long-standing concerns about the invasions of privacy on the part of the UK press, the revelations about illegal and unethical media activity arising from the phone-hacking scandal are genuinely unprecedented.

The events surrounding News Corporation's (ultimately failed) bid to take full control of British Sky Broadcasting (BSkyB) encapsulate virtually all of these above concerns. It seems apparent that the existing framework of media regulation would have permitted a company which controls one-third of UK national newspaper circulation to acquire full ownership of a major broadcasting concern. Instead, it took a lengthy investigation by the *Guardian*, a low-circulation broadsheet newspaper, into phone-hacking at the *News of the World*, a mass-market tabloid, to derail the controversial bid. It is far from reassuring that it was a major public scandal, prompted by press investigation that carried out in the face of police indifference and, later, police opposition, that ultimately provided the impetus for News Corporation to withdraw their bid for BSkyB, when the deal was edging close to final agreement. There is now widespread discussion of the weaknesses of the regulatory framework used to assess such takeovers, which may well not have taken place without the events of the phone-hacking scandal. Equally worrying is the fact that these events hinged on the sustained, investigative journalism undertaken by a heavily loss-making newspaper. Should *The Guardian* disappear from UK newsstands over the next decade, a mere two per cent market share of circulation would be up for grabs, but the significance of its reporting for the UK democratic process could well prove irreplaceable.

Of course, it is important to keep recent events, as well as conjecture about future developments, in perspective. We do not question that media freedom in the UK is fully assured. Media access to official information has also been bolstered as a result of the implementation of the Freedom of Information Act 2000. The continued existence of diverse media in the UK is also beyond doubt, and the significance of independent public service broadcasting, spearheaded by the BBC, remains a core element of the UK's media landscape. It can also be added that digitalisation offers, at least for the time being, greater access to news reporting than has ever previously been the case. Meanwhile, the Human Rights Act 1998 has gone some way to promoting a better balance between press freedom and the right to privacy. We would also underscore that many of the concerns we outline in this chapter are replicated across almost all established democracies. Indeed, on some measures of media concentration, the UK can be argued to have greater plurality of ownership than many of its north European neighbours.

Yet, none of these observations take away from the concerns that we identify in this chapter. Moreover, as the balance between print and broadcast media is reordered, and the web gains in significance, these concerns may well intensify. As we have outlined in this chapter, recent technological and commercial developments are serving to reshape, and increasingly, undermine the UK's traditional 'dual media' system. Given that simultaneous processes of media convergence and media fragmentation are at work, predicting the impact of these shifts is difficult. However, it does seem evident that the UK media landscape is being rapidly reshaped by the:

- erosion of the once clear demarcations between the press and broadcasters, owing to the growing significance of the web as a medium;
- rapid acceleration of the decline of the press, at least in its conventional form as a print medium, raising serious questions about the economic viability of several existing national newspapers;
- increasingly direct competition between the two major interests in the UK media system, the BBC and News Corporation, which would have previously been seen as operating in distinct markets;
- emergence of significant regulatory dilemmas, with regard to both ownership and content regulation, which have by no means been



resolved by the radical changes introduced by the Communications Act 2003.

The evidence presented in this chapter has both a direct and an indirect relationship to the five key themes identified in our Audit as a whole. First and foremost, our findings on media ownership underline the extent to which the UK press is dominated by a small number of large media organisations, several of which have begun to develop interests in other media sectors. The position of News International, which accounts for one-third of UK national newspaper circulation, and whose parent company, News Corporation, holds a 39 per cent stake in BSkyB, alongside a wide-ranging portfolio of media interests internationally, is particularly noteworthy. Yet, there are other significant examples of cross-media ownership, including the common proprietorship of Channel 5 and the Express and Star newspaper titles by Northern & Shell. It is, of course, difficult to demonstrate the extent to which ownership influences editorial decisions. Yet, there can be little doubt that media owners do help shape the political positioning of their media outlets to some degree and that the possibility of exerting such influence forms part of the motivation for owning what are often loss making concerns. As such, we would suggest that media ownership is an important source, and wider representation of, the dynamics of growing corporate power which we point to throughout this Audit.

This chapter also illustrates concerns which relate to two of our other overarching themes, albeit in a broader, and more indirect, sense. While our Audit does not include any content analysis of media reporting, we have highlighted patterns of declining news consumption, an acute fragmentation of audience shares in television (now clearly the dominant medium) and a continued resource squeeze in the quality press and news broadcasting. These trends clearly serve to undermine the scope for media outlets to perform the core functions which we outlined in the introduction to this chapter as being central to representative democracy. At the same time, we have little doubt that the media have been pivotal in the processes associated with the growth of transparency in UK democracy over the last two decades. As we make clear elsewhere in this Audit, we fully welcome initiatives such as freedom of information and the establishment of registers of donations to political parties. However, we also recognise that part of the rationale for such measures has proved flawed, namely that they will automatically promote integrity by virtue of the fact that 'sunshine is the best disinfectant'. Given the continued concerns which we identify in this Audit with regard to issues such as integrity in public life (see Chapter 2.6) and the funding of political parties (see Section 2.2.4), enhanced media access to material that was once confidential has partially empowered journalistic investigation in these areas. Yet, these legitimate democratic impulses also give rise to an obvious paradox, since it became more, rather than less, likely that material comes into the public domain which has the potential to further undermine public confidence in UK democracy.

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## 3.2. Political participation

### Executive Summary

This chapter reviews the available evidence relating to the four 'search questions' concerned with political participation.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **Areas of improvement**

##### **1. The continued vibrancy and growth of the voluntary sector.**

While the boundaries of the voluntary sector are notoriously difficult to define, there is clear evidence to suggest sustained growth in the number of voluntary organisations. It has been estimated that there were some 870,000 civil society organisations operating in 2006-07, with a combined income of £116 billion and assets of £210 billion. While time-series data for the whole of the sector are difficult to obtain, the number of registered charities grew for most of the 2000s (see Figure [3.2a](#)). However, by the end of the decade there was an observed decline in the number of charities and growing evidence of a relatively small number of charities becoming financially dominant. (For further details and discussion, see Section [3.2.1](#))

##### **2. Enhanced government support for the voluntary sector.**

The Labour governments of 1997-2010 continued the efforts of previous governments to support the voluntary sector. Under Labour, state financial support for the voluntary sector increased and the introduction of 'the Compact' (see Case Study [3.2a](#)) sought to provide a framework for improving the relationship between the state and the voluntary sector. From 2010, the Conservative-led coalition government's commitment to a 'Big Society' agenda (see Case Study [3.2b](#)) suggested a desire to promote the voluntary sector's role in society to an even greater extent. However, government policies in recent decades have also raised alarms within the voluntary sector, particularly with regard to the potential threat to the latter's independence. (For further details and discussion, see Section [3.2.1](#))

##### **3. An apparent increase in some forms of political participation.**

Surveys suggest that, during the 2000s, there may have been a modest increase in the proportion of the population engaged in political activities such as signing petitions, taking part in demonstrations and contacting elected representatives (see Figure [3.2e](#) and Figure [3.2f](#)). At the very least, participation in these forms of political activity is stable, highlighting a clear contrast to trends in electoral participation (see Section [2.1.6](#)) and activism associated with political parties (see Section [2.2.3](#)). There has also been a continued rise in the membership of the largest heritage and nature protection organisations, which contrasts dramatically with the declining membership of the main political parties (see Figure [3.2h](#)). However, it is crucial to note that there are dramatic contrasts in levels of political participation by social class and that large sections of the population appear to engage in no formal types of political participation at all. (For further details and discussion, see Section [3.2.2](#))

##### **4. The success of female candidates in devolved elections since their introduction in 1998.**

The levels of female representation achieved in the Scottish parliament, the Welsh assembly and the London assembly are genuinely unprecedented in UK politics. In all three cases, women have made up at least one-third of elected representatives following each set of elections held since the late-1990s (see Figure [3.2o](#)). The Welsh assembly, which has never been less than 40 per cent female, and maintained gender parity from 2003-07, boasts a particularly impressive record. While the Northern Ireland assembly has lagged significantly behind other devolved bodies, an increase in female representation has been achieved, reaching 19 per cent in 2011. It is also important to note that, with the exception of Northern Ireland, female representation in devolved parliaments and assemblies peaked in the



mid-2000s. This raises concerns about a potential 'boom and bust' in the representation of women under devolution. (For further details and discussion, see Section [3.2.3](#))

## **5. Increased participation of women in government.**

After 1997, there was a significant rise in the number of women involved at the highest levels of government, both in the political executive and in the senior civil service. Prior to 1997, around 10 per cent of cabinet posts were typically held by women but, by 2006, this had increased to 35 per cent, not far short of levels found in the Nordic countries (see Figure [3.2m](#)). There was a similar rise in the proportion of all UK ministerial roles held by women from the late 1990s onwards (see Figure [3.2n](#)). Meanwhile, women became a far greater presence within the ranks of the senior civil service; whereas only 17 per cent of these posts were held by women in the late-1990s, the proportion had increased to 31 per cent by 2010 (see Figure [3.2u](#)). However, while the progress towards gender parity in the civil service may be described as 'slow but steady', the formation of the coalition government in May 2010 has underlined the extent to which levels of female participation in high political office are determined by party composition. The proportion of all ministerial posts held by women was halved as a result of the change of government in 2010. (For further details and discussion, see Section [3.2.3](#))

## **6. A clear increase in ethnic minority representation in most areas of public life.**

In comparison to a decade ago, members of ethnic minority groups are now significantly better represented in the House of Lords, the senior civil service, public bodies and the judiciary. In all cases, the improvement has taken place from a very low base, but it has nonetheless been dramatic in several instances. For example, the proportion of senior civil servants from black and minority ethnic (BME) backgrounds has trebled since the late-1990s, from 1.5 to 4.8 per cent. Similarly, the proportion of places on public bodies held by BME appointees has increased from four to seven per cent over the same period. However, there is still some way to go before the UK's ethnic minority population is represented in a proportional manner across all key areas of public life. In addition, in cases such as elected local government, there has been much less progress, largely due to the failure of the Conservatives and the Liberal Democrats to recruit and select sufficient BME candidates. (For further details and discussion, see Section [3.2.4](#))

### ***Areas of continuing concern***

#### **1. Threats to the independence of the voluntary sector.**

While the growth of the voluntary sector has been facilitated, in part, by increased state financial support, concerns remain that charities and other civil society organisations are becoming overly dependent on government funds. Taken as a whole, organisations in the charitable sector now receive as much income from the state as they do from individual donations (see Figure [3.2b](#)). Moreover, much of the growth in state funding arises from the growing use of voluntary sector organisations to deliver public services under contract. The balance in statutory income from grants versus statutory income from contracts has shifted decisively in favour of the latter in recent years (see Figure [3.2c](#)), leading many commentators to suggest that some voluntary sector organisations are at risk of seriously compromising their independence. (For further details and discussion, see Section [3.2.1](#))

#### **2. A large part of the population has little or no engagement with politics.**

In 2010, almost half of the population said that they have not taken part in any of the following political activities within the previous two to three years: signing a petition; boycotting certain products for political reasons; contacting an elected representative; urging someone to get in touch with an elected representative; attending a political meeting; donating money or paying a membership fee to a political party; taking part in a campaign; or taking part in a protest or strike. Set alongside low levels of turnouts in local and devolved elections (see Section [3.3.2](#)), and declining participation in UK and European parliament elections (see Section [2.1.6](#)), these figures suggest that a significant minority of the UK population may well have no formal engagement with the political process whatsoever. (For further details and discussion, see Section [3.2.2](#))

#### **3. There are huge class divides in political and civic participation.**

While overall levels of political and civic participation appear to have been stable or even increased over the last decade or more, there are very wide differences in levels of engagement by social class. A survey carried out in 2009 found that while 56 per cent of respondents from social classes AB had signed a petition in the previous two to three years, only 25 per cent of respondents in social classes DE had done so (see Figure [3.2g](#)). Similar differentials were reported with regard to discussing politics or political news with a friend (65 versus 21 per cent) and to contacting an elected representative (27 versus 9 per cent). Equivalent patterns are found with regard to volunteering (see Figure [3.2j](#)) and giving money to charity (see Figure [3.2i](#)). Since this class divide is also increasingly evident in electoral participation (see Section [2.1.6](#)), these figures highlight the extent to which UK democracy is characterised by high, and almost certainly increasing, levels of political inequality. (For further details and discussion, see Section [3.2.2](#))

#### **4. The ongoing failure to increase female participation in political life and public office.**

While we are able to note some progress in this chapter with regard to the involvement of women at all levels of public life, there are a whole series of areas where little or no progress is discernible. Women now make up 22 per cent of the membership of the House of Lords, compared to 17 per cent a decade ago (see Table [3.2b](#)). In English local government, the proportion of councillors who are female is 31 per cent, a rise of only two per cent from the early-2000s (see Figure [3.2q](#)). Progress has also been painfully slow in the judiciary, where only one woman serves among the 11 judges making up the supreme court (see Table [3.2d](#)), and the proportion of female Lord Justices of Appeal has only risen from six to eight per cent over the course of a decade (see Figure [3.2t](#)). In the case of public bodies, the share of appointments held by women has actually decreased from 34 per cent in 2002 to 32 per cent in 2010 (see Figure [3.2v](#)). (For further details and discussion, see Section [3.2.3](#))

#### **5. The ethnic make-up of the UK population is not yet fully reflected in public life.**

Despite the genuine, and impressive, improvements we note in the participation of ethnic minorities in public life, there is still an evident need for further progress. It remains possible to count the total number of black and minority ethnic (BME) cabinet ministers there have been in UK history on one hand. Despite efforts to diversify the legal profession, which have met with obvious success at the lower ranks, no judge from a BME background has yet been appointed to either the supreme court or the court of appeal. Similarly, elected local government in England and Wales remains disproportionately white, with little or no overall progress made since the early-2000s in increasing BME representation - largely because Labour, the party with consistently the highest numbers of BME councillors, has lost so many seats since 2007. Even in those areas where BME representation has increased sharply, such as the civil service, progress will have to be sustained over the next decade for the UK's ethnic mix to be reflected more or less proportionally. (For further details and discussion, see Section [3.2.4](#))

#### ***Areas of new or emerging concern***

##### **1. The likely impact of government spending cuts on the voluntary sector.**

Notwithstanding concerns about the growing reliance of the voluntary sector on income from statutory sources, the cuts in state funding for the sector arising from the current period of government expenditure reductions threaten the very existence of some organisations. Small voluntary organisations, particularly those funded by local government and focused on advocacy and advice, would appear to be especially vulnerable. There is also worrying evidence to suggest that grant reductions to the voluntary sector have been greatest in areas with the highest levels of social deprivation (see Figure [3.2d](#)). (For further details and discussion, see Section [3.2.1](#))

##### **2. Some of the key progress towards gender equality in public life has been reversed.**

The participation of women in a number of elected and appointed positions reached a peak in the mid-2000s, after which there was an evident and, in some cases dramatic, decline. The peak of female representation in devolved parliaments and assemblies was in 2003-04, after which there was a fall in the number of women elected to each of the Scottish parliament, the Welsh assembly and the London assembly (see Figure [3.2o](#)). In the case of the Welsh assembly, the proportion of assembly members who are female has dropped from 50 per cent in 2003 to 40 per cent in 2011. Similarly, the peak level for female participation in the UK cabinet (35 per cent of posts) was reached in 2006, since which time it has dropped to 16 per cent (see Figure [3.2m](#)). In relation to all ministerial positions - i.e. including those outside cabinet - the high-water mark was set in 2008, when 34 per cent of UK government ministers were women, before dropping to just 15 per cent in 2010 (see Figure [3.2n](#)). Finally, a decade of progress towards gender equality in appointments to public bodies went into reverse from the mid-2000s, with the proportion of positions held by women declining from 38 per cent in 2004 to 32 per cent in 2010 (see Figure [3.2v](#)). (For further details and discussion, see Section [3.2.3](#))

##### **3. The professional middle classes dominate elected local government.**

Local councillors in England are increasingly likely to have a professional or managerial background. From 1997 to 2010, the proportion of local councillors in England from either professional or executive occupational backgrounds rose from 60 to 70 per cent, while the proportion from manual working occupations fell from 13.6 to 9.2 per cent (see Figure [3.2z](#)). Local councillors in England are also increasingly likely to be of retirement age. The proportion of councillors in England who have retired from full-time employment has risen from 34.1 per cent in 1997 to 47.2 per cent in 2010 (see Figure [3.2y](#)). These trends are serving to make councillors increasingly unrepresentative of society as a whole. (For further details and discussion, see Section [3.2.3](#))

## **Introduction**

## Democratic Audit

Political participation is, self-evidently, axiomatic to democracy. If democracy is to constitute 'the rule of the people', it is clear that 'the people' must participate in the process of rule. It is therefore widely accepted that a political system which does not, for instance, provide its citizens with the rights to participate in free and fair elections, to join and become active in autonomous political parties, or to engage in free expression of political views without censorship, is not a democracy.

However, despite its centrality to even the most basic notions of democracy, there has always been disagreement about what does, and does not, constitute 'political participation'. In classic accounts of representative democracy, the study of political participation was traditionally restricted to 'conventional' forms of participation, namely those concerned with activities such as voting, campaigning and standing for office. However, definitions of political participation have progressively broadened over the past four decades, largely because of new democratic currents, both conceptual and practical, arising from notions of direct and participatory democracy. In particular, the increase in 'direct action' politics during the 1960s and 1970s led to political scientists taking greater account of wider forms of political participation, such as signing petitions, taking part in demonstrations and engaging in civil disobedience.

In addition, broader definitions of political participation have become necessary because most, if not all, representative democracies have established various formal mechanisms for direct and participatory democracy over recent decades. In the UK, for instance, governments have established a range of procedures designed to promote the direct participation of citizens in the policy process. As a result, individual citizens have become engaged in decision-making in a multitude of different ways, from serving as a tenants' representative in social housing or parental representatives on the governing board of a school, to taking part in community planning events or consultation exercises run by public bodies .

As such, academic definitions of political participation have been stretched because the practice of political participation has itself tended to take more diverse forms. A relatively typical contemporary definition of political participation would therefore include reference to activities considered as both 'conventional' and 'unconventional' forms of participation. For instance, Birch (1993) outlines 11 principal categories of participation that include various forms of voting, party activism, organized protests and civil disobedience, as well as citizen participation in decision-making and community activism. However, there are also strong grounds for broadening the definition of political participation further still. Much recent research into political participation has been influenced by Robert Putnam's work on democracy and social capital. Putnam (1993; 1996; 2000) argues that there is a symbiotic relationship between political participation and more everyday forms of civic engagement. Most notably, Putnam (2000) stresses the close link between the forms of 'political' participation outlined above and various types of 'civic' participation, including involvement in church groups, sports clubs, social clubs and other organisations. He argues that citizen involvement in groups and organisations results in the formation of networks of trust and cooperation, which he terms 'social capital'. These forms of civic engagement, while not formally considered as political participation, are nonetheless crucial to a healthy democracy.

Our approach to political participation therefore begins from a broad-based definition of political participation which also reflects the significance of Putnam's insights about the role of social capital. As we explained in our last full Audit:

'We use a broad definition of "political participation", which equates it more with the "public" than simply with the "governmental". Thus we include participation in a trade union, tenants' association or a community organisation in our review as well as more narrowly political activities such as voting, involvement in a political party or lobbying an MP or councillor. The reason for broadening the concept is that a country's democracy lies as much in the vitality of its citizens' self-organisation in all aspects of their collective life - what has come to be called civil society - as well as their formal relation to government. Civil society is both an important arena within which citizens are empowered in the management of their own affairs, and a key agency for making government accountable and responsive' (Beetham et al., 2002, p. 208).

This conception of political participation is clearly consistent with the Audit's first underlying principle of 'popular control'. However, it is also important to consider how our approach to political participation should be informed by our second democratic principle, that of 'political equality'. In our view, the existence of multiple channels for political and civic participation are a necessary condition for a healthy democracy, but they may well not be sufficient if we are also concerned to promote political equality. It has long been noted that different social groups exhibit varying degrees of engagement in the political process, often with profound consequences for policy outcomes. As Schattschneider (1960, p. 35) famously noted when critiquing the then dominant pluralist conceptions of liberal democracy: 'The flaw in the pluralist heaven is that the heavenly chorus sings with a strong upper-class accent'. Consequently, our analysis in this chapter seeks to assess the extent to which there are identifiable class differentials in levels of political participation. In addition, we pay detailed attention to issues of gender equality and to the engagement of ethnic minorities in UK political life.

Given these issues, the four sections of this chapter focus respectively on:

- the scale and independence of civil society;
- levels of civic participation;

- the participation of women in political life;
- the social representativeness of public officials.

In our last Audit, we noted that while membership of political parties and turnout in elections were indeed falling in the UK, the same did not appear to be true of wider forms of political engagement (Beetham et al., 2002). We also highlighted that there was no evidence of a decline in levels of civic participation, that levels of volunteering were high and the voluntary sector vibrant. However, we also underlined potential threats to the independence of civil society organisations, particularly where they had become directly engaged in the delivery of public services. In addition, we found widespread evidence of women being under-represented in all forms of public office, a pattern which was repeated with respect to the UK's ethnic minority population. A decade on, we find that our core conclusions are largely the same, albeit with a number of significant caveats. We find that most forms of non-electoral and non-party political participation are stable, if not increasing. We also point to a sustained growth in the number of charities and to relatively stable levels of civic activism, but continue to raise concerns about the growing reliance of parts of the voluntary sector on government contracts. With regard to the representation of women and ethnic minorities in public life we highlight a mixture of genuine, commendable progress and ongoing, inexcusable failure. Meanwhile, we also raise greater concerns in this Audit about class inequalities in political participation than we have in our previous surveys - although this partly because of the availability of more extensive data than was previously the case.

On balance, New Labour's period in government from 1997-2010 is reflected in an improved set of democratic outcomes with respect to the issues addressed by this chapter of the Audit. The evidence we have assembled points to a healthy and vibrant civil society, which provides a partial counterbalance to the sharp decline in electoral participation over the same period. Likewise, we are encouraged by the growth of ethnic minority representation in many areas of public office, which is also replicated, albeit to a lesser extent, with respect to some aspects of gender representation. However, in the early-2010s, there is still a long way to go if our ultimate goals are those of mass popular participation, proudly independent voluntary associations and equality in public life. Moreover, it is far from certain that the coalition government's 'Big Society' agenda will prove successful in addressing these concerns, not least because it has become associated in practice, if not in theory, with policies aimed to achieve sharp cuts in public expenditure arising from their overriding goal of deficit reduction.

### 3.2.1 Scale and independence of civil society

How extensive is the range of voluntary associations, citizen groups, social movements, etc., and how independent are they from government?

While voluntary association and citizen action often serve as an important source of charity and social provision to the poor and other vulnerable groups, it is also widely recognised that the existence of a strong and diverse civil society sector supports democracy itself by functioning as: (i) a centre of power that can balance that of the state and private enterprise; (ii) a source of pressure to make state and private sector organisations more responsive and accountable; and (iii) a space in which people can empower themselves through association with others. Historically, this has been well evidenced in the case of the UK, which has a strong tradition of voluntary association and citizen campaigning, stretching back to the nineteenth century at least. Yet the freedom of charities and voluntary groups to campaign and wage an independent course of their own has often been brought into question. Most frequently, these concerns over the freedom of the sector focus on the degree to which it relies on the state to fund its other key role as deliverers of public services. As we discuss below, these fears have become particularly pronounced since the last Audit reported, due to the increasing involvement of charities and voluntary groups in the contracting of state services; and the concern that these are often delivered more in accordance with the priorities and policy goals of the government than those of the voluntary organisations themselves.

#### ***The extent of voluntary association***

A wide range of civil society organisations exist in the UK. However, any attempt to estimate the size and range of the voluntary sector immediately runs into the problem that there is no agreed definition of what it comprises. While it is widely considered that the sector extends beyond registered charities, and includes a range of non-state and not-for-profit organisations, there is little consensus over how to categorise organisations as diverse as trade unions, housing associations, universities, and independent schools. It is also recognised that many such organisations, all of which have a genuine claim to be part of civil society, are effectively hybrids - combining principles of voluntary association and promotion of the public good with the delivery of state services and commercial, surplus-generating activities.

One widely accepted way of responding to this quandary is to define the voluntary sector both in its 'narrow' and 'broad' versions. For instance, since 2008, the *Civil Society Almanac*, published annually by the National Council for Voluntary Organisations (NCVO), has adopted a comprehensive approach to defining the size and reach of the sector, comprising of 21 different categories of organisation that can also be disaggregated into their constituent parts. Using their inclusive definition, which essentially encompasses all 'borderline' cases other than quangos, one recent edition of the *Almanac* (Kane et al., 2009) estimated that there were some 870,000 civil society organisations in 2006-07, with a combined income of £116 billion and net assets of £210 billion.

As Table 3.1a shows, these resources are not spread evenly throughout the sector. The 171,000 general charities, for example, are thought to make up just 20 per cent of all civil society organisations, but account for 29 per cent of the sector's income, as well as 43 per cent of total net assets and 47 per cent of staff employed. Meanwhile, the four categories of organisations about which there is little agreement (co-operatives, housing associations, universities, and independent schools) collectively comprise only one per cent of all organisations, but account for 56 per cent of income, 46 per cent of assets and 45 per cent of staff. By contrast, the 721,000 organisations across four categories which can broadly be defined as 'grassroots' (faith groups, sports clubs, excepted charities, informal community organisations) make up 83 per cent of organisations in the sector, but account for just eight per cent of income and six per cent of assets.

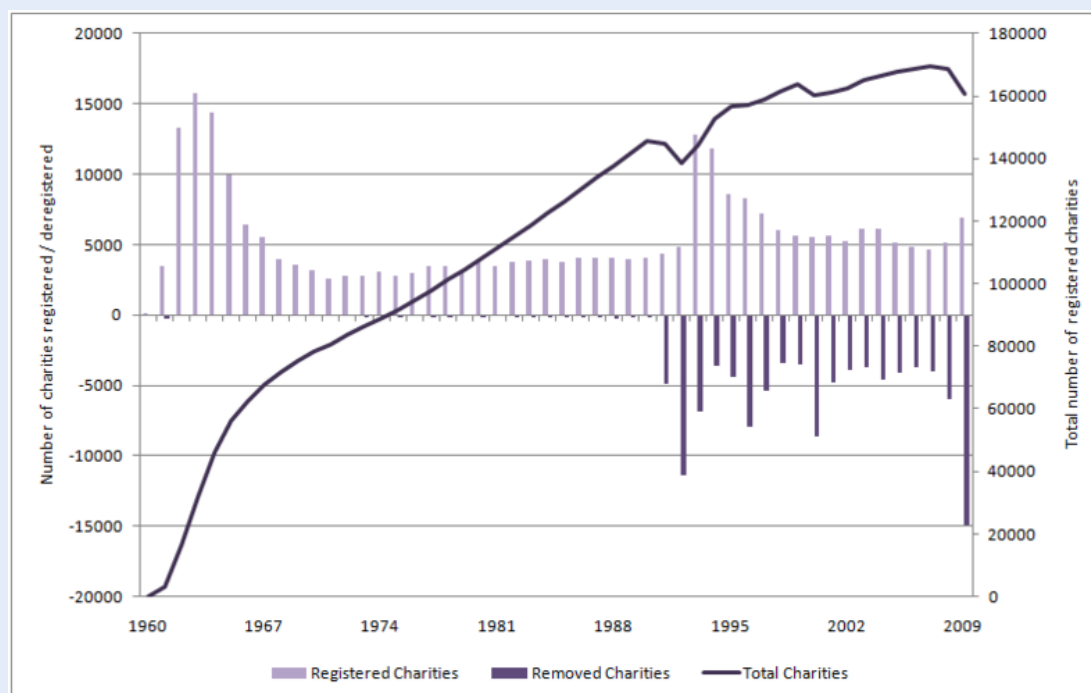
Table 3.2a: Size of civil society organisations by parts of the sector, 2006/07

	Number of organisations	Income (£m)
General charities	170,900	33,170
Co-operatives	4,600	26,270
Universities	170	21,280
Housing associations	1,800	10,910
Independent schools	2,300	6,570
Sports clubs	104,000	5,100
Building societies	60	4,420
Industrial and provident societies	8,500	4,210
Faith groups	13,300	3,750
Trade associations and professional bodies	300	1,860
Companies limited by guarantee	6,700	1,410
Trade unions	190	1,080
Common investment funds	70	600
Excepted charities	4,000	400
Working men's clubs	1,700	320
Community interest companies	900	320
Benevolent societies	2,200	280
Friendly societies	420	230
Credit unions	750	120
Political parties	180	70

Source: [Kane et al. \(2009\)](#).

While the available data is patchy and incomplete in places, evidence suggests that the voluntary sector - such as we might define it - has grown over time. This trend is most easily demonstrated with respect to the number of registered charities, for which data stretches back to the 1960s. As Figure 3.1b shows, the number of registered charities in England and Wales has increased steadily since the register was introduced, and has generally continued to increase year on year since the last Audit reported - albeit with the exception of 2008 and 2009, when there were quite sharp declines in the number of registered charities. The same pattern can also be observed with regards to the income of the charitable sector, which has increased quite consistently - from £25.1 billion in 2000-01 to £35.1 billion in 2007-08 ([Clark et al., 2010](#)). Many of the new charities being created are small charities. Of the 48,250 net increase in the number of charities from 1995-2004, for instance, some 37,500 (or 78 per cent) were charities with incomes of £100,000 per annum or below (derived from [Wilding et al., 2006](#)). However, at the same time, there has also emerged evidence to suggest that major charities are becoming more financially dominant. In 2003-04, by way of demonstration, the 290 charities with incomes of £10 million or more per annum comprised two per cent of the charitable sector, but 39 per cent of its income; while in 2006-07, in comparison, there were 411 charities of this size, comprising of still only two per cent of the total, but with 43 per cent of the sector's income.

Figure 3.2a: Number of registered charities in England and Wales, 1960-2009



Source: [Clark et al. \(2010\)](#).

The scarcity of data on community groups and associations that are not formally constituted makes measuring change in the number of these organisations far more difficult. What seems certain is that the total number of civil society organisations is likely to dwarf those captured by data on charities and other regulated bodies. As [Phillimore et al. \(2009\)](#) note, while there are around 200,000 third sector organisations which are registered in some way, there may be as many as 900,000 more civil society organisations which operate 'below the radar'. It is possible that here too there has been growth over time. Indeed, by comparing estimates given in earlier studies (see, for instance, Kendall and Knapp, 1996) with more recent ones (see, for instance, [Clark et al., 2010](#)), it is conceivable that the number of such organisations may have doubled in recent decades (although the different methodologies used by these studies make it impossible for us to know for sure whether this is really the case). While reliable estimates are impossible to produce, it is certainly plausible that there has been substantial growth in the number of 'micro-organisations' operating locally. Indeed, case studies of individual localities suggest that highly localised campaign and action groups may well have mushroomed in recent decades (Wilks-Heeg and Clayton, 2006).

### **Voluntary sector independence**

If the voluntary sector is to perform the various democratic functions of which it is capable, it is essential for it to be independent. This means independence from its private sources of finance; and also, more importantly, independence from government, which not only funds many of the activities of the sector but also sets much of the legal and regulatory framework in which it operates. Concerns over the independence of the voluntary sector from government, in particular, have become more prominent as consecutive administrations have sought a greater role for it at the heart of public service delivery. This process began in the 1970s and 1980s under Conservative governments aiming to contain public spending on state welfare - leading to a rapid and considerable increase in state funding to the voluntary sector during that period (Kendall, 2003, pp. 31-2).

Like the Conservative governments before it, the Labour government elected in 1997 was enthusiastic about the greater integration of voluntary organisations into state-funded public services; albeit as a means of expanding, rather than limiting, the scope of welfare provision ([Harris, 2010](#)). It was also, from its very beginnings, keen to stress its desire for a productive partnership with the sector, in which the independence of the sector was respected and strengthened. To these ends, a number of initiatives were introduced by the government - including the extension of tax relief on private donations, which made the UK one of the most tax-friendly jurisdictions for the sector in the world (Kendall, 2003, p. 46). Labour also instigated 'the Compact', which laid down a series of principles shared by government and the voluntary sector, as well as a framework within which the two could work. Finally, and most importantly of all, these steps were accompanied by further large increases in state funding to the sector.

## Case Study 3.2a: The Compact

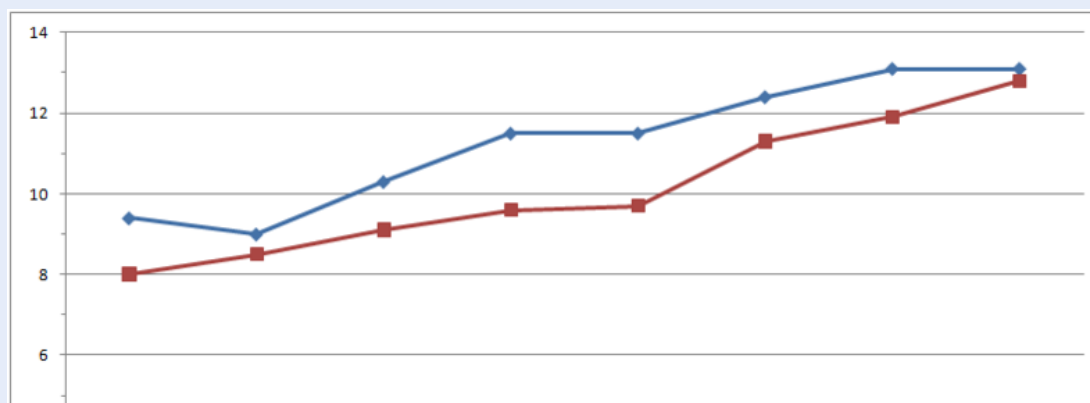
[The Compact](#) is an 'agreement between the government and the third sector [...] which outlines a way of working that improves their relationship for mutual advantage.' ([Compact Voice, 2012](#)). It was recommended by the Commission on the Future of the Voluntary Sector in 1996, introduced in 1998 by a Labour government keen to see an extended role for the sector, and 'refreshed' by the coalition government not long after its formation.

One of the aims of the Compact has been to reaffirm and help secure the independence of the voluntary sector from government ([Compact Voice, 2010](#)). However, those within the sector have disagreed as to how effective the Compact has been in realising this aim. Focus group research conducted by Compact Voice found that '[w]hilst the principles of the Compact are unanimously supported in theory [...] views as to its efficacy in practice as a tool for defending independence vary greatly' ([Simanowitz, 2008, p. 4](#)). Indeed, only 30 per cent of participants considered the Compact to be an important means of strengthening their organisation's independence, with 23 per cent dismissing it as ineffective. The report concluded that although the Compact was undoubtedly of value, much more could be done to ensure that the principles espoused in it are demonstrated in practice ([Simanowitz, 2008](#)). The biennial State of the Sector survey for 2009, meanwhile, found that just 17 per cent of the charity professionals surveyed believed the national Compact was having a good impact - with 47 per cent convinced, by contrast, that the Compact had no impact at all ([Varley-Winter et al., 2009](#)).

While the principles of the Compact are widely supported, its impact is therefore generally felt to have been negligible during a decade in which voluntary sector provision has increasingly been determined by formal contracting arrangements and the stipulations that have accompanied them. This seems, in the main, to be the fault of the government, which has shown a consistent lack of enthusiasm to implement the provisions of the Compact properly (Zimmeck, 2010).

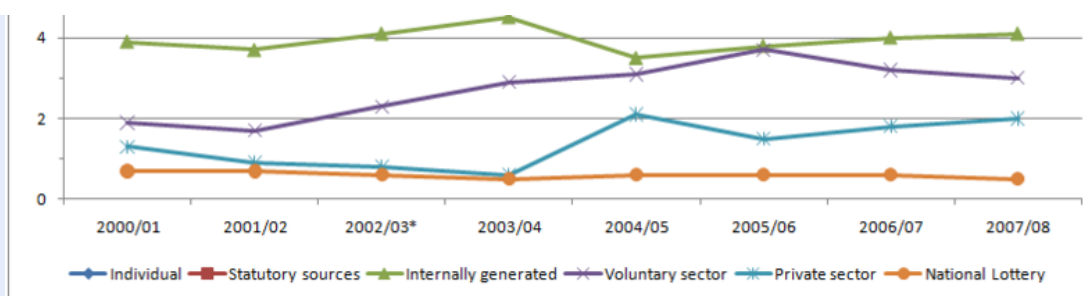
Yet, despite the notionally good intentions of the previous government, disquiet over the perceived threat to voluntary sector independence from government has persisted. The effects of the Compact, for instance, have been underwhelming (as we explain in Case Study 3.2a); while the scale and form of statutory funding to the sector have also continued to present concerns (see Seddon, 2007). As Figure 3.2b shows, voluntary sector income from statutory sources increased under the Labour government from £8 billion in 2000-01 to £12.8 billion in 2007-08. This was not enough for statutory sources to eclipse individual donations as the most important source of funding for the voluntary sector overall; but many organisations did become highly reliant on state funds, and some parts of the sector have arguably been 'co-opted' by the state during the period. There are some very large national charities, orientated towards service delivery in health and social care, for instance, which receive close to 100 per cent of their income from state sources - primarily to deliver public services. In 2004-05, there were 26 charities with income from state sources of £36 million or more, with the proportion of state support they receive varying from 18.6 per cent (Oxfam) to 98.2 per cent (community integrated care). Furthermore, there are tens of thousands of small charities and voluntary organisations with a highly localised focus, which depend to a great degree on grants from local government, regional agencies and devolved administrations. At least some of these are overwhelmingly funded by local authorities - such as the National Association of Citizens Advice Bureaux, whose £36.4 million of state support makes up 85.2 per cent of their total income. These developments have raised concerns that policy frameworks over the last decade have fostered the emergence of new charitable organisations with especially high levels of dependence on the state - a theory supported by a recent survey, which found that 'charities registered in the 2000-2008 period are two and half times more likely to regard the public sector as their most important source of income than charities registered prior to 1970' ([Clifford et al., 2010, p. 13](#)).

Figure 3.2b: The sources of income of the voluntary sector, 2000/01 to 2007/08 (£ billions)





## Democratic Audit



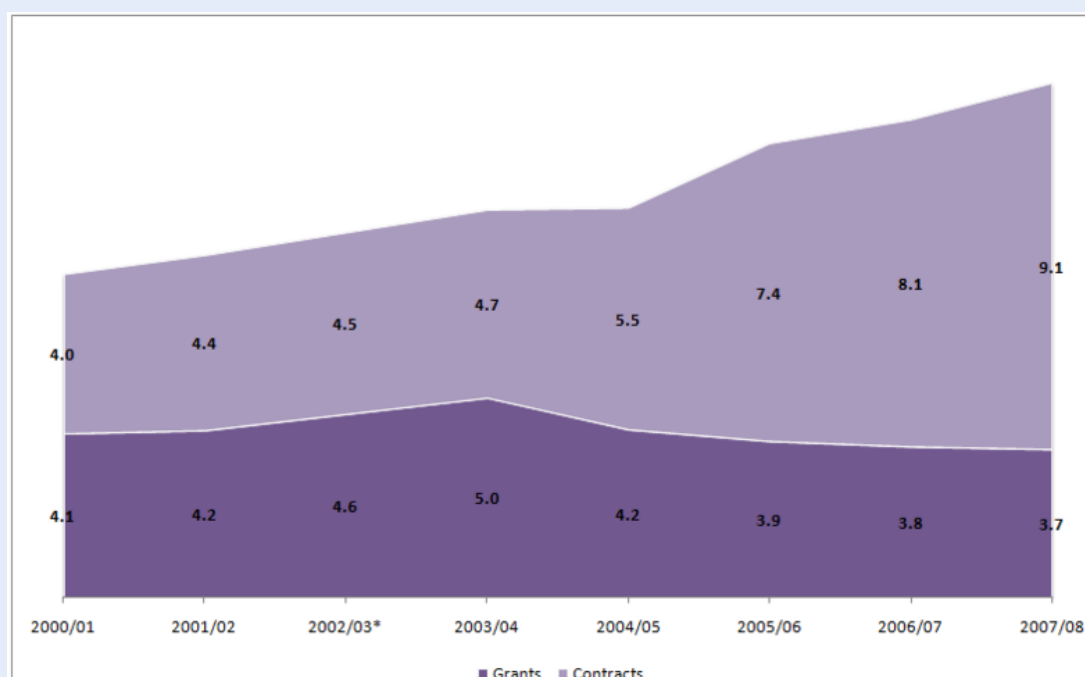
Note: 2002/03 figures are inferred.

Source: [Clark et al. \(2010\)](#).

Of course, it is crucial to note that there are still many parts of the sector that receive almost no state funding at all; and that even among those that do, there are huge variations in the extent to which organisations rely on such funding. This is particularly evident when one compares organisations by size, type, location and the sector in which they work. The regional contrasts, for example, are very clear. Devolution has meant that charities in Scotland, Wales and Northern Ireland receive a smaller proportion of state funding from national government; and there are also significant variations across the English regions. Local authority and regional development agency funding is more significant along the Eastern side of England than it is in the rest of the country; while [Clifford et al. \(2010\)](#) suggest that organisations in the North West and North East are more likely to be in receipt of money from central government. This study also highlights the strong relationship between government support and high levels of social deprivation ([Clifford et al., 2010, p. 13](#)).

In any case, while an over-reliance on state funding might well have a deleterious effect on the independence of the sector, state funding itself of course does not invariably lead to voluntary organisations becoming extensions of the state, and may be the only option in communities too deprived to sustain a high level of voluntary income to charities and community groups. Indeed, for many organisations, it is not state funding itself which has been considered the threat to independence, but rather the form which this funding has increasingly taken. As Figure 3.1c shows, the previous government placed an increasing emphasis on contract funding as opposed to grant funding - with the rough parity between these two types vanishing rapidly after 2003-04. Contract funding is perceived to offer a number of benefits to government, but for voluntary organisations themselves the threats to independence that it poses are manifold. The terms of a contract can, for instance, limit the ability of a voluntary organisation to shape and influence service design; while the insecurity of the funding may also lead to organisations censoring themselves out of fear of reprisals from government ([Panel on the Independence of the Voluntary Sector, 2012](#); [Seddon, 2007](#)).

Figure 3.2c: Voluntary sector grant and contract income from statutory sources, 2000/01-2007/08 (£ billions)

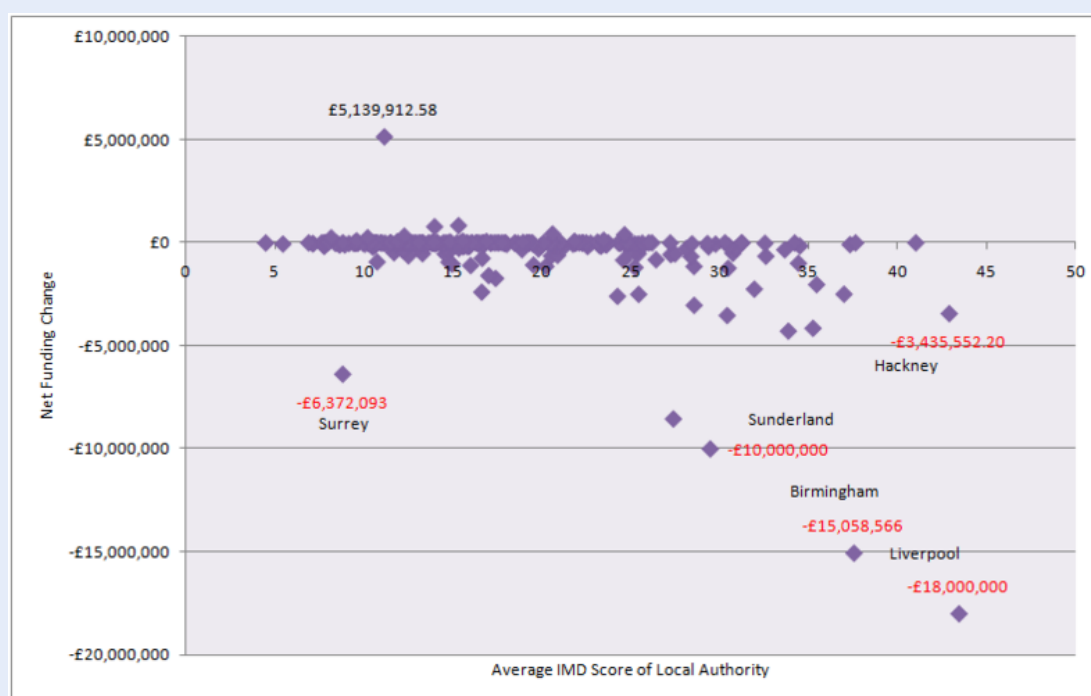


Note: 2002/03 figures are inferred.

Source: [Clark et al. \(2010\)](#).

Following the formation of the coalition government in 2010, however, voluntary organisations are now facing threats not just to their independence, but to their very survival. Like the previous government, the coalition government has also declared that it aims to strengthen the voluntary sector and further open up commissioning processes to organisations within the sector that wish to be involved in the delivery of public services ([HM Government, 2010, p. 29](#)). However, unlike the Labour government, the coalition is cutting funding to the voluntary sector considerably, at a time when parts of the sector already face major challenges. In the context of the 'Big Society' agenda (for details of which, see Case Study 3.2b), these government spending cuts are hugely important. On the one hand, large national charities geared up to deliver big government contracts in health and social care are likely to be able to adapt and may well find that their funding streams remain constant or even grow. On the other hand, smaller organisations heavily dependent on grants are almost certain to find their income cut sharply, and in some cases decimated. The risks to smaller voluntary sector organisations, particularly those engaged in advocacy or advisory roles seems especially acute, since many rely heavily on grants from local authorities, many of which are grappling with deep funding cuts. More worryingly still, however, is the fact that, in many cases, cuts appear to be falling hardest on those areas marked by the highest level of social deprivation and, thus, the greatest need for the services that the sector can provide. As Figure 3.2d shows, the local authorities which have not been able to find an alternative to making dramatic reductions in voluntary sector funding are overwhelmingly those which rank highest on the government's index of multiple deprivation. Indeed, there is a serious risk that in these areas, invaluable services - including those such as Citizens Advice - may shut down completely, causing immense harm to the people that rely on them.

Figure 3.2d: Local Authority funding cuts to the voluntary sector, 2011-12, mapped by Index of Multiple Deprivation (IMD) score.



Source: [False Economy \(2011\)](#); [Department for Communities and Local Government \(2011a\)](#).

### Case Study 3.2b: The Big Society

The Big Society has been described by the prime minister, David Cameron, as his 'passion' ([Cameron, 2011a](#)). It is one the flagship

policies of the coalition government, an ambitious initiative which aims to ameliorate many of the UK's perceived social problems by taking power away from the state and enabling people to exert more responsibility over their own lives ([Cameron, 2011b](#)). The prime minister has himself stressed that the Big Society is not about 'one single policy [being] rolled out across the country' ([Cameron, 2011b](#)). Much of the work of making the Big Society will fall to individuals and communities themselves. However, the state is clearly seen to be a key instrument in the realisation of this transformative vision.

Government documents on the Big Society highlight three key strands of the programme: community empowerment, opening up public services and the encouragement of social action and social capital. Various government policies and initiatives are being implemented under each of these headings - including, for instance, the creation of 'free' schools; the devolution of powers to local authorities; and measures to encourage greater levels of volunteering and charitable giving (although given that a great number of policy areas - if not the realm of public policy in its entirety - have a bearing on society as whole, more or less any of the policies of the government could be argued to fall under the banner of the Big Society).

Nevertheless, the project has been highly controversial, with many either left confused about precisely what the Big Society entails; sceptical about its true purpose; or otherwise critical of an idea which they see as a philosophically vacuous and a contradictory collection of sound-bites extolling the virtues of 'localism', 'community' and 'responsibility'. Even among supporters of the project, there has been disappointment at some of the recent outcomes of government policies; as well as doubts as to whether the government can achieve its objectives while at the same time cutting state spending in a number of key areas.

For instance, despite the government's insistence that it wishes to further open up public services to voluntary sector organisations, the Work Programme - one of the government's key reforms - has come under heavy criticism from leaders in the sector for the intolerable burdens it imposes on voluntary organisations wishing to be involved in the programme. Of the 40 prime contracts signed to deliver the programme in England, only three went to organisations working in the voluntary sector ([National Council for Voluntary Organisations, 2011](#)); while many of those organisations forced into the role of sub-contractor have complained of unfavourable or unreasonable terms from prime contractors in the private sector ([ACEVO, 2011](#)). Elsewhere meanwhile, figures from the anti-cuts group False Economy have helped to uncover not only the full extent of local authority funding cuts to the voluntary sector, but also a trend wherein the greatest cuts appear to be falling in the most deprived parts of the country (see Figure 3.1d).

There can be no doubting the existence of a very wide range of voluntary associations and other civil society organisations in the UK. Moreover, as we have chartered in this section, there is every likelihood of a sustained growth in the number of organisations operating beyond both the state and the market. At the same time, however, the issues raised by the increasingly close relationship between the state and parts of the voluntary sector does highlight causes for concern, particularly in light of the growing dependence of some large charities on contracts to deliver public services. Moreover, despite the apparent centrality of civil society to David Cameron's 'Big Society' agenda, there are serious questions about how the voluntary sector, in its broadest sense, will be affected by government cuts, particularly with regard to local authorities' financial support for voluntary and community groups.

### 3.2.2 Levels of civic participation

How extensive is citizen participation in voluntary associations and self-management organisations, and in other voluntary public activity?

A healthy democracy cannot exist without high levels of political participation at its heart. Yet the question of what exactly constitutes 'political' participation is not as simple or as clear-cut as one might imagine. If we were to ask a sample of the public, for instance, which activities they associated with the concept of political participation, at the top of most people's list, most probably, would be the more established forms of activity - for example, voting in elections and being an active member of a political party. So too, perhaps, would be the various forms of pressure activity, such as membership of a pressure group, taking part in a protest, or lobbying politicians and public bodies. In addition to these activities, there are also various kinds of consultation exercises involving the public that might be mentioned; as well as an almost an unlimited range of 'do-it-yourself' political activities, which have grown in response to a number of important social and technological developments in recent decades. A fourfold categorisation, capturing all of these activities, was proposed by the [Power Inquiry \(2005\)](#), and is extremely useful for its inclusion of these various types of grassroots and 'lifestyle' activism with more traditional and formalised types of participation, such as voting in elections. However, it could be argued that even a typology of political participation such as this is not expansive enough, as it is limited only to those activities that are overtly political. Indeed, the case has been made quite convincingly that all forms of civic engagement (including, for instance, volunteering and involvement in community groups) should also be considered alongside more conventional kinds of political participation, due to the symbiotic relationship that is thought to exist between the two (Putnam, 2000). This perspective was shared by the previous Audit, which judged that political participation consists not simply in the formal relation of the people to the government, but rather the 'vitality of citizens' self-organisation in *all* aspects of their collective life'

(Beetham et al., 2002, p. 208).

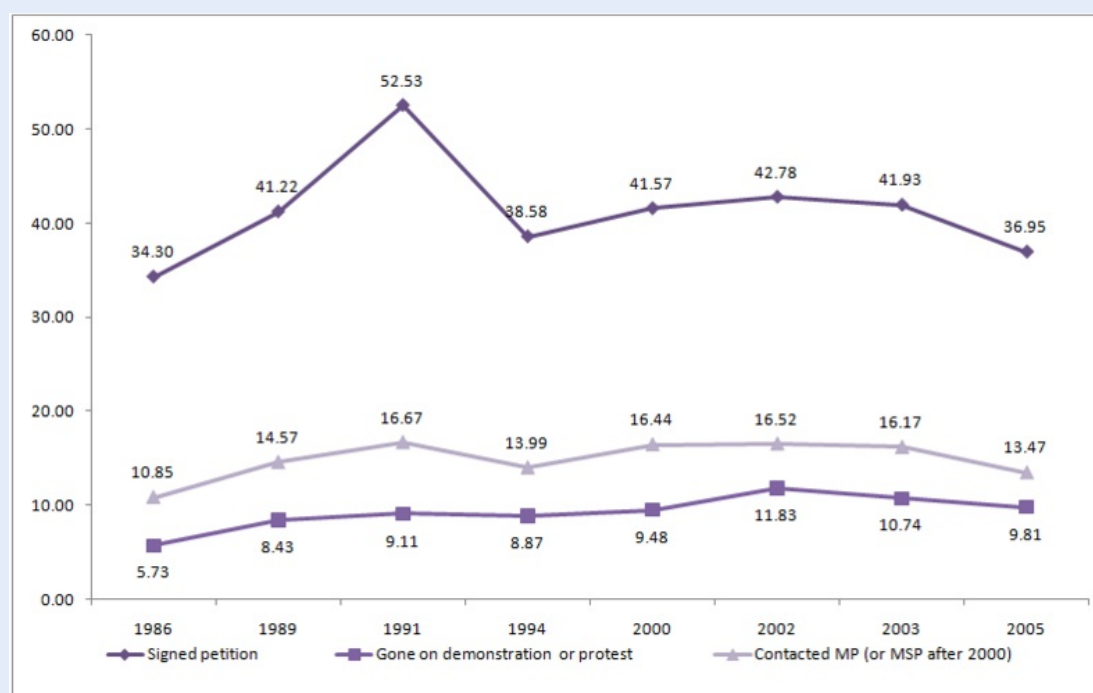
Using a broader conception of political participation such as this evokes a mixed picture so far as recent trends in the UK are concerned. As we discuss in Sections [2.1.6](#) and [2.2.3](#), respectively, turnout at elections and figures for the total membership of political parties have been declining for some time. The same trends can be identified in comparable countries. In fact, the primary and most dominant theme in recent work on political participation, not just in the UK, but in almost all advanced democracies, is the declining levels of participation in elections and political parties over the past three decades ([Mair and van Biezen, 2001](#); [Seyd and Whiteley, 2004](#)). However, this finding is countered by the discovery that, in the UK and elsewhere, levels of engagement in politics and civil society beyond elections and party membership (the more traditional forms of political participation) have actually been stable or tended to grow since the late-1960s, alongside a remarkable proliferation of entirely new ways to participate (Parry et al., 1992; Bromley et al., 2001; [Birchall and Simmons, 2004](#); [Power Inquiry, 2005](#)).

As such, overall public desire for participation in everyday life is thus arguably as strong as it has ever been in recent decades. Yet, although this is a reassuring finding, it must be noted that these patterns of participation are by no means uniform across society. Indeed, as we explain below, all forms of activism, whether political or civic, vary with respect to income, qualifications, age and other social cleavages; and these disparities in many instances appear to have grown over time. Given that it is a requirement of a democracy to exhibit not only high levels of popular control over the affairs of a country, as well as a considerable degree of political equality in the exercise of that control, this is an important caveat for us to bear in mind; and should act to temper the enthusiasm of those suggesting the potential for forms of 'direct democracy' to increasingly complement, or even displace, more traditional forms of political engagement associated with representative democracy.

### Political engagement

The [Power Inquiry's \(2005\)](#) analysis of political participation in the UK noted that available evidence suggests a significantly more complex picture than a simple decline in political participation. As far as electoral activity and political party membership is concerned, there is a clear downward trend. However, there is no evidence of decline in other political activities. Indeed, there is considerable evidence that pressure activity has remained relatively stable over a long period, or even increased in certain areas; and that the scale and significance of involvement in consultative activity and in 'do-it-yourself' political activity may also have grown in recent decades, despite the inherent difficulties in measuring these forms of participation. Figure 3.2e, for instance, presents evidence relating to self-reported involvement in a number of forms of political activity between the years 1986-2005, which suggests that UK citizens in 2005 were, if anything, slightly more likely to have engaged in actions - such as signing a petition, taking part in a demonstration or contacting their MP - than they had been in 1986.

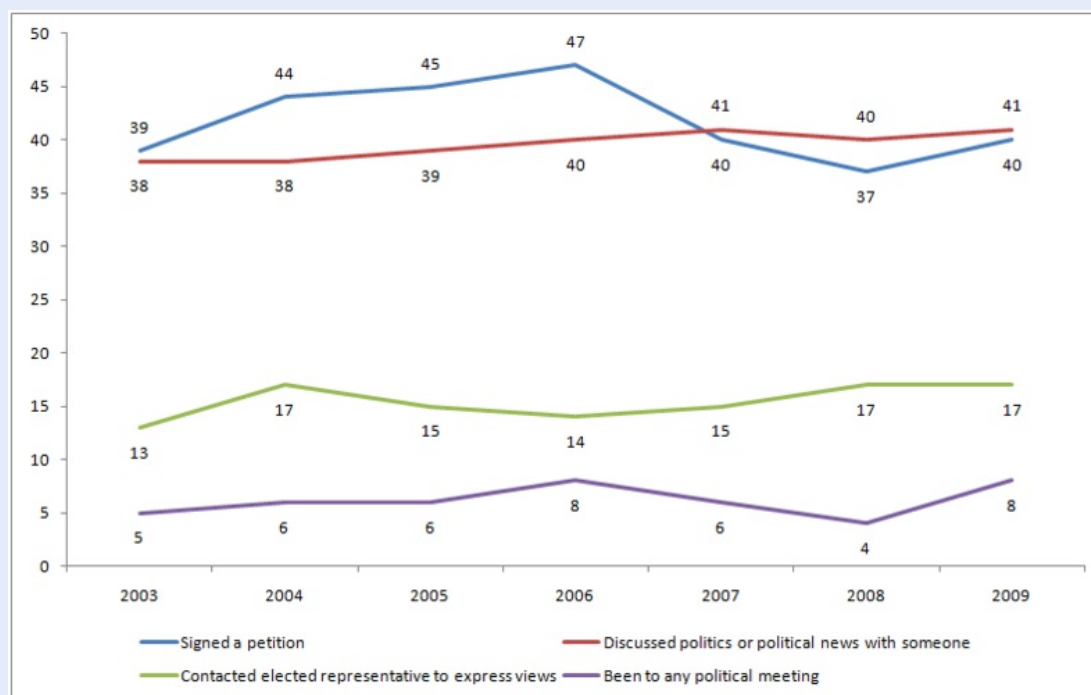
Figure 3.2e: Reported levels of past political activity, 1986-2005



Source: [British Social Attitudes](#).

These findings are supported by more recent data from the Hansard Society's Audit of Political Engagement (APE), which has been carried out annually since 2003. As figure 3.2f shows, responses to the APE survey questions about involvement in various forms of political activity over the previous two to three years also suggest an overall stability in the proportion of the population who engage politically by signing petitions, discussing politics with someone else, contacting an elected representative or attending a political meeting.

Figure 3.2f: Reported levels of political activism in last two to three years, 2003-2009



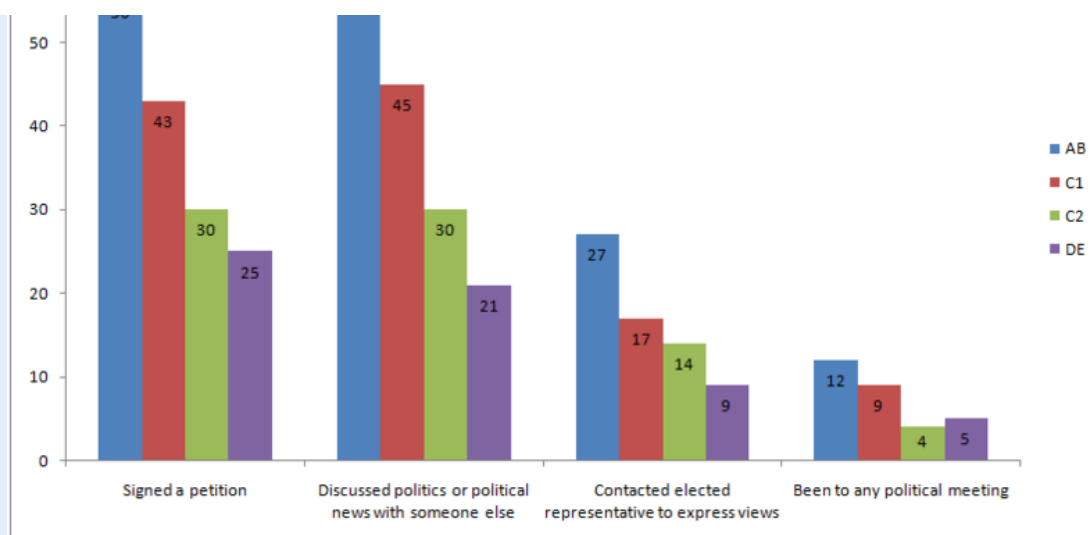
Source: [Hansard Society - Audit of Political Engagement \(various years\)](#).

These forms of participation do not, therefore, appear to be in decline at all. Moreover, comparative evidence suggests that UK levels of political participation beyond elections and parties are relatively high by European standards, although the Nordic countries tend to head the list (Stoker, 2006). However, the downside is that many of these types of political participation are not particularly widespread either. For example, around half of the members of the public surveyed for the 7th Audit of Political Engagement (47 per cent) had not taken part in any of the eight common political activities listed by the questionnaire during the two or three years prior to the survey ([Hansard Society, 2010](#)). These activities included: signing a petition; boycotting certain products for political reasons; contacting an elected representative; urging someone to get in touch with an elected representative; attending a political meeting; donating money or paying a membership fee to a political party; taking part in a campaign; or taking part in a protest or strike. Furthermore, much of the political activity that does take place appears to depend upon a small core of committed activists - a group that is thought to amount to perhaps only 10 per cent of the adult population ([Hansard Society, 2010](#)) and less than three per cent with respect to party politics (Wilks-Heeg and Clayton, 2006). These disparities in participation levels are known to be strongly related to a number of social characteristics - including the social class of the respondent. Indeed, as Figure 3.2g shows, members of social classes A and B were found to be twice as likely to have signed a petition, and three times as likely to have discussed politics with someone else, than members of social classes D and E.

Figure 3.2g: Reported levels of political activism in last two to three years by social class, 2009



## Democratic Audit

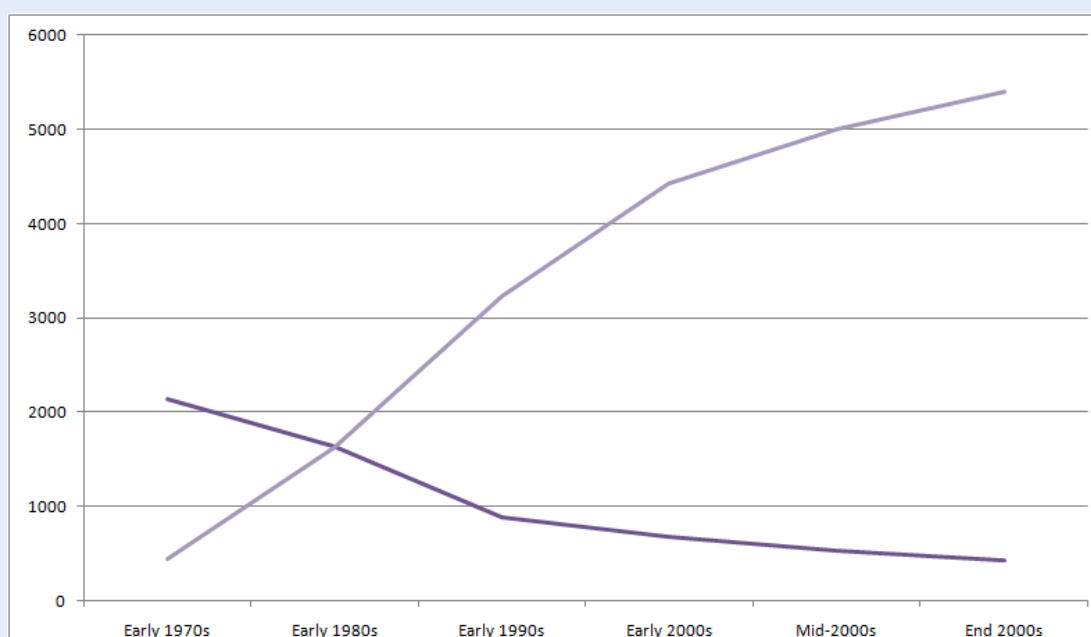


Source: [Hansard Society - Audit of Political Engagement \(various years\)](#).

### Civic engagement

Putnam's (2000) influential analysis of the USA interpreted falling levels of turnout and party membership as part of a wider decline in almost all forms of participation in recent decades, whether political, civic or religious. However, in the UK context, concerns about falling levels of party membership and voter turnout, while clearly valid in themselves, must be counter-balanced by evidence suggesting that other forms of political and social participation have in fact remained broadly stable over recent decades. In contrast to the dramatic decline in membership of political parties since the 1960s, there has, for instance, been a sharp rise in the number of people belonging to a wide range of UK campaigning organisations. The best documented case of this trend concerns organisations involved in heritage, the environment and nature protection: the largest three - the National Trust, the Royal Society for the Protection of Birds (RSPB) and the Wildlife Trusts - have all witnessed a tenfold increase in membership levels since the early 1970s. As Figure 3.2h shows, while the combined membership of these three organisations in 1971 was then a fraction of that claimed by the three main political parties, the growth in the membership of the heritage and nature organisations in the 1980s and 1990s was just as rapid as the decline in the membership of the political parties. Indeed, it is safe to assume that members of UK heritage and nature protection organisations now outnumber members of political parties by a factor of ten to one, despite the degree of overlap that there is likely to be in the membership of organisations such as the National Trust and the RSPB.

Figure 3.2h: Membership of largest UK political parties and nature organisations, 1970s-2000s (000s)

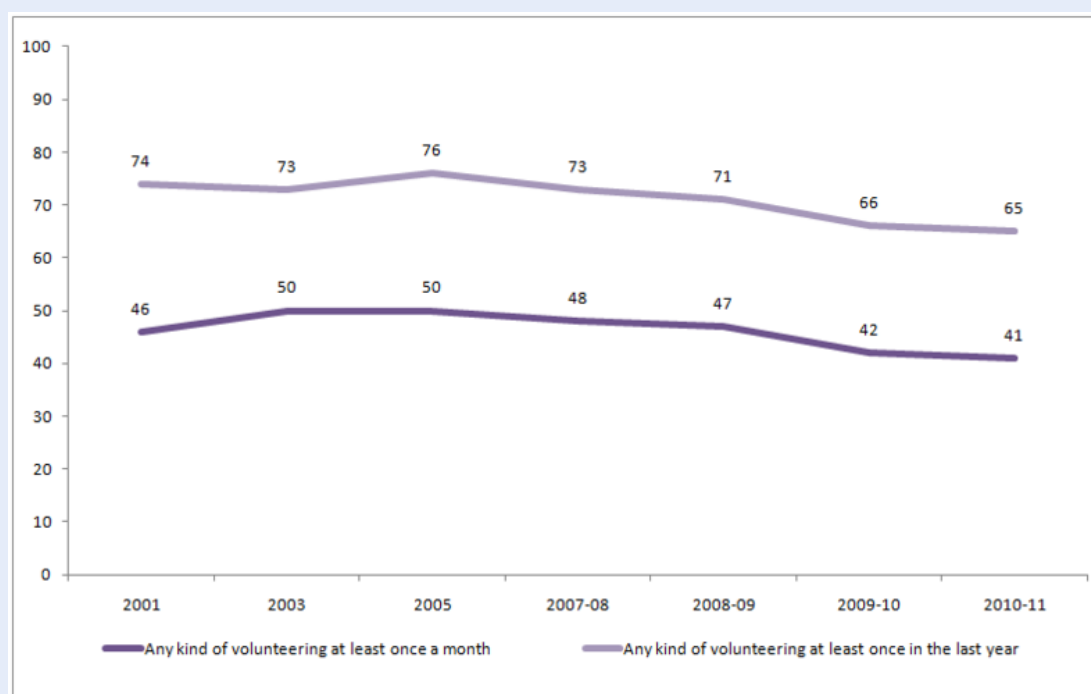


Three largest political parties      Three largest nature organisations

Source: Butler and Butler (2000); House of Commons Library (2009); Labour Annual Reports and Accounts (2001-2009); Liberal Democrat Annual Reports and Accounts (2001-2009); Bale (2011); Rootes (2007); organisational websites (accessed February 2011).

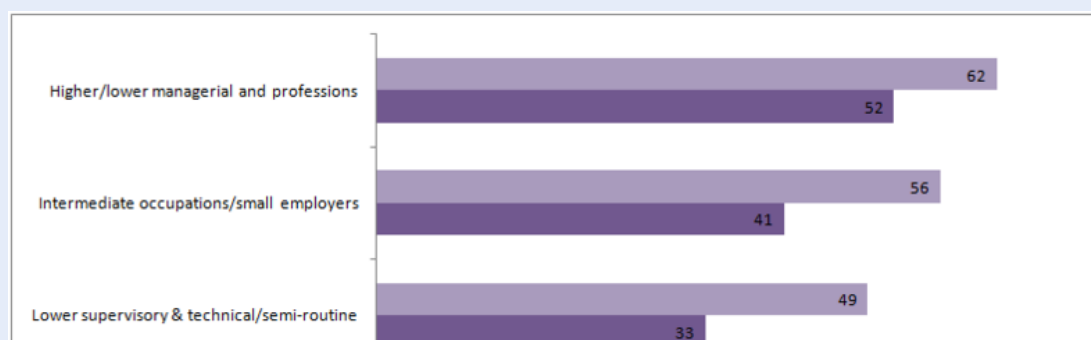
The available data on levels of volunteering in the UK do not show quite the same emphatic upward trend; but figures do appear to suggest that volunteering levels have been relatively stable during the past decade (see Figure 3.2i). However, as with the findings on involvement in political activism, regular volunteering appears to be crucially sustained by a small core group of highly engaged citizens, who account for around 12 to 14 per cent of the population (Wilks-Heeg and Clayton, 2006; [Hansard Society, 2011](#)); with the likelihood of participation strongly related to factors such as age, ethnic group, religious affiliation and, perhaps most significantly, social class. As Figure 3.2j shows, people from managerial or professional backgrounds are considerably more likely to volunteer, formally or informally, than those from semi-routine or routine occupational backgrounds.

Figure 3.2i: Self-reported frequency of volunteering, 2001 to 2010/11 (%)



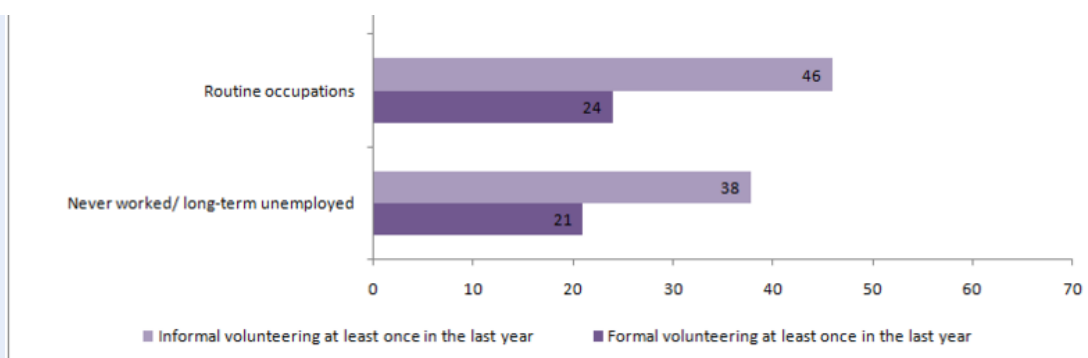
Source: [Department for Communities and Local Government \(2011b\)](#).

Figure 3.2j: Self-reported frequency of volunteering by socio-economic class, 2009/10





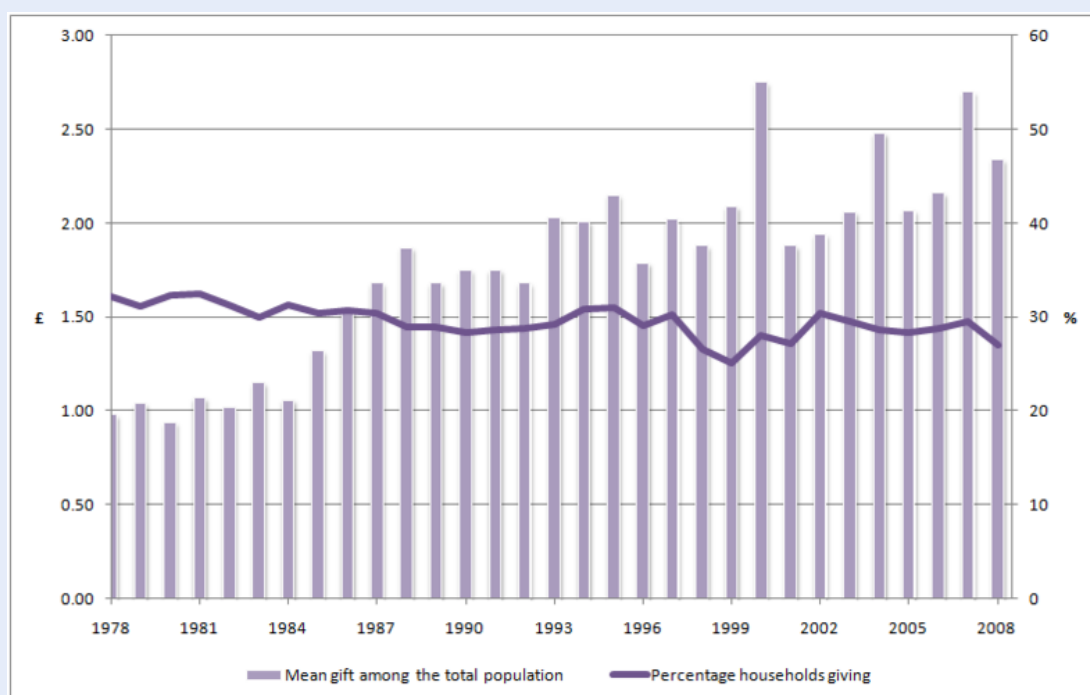
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Source: [Department for Communities and Local Government \(2011c\)](#).

Not dissimilar patterns can also be observed with regards to charitable donations. Data from the Living Costs and Food Survey (LCF) show that the percentage of adults giving to charity in the two weeks prior to the survey has remained relatively stable at around 30 per cent over the past three decades; although the average (mean) gift among the total population has increased (see Figure 3.2k).

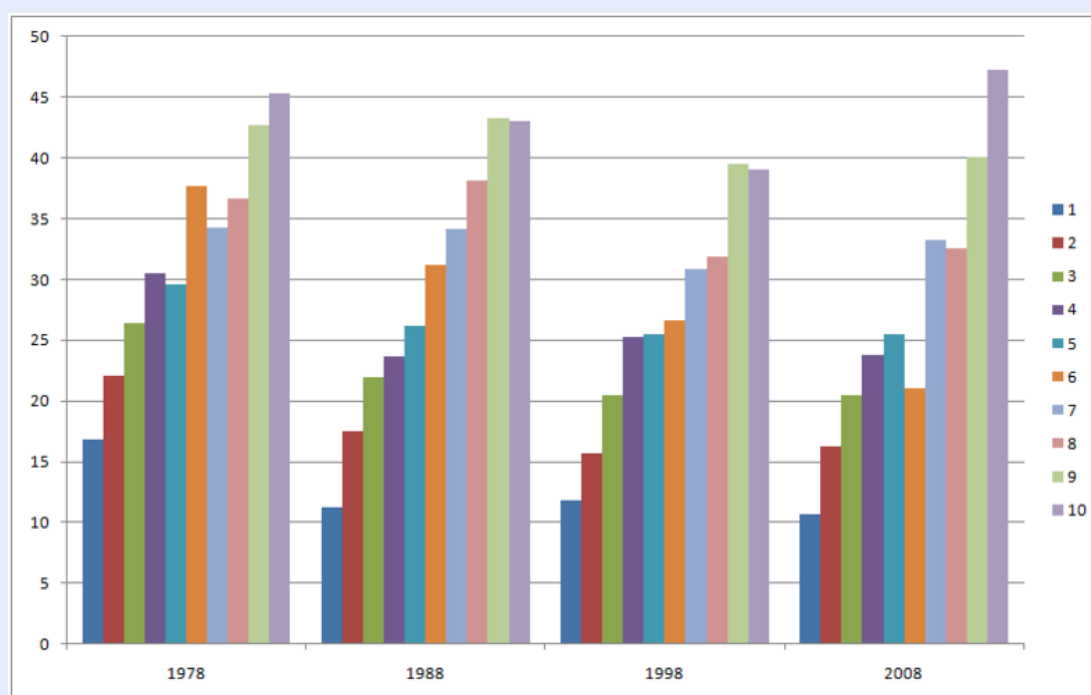
Figure 3.2k: Percentage of households that give to charity and average (mean) gift among the total population (£s, 2010 prices) 1978-2008.



Source: [Cowley et al. \(2011\)](#).

Yet, once again, most of the total amount donated is contributed by just 10 per cent or so of the population - a pattern which has remained unchanged for the three decades for which we have reliable data (see [Cowley et al., 2011](#)). The wealthiest households, it seems, have always contributed disproportionately to the total donated to charity. However, the share accounted for by donations from the very wealthiest is now even greater than when this data series began in the 1970s ([Cowley et al., 2011](#)). This is partly because, although poorer households who give to charity have always given a relatively greater percentage of their household expenditure, fewer of these poor households are now giving than in the past; while, as Figure 3.2l shows, the percentage of households from the top household expenditure decile that give to charity has increased. Overall, these two trends have generally cancelled each other out, when looking at donations as a percentage of total spending in all households - creating a fairly flat distribution across the thirty year period. Nevertheless, there is a clear, if modest, trend towards an increasing percentage share of charitable donations being contributed by wealthier households over time.

Figure 3.2l: Percentage of households that give, by household expenditure decile, 1978-2008 (2010 prices)



Source: [Cowley et al. \(2011\)](#).

Charitable giving is also strongly correlated with age, and the strength of this relationship has also grown over time. Indeed, for every age group besides the over-65s, the percentage that give to charity has declined overall since 1978. As a result, we have become more reliant on the charitable giving of older people than at any time in the past thirty years ([Cowley et al., 2011](#)). By way of demonstration, in the period 1978-82, those over the age of 65 contributed 24 per cent of the overall total donated to charity; whereas, in the period 2003-08, by contrast, they accounted for 34.5 per cent of the total.

To some extent, the evidence presented in this section provides a counterbalance to the trends we document elsewhere in this Audit. While engagement in the core elements of representative democracy - such as voting in elections and involvement with political parties - is clearly in decline in the UK and elsewhere, participation in wider forms of political and civic activity appears more resilient. Despite these relatively encouraging findings, however, it seems equally clear that, even on the broadest definitions of political participation, large sections of the UK population do not engage at all. Indeed, political and civic engagement tends to be sustained by a relatively small core of activists, drawn disproportionately from those in society with higher levels of education and income. In short, while overall levels of political participation have yet to decline, the class divisions we highlight throughout this Audit of UK democracy remain very much in evidence.

### 3.2.3 Women in political life

How far do women participate in political life and public office at all levels?

In our last Audit we noted that the case for the equal representation of women in public office derives from a basic principle of political equality, namely that 'no section of the population should be systematically discriminated against or disadvantaged in access to office' (Beetham et al., 2002, p. 219). However, in contrast to this principle, our last Audit documented systematic under-representation of women across all aspects of UK political life and public office in the early-2000s, showing that, *inter alia*, women made up just eight per cent of high court judges, 17 per cent of the House of Lords, and 27 per cent of local councillors in England. Against this backdrop, a variety of measures have been introduced since the early-2000s in an attempt to increase the proportion of women elected and appointed to public office.

As we show in this section, while there is some limited evidence of success in promoting greater gender equality in public life, the UK still has a very long way to go if gender parity is to be an intended goal. Having examined female representation in the House of Commons in

Section [2.1.5](#), we consider here the extent to which women are represented in the following spheres: the House of Lords; the cabinet and ministerial roles; devolved parliaments and assemblies; elected local government; the judiciary and the legal profession; and the civil service and public bodies. In most areas, the modest initial progress that has been made in improving the representation of women since our last Audit has clearly stalled. Moreover, in virtually all cases, the UK appears to be lagging significantly behind most international comparators used in this Audit.

### **House of Lords**

Women were not permitted to sit in the House of Lords until 1958 and progress in addressing the absolute gender imbalance of the House has been exceptionally slow. From 1958-70, fewer than 10 per cent of life peerages awarded went to women and the figure did not rise above 20 per cent until Tony Blair became prime minister in 1997 ([Eason, 2009](#)). Under Blair and then Brown, the proportion of new appointees to the Lords who were women grew to around 30 per cent, but this has made little overall impact on the composition of a house with over 700 members. As Table 3.2b shows, following the House of Lords Act 1999, which restricted the number of hereditary Peers to 92, women made up 16 per cent of the membership of the Lords. With the ratio of men to women appointed after 1999 being roughly 7:3, it took a full decade before women comprised 20 per cent of the membership of the Lords. Moreover, following more than an additional 100 appointments made since the 2010 general election, women still make up only 22 per cent of the membership of the Lords as of 1 March 2011. While it would be churlish to deny that there has not been any progress made at all, it is impossible not to concur with [Eason \(2009\)](#) that the proportion of women in the Lords has increased 'at a snail's pace'.

Table 3.2b: Membership of the House of Lords by gender, 1999-2011

	Male	Female
Nov-99	566 (84%)	106 (16%)
Jul-01	581 (83%)	115 (17%)
Dec-08	590 (80%)	146 (20%)
Mar-10	566 (80%)	143 (20%)
Mar-11	649 (78%)	181 (22%)

Sources: Beetham et al. (2002, p. 220); [Booth and Cracknell \(2010, p. 7\)](#); [Eason \(2009, p. 407\)](#)

As with other areas of political representation, notably the House of Commons (see Section [1.4.5](#)), much of the responsibility for this failure to bolster the representation of women in the Lords rests with the political parties. Representatives from the three main parties account for around 70 per cent of the Lords. Yet, as Table 3.2c illustrates, there is significant variation between the parties with regard to gender representation. Women accounted for 26 per cent of Labour and Liberal Democrat representation in the Lords in March 2010, while only 16 per cent of Conservative peers were women. While none of the three main parties' track records could be described as especially impressive, there are very few signs indeed that the Conservatives are taking steps to close the gender gap - among the new peers appointed in November 2010, only one-fifth of Conservatives were women, compared to four-tenths of Liberal Democrats and one-third of Labour appointees.

Table 3.2c: Membership of the House of Lords by party and by gender, March 2010

	Total	Male	Female
Conservative	204	171 (84%)	33 (16%)
Labour	211	156 (74%)	55 (26%)
Lib Dem	77	57 (74%)	20 (26%)
Other	217	182 (84%)	35 (16%)

All	709	566 (80%)	143 (20%)
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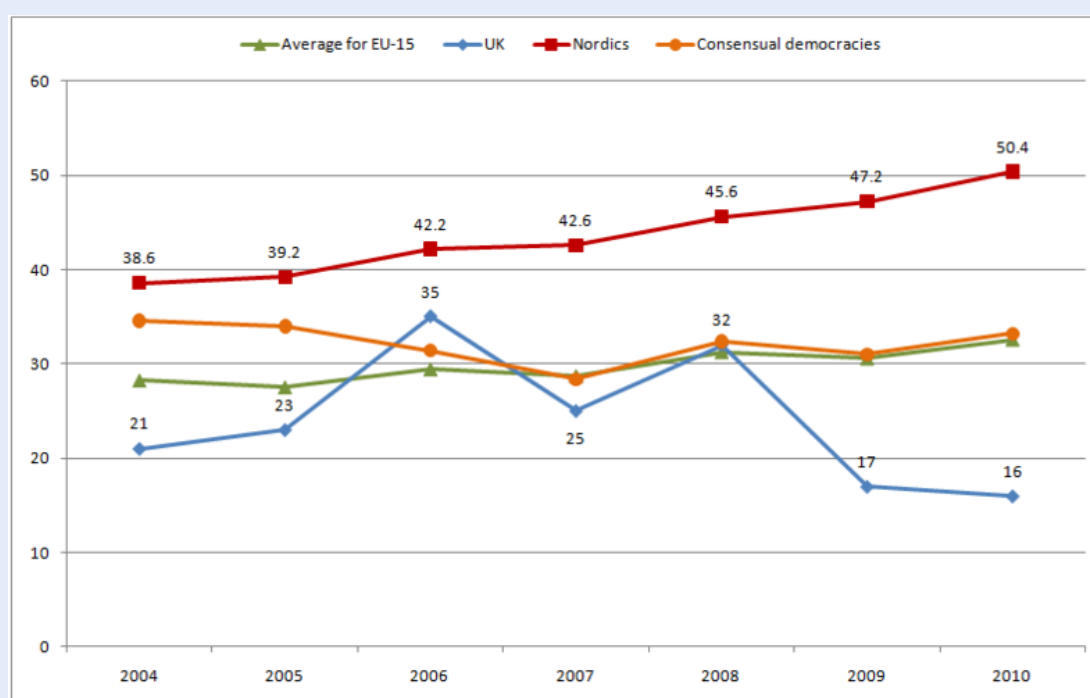
Source: [Booth and Cracknell \(2010, p. 7\)](#)

### Women in the executive

Representation of women in the executive, comprising both appointments to ministerial office generally, and to the cabinet specifically, was boosted significantly under New Labour. Prior to Tony Blair's first premiership, a total of only 40 female MPs had ever held any ministerial office; by the start of Blair's third term the figure had doubled to 80, with women typically holding around one-third of all government posts throughout the Blair years. This pattern was replicated in relation to the cabinet. Until 1997, men had tended to outnumber women in cabinet by a ratio of 9:1. Under Blair, however, the proportion of cabinet posts held by women remained consistently between one fifth and one third - although there was to be no female foreign secretary, home secretary or chancellor of the exchequer in any of Blair's cabinets. Women continued to feature prominently in government under Gordon Brown, including the appointment of Jacqui Smith as home secretary in 2007, until the resignation of three women from cabinet positions, Smith included, at the height of the MPs' expenses crisis in summer 2009. Female representation in cabinet fell from 32 to 17 per cent as a consequence, although women continued to make up around one-third of all government ministers during Brown's tenure. However, following the formation of the coalition government in May 2010, female representation has clearly taken a step backwards. The appointment of four women to cabinet has maintained the proportion of women in cabinet at about one-sixth, but the number of ministerial posts held by women has also dropped to less than 20 per cent for the first time since the mid-1990s.

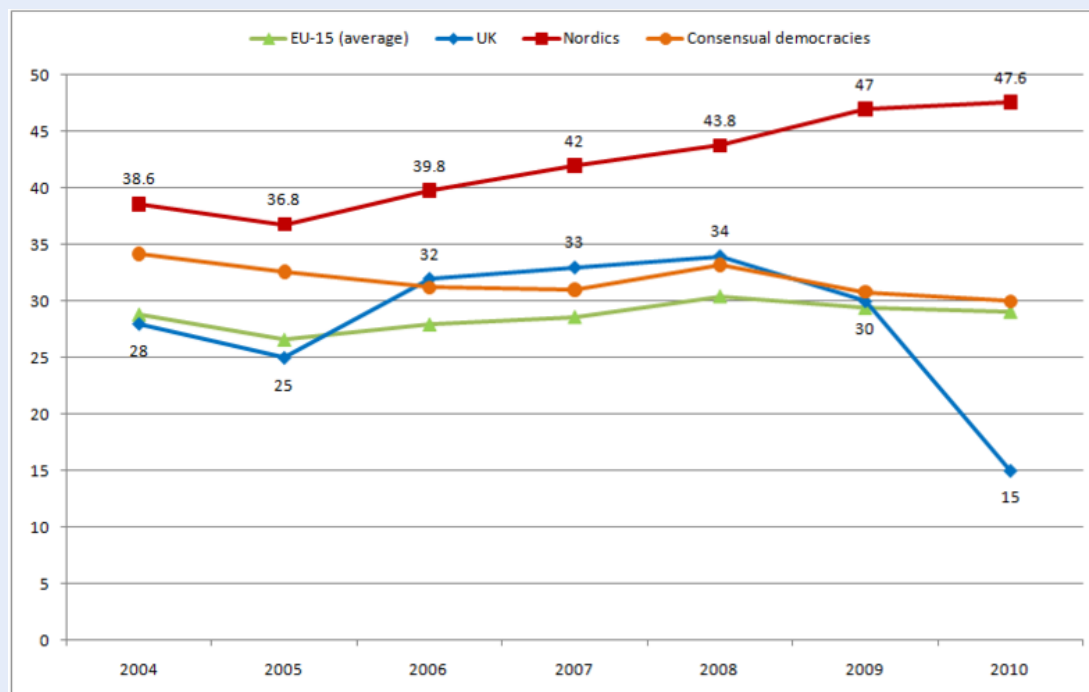
While progress towards greater gender equality in parliament has clearly faltered over the last decade (see Section [2.1.5](#)), patterns of appointment to ministerial office show a different, and potentially more concerning pattern. Figures 2.4m and 2.4n show that the highest proportion of female cabinet ministers in the UK was achieved in 2006 (35 per cent), while the peak of female representation among government ministers as a whole was in 2008 (34 per cent). As these two graphs indicate, during the mid-2000s, the proportion of ministerial posts held by women in the UK, including senior (i.e. cabinet or equivalent) posts, was in line with the average for both the EU-15 and for the consensual democracies. Representation of women in UK government from 2004-08 was also at about the same level as the Westminster democracies (Sawer et al., 2009, p. 240). Indeed, as Figures 2.4m and 2.4n show, by 2006, the argument could reasonably have been made that the UK was beginning to approach the levels of female representation in government typical of the Nordic countries. Having lagged behind most other democracies for decades, the UK's record of realising relatively high levels of female participation in government by the mid-2000s was therefore of genuine significance.

Figure 3.2m: Proportion of senior ministerial posts (cabinet or equivalent) held by women, UK compared to EU15 and Nordic average, 2004-10.



Source: Calculated from [European Commission \(2011\)](#)

Figure 3.2n: Proportion of all ministerial posts held by women, UK and groups of European comparators, 2004-10.



Source: Calculated from [European Commission \(2011\)](#)

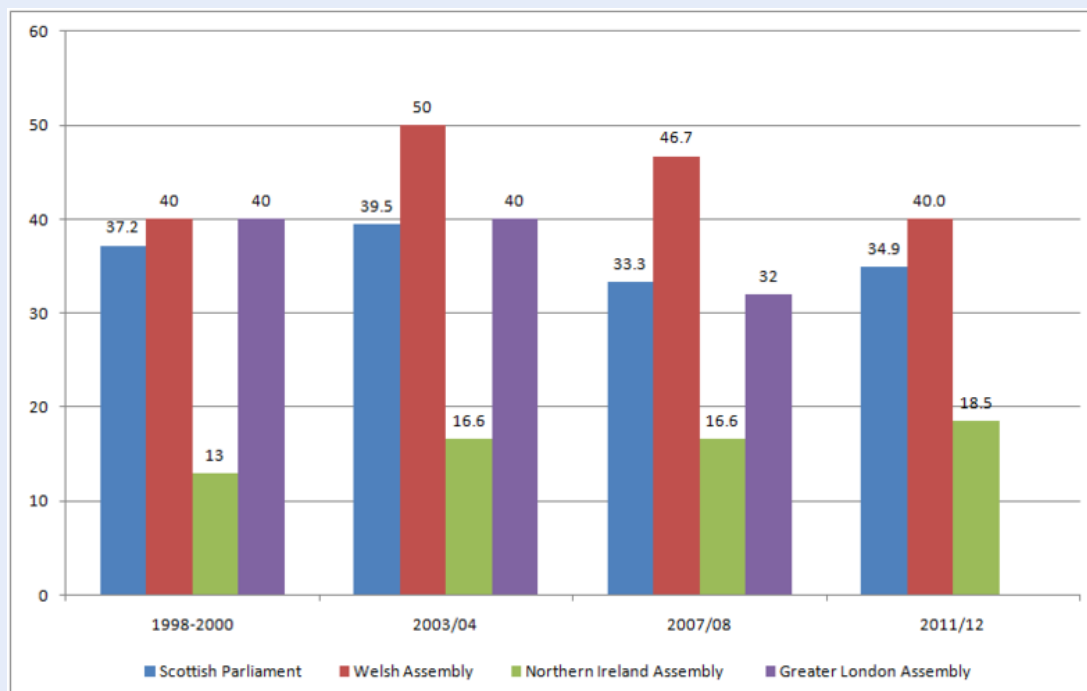
However, as Figures 3.2m and 3.2n also show, the dramatic falls in female participation in the executive after 2009 meant that the proportion of all UK ministerial posts held by women, as well as UK cabinet posts, has dropped to half the EU-15 average by 2010. Even more telling was the 30 percentage point gap between the UK and the Nordic countries on both measures in 2010. By the end of the 2000s, the Nordic countries had achieved broad gender parity in government positions, with changes of government resulting in no discernable shift in the proportion of women in government. In the UK, by contrast, the formation of the Conservative-Liberal Democrat coalition in 2010 saw female representation across all ministerial positions fall from 30 per cent to 15 per cent. It is notable in this regard that women make up 40 per cent of Labour's shadow cabinet now that the party are in opposition. It would appear, therefore, that any prospect of shattering the glass ceiling in high political office remains overly-dependent on Labour retuning to power.

### ***Devolved parliaments and assemblies***

While efforts to improve the representation of women in the UK parliament have clearly faltered over the past decade, the new elected bodies created as a result of devolution have a significantly better track record. As Figure 3.2o demonstrates, the four sets of Scottish elections which have so far taken place, in 1999, 2004, 2007 and 2011, have produced Scottish parliaments in which a third or more of members of the Scottish parliament (MSPs) are women. The Greater London assembly, to which elections have so far been held in 2000, 2004 and 2008, has maintained broadly the same pattern, although there was a drop in female representation in 2008. Meanwhile, devolved elections in Wales have consistently produced the most 'feminised' elected body in UK politics. Since it was established in 1998, female membership of the Welsh assembly has remained at 40 per cent or above, and gender parity was achieved in 2003 - an outcome heralded as a 'world record' for an elected body ([Guardian, 2003](#)). When Trish Law was elected as an independent assembly member (AM) for Blaenau Gwent in a by-election in 2006, the Welsh assembly went a step further by becoming the first legislative body in history to have a female majority ([Electoral Reform Society, 2007](#)).

Figure 3.2o: Percentage of seats taken by women following elections to devolved bodies in the UK, 1998-

2011



Sources: Rallings and Thrasher (2003); [Eason \(2009\)](#); [Northern Ireland Assembly \(2011\)](#); [Electoral Reform Society \(2011\)](#); [Kenny and Mackay \(2011\)](#)

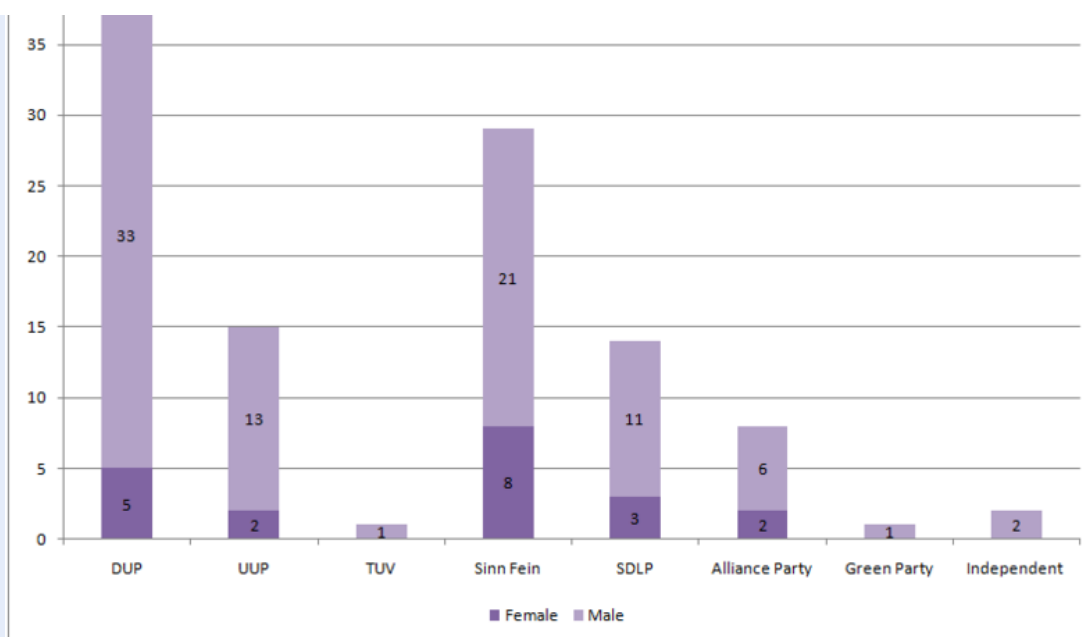
While the gender outcomes arising from devolved elections have consistently marked them apart from those for the UK parliament or local councils, Figure 3.2o also shows that the high watermark of female representation in devolved bodies was in 2003-04. The Scottish parliament, the Welsh assembly and the Greater London assembly have all since seen a decline in the number of women elected since 2003-04. The principal reasons for this pattern relate to the variations in the gender balance of candidates selected by individual political parties and to changes in party balance following elections. For example, Labour candidates for the Scottish parliament are significantly more likely to be women than SNP candidates. Thus, the rise in SNP support at the 2007 and 2011 Scottish elections prompted female representation to drop; following the 2001 Scottish elections, women comprised 46 per cent of Labour, but only 28 per cent of SNP MSPs ([Kenny and Mackay, 2011](#)). Similarly, when the representation of women in the Welsh assembly fell after the 2007 elections, a majority of Labour assembly members were women, and broad gender parity was achieved among successful Liberal Democrat and Plaid Cymru candidates. Yet, there was only one woman among the twelve Conservative candidates elected to the assembly - an outcome easily explained by the twin failure of the party to select female candidates in winnable constituencies or to place a woman at the top of any regional list ([Electoral Reform Society, 2007](#)). Following the 2011 Welsh elections, Labour AMs were split equally between men and women, but women made up only 29 per cent of Conservative, 37 per cent of Plaid Cymru and 40 per cent of Liberal Democrat AMs.

It is clear from Figure 3.2p that elections to the Northern Ireland assembly show evidence of a far poorer record of gender representation in comparison to other devolved elections. However, in contrast to other devolved bodies, the proportion of Northern Ireland assembly members who are women has grown steadily since 1998, when it was just 13 per cent, and stands at just under 19 per cent following the 2011 elections. Contrasts between the political parties are again a significant factor in explaining levels of gender representation at Stormont. As Figure 3.2p illustrates, the two nationalist parties, accounted for 11 of the 20 women elected to the assembly in 2011. Twenty-eight per cent of Sinn Féin's representatives in the assembly are women, while the Social and Democratic Labour Party's contingent is 21 per cent female. A further two women were elected to represent the non-sectarian Alliance Party, comprising one quarter of the party's presence in the assembly. However, the three unionist parties returned only seven successful female candidates between them. Just 13 per cent of both Democratic Unionist and Ulster Unionist assembly members are female although, in both cases, these figures represent a significant advance compared to 2007.

Figure 3.2p: Membership of the Northern Ireland Assembly, by party and gender, 2011



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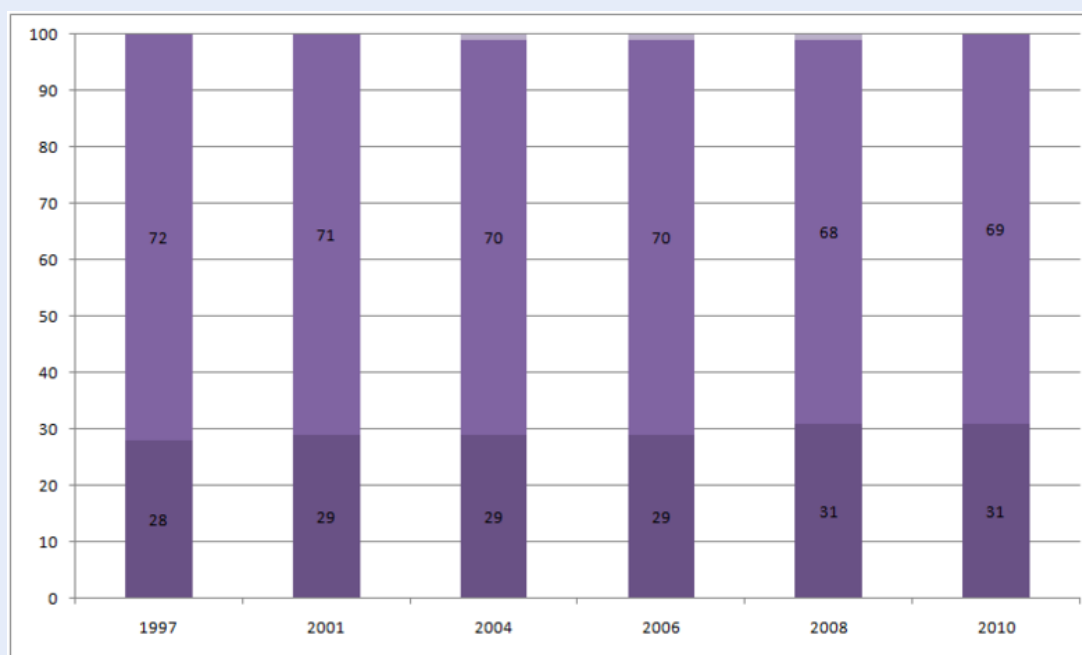


Source: [Northern Ireland Assembly \(2011\)](#)

### Local government

Local elections in Great Britain evidence much the same trends as general elections (see Section 2.1.5) with regard to gender representation. Despite modest improvement over the course of many decades, women remain under-represented among the ranks of elected councillors in Great Britain. The proportion of councillors who are women has doubled from the early-1970s to the late-2000s ([Councillors Commission, 2007](#)), but remains at only 31 per cent in England, 25 per cent in Wales and 22 per cent in Scotland. Moreover, as Figures 3.2q, 3.2r and 3.2s show, the growth of female representation in English and Welsh local government since the late-1990s has been painfully slow, and appears to have stalled entirely in Scotland. There are again significant differences between the political parties. In 2008, 28 per cent of Conservative councillors in England were women, compared to 34 per cent of Labour, 35 per cent of Liberal Democrat and 44 per cent of Green Party councillors. In Scotland, however, only 18 per cent of Labour councillors elected in 2007 were women, compared to 21 per cent for the SNP, 24 per cent for the Conservatives and 32 per cent for Liberal Democrats.

Figure 3.2q: Elected local councillors in England, 1997-2008, by gender (%)

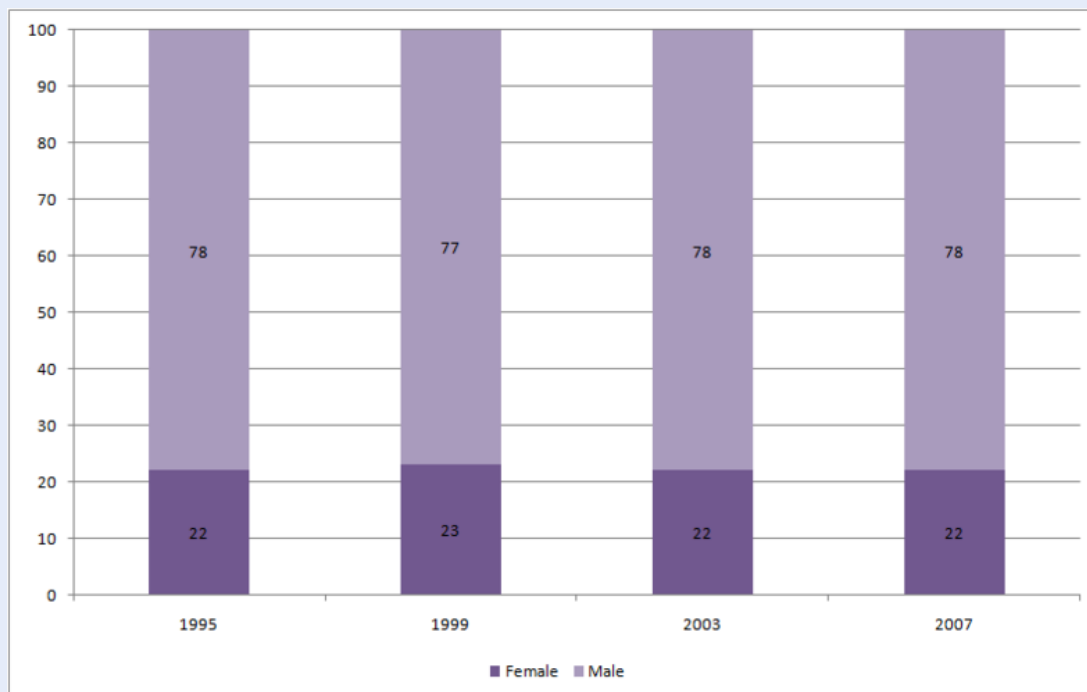




■ Female ■ Male ■ No response

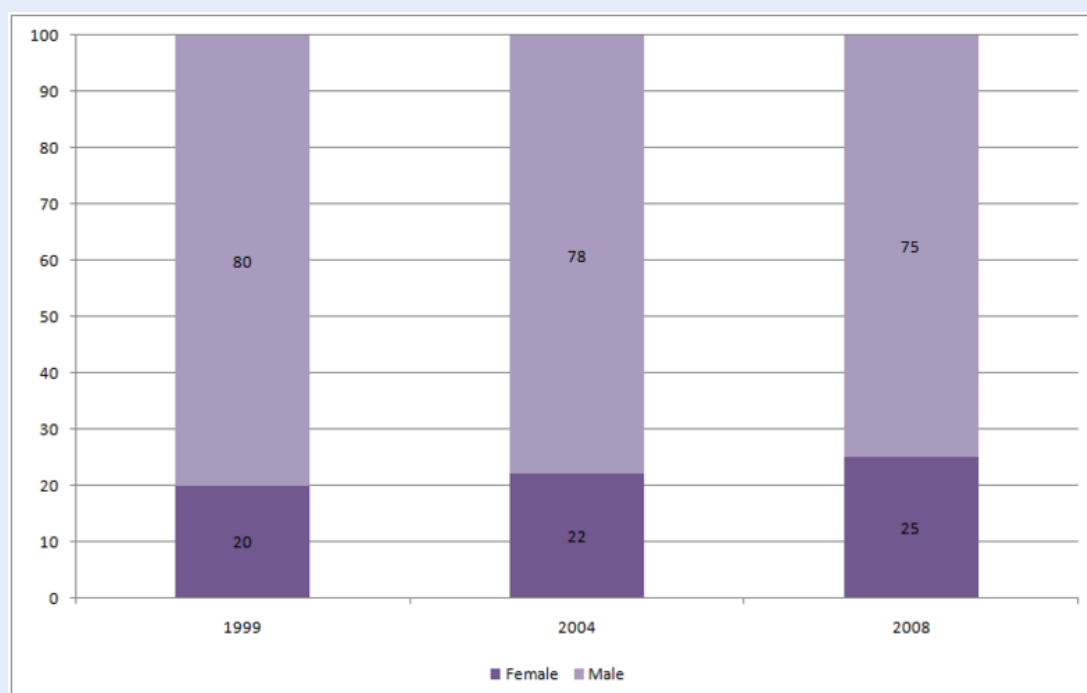
Source: [Local Government Association \(2008\)](#); [Local Government Association \(2010\)](#)

Figure 3.2r: Elected local councillors in Scotland, 1995-2007, by gender (%)



Sources: [SOCLA \(2004\)](#); [Electoral Reform Society \(2007\)](#)

Figure 3.2s: Elected local councillors in Wales, 1999-2008, by gender (%)



Source: [Welsh Local Government Association \(2004\)](#); [Hansard Society \(2012\)](#)

### *The judiciary and the legal professions*

In our 2002 Audit, we noted that women 'occupy few or very few senior judicial positions, but are strongly represented at junior levels and in the unpaid lay judiciary' (Beetham et al., 2002, p. 221). Indeed, the UK has been slow to appoint women to the judiciary, appearing to represent a laggard in comparison to other established democracies ([Kenney, 2008](#)). Although judicial offices were opened to female candidates in 1919, it was not until 1945 that the first woman judge was appointed in England. Meanwhile, the appointment of Brenda Hale as a law lord in 2003 came a quarter of a century after the United States and Canada had first appointed women to their respective supreme courts ([Kenney, 2008](#)), and 15 years after the first female appointment to the Australian high court. Moreover, prior to the 1990s, the UK judiciary had strongly resisted diversity initiatives as being irrelevant and inappropriate ([Malesson, 2009](#)). It was held that an emphasis on personal backgrounds would invite too much political interference in the judiciary's composition and would deter it from the principle of impartiality. Only by the early-1990s was the judiciary prepared to admit that a lack of diversity was undermining the public's confidence in the courts. It was suggested in 1992 by Lord Taylor, the lord chief justice that there was 'no doubt that the balance [would] be readdressed in the next few years' ([Guardian, 2010](#))

From the 1990s, steps were taken to create an open and transparent appointment process for judicial posts, although appointment based on 'merit' continued to be the dominating principle. After 1997, Labour initiated more direct intervention, although the focus remained on providing for greater transparency in judicial appointments. Central to these efforts was the transfer of authority for judicial appointments from the lord chancellor to the Judicial Appointments Commission (JAC) in 2006 ([Malesson, 2009](#)). This change was also part of a wider set of reforms to the lord chancellor's office. Previously, the lord chancellor had been solely responsible for selecting all QCs and judges to the high court, court of appeal and House of Lords. The failure of previous lord chancellors to appoint more women to the bench became central to the case for a new judicial appointment system. Moreover, because women (and ethnic minorities) are not as well represented on the bench, the JAC is required by statute to have regard to the need to encourage diversity in the range of candidates for judicial appointment.

The impact of these measures appears to have been very modest indeed. Table 3.2d compares the gender balance in the highest court of appeal in six English-speaking democracies (since 2010, the relevant court has been known as the supreme court in all cases other than Australian where the equivalent is the 'high court'). In 2003, the UK and Australia stood out as having significant under-representation of women at the highest level of the judiciary. If anything, the figures for 2003 exaggerate the UK's relative position: as noted above, the UK's first law lord had been appointed in 2003, whereas the single female member of Australia's high court had just retired. However, by 2011, the UK was clearly out of line with all of its English-speaking comparators. Australia and Canada have effectively achieved gender parity, while women make up between one-fifth and one-third of judges serving on the supreme courts of Ireland, New Zealand and the USA. In the UK, however, there have yet to be any further female appointments at this level, leaving Lady Hale as the single female justice serving on the UK's 11 member supreme court. There is also evidence to suggest that the UK finds itself lagging behind the EU-15 average; in 2004 female membership of supreme courts across the EU averaged 13 per cent. By 2011, 19 per cent of supreme court members in the EU were women, itself unimpressive by international standards ([European Commission, 2011](#)), but ahead of the UK, where the proportion remained static at under 10 per cent.

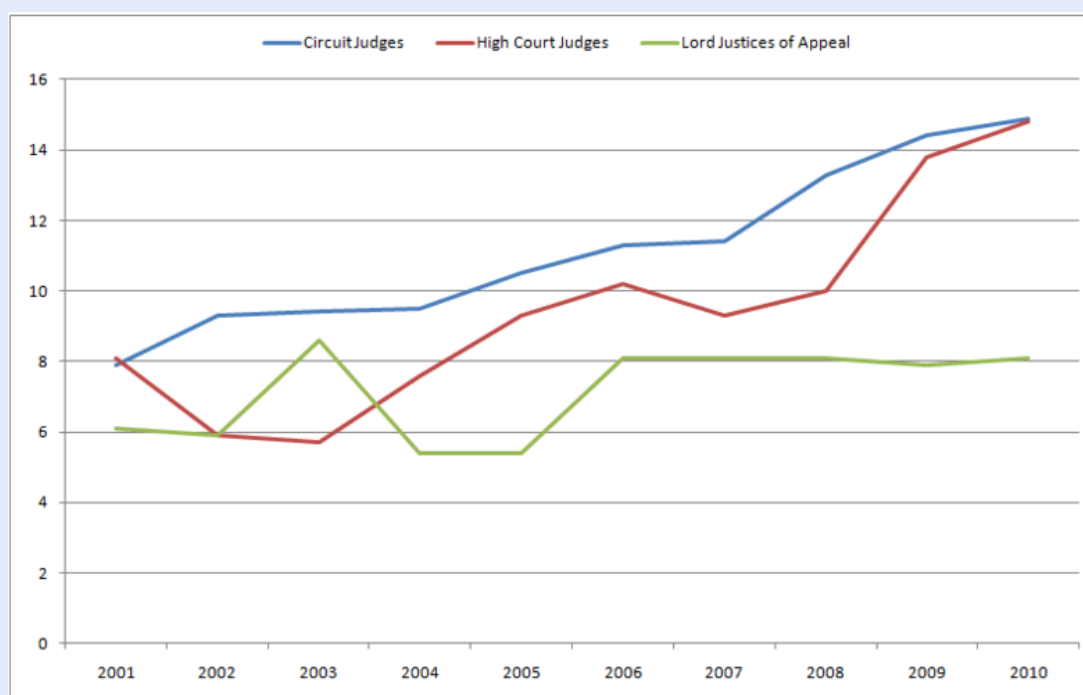
Table 3.2d: Membership of the highest court of appeal in established English-speaking democracies, by gender, 2003 and 2011

	2003				2011			
	Total	Male	Female	% Female	Total	Male	Female	% Female
Australia	7	7	0	0	7	4	3	42.9
Canada	9	6	3	33.3	9	5	4	44.4
Ireland	9	7	2	22.2	9	7	2	22.2
New Zealand	8	6	2	25	5	4	1	20
UK	12	11	1	8.3	11	10	1	9.1
USA	9	7	2	22.2	9	6	3	33.3

Sources: [Davis and Williams \(2003, p. 8\)](#); court websites (accessed 8 March 2011)

Developments have not been much more encouraging in other higher-tier and appeal courts. Figure 3.2t offers a familiar story of slow, often faltering, progress, similar to that noted throughout this section. Women now comprise three of the 37 lord justices of appeal in England and Wales, representing eight per cent of the total, compared to six per cent in 2001. Rather more has been achieved among the ranks of high court judges and circuit judges. There were 16 female high court judges in 2010 in England and Wales, compared to eight in 2001. Likewise, the number of female circuit judges has risen from 44 in 2001 to 101 in 2010. Yet even a doubling of the number of women in these positions has only served to increase their presence to around 15 per cent of the total, in both cases.

Figure 3.2t: Women in the judiciary, England and Wales, 2001-10 (%)



Source: [Judicial Office \(2001-2010\)](#)

Similar patterns are evident among other senior legal positions in England and Wales (and are also replicated in Scotland, although we do not consider them here given the contrasts in the legal systems). Judicial Office statistics reveal that women comprised just 16 per cent of recorders in 2010, compared to 14 per cent in 2001. Women also remain hugely unrepresented among Queen's Counsel (QCs), comprising a mere 11 per cent of QCs in 2010 (up from six per cent in 2000). Among lower ranks, women tend to enjoy higher levels of representation. The proportion of female district judges in 2010 was 25 per cent, up from 19 per cent in 2000, while women comprised 29 per cent of deputy district judges, compared to 20 per cent in 2000. In English and Welsh magistrates' courts, meanwhile, women made up 27 per cent of deputy district judges and 26 per cent of district judges in 2010, up from 19 and 21 per cent, respectively, in 2001. Despite this evident gender inequality throughout, it remains the case that the majority of new entrants to the legal profession are women. In each year since 1999, women have comprised between 50 and 60 per cent of new admissions to the Law Society, the professional body of solicitors in England and Wales, with women making up 46 per cent of all practicing solicitors in 2010.

The belief that appointments based on merit would ultimately ensure that women would find their way to the upper ranks of the judiciary in large numbers has clearly been discredited. Public discourse on diversity in the judiciary has been dominated by the belief that only modest intervention is needed and that it is only a matter of time before the rising numbers of women studying and practicing law 'trickles up' to the composition of the judiciary. Yet, even structural reforms have so failed to introduce any significant results. While statistics show that women are well represented in law courses at the undergraduate level ([Kenney 2008](#)) and also among the ranks of solicitors, very few women are able to break through the glass ceiling in the legal profession or, in many cases, enter through the glass door. Indeed, the [Equality and Human Rights Commission \(2008\)](#) concluded that it would take at least 55 years at current rates before gender equality is

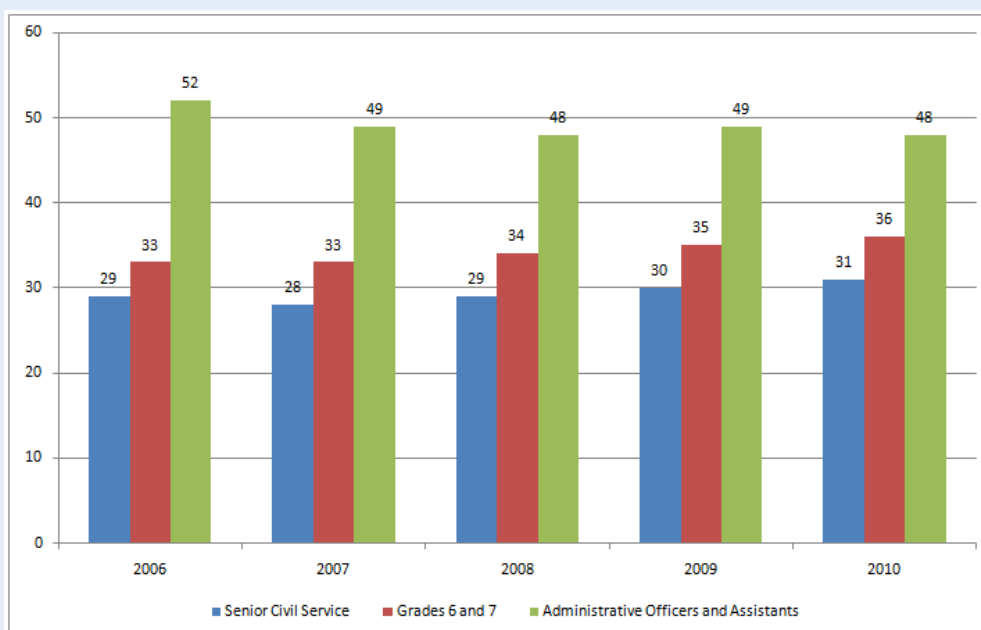
reached in the judiciary. Given the extent of intervention required to bring about this modest degree of change over a decade, it is difficult not to concur with the assessment that:

'despite two decades of official activity, the pace of change has been far slower than anticipated by many in the judiciary, the government and the legal profession and there remains little prospect of any significant shift in the composition of the bench in the near future' ([Malleson, 2009, p. 377](#)).

### ***The civil service and public bodies***

In our last full Audit, we noted that women occupied just 17.2 per cent of senior civil service posts in 1999, although this figure represented a significant improvement compared to 1984, when a mere 5.9 per cent of these positions were held by women (Beetham et al., 2002, p. 224). We also noted the striking contrast with more junior roles, with women making up 62.5 per cent of staff at the administrative officer and administrative assistant level of the civil service. Almost uniquely among the data we present in this section, there has been genuine and sustained progress since our last Audit in realising greater gender equality in the civil service. By 2006, women comprised 28 per cent of the senior civil service, and the government was working towards a target, agreed as part of the 2004 spending review, of 37 per cent by 2008. These targets also provided the basis for a ten-point plan adopted by the civil service ([Cabinet Office, 2005](#)). While the target set in 2004 has not been reached, the proportion of senior civil servants who are women has grown steadily to reach 31 per cent in 2010, as Figure 3.2z shows. Over the period from 2006-10, the proportion of female civil servants at grades six and seven of the civil service rose from 33 to 36 per cent. Meanwhile, gender parity has been achieved at lower grades, most notably among administrative officers and assistants, which previously contained a disproportional number of female civil servants. Despite the evidence of sustained progress, however, there is clearly some way to go if gender parity is to be achieved in the civil service or even, in the more immediate term, if the targets originally set for 2008 are to be met. Meanwhile, comparative studies of women in the civil service suggest that the UK ranks relatively poorly among EU member states ([Kuperus and Rode, 2008](#); [European Commission, 2011](#)).

Figure 3.2u: Women in the UK civil service, 2006-10



Source: [Civil Service Statistics \(2006-10\)](#)

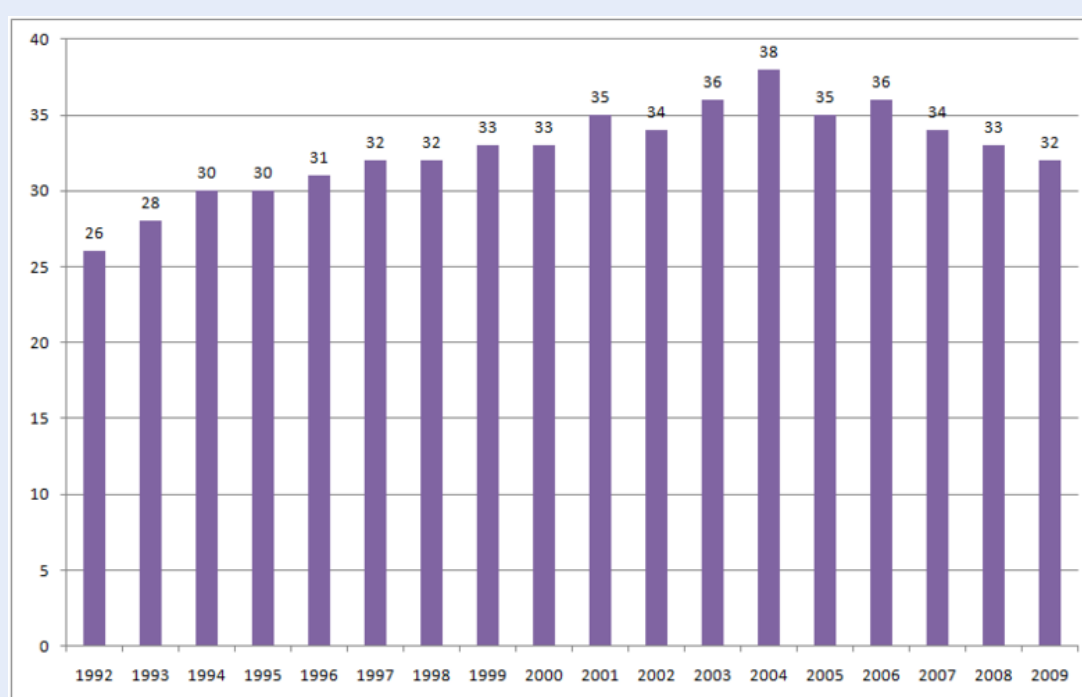
### ***Public Boards***

In our 2002 Audit we noted that women comprised 33 per cent of the 30,520 appointees to the boards of public bodies in the UK in 2000 (Beetham et al., 2002, p. 225). We also observed that, at that time, gender representation on public bodies was more equitable than for senior civil service posts or for most elected bodies. Our assessment of progress since the early-2000s points to a familiar pattern. Despite a strong government commitment under Labour to move towards gender equality, and some initial evidence of success in doing so, gender representation on public bodies has barely changed, and if anything, worsened compared to 2002. The gap we observed between public boards and the senior civil service has all but vanished, although this is as much to do with a lack of change in the former as it is

improvements in the latter.

In 1998, the first Blair government had committed to achieving a '50:50 ratio of women and men for public appointments' ([Flinders et al., 2011, p. 129](#)). As Figure 3.2v shows, while there was an increase in the proportion of female members of public bodies in the first half of the 2000s, which continued a trend that had begun in the 1990s. By 2004, 38 per cent of women held places on public bodies. Since 2004, however, there has since been a clear decline. In 2009, 32 per cent of public board members were women, slightly less than the level in the late-1990s. Meanwhile, as [Flinders et al. \(2011, p. 132\)](#) note, the proportion of public bodies with female chairs also reached a peak of 34 per cent in the early-2000s, and subsequently dropped to 20 per cent in 2008-09. While there are significant variations in gender representation across 24 sponsoring departments, only those public bodies sponsored by the Government Equalities Unit had an average of more than 50 per cent female board members in 2009. Moreover, the average was above 40 per cent for boards in just four other sponsoring departments: the Department for International Development (46.7 per cent), the Ministry of Justice (43.9 per cent) and the Department for Children, Families and Schools (43.5 per cent) and the Department for Work and Pensions (41.8 per cent).

Figure 3.2v: Female representation on boards of public bodies, UK, 1992-2009 (women as % of board members)



Source: Cabinet Office, Public Bodies (2000-2009)

As [Flinders et al., 2011](#) suggest, a combination of 'supply-side' and 'demand-side' factors are likely to explain the failure to bring about a sustained increase in female representation on public bodies. On the supply side, the absence of remuneration for many roles may well be the most significant factor while, on the demand side, the tendency for appointments to be based on very narrow criterion and governed by a risk-averse culture also appears to have played a key role. Nonetheless, the same authors note that public bodies have been able to achieve far better levels of female representation than private sector boards. They also underline that the Conservative-Liberal Democrat coalition has included an 'aspiration' in its Programme for Government that women should 'comprise half of all new appointments to public boards by the end of the parliament' ([Flinders et al., 2011, p. 138](#)). It remains to be seen whether this goal can be achieved without more robust interventions to tackle the supply- and demand-side barriers identified.

The evidence presented in this section points to an overwhelming failure to address the under-representation of women in British public life. While there is some evidence of progress, it has for the most part been painfully slow. In the House of Lords, the judiciary and elected local government, gender parity remains almost as distant a goal as it did a decade or more ago. Elsewhere, elections to devolved bodies produced something of a 'boom and bust' in women's representation (c.f. [Fox, 2011](#)), giving rise to unprecedented number of elected female representatives in the mid-2000s, but with the proportion of seats in these assemblies held by women having since fallen away again. A similar trend is observable with regard to appointments to public bodies, where the representation of women peaked in 2004. Only

with regard to efforts to diversify the senior civil service has there been steady, but slow, progress towards the goal of gender parity. Based on current trends, it will be many decades before women will be participating equally in public life and public office ([Equality and Human Rights Commission, 2008](#)).

### 3.2.4 Social representativeness of public officials

How equal is access for all social groups to public office, and how fairly are they represented within it?

No person should suffer disadvantage in access to public office – or be denied access altogether – on account of their social background. This requirement for equal access of all persons to public office flows from the principle of political equality: one of the two key democratic principles on which this Audit is based. However, it is also important for public officials to be representative of the public – not just in the sense that they reflect the attitudes of the public, to whom they are accountable; but also *socially* representative, so as to avoid excluding or under-representing the viewpoints of certain groups, and thus risk damaging the democratic legitimacy of public offices and institutions (and possibly even the social fabric itself in countries or regions marked by sharp social, political or religious differences, such as Northern Ireland).

In general, equal access to public office in the UK exists through the absence of any laws or practices that forbid certain social groups from participating in public life. Rules and procedures for candidates in elections, for example, are relatively open and free from abuse (see Sections [2.1.2](#) and [2.1.3](#)); while elections themselves are contested on the basis of universal suffrage of the adult population (see Section [2.1.2](#)). In matters relating to employment, meanwhile, it is against the law to discriminate against somebody on the basis of their age, sex, ethnicity, sexual orientation, marriage or civil partnership, disability, gender reassignment, pregnancy or religious beliefs (see Section [1.4.1](#)). Yet, for a number of reasons, measures intended to prevent active discrimination against certain social groups has not led to their fair and proportionate representation in public office.

#### **House of Lords**

As of the end of 2011, there were 42 ethnic minority members of the House of Lords out of a total of 826, i.e. 5.1 per cent of total membership ([Cracknell, 2012](#)). By party group within the Lords, they were six Conservatives, 14 Labour, four Liberal Democrats, four Independents, 13 Crossbenchers and one Bishop from BME backgrounds. This compared with BME 20 members, or 2.9 per cent, at last Audit. While the difference between 2.9 per cent and 5.1 per cent of the membership is significant improvement, it seems unlikely that new appointments of BME peers can be made sufficiently rapidly to cause a rapid increase in the proportion overall, given that tenure is nearly always for life. A change in the basis of the House of Lords towards a directly elected chamber, as indicated by the coalition government and its predecessor, would open the possibility for more rapid change, particularly (as with the London Assembly and the European Parliament) if a proportional or semi-proportional electoral system were adopted.

#### **The Cabinet**

As of the end of 2011, there was one ethnic minority Cabinet minister, Baroness Warsi (Conservative Party chair), first appointed in May 2010. During the Labour government there were two Cabinet ministers from BME backgrounds. Paul Boateng, the first ethnic minority Cabinet member, served as Chief Secretary to the Treasury from 2002 until 2005; and Baroness Scotland was Attorney General from 2007 until 2010.

#### **The Scottish Parliament and the Welsh Assembly**

Although all of the devolved legislatures have fewer elected members from ethnic minority backgrounds than the Westminster parliament, their chambers are more representative of their respective electorates, due to the fact that Wales, Scotland and Northern Ireland are all considerably less ethnically diverse than the UK as a whole. The ethnic minority proportion of the population in both Scotland and Wales was estimated to amount to around two per cent at the time of the 2001 census; while in Northern Ireland, the last census recorded that ethnic minorities make up only 0.8 per cent of the population. By contrast, the population of the UK from ethnic minority backgrounds was calculated by the census to be approximately nine per cent – due to the concentration of the ethnic minority population in specific cities and regions of England, most notably Greater London and the metropolitan West Midlands.

In Scotland, the first ethnic minority Member of the Scottish Parliament (MSP), Bashir Ahmad, was elected for the Scottish National Party (SNP) in 2007. The Scottish Parliament currently has two Black and Minority Ethnic (BME) MSPs (Humza Yousaf for the SNP and Hanzala Malik for Labour), comprising 1.6 per cent of the Parliament. The Welsh Assembly has two BME Assembly Members (representing 3.3 per cent of the total seats): Mohammed Asghar, was elected for Plaid Cymru in 2007 but since 2009 has sat as a Conservative; and Vaughan Gething, who was elected for Labour in 2011. Just one ethnic minority member serves in the Northern Ireland Assembly: Anna Lo of the Alliance Party, who is the first member of Chinese origin to sit in a UK legislature and the first ethnic minority member elected to the

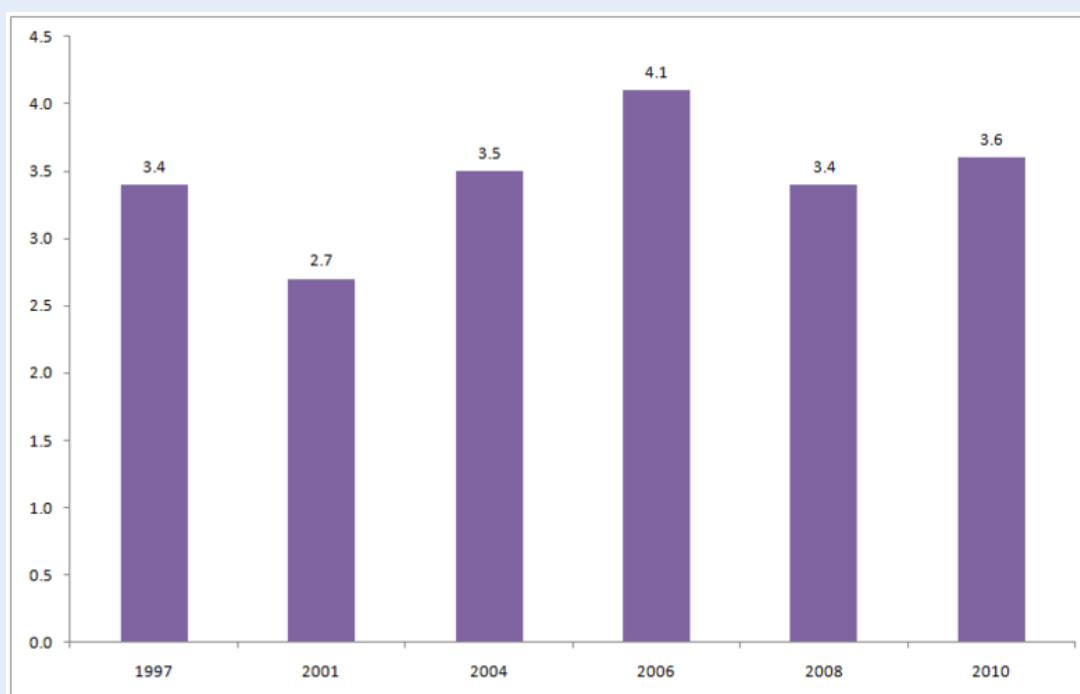
Northern Ireland Assembly. Her seat represents 0.9 per cent of those in the Assembly. The London Assembly, following the 2008 elections, has four ethnic minority members out of 25 (16 per cent), three Labour and one Conservative. Two members were elected in each of the elections of 2000 and 2004, Labour in each case.

### Local councils

Data on the social backgrounds of councillors in England is collated by the National Census of Local Authority Councillors – the most recent edition of which ([Evans and Aston, 2011](#)) covered 33.2 per cent of councillors in office and 97.4 per cent of English local authorities. The data from the Census covers several dimensions of social representativeness, including gender, ethnicity, disability and occupational backgrounds. We report on the findings with respect to gender in Section [3.2.3](#), so our focus here is on the other aspects of representativeness.

As Figure 3.2w shows, the proportion of ethnic minority councillors in total in England in 2010 was 3.6 per cent, which has not changed much since 1997 (although there have been year to year fluctuations). One factor affecting the overall figure is that councillors in the large urban areas, where most of the BME population live, represent much larger wards than those in rural areas, which are almost entirely white; the ratio of councillors to population is around 1 to 7,000 in Birmingham and less than 1 to 1,000 in some rural districts.

Figure 3.2w: The percentage of Black and Minority Ethnic (BME) councillors in England, 1997-2010



Source: [Evans and Aston \(2011\)](#).

London has the most ethnically diverse set of councillors, with 15.4 per cent from BME communities. Changes since the last Audit reported in 2002 show that the proportion of BME Conservative councillors has risen from 0.7 per cent in England in 1997 to 1.6 per cent in 2010, and for Labour the proportion is up from 5.5 per cent (1997) to 10.7 per cent (2010). The proportion of Liberal Democrat councillors of BME origin is up from 1.1 per cent to 2.2 per cent. Despite these increases across the three main parties, the overall total has not risen because there was a large change in the party composition of local government between 1997 and 2010, with Labour losing a large number of seats to the Conservatives and, to a lesser extent, to the Liberal Democrats.

Table 3.2e: The ethnicity of local councillors in England, 2010

	Total	Conservative	Labour	Liberal Democrat	Independent
White	96.3	98.4	89.3	97.8	98.9



## Democratic Audit

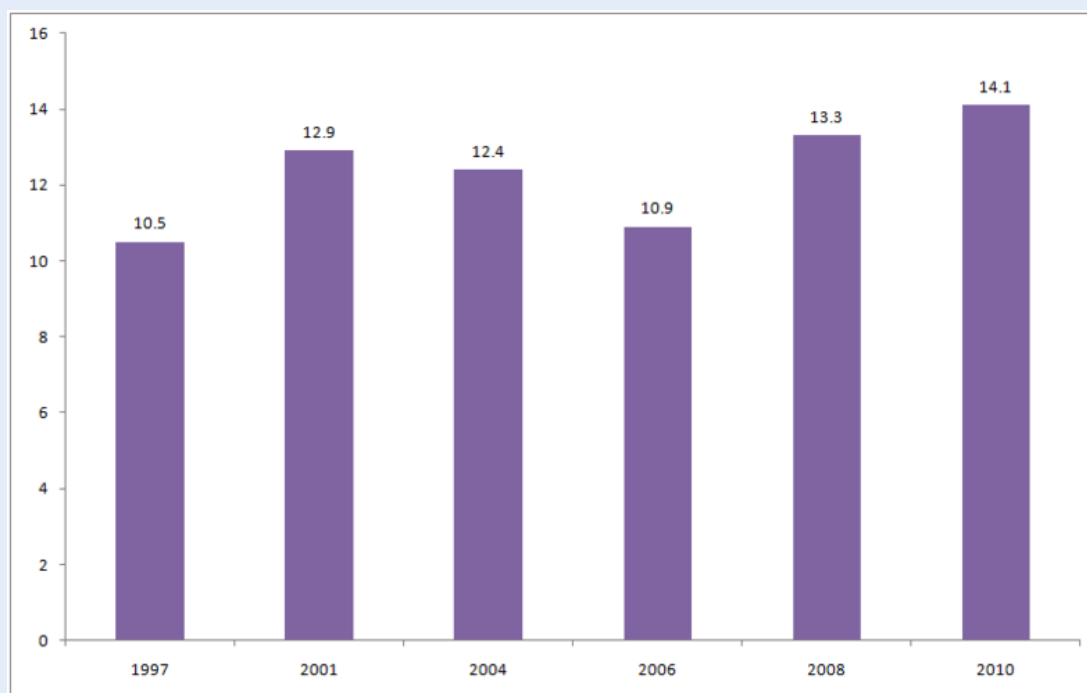
Mixed	0.6	0.5	0.9	0.6	0.4
Asian	2.3	1	7.5	0.9	0.4
Black	0.7	0.1	2.4	0.5	0.4
Other	0	0	0	0.1	0

Source: [Evans and Aston \(2011\)](#).

In the 2010 census of councillors, a question about sexuality was asked for the first time. A total of 84.2 per cent of councillors identified as heterosexual, 2.4 per cent as gay or lesbian, 0.9 per cent as bisexual and 0.3 per cent of 'other' sexuality; the non-response rate for this question was 12.2 per cent. A further 0.1 per cent of councillors did not have a gender identity that was the same as the sex determined at the time of birth.

There has been a gradual upward trend in the proportion of councillors with disabilities and with limiting long term illnesses, from 10.5 per cent in 1997 to 14.1 per cent in 2010. This may reflect more disability-friendly policies but may also reflect the upward trend in the proportion of councillors who are retired.

Figure 3.2x: The percentage of councillors in England with a disability, 1997-2010



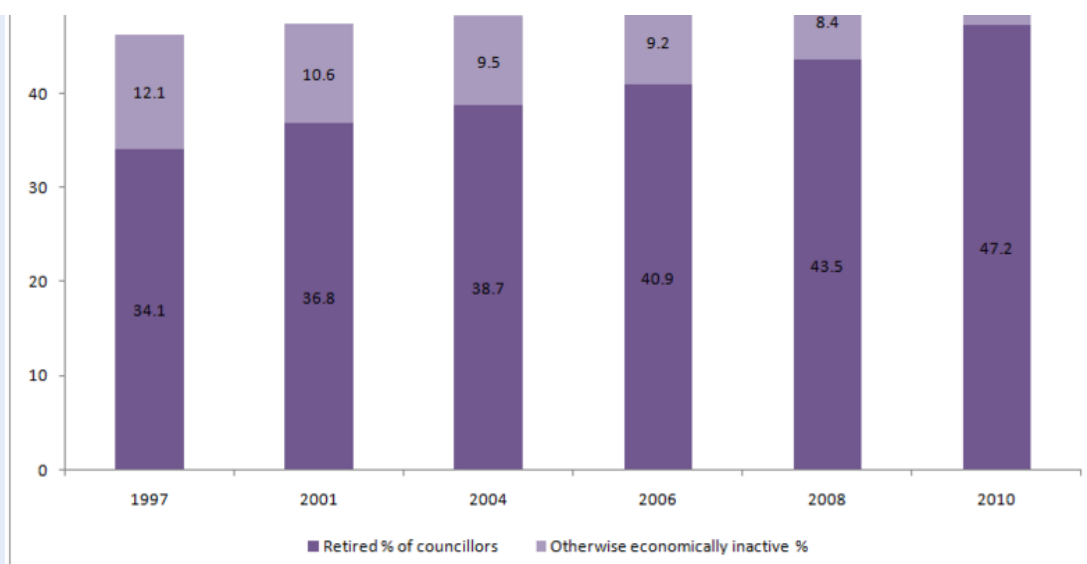
Source: [Evans and Aston \(2011\)](#).

The proportion of economically active councillors has tended to fall over time, with particular growth in the proportion of councillors who are retired, from 34.1 per cent in 1997 to 47.2 per cent in 2010.

Figure 3.2y: Percentage of councillors in England classed as retired or otherwise economically inactive, 1997-2010



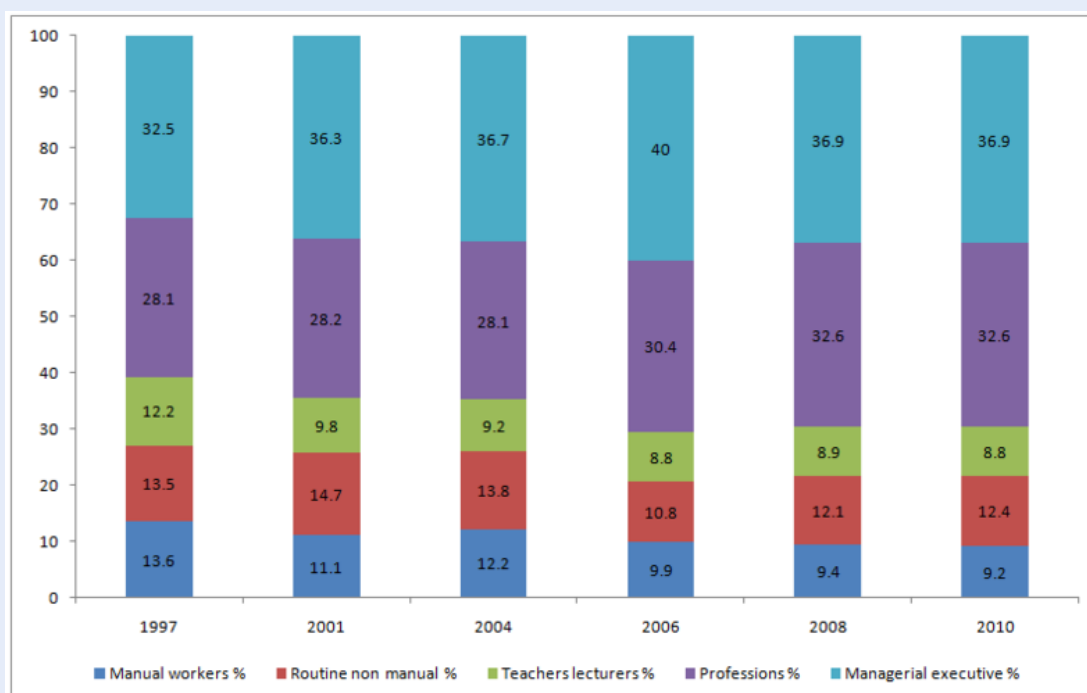
## Democratic Audit



Source: [Evans and Aston \(2011\)](#).

Serving on local authorities appears to be disproportionately open to those with professional status and people in the teaching/lecturing/research sector, and much less so for manual workers and routine non-manual workers such as administrative and clerical staff. In 2010, 70 per cent of councillors in England were from either professional or executive occupational backgrounds, compared to 60 per cent in 1997. Those from manual working occupations had been squeezed from 13.6 per cent in 1997 to under 10 per cent in 2010. While it is likely that this pattern again reflects the shift in the overall balance of control in local government from Labour to the Conservatives, the dominant roles played by those from social classes AB is clearly apparent and reflects an equivalent trend with respect to the House of Commons (see Section 2.1.5).

Figure 3.2z: The occupational background of local councillors in England, 1997-2010



Source: [Evans and Aston \(2011\)](#).

A similar Census in Wales following the 2004 local government elections showed that 0.8 per cent of councillors were from ethnic minorities, below the level in the general population ([Welsh Local Government Association, 2005](#)). The position in Scotland is analysed by the [Scottish Government's \(2008\) National Survey of Local Government Candidates, 2007](#). The proportion of councillors in Scotland from BME backgrounds was 2.0 per cent in 2003 and 1.9 per cent in 2007; the corresponding proportions of unsuccessful council candidates were 2.0 per cent in 2003 and 3.3 per cent in 2007. These levels are broadly comparable with the Scottish population and represent a clear improvement on the 0.5 per cent of councillors of BME origin in 1999 (Beetham et al., 2002). The *National Survey* also suggests that there is inequality in housing tenure among Scottish councillors, which may be taken as a proxy for socio-economic class. In 2007, 5 per cent of councillors (8 per cent in 2003) lived in the social rented sector, compared to 25 per cent of the Scottish population as a whole (27 per cent in 2003). The figures are probably not strictly comparable with England, but the Scotland survey suggests a lower rate of disability, limiting and non-limiting long term illness among councillors than in the general population. Labour market participation is on a broadly similar pattern to England.

Clearly, there is some way to go if elected local councillors are to become representative of the population as a whole. In 2007, the Secretary of State for Communities and Local Government established the Councillors' Commission to undertake an independent review of 'the incentives and barriers' to people being selected, elected and retained as councillors including 'the real or perceived barriers faced by many sections of the population to get to become a candidate' ([Councillors' Commission, 2007, p.8](#)). As we highlight in Case Study 3.2c, while the resulting report made a series of practical recommendations for broadening the appeal of standing for local election, there is little evidence that it has made much impact in relation either to policy development in this area or in relation to who stands for, and is returned to, local councils.

### Case Study 3.2c: The Councillors Commission

The Councillors Commission was established in 2007 by the then Secretary of State for Communities and Local Government, Ruth Kelly. Amid growing concerns over the socially unrepresentative nature of most local councils, it was tasked with identifying the incentives and barriers that people encounter in standing for local elections; suggesting measures that might encourage a greater number of able candidates from a more diverse range of social backgrounds to stand; and considering how councils could generate greater public awareness of, and participation in, local democracy.

In its final report, published later that year, the Commission pinpointed a number of factors that prevent or discourage involvement in local politics – many of which were found to disproportionately affect minority groups ([Councillors Commission, 2007](#)). It noted, for instance, that high levels of public distrust in politicians generally, as well as a lack of understanding and awareness of how local government works, were a likely disincentive to those who might otherwise wish to serve as councillors. In addition, it lamented the exclusive nature of some local authorities and local parties; opined that the strong central control of local government may make participation in local government unappealing; and noted that, for many, work or family commitments were also likely to act as a barrier to participation.

In order to encourage more people to come forward as candidates in local elections, the commission suggested a number of changes. For those in work, for instance, the commission recommended that steps be taken – both on the part of employers and the local authorities themselves – to make the role of councillor more compatible with employment. To promote greater numbers of councillors from minority backgrounds, the Commission proposed that local authorities have a clearer responsibility to promote diversity among councillors, through an amendment to legislation that would allow councillor equalities targets to be covered under race, gender and disability equalities schemes. While, outside of the council, the commission urged local parties make active attempts to enlist more candidates from minorities and other under-represented groups.

To boost democratic engagement, the final report called on councillors to play a greater role in actively increasing local participation in local democracy; and for local councils themselves to have an 'explicit duty' to boost local democratic engagement built into legislation. The commission also called for greater clarity over what the responsibilities of a councils are, and for councils, public service broadcasters and even schools to communicate better with citizens, in order to make them more aware of the valuable work that they and their councillors do.

In addition, the Commission also suggested a number of wider changes to the electoral system – including the uniform adoption of all-out council elections, with all councils in a region holding elections on the same day, the use of multi-member wards in all areas, and for the single transferable vote system to be used on a pilot basis in local authorities that wished to do so. Within councils, meanwhile, it was proposed that councillors should be subject to terms limits (of five consecutive terms); and that the rules preventing officers of local councils from engaging in political activities should be relaxed.

Although the report of the Commission did not receive a great deal of media attention, most of its 61 recommendations were

accepted by the government in its official response issued the following year ([Department for Communities and Local Government, 2008](#)). For instance, the proposal to create a statutory duty for local authorities to promote local democracy was taken up. So too was the recommendation that the 'Widdicombe rules' be changed, so that only those council workers in political roles or senior positions would be banned from participating in political activity or acting as a councillor in another local authority. Indeed, even some of the Commission's more unusual proposals were accepted, such as legislation to allow remote attendance and voting at council meetings; and for local authorities to be allowed to run 'lotteries' for voters who take part in local elections.

Perhaps predictably, the government declined to accept some of the more radical proposals of the commission – including the idea of councillor equalities targets for local authorities. Also rejected were the recommendations for moving to all-out local elections across all local authorities; the use of multi-member wards in all areas; the introduction of term limits for councillors; and the creation of STV pilots in authorities that wished to do experiment. In sum, the relatively straightforward proposals of the Commission were accepted, while the more radical changes put forward were rejected. It is perhaps not surprising, therefore, that the impact of the Commission appears to have been modest.

### ***The judiciary***

In Section [3.2.3](#), we reported on efforts to diversify the social composition of the judiciary, particularly since the creation of the Judicial Appointments Commission in 2006. Statistics compiled by the [Judicial Office \(2011\)](#) for England and Wales recorded 154 BME judges in 2011 out of 3,694 in total (4.2 per cent) and 2,992 for whom data was provided (5.1 per cent) – responding to the survey question is voluntary. i.e. 4.2 per cent of the total and 5.1 per cent of those who provided the information. However, as we noted in Section [3.2.3](#) with regard to women in the judiciary, the numbers of BME judges are smallest in the senior ranks of the profession. There are no judges with a BME background in the Supreme Court or the Court of Appeal. In 2004, Linda Dobbs was appointed as the first High Court judge from a non-white background and since 2008, three High Court judges have been recorded as BME (representing 3.7 per cent of the total). There has been a parallel rise in the number of BME Circuit Judges, of which there were 16 in 2011 (2.4 per cent of the total), compared to just four a decade previously. While there are some indications of improvement, it is evident that there is some way to go before the judiciary in England and Wales reflects the ethnic composition of the population as a whole.

As with the gender profile of the legal profession, there is also evidence that ethnic minorities are significantly better represented at lower ranks of the judiciary and among those plasticising the law as barristers and solicitors. The [Judicial Office \(2011\)](#) estimates that 92 per cent of magistrates in England and Wales are white, 4.1 per cent black, 2.7 per cent Asian, 0.8 per cent from other ethnicities and 0.5 per cent mixed race. In London, magistrates are 78.6 per cent white and 21.4 per cent non-white. Meanwhile, an estimated 10 per cent of practicing barristers are of BME origins; and the Law Society's figures show that 11 per cent of practicing solicitors are from a BME background, compared to 5 per cent in 1999. It is therefore clear that ethnic minorities are entering the legal profession in sufficient numbers. As with efforts to promote greater gender equality in the judiciary, the key challenge is therefore one of ensuring that members of BME communities working in the legal profession are able to move up the career ladder.

### ***Civil service and other public bodies***

In our previous Audit we noted that 5.7 per cent of civil servants were from ethnicity minority groups in 1999 and that only 1.5 per cent of the senior civil service were from BME backgrounds at that time (Beetham et al., 2002). By 2006, as Table 3.2f shows, BME representation had increased to 8.4 per cent of the civil service as a whole and 4.1 per cent of the senior civil service. By 2010, further progress had been made: by this time, 9.2 per cent of civil servants and 4.8 per cent of senior civil servants were of BME origins. We would regard this as significant progress since our last Audit was undertaken, but note there is still some way to go before the senior civil service can be said to be representative of the ethnic composition of the UK as a whole. Similar trends are observable with regard to ethnic minority representation on the boards of non-departmental public bodies (NDPBs). Despite some inevitable annual fluctuations, the BME proportion of public board members has increased steadily from 2 per cent in 1992 to 4.4 per cent in 2000 and 6.9 per cent in 2009.

**Table 3.2f: Proportion of UK civil servants from BME backgrounds, 1999, 2006 and 2010 (%)**

	1999	2006	2010
All civil servants	5.7	8.4	9.2
Civil service grades 6 and 7	n/a	5.9	6.8
Senior civil service	1.5	4.1	4.8

Sources: Beetham et al. (2002, p. 230); [Civil Service Statistics \(2006; 2010\)](#).

The statistics presented in this section reveal a mixed picture, so far as participation in public life from underrepresented groups is concerned. On the one hand, there is evidence to suggest the increasing inclusion of members of ethnic minority communities in several aspects of public life. The number of black and minority ethnic (BME) members of the House of Lords, for instance, has doubled (although the proportion has not risen quite as fast, and is still below the level in the general population); while civil service recruitment appears to have become more equal in terms of access, with the overall proportion of civil servants from ethnic minority backgrounds rising over the decade, particularly at senior levels (although, again, not yet achieving the level found in the general population). However, local government in England and Wales still seems to be disproportionately white, with little overall progress (largely because Labour, the party with consistently the highest levels of BME representation, has lost so many seats in local government since 2007). The same pattern is replicated in higher levels of the judiciary and the magistracy, which is of general concern given the requirements for fairness that are central to the role of judgement. Meanwhile, the declining proportion of local councillors from manual working class backgrounds raises concerns that elected local government is becoming the preserve of the professional and managerial classes.

To the extent that there has been progress over the last decade, it owes much to the concerted efforts of the Blair and Brown governments to diversify the civil service, the judiciary and other public offices. Whether it will be possible to sustain the improvements we note since our last Audit is far from clear. Despite its commitment in principle to promote greater access to public office for women and under-represented groups, the coalition has yet to set out detailed policy recommendations in these areas. Experience suggests that robust measures will be required if recent progress is to be built upon.

## Conclusion

In many ways, the evidence presented in this chapter of our Audit points to the existence of a vibrant civil society and healthy levels of political participation in the UK. There are continued signs of extensive voluntary sector activity and, based on the available evidence, the voluntary sector may well have grown over the past decade. Moreover, the importance of the voluntary sector is clearly recognised by governments of all political compositions and the sector has benefitted from greater state support in recent decades. Meanwhile, there is ample evidence to suggest that levels of participation in many types of political activity either remain broadly stable or have increased. Finally, we have noted increased levels of participation among women and members of ethnic minority groups in several areas of political office and public life. Despite some clear fluctuations, the representation of women in recently-established bodies such as the Welsh Assembly, the Scottish Parliament and the Greater London Authority has been significantly above that typically achieved via elections to the House of Commons or local authorities.

However, while we identify a number of positive development in this chapter, it is also necessary to add caveats to each of these observed improvements. In particular, we have found evidence to suggest that:

- The independence of the voluntary sector is perceived to be under threat, and the coalition's commitment to foster a 'Big Society' will do little to mitigate the impact of deep cuts in local and central government grants to voluntary organisations.
- Up to half of UK citizens appear to have virtually no engagement with the political process at all (with the possible exception of voting in general elections).
- There is a growing class divide among those who do participate in civil and political life, with those in social classes AB being significantly more likely to engage than those in social classes DE.
- There is still a very long way to go until the UK's elected representatives and public officials are socially representative in terms of both gender and ethnicity and, in some area of public life, previous progress towards greater gender equality is being reversed.

These findings provide us with at least a partial basis for adjudicating between the contrasting 'pessimistic' and 'optimistic' interpretations of trends in political participations found in the wider literature. Certainly, it would appear that the UK does not fully conform to the downbeat assessment, offered by Putnam (2000) in his work on the USA, that not only has electoral participation declined, but so too have activities such as signing petitions, taking part in consumer boycotts, joining sports clubs, taking part in competitive sports and even entertaining friends at home. Putnam sees the decline in formal political participation and the decline in both formal and informal social interaction as two sides of the same coin. However, as with other studies of political and civic participation in most other democracies, these conclusions are not replicated in this Audit. While we have cited, elsewhere in this Audit, evidence that turnout in UK elections is falling (see Section 2.1.6) and that party membership levels are now a fraction of what they were half a century ago (see Section 2.2.3), these stark declines are clearly not reflected in other forms of political and civic activity, as this chapter has shown. Indeed, our findings reinforce longer-run UK evidence that levels of engagement in most forms of political and civic activity have held up well since the late 1960s (Parry et al, 1992; Bromley et al, 2001; [Birchall and Simmons, 2004](#); Power Inquiry, 2005).

However, while there may not be any clear evidence of overall levels of political participation eroding, our findings do point to a number of concerns which reinforce wider trends highlighted in this Audit. First, it is clear that the broad analysis of political and civic participation undertaken in this chapter reinforces other evidence of growing political inequality we have observed in this Audit (alongside a widening of socio-economic divisions). Second, while the overall stability in levels of civic and political participation is broadly encouraging, it should be noted that this has done little to stem declining faith in democratic institutions, and it is difficult to see how it could do so. Indeed, it is rather more plausible that the upward trend observed in some forms of political activity, such as signing petitions or attending demonstrations, is a reflection of declining public confidence in key democratic institutions. Finally, while the trends documented in this chapter clearly contrast with the decline in electoral participation and party membership, it is currently difficult to see how they can provide for a reinvigoration of UK democracy. Not only is it the case that the vast majority of citizens are at best marginally engaged in civic or political activism, it is also far from clear how even a broader base of participation beyond elections and political parties could help address the decline of representative democracy. Given the evidence of clear class inequalities in political participation, it is especially doubtful that a model of participatory democracy could adhere, even notionally, to the principle of political equality.

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### 3.3. Decentralisation

#### Executive Summary

This chapter reviews the available evidence relating to the three ‘search questions’ concerned with decentralisation.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

##### **(a) Areas of improvement**

###### **1. The consolidation of devolution in Scotland and Wales.**

There are many indicators of the success of devolution to Scotland and Wales over the past decade and a half. The devolved arrangements have become fully embedded within the UK political system, and steps have been taken to extend the powers of both the Scottish parliament and the Welsh assembly. As the devolved legislatures have consolidated their role, they have shown a growing tendency to develop policies which diverge from those in England, most notably in areas such as health and education. However, while these are positive indicators of devolution achieving what it was intended to, they also highlight growing constitutional tensions in a context where England continues to be governed from Westminster and Whitehall. (For further details and discussion, see Section [3.3.1](#))

###### **2. Progress in achieving devolution in Northern Ireland.**

The early years of devolution to Northern Ireland were beset by problems, resulting in frequent suspension of the Northern Ireland assembly. However, there has been remarkable progress since our last full Audit in 2002. Following the restoration of the Northern Ireland assembly following a prolonged period of direct rule from Westminster, all planned powers had been fully devolved by 2007. In 2011, police and justice powers were also devolved to the assembly, representing a landmark development in the peace process. (For further details and discussion, see Section [3.3.1](#))

###### **3. The enhanced role of local government under devolution.**

Devolved administrations in Scotland and Wales have taken some steps to bolster the standing of local government and to promote cooperation between local authorities and devolved governments in policy formulation and implementation. While there were initial concerns that the centralising tendencies of the UK state were largely being replaced by the dominance of the devolved institutions, there is general agreement that local government in Scotland and Wales has emerged stronger as a result of devolution. (For further details and discussion, see Section [3.3.1](#))

###### **4. The successful operation of party systems under devolution.**

The success of devolution to date has been underpinned by the development of separate party systems in Scotland, Wales and Northern Ireland which have been both strong and flexible enough to sustain various types of governing arrangements. In the case of Northern Ireland, the party system has adapted to power-sharing, albeit following some initial difficulties. In Scotland and Wales, the party systems have, depending on electoral outcomes, been flexible enough to sustain in office a mix of majority, minority and coalition governments. (For further details and discussion, see Section [3.3.2](#))

###### **5. The consolidation of devolved legislatures as open and responsive bodies.**

Conscious efforts were made to ensure that the operation of both the Scottish parliament and the Welsh assembly were underpinned strongly by principles of openness, responsiveness and accountability. Both legislatures have built on these foundations over the past

decade, developing strong linkages with civil society and promoting wider forms of public engagement with the democratic process. The adoption and development of petitioning systems in Scotland and Wales has been particularly successful, especially in contrast to the system put in place by the UK government. (For further details and discussion, see Section [3.3.2](#) and Case Study [3.3b](#))

## ***(b) Areas of continuing concern***

### **1. The continuation of the 'English problem'.**

It was always clear that devolution would create problems of imbalance within the UK. The granting of significant autonomy to Scotland, Wales and Northern Ireland inevitably creates dilemmas about what to do about England, which is home to 84 per cent of the UK population. Labour's plans for a rolling process of devolution to the English regions 'on demand' came to an abrupt halt following the rejection, in 2004, of proposals for an elected regional assembly for the North East. While evidence of a growing desire for some form of political representation of 'England' has begun to emerge, no viable means of dealing with the English question has yet been put forward by any of the political parties. As Scotland pushes for greater autonomy, and possibly independence, the constitutional tensions raised by the absence of devolved arrangements in England will almost certainly intensify. (For further details and discussion, see Section [3.3.1](#))

### **2. The highly centralised nature of government in England**

Prior to the late 1990s, the UK was widely regarded as one of the most centralised states in western Europe. While devolution has seen significant powers delegated to the three 'Celtic nations' over the last decade and a half, the governance of England has become even more centralised. Central controls over local government finance, combined with the imposition of wide-ranging performance targets on local authorities, took centralisation (in England) to a new level under Labour. While the coalition's commitment to 'localism' has prompted a significant reduction in central controls on English local government, it has been applied alongside an unprecedented resource squeeze, and local authorities remain tightly restricted in their ability to generate extra funds from local sources. (For further details and discussion, see Sections [3.3.1](#) and [3.3.2](#))

### **3. Unelected bodies still play a major role in sub-national governance.**

Democratic Audit has consistently raised concerns about the extent to which major government functions are allocated to unelected bodies, frequently described as 'quangos', which are unaccountable to the electorate. While there has been some reduction in the number of quangos operating under the devolved governments, it has proved more difficult than anticipated to reduce the size of the quango state. Similarly, the number and range of unelected bodies operating regionally and locally in England under the Labour governments remained at least as substantial as it had under the previous Conservative administrations. The coalition government has taken steps to 'cull' English regional quangos, such as Regional Development Agencies (RDAs), rather than democratise them. However, as has been the case with previous governments, the coalition has also overseen the creation of new unelected agencies, such as the Local Enterprise Partnerships (LEPs) which have essentially replaced the RDAs. Meanwhile, a wider range of unelected local public spending bodies sit alongside elected local government in each local authority district. (For further details and discussion, see Section [3.3.2](#))

### **4. The persistence of low turnouts in local and devolved elections.**

Local election turnouts in the UK have always been low compared to other European democracies, with around half of eligible electors casting ballots, but in recent decades they have typically been less than 40 per cent. Turnouts have not increased where directly elected mayors have been introduced, despite claims that elected mayors would bolster interest in local government (see Case Study [3.3c](#)). While devolved elections have generally achieved higher rates of turnout than local elections, turnouts in 2011 were 50.6 per cent in Scotland, 41.4 per cent in Wales and 54.5 per cent in Northern Ireland. In each case, this represents a decline compared to the turnouts in 1998-99 (see Figure [3.3d](#)). (For further details and discussion, see Section [3.3.2](#))

### **5. Distorted local election results under first-past-the-post.**

While the single transferable vote (STV) has long been used for local elections in Northern Ireland, and was adopted for Scottish local elections in 2007, the vast bulk of local elections in England and Wales use variants of 'first-past-the-post' (FPTP). As a result, local elections in England and Wales frequently produce highly disproportional outcomes and some types of councils, most notably county councils, rarely change hands, because FPTP virtually guarantees single party dominance. (For further details and discussion, see Section [3.3.2](#))

### **6. UK local authorities are very large by international standards.**

In past Audits, we pointed to clear evidence that the basic units of UK local government are exceptionally large compared to those found in

other established democracies, whether size is measured by land area or population. This pattern has been further consolidated by local government reorganisation in England during the past decade, which has seen a further reduction in the number of local authorities, including the creation of a number of large, unitary county authorities. It is difficult to see how the benefits of local democracy can be realised given the scale at which UK local government now operates. (For further details and discussion, see Section [3.3.2](#))

### **7. Ongoing controversies surrounding the Barnett formula.**

The Barnett formula was introduced as a temporary measure in 1978 as a means of allocating public expenditure to Scotland and Wales ahead of possible devolution. Despite the fact that, following the referendums held in 1979, devolution did not take place, the Barnett formula was retained and has remained in place following devolution in the late-1990s. However, the formula is subject to criticism both from those who argue that it allocates disproportionately large per capita sums to Scotland, Wales and Northern Ireland and from those who argue that it is being used to squeeze the resources available to the devolved governments. What seems clear is that the Barnett formula succeeds neither in providing devolved government with fiscal autonomy nor in ensuring a level of fiscal equalisation that is broadly accepted as 'fair'. Moreover, the controversies associated with the Barnett formula cannot be divorced from concerns that the UK has relatively high levels of inter-regional inequality by international standards (see Figure [3.3c](#)). (For further details and discussion, see Section [3.3.1](#))

#### ***(c) Areas of new or emerging concern***

##### **1. Growing tensions arising from policy divergence.**

While policy divergence is a natural, and desirable, consequence of devolution, the policies adopted by devolved government in health and education are increasingly at odds with those which apply across England. A number of tensions have begun to emerge because of the fact that this divergence arises from a peculiarly asymmetrical set of devolution arrangements. On the one hand, it has been suggested that devolved governments can only afford policies such as those they have adopted on university tuition fees by virtue of the higher per capita funding they receive via the Barnett formula. On the other hand, it is likely that demands for devolution within England will grow as voters become increasingly aware of how policies diverge across different parts of the UK. There is no reason that these tensions could not be handled within a structured debate about moving towards a more balanced devolution of political power in the UK. However, in the absence of such debate, there is every risk that policy divergence will become a driver of major constitutional instability. (For further details and discussion, see Section [3.3.1](#))

##### **2. The dismantling of regional governance capacity in England.**

The coalition has moved swiftly to dismantle the regional governance arrangements which have grown up under previous UK government since the early 1990s, including government offices for the regions, local authority leaders' boards (the successors to regional assemblies), and Regional Development Agencies (RDAs). While none of these were elected bodies, and have frequently been criticised for their lack of accountability to electors in each region, their abolition raises serious questions about the economic, social and political implications of stripping away the framework of regional governance in England within such a short time frame. (For further details and discussion, see Sections [3.3.1](#) and [3.3.2](#))

##### **3. The impact of spending cuts on local democracy.**

Since the 1980s, local government has become increasingly dependent upon central government grants, with only about 15 per cent of local government spending raised via local taxes. Given this context, the imposition of large reductions in the grants which central governments make to local authorities, alongside a tightening of restrictions on the capacity of local authorities to increase local taxes, can only serve to further constrain local autonomy. Grant reductions will pose particular challenges for local authorities in areas with high levels of social deprivation, which face the deepest budget cuts. (For further details and discussion, see Section [3.3.2](#))

##### **4. New evidence that most local public spending is not under democratic control.**

Recent local case study estimates for English local authority areas suggest that more than half of identifiable local public expenditure is in the hands of unelected agencies. In areas with two-tier local government, as little as five per cent of all spending in a district appears to be accounted for by the district council itself. (For further details and discussion, see Section [3.3.3](#))

##### **5. The failure to renew local democracy by 'diversifying' it.**

In the face of evidence that local representative democracy is failing, the Labour governments made concerted efforts to diversify local democratic engagement through the promotion of mechanisms such as consultation exercises and partnerships with local residents and

service users. Aside from the flawed manner in which some local authorities and other bodies have run such engagement processes, there is little evidence that they have fostered either increased levels of participation or greater public confidence in local governance. (For further details and discussion, see Section [3.3.3](#))

### **6. Partnership working has served to blur accountability.**

The 'hollowing out' of local government has led to the emergence of highly fragmented local governance arrangements in recent decades. The problems of policy coordination associated with this fragmentation, together with a more general drive to 'join up' government and promote joint working across the public, private and voluntary sectors, had led to a proliferation of local partnership arrangements. However, partnership working carries the risk of obscuring both how decisions are taken and where responsibility for service delivery actually lies. As such, there are important issues to be raised about the potential impact of partnership proliferation on democratic accountability. (For further details and discussion, see Section [3.3.3](#))

## Introduction

It is widely acknowledged that liberal democracies require some degree of decentralisation, particularly in light of the range of public services that the modern democratic state provides. Moreover, within wider debates about the meaning and practice of democracy, particular significance has often been attached to the specific qualities of *local* democracy, principally because of the democratic advantages associated with smaller decision-making units (Dahl, 2000). Local government has often been seen to be especially democratic in this regard, partly because 'it is at the local level that the relationship between representative democracy and widespread citizen participation makes most sense' ([Pratchett, 2004, p. 361](#)).

However, it is important to note that there are a number of tensions which arise when considering the place of decentralisation in a democratic polity. In particular, as we observed in our last full Audit, there is a need to recognise that the two core principles which underpin our Audit framework, popular control and political equality, cannot be automatically reconciled in debates about the extent to which democracies should be decentralised (Beetham et al., 2002). On the one hand, a highly decentralised state, which provide for strong local autonomy in shaping political choices, would appear to offer the most obvious means of maximising popular control in a democracy. However, high levels of local autonomy are also likely to result in significant variations in democratic practice, and in the resourcing, standards and comprehensiveness of public services, resulting in potentially enormous inequalities of citizenship. It is therefore evident that 'democracies need to find an effective balance between equal citizenship throughout their territory and the demands of distinctive regional and local autonomy' (Beetham et al., 2002, p. 247).

This chapter considers three distinctive sets of issues related to decentralisation. First, it examines the powers and autonomy of sub-central government, with a particular focus on the independence of sub-central tiers of government from the centre, their powers and their resources. Second, it analyses the extent to which sub-central government is democratic accountable, both with regard to the operation and outcomes of elections and with respect to wider democratic criteria of openness, accountability and responsiveness. Finally, it considers the degree of cooperation between local government and other partners, including local communities, in shaping and implementing policy.

### ***The changing shape of devolved and local government***

The shape of the UK state has changed considerably since we published our first Audit of UK democracy in 1996. There were then no national or regional levels of elected government below the Westminster parliament. The UK government operated a system of 'administrative devolution', in the form of separate departments running Scotland, Wales and Northern Ireland, which sometimes pursued policies that were at variance with approaches in England. However, there was no democratic accountability for such arrangements and the relationship between public opinion and government policy in these areas was extremely weak. This 'democratic deficit' became particularly evident in Scotland in the late 1980s, when a large gap opened up between Scottish public opinion and UK government policy, as exemplified by the dramatic reduction in Conservative parliamentary representation in Scotland and the strength of reaction to the imposition of the poll tax. The formation of the Scottish Constitutional Convention following the issuing of a Claim of Right for Scotland in 1989 paved the way for the creation of a Scottish parliament. In 1997, referendums approved the creation of a parliament in Scotland and an assembly in Wales. Meanwhile, the UK government started to prioritise a political settlement in Northern Ireland from 1993 onwards, which was carried through to the Good Friday Agreement in 1998 and eventually to full devolution of legislative and executive functions after 2007.

The impetus for each of these changes was not an overall plan to re-shape the UK state but, rather, a process of accommodation to local circumstances in each component part of the UK. The Scottish devolution settlement was the product of a wide consensus within Scotland forged at the Constitutional Convention and an inter-party agreement (the Cook-MacLennan Agreement) between Labour and the Liberal Democrats. The arrangements in Northern Ireland were created following painstaking talks with the Northern Ireland parties, the Republic of Ireland and international participants. Devolution in Wales was created to provide some sort of parallel process with Scotland, although

the Welsh assembly did not have primary legislative powers, was responsible for fewer policy functions, its governmental structure was different and its governance still entangled with Westminster. Local circumstances therefore produced three asymmetrical forms of devolution, as well as a genuine dilemma concerning what to do about England. As we highlight in this chapter, there is ample evidence to suggest that these imbalances are growing and are rendering the UK's constitutional arrangements increasingly unstable.

The Labour government which came to office in 1997 realised that its proposed devolution programme would impact on England, and was sympathetic to some form of regional devolution within England. The English problem was conceptualised in relation to both an 'economic deficit' and a 'democratic deficit'. In economic terms, it was clear that regional inequalities within England had been growing steadily for some years and that the gap between north and south (and specifically between the South East and the urban heartlands of the North West and North East) was widening. There was also powerful evidence to suggest that economic performance in almost all English regions other than London and the South East was below the European Union average, in some cases dramatically so. Meanwhile, the 'democratic deficit' was framed in relation to the large number of democratically unaccountable regional bodies and 'quangos' created by previous governments, including the government offices for the regions, established under John Major's administration.

Labour's response to the 'economic deficit' in the English regions was the creation of nine Regional Development Agencies (RDAs), charged with spearheading economic development, including the London Development Agency (LDA). The response to the 'democratic deficit' was more cautious, however. Labour was concerned to avoid imposing elected regional government in England since there was apparently little demand for it, and in some regions there was every possibility of concerted opposition. The government therefore took the decision to establish regional chambers or 'assemblies', comprised primarily of nominated elected local councillors from each region, to provide some degree of regional policy co-ordination, including the development of regional spatial strategies, and to establish a form of regional accountability for the work of the RDAs. It was hoped that the case for regional government would then be made within the regions themselves, with individual regions holding referendums as and when this case became strong enough to put to the electorate. However, one of the nine English regions, London, was regarded as a special case, in that the argument for a strategic metropolitan authority had continued to be made ever since the abolition of the Greater London Council in 1986. Following a referendum approving the plans in 1998, the government established the Greater London Authority (GLA), comprising a directly-elected mayor and an elected assembly. The GLA is a particular form of regional authority - neither local government as traditionally conceived in the UK, nor quite devolution on the model of the three other nations.

The broader development of regionalism in England, and the creation of directly elected regional authorities, stalled with the vote in the North East against a regional assembly in November 2004. Funding for RDAs was progressively increased but, after 2007, the government opted to phase out the English regional assemblies, moving instead to the creation of local authority leaders' boards (which most regions had adopted by 2010). Meanwhile, the framework of devolution in Scotland, Wales and Northern Ireland has not only been maintained, they have also been extended (via the Welsh referendum in March 2011 on legislative powers, the Calman Commission on Scotland and the devolution of justice powers to Northern Ireland in 2011). Yet, while demands for greater autonomy have continued to grow in Scotland and, to a lesser extent, in Wales, the regional structures in England have been dismantled by the coalition government since May 2010. The coalition moved quickly to cease funding local authority leaders' boards and, in July 2010, to revoke the regional spatial strategies. Subsequently, the RDAs were abolished via the Public Bodies Act 2011 and the LDA by the Localism Act 2011 ([Sandford, 2011](#)).

Local government has also undergone a number of changes to its powers, structures, electoral arrangements and finance. Both the Labour government in 1997 and the coalition in 2010 started office with proclaimed intentions to enhance the role and powers of local government, but in both cases critics have suggested that the reality does not match up to the rhetoric. It is generally agreed that local governance in England is characterised by a combination of internal fragmentation and complexity, and tight external control (Wilks-Heeg and Clayton, 2006). The coalition's 'localism' agenda offers little prospect of simplifying local governance. Indeed, as with all governments since the 1980s, the coalition appear to be intent on adding to the institutional complexity by adding institutions such as Local Enterprise Partnerships (LEPs) and directly-elected Police and Crime Commissioners to the mix. Whether 'localism' results in greater local autonomy remains to be seen, particularly given its close association with deep cuts to local government grants, but it is virtually certain that it will become associated with widening political inequality. Perhaps most importantly, however, there appears to be little prospect of the coalition's local government reforms offering any answer to the growing tensions raised by the dynamics of devolution.

### 3.3.1 Powers and autonomy of sub-central government

How independent are the sub-central tiers of government from the centre, and how far do they have the powers and resources to carry out their responsibilities?

During the 1980s and 1990s, the UK came to be regarded as one of the most centralised states in western Europe. As a unitary state, political power in the UK was always strongly concentrated in Westminster and Whitehall. Certainly, there was also a strong tradition of independent local government, particularly in the major cities, and local authorities also played a key role in the expansion of the welfare



state in the post-war decades (Atkinson and Wilks-Heeg, 2000). The measures introduced by Conservative governments from 1979 onwards were profoundly centralising in their intent, particularly with regard to the efforts of the centre to control local government expenditure. However, there are also some grounds for scepticism about whether centralisation was achieved to the extent that many commentators claimed. For instance, there was no overall decline in local government's share of total public expenditure during the 1980s and 1990s, and total employment in local government also remained relatively stable (Atkinson and Wilks-Heeg, 2000). What was certainly the case, however, was that the policies pursued by the Conservative governments from 1979-97 enhanced the popular desire for greater autonomy in parts of the UK, most notably Scotland and, to a lesser extent, in Wales. There was also significant pressure from civil society in Greater London for some form of elected strategic authority, arising from ongoing concerns about the failings of metropolitan governance following the abolition of the Greater London Council (GLC) in 1986 (Hebbert, 1998). Finally, while public pressure for greater decentralisation was not as strong in the rest of England as it was in London, there were growing numbers of academics and policy-makers making the case for new institutional arrangements for the English regions, particularly in view of the evidence of a growing regional economic divide (Harding et al., 1999).

Against this backdrop, the period since 1997 has witnessed the radical restructuring of sub-national governance in the UK (Atkinson and Wilks-Heeg, 2000; Wilks-Heeg and Clayton, 2006). As we note in the introduction to this chapter, under Labour, devolved government was introduced in Scotland and Wales and restored in Northern Ireland following referendums held in the late-1990s (see Section 1.1.5 for details of referendum results). At the same time, significant new institutional arrangements were made (and subsequently undone) for the English regions, including the creation of regional development agencies (RDAs) and regional assemblies. In addition, the period has seen the restoration of a strategic authority for Greater London, in the form of the Greater London Authority (GLA) and the office of a directly-elected mayor, again after a referendum. There have also been significant reforms to English local government, including the replacement of the committee system with a more clearly defined executive system and the creation of greater powers for local authorities to pursue policy initiatives which promote the economic and social 'well-being' of the locality.

### Devolution

As we noted in Section 1.1.3, Labour's devolution agenda was designed to respond to demands for devolution, where these were strongest, with the assumption that other areas, most notably the English regions, would come to demand devolved government over time. This deliberately asymmetric approach to devolution has created a number of profound tensions, not least with respect to England, where the planned process of devolving region by region failed at the first hurdle following the 'no' vote in the referendum on the creation of an elected assembly for North East England in November 2004. As a result, only 16 per cent of the UK live under devolved governance in the UK, as Table 3.3a illustrates, a figure which remains essentially unchanged since our last Audit in 2002. Given that 84 per cent of the UK population lives in England, the nature of the 'English problem' is highly apparent.

Table 3.3a: People living under devolved governance in the UK

	Population	% of total
<b>Total population of the United Kingdom</b>	<b>60,975,300</b>	
<i>People living under devolved institutions</i>		
Scotland	5,144,200	8.4
Wales	2,980,000	4.9
Northern Ireland	1,759,100	2.9
<b>People living under devolved institutions</b>	<b>9,883,300</b>	<b>16.2</b>
<i>People living in London and the English regions</i>		
London	7,556,900	12.4
South East	8,308,600	13.6
North West	6,864,200	11.3
East	5,661,000	9.3
West Midlands	5,381,900	8.8
Yorkshire and Humberside	5,177,200	8.5
South West	5,178,000	8.5
East Midlands	4,399,700	7.2
North East	2,564,500	4.2



People living under Whitehall's rule

51,092,000

83.8

Source: [ONS Population Estimates \(2009\)](#).

Not only has devolution created huge imbalances in local autonomy between England/the English regions and the three 'Celtic nations', it has also produced notable variations in the extent to which power is devolved outside of England. Tables 3.1b and Table 3.1c summarise, respectively, the devolved responsibilities and the matters reserved to the UK parliament for Scotland, Wales and Northern Ireland. While there is much overlap in the functions which are controlled by the devolved administrations, it is also evident that the Scottish government has the most far-reaching settlement, including autonomous legislative powers across a wide range of policy areas.

Table 3.3b: Legislative competence of the devolved administrations

	<i>Scotland</i>	<i>Wales</i>	<i>Northern Ireland</i>
<b>Key legislation and agreements</b>	<ul style="list-style-type: none"> <li>Scotland Act 1998</li> </ul>	<ul style="list-style-type: none"> <li>Government of Wales Act 1998</li> <li>Government of Wales Act 2006</li> </ul>	<ul style="list-style-type: none"> <li>Northern Ireland Act 1998</li> <li>1998 Belfast (or Good Friday) Agreement</li> <li>Northern Ireland Act 2006</li> <li>2006 St Andrews Agreement</li> <li>2010 Hillsborough Castle Agreement</li> </ul>
<b>Devolved legislature and administration</b>	<ul style="list-style-type: none"> <li>Scottish Parliament</li> <li>Scottish Executive (Scottish Government)</li> </ul>	<ul style="list-style-type: none"> <li>National Assembly for Wales</li> <li>Welsh Assembly Government</li> </ul>	<ul style="list-style-type: none"> <li>Northern Ireland Assembly</li> <li>Northern Ireland Executive</li> </ul>
<b>Devolved Responsibilities</b>	<ul style="list-style-type: none"> <li>Agriculture, forestry and fishing</li> <li>Education and training</li> <li>The environment</li> <li>Health and social work</li> <li>Internal transport - inc. roads, buses and ports and harbours</li> <li>Law and home affairs – inc. most aspects of criminal and civil law, the prosecution system and the courts</li> <li>Local government and housing</li> <li>Natural and built heritage</li> <li>Police and fire services</li> <li>Sports and the arts</li> <li>Statistics, public registers and records</li> <li>Tourism, economic development and financial assistance to industry</li> </ul>	<ul style="list-style-type: none"> <li>Agriculture, fisheries, forestry and rural development</li> <li>Ancient monuments and historic buildings</li> <li>Culture</li> <li>Economic development</li> <li>Education and training</li> <li>Environment</li> <li>Fire and rescue services</li> <li>Food</li> <li>Health and health services</li> <li>Highways and transport</li> <li>Local government and housing</li> <li>National assembly for Wales</li> <li>Public administration</li> <li>Social welfare</li> <li>Sport and recreation</li> <li>Tourism</li> <li>Town and country planning</li> <li>Water and flood defence</li> <li>Welsh language</li> </ul>	<ul style="list-style-type: none"> <li>Agriculture and rural development – inc. fisheries</li> <li>Culture, arts and leisure</li> <li>Education</li> <li>Employment and learning – inc. further and higher education</li> <li>Enterprise, trade and investment</li> <li>Environment – inc. local government</li> <li>Finance and personnel</li> <li>Health and social services</li> <li>Justice – inc. policing and justice functions</li> <li>Regional development – inc. transport</li> <li>Social development – inc. social security, child support, pensions and benefits</li> </ul>

Source: [Cabinet Office \(2012\)](#).

Table 3.3c: Matters reserved to the UK parliament

the constitution; foreign affairs; defence; international development; the civil service; financial and economic matters; national security; immigration and nationality; misuse of drugs; trade and industry; energy regulation; various aspects of transport – inc. regulation of air services, rail and international

Scotland

shipping; social security; employment; abortion, genetics, surrogacy and medicine; broadcasting; equal opportunities

*Wales*

Only matters cited in Schedule 5 of the Government of Wales Act 2006 fall within the legislative competence of the National Assembly for Wales. All other matters not cited are reserved to the UK Parliament.

*Northern Ireland*

**Excepted matters:** royal succession; international relations; defence and armed forces; nationality, immigration and asylum; taxation across the UK; all elections held in Northern Ireland; currency; conferring of honours; international treaties

**Reserved matters:** navigation and civil aviation; international trade and financial markets; telecommunications/postage; the foreshore and sea bed; disqualification from Assembly membership; consumer safety; intellectual property

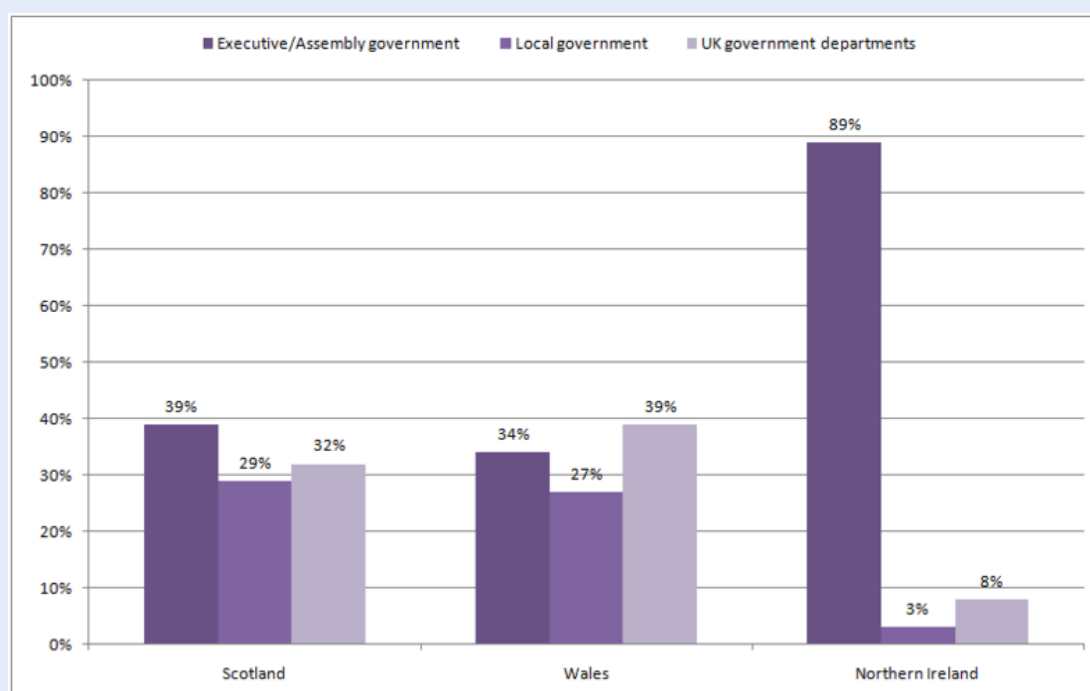
Source: [Cabinet Office \(2012\)](#)

We now turn to consider devolution arrangements in Scotland, Wales and Northern Ireland in more detail, including consideration of issues such as local government arrangements, the role of unelected bodies, the extent of policy variation, and the funding of devolved governments. We then return to the question of sub-UK governance arrangements in England, with a particular focus on local government.

### Scotland

As noted above, the Scottish settlement is the strongest of the three devolved governments, giving the Scottish parliament the power to make primary legislation across a range of policy areas. Furthermore, as part of the Scottish devolution referendum in 1997, there was a resounding 'yes vote', not only for the creation of a devolved Scottish parliament, but also for the right to vary the basic rate of income tax which was set at a variable rate of three pence in the Scotland Act 1998. However, despite these tax-varying powers, the option of using them to raise additional revenue has not thus far been seriously contemplated by the Scottish parliament due to the political unpopularity that adding to the tax burden would undoubtedly involve (Leyland, 2011). As a result, the funding of Scottish expenditure is heavily reliant on the block-grant system, which accounted for nearly 68 per cent of total expenditure on services in Scotland in 2009-10 (see Figure 3.3a).

Figure 3.3a: Identifiable expenditure on services in Scotland, Wales and Northern Ireland, 2009/10



Source: [HM Treasury \(2011, p. 146\)](#)

## ***Wales***

The Government of Wales Act 1998 resulted in a form of executive devolution, which only gave the newly formed national assembly for Wales secondary law-making powers, as opposed to legislative devolution given to Scotland (Mitchell, 2009). Under this model, any Welsh primary legislation had to be passed by the UK parliament in Westminster, with the assembly tasked with adding subordinate legislation in the form of rules and regulations. The inadequacy of Welsh devolution compared to Scotland's and the inability to make real changes to policy, even in areas of devolved responsibility, led to calls within the assembly for an extension of devolved powers. Following the Richard Commission's recommendations in 2004, the Government of Wales Act 2006 was passed and made two significant changes to the existing organisation of the Welsh Assembly, namely:

- The separation of the executive, the Welsh assembly government, from the legislature, the national assembly for Wales. This measure formally established the Welsh government as a separate entity with executive powers from the assembly, to whom it would remain answerable and therefore operate like a parliamentary model of government.
- The enhancement of legislative powers, which, despite remaining secondary, gave the assembly greater room to manoeuvre in delivering policy. In addition, orders of council were introduced that would allow parliament to transfer legislative powers to the assembly in specific devolved areas, paving the way for future primary legislative powers (Deacon and Sandry, 2007).

It was not until the 2011 Welsh referendum that the Welsh assembly gained primary legislative powers for the 20 devolved policy areas, although this still did not deliver any tax-varying powers. Despite the ceding of primary legislative power, Welsh devolution still has considerably more limitations in comparison with Scotland and Northern Ireland. The absence of substantive powers in some areas, most notably criminal justice and the courts, suggest that the Welsh assembly's subordinate position to the UK parliament will continue to be a source of constitutional tension.

## ***Northern Ireland***

Devolution in Northern Ireland was the outcome of the Good Friday Agreement in 1998, which concluded peace talks between the governments of the UK and the Republic of Ireland and the main political parties in Northern Ireland. The ultimate aim of devolution was to end the sectarian violence that had reigned over the province for 25 years. The Northern Ireland Act 1998 included provisions for the establishment of a Northern Ireland assembly with a compulsory power-sharing executive between representatives from unionist and nationalist/republican communities. This arrangement meant that any legislative decisions would need the support of the minority nationalist/republican parties in order to avoid the majoritarian dominance that had preceded the violence leading up to the suspension of the Northern Ireland Parliament in 1972 (Leyland, 2011). The assembly took responsibility for all devolved matters transferred from Westminster, including education, health and, uniquely with respect to other devolution settlements, social security. Excepted matters that would remain the preserve of the UK government included taxation, defence and all elections held in Northern Ireland (Deacon and Sandry, 2007).

The early years of devolution in Northern Ireland were fraught with infighting between politicians from unionist parties and nationalist/republican parties, leading to the suspension of the assembly on three separate occasions between 1999 and 2001. Political tensions finally came to a head in 2002 and the assembly was suspended again, with direct rule restored indefinitely, even though the assembly elections went ahead in 2003. In the years that followed, a series of intergovernmental and cross-party summits were held to try to break the deadlock, but with little success. The plan to restore devolved government in Northern Ireland eventually came to fruition in 2006 with the St Andrews Agreement, which put in place measures for a new power-sharing executive with revised arrangements allowing the largest party to nominate the first minister, with the second-largest party nominating the deputy first minister (Leyland, 2011).

Following the assembly elections in 2007, full legislative powers were finally restored to the Northern Ireland assembly. Although the St Andrews Agreement did not enhance the powers of the Northern Ireland assembly, it did include the provision for the future devolution of policing and justice. After considerable delays, policing and justice was finally devolved with the Hillsborough Castle Agreement (Perry, 2011). Moreover, the subsequent appointment of an Alliance MLA as the new justice minister meant the four-party coalition gained a fifth partner in the Northern Ireland executive (Gray and Birrell, 2012).

## ***Legislative consent motions and devolution***

Legislative consent motions (LCMs) were included in the devolution settlements to provide a mechanism so that any legislation passed by

the UK parliament that applied to the devolved administrations could be conveniently and expediently enacted into their own legislation with minimum scrutiny and oversight. Although the UK parliament reserves the right of legislative supremacy over the devolved administrations, LCMs provide a means for issues to be raised concerning potential bills of consequence and consent to be given once they have been approved. Referred to as 'Sewel motions' in Scotland, LCMs have been used more extensively than was originally anticipated, with 112 motions passed since Scottish devolution in 1999 ([The Scottish Parliament, 2012](#)). This has been a source of controversy in the past; particularly for the SNP who see it as undermining the devolutionary process and providing 'a tool through which centralised rule from Westminster continues to be enacted' (Deacon and Sandry, 2007, p. 82).

In Wales, LCMs were not used until the enactment of the Government of Wales Act 2006 which gave the Welsh assembly enhanced legislative powers. Even after the passage of the act, the lack of primary law-making powers meant LCMs were still rarely used, with only 16 raised between 2007 and 2011, and all but one of those being passed ([National Assembly for Wales, 2011](#)). Following the 2011 Welsh referendum, the power to make primary legislation means that LCMs are likely to be of even greater importance in Wales than in Scotland due to the higher degree of administrative and legal entanglement that still exists between England and Wales. In Northern Ireland, there were no formalised procedures for LCMs until very recently. During the early years of devolution, they were very rarely used and were not actually required during the intermittent periods of direct rule. Since the restoration of the Northern Ireland assembly in 2007, the trend of using LCMs has been similar to Scotland (Leyland, 2011), with eight motions raised between October 2007 and July 2008 alone ([Northern Ireland Assembly, 2009](#)).

### ***Local government under devolution***

From a historical perspective, Scotland had always retained a modicum of autonomy in central and local government. However, between 1979 and 1997, Scottish local government was subjected to the same 'hollowing-out' process as the rest of the UK. There were expectations that the creation of a Scottish parliament and executive would generate new opportunities for greater cooperation and autonomy in democratically elected local government, which was deemed an integral part of the devolution process because of its proximity to the Scottish people and its role in delivering public services, strategic planning and regulation. Moreover, the Local Government in Scotland Act 2003 also gave local authorities a more prominent role in community leadership and promoting partnerships in the delivery of public services (Deacon and Sandry, 2007). But despite their indispensability in this respect, Scottish local authorities were, at least initially, conspicuous by their absence as far as decision-making at a national level was concerned, due to the relative strength of the Scottish executive's policy development capacity and the imposition of centrally determined guidelines, targets and audits on local authority services (Jeffrey, 2006). In effect, the organisation and relations between central and local government reflected 'the same structures and degree of financial dependency that existed pre-devolution' (McGarvey, 2012, p. 160-1). However, the election of an SNP minority government in 2007 prompted a change in central-local relations. In return for supporting SNP policies, local authorities were given a more prominent role in national decision-making and gained greater autonomy with the increased emphasis on localism in SNP policies (McGarvey, 2012).

The role of local government in Wales was also considered an integral part of the devolution settlement and this importance was illustrated in the Government of Wales Act 1998 with the establishment of the Local Government Partnership Council which created a permanent forum of exchange between the Welsh assembly and Welsh local government. Unlike Scotland, local government was given a key role in both policy formulation and implementation in Wales, partly owing to the Welsh assembly's more modest powers. As a result, the assembly formed an 'unusually dense relationship with local government that suggest a high level of capture of Welsh policymaking by local interests' (Jeffrey, 2006, p. 61). Devolution has undoubtedly improved Welsh local government's proximity to the new devolved centres of power as opposed to Whitehall, with greater accessibility, openness and opportunities to influence policy. Despite this, there remains a strong central presence. Local government expenditure has actually decreased as proportion of total spending in Wales as the powers and capacities of the assembly have increased, falling from around 40 per cent in 2001 ([Laffin et al., 2002](#)) to 27 per cent in 2010 (see Figure 3.3a). Furthermore, the funding of local government is hypothecated with regard to targeting and auditing, rather than discretionary, although the inclusion of local authorities in the policy process at a national level mean there is still an element of codetermination in setting those targets.

From 1973 onwards, local government in Northern Ireland was stripped of the majority of its public service functions due to its integral part in what has been described as the 'deliberate discrimination' against Catholics in 'electoral practices, public employment, policing, public housing and regional policy' (Knox, 2009, p. 441). Until devolution, the majority of public services had been delivered either through the UK government's Northern Ireland Office or by executive quangos. The lack of electoral base in Northern Ireland for British ministers, as well as the preoccupation of those ministers with security matters, meant there was a significant deficit in accountability as policy decision-making, at both a local and regional level, was vested in the hands of civil servants. Post-devolution, the democratic deficit in Northern Ireland was seemingly reversed, with representatives for Westminster, the Northern Ireland assembly, district councils and the European parliament contributing to perceived situation of 'over-governance' and 'over-administration' in the province (Knox and Carmichael, 2007). Although the Northern Ireland economy has an enlarged public sector by UK standards, accounting for 32 per cent of employment compared to the UK average of 22 per cent, local government is still unusually weak, with responsibility for less than three per cent of total

public expenditure on services (see Figure 3.3a) compared to the UK average of 30 per cent.

The Review of Public Administration was launched in Northern Ireland in 2002 aimed at improving the accountability and clarity of public service provision with an emphasis on strong local government. The review proposed that the number of local councils should be reduced from 26 to seven, with a marginal increase in their functions that would see their budgets increase to ten per cent of overall annual expenditure on services for Northern Ireland. There were two main criticisms of the proposed changes. First, the reform of councils was seen as a 'balkanisation' of Northern Ireland that would result in predominantly nationalist/republican councils in the West, predominantly unionist councils in the East and a relatively balanced council in Belfast; prompting some to predict an escalation in sectarian tensions. Second, the Northern Ireland Local Government Association (NILGA) opposed any reduction in council numbers that did not include a return of core public services (Knox, 2009). After a further consultation, plans were announced in 2008 for the number of councils to be reduced to 11 and greater delegation of functions that would see council budgets increased by 25 per cent. However, further conflict in the Northern Ireland executive over the proposed district boundaries led to the abandonment of the plans in 2010, leaving any future plans for local government reform in Northern Ireland far from certain.

## ***Quangos and devolved government***

In our previous Audits, we raised particular concerns about the substantial role played by unelected quangos in UK sub-national governance (Weir and Beetham, 1999; Beetham et al., 2002). However, while devolution offered obvious potential to bring these functions under democratic control in Scotland, Wales and Northern Ireland, the practical challenges of dismantling and democratising the quango state have been substantial.

The Scotland Act 1998 delegated the responsibilities of quangos to the Scottish executive, rather than the Scottish parliament. An early review of the 'quango state' in 2000 advocated the abolition of nearly a third of the 180 quangos operating in Scotland at that time. However, rather than a wholesale cull of quangos and the redistribution of their powers to the central or local tiers of Scottish government, the reduction in numbers has been the result of their reclassification or amalgamation into other non-departmental public bodies. In fact, between 2000 and 2006, the Scottish executive was responsible for creating 13 new bodies, such as the Office of Scottish Charity Regulation in 2005 (Flinders, 2011). Following the publication of the Crerar report in 2007 recommending widespread reforms to quangos in Scotland, the Scottish first minister immediately announced a 'simplification programme' that would lead to a 25 per cent reduction from a baseline of 199 quangos. This process was aided with the passing of the Public Service Reform (Scotland) Act in 2010 that gave the Scottish executive extended powers in abolishing and amalgamating public bodies. At present, the Scottish government claims to have reduced the number of quangos to 154 ([The Scottish Government, 2012](#)), although this can only be interpreted as a reorganization of the 'quango state' rather than its abolition. As Flinders (2011, p. 11) suggests: 'The post-Crerar commission reforms will alter the landscape of public governance, by creating a smaller number of much larger bodies, but they will not reflect the end of delegation as a central tool of governance'.

In the build-up to devolution, the stance taken towards quangos operating in Wales was unequivocally hostile, with the secretary of state for Wales stating in 1997 that quangos should be 'placed under proper democratic control and scrutiny once the assembly is in place' (cited in Flinders, 2011, p. 12). However, in the first four years of devolution, the reforms enacted by the Welsh assembly were focused on streamlining quangos, as opposed to any major transferral of powers. From 2006 onwards, a new approach was announced signalling a shift towards centralisation, with the intention to abolish eight of the 14 executive public bodies operating under the national assembly for Wales. These plans ultimately broke down though when it emerged that, under schedule four of the Government of Wales Act, the assembly was prohibited from abolishing quangos that had originally been established by royal charter, which included five of the bodies that were earmarked in the reforms. Although, the Welsh assembly has reduced the number of executive quangos and the total overall expenditure on delegated governance, there has actually been an increase in the number of public bodies with a proliferation of 'off-stage' quango creation, whereby smaller bodies, such as the Design Commission for Wales and Film Agency for Wales, are omitted from official listings. Despite the growth in public bodies, the absorption of the larger bodies' functions into the assembly has resulted in the number of civil servants in Wales more than doubling since the start of devolution.

A review of quangos in Northern Ireland post-devolution revealed the province represented an extreme case of the 'quango state', with the existence of over 150 non-departmental public bodies providing services for a population of less than two million people. The large number of quangos had emanated from the reforms of direct rule by the UK parliament stretching back to the 1970s. These reforms favoured a mode of governance that was free from partisan influence and were aimed at cross-community representation on the boards of public service providers to avoid the majoritarian political structures that had contributed to widespread discrimination against the Catholic population (Flinders, 2011). The Review of Public Administration in 2003 highlighted serious concerns about an accountability deficit in these public bodies. It recommended the abolition of all quangos and the transferral of their functions to democratically elected regional and local government. Although there was overall consensus among political parties in Northern Ireland in favour of strengthening local government at the expense of the universally unpopular quangos, the return to direct rule after the suspension of the Northern Ireland assembly in 2002 meant the final outcome of the Review of Public Administration leaned toward a more modest approach of streamlining

(Birrell, 2008). After the restoration of devolution in 2007, the approach towards quangos was diluted even further with a clear preference towards the creation of integrated 'super quangos', which would amalgamate existing bodies for a clearer, more efficient and more simplified system. These reforms are expected to halve the number of public bodies in Northern Ireland from 154 to 75.

As is clear from the above, Scotland, Wales and Northern Ireland all initially adopted a rhetorically stance of promising a 'cull of the quangos' in the early years of devolution. While the issue of democratic accountability was of most significance, the abolition of quangos also meant the devolved administrations could 'increase political control, enhance policy capacity at the centre, reduce the number of quangos and cut administrative costs' (Birrell, 2008, p. 39). However, rather than a wholesale cull, any reduction in quangos has been largely the result of a process of rationalisation in which existing quangos have been amalgamated, reclassified and streamlined to produce fewer but larger public bodies. The divergence between the devolved administrations in centralising tendencies is partly due to the asymmetry of devolution. The stronger devolution settlements of Northern Ireland and Scotland reduce the importance of bringing quangos' functions into the power of their respective executives, in contrast to Wales, as Matthew Flinders observes:

'Drawing back functions into the WAG [Welsh assembly government] can be interpreted as a rational act given the relatively small size and limited powers it possessed [...] creating a greater resource capacity with the overall effect of making institutions larger and more governmental in size and scope' (Flinders, 2011, pp. 23-4).

Constitutional barriers have at times limited the scope of reform where quangos are UK-wide or in non-devolved areas of policy, such as the Health Protection Agency and the Food Standards Agency. For Wales and Northern Ireland, the lack of power to affect the changes has been a considerable limitation. Also, there have been some instances where it has been desirable for public bodies to be absent from the political process, most notably in Northern Ireland (Birrell, 2008). On the whole, the rhetoric of abolishing quangos has been markedly different from the reality and, though Scotland, Wales and Northern Ireland have all gone about exacting far-reaching reforms, it has not led to the end of quangos in the devolved administrations.

### ***Devolution and policy variation***

Between 1979 and 1997, the long period of Conservative rule in the UK prior to devolution had led to what was perceived as a democratic deficit, particularly in Scotland, where the Conservatives had little electoral support yet were able to impose unpopular, majoritarian policy decisions from Westminster without the legitimacy provided by the popular will of the electorate. Devolution was therefore, in part, aimed at redressing the democratic deficit through the creation of governments that would be more responsive to the specific needs and demands of each region. Since devolution, political parties in all of the devolved administrations have sought to emphasise their differences and approaches to policy-making from Westminster-based parties. Party politics in Northern Ireland has long been, and continues to be, regionally-specific, with Northern Irish parties having only loose party affiliations to the main three UK parties. In Scotland, on the other hand, the Labour party has traditionally had a strong electoral presence. However, Scottish Labour MSPs have been constrained in forming a distinctive policy strategy without diverging from official Labour policies south of the border, particularly when New Labour was in power (Keating, 2007). As a result, the SNP's standing as a more independent political force, more inclined to responding to the specific concerns of Scottish electors, has been instrumental to their success in securing growing support in Scottish elections, culminating in the formation of an SNP majority government in 2011. In Wales, Plaid Cymru, the nationalist party, has not attracted the same growth in electoral support as the SNP in Scotland. This may be attributable to the Welsh Labour Party's early strategy of distancing themselves from the policies of the Labour Party in Westminster, as outlined in 2002 by the then Labour first minister of Wales, Rhodri Morgan's assertion that a 'clear red water' divided policy in Wales and Westminster ([BBC News, 2002](#)).

The power to pass primary legislation has meant that the Scottish parliament is able to prioritise, raise and scrutinise devolved matters without deferment to the UK parliament. In contrast, the absence of substantive powers in some areas, most notably criminal justice and the courts, has in the past meant that the Welsh assembly's subordinate position to the UK parliament has been a source of tension. An example of these tensions can be seen with the introduction of the UK's first children's commissioner in 2001. The role was created by the Welsh assembly in response to the widespread scandals of child abuse in children's homes in North Wales. From its inception, the commissioner's powers were hotly contested as they were deemed to cross over into non-devolved areas, such as young offenders' institutions and secure children's homes. Nevertheless, the flagship project was quickly adopted by both Scotland and Northern Ireland, before the UK government took it up. The new English commissioner's powers ostensibly meant that they would be responsible for Welsh children in the criminal justice system; a situation which ultimately undermined the Welsh commissioner's position (Trench and Jarman, 2007).

Prior to devolution, direct rule from Westminster and a weak local government structure meant that policy-making in Northern Ireland was restricted to civil servants in Whitehall and the UK government's Northern Ireland Office. Therefore, when the Northern Ireland assembly was formed, it had little experience of policy-making and a distinct lack of local policy communities and networks from which to draw. As devolution in Northern Ireland has progressed, policy has been driven and made largely through top-down approaches with little consideration to participatory methods of inclusion to inform policy at a local level. Due to the distinct organisation of the Northern Ireland



executive as a permanent coalition, there has been an almost continuous lack of agreement over major social policies. The requirement of gaining cross-party support for any legislation means that radical or divisive proposals are doomed to fail with even the slightest hint of opposition. This has been reflected in the relatively small number of acts relating to social policy that have been passed by the assembly since 2007. Those policies that have been most successful and garnered sufficient consensus within the executive have been policy transfers from Scotland and Wales, such as free prescriptions and the children's commissioner (Gray and Birrell, 2012). Furthermore, the way in which the budget is allocated to the 11 departments, with each department represented by a minister from one of the five of the coalition partners, has created a situation of departmental territoriality and protectionism. The consensus of equalising cuts or increases across all departments rather than determining budgets by priority needs has meant that in key policy areas, such as healthcare and education, the extra investment needed to maintain standards has fallen short of what is needed. Such inflexibility in prioritising and organising expenditure has led Gray and Birrell (2012, p. 18) to conclude that the approach towards policy development in Northern Ireland has been essentially 'cautious and conservative'.

The prevalence of coalition governments in the devolved administrations has meant that politicians have had to develop a more creative and less confrontational approach to policy-making than has traditionally been the case in Westminster. The formation of coalition governments often requires political parties to compromise in order to reach an accord. This was evident after the first Scottish elections, when the Liberal Democrats and the Labour Party agreed to the 'graduate endowment' in place of tuition fees as a condition of the Liberal Democrats participation in government (see Case Study 3.3a). Furthermore, Westminster policy-making is influenced primarily by well-financed think tanks and policy forums that are based in London, resulting in a policy arena that is crowded with the 'usual suspects' who are able to dominate policy discourses (Cairney, 2008). The relative absence of such organisations under devolution has given local actors a greater opportunity to participate in policy-making and politics more generally. Devolution has therefore led to a more inclusive and participative policy-making process and a reconfiguration of policy networks, which give greater weight to contributions from the professions and their associations in areas of policy, such as education and health, than is usually the case in the UK parliament. It has also facilitated an increase in activity from pressure groups and lobbying firms who have more opportunities to influence policy given their increased access to politicians (Deacon and Sandry, 2007). A prime example of the influence of new policy networks was in evidence when health professionals and pressure groups played an important role in persuading the Scottish executive to accept the smoking ban policy in 2006, leading the way for the rest of the UK who adopted it the following year (Mitchell, 2009).

There is substantial evidence to suggest that the factors highlighted above have prompted significant policy divergence between the devolved nations and England. Table 3.3d summarises key examples of how policy variation has grown within the UK national territory under devolution in areas as diverse as long-term care for the elderly and school league-tables. As we discuss in more detail below, the policy contrasts which have opened up between England and the devolved nations in both healthcare and education are of particular significance and underline the degree to which devolved administrations have been able to assert their independence from the UK government.

Table 3.3d: Different public policies pursued by Scotland, Wales and Northern Ireland following devolution

<i>Scotland</i>	<i>Wales</i>	<i>Northern Ireland</i>
<ul style="list-style-type: none"> <li>• Free long-term care for the elderly</li> <li>• Abolition of up-front tuition fees for students in higher education</li> <li>• Three-year settlement for teachers' pay and conditions</li> <li>• Less restrictive Freedom of Information Act</li> <li>• Abolition of fox hunting</li> <li>• 'One stop shop' for Public Sector Ombudsman</li> <li>• Abolition of ban 'promoting homosexuality' by repeal of the Local Government Act ('section 28' in England)</li> </ul>	<ul style="list-style-type: none"> <li>• UK's first Children's Commissioner</li> <li>• Creation of 22 Local Health Boards</li> <li>• Homelessness Commission, and extending support for the homeless</li> <li>• Abolition of school league tables</li> <li>• Free medical prescriptions for those under 25 and over 60</li> <li>• Free bus travel for pensioners</li> <li>• Free school milk for those under seven</li> <li>• Six weeks' free home care for the elderly after discharge from hospital</li> </ul>	<ul style="list-style-type: none"> <li>• Abolition of school league tables</li> <li>• Establishment of a Commissioner for Children</li> <li>• Decision to provide a Single Equality Act, consolidating legislation on religion, sex, race and disability, with new provision for sexual orientation and age</li> <li>• Free fares for the elderly</li> <li>• Introduction of bursaries for students</li> <li>• Decision on the abolition of the 11+ examination in secondary school selection</li> </ul>

Source: Moran (2011, p. 185)



Analysis of health policies in the devolved regions had led many commentators to highlight it as an area of substantial policy divergence. [Greer \(2004\)](#) suggests that, since devolution, four different approaches to health policy have emerged: markets in England; professionalism in Scotland; localism in Wales; and permissive managerialism in Northern Ireland. While England continued to forge ahead with the market reforms started in 1980s, Scotland gave greater control to medical professionals in the management and assessment of health services. In contrast, the Welsh approach sought to integrate local government into health service provision with the creation of 22 local health boards with substantial local government representation. Northern Ireland's health policy was characterised as remaining consistent with pre-devolution policies with the preoccupation of maintaining complex organisations in complex circumstances, resulting in little effective central control and policy divergence within the region itself (Greer, 2007).

However, despite the initial divergences in devolved approaches to health policy, there still remains a degree of consistency across the UK. The fact that the NHS is still free at the point of service and is financed by the same model of tax-funding means there is still an expectation that citizenship provides individuals with equal rights to healthcare. As such, although the 'top-down managerialism' of the English model was not universally accepted originally, its success in reducing waiting times has led to an increase in policy transfer and the adoption of similar forms of performance assessment across the devolved administrations, especially in Wales and Northern Ireland. Moreover, while private healthcare provision was initially rejected in Scotland and Wales, the method of using the private sector both as means to reduce waiting times and as a potential source of investment has also found traction, as the devolved administrations grapple with increasingly stretched budgets in spite of a growth in overall health expenditure (Smith and Hellowell, 2012). Nonetheless, it is apparent that health policy in the UK is now characterised by twin dynamics of divergence and convergence and it is likely that the real test for the continuation of a universal National Health Service will be felt in the coming years following the passage of the Health and Social Care Act 2012.

### Case Study 3.3a: Devolution and higher education funding fees

The number of students in higher education in the UK has increased by 42 per cent since 1996 ([HESA, 2012](#)). As a result, the funding of higher education in the UK has been at the forefront of policy debates, particularly concerning how the 'financial burden' should be managed and who should shoulder the responsibility. It has also provided the backdrop to considerable divergence between UK government policy and corresponding policies in the devolved administrations in their approaches towards tuition fees and student support.

Differences in higher education policy may be traced back to the Further and Higher Education Act 1992, when separate territorial funding agencies were created for England, Scotland and Wales. However, it was not until the devolution settlements of 1998-99, in which significant powers over education and training were transferred from Westminster to the devolved administrations, that distinct approaches to higher education policy could, in principle, be developed by each of the respective administrations.

New Labour first introduced tuition fees for higher education in the UK in 1997, which were initially set at £1,000. With the election of the first Scottish parliament in 1999 under a Labour/Liberal Democrat coalition executive, tuition fees were scrapped in Scotland in favour of a 'graduate endowment', which was intended as a loan repayable only when a graduate's incomes exceeded £10,000. In addition, bursaries for students from low-income families were introduced in Scotland. Both Wales and Northern Ireland showed a preference for adopting the 'Scottish model', but were both initially prevented from doing so (Gallacher and Raffe, 2011). In Wales, the assembly lacked the necessary powers to implement the changes; a situation that persisted until the Higher Education Act 2004 granted the devolution of tuition fees and student support responsibilities (Trench and Jarman, 2007). In Northern Ireland, meanwhile, the proposals could not secure a consensus in the power-sharing government. Following the suspension of the Northern Ireland assembly in 2002 and a return to direct rule, Northern Ireland's policy on tuition fees was pegged to the 'English model' until the restoration of the assembly in 2007 (Trench, 2008).

From 2006-07, the UK government enabled English universities to charge variable fees of up to £3,000 per annum. Although the increase in fees suggested policy divergence, it was actually more of a convergence on the 'Scottish model', as repayment was deferred until after graduation and only after graduate income exceeded £15,000. Some measures of student support were also introduced to offset the increased fees for students from low-income families. As a result of direct rule, Northern Ireland was compelled to follow English policy. However, Wales delayed making the change until the following year and went further with student support by providing a non-means tested grant of £1,800 to all Welsh-domiciled students attending Welsh institutions. In Scotland, on the other hand, the newly elected SNP minority government took a different approach. Not only did they reject variable fees, but also abolished the graduate endowment, meaning that from 2007 students would not be liable for any direct contribution to the cost of their higher education. This position was taken due to the perceived inefficiency of the graduate endowment scheme, which only resulted in graduates increasing their student loan to repay it, and the desire to reduce the burden of debt on graduates as they entered the labour market (Gallacher and Raffe, 2011).

Following the publication of the Browne review into higher education funding and student finance in 2010, the coalition UK government raised the cap on tuition fees to £9,000 per annum, with repayments due only when graduates exceeded the income threshold of £21,000. Provisions to mitigate the impact of increases meant universities in England charging in excess of £6,000 would have to meet stricter targets on widening participation and fair access. Significantly, the increase in fees would be used to compensate a 40 per cent cut in higher education funding made by the coalition UK government, which, due to the 'comparability percentage' stipulation invoked through the Barnett formula, would result in equivalent cuts being imposed on the corresponding higher education funding agencies in each of the devolved administrations (Bell and Christie, 2007). In Scotland, the government committed itself to not charging Scottish-domiciled students, but opted to attempt to balance the cuts by allowing Scottish institutions to charge students from elsewhere in the UK up to £9,000 per annum. In contrast, the Welsh assembly permitted its institutions to charge at the same rate as English universities, but also committed to cover the additional costs for Welsh-domiciled students irrespective of whether they attended a university in Wales or not. After a protracted consultation process, Northern Ireland chose to freeze tuition fees at £3,450 per annum in order to try to maintain participation rates for students from low-income and disadvantaged backgrounds (Gallacher and Raffe, 2011).

Despite the broadly commensurate economic and social pressures facing higher education institutions across the UK, the paths taken by the devolved administrations show a remarkable divergence in their approaches compared to the largely market-driven approach of the UK government. For Wales and Northern Ireland, the decision to adopt tuition fees was initially taken out of their hands as both were subject to Westminster when they were first introduced. Even so, both have since adopted a similar approach to Scotland by emphasising inclusion as a priority of their funding decisions. However, there are continuing pressures on the devolved administrations as all three are forced to grapple with the increasing funding gaps in higher education that have grown as a result of both the 'massification' of higher education and the cuts imposed by the UK government.

As fiscal policy has not been devolved, the budgets of the devolved administrations are, in effect, determined by English policy decisions through the comparability factor inherent in the Barnett formula. Therefore, when England transfers the costs of higher education onto students, resulting in reduced public spending on higher education, it puts pressure on devolved institutions to either adopt similar measures, or to make cuts in other areas of the budget in order to maintain existing spending on higher education (Gallacher and Raffe, 2011). This rationale was present in Northern Ireland's decision to freeze tuition fees in 2011 by 'top-slicing money from several other departments' ([BBC News, 2011](#)). While divergent and innovative policies in higher education funding have emerged in spite of the market-orientated approach favoured in England, it remains to be seen whether it will continue to be sustainable in the future.

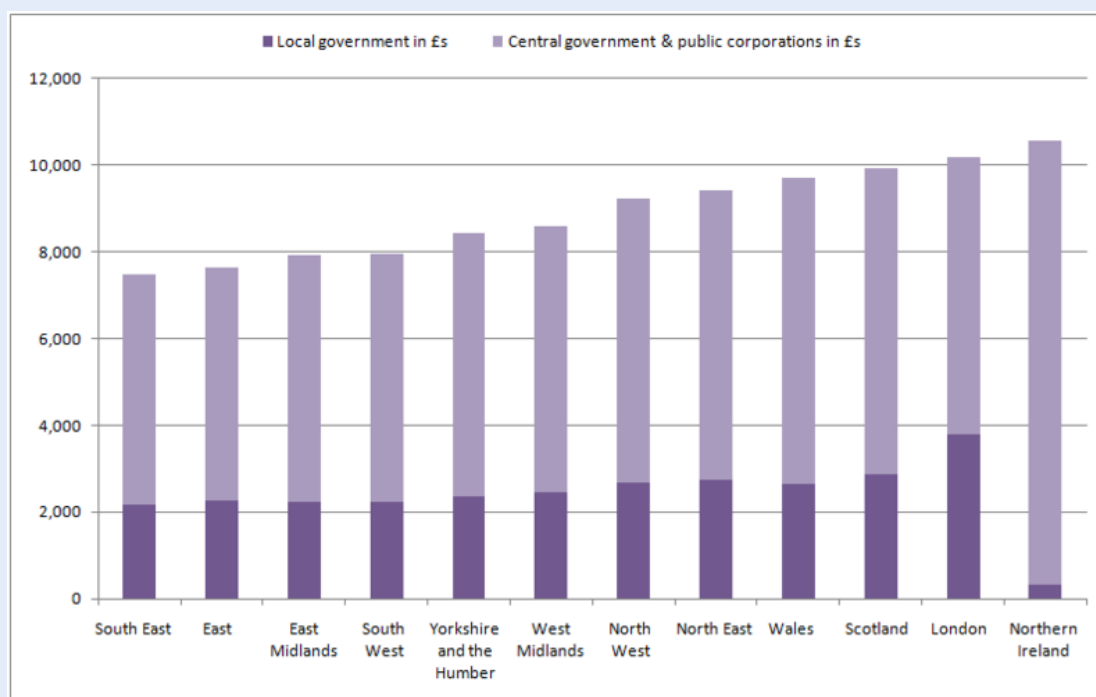
### ***The Barnett formula***

Introduced as a temporary measure in 1978, the Barnett Formula is the mechanism which determines budget allocations to devolved administrations, weighted according to their respective populations, when there are changes to 'comparable programmes' in England. Only spending classified as 'England-only' triggers consequential changes for the devolved administrations budgets. Significantly, items that have been classified as 'UK-wide', such as regeneration spending for the 2012 London Olympics, do not trigger any consequential changes to devolved funding (Trench, 2010).

The devolved administrations receive their funding as a block grant from the UK Treasury. On the one hand, this arrangement provides each administration with genuine autonomy in how they allocate the funding. On the other hand, the mere function of being able to make funding choices within an allocated budget is not the same as autonomous government. Without the power to raise their own revenues through taxation, devolved administrations can be considered as merely spending agents. Though the Scottish parliament has the power to vary taxes by three pence, it has not exercised these powers due to the likely public backlash and negligible fiscal benefits that would arise from such a move. Borrowing by devolved administrations is also strictly regulated by the UK Treasury and is only authorised to ease short-term cash-flow problems, while any capital projects must be funded through public-private partnerships (Trench, 2007).

For the UK Treasury, the block grant and formula system is an expedient means of maintaining a tight grip on public spending and taxation, and controlling government debt. Moreover, as there are no specific funding agreements in place between the devolved administrations and the UK government, it gives the UK Treasury the power to make unilateral decisions concerning the funding arrangements, such as whether spending in England is classified as either 'English' or 'UK-wide' (Trench, 2007). As the [House of Lords Select Committee on the Barnett Formula \(2009, p. 30\)](#) concluded: 'On every funding decision the Treasury is judge in its own cause, including whether to bypass or include any expenditure within the application of the Barnett Formula'.

Figure 3.3b: Identifiable expenditure on services by country and region per head, 2009/10

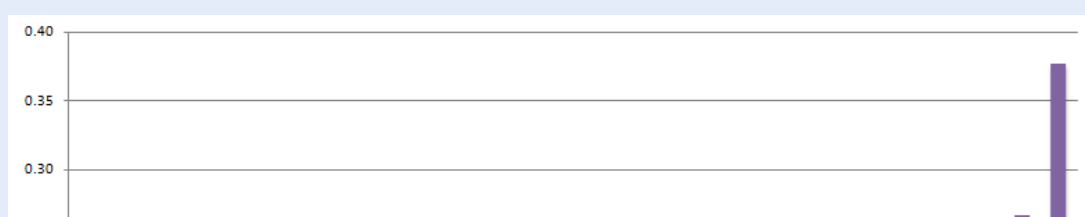


Source: [HM Treasury \(2011, p. 145\)](#)

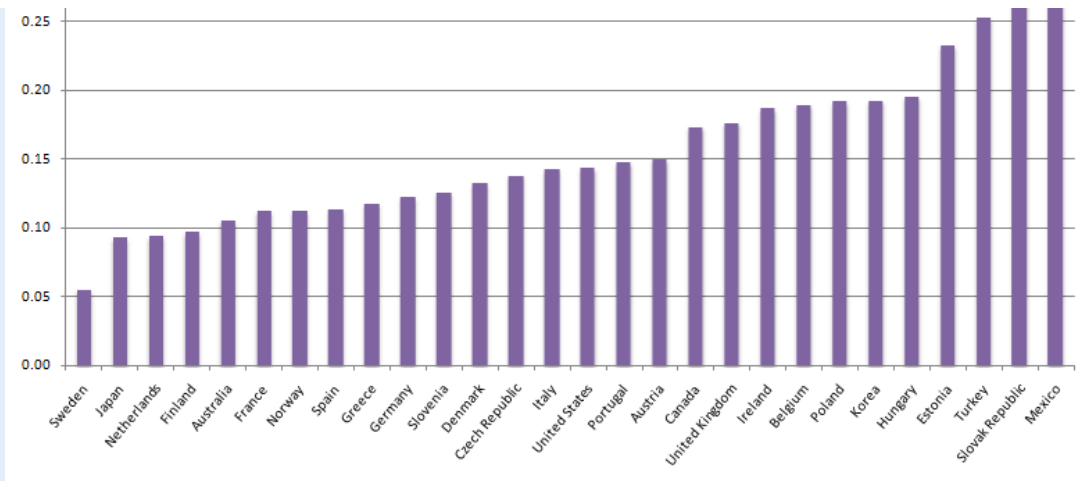
An enduring problem associated with the Barnett formula is the perception that devolved administrations receive a disproportionate share of funding compared to English regions, particularly Scotland where the overall population has fallen over the years. Figure 3.3b shows that the devolved regions, as well as London, have the highest per capita expenditure in the whole of the UK. However, such figures are less than conclusive if we consider the contextual issues for each of the areas. Notably, the costs of maintaining a common standard of service in London are likely to be more expensive due to higher wages, property prices and the cost of living, while Scotland and Wales have higher costs due to low population density (Bell & Christie, 2007). Also, Northern Ireland receives funding for law, order and protective services, and the courts separately from the Barnett Formula as part of the Spending Review negotiations with the UK Treasury (Midwinter, 2007). From the devolved administrations' perspective, the problem is that the Barnett formula is intended to equalise per capita expenditure across all regions of the UK over time. This has been referred to as the 'Barnett squeeze', meaning that those areas with the highest per capita spending will receive the lowest increases; consequently endangering the devolved administrations' existing spending commitments and reducing the autonomy they have in deciding their spending priorities as they converge with the rest of the UK (Bell & Christie, 2007).

In 2009, the [House of Lords Select Committee on the Barnett Formula](#) concluded that the Barnett Formula was 'arbitrary and unfair' and should be replaced by a system that allocates resources based on an explicit needs assessment. Such a system has been argued for in the past by McLean (2000), who advocates a 'fiscal constitution' for the UK, highlighting Australia as a preferred model. This would entail an independent grants commission that would be responsible for allocating revenues based on the principle of 'fiscal equalisation', so that each administration is provided with the necessary resources to maintain and operate services at the same standard as the rest of the UK. In most OECD countries, some form of fiscal equalisation is employed to address regional fiscal variations. As Figure 3.3c shows, countries such as Sweden, Australia and Germany are able to maintain low levels of inequality between regions, despite the unique fiscal geography of each of these nation-states. At present, the coalition government has not announced any further plans to review the Barnett formula in the UK.

Figure 3.3c: Gini index of inequality of GDP per capita across regions, 2007



## Democratic Audit



Source: [OECD \(2011, p. 41\)](#)

### **Local government in England**

New Labour's failure to implement a directly elected tier of regional government in England, with the exception of London, means that the immediate sub-national level of governance is still the patchwork of local government made up of metropolitan boroughs, non-metropolitan districts and unitary authorities. For over 30 years now, consecutive governments have overseen an increasing centralising tendency towards local government in the UK. This trend can be traced back to the Conservative governments of the 1980s and 1990s, which set about the 'hollowing out' of local government in two specific ways. First, the UK government pursued an agenda of shifting local authorities' primary responsibilities for providing public services to the private sector via contracting-out, under a model known as compulsory competitive tendering (CCT). Second, central government imposed increasingly strict controls on local government finance through measures such as rate capping, restrictions on borrowing, the introduction of a uniform national business rate, the ring-fencing of government grants and strict rent controls for council housing (Williams, 2010). The legacy of these measures means that local government now receives 75 per cent of its revenues from central government and is severely constrained in how it uses the 25 per cent that it raises from council taxes ([DCLG, 2009](#)).

Despite New Labour's commitment to devolution in Scotland, Wales and Northern Ireland, and their intentions to delegate power to the English regions, their overall policies towards local government shared significant continuities with the previous Conservative governments. CCT was repealed as part of the Local Government Act 1999, but replaced with the 'best value' framework for service provision, which included a top-down approach to performance management. The inclusion of the performance plan and performance indicators as part of the best value agenda allowed central government to set targets and, to many observers, effectively micro-manage local government activity (Wilson and Game, 2011). Even when restrictions on borrowing were lifted as part of the Local Government Act 2003, local authorities remained subject to the strict control of the Treasury and the adherence to the principle of a 'prudential code' and 'prudential borrowing'. Such measures are exemplary of New Labour's seemingly contradictory approach to decentralisation, whereby the government simultaneously committed itself to the devolution of power at the same time as governing through centralized control; something Davies (2009, p. 405) has termed the 'Blair Paradox'.

During the 2010 general election, all three party leaders proclaimed a commitment to decentralising power and reforming local democracy through the seemingly self-evident universal remedy of 'localism' (Wilson and Game, 2011). Once in power, the newly formed coalition government introduced the Localism Bill. Announcing the new measures, the communities and local government secretary, Eric Pickles announced:

'The Localism Bill will herald a ground-breaking shift in power to councils and communities overturning decades of central government control and starting a new era of people power. It is the centrepiece of what this Government is trying to do to shake up the balance of power in this country [...] By getting out of the way and letting councils and communities run their own affairs we can restore civic pride, democratic accountability and economic growth - and build a stronger, fairer Britain. It's the end of the era of big government', ([DCLG, 2010](#)).

The rhetoric behind the Localism Bill suggests a radical empowerment of local government and communities that aims to reverse 30 years of hierarchical centralism. Core elements of the bill include: giving councils a general power of competence to conduct any lawful activity or business; empowering local people and communities with the rights to take over public services, veto any excessive increases in council

tax and instigate referendums on any local issue of concern; and, allowing councils and communities greater powers in granting planning permission (Wilson and Game, 2011). However, this newfound autonomy for local government comes at a time when local authority budgets are facing the deepest cuts for nearly three decades in the face of austerity measures. Plans to reduce central government grants to local government by an average of 7.5 per cent annually, as well as a freeze on council tax, will lead to a reduction in revenue spending power which will inevitably have a deleterious impact on frontline services, despite central government claims to the contrary ([Wilks-Heeg, 2011](#)). Some have interpreted the cuts as 'creative destruction', whereby it is assumed that innovation will arise in the face of austerity, thereby creating more efficient and cost-effective practices in local government ([c.f. Wilks-Heeg, 2011](#)). Even taking into account local government's implied new freedoms; such assertions ignore the potential harm to vital services that severe financial constraints will impose. As [Wilks-Heeg \(2011, p. 641\)](#) has pointed out: 'the bill does not advance a politically "neutral" vision of localism; rather, its concerns are as much with deregulating as they are with decentralizing'.

### ***The regional development agencies in England***

As we noted in the introduction to this chapter, Labour established regional development agencies (RDAs) in 1999 for England's eight administrative regions as part of their broader plans for decentralisation (a ninth RDA was created under the auspices of the GLA). RDAs were headed by ministerially appointed boards, made up of regional business leaders and local councillors from the region. They were intended to develop, coordinate and implement regional economic development policy in line with their respective regional economic strategies (RES) that were intended to establish sustainable economic growth and reduce the disparities of economic development that existed between regions. Oversight and scrutiny of RDAs was provided for by unelected regional assemblies made up of nominated local councillors, business leaders, trade unions and other regional interests, although they were ultimately responsible to central government for funding and meeting national targets on regional economic performance (Pearce and Ayres, 2009). However, despite the RDAs' success in meeting central government targets, and even exceeding them in some cases, there was no overall consensus about the significance of their impact in relation to the level of public expenditure they commanded.

In 2010, the coalition government immediately announced a 'bonfire of the quangos', including plans to abolish RDAs, which they considered as ineffective and unaccountable quangos. The estimated savings of abolishing RDAs were £1.85 billion. To replace them, the coalition proposed joint council- and business-led local enterprise partnerships (LEPs), which would be able to draw on a £1.4 billion regional growth fund (RGF) to support economic development (Wilson and Game, 2011). LEPs are intended to act as an interface between central government and local authorities by bringing strategic leadership and support to locally identified economic priorities. However, though many functions of the RDAs have been devolved to local authorities and redistributed among the 39 newly formed LEPs, the power to allocate resources, such as international investment and business finance, has been recentralised to government departments and amalgamated into the RGF. This realignment of regional power represents something of a double movement whereby, as Pugalis and Fisher (2011, p. 513) suggest, 'the coalition appears to be following a steady flow of UK governments that have variously claimed to decentralise powers, although each has failed to relinquish central control'.

### ***The Greater London Authority***

After the abolition of the Greater London Council (GLC) in 1986, London became the only major capital city in the western world without a city-wide elected authority. When New Labour came to power they pledged to restore an elected government to London. However, rather than restore the GLC, with the power to challenge the policies of central government which had ultimately led to its abolition, the plans for the new London authority were far more modest by comparison (Wilson and Game, 2011). After a conclusive 'yes vote' of 72 per cent in the 1998 referendum, the Greater London Authority (GLA) Act 1999 was passed establishing a directly elected 25-seat assembly and executive mayor for London, with the first elections following in 2000.

The GLA was given executive strategic powers over four main London-wide bodies, referred to as the GLA group: Transport for London, the Metropolitan Police Authority, London Fire and Emergency Planning Authority, and the London Development Agency. Day-to-day service delivery like education, housing and social services remained with London's 32 borough councils. Further powers were added with the GLA Act 2007, giving the mayor a strategic role in policy areas such as climate change, culture, the environment, health inequalities, housing, planning, and waste management. The mayor of London has an executive role in deciding policy and setting budgets, while the assembly scrutinises the work of the mayor through committees and has the power to overturn budgets with a two-thirds majority. Most of the funding for the GLA comes directly from central government grants, as well as a proportion of council taxes from the London boroughs known as the 'GLA precept'. Additional funding comes from transport fees and congestion charges.

The total budget requirement of the GLA is still only less than a third of the combined budget for the London boroughs. Also, with the restrictions on transferring money between the bodies that make up the GLA group, it leaves little room to diverge too much from central government's policy priorities. As a result, the GLA's peripheral role in service delivery and lack of financial resources mean that it is significantly limited in its power to directly affect real change in London, which is unsurprising taking into account that these limitations were circumscribed from its inception. As Travers (2004, p. 184) has stated: 'Whitehall and the borough councils remain as important as ever in

the government of London [...] The mayor is squeezed between these two blocs of long-established financial and political power'.

However, what the mayor and GLA lack in financial capabilities, they more than make up for in democratic legitimacy; with the 2008 mayoral elections making Boris Johnson the first UK politician to be elected with a 'million vote mandate' (Wilson and Game, 2011). Moreover, the high profile role of the mayor of London is augmented by its close proximity to the highly concentrated national media in the capital, creating a political space to set agendas and capture the public interest (Greer and Sandford, 2006). Following the failure of the North-East referendum in 2004 that ended future plans for elected regional government, the GLA remains uniquely without precedent as a devolved city-regional government in England. In spite of the restrictions originally imposed on the GLA, consecutive mayors have now successfully argued for extensions in formal powers, as they have sought to push the boundaries of their influence. However, these attempts to manoeuvre political room will almost certainly remain piecemeal without the autonomy derived from self-generated revenues.

As we have shown in this section, the UK now exhibits stark internal contrasts in the extent to which sub-central government operates autonomously. The 'Celtic nations', comprising the more peripheral parts of the UK national territory, are home to only 16 per cent of the population, but have devolved administrations with a high level of autonomy. Meanwhile, sub-central government in England has, with the partial exception of London, become highly centralised and, notwithstanding the coalition's localism agenda, continues to operate with heavily circumscribed local autonomy. In particular, rigid controls on local government finance remain very much in operation, placing elected councils 'between a rock and a hard place' in the context of sharp reductions in central grant support. In this sense, the threats which localism poses for autonomous local government are very similar to those which the 'Big Society' agenda poses for the independence of the voluntary sector (see Section [3.2.1](#)).

In our last full Audit, we noted that devolution represented a major constitutional change but that, as of the early-2000s, constitutional conflicts with the centre had yet to be tested (Beetham et al., 2002). As we note in Section [1.1.3](#), it is now clear, a decade on, that asymmetric devolution has led to the emergence of significant constitutional instabilities. Not only are there demands for further devolved powers, or even full independence, for Scotland, but there is also growing evidence that the absence of any devolved arrangements in England is becoming a source of obvious imbalance within the UK state. The continued centralising tendencies in English local government since the late-1990s have only served to render the 'English question' more urgent and it is by no means clear how an apparently radical shift to 'localism' under the coalition will remedy this situation, given the direct association between localism and heavy reductions in grant support to local authorities (Wilks-Heeg, 2011). Indeed, the possibility cannot be discounted that national government policy over the next few years will lead to demands in some English regions for devolution, arising from a similar dynamic to that observed in Scotland in the 1980s and 1990s.

### 3.3.2 Democratic accountability of sub-central government

How far are these levels of government subject to free and fair electoral authorisation, and to the criteria of openness, accountability and responsiveness in their operation?

Sub-national governance in the UK comprises a mix of elected and unelected bodies. Devolved governments in Scotland, Wales and Northern Ireland, as well as local governments throughout the UK, are elected on a universal adult franchise. However, significant parts of the sub-national (UK) state operate without direct electoral accountability. These include a variety of regional and devolved quangos as well as vast numbers of local public spending bodies (LPSBs) which operate in sectors such as education, housing and health care. Many of these LPSBs have been created via the 'hiving off' of functions from local authorities to single-purpose bodies with independent governing arrangements, most notably in education and housing. Meanwhile, where electoral accountability does exist, there are a number of concerns about the extent to which it provides clear democratic mandates. In particular:

- Turnouts in devolved and local elections are generally low, whether measured against levels of electoral participation in UK general elections or in sub-national elections in other established democracies.
- A range of different electoral systems are in use for different sets of sub-national elections in the UK, with the consequence that there are wide variations in the extent to which party representation is proportional to the votes cast.
- In the context of a progressive loss of core functions and diminishing local autonomy, there are significant questions about the extent to which local elections, particularly in England, offer meaningful scope for voters to choose between competing policy options and hold local political representatives to account.

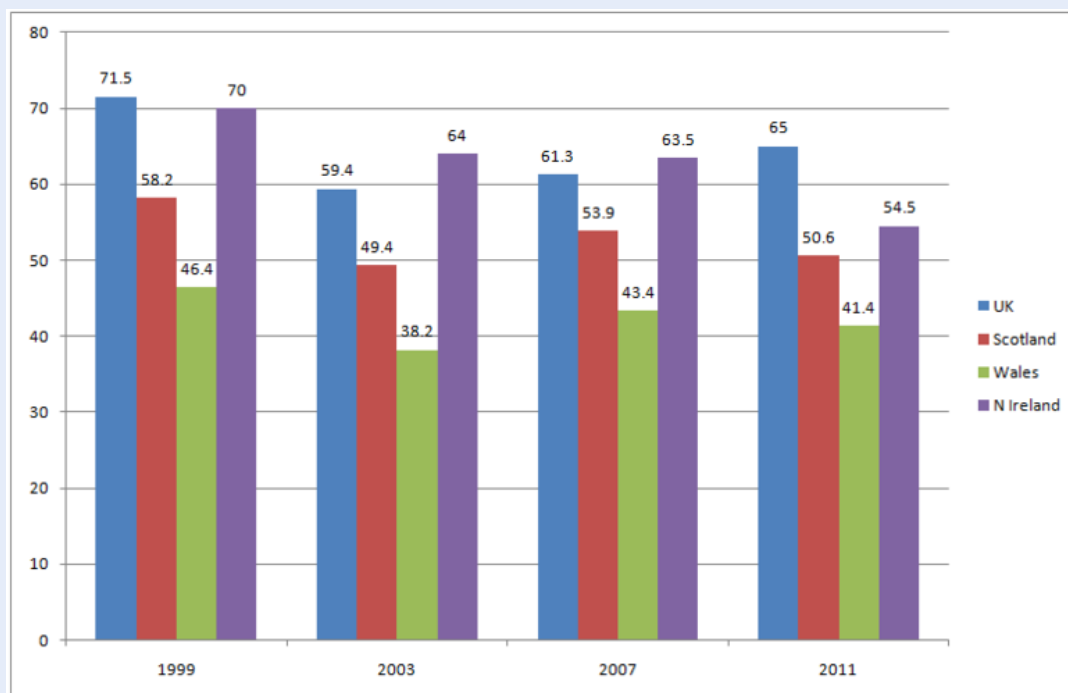
Given the contrasting arrangements in place across the UK as a result of devolution, we begin by considering electoral arrangements and outcomes in Scotland, Wales and Northern Ireland, and also examine the wider context of openness, accountability and responsiveness of the devolved parliaments and executives. We then turn to examine the same sets of issues in Greater London, before outlining the quite different arrangements which have been applied in the English regions, but are now in a state of some flux following the decisions made by the coalition to abolish a number of regional bodies. Finally, we consider the strength of electoral authorisation and accountability, as well as wider issues of openness, accountability and responsiveness in UK local government.



### Devolved governments

Figure 3.3d shows the turnouts at the four sets of devolved elections held since they were introduced in the late-1990s. As the graph shows, turnouts in Scottish and Welsh elections have always been below those in the previous general election, and participation levels in Welsh elections have been especially disappointing. Two sets of elections to the Northern Ireland assembly have produced higher turnouts than at the preceding UK general election, while the turnouts at the 1998 and 2011 Northern Irish elections were closer to general election levels than those for other devolved bodies. Nevertheless, the overall pattern shown in Figure 3.3d is one of declining turnouts across all types of elections since the late-1990s, a trend which we discuss in more detail in Section [2.1.6](#).

Figure 3.3d: Turnout in UK and devolved elections, 1997-2011



Note: For category '1999', UK result is for 1997 election and Northern Ireland result for 1998 election; for other data points the preceding UK election is used, i.e. 2001 is represented under '2003' and so on.

In Section [2.1.4](#), we noted how the first-past-the-post (FPTP) electoral system used for UK general elections has produced increasingly disproportional electoral outcomes, evidenced by a growing mismatch between votes cast for political parties and their representation in the House of Commons. The electoral systems used for devolved elections produce outcomes which are, in the main, significantly less disproportional than those for general elections. Elections for both the Scottish parliament and the Welsh assembly are conducted under variants of the mixed member proportional (MMP) system, which is sometimes also referred to as the additional member system (AMS). In Northern Ireland, meanwhile, the assembly is elected by the single transferable vote (STV).

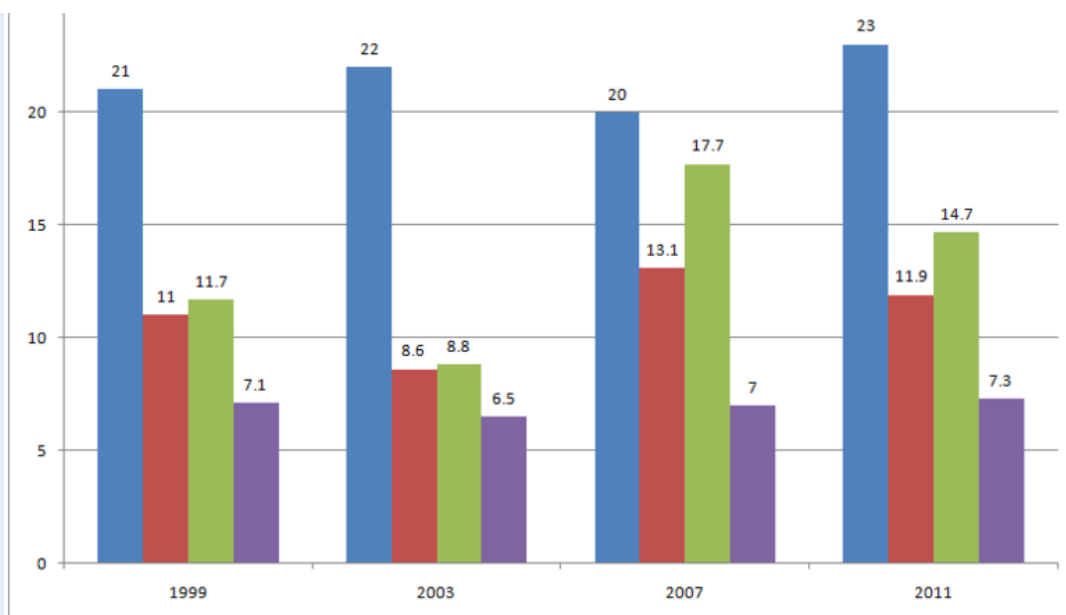
Figures 3.3e and 3.3f give two alternative measures of the proportionality of the outcomes at devolved elections - the simple 'DV score' and the more sophisticated Gallagher index. The choice of measure does not affect the conclusions about the properties of the electoral systems used in the devolved bodies. As both graphs show, STV in Northern Ireland produces the most proportional electoral outcomes, while the operation of MMP in Scotland gives rise to outcomes which are more proportional than those in Wales. Moreover, while the relationship between votes and representation is weaker in Wales, it remains far stronger than it is in the UK parliament.

Figure 3.3e: Disproportionality of UK and devolved election results, measured as deviations from proportionality (DV), 1997-2011



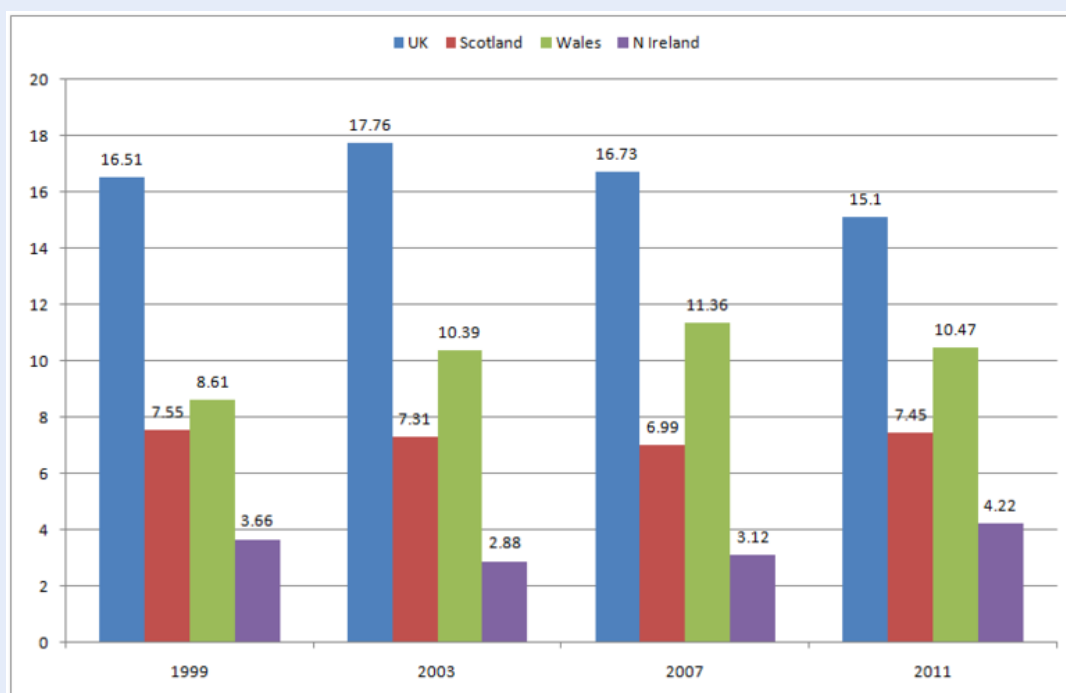


## Democratic Audit



Note: For category '1999', UK result is for 1997 election and Northern Ireland result for 1998 election; for other data points the preceding UK election is used, i.e. 2001 is represented under '2003' and so on. The index for Scotland and Wales is compiled with reference to regional list votes, and that for Northern Ireland using first preferences.

Figure 3.3f: Gallagher index of disproportionality in UK and devolved elections, 1997-2011



Source: [Gallagher \(2012\)](#)

Note: For category '1999', UK result is for 1997 election and Northern Ireland result for 1998 election; for other data points the preceding UK election is used, i.e. 2001 is represented under '2003' and so on. The index for Scotland and Wales is compiled with reference to regional list votes, and that for Northern Ireland using first preferences.

It is particularly clear from Figure 3.3f that the electoral system adopted in Wales is by some distance the least proportional of those used in devolved elections. On two occasions, 2003 and 2011, the largest single party (Labour) has won half the seats with a share of the vote of respectively 36.6 per cent and 36.9 per cent. On several occasions, small but significant parties have failed to gain representation in the assembly. Table 3.3e identifies seven instances where a party has won three per cent or more of the list vote but not elected an AM. There are no comparable cases in Scottish and Northern Ireland elections.

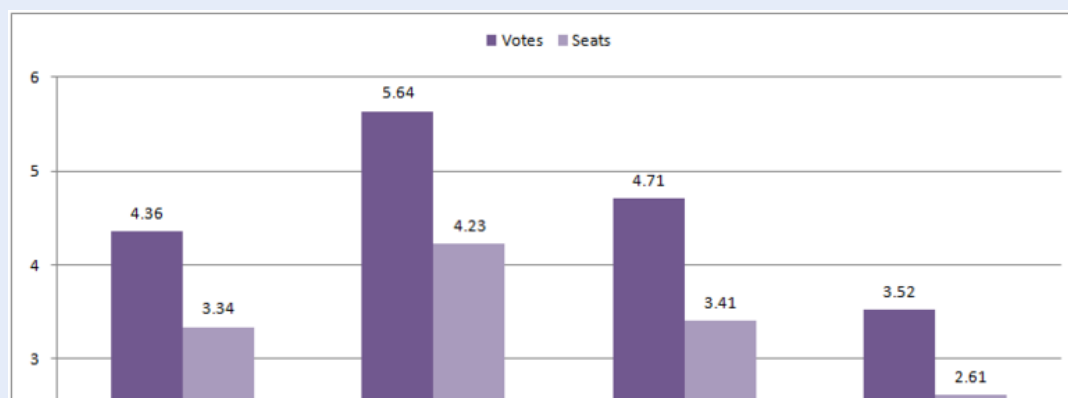
**Table 3.3e: Parties securing more than 3% of the votes but failing to secure seats in the Welsh Assembly, 2003-11**

Party	Election	Share of vote %
UKIP	2011	4.6
Green	2011	3.4
BNP	2007	4.3
UKIP	2007	4
Green	2007	3.5
UKIP	2003	3.5
Green	2003	3.5

The evidence presented above indicates that the version of MMP used for Welsh assembly elections is more majoritarian than the variant used in Scotland or, indeed, in other countries which have adopted this electoral system. In Wales, a lower proportion of those elected are returned from lists than is typical elsewhere (33.3 per cent rather than 43.4 per cent as in Scotland or around 50 per cent in Germany and New Zealand). MMP in Wales is less likely to result in the representation of small parties members for this reason, but also because the Welsh assembly, with 60 members, is the smallest of the devolved legislatures and the list members are elected in batches of four from each of five regions (compared to seven in Scottish regions). As a result, list members under the Welsh system mainly correct for major-party disproportionality in each region rather than lowering the threshold of representation.

Another indicator of the 'fairness' of electoral outcomes is to compare the effective number of parties (ENP) as a measure of the votes cast, in comparison to the same measure for the seats obtained (see Section 2.1.6 for details of how both are calculated). Figure 3.3i shows that the Northern Ireland electoral system has resulted in a close relationship between the balance of the votes cast and the number of parties represented in the assembly. In contrast, the systems in both Wales (Figure 3.3h) and Scotland (Figure 3.3g) have tended to consolidate representation around the larger parties, latterly Labour and the SNP in Scotland, and Labour, Conservative and Plaid Cymru in Wales. This is largely a feature of the electoral system, in that there is a large district magnitude and a large number of assembly members in Northern Ireland (six and 108 respectively, with preferential voting). The number of effective parties in terms of votes has declined sharply in Scotland since 2003, reflecting a two-party choice of government, while it has remained more or less constant in Northern Ireland where governmental posts are shared proportionally between the parties. The trend in Scotland towards two-party politics, and the scale of the SNP victory in May 2011, has resulted in a situation where the effective number of parties in both votes and seats produced a similar situation to that in the UK in 2010.

**Figure 3.3g: Effective number of parties, votes and seats, Scottish Parliament, 1999-2011**



### Democratic Audit

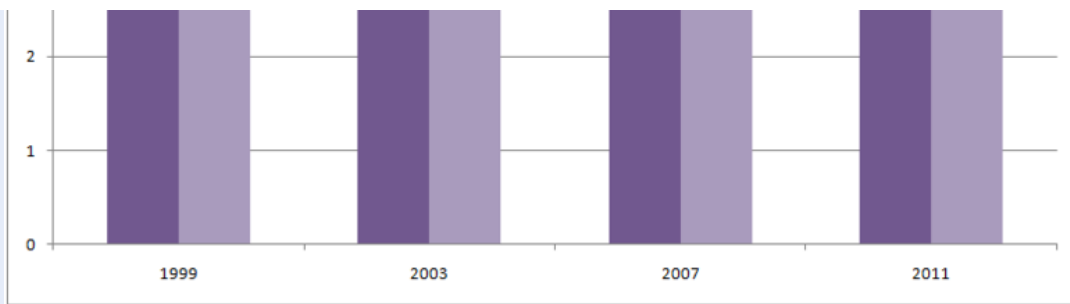


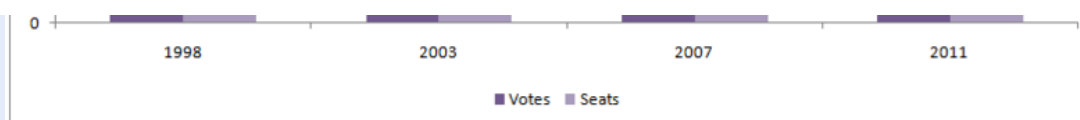
Figure 3.3h: Effective number of parties, votes and seats, Welsh Assembly, 1999-2011



Figure 3.3i: Effective number of parties, votes and seats, Northern Ireland Assembly, 1999-2011



## Democratic Audit



Electoral outcomes may also be assessed with respect to the social representativeness of the candidates returned to office, most notably with regard to gender and ethnicity. However, since social representativeness is not necessarily an indicator of how 'free and fair' elections are - we consider these issues elsewhere in this Audit (see Section [3.2.3](#) on women and devolved elections and Section [3.2.4](#) on ethnic minority representation in devolved parliaments and assemblies).

If devolved elections have proved significantly more proportional than their Westminster equivalents, it is perhaps unsurprising that there is also evidence that devolved legislatures appear to have operated in a more open, accountable and responsive manner. The founding principles of the devolved parliaments included a commitment to transparency and openness, as well as ways of working which were often defined in clear contrast to those found in the Westminster parliament. It is notable, for instance, that elements of deliberative and participatory democracy were blended into the new representative institutions as part of the 'commitment from the creators of the devolved legislatures to openness and new means of communication with citizens' (Bochel, 2012, p. 143). For instance, the devolved bodies have worked extensively with community organisations. By way of illustration, the Scottish parliament hosts an annual Communities Conference to build links between the voluntary sector and members of the Scottish parliament (MSPs). In addition, committee meetings are frequently held away from the parliament buildings to encourage contributions from members of the public and community groups. The Scottish parliament also publishes information about participation online and in a booklet *Making the Scottish Parliament Work for You* (Scottish Parliament, 2011).

The approaches developed by the devolved legislatures for the submission and consideration of petitions are especially noteworthy and 'have been widely seen as models of good practice, with others seeking to learn from them' (Bochel, 2012, p. 143). Both in Wales and Scotland petitions to the legislature, provided that they are in an admissible form, are not just noted as they have traditionally been in Westminster (and even under the new e-petition system the expression of opinion is often merely that), but cause action on the part of the legislature. The Petitions Committee discusses them, thereby putting the issues on the public record, and will often invite the petitioners to come to parliament to explore the issue further. Discussion on the floor of the house or in committee may well follow as a result. In both bodies, the Petitions Committee exists not only to receive and assess petitions as manifestations of public views but to actively solicit petitions and views, particularly from people outside the capitals and from groups in society who have in the past felt excluded from the political process. A particularly clear example of such a group would be young people; while voting is only available at 18, petitioning can be undertaken by people too young to vote and has resulted in young people appearing in the Scottish parliament (Bochel, 2012). The Scottish parliament has also been particularly innovative in its adoption of e-petitions, as we discuss in Case Study 3.3b.

### Case Study 3.3b: E-petitioning in the Scottish parliament

When the Scottish parliament was established in 1999, the internet was already an established entity. Because the introduction of the parliament was preceded by careful cross-party planning of its composition and modes of operation, it has proved able to seek to harness this innovation for democratic ends (Seaton, 2005). From the outset, the Scottish parliament has been committed to the use of information technology to achieve public participation, to be accessible to the public, and to be open in its operations (Beddie et al., 2002). A key manifestation of this objective has been the e-petitioning system.

All petitions to the Scottish parliament must, to be admissible, ask the parliament to carry out an act which is within its power; the substantive content as such is not the issue. Sponsorship from an MSP is not required; and signatories have come from various different countries (Seaton, 2005). The parliamentary Public Petitions Committee (PPC) assesses whether a petition is acceptable and decides how it should be handled. Normally the text of a petition would be cleared with a PPC clerk before submission (Macintosh et al., 2008). Members of the PPC often sit on other committees as well, enabling its members to promote the petitions system within these other bodies (Lynch and Birrell, 2001).

Towards the end of the first year of operation of the parliament, the decision was taken to permit petitions hosted online by the International Teledemocracy Centre (ITC) to be submitted by individuals and groups to the PPC. More traditional paper petitions continued to be allowed also (Beddie et al., 2002). The online system allows for the provision of background information assisting a judgement about whether to become a signatory. There are forums for on-line discussion and links to third party websites (Beddie et al., 2002). Discussions are moderated; and checks are made for individual signatories with apparently fake identities. The names and country locations of signatories can be viewed online; and users can trace the progress of particular petitions (Macintosh et al., 2008).

The types of petitions received have been divided into two broad groups: those reacting to government proposals; and those seeking to place an issue on the agenda ([Lynch and Birrell, 2001](#)). Generally, petitions are passed to the Scottish government, or another public agency, for comment. The PPC then considers the response it receives and decides what action to take next. Petitions may then also be included within the work of the parliament, such as committee inquiries, either conducted by the PPC or another parliamentary committee, or parliamentary legislative scrutiny ([Lynch and Birrell, 2001](#)). In one instance, a petition on rural health care submitted in 2004 eventually led to a debate held by the health committee of the parliament in the chamber, in which the organiser of the petition was asked to participate ([Macintosh et al., 2008](#)).

Initially there were some fears that an electronic petitioning system might make the signing of petitions too easy and therefore less meaningful. However it has been argued that going to the trouble of logging on to a website and selecting a particular petition to sign may suggest more commitment than simply agreeing to support a campaign when approached in the street ([Beddie et al., 2002](#)). An early barrier to e-petitioning as a means of ensuring greater responsiveness was seen as being the low level of internet access in Scotland. This position improved over time ([Seaton, 2005](#)). However, as of 2011, only 64 per cent of Scottish households had internet access (as compared to 73 per cent in England and Wales) ([Bochel, 2012](#)). The PPC has engaged in outreach activities designed to ensure participation amongst politically excluded groups; and members of the Scottish parliament have come to see the value of the petitioning system as a means of democratic engagement ([Seaton, 2005](#)). Public participation in the system - both through signing and taking part in discussions - rose over time from its first being introduced ([Macintosh et al., 2008](#)). Analysis suggests that members of the public and not simply organisations make extensive use of petitioning ([Lynch and Birrell, 2001](#)). But there is evidence of users tending to be middle-aged males with more than average educational attainment ([Bochel, 2012](#)). Early reviews of the system suggested that its users regarded it as valuable, but they had concerns about personal confidentiality ([Macintosh et al., 2002](#)). The Scottish parliament model for e-petitioning has proved influential within the UK and internationally ([Macintosh et al., 2008](#)). Over the last year, the website has seemingly experienced technical difficulties and been offline for some time.

Within the overall context of a representative democratic model, the impact of mechanisms such as petitioning is indirect, and does not generally involve actual decision-making by the public. However, there is value to building public engagement methods into representative processes. While Scottish parliamentary e-petitioning does not, and cannot, allow citizens to make decisions directly, it can enable them to influence democratic processes in innovative ways, while leaving the ultimate outcome in the hands of elected representatives ([Seaton, 2005](#)). Tracking the progress of petitions enables voters to appreciate the impact that has been made, and to see that their views can be taken seriously, whether or not their desired outcome was achieved ([Bochel, 2012](#)). Moreover, through facilitating discussions around the issues raised in petitioning, a more participative dimension is introduced to the petitioning process, which can also stimulate public debate ([Macintosh et al., 2008](#)). In achieving these outcomes, the e-petitioning system is to be welcomed as an addition to responsiveness at this devolved level of governance. However, there is a need to note the risks of the e-petitioning system replicating existing social inequalities in political participation, and making government more responsive to those who already enjoy significant influence ([Bochel, 2012](#)).

In comparison to Scotland and Wales, Northern Ireland has been in a peculiar position under devolution in that its developing political tradition is more of an accommodation between elites than of public involvement. Moreover, the assembly had been suspended for most of the period from 2002 to 2007. The system of public involvement that was introduced after 2007 is intended to be a framework similar to that operating in Scotland and Wales, but has so far concentrated mostly on traditional public information and educational outreach and public access to the legislature's buildings. A petitioning process is intended but has not yet been implemented ([Clark and Wilford, 2011](#)).

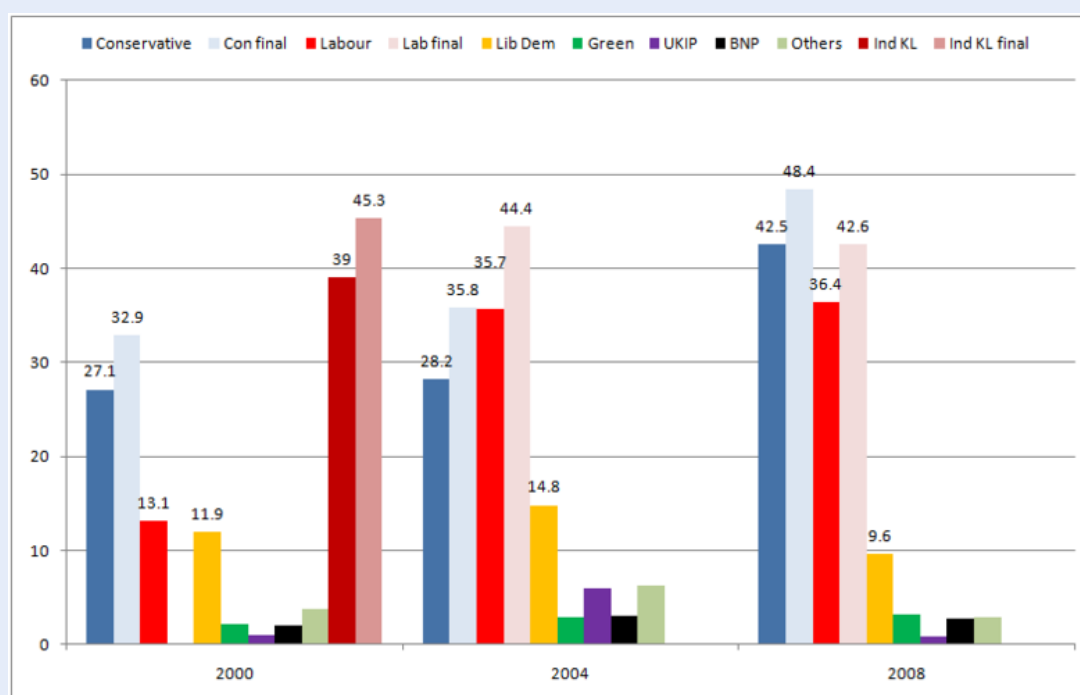
There have been a number of different sorts of executive formed during the existence of the devolved bodies, with significant implications for their relationships to their respective legislatures. There have been just two periods of single-party majority government under devolution (the SNP since 2011 in Scotland, and Labour from 2003 to 2005 in Wales), compared to four periods of single-party minority government (the SNP from 2007 to 2011 in Scotland, and Labour from 1999 to 2000, 2005 to 2007 and since 2011 in Wales) and three periods of coalition government (Labour and the Liberal Democrats in Scotland from 1999 to 2007, Labour and the Liberal Democrats in Wales from 2000 to 2003 and Labour and Plaid Cymru in Wales from 2007 to 2011). These different political configurations have resulted in different sorts of relationships between executives and devolved legislatures, with accountability of the executive to parliament being particularly strong during periods of minority government. The institutional rules of the legislatures are mostly based on the Westminster Select Committee model of oversight, although there have been innovations such as the practice in Wales of requiring quarterly reports from ministers of the activities of their departments. It should also be noted that the rules governing devolution in Northern Ireland specify a power-sharing method of forming an executive, with portfolios shared between the parties on the basis of the proportional D'Hondt method. This ensures a maximally representative executive, in the interests of the widest possible consent, but somewhat at the expense of collective government and the accountability of parties to the electorate for their individual record in office.

## Greater London

Elected and accountable regional government exists in only one area of England, namely London, as approved via a referendum in 1998 and implemented from 2000 onwards. As we noted in Section 3.3.1, the governmental model is based on a powerful directly elected mayor operating alongside an assembly that acts as a scrutiny body and the pool for appointments for London-wide boards and organisations (the London Development Agency, the London Fire and Emergency Planning Authority and until 2008 the Metropolitan Police Authority). Other London government institutions are responsible for many important functions in the region's governance - notably transport (including the running of much of the public transport system), major planning, housing, the environment, art and culture, and the police - and these are overseen by the assembly. The mayor of London is elected in a single-post election and the mayor's direct powers over policy and budgeting are extensive. The electoral system used for the mayor is the supplementary vote (SV) as in other mayoral elections and Police and Crime Commissioner elections from autumn 2012. Turnout in Greater London authority (the mayor and the assembly) elections started significantly lower than in the three devolved nations, but increased from 33.6 per cent in 2000 to 36.9 per cent in 2004 and 45.3 per cent in 2008.

The SV electoral system gives a broader measure of support for the mayor than FPTP would permit, and also enables expressions of electoral choice such as support for smaller party candidates in the first round and an effective vote for one of the main party candidates in the second round. SV has worked reasonably well in London because there has generally been a clear choice between two leading candidates, although it has still not yet produced an overall majority of the vote for any candidate, as Figure 3.3j shows.

Figure 3.3j: Vote shares in London Mayoral elections 2000-08 (%)



Note: 'Final' indicates support at the second stage of the count, expressed as a percentage of the valid total first preference vote. 'Ind KL' indicates the Ken Livingstone vote as an Independent in 2000.

The London assembly electoral system, like Scotland and Wales, is MMP, with 14 members elected from constituencies using FPTP and 11 from London-wide compensatory lists. So far, the Labour and Conservative parties have been the only parties to win constituency seats. There is a five per cent threshold for representation from the list, which meant that the BNP and Respect were disqualified from electing assembly members in 2004. The London electoral system is moderately proportional, with DV scores of 14.8 in 2000, 13.6 in 2004 and 15.8 in 2008, broadly comparable with those for Wales (see Figure 3.3e).

While the London assembly itself is transparent in the way it functions in terms of the publication of information and public access to its proceedings, it is hampered by the limited role the law allots it. Uniquely within the UK, it is itself largely an oversight and scrutiny body to the mayor's government, charged with investigating matters it considers to be of importance to Greater London, regularly questioning the

mayor, scrutinising the statutory strategies for which the mayor is responsible and examining the mayor's budget (Sandford, 2005, p.10). However, it would appear that public knowledge of the assembly, its work and its role, are fairly poor and that the dominant means of political involvement in London government remains the four yearly election for mayor.

### *The English regions*

Regional government outside London is not subject to free and fair electoral authorisation. The London model is unique within England (or, indeed, in the UK) and a different model was proposed for the eight other English regions as part of the Labour government's programme of regional devolution, based around an assembly rather than a directly elected executive. The powers offered for regional governments were also weaker than in London, and by the time a concrete proposal was put forward in 2004 there were fewer powers exercised at regional level than originally envisaged. As we noted in Section [3.3.1](#), in a referendum in November 2004 the first region to be offered a regional assembly, the North East England, rejected the proposition by a large majority. Proposed referendums in other regions were cancelled and the programme of moving towards elected regional government in England ground to a halt. However, various forms of unelected regional government existed in England both before and after 2004, principally in the form of national government executive bodies operating at a regional level. The key facets of English regional governance built up prior to the coalition taking office in 2010 comprised a 'triumvirate' in each region of the following institutions:

- **The Government Offices of the Regions (GORs)** were established by John Major's Conservative government in 1994, with responsibility for coordination and integration of a range of service delivery functions across Whitehall departments. The GORs were agencies of central government without direct local accountability and were abolished in 2011.
- **Regional Development Agencies (RDAs)** existed from 1998 until March 2012, with key responsibilities for economic development, inward investment and sustainability (see Section [3.3.1](#)). The RDAs were not accountable to local electors and were funded by central government through a pooled arrangement through the budgets of several government departments, principally Business Innovation and Skills and Communities and Local Government.
- **Regional Assemblies** outside London were created from 1998 onwards (they were also known in some instances as 'regional chambers'). The assemblies were unelected bodies, composed of councillors from the local authorities in the region drawn in proportion to party strength, plus voluntary, civic and business representatives. They were intended to act as scrutiny bodies for the regional levels of government that did exist in England, particularly the RDAs, but their public profile was low. As we note in the introduction to this chapter, regional assemblies were phased out from 2007 onwards.

There have been other facets to English regional governance, including a range of other unelected organisations operating on the basis of different regional boundaries. For instance, regional arts boards functioned in England with some indirectly elected involvement (via local authority appointees) from 1990 until 2002. Their boundaries differed from those of the GORs and they were replaced by regional divisions of the Arts Council working to the government office regional boundaries. The Environment Agency is divided into six English regions (plus Wales), the boundaries of which do not correspond to those of the former GORs and RDAs.

With the abolition of the regional assemblies in 2010, the government offices in 2011 and the RDAs in 2012, there is no longer even the framework of unelected regional government in England outside London (although some Police and Crime Commissioners in larger force areas will end up being effectively a sub-regional, single-purpose tier). It remains to be seen how the accountability and transparency of central government activities in the regions has been affected by these changes. However, some emerging concerns are evident with respect to local enterprise partnerships (LEPs), the replacements for the RDAs (in terms of their function if not the scale and organisation of their activities).

The government has designated 39 LEPs across England, although some areas are covered by more than one LEP. The boundaries of LEPs are not fixed and over time it is anticipated that local authorities may leave and join different LEPs. The constitution of the boards of LEPs is left fairly flexible in the legislation, although there is an expectation that 50 per cent or more (including the chair) should be appointees from private sector business and the other 50 per cent will be drawn, in proportions that will vary in different partnerships, from local authorities, the voluntary sector, academia, trade unions and other representatives of public and civil society; local authorities may not even choose to take part (Department of Business Innovation and Skills, 2010). The balance of power over these bodies has therefore shifted from professional staff with a supervisory board drawn from appointment and indirect election, and overseen from central government (under RDAs) to a staff working to a mostly appointed partnership board. The boundaries of these institutions are shifting and also reflect the partnership networks that have formed, rather than any community with which electors and members of the public will identify. The sense of accountability to local opinion in the new system is therefore certainly no better, and perhaps worse, than before; indeed, the policy area seems to be reconceptualised out of the area of 'public service'.

A decade on from our last full Audit, it is clear that a number of factors hampered the development of regional democratic governance in England. First and foremost, Labour's proposals were undermined by a lack of political identification between electors and the regions in which they live. While surveys revealed that over 75 per cent of residents in seven of the nine regions of England could correctly identify



their region in 1999 (DTLR, 2002), there was never any evidence of strong popular demand for elected regional government. Second, outside London, the somewhat technical nature of the functions undertaken at regional level (inter-departmental policy coordination, economic development, regional spatial planning), almost certainly explain the levels of public indifference to the idea of elected regional government. Third, the lack of public and media understanding and interest in the work of regional assemblies meant that these bodies failed to provide the expected impetus for elected regional government.

Recent research has reaffirmed the lack of English public appetite for regional government (Wyn Jones and Lodge, 2012). Moreover, given the abolition of the GORs and the RDAs, as well as revoking the regional spatial strategies, there are few government functions now being delivered at regional level. Compared to a decade ago, creating structures of regional devolution in England would therefore involve a greater reallocation of functions from local and central government. Any such move would not only be unthinkable under the current coalition government, but would also constitute a reversal of the trajectory of government policy since 2004, which has stressed civic leadership through elected mayors, single-function elected posts, and mergers of local authorities into large county unitary authorities, as in Durham, rather than regionalism.

However, the lack of transparent and accountable institutions overseeing or running English governance at a level between local authorities and the UK central government (outside London) remains a cause for concern in this Audit. There appears to be a growing sense of political identity in England - and with the momentum of devolution to the other three nations there are more and more aspects in which England is a politically relevant unit of analysis but one which lacks any institutional political expression. While regionalism appears to be off the agenda, the 'English problem' remains as much as an issue as it did in 2002, when we noted that the principal problem with Labour's devolution agenda was 'that it has a "hole in the heart", otherwise known as England' (Beetham et al., 2002, p. 247).

### **Local government**

There are several different models of local government in the UK. In Scotland and Wales, local government is organised on the basis of large unitary councils which provide the full range of local government services. In England, however, a complex patchwork of different local government arrangements has arisen from the numerous reviews and reorganisations which have taken place since the 1960s. Most urban areas in England now have single-tier local government arrangements in which a single local authority is responsible for all service areas. These single-tier arrangements consist of the metropolitan borough councils located across the main conurbations around Birmingham, Liverpool, Manchester, Leeds, Sheffield and Newcastle and city and unitary councils in most other urban areas. In Greater London, the London boroughs have primary responsibility for services in a similar way to the metropolitan boroughs, but with some London-wide functions included under the remit of the Greater London authority. In predominately rural areas, the two-tier county and district arrangements introduced in 1974 continue to exist, although recent reorganisation has seen the two-tier arrangements replaced by unitary county councils in a number of areas (e.g. Wiltshire, Cornwall, Durham, Northumberland, Shropshire). Finally, it should be noted that local government is itself a function of the devolved governments outside London and policy decisions taken at that level have affected local government's structure, functions and electoral arrangements.

Elections for local government are professionally administered in an essentially free and fair manner, although there have been concerns about isolated incidents of electoral fraud, including large-scale fraud in local elections in Birmingham in 2004 (see Section [2.1.2](#)). However, there are much more significant concerns about the representativeness of local election results and the extent to which they offer real accountability to local government. These concerns include very low turnout levels, the disproportionality of the results produced by local elections in England and Wales, the tendency for local elections to be dominated by national issues, and the weak autonomy of local councils.

We would argue that local election turnouts are too low to provide sufficient democratic legitimacy for local government. Aside from general election years, which often provide a huge boost in turnout at local elections, all turnouts in English district elections since 1973 have been under 50 per cent, and there is clear evidence of decline in recent decades. Between 1973 and 1994, turnout only once fell below 40 per cent (in 1980 and 1992). Since the mid-1990s, again excluding the general election years, turnout has remained well below 40 per cent and fell to 30 per cent in both 1998 and 2000. Turnouts at English shire county elections have fluctuated between 37 and 43 per cent, with a similar downward trend since the 1980s, except where they were artificially boosted by being held simultaneously with a general elections, as in 1997, 2001 and 2005 (Rallings and Thrasher, 2003). The pattern is similar for unitary councils in England, except that turnouts tend to range from 28 to 38 per cent when not held at the same time as a general election. The UK has by far the lowest rates of turnout in local elections in western Europe. Even accounting for a general decline in turnout across the EU, the proportion of citizens voting in sub-national elections in Great Britain was a full 30 percentage points below the European average in the early-2000s and around 40 percentage points adrift of the Scandinavian countries ([Wilks-Heeg and Blick, 2009](#)).

A further reservation about the electoral legitimacy of local government in some areas is the incidence of uncontested seats in some categories of local authority. The phenomenon is most noted in the sub-tier of parish and community council elections, but it does also take place in principal local authorities. The most affected are in Welsh local government and shire district councils in the more rural areas of

England. In 2008, 31 out of the 73 seats in the Welsh authority of Powys were uncontested, although this was fewer than in 2004 when a majority - 45 seats - were uncontested and councillors returned without electoral affirmation. By contrast, uncontested seats in London borough and county elections are unusual, typically comprising less than one per cent (Rallings and Thrasher, 2007; 2008).

As we have noted in relation to devolved elections, the extent to which seats in elected bodies are allocated in proportion to the votes cast depends crucially on the electoral system. Adding to the sense of the UK as an elections laboratory, there are essentially four electoral systems in operation in the United Kingdom for elected local government.

1. Multi-member first-past-the-post, sometimes called the multiple non-transferable vote (MNTV), used in the London boroughs, Welsh local government and many unitary and district councils.
2. Single-member first-past-the-post (FPTP) based on partial renewal, with elections taking place in three years out of four for a third of the council at each time (there are variant electoral cycles in a few local authorities), used in most district councils and metropolitan districts.
3. Single transferable vote (STV) used in Northern Ireland since 1973, and adopted for use in Scotland in 2007.
4. The supplementary vote (SV) used for directly-elected executive mayors in London and several local authorities in England.

In terms of representing votes cast in the membership of local elected bodies, the systems used in Northern Ireland and Scotland produce a closer concordance than the other electoral systems. They are also less prone to uncontested seats. The introduction of STV in Scotland led to a fall in the median council's deviation from proportionality (DV) score from 20.9 in 2003 to 10.4 in 2007, and the proportion of uncontested seats fell from five per cent to zero. The number of candidates available to the average voter increased from 3.4 to 7.4 ([Baston, 2007](#)). Under MNTV and FPTP in England and Wales, a number of local elections in England and Wales produce peculiar electoral outcomes each year. In 2006 there were six, and in 2002 four, London boroughs out of 32 in which the majority party on the council had in fact won fewer votes than its main opposition. There are also frequent cases where a party with a significant proportion of the vote is unrepresented on the local authority, as with several county councils, such as Staffordshire, where Labour not only lost control in 2009 but also lost nearly all its seats and its ability to provide organised opposition to the Conservatives. Conversely, given the nature of the electoral system, even quite large swings in the vote may leave party control of a local authority unaffected, especially in county councils. Since their creation in 1973, the majority of county councils have not changed hands more than twice ([Wilks-Heeg and Blick, 2009](#)).

There is a wider problem with the accountability of elected local government, unrelated to the local electoral system, in that local election outcomes are only occasionally related to local government election issues. Electoral accountability in local affairs tends to be overridden by two phenomena - the state of the national electoral cycle and the nationally-determined social and political make-up of the local area. Local authorities in politically marginal areas (Southampton for instance) will tend to fluctuate between Labour, Conservative and 'no overall control' alongside national voting intention polls, while areas which are parliamentary strongholds for one party will usually see that party retain control at all but the most extreme points of the national political cycle. These extreme points will be after a party has been in control of the UK government for some time, as with Labour in 2008-09 and the Conservatives in 1995-97. As one account written almost 25 years ago notes, these patterns raise the question of whether local elections are, in fact, 'irrelevant elections':

'If the majority of electors ignore local elections altogether and refuse to vote, while most of us that do vote use the local election to pass judgement upon central government, we can argue that local elections are meaningless and irrelevant - both for local government and for central government. The message that local elections then send to local government is almost completely irrelevant because few voters are evaluating local government's performance when they vote', (Miller, 1988, p. 3).

The openness, accountability and responsiveness of local government in the UK is also affected by the size of local authorities. UK local government is significantly less 'local' than in other countries, with councils typically occupying larger geographical areas and containing larger populations than in other established democracies. It has long been argued that the basic units of local government in the UK are too large to realise the democratic advantages associated with decentralisation. As Democratic Audit has previously noted, as measured by population, the UK has the largest units of local government in Europe, and possibly in the OECD, and the ratio of citizens to elected local politicians is higher in the UK than in any other European country. The average population per local authority in the UK is four times greater than in Sweden, 24 times greater than in Germany and 74 times greater than in France (Beetham et al., 2002). The large geographical and population size of many local authorities also renders them remote from the electorate, with many county councils and some new unitary councils occupying territories larger than Luxembourg, an independent nation-state within the European Union (see Table 3.3f); and some serving populations larger than four EU member states. This is a particular concern in relation to the new unitary counties (Durham, Northumberland, Cheshire, Wiltshire, Cornwall and Shropshire), since there are no districts to mitigate the scaling up of local government.

Table 3.3f: The geographical size of selected local authorities in England, compared to Luxembourg (km2)

Local authority	Type of political unit	Area covered
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North Yorkshire	County council	8654
Cornwall	Unitary county	3563
Wiltshire	Unitary county	3476
Shropshire	Unitary county	3197
Lancashire	County council	2903
Luxembourg	Nation-state	2586

Source: [Wilks-Heeg and Blick \(2009\)](#)

Institutional changes since 2000 have not addressed the problems of local democracy. Direct elections for mayors have not increased turnout (see Case Study 3.3c), although they have in some instances produced more local and personalised campaigns that have resulted in the election of Independent and minor party mayors. The strength of mayors once elected has reduced the importance of the elected councils in those areas. Even in non-mayoral councils the separation of cabinet from backbench council membership has clarified executive arrangements but moved councils into the unfamiliar role of scrutiny that has not always been successfully handled (Wilks-Heeg and Clayton, 2006).

### Case Study 3.3c: Elected mayors

From a democratic viewpoint, concerns over the appropriateness of local government structures have existed for decades, if not longer. These have often focused on the low level of public awareness with respect to local politics, and the question as to whether this may be aggravated, first, by a lack of visibility and accountability in council decision-making; and second, by councillors spending too much time in fulfilling managerial (as opposed to representative) functions (Copus, 2006, p. 5). The notion of directly elected mayors has been one of many ideas suggested to remedy these perceived problems; with the theory being that a directly elected figurehead could reduce the sense of disconnection between local authorities and communities, through a clear separation of local powers that would increase visibility and promote leadership.

Proposals to introduce directly elected mayors were floated by the Conservative government in the early 1990s, but were never implemented. However, Labour came into government in 1997 with firmer plans, making provisions for elected mayors via the Local Government Act 2000. This act forced local councils in England and Wales to dispense with the old committee system of organisation (which was criticised as being slow and unaccountable) and adopt either one of two variations of a directly-elected mayoral system, subject to approval by a referendum of local electors; or, alternatively, a council leader and cabinet system. For London, the situation was rather different. While the act applied to all 32 London boroughs, arrangements had already been put in place under the Greater London Authority Act 1999 to establish the new London assembly and the office of mayor of London, which had been subject to approval by a local referendum in 1998.

For those few local councils that made the switch to a directly elected mayor, this represented a radical change in some respects; with the leader of the local council changing from an indirectly elected and, at times, remote figure, to a directly-elected and perhaps more 'presidential' figure. Some believe that this arrangement has offered benefits - particularly in making local government more accountable, through the creation of a clear and widely-recognised leader of the executive (see, for instance, Leslie and Lodge, 2008, p. 12). However, on the other hand, there is no evidence to suggest that mayoral elections have boosted turnout or stimulated wider public interest in local politics; a problem that some have attributed to the fact that the powers of the mayors created through the Local Government Act have not been significantly greater than those of indirectly elected council leaders (Copus, 2006, p. 208).

Overall, the push for more directly elected mayors could therefore be argued to have been something of a flop thus far. Including the mayor of London, there are now only 13 directly elected mayors in England. Most councils have opted for the cabinet and leader option offered by the Local Government Act, and the public have generally shown little support - or even interest - in the issue of elected mayors. Indeed, only a handful of referendums on the proposal to date have been triggered by petitions from the public themselves (which require a minimum of five per cent of local electors in favour); leaving most to be decided on by a vote of the local council. Furthermore, a majority of the referendums that have taken place have resulted in 'no' votes - and on relatively low turnouts.

Yet despite this, the desire of central government to increase the number of mayors shows little sign of abating. Indeed, the coalition government came to power in 2010 pledging to 'create directly elected mayors in the 12 largest English cities, subject to confirmatory referendums' (HM Government, 2010). As in accordance with the government's localism agenda and, more specifically,

the provisions of the Localism Act 2011, the push for more elected mayors is being linked with plans to decentralise a range of powers to local authorities on a city-by-city basis (Department for Communities and Local Government, 2012). In May 2012, referenda for elected mayors took place in 10 cities (Birmingham, Bradford, Bristol, Manchester, Leeds, Nottingham, Sheffield, Newcastle-upon-Tyne, Coventry and Wakefield), with all but one (Bristol) of these proving to be unsuccessful. The other two cities originally included under the government's plan - Leicester and Liverpool - have already moved to adopt the model; with Leicester having elected its mayor in 2011, and Liverpool electing their mayor in May 2012 (together with Salford, where the Council decided to move to a mayoral system in January 2012). Elsewhere, meanwhile, Doncaster held the only referendum in May 2012 on whether or not to *retain* the mayoral system, which resulted in a resounding affirmation (62 per cent voted 'yes') of the mayoral system by the electorate there.

In general terms, therefore, local democracy in the UK, but particularly in England and Wales, cannot be regarded as meeting desirable criteria of fairness and electoral accountability. Yet, our concerns about accountability and responsiveness in local government also relate to the way in which local government operates and the manner in which citizens connect, or fail to connect, with it outside of election times. It has been well documented that there is much public confusion about the roles and responsibilities of local government, both with regard to the division of functions between elected local councils and a wide range of other unelected local bodies, as well as possible confusion about who does what in areas with two tier local government (Wilks-Heeg and Clayton, 2006). The fragmentation of local governance has undoubtedly clouded local accountability and rendered the source of local democratic leadership increasingly unclear. In particular, in the two-tier structure there is a popular tendency to view 'the council' (i.e. the district council) as the primary local public agency, regardless of the actual division of responsibilities for services (Wilks-Heeg and Clayton, 2006). In addition, democratic accountability in local government is further blurred via the growing tendency for local policy to be shaped through partnership mechanisms (see Section 3.3.3). These tendencies have long been a feature of central government policy towards local government, and have continued and intensified since the change of government in 2010. Partnership mechanisms may also involve a conflict between 'commercial confidentiality' and democratic accountability.

Local government as a creature of statute is obliged to behave in some particular ways in terms of its internal governance, and central government is thereby able to insist on standards of openness. For example, local authorities have been obliged since 2011 to publish details of all spending items of over £500. The ability of councils to close their plenary and committee proceedings to the public is strictly limited in law. But by the same token there are many decisions in which the autonomy of local institutions is limited by centrally-determined rules rather than local wishes, particularly in the case of planning. Local government's lack of fiscal autonomy also means that most of its spending decisions are taken according to national priorities. The extent of local autonomy is financially restricted in several ways, most notably by the fact that most local authorities are highly dependent on grants from central government, with only 15 per cent of local government expenditure funded from taxes raised locally, as Figure 3.3k shows. By comparison, around half of local government income in England comes from central government grants, and a further 10-15 per cent from national non-domestic rates (NNDR), which are allocated to local authorities by central government. A further 15 per cent of English local government revenue originates from fees, charges and rents.

Figure 3.3k: Source of local government income, England, 1997/98-2008/09



## Democratic Audit

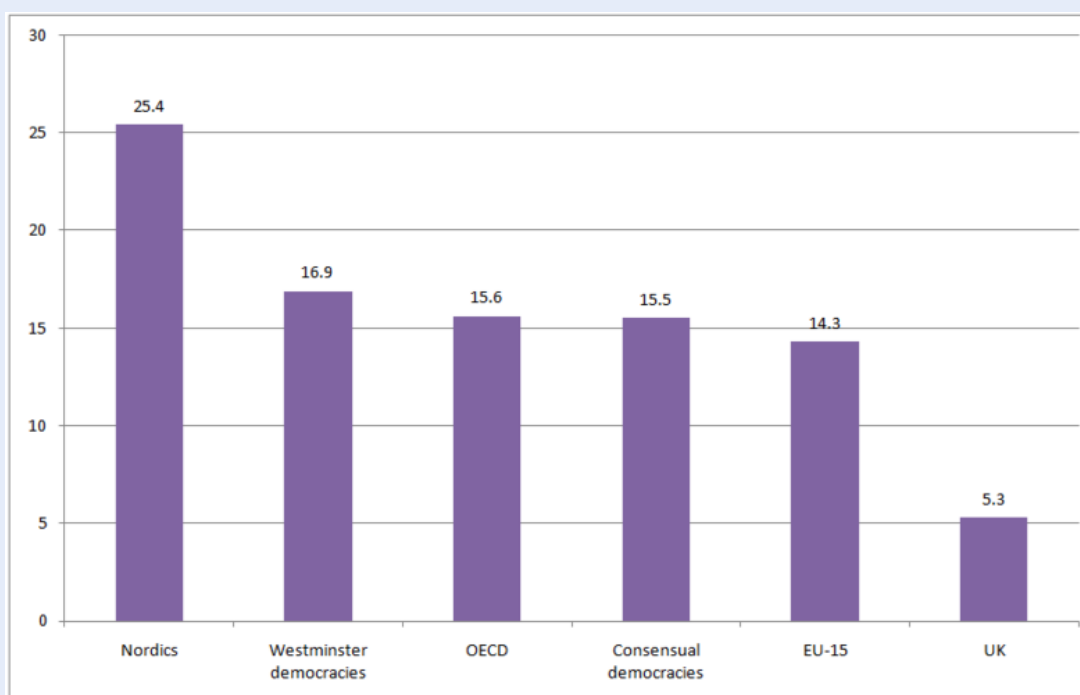


Note: NNDR = National Non-Domestic Rates

Source: Local Government Financial Statistics (1999-2010)

Despite the frequent controversies about council tax rates in the UK, local taxes accounted for a mere five per cent of total UK tax revenue in 2009. Only eight countries in the OECD raise a smaller proportion of total tax revenue from sub-national tier of government, and in federal countries such as Switzerland and Canada, the share of tax revenue attributed to state/regional and local government can be 40 per cent or more. However, even in some non-federal systems, local taxation plays a significant role, notably in a number of the Nordic countries, where local taxes generally account for between one quarter and one third of total tax revenue. It cannot automatically be assumed a low share of taxation from sub-national sources equates to a lack of fiscal autonomy. For instance, the Netherlands is highly decentralised, despite the fact that sub-national government accounts for less than five per cent of total tax revenue. Nonetheless, the data presented in Figure 3.3I show that the UK's levels of tax revenue originating from sub-national government are very much out-of-step with the average levels found in our comparator groups of democracies.

Figure 3.3I: Proportion of tax revenue attributed to sub-national government, UK and groups of comparator democracies, 2009



Source: OECD (2011)

Despite the current coalition government's emphasis on 'localism', there are no current plans to address this situation. Instead, recent grant settlements for local government have cut central government support sharply, most notably in areas which had previously been allocated additional funds on the basis of levels of social need locally ([Wilks-Heeg, 2011](#)). While previous restrictions in local autonomy are being reduced, notably the ring-fencing of budgets by central government funds and the setting of centrally-defined service targets, it is difficult to see how local authorities will be able to assert greater autonomy in the context of deep budget cuts.

The evidence presented in this section is highly mixed. Developments associated with devolution are clearly the most encouraging areas of improvement identified. While turnouts in devolved elections have been consistently disappointing, and have fallen over time, they nonetheless represent an improvement on levels of participation in local elections. Meanwhile, we have identified a number of more clearly

positive developments in relation to devolved elections and institutions. In particular, it is evident that the electoral systems used for devolved elections produce far more proportional outcomes than those for the House of Commons and that devolved legislatures have proved more open and responsive to citizens than the Westminster parliament. The introduction and development of successful petitioning systems by both the Scottish parliament and the Welsh assembly is particularly encouraging.

However, the concerns which we have expressed in previous Audits in relation to England's position under devolution clearly remain. The democratic dilemmas raised by the 'English question' have certainly not been resolved by the coalition removing most of the regional governmental apparatus built up by previous administrations, Labour and Conservative, since the early 1990s. Indeed, the establishment, at a sub-regional level, of private sector-dominated LEPs simply raises a fresh set of issues about the democratic deficit which persists in England in the space between elected local government and the UK parliament. Moreover, we find that local government presents perhaps the biggest problem of all in sub-UK government, particularly in the English regions, where no devolved bodies exist. The democratic credentials of local government are seriously undermined by low election turnouts, the clear tendency for local elections to be shaped by national issues, frequently disproportional election results, the size and remoteness of most local councils and the relative lack of local autonomy. Initiatives such as elected mayors have done little, if anything, to overcome these problems and we have little faith that the coalition's particular brand of 'localism' will succeed in addressing the problems we highlight.

### 3.3.3 Cooperation with local partners and communities

How extensive is the cooperation of government at the most local level with relevant partners, associations and communities in the formation and implementation of policy, and in service provision?

Local governance in the UK is highly complex, and particularly so in England. While elected local authorities are major providers of key public services, they operate alongside a myriad of unelected service providers spanning the public, private and voluntary sectors. Further complexity arises from the growth of numerous forms of multi-agency and multi-sector partnerships in local governance, often created in response to growing fragmentation. Such partnerships operate at a variety of geographical scales, from individual neighbourhoods to entire sub-regions, and are most notable in policy areas such as economic development, regeneration, social exclusion and community safety. Finally, there is also a great variety of consultative and participatory mechanisms, designed to encourage public and community involvement in shaping policy priorities and service delivery. These arrangements vary from formalised structures, such as neighbourhood forums, through to one-off surveys of local residents about particular issues.

It is beyond the scope of this section to map the full range of organisations involved in local governance in the UK, not least because arrangements vary significantly between different parts of the UK, including between different regions and sub-regions of England - for detailed local mapping exercises, see Wilks-Heeg and Clayton (2006) on Burnley and Harrogate, and [Wilks-Heeg et al. \(2011\)](#) on Merseyside. In addition, there is a well-documented tendency for local governance arrangements to be relatively unstable. Major sources of instability include successive national and local reorganisations of the NHS; the regular creation, merger and abolition of organisations charged with economic development and regeneration; and the growing tendency for functions to be 'hived off' from local government to single-purpose public bodies and arm's length corporations.

Despite the tendencies referred to above, local authorities generally remain the principal, if not only, multi-functional providers of local public services, with key responsibility for, among others, refuse collection and disposal, street cleaning, environmental health, parks, leisure and recreation, local economic development, planning, highways, licensing, education, libraries, and social services. However, as noted above, local governance involves a large number of generally single-purpose agencies, which range from small housing associations to primary care trusts (due to be abolished in 2013), whose budgets rival those of the largest local authorities. These unelected bodies have frequently been labelled 'quangos' because of their obvious common feature - they operate with varying degrees of independence from the formal structures of local democratic political control. Moreover, the majority of local public spending is controlled by these unelected agencies. Recent estimates comparing the spending power of local and regional agencies found that the share of public expenditure under local democratic control was likely to be around 40-50 per cent at most (Wilks-Heeg and Clayton, 2006; [Wilks-Heeg et al., 2011](#)). Moreover, in two-tier local government structures, it was found that district councils account for as little as five per cent of total public spending within their own territorial boundaries (Wilks-Heeg and Clayton, 2006).

Unsurprisingly, given this context, there is significant public confusion about the roles and responsibilities of different agencies in local governance networks. The fragmentation of local governance has undoubtedly clouded local accountability and rendered the source of local democratic leadership increasingly unclear. In addition, democratic accountability in local government is further blurred via the growing tendency for local policy to be shaped through partnership mechanisms, which have mushroomed via national and local attempts to tackle the problems which arise from the complexity and fragmentation which characterise contemporary local governance. Partnerships are especially prevalent in policy areas characterised by multi-agency collaboration, such as crime and community safety; short-term area-based initiatives designed to regenerate a deprived area, improve educational standards or health outcomes; and efforts to engage the private sector in local, sub-regional or regional economic development initiatives. Examples during Labour's period in office included New



Deal for Communities partnerships, Sure Start schemes, Health Action Zones, Youth Offending Teams, and Drug Action Teams. Moreover, at a local authority level, efforts were made to coordinate all joint-working between public, private and voluntary sectors via local strategic partnerships (LSPs). Assessments of the success of local partnerships have generally been mixed, as Case Study 3.3d shows with regard to LSPs.

### Case Study 3.3d: Local strategic partnerships

Local strategic partnerships (LSPs) were created from the early-2000s onwards in almost all local authority areas in England. The rationale for LSPs was to bring together representatives from the public, private and voluntary sectors, as well as from the local community to coordinate activity and enable local social and economic needs to be met more effectively. In Scotland and Wales, equivalent bodies exist called community planning partnerships and local service boards, respectively.

Opinion on the performance of LSPs has been mixed. The first evaluation of LSPs, commissioned by the former government ([Office of the Deputy Prime Minister, 2006](#)), argued that they had become a 'vital part of the institutional arrangements of modernised local governance'. However, the report also felt that the organisation of many meant that they were not effective in providing the 'joined up' and coordinated approach to local governance that they were intended to. The effectiveness of the partnerships was found to be highly variable; and the report expressed concerns over the accountability of partnership to the public and its stakeholders, as well as the efforts to engage stakeholders with the work of the partnership. These criticisms were also echoed in a report by the [Audit Commission \(2009\)](#), which uncovered 'little evidence that councils [were] using overview and scrutiny arrangements to hold LSPs, and partners, to account.'

In similar fashion to the first evaluation of LSPs, the former government's long-term evaluation of local area agreements (LAAs) and LSPs concluded that the partnerships had been 'valuable arenas for sharing local concerns for establishing a collective vision and coordinating strategy' ([Department for Communities and Local Government, 2011](#)). But it also found that participation in LSPs was difficult, in practice, for many over-stretched voluntary sector bodies; and that the contribution that the sector could make was not always appreciated by other partners within LSPs. Likewise, the report noted that difficulties were sometimes encountered in enlisting the participation of the private sector. According to one study, the community plans produced by the partnerships are often vague and abstract, and there are frequently few mechanisms to ensure that agreed priorities 'percolate down' to the front line ([Davies, 2009](#)).

Although almost every local authority area had its own LSP at one stage, many have now been abolished or reformed following the formation of the coalition government, which forced partnerships to adapt to a reduced role with the abolition of many of the statutory duties that they used to perform ([Local Government Improvement and Development Agency, 2010](#)).

Concerns about weak accountability in local governance have been recognised, but the case for extending (or re-establishing) electoral accountability for local public services has been resisted. Instead, other mechanisms have been put in place across the public sector that are intended to enhance the scope for local people to hold organisations to account and to become involved in the decision-making processes. Over several decades, but especially under the Labour governments of 1997-2010, substantial emphasis has been placed on local public bodies 'engaging' local residents and service users. The forms of engagement adopted have varied enormously, ranging from the direct representation of tenants on the governing boards of housing associations to patient satisfaction surveys carried out by local NHS bodies. Moreover, most public bodies use a combination of methods to involve and consult residents and service users. Indeed, the range of approaches to consultation have become almost bewilderingly diverse. Lowndes et al. (2001a) identify five distinct categories of consultation technique used by local authorities alone, comprising a total of 19 different forms of consultation. As one recent study of local democracy in two small northern English towns noted, the possibilities for local residents to express their views to service providers range from 'traditional' approaches such as attending public meetings, through to distinctively contemporary methods such as text-message consultations (Wilks-Heeg and Clayton, 2006).

However, there is an uneasy relationship between the different forms of democracy that have been layered on top of each other at a local level over the past 40 years. Traditional forms of representative democracy were first augmented by the growth of participatory democracy during the late-1960s and early-1970s, as reflected, for instance, in the creation of community health councils and the election of parent governors to school governing bodies. However, in more recent years there has been a shift away from collectivist notions of citizen engagement towards more individualistic notions of 'customer responsiveness', leading to initiatives such as surveys of service users and the establishment of 'customer complaints' procedures (Wilks-Heeg and Clayton, 2006). There are clear limitations to these more consumerist approaches to participation. Only a minority of local residents respond to consultation processes or use 'customer feedback' mechanisms. Moreover, substantial investment in market research, focus groups, consultation events, and so on, has not prompted levels



of participation that might mitigate concerns about levels of electoral participation. There is little evidence that local people feel 'personally empowered' via the process of being recast as 'consumers' (Wilks-Heeg and Clayton, 2006). Indeed, while recent reforms have required local councils and other public bodies to ascertain, and respond to, the views of local people through consultation exercises, more often than not, these mechanisms create a democratic paradox. The resulting plethora of consultation and engagement processes are inherently flawed because citizens' expectations are raised, while the capacity of local government to respond remains tightly restricted, due to the restrictions on local autonomy which we highlight in Section [3.3.1](#).

In summary, local governance in England is characterised by a complex machinery of cooperation between elected local authorities and other organisations, as well as between local authorities and local communities. However, it would be highly misleading to regard these arrangements as a positive indicator of the health of local democracy. Numerous reservations have been expressed about the effectiveness of partnership working, and about the lack of accountability associated with multi-agency and public-private collaboration. Meanwhile, evidence that the myriad of community consultation and involvement mechanisms actually serve to bolster local democracy remains thin on the ground. While there are undoubtedly individual examples of democratic 'good practice' in partnership-working and community consultation, we would argue that these offer no substitute for the democratic accountability provided by local elections.

## Conclusion

In our last full Audit in 2002, we underlined the significance of devolution as a counter-trend to the increasingly centralised nature of the UK state. At the same time, we noted the obvious tension arising from the absence of devolution to England, not least because of the restricted autonomy of English local government. A decade on, these tensions are more obvious than ever, although they have also begun to take on new dimensions. The success of the devolved institutions is highly apparent and, while turnouts in devolved elections remain a concern, there is clear evidence that devolution has been instrumental in leading a process of democratic renewal in Scotland, Wales and Northern Ireland. However, the success of devolution is increasingly posing problems for the UK political system as a whole. In particular, the commitment of the new SNP majority government, formed after the 2011 Scottish elections, to hold a referendum on independence underlines that demands for greater autonomy have by no means been settled by devolution. Meanwhile, the growing 'devolution gap' between Scotland and England has arguably only been enhanced by the decision of the UK coalition government to dismantle the existing English regional governance structures. Finally, if the coalition's commitment to localism is intended to reverse decades of centralisation of government in England, it is predicated on a high-risk strategy that local government will be able to find meaningful ways of using a range of new freedoms and flexibilities in the context of large-scale cuts in their revenue base.

All of the areas of improvement we identify in this chapter relate to devolution and, in virtually every case, they represent a consolidation of trends we identified in our last Audit ten years ago. The devolved legislatures have clearly built on the strong democratic foundations which we noted in 2002. The openness and responsiveness of the devolved institutions, as exemplified by the development of successful petitioning systems, stands in stark contrast to the Houses of Parliament. Meanwhile, party systems under devolution have adapted to, and fostered, a less adversarial style of politics and governance than typifies Westminster. The adoption of distinctive education and health policies under devolution underlines the growing confidence, and the clear democratic legitimacy of the devolved legislatures. Yet, all of this presents a growing problem with regard to England, where Labour's plans to move towards elected regional government failed at the first hurdle. Indeed, the key dilemma facing the UK political system is arguably not the growth of support for greater autonomy in Wales, or even the demands for Scottish independence, but rather the question of how to handle the 'English question'.

Although it is rarely articulated as such, the dominance of English politics by the UK parliament and central state is becoming the central anomaly of UK democracy, despite the fact that only 16 per cent of the UK population live in the territories with devolved governments. The failure to find a way of decentralising power in England, whether through the creation of regional governments, the strengthening of local government or the establishment of an English parliament, must not be overlooked as a major source of constitutional instability in the UK. It is no exaggeration to suggest that while the 'Westminster model' of democracy has been retained in England, other parts of the UK have moved towards forms of democracy which are more typically associated with the consensual democracies or the Nordic countries. Meanwhile, placed in the wider context of an overly-centralised English state, attempts to reinvigorate local democracy in England via initiatives such as directly-elected mayors or requirements on local councils to consult local residents have unsurprisingly failed. In the main, the continuing concerns which we identify in our current Audit, as well as many of those which we consider to be new or emerging concerns, also represent a consolidation of issues we identified a decade ago. The lack of local autonomy, the size and remoteness of local authorities, the persistence of low turnouts in local elections are all familiar issues to anyone who has studied English local government. Similarly, controversies surrounding the Barnett formula date back virtually to its introduction, as a temporary expedient in 1978. In short, the tensions and contradictions we highlight in this chapter are not new, but the long-standing failure to address these issues is now causing them to intensify.

While the UK is often described as having adopted asymmetric devolution, it might be better to describe it as 'imbalanced' or even 'unsustainable'. Certainly, the dynamics of devolution in the UK are central to one of the five key themes running throughout this Audit, namely that the UK is subject to growing constitutional instability. At the same time, the notable successes of the devolved legislatures

contrast with the failure of to find ways of securing the democratic renewal of the UK political system as a whole, and of stemming the wide-ranging loss of public faith in political and governmental institutions which we highlight throughout this Audit. Representative democracy can hardly be said to have been fully reinvigorated under devolution, not least because of disappointing levels of turnout in devolved elections. However, what has been achieved under devolution should not be underestimated, particularly with regard to the way in which representative institutions in Scotland and Wales have been bound into a closer relationship with civil society. Throughout this Audit, we have shown how poorly the UK compares to other established democracies, across a wide range of democratic indicators. Yet, if we are to identify ways for the UK to tackle the very real democratic problems we identify, we could do worse than begin by learning more lessons from within our own national territory.

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## 4. Democracy beyond the state

### 4.1. External influences on the country's democracy

#### Executive Summary

This chapter reviews the available evidence relating to the three 'search questions' concerned with external influences on UK democracy.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. Steps taken to improve the democratic legitimacy of the European Union.**

Under the Lisbon Treaty of 2007 various provisions were made to strengthen the position of national parliaments with respect to the EU. The position of the European parliament was enhanced also. Changes to the procedure of the Council of Ministers has made their business more transparent; and a basis was provided for a system of 'European Citizens' Initiatives', which could enable citizens to call upon the European Commission to act in particular areas. (For further details and discussion, see Section [4.1.1](#))

#### **Areas of continuing concern**

##### **1. The lack of transparency and direct democratic accountability of international organisations.**

Various international and regional organisations such as the European Union and World Trade Organisation may well perform necessary and potentially democracy-enhancing functions. Yet they are criticised both for their negative impact upon the autonomy of democratic nation states; for their lack of transparency; and - with the exception to some extent of the European Union - their lack of direct democratic accountability. (For further details and discussion, see Section [4.1.1](#))

##### **2. Continuation of European Union 'democratic deficit'.**

The European Union is at the peak of its power to date in certain senses: the scope for its policy activity, which has broadened

substantially; and the potential for it to act on a basis of qualified majority voting, potentially against the wishes of some member states. Its decisions are directly incorporated into the law of member states. Concerns about the so-called 'democratic deficit' in EU affairs - that there is no clear line of democratic accountability for the decisions that it makes - persist. Yet, there is also evidence to suggest that the UK would face as much of a 'democratic deficit' operating outside the EU as it does inside it. (For further details and discussion, see Section [4.1.1](#))

### **3. The 'special relationship' with the United States serves to compromise UK foreign policy autonomy.**

In the period since the Second World War, the UK has tended to place a high premium on close relations with the US. This relationship has been founded in a variety of concerns, including matters of security and intelligence, and military issues. At times, for instance over UK participation in the Iraq War of 2003, the desire to adhere to this alliance has appeared to override more regular democratic decision-making and led the UK into activities of a democratically questionable nature. It is not clear that the UK obtains the influence over the US that it seeks through public support for many of its policies; nor that the negative consequences of pursuing a more independent foreign policy would outweigh the potential benefits. The value of the special relationship is not generally the subject of wide political scrutiny and debate. (For further details and discussion, see Sections [4.1.1](#), [4.2.2](#), [4.2.4](#) and [2.4.3](#))

### **4. The role of UK in supranational arrangements testing traditional constitutional/democratic models.**

Parliamentary sovereignty is a central doctrine to the UK constitution as traditionally understood. This doctrine is called into question both by the European Communities Act 1972 and the Human Rights Act 1998, both of which are protected from implied repeal by subsequent acts of parliament, a break with regular constitutional practice. Moreover, parliament is unable by convention to alter the royal rules of succession without obtaining the agreement of all the other states of whom the UK monarch is also head of state. These doubts about parliamentary sovereignty are problematic because they create a lack of clarity regarding how UK democracy functions, but it is by no means clear that repealing the European Communities Act 1972 and the Human Rights Act 1998 would resolve the problem. (For further details and discussion, see Section [4.1.1](#))

### **5. Parliamentary EU committees lack of formal authority.**

When placed in comparative European perspective, committees charged with oversight of the European Union lack the formal ability to control or oversee the government. Moreover, the UK parliament is not characterised by an institutional environment in which parliamentarians cooperate across party lines to assert their authority over the government. In this sense, both requirements for a strong system of parliamentary oversight of European business are absent. (For further details and discussion, see Section [4.1.3](#) and Table [4.1e](#))

### **6. Lack of parliamentary authority in overseeing activity within international organisations.**

The rights of the UK parliament with respect to UK participation in international organisations is even weaker than its position with regard to the European Union. Diplomacy continues to be conducted under the non-statutory royal prerogative. Mechanisms such as the 'mandating' of ministers prior to their attendance at international negotiations used in other countries have not yet been adapted to the UK. (For further details and discussion, see Sections [4.1.3](#) and [4.2.4](#))

## ***(c) Areas of new or emerging concern***

### **1. Exaggerated claims about globalisation have served to restrict discussion of economic and social policy options.**

It is not at all clear that economic globalisation is, of itself, an irresistible force that will inevitably serve to entirely compromise the autonomy of nation states. Indeed, while the UK has often portrayed itself as unavoidably responding to world economic trends in its policies of economic liberalisation, the UK is certainly not amongst the most globalised or open economies. This observation leads us to the conclusion that globalisation has been used primarily as a rhetorical device to close off debate on different policy options in the UK, rather than responded to it as a reality. (For further details and discussion, see Section [4.1.1](#) and the [Introduction](#) to Section 1.4, and Table [4.1a](#) and Figure [4.1a](#))

### **2. Domestic policies adopted in response to globalisation are causing the UK to diverge from European social welfare norms.**

Evidence exists that there has not been a single pattern of policy response in European democracies - or indeed internationally - to the trend of globalisation. In the area of welfare policies, some countries have been more disposed to retrench than others. It is in the liberal welfare states, such as the UK, that retrenchment has been greater, as compared with the social democratic welfare states. (For further details and discussion, see Section [4.1.1](#) and [Introduction](#) to Section 1.4, and Table [4.1a](#) and Figure [4.1a](#))

### **3. The impact of coalition retrenchment plans upon the capacity of the Foreign Office.**



The capacity of the UK effectively to secure influence over decisions impacting upon it may be undermined by reductions in the Foreign and Commonwealth Office (FCO) budget under the present coalition retrenchment plans. The FCO had already undergone spending cuts; and its scope for absorbing reductions was less than in some other departments. (For further details and discussion, see Section [4.1.2](#))

## Introduction

The external influences bearing on a state are a crucial determinant of the quality of its democracy, being both capable of helping and hindering national democratic processes and institutions. This much is demonstrated by an observation from the previous Audit that a 'country might have the most perfect democracy internally, but enjoy little real self-government if most of the decisions that mattered for the life of its citizens were taken beyond its borders' (Beetham et al., 2002, p. 274). We use this simple premise as the basis of our analysis in this chapter, which is split into three areas. In the first, we examine, in general terms, whether the external influences affecting the UK compromise its democratic processes and national interests; while in the second and third, we assess the extent to which the influence and decision-making power that the UK government wields within international organisations, is both equitable and subject to proper parliamentary scrutiny and public debate at home.

As a key member of various international institutions, and one of the most fully-integrated units in the new global economy, the UK, like many other comparable states, is of course subject to a broad range of external influences, which include political, diplomatic and trade organisations; powerful corporate bodies operating in industry and finance; and even other nation-states more powerful than itself. Yet, as we discover in this chapter, the influence that these entities exert over the UK does not always appear to be to the benefit of its democracy. Indeed, the decision-making of international bodies such as the EU and the WTO, for instance, continues to be criticised for a lack of transparency and accountability; whilst elsewhere, public unease appears to be growing over corporations intent on shaping domestic policy at the same time as paying very little tax on profits made in the UK. In the realm of foreign policy, meanwhile, we find that the UK government continues to be influenced to an unhealthy extent by the position of the United States - despite that country's ongoing relative decline. A constitutional doctrine central to the traditional model of UK democracy, that of parliamentary sovereignty, is tested by UK participation in such organisations as the European Union.

Although these are the same concerns, for the most part, that were made by the previous Audit, the threat that they pose, collectively, to the integrity of UK democracy appears to have grown, just as the ability of democratically-elected governments to effect change appears to have shrunk. This trend has been particularly evident in relation to the unbalanced relationship between government and international industry and finance. On this subject, the previous Audit (Beetham et al., 2002, p. 275) felt that, although the UK, like other countries, was undoubtedly vulnerable to the whims of transnational corporations and financial markets, the danger posed by them was mitigated by a combination of the UK's economic weight, reducing national debt and adequate exchange reserves. However, events since the onset of the worldwide financial crisis in late-2007 have arguably shown the autonomy of states such as the UK to be rather more limited now than previously appeared to be the case. Indeed, having taken on considerable debts in bailing out crisis-stricken financial institutions, national governments in Europe and beyond find their economic policies dictated not by the wishes of the electorates to which they are supposedly accountable, but increasingly to the privately-run credit ratings agencies whose assessments affect the ability of a state to borrow money through government bond issues. Mainstream acceptance of the idea that globalisation dictates certain policy options has served to close off discussion of different policy options for the UK. The policy courses that have been entailed have also led to divergence from social policy norms in Europe.

Elsewhere, meanwhile, the impact of the EU is also no less ambivalent, despite the introduction of reforms designed to improve the democratic credibility of that organisation in the eyes of the EU citizenry. At the same time, the UK approach to the EU falls between two stools of either: accepting the constraints upon national autonomy that membership entails because of the gains, including of a democratic nature, that can be obtained; or on the other hand, not participating in order wholly to preserve national sovereignty. In international affairs, the UK continues to punch above its weight; generally enjoying far greater influence within multilateral bodies than its population alone would entitle it to, although without sufficient oversight of this power from both parliament and the public.

### 4.1.1 External influences on UK democracy

How free is the country from external influences which undermine or compromise its democratic process or national interests?

External influences upon a state can take many different forms and can, as is discussed above, serve to challenge internal democratic processes. In this subsection, consideration is given to the impact of economic globalisation; UK membership of international and regional organisations, including the European Union (EU); and the UK's bilateral dealings with a key ally, the United States. It is also necessary to consider the relationship between the internal constitutional arrangements of a state and its external dealings. In this context, the status of the UK doctrine of parliamentary sovereignty is considered.



## ***Economic globalisation***

In our last full Audit, we touched briefly on the role of global economic forces as an external influence which potentially undermines the UK democratic process. In particular, we noted the potential vulnerability of UK political actors to threats of 'capital flight' associated with multinational corporations and international financial actors. At the same time, we noted that the UK ranked among those national economies with the least exposure to volatile international economic conditions.

In the period since our last Audit, debates about the origins, nature and consequences of globalisation have developed considerably. As a result, discussion of the implications of globalisation for democracy have featured more significantly in both academic social science research and public policy-making. Within the academic literature, the consequences of globalisation for democracy has been addressed in two contrasting ways, with this distinction also reflected in much political and policy debate. First, a number of authors have attempted to assess whether globalisation has fostered the recent growth in the number of democracies world-wide, by virtue of creating the conditions of economic liberalisation which have historically promoted demands for political freedom ([Li and Reuveny, 2003](#); [Eichengreen and Leblang, 2006](#)). Second, a contrasting body of work has considered the extent to which globalisation has brought about a 'power shift', which has eroded the autonomy and capacity of the state and therefore narrowed the policy options open to democratically elected governments (Cox, 1992; Schmitter, 1996). In this second body of literature, various 'threats' to democratic decision-making arising from globalisation are discussed. These potential threats include: the enhanced power of international financial interests (Cerny, 1999); the growth of multinational corporations, whose turnover is often greater than the GDP of small European states (Dicken, 1998); and the growing influence of international organisations such as the EU, the World Bank and the International Monetary Fund ([Jones and Hardstaff, 2005](#)).

Before turning to consider the evidence relating to how globalisation may have impacted upon UK democracy, it is vital to note that there is much disagreement about what globalisation constitutes. Indeed, despite - or perhaps because of - its widespread conceptual usage, protagonists in debates about globalisation have tended to define the term in a multitude of different ways or, more commonly, not attempted to define it at all. Consequently, the assumed nature of globalisation is often left implicit, while in some cases the concept is used in a relatively crude rhetorical fashion. At its core, however, globalisation is generally defined with reference to a set of economic and technological changes which are held to have dramatically increased economic and communication flows across what are seen as increasingly porous national borders. Hence, globalisation is generally associated with notions of the world becoming increasingly interconnected, with goods, services, investment, financial transactions and skilled labour moving freely between countries, and of the globe effectively 'shrinking' in comparison to previous decades, due to rapid developments in telecommunications and the continued growth and expansion of air travel.

As noted above, it has been suggested by a number of commentators that the liberalisation and intensification of global economic flows has fostered the growth in the number of democracies over the last four decades. However, attempts to assess the validity of this 'globalisation promotes democracy' thesis empirically have generally been inconclusive and, in some instances, sceptical. Certainly, the era of economic globalisation has coincided with a period of democratisation, which has seen a trebling of the number of electoral democracies worldwide from around 40 in the 1950s to about 120 today. However, as [Eichengreen and Leblang \(2006\)](#) note, it would appear that the relationship between globalisation and democracy is one of 'bi-directional causality', whereby democracy and globalisation foster one another via a sort of positive feedback loop. Meanwhile, [Li and Reuveny \(2003, p. 52\)](#) have found that while 'the spread of democratic ideas promotes democracy persistently over time', indicators of economic globalisation suggest that its association with the growth of democracy is, if anything, negative. As the same authors put it:

'the growing capital mobility accompanying globalization produces a political dilemma for governments who want both economic competitiveness and democratic political accountability. Footloose capital is generally not accountable to the public. The mobility of capital reduces democratic governments' ability to respond to popular demands for social welfare and effective economic management. Our findings imply that under economic openness, the room for policy manoeuvring is obviously reduced. Hence, the threats to democracy from financial inflows and foreign direct investments are substantial' ([Li and Reuveny, 2003, p. 53](#)).

These conclusions have been echoed in much of the second body of literature which we identify above. In particular, the early literature on globalisation, particularly that originating from Marxist political economy perspectives, argued that even wealthy western states were increasingly unable to exert themselves against the panoply of powerful external political and economic forces operating beyond their borders (Cox, 1992; Schmitter, 1996; Cerny, 1999). These studies tended to assume that globalisation would lead to competitive pressures on welfare states which would be felt more or less equally by all countries, thus resulting in universal retrenchment and convergence towards the (neo-) liberal 'subsistence' model of welfare (Mishra, 1999). As we noted in Section [1.4.6](#), this analysis was also reflected on the opposite side of the political spectrum, in the form of corporate interests and right-of-centre political parties arguing for a distinctive set of neo-liberal policy changes in areas such as the labour market, social welfare and fiscal policy.

However, we also noted in Section [1.4.6](#) that there is evidence of clear variation in the extent to which individual democracies have

adopted measures deemed to be 'essential' or 'inevitable' policy responses to globalisation. Indeed, empirical analyses have shown that the political and corporate pressures to adapt to globalisation via a neo-liberal 'race to the bottom' are far from evenly spread; and that particular countries have been more susceptible to retrenchment than others. In one view, the impact of globalisation on public policy, and on the welfare state in particular, has been generally exaggerated. Indeed, Liebfried and Rieger (2003) argue that it is the existence of the welfare state which has provided western societies with the degree of social protection which has enabled their democratically-elected governments to push for policies fostering globalisation. Meanwhile, [Dreher et al. \(2006\)](#) find that there is no evidence of globalisation causing shifts in the composition of government expenditure internationally. In addition, there is clear evidence to suggest that the impact of globalisation has been heavily mediated according to the principal welfare regime 'types' operating in established democracies (Swank, 2002; [Korpi and Palme, 2003](#); [Navarro et al., 2004](#); for details of the welfare regimes, see [Introduction](#) to Section 1.4 and Esping-Andersen, 1990).

Indeed, both [Navarro et al. \(2004\)](#) and [Korpi and Palme \(2003\)](#) show that, despite some specific examples of policy transfer, there was no overall convergence among welfare states during the 1980s and 1990s. Thus, retrenchment has been greatest in liberal welfare states ([Navarro et al., 2004](#)) and the value of benefits has been cut less in social democratic welfare states than liberal ones ([Korpi and Palme, 2003](#)). Meanwhile, despite the general reduction in corporate tax rates we noted in Section 1.4.6, the proportion of tax revenue originating from taxes on profits and corporate gains has only fallen in liberal welfare states ([Navarro et al., 2004](#)). As Table 4.1a shows, levels of social expenditure as a proportion of GDP increased across all types of welfare state from 1980 to 1997, but the average increase was significantly higher in social democratic welfare regimes (plus 5.2 percentage points) than it was in liberal welfare states (plus 2.9 percentage points). Moreover, the statistics for public employment in Table 4.1a point to a similar trend, with public employment growing as a proportion of the workforce in social democratic welfare states (plus 6.5 percentage points) compared to a modest decline in liberal welfare regimes (minus 0.9 per cent).

Table 4.1a: Change in social expenditure as % of GDP and in public employment as % of all employment, by welfare regime type (percentage points)

Welfare regime type	Change in social expenditure as % of GDP, 1980-97	Change in public employment as % of total employment, 1974-97
Social Democratic	5.2	6.5
Conservative/corporatist	4	2
Liberal	2.9	-0.9

Source: Adapted from [Navarro et al. \(2004, p. 138\)](#)

There is some more recent evidence, using data from the 2000s, to suggest that the impact of globalisation on social expenditure may be having more of a convergent effect than previous studies had established ([Busemeyer, 2009](#); [Schmitt and Starke, 2011](#)). Nonetheless, it is not at all difficult to find evidence to support the supposition that it is in liberal welfare states in the Anglo-Saxon realm, notably the USA, Australia, New Zealand, Ireland and the UK, that governments have been most enthusiastic in responding to, and championing, demands for neo-liberal policy change ([Seidel, 2005](#); [Sapir, 2006](#)). Indeed, as Colin Hay notes in relation to the UK:

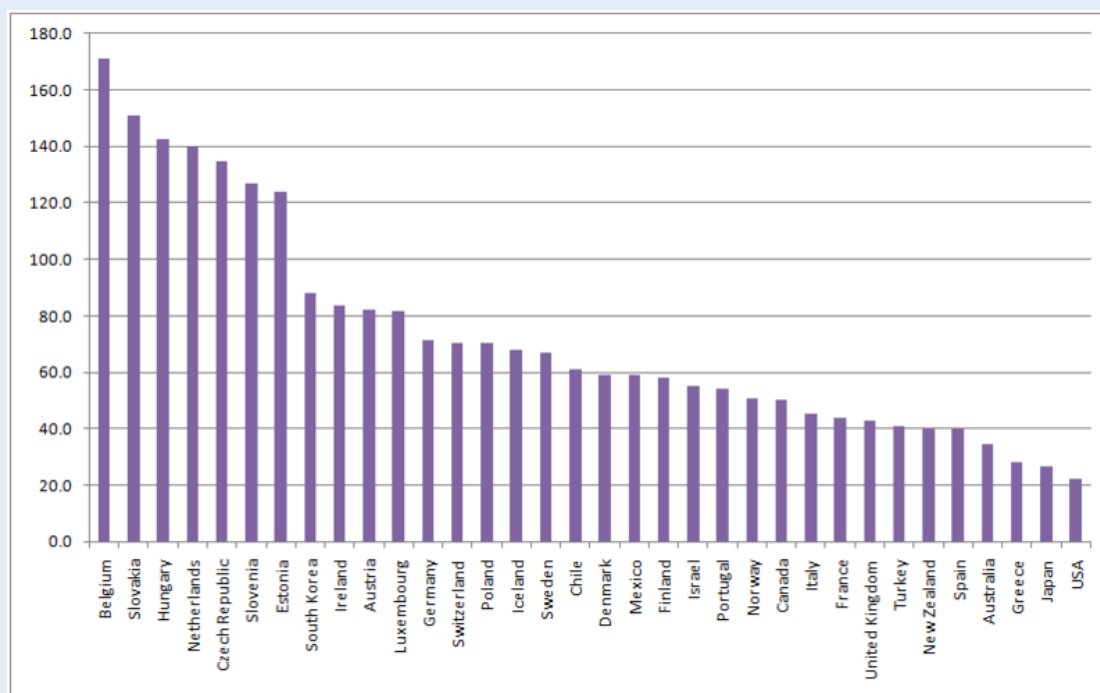
'The British economy has been widely touted, not least by the government itself, as a model of - and for -European competitiveness in an era of globalization. Its unquestionably impressive record (until 2008 at least) of steady and uninterrupted growth, stable and low unemployment, and, certainly in comparative historical terms, low inflation is typically attributed to its lean and flexible labour markets, its fiscal and monetary discipline, and, in European terms, its light-touch regulatory environment. It is, in short, widely seen as a model of adaptation to the imperatives of globalization - and one which other more reform-averse European economies can benefit from emulating' (Hay, 2009, p. 874).

However, as Hay goes on to note, this notion of successful UK adaptation to globalisation is a myth for two key reasons. First, the UK's weak economic performance since 2008 exposed the inherent flaws of an economic model based on boosting consumer demand via 'unprecedented levels of personal debt and the release of equity arising from sustained house-price inflation' (Hay, 2009, p. 876). Quite aside from the impact of the crash which arose from the banking crisis of the late-2000s, the UK was already showing signs by the early/mid-2000s of failing to adapt to increased international economic flows. Thus, the UK's weakness in export markets prompted a sharp rise in its balance of payments deficit from 2001 onwards, while the UK has long been a net exporter of foreign direct investment. Second, Hay argues that the UK economy has not been 'globalised' to anything like the extent that is commonly argued and, moreover, is less exposed to international markets than other European states. As Hay notes, patterns of change in relation to international trade, foreign

direct investment and even financial trading point primarily to a strengthening of economic ties with the rest of the European Union, and to a lesser extent with North America and Japan, rather than to the integration of the UK into a genuinely 'global economy'.

This myth of UK adaptation to globalisation highlights a genuine paradox. For two decades or more, UK public policy has been underpinned by a specific neo-liberal logic of adapting to globalisation, despite the fact, as with other Anglo-Saxon countries, the UK's economy is far less open to international economic forces than most OECD member states. Figure 4.1a shows the ratio of merchandise trade to GDP, a standard measure of the extent to which an economy is open to the international economy, for each OECD member state in 2010. Based on this indicator, the UK's exposure to international markets is the lowest in northern Europe and significantly less than smaller European states such as Belgium, the Netherlands, Ireland and Austria. As the graph shows, most other Anglo-Saxon economies also have comparatively low levels of openness to world trade, including Canada, the USA, Australia and New Zealand.

Figure 4.1a: Ratio of merchandise trade (value of imports and exports) to GDP, OECD members states, 2010



Note: Figures for Australia and New Zealand are for 2009.

Source: [World Bank \(2011\)](#)

Yet, many of the countries with the highest levels of economic openness have higher levels of social expenditure, more tightly regulated labour markets, and lower levels of income inequality than those countries with far lower levels of exposure to international markets ([Rodrik, 1998](#); [Reuveny and Li, 2003](#); [Brady et al., 2005](#)). Indeed, while the strong correlation between economic openness and levels of social expenditure found up until the 1990s (Katzenstein, 1985; [Rodrik, 1998](#)) appears to have diminished ([Bussemeyer, 2009](#)), it remains the case that countries with a high dependency on international trade tend to have lower levels of inequality ([Reuveny and Li, 2003](#)). In addition, a number of small European states have opted to maintain expansive welfare states, with large-scale income redistribution, despite the alleged pressures of globalisation. The most notable examples of this continued commitment to social democratic policies are found in the Nordic countries, which we find to have out-performed the UK on virtually every democratic indicator presented in this study:

'the Scandinavian social democracies of Denmark, Norway, and Sweden [...] have always maintained highly globalized economies, and have institutionalized generous decommodification. Moreover, these countries have increased their decommodification as they became even more internationally open' ([Brady et al., 2005, p. 943](#)).

Despite all these observations, there can be little doubt that claims about globalisation have impacted significantly on UK political debate in recent decades. Yet, there are very strong grounds to argue that it has been the power of globalisation as a discursive construct, rather than as an empirical reality, which has been used to justify the policies adopted by UK governments ([Hay and Rosamund, 2002](#)). In doing so, the UK has diverged increasingly from the European social model and taken an increasingly oppositional stance to EU policies aimed at

promoting social protection and social cohesion ([Hay and Rosamund, 2002](#); [Sapir, 2006](#)). Given the experience of other north European countries, we reject the straightforward view that globalisation acts automatically as an external force which serves to compromise UK democracy. This is not to deny that the dynamics of economic internationalisation do not pose genuine challenges for national representative democracy. It cannot be denied, for instance, that in the financial sector at least the UK has been exposed to external forces which have had and continue to have a detrimental impact on our democratic life. The degree of integration of the UK's banking sector into an international financial network meant that a problem originating in the US mortgage market threatened to destroy our banks in 2008, and led to a prolonged recession and drain on the public finances from which the government was powerless to protect its citizens. That same international network makes possible a huge industry of tax avoidance and evasion that has further weakened our public finances, and transferred a greater burden onto ordinary taxpayers. Furthermore, the external, US based, ratings agencies now set clear limits to the government policies for addressing the fiscal deficits which are deemed acceptable to international lenders, even if they do not determine them.

However, we would also argue that the greater threat to UK democracy arising from globalisation is the use of the concept, by all of the principal political parties, to justify the adoption of neo-liberal policy agendas, including deregulation of the financial services, as a necessary response to the challenge of promoting a competitive UK economy. While neo-liberal policies have without question left both government and citizens increasingly vulnerable to external forces outside our democratic control, it is vital to note that they were originally, and remain, policies of choice. With regard to this latter point, it is vital to note that not only are assertions of UK adaptation to a globalised economy based on a flawed understanding of globalisation, but the policy choices adopted have also failed to provide the UK with a successful economic model. As Hay (2009, p. 877) argues, the UK economy 'has simply not experienced a process of globalization by any but the least exacting of definitional standards [and] despite the rhetoric, Britain is [...] no model of adaptation to globalization'. Yet, as the same author notes, none of this has done anything to prevent UK policy-makers from asserting the need to adjust to global economic imperatives: 'in no other country has globalization been invoked so frequently and so consistently as a source of constraints and imperatives which domestic policy-makers must negotiate and internalize' (Hay, 2009, p. 856).

### ***International organisations***

The UK is a member of a number of international organisations established for the purposes of trade, diplomacy and military assistance - most of which enjoy unquestioned and often implicit support from government, the general public and business interests. However, a small handful of these organisations - including, most notably, the EU and the World Trade Organization (WTO) - do attract criticism from those with an interest in safeguarding and strengthening UK democracy, both from the left and the right of the political spectrum. These concerns are longstanding, and are too manifold to be considered here comprehensively. However, for those on the right, concerns might typically be said to focus on the ways in which particular national democratic values, practices and customs are perceived to be threatened by the loss of sovereignty that membership of international bodies (in particular, the EU) is believed to entail; while for those on the left, criticisms tend to emphasise the ways in which the purportedly shadowy and publicly unaccountable structures and practices of international organisations are vulnerable to lobbying by corporate interests.

There is at least a superficial level of plausibility to both of these arguments. It is certainly true, for instance, that international organisations are not, for the most part, subject to a great deal of direct popular control or accountability; and this should be the cause of legitimate concern. Yet, it could be asked in response, firstly, how realistic an objective this would be to adopt in a world still characterised by quite distinct and, at times, antagonistic national identities. Even the EU, for example, with its directly-elected European parliament, remains to a great extent a fragmented collection of peoples lacking any strong sense of shared European identity - having relatively little interest in European affairs, and exhibiting a noticeable disinclination to assert their right to influence EU policy via European elections. More fundamental still, however, is the question as to whether direct public accountability is really necessary at all for an international organisation to satisfy commonly imagined notions of democratic legitimacy. Although Dahl (in Shapiro and Hacker-Cordón, 1999), for instance, argues that the inverse relationship between 'efficacious popular control', on the one hand, and 'consequential decision-making', on the other, makes it impossible to operate international organisations on a democratic basis, he nevertheless concedes that they can fulfil valuable and, in many cases, democracy-enhancing ends. Elsewhere, others (see, for instance, Grant and Keohane, 2005, pp. 29-30) have argued, similarly, that despite the fact that large international organisations may score poorly on direct democratic accountability, they often have well-developed mechanisms to ensure fiscal and supervisory accountability to the governments of member states; and that membership of international organisations can in practice boost other aspects of democracy within member states, by contributing, for example, towards the protection of human rights (through organisations such as the European Court of Human Rights), the provision of high-quality and politically-insulated information on which to base policy (through organisations such as the Intergovernmental Panel on Climate Change), and the restriction of special interest factions (Keohane et al., 2009). Likewise, although membership of international bodies may also - as right-wing critics of the EU fear - entail the loss of control over certain areas of policy, the 'pooling' of that sovereignty arguably leaves the state better equipped to act effectively in pursuit of policies that will benefit its people.

Concerns regarding international organisations such as the EU and the WTO would be far less prominent in public discourse if it could be satisfactorily demonstrated that they are: (i) *necessary* for the fulfilment of public goods that nation-states acting alone could not achieve; (ii)

ordered in an *internally democratic* way, so as to ensure the equitable distribution of power between member states (for further discussion, see Section [4.1.2](#)); and (iii) *transparent and accountable*, so as to facilitate scrutiny of their internal workings, and responsibility to the people whose lives they affect. Yet, the adherence of international organisations to all of these standards would, in general, be very difficult to prove. This is, in part, simply because the governance and structures of an organisation such as the EU are enormously complex, and thus difficult to evaluate as a whole. However, it is also partly because the essence of terms such as 'accountability' can be contested by those on opposing sides of the debate. In some cases, it can even be because some of these standards are, in practice, achieved by international organisations at the expense of others.

### **The European Union**

In two key respects, the EU is more powerful now than at any point in its history. Firstly, it has greater *scope* for action. Where once the European project was concerned primarily with matters relating to trade, its remit now spans the full range of policy areas, from food standards and customs, to foreign policy and home affairs. Secondly, it has greater *power* to make decisions that are opposed by the governments of a number of its member states. Where most decisions by the Union were once exercised by representatives of the governments of member states on the basis of unanimity, now the most common method of decision-making (known officially as the 'ordinary legislative procedure' since the Treaty of Lisbon came into effect) is for co-decision between the directly-elected European parliament and the Council of Ministers; with the latter acting on the basis of a qualified-majority vote (QMV; see also Section [4.1.2](#)). This all matters for two key reasons. Firstly, as a member of the EU, all European legislation automatically becomes part of the UK legal framework without the need for approval by the UK parliament (as in accordance with the European Communities Act 1972, see below for the impact upon the UK doctrine of parliamentary sovereignty). Second, it also matters because the notion that the EU suffers from a 'democratic deficit' is widely accepted. Together, this creates the anxiety that a significant proportion of UK law could be being made, and transposed directly, by a body that is severely flawed in its democratic architecture and processes.

Since the last Audit reported, a number of steps have been taken by the EU to enhance the democratic legitimacy of the Union. Chief among these were the measures enacted by the Treaty of Lisbon to strengthen the role of national parliaments (for further discussion of which, see Section [4.1.3](#)) and the European parliament. As mentioned above, the European parliament was strengthened by the treaty through the expansion of co-decision into most policy areas. However, a number of other reforms were also passed. For instance, meetings of the Council of Ministers - which had previously been held in private - were made more transparent by the decision to split them into parts dealing with legislative and non-legislative acts, with the provision that the former be held publicly. The treaty paved the way for European Citizens' Initiatives: a new scheme under which European citizens will be able to call upon the commission to initiate legislation in a specific area (provided an initiative attracts at least a million citizens from a quarter of EU member states). Finally, Lisbon also introduced the 'yellow' and 'orange' cards procedures, to allow national parliamentary chambers to express concerns about the compatibility of draft legislation with the principle of subsidiarity directly to the EU institution from which the legislative proposals originated. The procedures are simple. In the case of the 'yellow' card, for instance, draft legislation must be reviewed if one-third or more of national parliaments make reasoned objections that the principle of subsidiarity has been violated. Where a majority of national parliaments issue such objections, the 'orange' card procedure is triggered. In such instances, the European Commission is required to re-consider the legislative proposal and, if it wishes to proceed, to make a clear justification for doing so. Where draft legislation proceeds with an orange card, a majority of 55 per cent in the Council of Ministers or the European Parliament is sufficient to vote down the bill at the first reading. These changes were welcomed by national parliaments; although many have questioned the likelihood of these mechanisms ever being used, given the level of inter-parliamentary cooperation that they would require ([Cygan, 2011, p. 6](#)).

Yet, the greater involvement of the European parliament in decision-making has also led inadvertently to practices which are arguably undermining the best intentions of the European leadership. For instance, the House of Lords European Union Committee and others have noted with unease the increasing tendency towards 'first reading deals' between the European Parliament and the Council of Ministers, which are typically reached through informal discussions rather than formal debate. These early stage agreements have been possible since the Treaty of Amsterdam, but look set to increase in number following the expansion of the co-decision procedure by the Treaty of Lisbon. In evidence to the committee, the European Commission itself disclosed that over 70 per cent of cases were now agreed at the first reading stage; while Professor Simon Hix stated that since 2004 '94 per cent of co-decision bills (201 out of 219 agreements) were discussed via the informal dialogue procedure before open deliberations and votes could take place in committee' ([European Union Committee, 2009, pp. 12-15](#)). Although supporters argue that this arrangement allows the EU to be more efficient, it also involves legislation being passed more secretly: a development that cannot be conducive to proper scrutiny, either by the European parliament, national legislatures or the European people itself.

The Protocol on the Application of the Principles of Subsidiarity and Proportionality created by the Amsterdam Treaty were also rewritten at Lisbon, further extending the procedural requirements, although the European Scrutiny Committee, in a report of 2008, felt that the substance of the subsidiarity article in the Lisbon Treaty was not substantively different from that which already existed (see [European Scrutiny Committee, 2008, p. 11](#)). Following the Treaty of Amsterdam, national parliaments were given a legal right to receive European documentation (albeit with some exceptions, and without any explicitly stated responsibility for national governments to transmit the



documentation), as well as a guaranteed period of at least six weeks in which to scrutinise draft legislation before it became law. However, as this did not in practice lead to the prompt and comprehensive transmission of European documentation to national parliaments that many would have hoped for ([Cygan, 2011, pp. 3-4](#)), it was decided under the Barroso Initiative of 2006 that most EU documentation would henceforth be sent *directly* to national parliaments from the institutions of the Union. This right of national parliaments was later affirmed in the Treaty of Lisbon, which also expanded the minimum scrutiny period guaranteed by the European treaties from six weeks to eight weeks; although national parliaments, including that of the UK, do not appear convinced that even this extended period allows enough time in which to conduct effective scrutiny (COSAC, 2011, pp. 35-7). As a result of the Treaty, national parliaments were given the responsibility to ensure that EU legislation complies with the principle of subsidiarity. National parliaments have often been considered to be 'losers' from the process of European integration.

Quite apart from the issues concerning the relationships between national parliaments and the EU, which have acquired a particular significance in the UK, it is also important to note that UK citizens are among the least enthusiastic participants in EU affairs, including elections to the European parliament. UK turnouts at European elections are among the lowest of all member states; public knowledge of, and interest in, the EU is low; and negative perceptions of the EU are widespread. In part, these perceptions may arise from the content of UK media reporting. In a recent Eurobarometer survey, respondents from the UK were the most likely to report that the media - and, in particular, the press - is too negative in its treatment of the European Union ([European Commission, 2008](#)).

### ***The 'Special Relationship'***

During the present Audit period, the UK has engaged in a variety of activities in international policy, that can be regarded as democratically problematic, which arise from its close association with the US. In particular, participation in the invasion of Iraq in 2003 involved the arguable misuse of the royal prerogative war powers - themselves a democratically questionable device; the presentation of misleading evidence to parliament and public; and in the military operation itself what is widely regarded as a violation of international law (see Sections [2.3.5](#), [2.4.3](#), [2.5.1](#), [4.2.2](#) and the [Introduction](#) to Section 2.4). More broadly, in the period following the terrorist attacks on the US of 11 September 2001, the UK was supportive to the US in its rejection of a multilateral response. In the process, the UK may have become complicit in ventures, including rendition and torture, that served to undermine key democratic principles such as the upholding of human rights and the international rule of law (see Sections [4.2.1](#) and [4.2.2](#)).

This adherence to the US, which might reasonably be seen as leading to an erosion of UK democracy and possibly the compromising of its national interests, has longer-term historical roots. The basis is historical and cultural, given the origins of the US as an English colony. In the nineteenth and early-twentieth centuries, relations between the UK and the US were not always strong. However, the Second World War brought about an increasing closeness, with the UK emerging as the subordinate partner. The Suez crisis of 1956 confirmed for UK policy-makers that they could not carry out major international initiatives without the backing of the US. Thereafter, the 'special relationship' developed further. It involves, in particular, close cooperation over military activity and technology, and intelligence sharing. The status of the UK as a nuclear power was dependent upon the technological support of the US and is sustained by the 'Mutual Defence Agreement'; a renewable treaty dating from 1958 (Burall et al., 2006, pp. 70-3). The UK has also at times had a degree of financial and economic reliance upon the US since the period of fixed exchange rates under the 'Bretton Woods' system that existed from the end of the Second World War until 1971. As is discussed elsewhere in this Audit, the nature of the 'special relationship' has rarely been the subject of serious mainstream political debate or challenge (see Section [4.2.4](#)). Yet, it represents an external influence to which the UK - or at least its political leadership - could be seen as having voluntarily subjected itself. Other options have existed. Adherence to the US has not always been slavish. For instance, the UK resisted participation in the Vietnam war in the 1960s; and in the 1970s Edward Heath as prime minister prioritised relations with Europe; securing UK membership of what is now the EU. Moreover, other European powers, including France and more recently Germany, have been able to pursue policies which diverged with those of the US, including over Iraq in 2003, without noticeably suffering (Burall et al., 2006; [Wallace and Phillips, 2009](#); [Foreign Affairs Committee, 2010](#)).

### ***External influences and the doctrine of parliamentary sovereignty***

Traditionally, parliamentary sovereignty is often regarded as a - or indeed *the* - key feature of the UK constitution. Although both the desirability and viability of the notion of a sovereign parliament are often and increasingly disputed, successive UK governments have continued to assert the overriding nature of this principle. The doctrine is central to the way in which UK democracy functions, even though it raises problems for other important aspects of a democratic constitution, such as the rule of law (see the [Introduction](#) to Section 1.2; [Cabinet Office, 2011](#)). However, a number of supranational arrangements have arguably served to compromise parliamentary sovereignty (as has the process of devolution to the three 'Celtic' nations, see Section [1.1.4](#)). Three sets of supranational arrangements are of particular significance: the European Union; the European Convention on Human Rights (ECHR); and the Commonwealth.

The organs of the EU have long asserted that European law is superior to national law simply by virtue of a member state's acceptance of membership. The idea of the supremacy of European law was well developed by the time the UK formally became a member of what was then the European Economic Community in 1973 (Jowell and Oliver, 2011). Member states have a tendency to assert that European law is

given expression by the domestic legislation or constitutional text that provides for EU membership. But the practical effect has been the same; that EU law takes precedence over the national law of member states.

European law may be expressed in the form of regulations, which directly become law in member states; or directives, which must be transposed into legislation by member states in the way they deem proper (although failure to do properly carries with it legal consequences). The doctrine of direct effect means that not only can the European Commission seek to enforce European law through the European Court of Justice, but individuals within member states can seek to uphold rights provided by the EU through legal action in domestic courts. Sensitivities surrounding the doctrine of parliamentary sovereignty have been part of the basis for Euroscepticism in the UK, helping to explain both why UK membership was delayed, and the ongoing controversy that has existed since entry. Those who seek to radically alter or end the position of the UK within the EU often argue that the impact of the EU on parliamentary sovereignty represents an unacceptable imposition upon UK democratic practices.

One consequence for the UK of EU membership has been that the UK parliament no longer possesses a monopoly on law making for the UK (Bradley and Ewing, 2011). Another has been that acts of parliament cannot by implication repeal the European Communities Act 1972 (ECA), which gives domestic legal expression to UK membership of the EU. Some argue that the traditional doctrine of parliamentary sovereignty cannot be reconciled with this development since the UK parliament of 1972 effectively bound future UK parliaments through the ECA - the one thing parliament is supposed to be legally unable to accomplish (Wade, 1996).

On the other hand it might be held that European law only has effect in the UK because parliament wills it, via the ECA, to do so; and that parliament retains the explicit ability to amend or repeal the ECA, and indeed to affect departure from the EU (which is now expressly allowed for under the Treaty of Lisbon of 2007). A clause included in the European Union Act 2011 sought to assert parliamentary sovereignty by arguing that European law was only effective in the UK by virtue of an act of parliament. However, this measure did not address the issue of the ECA being immune to implied repeal. Moreover, it seems logically impossible that the authority of parliament could be founded in, or sustained by, an act of parliament, since it would not explain where such an act drew its force from ([Cabinet Office, 2011](#); [European Scrutiny Committee, 2010](#); Goldsworthy, 2010). Whatever the precise conclusion, European law is clearly the primary mode of legislation within the UK while it remains a member of the EU.

The Human Rights Act 1998 (HRA) also involves a supranational legal order which poses challenges for parliamentary sovereignty, in particular through undermining the doctrine of implied repeal (see also Section [1.1.5](#), [1.2.2](#) and [4.2.1](#)). The HRA gives domestic legal protection to the European Convention on Human Rights (ECHR), which was signed in 1950, ratified by the UK in 1951 and first came into force in 1953. The convention is a document of the Council of Europe; and is enforced by the European Court of Human Rights. What made the ECHR different from many other international human rights instruments which have appeared since, a number of which the UK is a signatory to, is that it created the possibility for individuals to petition for their rights. The UK acceded to this mechanism in 1966, as well as signing up to the compulsory jurisdiction of the court (Bradley and Ewing, 2011). This change can be seen as a crucial moment in UK constitutional development, though it was not until 1975 that an individual petitioner was first successful. While before the HRA, the ECHR existed only as an external obligation, although UK governments took findings against it by the court seriously and acted upon them (Wicks, 2006). But the recent conflict between the European Court of Human Rights and UK politicians over prisoner voting rights shows the potential that can arise from this arrangement and lead to claims that UK democracy has been undermined by an external force (see Section [1.1.1](#)). On the other hand, since human rights are universal and fundamental in nature, as well as being essential to a meaningful democracy, it could be concluded that a supranational mechanism which can protect rights even against national legislatures is democratically desirable. Indeed, since the UK is exceptional in the lack of restraints upon its parliament, the ECHR might be seen as particularly valuable to it.

The Labour government elected in 1997 was committed to incorporating the ECHR into UK law. This policy was presented as a means of enabling individuals to seek recourse to their rights in domestic courts, rather than at the court in Strasbourg, in order to create an institutional culture of human rights compliance. The HRA was designed to operate within the traditional framework of parliamentary sovereignty. It did not enable courts to disapply acts of parliament. Where primary legislation was found to violate the ECHR, the courts would make a declaration of incompatibility, leaving both the offending act and the HRA on the statute book, and passing the decision about how to respond back to ministers and parliament: UK politicians. However, the HRA was protected from implied repeal by subsequent acts of parliament (while at the same time not repealing earlier acts). In this sense it conflicted with traditional notions of parliamentary sovereignty. Moreover, the HRA called on the UK courts as far as possible to interpret acts in such a way as to render them compatible with the ECHR; possibly meaning they can go as far as reading into them words that are not in the text, arguably tilting the balance of power away from parliament and towards the judicial interpretation of an international treaty. If such interpretation is not possible, a fast-track procedure enabled ministers to correct incompatibility through subordinate legislation amending primary legislation. Declarations of incompatibility have not been ignored, even if they have not always been responded to in an ideal fashion. When they review the compatibility of legislation and administrative acts with the convention, courts are called upon by the HRA to take into account Strasbourg jurisprudence, underlining the supranational dimension of this important work.



In comparison to the EU and the ECHR, the potential implications of the Commonwealth for the doctrine of UK parliamentary sovereignty are not immediately obvious, and are rarely discussed. On the surface, the Commonwealth appears more as a loose organisation of largely historic significance to the UK, rather than wielding the dynamic impact upon the everyday functioning of democracy in the manner of the 'special relationship', the ECHR or the EU. However, the relationship between the UK and some of its former empire places an important practical restriction on the exercise of parliamentary sovereignty, which existed some time before more recent issues arose involving the EU and HRA.

Historically, it is arguably the most important feature of the UK parliament that it is able to regulate the rules of royal succession. Indeed, the doctrine of parliamentary sovereignty has been held to have come about to a significant extent as a means of asserting the principle of parliamentary strength in the face of assertions of the divine right of kings (Goldsworthy, 1999). In this sense, while the doctrine of parliamentary sovereignty was pre-democratic in its origins, in so far as it introduced a limitation on arbitrary monarchical rule, it helped create the conditions in which democracy could develop.

Of the 53 members of the Commonwealth, 16 including the UK have Queen Elizabeth as their head of state. It would be possible for each of the Commonwealth states that remains a monarchy to have different rules of succession. The ultimate consequence of such an arrangement would be that countries would end up with different individuals as their heads of state. Such a pattern developed in Hanover after 1837, which did not allow female succession and therefore did not accept Victoria on its throne. UK policy makers have long regarded such an outcome as undesirable from the point of the political solidarity of the Commonwealth (and before then the Empire). In 1931, an act of parliament, the Statute of Westminster, set out in its preamble a previously agreed arrangement to the effect that the consent of the parliaments of all the countries involved was required for any change to the rules of succession. This stipulation is not a legal requirement, because it is not in the main body of the act, but it is a convention to which successive UK governments have adhered. It means today that any change to the succession to the UK throne would be dependent on the complex constitutional procedures of various other countries. Indeed in a number of cases, formal constitutional amendment procedures far more demanding than those applying to the UK would need to be fulfilled ([Blackburn, 2011](#); see also Section [1.1.5](#)).

These restrictions could be seen as an issue of general principle, in that they have the practical effect of restricting the power of parliament in one of its most important traditional areas of operation. They also create difficulties for any attempt to remove discrimination from the rules of succession, which are discriminatory both on grounds of gender and faith, and would contravene equality law if applied in the regular workplace. However, unlike with the issues of the HRA and the EU, the apparent infringement upon the autonomy of the UK and its parliament signified by the convention embodied in the Statute of Westminster has not been subject to major political or media criticism.

### 4.1.2 UK influence on international organisations

How equitable is the degree of influence exercised by the government within the bilateral, regional and international organisations to whose decisions it may be subject?

#### ***Nation states and international decision-making***

All nations in the world are subject to decisions that involve countries other than themselves. These decisions may involve direct one-on-one dealings between particular states in various bilateral relationships, such as between the UK and the US. They may also be made by multilateral groupings, some of an informal nature, such as the G8, or some more formally, such as the United Nations (UN), which is underpinned by international agreements signed by its members and which has its own institutional support. Organisations may be regional, such as the European Union (EU), or international, such as the UN. The actions these organisations vary by degrees, meaning they may simply make agreements for their member states to act in a certain way; produce obligations that are binding under international law; or even that take effect in the domestic law of their members, such as happens in the EU. The scope and potential importance of these sorts of deliberations should not be underestimated as they can cover a wide range of policy areas - including the environment, the economy and national security (Burall et al., 2006).

Clearly democratic principles suggest that nations should have a meaningful role in decisions which impact upon them, while at the same time, no nation should have excessive influence over issues affecting other nations. Diplomacy should be conducted in as even-handed a way as possible and supranational institutions should be designed to accommodate democratic procedures; although this principle is not always realised in practice. In many instances, nations may not even participate in discussions at all. An extreme example would be when Afghanistan did not take part in the initial decision for a North Atlantic Treaty Organisation (NATO) military action in the country in 2001. Also, developing world countries are disproportionately impacted upon by the work of the EU and Organisation for Economic Cooperation and Development (OECD), of which they are not members. In an organisation such as the UN, each individual nation has limited scope for influence, because of its sheer size and especially if a state is not a member of the UN Security Council (UNSC). In this sense, the tendency for the established powers to dominate decision-making and perpetuate their position of advantage they hold at a national level is replicated on the international stage. In some instances, as in certain critiques of the EU, supranational institutions may be

held to be power-hoarding institutions in their own right, seeking to impose their own agendas upon nation states.

However, there is another dimension to this discussion. The purpose of many international agreements and organisations is to create conditions conducive to the functioning of a healthy democracy at national and international level, such as protecting the environment, creating economic stability, guaranteeing security or promoting international development. Often, other less democratic agendas may play a part and the means by which these objectives are sought can be controversial to those who are adversely affected. Nonetheless, the need to adhere to democratic decision-making and involve countries in decisions affecting them should not be interpreted as meaning that each individual nation should always have an absolute veto over any form of action that may be in the wider international interest. For instance, the UNSC can authorise action to prevent states endangering international security, even to the point of military action (see Section 4.2.2). Therefore, as at national level, individuals may be bound to pursue courses of action that they do not support due to majority decision-making or wider social requirements. As such, a democratic assessment of the impact of the UK on international decisions which affect it must consider these sometimes conflicting needs.

### ***The UK and mechanisms for decision-making***

Central to an understanding of the influence that the UK has on external decisions that impact upon it is the formal role the UK occupies within a variety of international organisations, including:

- The World Bank (WB) is responsible for international development around the world and the UK government, as one of the five largest national shareholders, is able to appoint one of the 24 executive directors of the bank and holds voting power which reflects its dominant position.
- Within the International Monetary Fund (IMF), which is responsible for providing emergency loans to countries in financial difficulties and reporting on the economic policies of countries, the UK has a larger than standard voting share due to its use of a quota system partly based on national income.
- The Bank for International Settlements (BIS) seeks to maintain international financial stability and operates as a bank for central banks and supranational institutions. Only six countries have ex officio directors, of which the UK is one.
- The World Trade Organisation (WTO) is responsible for the regulation of international trade. Although the UK is an individual member of the WTO, the EU (as a customs union) conducts negotiations within the WTO on behalf of all its members - including the UK.
- Within the UN, the UK is a member of the general assembly, which includes all UN members, each with an equal vote. The UK also holds a permanent seat on the UNSC, alongside the US, France, China and Russia, and ten temporary members. The UN Charter binds all members to follow the decisions of the UNSC, but only its permanent members, including the UK, have the right to veto its resolutions (see Section 4.2.2) (Cabinet Office, 2011; Burall et al., 2006).

Table 4.1b presents details of the UK's membership of various organisations in comparison with other European nations of a similar population size. It shows that France and the UK are the best represented across the three organisations considered, due in part because of their status as nuclear powers.

**Table 4.1b: Larger European nations' participation in supranational organisations**

	Appoints a World Bank Executive Director	Has ex officio director of Bank for International Settlements	Permanent Member of United Nations Security Council
France	✓	✓	✓
Germany	✓	✓	x
Italy	x	✓	x
Spain	x	x	x
UK	✓	✓	✓

Main source: Burall et al. (2006)

As noted above, the EU is an exceptionally important supranational organisation for the UK because, not only does the EU operate across a wide range of areas, its laws are directly incorporated into the domestic legal system, taking precedence over other UK law, and is not subject to implied repeal by subsequent acts of parliament (see Section 4.1.1). The way in which the UK government influences the production of European law is therefore of substantial significance to the present discussion. Legislation is proposed by the European Commission, which also takes action to enforce it, and the UK, like all EU member states, appoints one commissioner. Prior to the enlargements of the EU in 2005 and 2007, the UK was one of the countries which appointed two commissioners, but from 2014, only two

thirds of states will have appointed commissioners at any given time.

The European Council of Ministers is an intergovernmental organisation, attended by ministers from member states; with the particular minister who attends determined by the nature of the business under consideration (Bradley and Ewing, 2011). Increasingly, as discussed previously (see Section 4.1.1), the council has come to reach decisions through a system of 'qualified majority voting' (QMV), whereby votes are allocated on a general basis of the population of each country. Out of a total of 345 votes overall, the UK, France, Germany and Italy, have the most votes each, with 29. Under present rules, QMV requires: 255 of the 345 votes to support a proposal; that the states supporting it cover 62 per cent of the EU population; and that the majority of member states are in favour of the proposal. Rules coming into effect in 2014 will mean that only 55 per cent of member states (15 out of 27) must support a measure, although these countries will have to account for 65 per cent of the population of the EU. QMV means that any state, including the UK, may become subject to a measure which it originally opposed unless it can assemble a blocking minority (Barnett, 2011; Bradley and Ewing, 2011). However, following the transferral of justice and home affairs matters to QMV under the 2007 Treaty of Lisbon, the UK was able to obtain mechanisms to enable it to opt-out of proposals in these areas before they were agreed (Donnelly, 2008).

Traditionally the council has been the most important body in the legislative process, although the directly elected European parliament has gained an increasingly prominent role in this respect, particularly following the 2007 Treaty of Lisbon. There are 736 seats in the parliament which are allocated to member states on a basis of population size. As such Germany has the largest number of seats with 99, followed by the UK, France and Italy, each with 72 seats. The normal process for law-making requires that the commission proposes a measure to the council, which passes it on to the parliament to scrutinise, known as the first reading. Following this initial review, the European parliament then refers the proposal back to the council, which votes on the proposal using QMV. The position of the council is then considered by the European parliament, which constitutes the second reading, and then can either: agree to the measure, which the council can then adopt; propose changes for the council to make to the original proposal; or reject it altogether. If the council does not agree to amendments, or if the parliament rejects the measure, a conciliation committee composed of members of the European parliament and the council is set up, wherein a resolution to the proposal can be agreed upon, which can then be adopted if it is approved by QMV in the council and majority vote in the parliament. If mutual consent cannot be achieved, the council can reassert its original position through a majority vote, although the parliament can in turn veto this response by a majority vote of its own. In effect, legislation now requires the agreement of both bodies (Jowell and Oliver, 2011).

### ***Assessing UK influence over international and regional decisions***

The position of the UK within the various multinational institutions discussed above suggests that in formal terms, it is in a strong position to influence the decisions which apply to it. Indeed, it would seem that the UK is one of a number of privileged nations that possess excessive influence relative to other nations. This position is derived partly from its existing relative prosperity, but also from historic resources. The introduction of the present structure of multinational organisations began at the close of the Second World War, in which the UK was one of the victors, guaranteeing it a place at the table as such. It remains to be seen that if such organisations were to be re-established in the current political and economic climate, whether the UK's existing position would be maintained with respect to new emerging powers, such as India, who might well have a claim for higher status in these organisations.

The relatively strong position of global influence possessed by the UK is suggested when the concept of 'soft power' is considered. Soft power involves the ability to influence other actors through such means as persuasion and agenda setting. It is distinguished from 'hard power', meaning the coercion through routes such as the use of force, diplomacy or economic measures. Table 4.1c provides the headline findings of the 2011 Global Ranking of Soft Power for 30 states. It measures the soft power of countries across five categories of government - culture, diplomacy, education and business/innovation - and takes into account variable subjective elements. The various scores are combined to produce a figure between zero and one, which is then multiplied by 10 for presentational purposes. The UK was placed second, behind the US, ranking ahead of comparable European powers such as France and Spain, as well as larger economies such as Germany and China. The UK performed particularly well in 'culture' and 'diplomacy and 'education', coming second overall in each of these categories, but was outside the top 10 for 'government' and 'business/innovation' (McClory, 2011).

**Table 4.1c: Soft Power Index Results 2011**

Rank	Country	Score
1	USA	7.41
2	UK	6.78
3	France	6.21
4	Germany	6.15

## Democratic Audit

5	Australia	5.64
6	Sweden	5.35
7	Japan	5.08
8	Switzerland	5.07
9	Canada	4.91
10	Netherlands	4.9
11	Norway	4.82
12	Denmark	4.78
13	Spain	4.68
14	Korea	4.52
15	Finland	4.45
16	Italy	4.28
17	New Zealand	4.17
18	Austria	4.1
19	Belgium	3.8
20	China	3.74
21	Brazil	3.55
22	Singapore	3.49
23	Turkey	3.33
24	Chile	2.94
25	Portugal	2.81
26	Israel	2.67
27	India	2.64
28	Russia	2.43
29	Czech Republic	2.36
30	Greece	2.35

Source: [McClory \(2011, p. 15\)](#)

While the UK government certainly possesses the potential to wield influence in international decision-making, its capacity to do so may currently be under threat. The House of Commons Foreign Affairs Committee recently argued that the present government retrenchment programme was likely to impede the capacity of the Foreign and Commonwealth Office (FCO) to represent UK interests abroad. The FCO already had a relatively small budget within Whitehall and, therefore, its scope for reducing costs was inhibited because of the imperative nature of the programmes it is involved in. Substantial cuts had already been made under the previous administration and those intended for the FCO in the current round were relatively large in the context of the overall coalition package, resulting in the likelihood of diminished future capacity ([Foreign Affairs Committee, 2011](#)).

Whatever its position within multilateral bodies, there are grounds for believing that UK governments have failed to achieve sufficient influence within arguably its most important bilateral relationship with the US - sometimes termed the 'special relationship' (see Sections [4.1.1](#) and [4.2.4](#)). It is widely claimed by observers that UK representatives tend to take a less realistic approach to this engagement than the US, which pursues specific practical objectives in a more direct fashion ([Wallace and Phillips, 2009](#)). In this sense, the UK may not achieve the influence that it hopes that adherence to US objectives obtains for it. Relatively little mainstream political scrutiny of the value of this relationship has taken place (see Section [4.2.4](#)). However, in 2010, the Commons Foreign Affairs Committee, while positive about its overall nature, suggested that the term 'special relationship' should no longer be used since it overlooked the fact that the US had close connections with other nations. It argued that UK influence over the US was likely to decline in future and that the UK should be less deferential towards the US. Where UK and US policy differed, it was suggested that the UK should look more to other partners, particularly in Europe ([Foreign Affairs Committee, 2010](#)).

Assessing the equitability of UK government influence on EU decisions is a complex task. On one level, it could be held that changes in the organisation of the EU reflecting in part the growth of its membership - as well as a broader shift away from intergovernmentalism, culminating in the 2007 Treaty of Lisbon - has led to a lessening of UK influence. The simple fact that it is only one state amongst a growing number of others could be seen as a trend of diminishing influence, while the rise of QMV on the council increases the chances that the UK will become subject to decisions that it did not support. Moreover, the growth in the power of the European parliament means that a supranational body is playing an increasingly important role in the legislative process, which was previously dominated by the council. While the UK will still be able to appoint members of the commission, their specific role while serving in such offices is to represent the whole of the EU, not the individual nation which nominated them.

However, whether these ongoing developments in the nature of the EU should be seen as necessarily entailing a reduction in influence is open to question. It partly turns on the conception of national sovereignty within the UK itself. Some might view any transferral of sovereignty to the supranational level as a loss, and that full democratic legitimacy is not possible above the UK level, even if it involves the directly elected European parliament. Others would note that by pooling sovereignty with other European states, it is possible to gain additional influence that could not be attained by the UK acting alone (Wicks, 2006). On this second model, any gains for UK influence might be achieved when both it successfully secures the adoption by the EU of policies it favours, and more generally by its participation in an organisation through which it is able to achieve an impact on the outside world, such as through its participation in the WTO. Indeed, it might be better to view the EU as in some senses an extension of the UK government, rather than an external body to be influenced. Moreover, democratic oversight of the pooled functions is possible via the European parliament, which, as noted above, has recently been growing in strength.

These contrasting perspectives on how the UK's membership of the EU impacts on parliamentary sovereignty and domestic democratic accountability more generally are considered in more detail in Section [4.1.1](#), where it is noted that it is by no means the only example of a constraint on the notion of the absolute sovereignty of UK parliament. Yet, it is questionable whether there are any democratic gains to be made from the only obvious means of resolving this apparent conflict outright; namely, that the UK would leave the EU altogether. Given that the vast majority of UK trade is with EU member states, a decision to leave the EU would almost certainly have dire economic consequences, unless the UK were to negotiate a detailed agreement with the EU via membership of the European Free Trade Association (EFTA), as is the case for Norway, Iceland and Lichtenstein. Aside from the complexities of moving from the EU to EFTA membership (which has never previously been attempted), it would be hugely misleading to assert that such a move would resolve the democratic tensions we highlight in this chapter. As we outline in Case Study 4.1a, a recent study published by the Norwegian Ministry of Foreign Affairs illustrates that the democratic deficit associated with EFTA membership is as great, if not greater, as that associated with full EU membership.

### Case Study 4.1a: The democratic implications of Norway's membership of EFTA

In January 2010, the Norwegian government appointed a European Economic Area (EEA) Review Committee with a mandate to 'carry out a comprehensive and thorough review of the political, legal, administrative, economic and other social consequences (including its implications for welfare and regional policy) of the EEA Agreement' for Norway ([EEA Review Committee, 2012](#)). The membership of the committee was primarily comprised of academic experts, with additional representatives from the legal profession and the corporate sector.

The committee's report was submitted to the Norwegian Ministry of Foreign Affairs in January 2012. It noted that, by virtue of being part of the EEA, Norway had entered into agreements with the EU covering issues as diverse as immigration, foreign policy, police co-operation, agriculture and fisheries. Moreover, the committee identified a total of 170 statutes and 1000 government regulations which incorporated some element of EU law. The committee's report was clear that no other international agreement impacted as substantially on Norwegian domestic policy as extensively as the EEA.

In light of this influence on, and incorporation into, domestic policy, the committee took the view that the most problematic consequence of Norway's membership of the EEA was a democratic one. As the report notes:

'Norway is in practice bound to adopt EU policies and rules on a broad range of issues without being a member and without voting rights. This raises democratic problems. Norway is not represented in decision-making processes that have direct consequences for Norway, and neither do we have any significant influence on them. Moreover, our form of association with the EU dampens political engagement and debate in Norway and makes it difficult to monitor the Government and hold it accountable in its European policy.'

'This is not surprising; the democratic deficit is a well-known aspect of the EEA Agreement that has been there from the start. It is the democratic deficit. It is the price Norway pays for enjoying the benefits of European integration without being a

member of the organisation that is driving these developments' ([EEA Review Committee, 2012, p. 7](#)).

Unlike the UK, Norway has never been a member of the EU or its predecessor organisations, although the case for membership was twice put to the electorate in referendums (in 1972 and 1994). If the UK were to seek to leave the EU and acquire membership of the EEA, it is clear that the very same profound democratic considerations highlighted by the EEA Review Committee would apply.

If the EU is considered as a means by which influence is achieved, its effectiveness as a coherent organisation requires consideration. The Treaty of Lisbon contained measures intended to bring about the more effective coordination of EU foreign policy ([Federal Trust, 2009](#)). While some institutional changes have been secured, other tendencies may have undermined the potential gains for the EU. It has been argued that the recent economic difficulties experienced by the EU have inhibited its ability to act as a unified force in international affairs and that member states have acted on a more individual national basis ([Vaisse and Kundnani, 2012, p. 17](#)). The specific contribution made by the UK to the cohesiveness of EU foreign policy is also questionable. According to the European Foreign Policy Scorecard, which assesses the collective performance of the European Union in achieving foreign policy and outcomes across a variety of goals, its 2012 survey it found the UK to be the third highest scoring 'leader' in the EU, behind Germany (first) and France (second). However, while noting that the UK had played a prominent role, alongside the French, over the intervention in Libya of 2011, the report found that the UK was becoming less active over European foreign policy matters and was failing to take a creative approach to policy-formation ([Vaisse and Kundnani, 2012, pp. 21-2](#)). In its wider approach to the EU, the UK seems to have followed a middle course with regard to the two interpretations of sovereignty. While participating in the EU suggests that the UK sees some value in sovereignty pooling, it has increasingly emerged as less than a fully-committed member, such as when it has secured opt-outs over justice and home affairs. When this occurs, the arguable impact of UK policy is potentially to undermine an organisation of which it is a member (Blick, 2012).

Democratic Audit notes that in some respects the UK has a substantial ability to influence decisions that impact upon it. Indeed, this role is arguably greater than its present economic and global political position merits, and is difficult to justify. However, we are also concerned that the UK does not achieve the degree of influence that would be required to validate its policy of adherence to US foreign policy. While we accept that it is always possible to make a case against cuts in virtually any area of government, we note the concerns that have been raised about possible damage to the capacity of the FCO to function effectively in ensuring the representation of UK interests.

The issue of the role of the UK in the EU is complex and controversial. It is certainly the case that the particular role of the UK in individual decisions has been potentially reduced, as it has for all member states. However, we also accept that differing views of the nature of sovereignty are possible, some of which do not treat the position of the UK and the EU as a zero-sum power game. We do not take a specific position on the terms of UK membership of the EU, we are clear in our view that a decision by the UK to leave the EU would not resolve the genuine democratic tensions we have highlighted. Indeed, as the report of the Norwegian EEA Review Committee (2011) suggests, the option of remaining outside of the EU but inside the European Economic Area also has very serious democratic implications. At present the UK appears to be pursuing a dual approach which entails an uncomfortable combination of European and national outlooks ([Adler-Nissen, 2008](#)), but we are by no means persuaded that such a stance can be sustained.

### 4.1.3 Domestic oversight of relations with international organisations

How far are the government's negotiating positions and subsequent commitments within these organisations subject to effective legislative oversight and public debate?

The effective parliamentary and public oversight of government negotiations within international organisations is clearly essential if decision-making at that level is to be democratically accountable and in the best interests of the country. Yet at the same time, it is generally recognised that these safeguards should not be so stringent as to sacrifice the flexibility that is often required for important compromises to be achieved between governments when negotiating at an international level. A balance between these two competing priorities can be difficult to achieve in practice, and observers may disagree over where exactly the line between them should be drawn. However, most would affirm that if parliament is to influence international negotiations to any reasonable extent, it must, as a minimum enjoy the right of swift and unencumbered access to information it requires; sufficient time and resources to consider this information; and the formal rights to scrutinise and influence government action, within the context of a parliamentary and party system in which these powers are able, and likely, to be used (see also Section [4.2.4](#)).

#### *The European Union*

In common with every other national parliament of the European Union (EU), the UK parliament maintains a number of committees and sub-committees to oversee the actions of the government in relation to the EU (for a summary of the committee structure, see Case Study 4.1b). As consistent with the features of a 'document-based' system of scrutiny, the work of these committees focuses mainly on the



examination of documents produced during the pre-legislative and legislative processes of the EU; with the stated aim of the committees being able to influence the government on EU matters and hold its ministers to account.

### Case study 4.1b: Parliamentary scrutiny of EU affairs

While matters relating to the European Union are occasionally debated on the floor of both Houses of Parliament, the majority of the work that parliament does in scrutinising the proceedings of the EU is performed by specialised European committees - of which there exist separate networks in both the House of Commons and the House of Lords. Broadly speaking, these committees employ similar, 'document-based' systems, in which European draft legislation and consultative papers are the focus of scrutiny, rather than the negotiating positions of government ministers themselves; and where the scrutiny process itself is guaranteed by 'scrutiny reserve' resolutions in both houses, which state that the government will usually refrain from agreeing to an EU legislative proposal which has not cleared parliamentary scrutiny.

In the House of Commons, the scrutiny process begins with the weekly meeting of the European Scrutiny Committee, where EU documents received by parliament (around 1,000 per year in total) are sifted to identify those of legal or political importance. Those documents *not* judged to be important are cleared from scrutiny immediately. However, when the committee does consider a document submitted to it to be of legal or political importance (of which there are usually around 500 per year), further action is taken. This may involve the committee requesting further information from the government, either in writing or in the form of oral evidence from a minister, in order to arrive at a decision. It may also, from time to time, involve the recommendation that a document be debated, either by one of the three general European Committees (this typically happens around 40 times per year), or on the floor of the House of Commons itself (this requires the approval of the government, and typically happens only around three times per year).

These processes offer some scope for parliamentary influence over the government - not least because ministers can be called before the European committees to answer questions. However, the extent of this influence remains limited by the control that the government retains over the terms of debate. Resolutions arrived at by the European Committees, for instance, do not clear scrutiny before being sent for resolution in the House of Commons, where the government is responsible for tabling the final motion, which is held without debate and does not have to be the same motion agreed upon by the committee. For documents that the government agrees to debate on in the House of Commons, meanwhile, it is the government, again, that is responsible for the motion that is tabled for debate.

In the House of Lords, the task of scrutinising EU documents is entrusted to the European Union Committee and its seven specialised sub-committees. As under the Commons system of European scrutiny, the European Union Committee first sifts the documents it receives in order to determine whether an EU document is unimportant, and should thus be cleared immediately; or whether it is important, in which case it is referred to the relevant sub-committee for further consideration. In contrast to the Commons European Scrutiny Committee, which considers hundreds of documents every year and often reports on them within the week, the Lords committee is more deliberative - considering fewer documents but often spending a great deal more time in debating them. However, the stages of the scrutiny procedure are not markedly different. If a document is referred for further consideration, then the sub-committee responsible can choose either to correspond with the government in writing, hold one-off hearings, or commence a full inquiry - the report of which may then be debated on the floor of the House (usually on the basis of a 'take note' motion or a 'question for short debate'), if the committee so wishes. The scrutiny process is then considered complete.

The existing system is acknowledged to have a number of strengths. For instance, although initiatives undertaken by the EU should ensure that national parliaments now have near-universal access to all of the European consultative papers and draft legislation needed to conduct proper scrutiny (see Section [4.1.1](#)), the UK parliament has previously declared itself generally satisfied with the range of European documentation that it receives from the government (COSAC, 2009). In addition, the fact that the government cannot usually approve a document at the European level unless it has cleared parliamentary scrutiny means that the committees have time to deliberate and, if necessary, request further information from the government either in writing or at committee debates. The work of the committees themselves, moreover, is highly transparent by European standards, thus facilitating greater involvement in the scrutiny process by both the public and the media (see Table 4.1d).

Table 4.1d: The transparency of European affairs committees within each member state of the Union



# Democratic Audit

Member state (lower house)	Are EU committee meetings publicly accessible?	Are EU documents received by parliament from EU/ government publicly accessible?	Are EU documents produced by parliament publicly accessible?	Are the meetings of other specialised committees publicly accessible?
Austria	Yes	Yes (EU) / No (government)	Yes	No
Belgium	Yes	No	Yes	Yes
Bulgaria	Yes	Yes	Yes	Yes
Cyprus	No	No	Yes	No
Czech Republic	Yes	No	Yes	Yes
Denmark	Yes	Yes	Yes	No
Estonia	No	Yes	Yes	No
Finland	No	Yes	Yes	No
France	No	Yes	Yes	No
Germany	No	No	Yes	No
Greece	Yes*	No	No	Yes*
Hungary	No	No	No	No**
Ireland	Yes	No	Yes	Yes
Italy	No	Yes	Yes	No
Latvia	Yes	No	Yes	Yes
Lithuania	No	Yes (EU) / No (government)	Yes	No
Luxembourg	No	Yes	No	No
Malta	No	Yes	Yes	Yes
Netherlands	Yes	No (EU) / Yes (government)	Yes	Yes
Poland	Yes	Yes (EU) / No (government)	Yes	Yes
Portugal	Yes	No	Yes	Yes
Romania	Yes	Yes	No	Yes/No***
Slovakia	Yes	No	Yes	Yes
Slovenia	No	No	Yes	No
Spain	No	No	Yes	No
Sweden	No	Yes	Yes	No
<i>United Kingdom</i>	Yes	Yes	Yes	Yes
Note:				
*Possibly not open to public visits as such, but committee meetings are as a rule broadcast on Parliament TV.				
** Open to the press.				
*** Contradictory information on parliamentary website.				
Source: Table and accompanying notes derived from <a href="#">Raunio (2011)</a> .				

However, in terms of their formal powers of influence and control, the European committees of the UK parliament are relatively weak compared to those of the national parliaments of many other EU member states with regards to having no rights either to direct or veto the positions taken by the government at the European level. As Table 4.1e shows, this is in stark contrast to arrangements in countries such as Denmark, Finland, Sweden and Austria, where national parliaments have the power to issue mandates that bind the actions of their government in the meetings of the council of ministers.

Clearly, the mere existence of such powers is no guarantee that they will be used regularly or effectively. The fact that, in Denmark, the European Affairs Committee of the *Folketing* is highly involved in EU matters; whereas, in Austria, the *Nationalrat* has, by contrast, made very little use of its ability to issue binding resolutions on matters relating to EU negotiations (Pollak and Slominski, 2003), illustrates this point very well. This disparity could be argued to lend credence to theory that the broader features of the parliamentary and party system in which each parliament operates are a more reliable predictor of effectiveness in relation to EU matters than the narrowly-defined powers that the parliament possesses in this area. The partisan domination of parliament has been identified as a key factor in explaining the Austrian parliament's reluctance to make full use of its powers in influencing the EU agenda (Pollak and Slominski, 2003); whereas the long history of minority government in Denmark, and the politics of compromise and consensus-generation that this necessitates on a daily basis, is, by contrast, thought to explain the prominence of the European committee in that country (Auel, 2007, pp. 493-4). The problem for the UK parliament is that it arguably enjoys neither the formal powers nor the wider institutional context required to operate in the same way as the Danish *Folketing*. Indeed, although it could be argued that the responsibility for backbench MPs of the majority party (or parties) to scrutinise and oversee the actions of government in EU affairs is especially great (as this is one area in which they have no direct influence on the legislative process), the strong desire to avoid any appearance of disunity among the governing party (or parties) can nevertheless be a powerful deterrent to those wishing to question the government line.

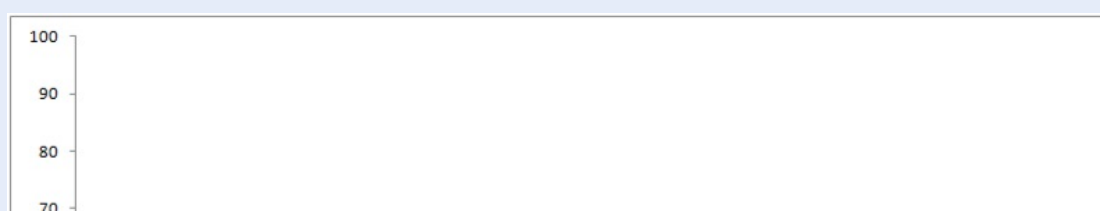
Table 4.1e: National parliaments and the EU-15 (ranking of relative powers, where Danish parliament = 10.0)

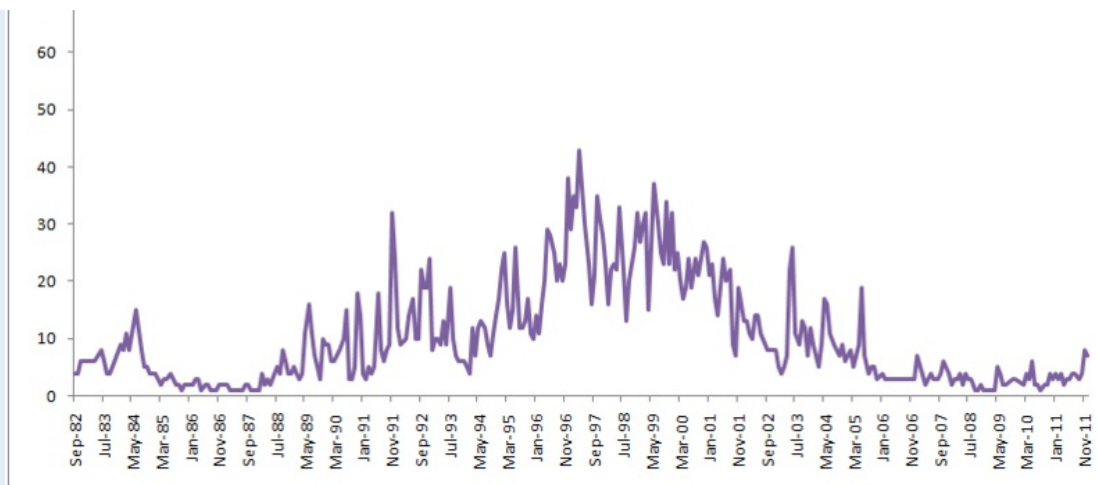
Member state	Relative powers	Nature of powers
Denmark	10	Parliament has the power to mandate the government prior to meetings of the Council of Ministers. In Denmark and Austria these mandates are legally binding.
Finland	8.8	
Sweden	8.3	
Austria	8	
Germany	6.7	Parliaments have partial powers of mandate over government's position in the Council of Ministers.
Netherlands	6	
UK	5.3	Parliaments have the scope to express views to government on matters to be discussed at the Council of Ministers, but governments maintain considerable discretion as to the extent to which they take these views into account.
France	4	
Italy	3.7	
Ireland	3.3	
Belgium	2.7	
Luxembourg	2.3	Parliaments have very few or no powers with respect to the government's position in the Council of Ministers.
Portugal	2	
Spain	1.7	
Greece	1.3	

Source: Adapted from Lord (2004, pp. 169-171) after Rozenberg (2002).

The task of European scrutiny is made more difficult, still, by the apparent lack of interest or concern with the EU outside of parliament. As Figure 4.1b shows, the EU has never been considered to be an issue of great importance by the vast majority of the public, despite the unequalled level of negative media coverage of the EU in the UK media (see Section 4.1.1); while UK citizens' knowledge of, and interest, in the EU is among the lowest in the Union.

Figure 4.1b: The percentage of the public citing Europe as an 'important issue facing Britain'





Note: Respondents to the survey are asked 'What would you say is the most important issue facing Britain today?' and 'What do you see as other important issues facing Britain today?'. The answers given by respondents are unprompted. The results in the graph above combine the answers from both questions, but only for those respondents citing Europe (that is, the Common Market, the EU, Europe or the Single European Currency) as an important issue facing Britain.

Source: Ipsos MORI (various years).

### ***Other supranational organisations***

Parliament possesses less clearly defined rights still in relation to supranational organisations other than the EU. While the national parliaments have enhanced roles defined for them under the EU treaties, most international business of the UK government is conducted under the royal prerogative (see also Sections [2.4.3](#), [2.5.1](#) and [4.2.4](#)). The royal prerogative is by definition a non-parliamentary set of powers. It covers, in the field of external policy, the conduct of diplomacy and treaty-making. Recently, the conventions governing the role of parliament in treaty ratification were placed on a statutory basis by the Constitutional Reform and Governance Act 2010, but the difference this shift will make remains to be seen. Moreover, the actual power of treaty-making remains on a prerogative footing. Parliamentary involvement in the supranational commitments of the UK is therefore largely a matter of informal political influence. The practice of 'legislative mandates' used in the US, stipulating the parameters within which the executive may operate in certain international organisations, does not exist for the UK.

Specialist select committees play an important role. For instance, in the mid-2000s, the Commons International Development Committee began taking evidence from the international development secretary annually after the autumn meeting of the board of governors of the World Bank. However, World Bank secrecy rules have seriously restricted parliamentary knowledge of what transpired at World Bank meetings. Sometimes, the route to parliamentary accountability is unclear. The Bank of England represents the UK at the Bank of International Settlements (BIS). Since the Bank of England is independent from the Treasury, the Commons Treasury Committee has found it difficult to establish responsibility for the UK role in the BIS. For some bodies, such as the G8, there is no single committee with a role, because it is a cross-cutting responsibility within the UK government (Burall, 2006).

Democratic Audit notes that it is not possible to apply the same standards of democratic oversight to international policy as it is to domestic policy. However, the weaknesses in legislative oversight inherent in the UK constitutional system (see Section [2.4](#)) are magnified for the accountability of the executive in its supranational activities. There are clear problems with the formal powers of oversight of EU policy, and the institutional environment in which this oversight is conducted. Moreover, the extent and quality of public debate in this area is not conducive to meaningful democratic accountability. The position with regards to other multilateral organisations is worse still. Such oversight as exists is largely retrospective, with no means of formally mandating ministers in advance of negotiations.

## **Conclusion**

Democratic legitimacy in international policy is a complex concept; and one that is difficult to secure. One area in which there has been improvement is through the enhancements for the roles of the European and national parliaments in EU activity provided for under the 2007 Treaty of Lisbon, as well as its limited improvements to transparency within the council of ministers, and its enabling of citizen calls for action. The UK does have access to various levers of influence both of the hard and soft variety - though arguably the extent of its reach is too great when considered in an international perspective. However, elsewhere the picture has been one largely of continuing or emergent

problems.

Despite the improvement, the EU - in some ways now at the peak of its influence to date - continues to suffer from a democratic deficit (although, as we note, UK withdrawal from the EU would almost certainly substitute one type of democratic deficit with another). The UK's relationship with the US sometimes leads it to pursue policies which raise democratic difficulties in themselves, and are adopted in ways which also raise democratic problems. Moreover, 'the special relationship' may not achieve the gains for the UK in terms of influence which governments hope to receive for their loyalty; while other options are available. Traditional constitutional models in the UK, particularly that of parliamentary sovereignty, are difficult to match up to modes of international interaction. Partly because of its attachment to the doctrine of parliamentary sovereignty, the UK has had difficulties in establishing a clear democratic rationale for its engagement in the EU; while at the same time judging it necessary, nonetheless, to participate within it. The means by which the UK parliament oversees the executive in its conduct of European and international policy are, when placed in international comparison, weak, overly dependent upon informal methods of which the UK constitutional system discourages the effective use.

A growing body of analysis now also suggests that the concept of globalisation - which is complex in itself - has seemingly been misused for some time in political discourse in the UK. It is used as a means of portraying policies of retrenchment in public welfare as inevitable, when international evidence suggests that they are not - even in countries subject to greater exposure to globalisation than the UK.

The findings presented in this chapter connect to a number of the key themes in the Audit as a whole. The constitutional tensions highlighted in this chapter are of particular significance to the wider evidence we produce in this Audit that the UK is characterised by growing constitutional instability. The traditional model of a sovereign UK parliament, legally unlimited, is increasingly difficult to sustain intellectually or in practice, in light of UK membership of the EU and the incorporation of the European Charter of Human Rights into UK law (see also Section [1.1.3](#) and [4.2.1](#)). However, it is far from clear that decisions to leave the EU or repeal the Human Rights Act 1998 would provide the basis for restoring parliamentary sovereignty. The high degree of public controversy about the EU and UK membership of it provides another example of the distrust towards established democratic institutions in the UK (see Section [1.1.3](#)), although it is notable that the level of distrust is higher in the UK than in virtually all other EU members states ([Wilks-Heeg and Blick, 2009](#)). The various measures introduced to render the EU more democratic, regardless of their merits (or otherwise) have not altered this position and may have aggravated it.

Meanwhile, policies which have been justified - often in rhetorical terms - by reference to the concept of globalisation underline the democratic implications of growing corporate power. International comparisons highlight that measures such as labour-market deregulation and reductions in welfare spending are by no means the 'inevitable' consequence of globalisation. However, the adoption of a distinctively neo-liberal policy response in the UK has clearly served to aggravate social inequality, and has become a key factor driving the growth of political inequality which we highlight throughout this Audit (see Section [1.4](#)). Finally, the difficulties in ensuring parliamentary oversight of the EU and other organisations provide further illustrations of extent to which representative democracy in the UK is faltering, but with no clear alternative democratic model currently in sight.

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## 4.2. The country's democratic impact abroad

### Executive Summary

This chapter reviews the available evidence relating to the four 'search questions' concerned with the country's democratic impact abroad.

Our analysis in this chapter identifies a number of changes and continuities since our last full Audit of UK democracy. These are summarised below under three separate headings: (a) areas of improvement; (b) areas of continuing concern; and (c) areas of new or emerging concern.

#### **(a) Areas of improvement**

##### **1. UK participation in a declaration on the ban on cluster munitions.**



Unexploded cluster bombs can pose a substantial threat to civilians. Following significant domestic pressure, in 2008 the UK agreed to the Convention on Cluster Munitions banning these weapons. It came into force in 2010, though some loopholes possibly remained in UK fulfillment of this agreement. (For further details and discussion, see Section [4.2.1](#))

## **2. New legal controls of exports.**

The start of the present Audit period saw the introduction of the Export Controls Act 2002. It established a new statutory footing for the regulation of exports; one of the purposes of which was to prevent the facilitation of human rights abuses abroad. The act was accompanied by a new system of parliamentary scrutiny of export policy. (For further details and discussion, see Section [4.2.1](#) and Case Study [4.2b](#))

## **3. New statutes covering international development aid.**

The International Development Act 2002 stipulated that international development aid should be directed towards the purpose of the lessening of poverty; and sought to prohibit tied aid, though not defining it in the act. The International Development Act 2006 introduced more openness about official performance over development. (For further details and discussion, see Section [4.2.3](#))

## **4. Progress towards the international development aid target.**

The idea of an international target for development aid reaching 0.7 per cent of gross national income can be traced to the late-1960s. While some have challenged the relevance of this measure, it at least provides a popular and political focus that can help galvanise and assess progress towards a more extensive international commitment to development. UK progress towards this target improved over the last decade, following two decades of poor performance. However, placed in international perspective, UK performance is not spectacular. (For further details and discussion, see Section [4.2.3](#) and Figure [4.2b](#))

## **5. A firmer institutional basis for international development and policy consensus around development aid.**

The Department for International Development which was established by the Labour government in 1997 was retained by the coalition which took office in 2010. In earlier periods, when Labour had enhanced the institutional basis for development aid this move had been reversed when the Conservative Party came to power. This new institutional consensus has been accompanied by agreement over key policy goals, including the 0.7 per cent target for the ratio of development aid to gross national income. (For further details and discussion, see Section [4.2.3](#) and Case Study [4.2f](#))

## **6. Limited reform of the royal prerogative with respect to the conduct of external policy.**

The home civil service and the diplomatic service, both of which play a crucial part in the development and implementation of UK external policy, were previously regulated under the royal prerogative, a set of powers which have never been approved by parliament and in which parliament generally has no formal part. The Constitutional Reform and Governance Act 2010 placed the civil and diplomatic services on a statutory basis. The same act also introduced a statutory role for parliament in the oversight of treaty-making, which is conducted under the royal prerogative. (For further details and discussion, see Section [4.2.4](#))

### ***(b) Areas of continuing concern***

#### **1. Less than full nominal commitment to human rights instruments.**

Signing up to international human rights agreements does not in itself guarantee adherence to the norms they represent. However, it can contribute to the strength of those agreements internationally and help facilitate a more favourable climate for human rights internationally. It also provides a means of measuring adherence to human rights. The UK has not performed well relative to other democracies in Europe and elsewhere in the extent of the agreements and instruments it accepts, though some progress was made during the present Audit period. (For further details and discussion, see Section [4.2.1](#) and Figure [4.2a](#))

#### **2. Conflicts between strategic alliances and trade objectives on the one hand; and the need to promote human rights on the other hand.**

The UK is in principle committed to human rights and their international promotion as a matter of policy. However, there is evidence that it has softened its approach or lessened its criticism when faced by violations perpetrated by countries which may be important trading powers or strategic allies of the UK, or both. The universal nature of human rights makes this inconsistency problematic and unacceptable.

(For further details and discussion, see section [4.2.1](#) and Case Study [4.2a](#))

### **3. Continuing concerns about arms exports.**

Despite the existence of legal and parliamentary mechanisms regulating arms exports, arms exported by UK companies continue to be used in the perpetration of human rights abuses. The House of Commons Arms Control Committee regularly raises various concerns about the regulatory system and the way it works in practice. There are grounds for questioning the extent to which the Export Credits Guarantee Department prioritises human rights considerations when promoting arms exports; and this issue is part of a broader problem involving an apparent lack of adherence to human rights values within the UK private sector's international dealings, over which the UK government has failed to provide the necessary lead. (For further details and discussion, see Section [4.2.1](#) and Case Study [4.2b](#))

### **4. Limitations on the ability of parliament to oversee external policy.**

Traditionally, governments enjoy high levels of discretion in their international dealings. External policy in the UK continues, to a significant extent, to be dependent upon the royal prerogative. This ancient set of powers have by definition never been approved by parliament, which generally does not have a formal role in overseeing their exercise. The royal prerogative is used for such purposes as the conduct of diplomacy and treaty making, notwithstanding limited reforms that have taken place. (For further details and discussion, see Section [4.2.4](#))

### **5. Restrictions on the impact of public opinion upon international policy.**

In a representative democracy, to have an impact on policy, public opinion must filter through parliament and its members, or less formal routes such as the media and pressure groups. In the UK, general elections are rarely dominated by foreign policy issues; though the Iraq war was a significant factor in the 2005 general election. With the exception of Iraq and nuclear policy in the 1980s, there is a broad tendency towards consensus between the main parties over foreign policy, making the representation of divergent views more difficult to attain. Unusual levels of secrecy surrounding international policy inhibit informed public debate. (For further details see Section [4.2.4](#))

#### ***(c) Areas of new or emerging concern***

##### **1. A desire on the part of the UK to weaken international human rights obligations.**

The UK has intervened in cases before the European Court of Human Rights with a view to securing greater discretion in such areas as deporting terrorist suspects to potentially dangerous destinations; and maintaining a blanket ban on voting by prisoners. As part of a domestic agenda involving a review of human rights protection, it has promoted the idea of reducing access to the European Court. The potential outcome of such actions, if successful, would be to weaken the European Convention on Human Rights for all those who are protected by it, not just in the UK. (For further details and discussion, see Section [4.2.1](#))

##### **2. Association with the unilateral approach of US in its approach to global security.**

In the wake of the terrorist attacks on the United States (US) on 11 September 2001, the US developed an approach to foreign policy that involved stretching or ignoring existing principles of the international rule of law; building on tendencies it had already to some extent displayed. As a key ally of the US, the UK was to a significant extent supportive of and involved in this method of operation. There was credible evidence that the UK facilitated the rendition of terrorist suspects by the US; and was in various ways complicit in torture taking place abroad. Most controversially of all, the UK participated in the US-led invasion of Iraq in 2003, the international legality of which has been widely challenged, and which served to undermine the authority of the United Nations. (For further details and discussion, see Section [4.2.2](#) and Case Study [4.2d](#))

## **Introduction**

Democracy is not simply an internal matter; and the values associated with it, though they may be realised in many different ways, are fundamentally universal in nature. It is therefore an important component of democracy that a state upholds the core principles of democracy, such as the international rule of law and human rights, in its external engagements, as well as the supranational mechanisms which exist to promote them. In so doing, it should seek to ensure that other considerations - such as international alliances and commercial strategies - do not override its impartiality. Moreover, while it is often held that foreign policy requires a high degree of discretion for governments, it is essential that external policy is subject to democratic oversight and public input.

Taking into account these concerns, the following section considers:

- The consistency of UK support for and protection of human rights internationally;

- The extent to which the UK supports agencies for international cooperation, including the United Nations, and its degree of respect for the international rule of law;
- The extent and consistency of UK contributions to international development;
- The parliamentary and public impact upon external policy.

Our 2002 Audit found that the UK had a good record of promoting human rights and supporting institutions designed for this purpose. The UK had entered into the most important international agreements in this area; and substantial contributions had been made to development aid. However, we noted that the strategic attachment to the US had involved the UK in military actions - including in Kosovo and Afghanistan - that were questionable under international law. We also described ongoing concerns about UK arms exports to regimes which might deploy them in the perpetration of human rights abuses (Beetham et al., 2002).

In this Audit, we find some instances of improvement. The UK has participated in a treaty banning cluster munitions. Progress has been made in the reaching of international aid targets; in the institutional commitment to development aid; and wider acceptance of its value as a policy goal. There have been limited improvements to the regime of parliamentary oversight of external policy. However, there are concerns about the reluctance of the UK to ratify certain international human rights treaties; and over the destinations of some arms exports. The UK parliament remains restricted in its ability to oversee the conduct of UK foreign policy. The most dramatic problem during the present Audit period has been the association of the UK with the US in the pursuit of the so-called 'war on terror', particularly during the presidency of George W. Bush (2001 to 2009). This attachment has involved an undermining of the global rule of law and the authority of the United Nations.

### 4.2.1 Support for human rights overseas

How consistent is the government in its support for, and protection of, human rights and democracy abroad?

#### *International human rights*

Human rights and democracy, two interdependent sets of values, apply not only to individual countries, but universally - or at least they should do. In this sense a truly democratic state must seek to further democracy on an international scale. In part this obligation involves participation in the numerous international human rights instruments that have been established in the period since the United Nations was established at the end of the Second World War, covering both 'traditional' civil and political rights and other generations of rights, such as economic and social rights (Burall et al., 2006). These instruments may cover both states' internal adherence to human rights; and their external dealings, for instance in the conduct of war.

In ratifying such agreements, a country is committing itself in principle to certain norms; and at the same time arguably contributing to the international credibility of these instruments, thereby increasing the chances that the standards they represent will be upheld universally. The history of UK participation in the European Convention on Human Rights (ECHR), signed in 1950, provides evidence of the potential strength of such instruments. When it was first devised, the UK saw propaganda value in the document in the context of the Cold War era. It was also reluctant to alienate its western European allies by pulling out of an agreement that had been negotiated with UK sensitivities in mind. For these reasons the UK government was forced to set aside its unease about the impact the ECHR might have upon domestic executive discretion. Over time various UK governments have been pressured into greater compliance with human rights norms through participation in the ECHR in ways they might otherwise not have been. Then, in 1998, the ECHR was strengthened further through its incorporation into UK law by the Human Rights Act 1998 (Wicks, 2006. See Section [1.2.2](#)).

Nominal commitments have their limitations as a measure of human rights compliance. It is possible that a state may fail to uphold rights to which it is committed; or indeed uphold rights to which it is not committed. But acceptance of international norms at least provides a standard against which the performance of a country can be measured, and compared to others ([Landman, 2004](#); for UK performance with respect to civil and political rights, see Section [1.3](#); for economic and social rights, see Section [1.4](#)).

As these qualifications suggest, as well as taking on obligations, a state must fulfill them in practice. If it fails to do so, either in external or internal policy, such behaviour is not only unsatisfactory in itself, but also because it undermines the international standing of human rights more generally. Even if general goodwill towards human rights and democracy exists, within a government there may be strong temptations and pressures not to adhere to them consistently. In domestic policy, for instance, security concerns or popular pressure may lead to the targeting of certain groups, such as terrorist suspects (for the playing out of this tendency in the UK and its internal impact on civil and political rights see Section [1.3](#)). In international terms, the desire to pursue global strategic objectives or secure commercial advantage for national commercial interests over foreign competitors may sometimes take priority over human rights commitments or support for democracy. Given its history as a global power and tradition as an international trading nation, these considerations may apply to an exceptional extent to the UK.

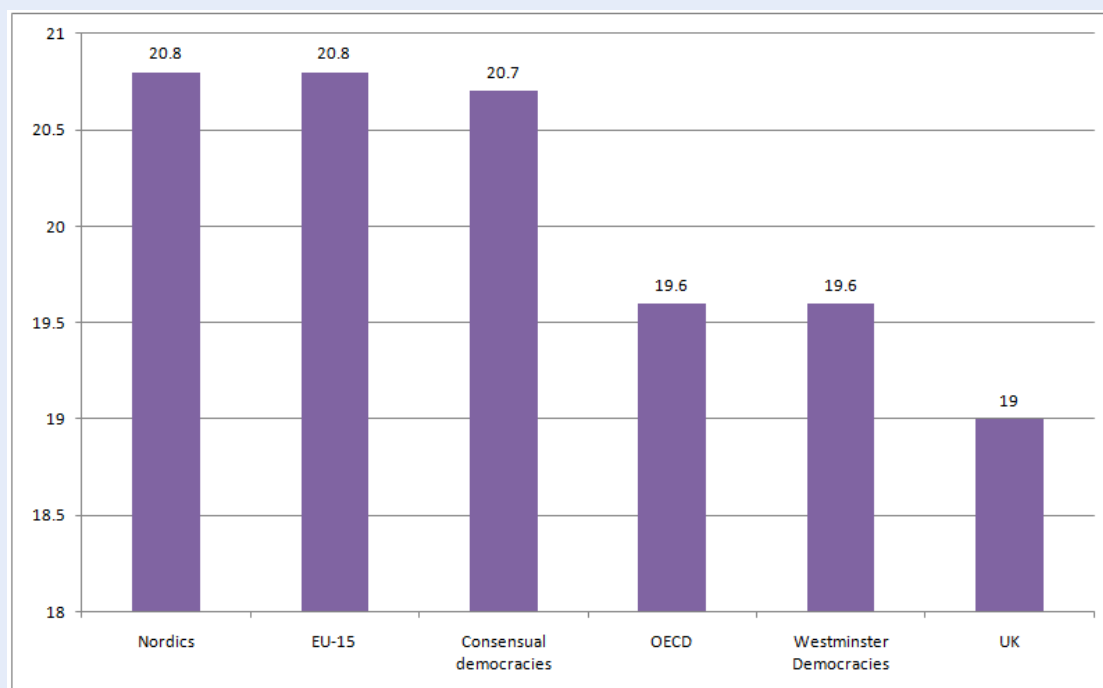
It might also be hoped that a state would not only avoid violating its international obligations, but would have a policy of actively promoting human rights and democracy through the avenues that are open to it. For instance, it might seek through public or private routes to encourage powers over which it has an influence to curb undesirable activities. It could seek to secure certain courses of action by supranational organisations of which it is a member, such as the European Union or United Nations. In extreme cases, states might also participate in humanitarian military interventions, as the UK did in Kosovo in 1999, and in Libya in 2011 (this latter issue, and the international legal complications that are entailed, is considered in Section [4.2.2](#)).

### ***UK commitments and policy***

The UK is the signatory to a wide range of international human rights instruments; but when placed in international perspective, its level of nominal commitment is not high. In 2009 a survey was conducted of 194 countries (the 192 members of the United Nations, the Cook Islands and the Holy See) to quantify the international human rights treaties to which they had agreed ([Anton et al., 2009](#)). It scored and ranked countries according to their ratification rates. In its ranking of the commitments of members of the Council of Europe to its human rights instruments, the UK came joint sixth, or rather joint bottom, having ratified only five out of 10 agreements that formed part of the assessment. A total of 43 countries came above the UK (Switzerland, Spain and the Russian Federation were ranked alongside). When its adherence to individual petition mechanisms was considered against all 194 states, the UK again came joint sixth, having accepted two such mechanisms, with the lowest ranking being eighth, for those countries that had accepted none. Countries without the African, American or European human rights systems had less opportunity to join petitioning mechanisms, making the performance of the UK even less impressive. The three top-ranked countries, Belgium, Italy and Sweden, who had accepted seven mechanisms, were all within the same system as the UK.

In overall ranking, scoring countries on a basis of whether they had signed up to a total of 24 treaties and mechanisms globally, [Anton et al. \(2009\)](#) ranked the UK joint sixth with a score of 19 out of 24. Fifty countries came above the UK, 14 were ranked alongside it and 129 below. Figure 4.2a provides the average overall scores out of 24 for the groups of comparator democracies used in this Audit. While the differences are fairly modest, the UK's scores are below those of the average for each comparator group. The Nordics and EU-15 jointly perform best, with an average score of 20.8. The consensual democracies achieve 20.7; the OECD and Westminster democracies both score 19.6. The UK's score is 19.

Figure 4.2a: Nominal human rights commitment, UK and groups of comparator democracies.



Source: Calculated using [Anton et al. \(2009, pp. 14-17\)](#)

When participation in international instruments underpinning human rights and democratic values is considered, the particular legal and constitutional system of the UK must be taken into account. Broadly speaking, there are two general approaches towards the legal status of

international agreements within a constitution. The first, monism, involves such obligations being incorporated directly into the domestic legal hierarchy of a state. Countries such as France and the US broadly accord to this model. The second, that of dualism, implies that international commitments only become effective internally if enacted by domestic legislative procedures. The UK is closer to the dualist approach, which accords with the doctrine of parliamentary sovereignty, according to which the supreme law-making body is parliament (Jowell and Oliver, 2011). In the UK, if an international agreement requires domestic legal force, it must be provided by an act of parliament (though by tradition UK courts may consider customary international law - the international equivalent to common law - to be a part of domestic UK law). For instance, European law is incorporated through the European Communities Act 1972. The ECHR, after being applicable only as an external commitment since the 1950s, was incorporated by the Human Rights Act (HRA) 1998 (see Section [1.2.2](#)).

The HRA can be a means of regulating both the domestic and to some extent the external activities by the UK state. During the present Audit period, case law established that the ECHR applied abroad in certain circumstances: if a state subject to it has military control of a territory; and on diplomatic premises or in vehicles registered to the state concerned (Barnett, 2011). However, the potential for the domestic judicial enforcement of international instruments giving expression to human rights and democratic values is limited if they are not incorporated into UK law. They can be taken into account, but not directly enforced. For this reason, political mechanisms for ensuring adherence to international democratic principles have a marked importance (see Section [2.4.2](#)).

In addition to its international legal obligations, throughout the period of this Audit, the UK government has been officially committed to the active pursuance of human rights and democracy internationally. The Labour government, first elected in 1997, was committed to an 'ethical dimension' to foreign policy (Burall et al., 2006). An innovation introduced by this government was the publication of annual international human rights monitoring reports. The coalition has continued to produce these documents, slightly retitled as human rights and democracy reports. The coalition also has an official commitment to human rights. The Foreign Office first adopted in 2010 a 'Business Plan' comprising of five 'structural reform priorities' (see Case Study 4.2a). The commitment to human rights was part of item five on the list. It was, however, not an item in its own right. Moreover, in this item, human rights were presented as being a subset of 'British values', arguably a curious categorization given that the UK is committed to human rights under *international* conventions, and as *universal* values.

### Case Study 4.2a: Foreign and Commonwealth Office 'Structural Reform Priorities' for 2011-2015, excerpts from Foreign and Commonwealth Office's Business Plan

1. Protect and promote the UK's national interest [...]
2. Contribute to the success of Britain's effort in Afghanistan [...]
3. Reform the machinery of government in foreign policy [...]
4. Pursue an active and activist British policy in Europe [...]
5. Use "soft power" to promote British values, advance development and prevent conflict [...] expand the UK government's contribution to conflict prevention; promote British values, including human rights; and contribute to the welfare of developing countries.

Source: [Foreign and Commonwealth Office \(2011, p. 2\)](#)

During the period covered by this Audit, the Export Control Act 2002 was newly introduced. It supplanted a practice whereby the government had used regulations intended to prevent trading with the enemy during war. This earlier approach was judged legally questionable. The new act determined that export controls could be introduced 'for the purpose of giving effect to any [European] Community provision or other international obligation of the United Kingdom'; and a range of other ends such as the national security of the UK and allies of the UK; or generally in the interests of stability worldwide. The products that could be controlled included those whose export might bring about 'breaches of international law and human rights'. The act provided for the issuing of orders which came into force at once, but had to be approved expressly in both Houses of Parliament. The act required the government to produce annual reports to parliament on its operation (Burall et al., 2006, pp. 34-5 and pp. 95-6). In the House of Commons, the Select Committees for Business, Innovation and Skills; Defence; Foreign Affairs; and International Development, collaborate to examine the government's strategic export control system and policies. This arrangement is known as the 'Committees on Arms Export Controls' or 'Arms Control Committee'.

The UK applies a set of criteria governing export controls that are based on a combination of national standards and the EU Code of Conduct on Arms Exports (see Case Study 4.2b). While due concern is attached to human rights and related democratic issues, the provisos about commercial concerns, the industrial base of the UK and international relations could be seen as creating an inbuilt tension within the operation of the rules themselves. It is unclear which of these motives takes precedence when difficult decisions must be made.

### Case Study 4.2b: Consolidated export control criteria, excerpts from the Arms Control Committee Annual Report, 2009

#### CRITERION ONE

Respect for the UK's international commitments, in particular sanctions decreed by the UN Security Council and those decreed by the European Community, agreements on non-proliferation and other subjects, as well as other international obligations [...]

#### CRITERION TWO

The respect of human rights and fundamental freedoms in the country of final destination [...]

#### CRITERION THREE

The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts [...]

#### CRITERION FOUR

Preservation of regional peace, security and stability [...]

#### CRITERION FIVE

The national security of the UK, or territories whose external relations are the UK's responsibility, and of allies, EU Member States and other friendly countries [...]

#### CRITERION SIX

The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law [...]

#### CRITERION SEVEN

The existence of a risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions [...]

#### CRITERION EIGHT

The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources [...]

#### OTHER FACTORS

Operative Provision 10 of the EU Code of Conduct specifies that Member States may where appropriate also take into account the effect of proposed exports on their economic, social, commercial and industrial interests, but that these factors will not affect the application of the criteria in the Code.

The Government will thus continue when considering export licence applications to give full weight to the UK's national interest, including:

a. the potential effect on the UK's economic, financial and commercial interests, including our long-term interests in having stable, democratic trading partners;

- b. the potential effect on the UK's relations with the recipient country;
- c. the potential effect on any collaborative defence production or procurement project with allies or EU partners;
- d. the protection of the UK's essential strategic industrial base.

Source: [Arms Control Committee \(2011, pp. 58-62\)](#)

### ***UK policy and practice regarding international human rights and democracy***

The attitude of the UK towards participation in international human rights instruments has been challenged. In 2004 the UK government concluded a review of its international human rights commitments. It chose to accept the optional protocol to the UN Convention for the Elimination of all forms of Discrimination Against Women for a trial period. But no other changes were made. In 2005 the parliamentary Joint Committee on Human Rights (JCHR) criticised the government for failing sufficiently to explain its reasons for not opting into more agreements at this stage. The JCHR called into question the reluctance of the government to accept individual rights of petition under human rights instruments; and its rejection of protocol 12 of the ECHR, which would provide a free-standing protection against discrimination (for discrimination see Section [1.1.2](#)). The committee called for further consideration of ratifying protocol four of the ECHR, which would strengthen freedom of movement. It found fault with UK reservations regarding international agreements on the rights of children, entered for the purposes of retaining discretion in immigration and asylum policy (see also Section [1.1.6](#)). The JCHR did however welcome a number of recent ratification decisions. The UK had accepted protocol 13 of the ECHR, completely abolishing the death penalty; the optional protocol to the Convention Against Torture, allowing independent inspection of detention premises; agreements to prevent the exploitation of children; and protocol 14 of the ECHR, providing for better functioning of the European Court of Human Rights ([Joint Committee on Human Rights, 2005](#)).

During the present Audit cycle, the UK has also sought through legal action to reduce the impact of the ECHR. It has intervened in cases before the European Court of Human Rights, in particular with a view to allowing it to deport terrorist suspects to potentially dangerous destinations, and to continue to impose a blanket ban on prisoner voting rights (Bradley and Ewing, 2011; Turpin and Tomkins, 2011; see Section [1.1.1](#)). In both cases, were it successful, the UK would have an impact upon rights throughout the states to which the ECHR applied. In early 2012, the UK is seeking through its presidency of the council of Europe to reduce individual access to the European Court of Human Rights, linked to a domestic agenda of reviewing human rights provision ([Lewis, 2011](#); see also Section [1.1.3](#)).

Whatever the formal international obligations and objectives of the UK regarding the associated causes of human rights and democracy, concerns have long been raised about the extent to which they are consistently fulfilled in practice, as they have often seemed to be undermined by the desire to pursue commercial and strategic alliances. In its review of the 2008 Foreign Office annual human rights report, the House of Commons Foreign Affairs Committee observed a number of problems with UK policy towards human rights internationally. For example, the committee noted 'that there remains little evidence that the British Government's policy of constructive dialogue with China has led to any significant improvements in the human rights situation' ([Foreign Affairs Committee, 2009, p. 78](#)). Furthermore, enormous violations of democratic principles continued in Saudi Arabia, yet the human rights report tended to downplay this problem. The committee warned that '[t]he fact that Saudi Arabia is a strategic ally of the UK should not lead to an official policy of turning a blind eye to its human rights failings' ([Foreign Affairs Committee, 2009, p. 93](#)). In 2011 the same committee pressed the government on its reluctance to support the establishment of an international panel to investigate alleged atrocities during the Sri Lankan civil war ([Foreign Affairs Committee, 2011](#)). A longstanding criticism of the UK has been its tendency in various ways to support - or fail to criticise - Israel for its questionable activities during the ongoing Middle East conflict. For instance, in 2006 Israel launched attacks against Lebanon, but the UK (along with the US) would not call for an immediate ceasefire ([Weir, 2007](#)). The UK alliance with the US, and its implications for the international rule of law, including the prohibition of torture, is considered in more detail below (see Section [2.4.2](#)). One feature of this relationship has manifested itself in extradition policy. Under the US-UK Extradition Treaty of 2003 the UK must provide the US with reasonable evidence that they are seeking the correct person; while the US need not meet such a requirement ([Joint Committee in Human Rights, 2011](#)).

There is evidence of special privileges apparently being accorded to the arms manufacturing sector in the UK and that their export activities are not as tightly controlled as they should be, to the detriment of human rights internationally (see Section [2.6.4](#)). The House of Commons Arms Control Committee has expressed the view that: 'the Government should take a longer term view about unstable countries, and



further appraisal is required where the peace is fragile. UK arms exports have ended up in places that were contrary to UK policy' ([Arms Control Committee, 2010, pp. 51-2](#)). As a result of the violent response to uprisings in the Middle East and North Africa in 2011, the committee has observed that there was a frenetic change in government export control policy. This outcome suggested that the previous approaches adopted by successive governments had in some way been far from ideal. However, despite the repeated recommendations of the committee for the government to make its legal controls over extraterritorial arms deals - involving UK firms selling arms from one foreign country to another - more extensive, the intention of the present coalition government to enhance the sale of arms overseas raises particular concerns ([Arms Control Committee, 2011](#)). On a more practical note, the committee has also complained about the inadequate delays in receiving timely information from the government in order to fulfil its scrutiny role ([Arms Control Committee, 2010](#)).

During the period under examination, some progress was made in the area of arms control. Cluster munitions, if they do not detonate immediately, can become similar to unexploded landmines, posing a great threat to civilians. In 2007, after substantial pressure within parliament and from civil society groups, the UK government signed up to the Oslo Declaration, which required states to produce a binding treaty to prevent the 'use, production, transfer and stockpiling of cluster munitions'. However, there were some concerns voiced about the precise way in which the government interpreted and implemented this agreement, and whether it left unsatisfactory loopholes ([Weir, 2007, pp. 15-7](#)). In 2008 the UK signed the Convention on Cluster Munitions, which came into force in 2010.

The Export Credits Guarantee Department (ECGD) plays an important official role in supporting UK trade policy, providing insurance and guarantees for UK manufacturers. For some time concerns have existed about its work in countries which have poor records on human rights. It has also been found to be subject to unsatisfactorily slight forms of democratic oversight ([Hawley, 2003](#); Burall et al., 2006). In 2009, the JCHR investigated the relationship between the private sector and human rights, both within the UK and internationally. It raised specific concerns about the ECGD. The committee held that there was not sufficient due diligence involved when the impact of companies seeking ECGD support on human rights was considered. Furthermore, ECGD decision-making processes were found not to be sufficiently transparent. In the same report, the JCHR identified wider failings by government to take clear measures to ensure that the commercial sector operated with sufficient regard to human rights concerns in its international operations ([JCHR, 2009a](#)). This issue is of particular concern given that it has been argued that under international law, states can have responsibility for the commercial activities of their nationals abroad and for the outcome of the subsidies that states provide ([McCourquodale and Simons, 2007](#)).

In conclusion, Democratic Audit notes that in its rhetoric, the UK presents human rights as being inherently 'British' in nature. Moreover, through its actions, for instance in issuing official international human rights assessment reports, it regards itself as having a special international role in upholding human rights and democratic values. It seems only fair to assess the UK itself against the high standards it purports to set. On a plus note, the agreement to an international ban on cluster bombs is promising and some progress has been made with the UK ratification of more international human rights instruments. However, such progress has been limited; and the UK clearly does not set the best example in this regard. Moreover, the UK's record of litigation under the ECHR and attitude towards the European Court of Human Rights is suggestive of a desire to loosen the application of human rights standards not only to the UK, but, by extension, to Europe as a whole. There is also clear evidence of inconsistency in the application of human rights and democratic principles internationally, conditioned by political and commercial concerns, which we find a cause for concern. The private sector as a whole appears to be insufficiently concerned with international human rights issues.

#### 4.2.2 Support for UN and international law

How far does the government support the UN and agencies of international cooperation, and respect the rule of law internationally?

##### ***Achieving international cooperation and sustaining the international rule of law***

The rule of law is an essential component of democracy, internationally as well as domestically (see [Introduction](#) to Section 1.2). The fundamental principle of the rule of law, that all institutions and individuals should be subject to the law, is essential to the establishment and maintenance of international circumstances in which democracy can flourish. Initially, international law existed mainly as custom. Then a process which began to gain pace from the late-nineteenth century saw a process of increased codification. A corpus of codified international law and organisations associated with its development and implementation developed. This tendency accelerated further after 1945. The subject matter these rules and bodies deal with is wide, ranging from commercial and technological cooperation to the protection of the environment ([Alvarez, 2007](#)). All of these areas are important to democratic values as discussed throughout this Audit, and the principle that democracy should be promoted not only within any given state, but universally.

The central institution in international law is the United Nations (UN). The International Court of Justice (ICJ) is the main legal organ of the UN. It is a civil court, which mainly hears disputes between states, rather than dealing with the actions of individuals, and works closely with the International Criminal Court (ICC), which is not specifically a UN body, though it has links with it and was proposed by the UN. It was created by the Rome Statute of 1998, which came into force in 2002 (Burall et al., 2006).

Much of international law is concerned with day-to-day, regular dealings, but an underlying issue involves the use of force and its legitimacy. The desire to establish a newly-regulated world order following the Second World War drove the formation of the UN in 1945. Its charter seeks to outlaw war altogether, banning unilateral use of force by individual states directed against others. However, it does specifically leave open the possibility of military action taken in self-defence. The body with primary responsibility for decisions about the use of force is the United Nations Security Council (UNSC), which has five permanent members: China, France, the Russian Federation, the UK and the United States (US); and ten rotating temporary members, elected for two year terms by the UN general assembly. Under the UN Charter, the UNSC is responsible for identifying threats to international peace and security, and to take action to restore it, including sanctions and military action. It can call upon other member states to support such action. Military operations authorised by UNSC Resolutions in this way include the interventions in Korea in 1950 and to end the Iraqi occupation of Kuwait, which rested on a Resolution passed late in 1990 (Blick, 2005).

While the rule of law may be held to be a universal value, applicable to international relations as much as domestic affairs, its international application presents particular challenges. There is no clearly defined canon of all international law, though the UN Law Commission, first established in 1949, has been entrusted with codifying it. Moreover, at national level, law can be expected to be produced by a legislature. At international level, no body as such exists. International law is generally now produced by two or more states entering into agreements with each other. From a democratic perspective, this arrangement could be seen as problematic in that it means that there is no body that contains at least some directly elected component, such as the House of Commons provides in the UK parliament. Furthermore, just as international law is to a large extent the product of agreements between assorted states, it is essentially dependent upon their willingness to adhere to it (Bingham, 2010). In this sense, the international rule of law and the organisations that facilitate international cooperation may not be greater than the sum of its parts - i.e. the states that comprise it.

The international rule of law is especially vulnerable, then, to the agendas of particular states. Powerful countries can override or undermine it in different ways, as has been repeatedly demonstrated in the case of the US. One means of doing so is not to take part in agreements and institutions. The US has declined to participate in important features of the development of international law, including the ICC; and has withdrawn from the full jurisdiction of the ICJ (Burall et al., 2006). Another option is unilaterally to pursue particular interpretations of international law which are not generally accepted. During the present Audit period, in the wake of the terrorist attacks of 11 September 2001, the US has stretched the concept of self-defence against international terrorism to the point where it was used as a justification for pre-emptive military action anywhere in the world, even if an attack was not imminent (see Case Study 4.2c).

### Case Study 4.2c: Excerpts from the 2002 National Security Strategy of the United States of America

'We will disrupt and destroy terrorist organizations by [...] defending the United States, the American people and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of self-defence by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country [...].'

Source: [President of the USA \(2002, p. 6\)](#)

The US also partly drew on self-defence as a justification for the invasion of Iraq it led in 2003. This action was particularly controversial and widely regarded as incompatible with international law ([Alexander, 2003](#); Sands, 2005; Bingham 2010). The association of the UK with the broad approach of the US during the last decade is discussed below.

A further complication arises from the importance of individual states to international law and organisations for attaining international cooperation. A number of countries in the international community fall severely short of even basic democratic standards; and may use the principle of state sovereignty, which is to some extent protected by the UN Charter, as a shield for activities within their own borders that seriously compromise democratic values such as human rights; even to the point of committing major atrocities. While in theory the UNSC can act to prevent such activity, it is often painfully slow to do so in a meaningful way; and may be deadlocked. Of the permanent members of the council, which have a right to veto resolutions, China and the Russian Federation have been resistant to the practice of humanitarian intervention, presumably on the grounds that it could create a precedent which might be used against them at some point in the future (Burall, 2006).

Gradually a new doctrine has begun to develop. It involves the idea that states have not only a right, but a duty to intervene to prevent humanitarian disasters in circumstances where a domestic government is unable or unwilling to help - or is perhaps the source of the problem. Such intervention can involve, in the extreme, military action, such as the bombing of Belgrade in 1999 to prevent atrocities against ethnic Albanians in Kosovo. Russia and China had used their position on the UNSC to block intervention, so the operation took place under the auspices of the North Atlantic Treaty Organisation (NATO). The doctrine of a 'responsibility to protect' made international headway during the period of the present Audit and was endorsed by a UN investigation published in 2004. Though maintaining that decisions about the use of armed force still rested with the UNSC, the UN supported the idea of intervention to prevent 'genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law' ([High-level Panel on Threats, Challenges and Change, 2004, p. 66](#)). It should however be noted that this principle is itself vulnerable to manipulation by states seeking cover for military action they may wish to take for other purposes; and such action can bring the whole doctrine into disrepute. The invasion of Iraq in 2003 and various forms of questionable counter-terrorist activity undertaken by the US and its allies over the last decade were held to be justified as carried out in pursuit of democratic values.

### ***The commitments of the UK***

As the analysis above suggests, the commitment of particular states to the rule of law and organs of international cooperation is vital to their sustainability, since they lack sufficient autonomous existence. This commitment can be assessed both by the extent to which a state participates in agreements and institutions, its practical policy activity, and the interpretations it seeks to place on particular features of international law at given times. The underlying principle is whether a state uses such influence and power it possesses to pursue only its narrow perceived self-interests, or display genuine support for broader principles of legality.

The UK has a long history as an internationally active state. Indeed, so extensive are its commitments that the UK government itself does not have a single complete list of all the treaties to which it is a signatory (Burall et al., 2006). Through the formation of the UN in 1945, the UK took a leading role in conjunction with the US in the attempt to establish a firmer world legal order and was also more recently a central player in the creation of the ICC (Sands, 2005). As such, the UK government has long maintained its stance of commitment to the international rule of law.

In the UK, the constitutional position regarding the handling of treaty agreements comes closer to what is known as the 'dualist model' than the 'monist model' (see also Sections [4.2.1](#) and [4.2.4](#)). This arrangement means that international agreements are not automatically integrated into domestic law, but can only be directly enacted through parliament (Jowell and Oliver, 2011). The courts can, however, consider customary international law and take it into account in their deliberations, but national law always supersedes it ([Crawford, 2006](#)). Parliament can also pass legislation contrary to international law which will be accepted as legal within the UK.

The non-statutory ministerial code describes the 'overarching duty on Ministers to comply with the law including international law and treaty obligations' ([Cabinet Office, 2010, p. 1](#)). Furthermore, the Foreign and Commonwealth Office asserts its intention to provide support to various international organisations including the UN and the Commonwealth. More recently, the current coalition government has supported permanent UNSC membership for Japan, India, Germany and Brazil, as well as African representation ([Foreign and Commonwealth Office, 2011, p. 2](#)).

### ***The UK and the international rule of law in the post 9/11 era***

The previous full Audit found that the Labour administration which took office in 1997, had provided valuable support to institutions of international cooperation including the UN; and had 'shown a clear commitment to the international rule of law' (Beetham et al., 2002, p. 282). However, it noted that the UK was involved in territorial disputes with Spain over Gibraltar and with Argentina over the Falkland Islands, while it also expressed concerns about the position of the UK as 'chief ally to the US' (Beetham et al., 2002, p. 282). In the period covered by the present Audit, concerns intensified about the manner in which the UK pursued its longstanding strategic alliance with the US. As noted above, the US has not always fully committed itself to the instruments and organs of international law and its response to events of 11 September 2001 was to harden this approach, including through the development of a doctrine of preemptive self-defence. It has been argued that the UK, in supporting the US in its endeavours, served to damage the authority of the UN and the international rule of law (Sands, 2005).

The most dramatic manifestation of this tendency was UK participation in the US-led invasion of Iraq in 2003. Already by this point, the Labour government under Tony Blair had engaged in various military actions, some of which, such as the intervention over Kosovo, stretched existing understandings of international law (Kampfner, 2004). There was no clear final UNSC authorisation for the Iraq invasion, though the UK claimed that a combination of earlier resolutions gave it a legal basis. In particular the UK asserted that UNSC resolution 678, which had authorised the ejection of Iraq from Kuwait in 1991, could be revived and used as an authority for the invasion of Iraq, without need for a further specific resolution if Iraq failed to comply with UN requirements that it rid itself of weapons of mass destruction (see Case Study 4.2d).

#### Case Study 4.2d: Full text of public statement of attorney general's advice on legality of the invasion of Iraq, as provided to House of Commons in a written answer of 17 March 2003

1. In resolution 678 the Security Council authorised force against Iraq, to eject it from Kuwait and to restore peace and security in the area.
2. In resolution 687, which set out the ceasefire conditions after Operation Desert Storm, the Security Council imposed continuing obligations on Iraq to eliminate its weapons of mass destruction in order to restore international peace and security in the area. Resolution 687 suspended but did not terminate the authority to use force under resolution 678.
3. A material breach of resolution 687 revives the authority to use force under resolution 678.
4. In resolution 1441 the Security Council determined that Iraq has been and remains in material breach of resolution 687, because it has not fully complied with its obligations to disarm under that resolution.
5. The Security Council in resolution 1441 gave Iraq "a final opportunity to comply with its disarmament obligations" and warned Iraq of the "serious consequences" if it did not.
6. The Security Council also decided in resolution 1441 that, if Iraq failed at any time to comply with and co-operate fully in the implementation of resolution 1441, that would constitute a further material breach.
7. It is plain that Iraq has failed so to comply and therefore Iraq was at the time of resolution 1441 and continues to be in material breach.
8. Thus, the authority to use force under resolution 678 has revived and so continues today.
9. Resolution 1441 would in terms have provided that a further decision of the Security Council to sanction force was required if that had been intended. Thus, all that resolution 1441 requires is reporting to and discussion by the Security Council of Iraq's failures, but not an express further decision to authorise force'.

Source: [Solicitor General \(2003\)](#)

The argument offered by the UK government in defence of the legality of the invasion of Iraq has been widely disputed. It has been argued that Iraqi non-compliance with UNSC resolutions was not of an extent justifying military action and that the final decision about action should have been clearly taken by the UNSC, which it was not ([Alexander, 2003](#); Bingham, 2010). The issue cannot be settled in the sense that it has not been heard by an international court, nor is it likely to be. However, it is notable that in an earlier (now declassified) internal version of his advice on the legality of the proposed invasion, which the prime minister received on 14 January 2003, the attorney general, Lord Goldsmith, expressed the view that 'resolution 1441 does not revive the authorisation to use of force contained in resolution in the absence of a further decision by the Security Council' ([Attorney General 2003](#)).

The attorney general seemed to have shifted his position by the time he provided further advice on 7 March 2003, but was not as definitive as the public statement could be interpreted as suggesting. The earlier, more equivocal, views of the attorney general on the operation were not only denied to MPs voting on the action and the public, but also the cabinet who - according to constitutional doctrine - were collectively responsible for the decision to invade. There were difficulties in reconciling this approach with the statement in the ministerial code that when a summary of advice from law officers is included in cabinet papers, 'the complete text of the advice should be attached' ([Cabinet Office, 2010, p. 5](#)). This approach to the handling of legal advice was part of a broader technique pursued towards Iraq (and other issues) by Tony Blair. As prime minister he sought to dominate decision-making by working in small informal groups, who possessed access to detailed information not made available to full cabinet and its more official sub-committees (Short, 2005; Burall et al., 2006).

In addition to the invasion raising issues of international legality, the legal advice which the UK government received regarding the occupation of Iraq was unambiguous with regard to any attempts to restructure the Iraqi political or economic system. As Case Study 4.2e outlines, a subsequent memorandum from the attorney general, dated 26 March 2003, made it absolutely clear that 'a further Security Council resolution is needed to authorise imposing reforms and restructuring of Iraq and its Government'. Yet, the occupation that followed the invasion of Iraq on 19 March 2003, in which the UK participated, gave rise to exactly the sorts of wide-ranging political and

economic reforms which Lord Goldsmith warned would be unlawful. There were, moreover, wider allegations of occupying forces, including those from the UK, engaging in actions which violated international laws and norms. Following the death of an Iraqi civilian, Baha Mousa, in British custody in 2003, a British soldier was prosecuted in the UK under the International Criminal Court Act 2001 for war crimes ([Gage, 2011](#); Bradley and Ewing, 2011).

### Case Study 4.2e: The attorney general's advice on the occupation of Iraq

One memo from the attorney general to the prime minister on the subject of the legality of the 2003 Iraq war has escaped mention in the various inquiries and public debates. Yet this [memo](#), sent on 26 March 2003, is perhaps the clearest evidence that the British government knew that its conduct was illegal and that the prime minister failed to act to ensure the UK complied with international law.

The memo presented the attorney general's reading of the legal framework imposed by the Geneva and Hague conventions. In his opinion, he noted that 'some changes to legislative and administrative structures of Iraq may be permissible if they are necessary for security or public order reasons, or in order to further humanitarian objectives [however] more wide-ranging reforms of governmental and administrative structures would not be lawful'. He added that this general principle 'applies equally to economic reform, so that the imposition of major structural economic reforms would not be authorised by international law' ([Lord Goldsmith, 2003](#)).

The Geneva and Hague rules, as the attorney general's opinion suggests, make very clear the circumstances under which an occupying power can impose new laws upon a population. To cite article 43 of the 1907 Hague Regulations on Land War more fully, the assertion is that an occupying power 'shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country'. Subsequently, article 64 of the Fourth Geneva Convention of 1949 broadened the remit of the occupying power to maintaining 'the orderly government of the territory'.

Profiting from war is not permitted in law, nor is reconstructing the economy in the image of the Washington consensus, something that was made abundantly clear in the attorney general's memo to the British prime minister and his cabinet. Subsequent events certainly contradicted this advice, yet the UK-US coalition restructured the economy tightly around neo-liberal, WTO compliant principles ([Whyte, 2007](#)), transforming the political and economic systems ([Wheatley, 2006](#)), and creating a new legal basis for enabling access to Iraqi oil reserves to British and American oil companies (Muttitt, 2012). The administration of the Iraqi occupation was primarily carried out by the US, the UK and Australian governments and, as such, those governments are therefore implicated in those potential breaches of international law.

Consistent with both the principles of the laws of war set out in the Geneva and Hague Conventions, the UN resolution authorising the occupation (UNSCR 1483) stated merely that that 'the Development Fund for Iraq shall be used [...] to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq'. The consequences of the occupation are, by now, well known: a weakening of local systems of production and distribution in every sector; an ongoing political crisis; and the weakening of healthcare and education systems. According to the UN, up to 5 million Iraqis have become refugees since the occupation, and unemployment now stands at 40 per cent. Ongoing water shortages are described by Iraqi government officials as the worst since the beginning of Iraq's civilisation and agricultural food production is also at a record low.

Another area of controversy which arose from the UK alliance with the US involved suspicions that the UK had become involved in rendition. This issue was considered in a [report](#) co-produced by Democratic Audit in 2007. Describing the practice as 'the informal, international transfer of suspects to custody', we noted that rendition had already been carried out before the terrorist attacks in the US of 11 September 2001. However, thereafter it became central to US counter-terrorist policy, including 'extraordinary rendition', involving individuals being tortured. Clear evidence has emerged during the last decade of the UK collaborating with the US in rendition. In view of these issues, human rights pressure groups, such as Amnesty International and Liberty, have condemned rendition of all types and argued that it clearly violates both UK domestic law and international law ([Weir, 2007, pp. 17-19](#); [Intelligence and Security Committee, 2007](#)).

When the UK government described its position regarding rendition in 2009, the account it provided did not completely condemn such a policy, nor was there a complete denial that the UK might be implicated in it. The statement argued that the descriptions 'rendition' and 'extraordinary rendition' had not yet attained a widely acknowledged definition, but that the UK was opposed to 'any form of deprivation of liberty that amounts to placing a detained person outside the protection of the law'. It went on to claim that if the UK were asked to help another country with rendition, and if its participation in doing so were within the law, it 'would decide whether or not to assist taking into



account all the circumstances'. Furthermore, it stated that the UK had not and would not 'approve a policy of facilitating the transfer of individuals through the UK to places where there are substantial grounds to believe they would face a real risk of torture' ([Foreign and Commonwealth Office, 2008, pp. 16-17](#)).

Broader claims have been made that the UK, as part of its efforts against international terrorism, has been complicit in torture. Concerns exist about the possibility that UK officials may have asked foreign intelligence agencies to torture and interrogate individuals; helped foreign intelligence agencies known to practice torture detain individuals; provided information for use in interrogations of individuals who have been subjected to torture; taken part in interrogating individuals who have been or might be tortured; been present when torture has taken place; and regularly received intelligence acquired through torture. The government has also been strongly criticised for resisting scrutiny of its activities in this respect ([Joint Committee on Human Rights, 2009b](#)). While, the successor to the US administration of George W. Bush, led by President Barack Obama who took up office in 2009, has demonstrated more commitment to the international rule of law, it is premature to assess the precise implications of this shift. When pressing for military intervention in Libya in 2011, the UK emphasised obtaining clear UN approval.

Democratic Audit acknowledges that international law can be imprecise and disputes involving it can be difficult to involve. We also accept that some of the states incorporated within the international system of rule of law are clearly undemocratic. However, like the rule of law on the national scale, to bend, ignore or break the rules is a dangerous violation which is difficult to justify. Moreover, simply signing up to treaties and organisations and committing to support these principles is essential but not sufficient. We regret that the UK, which has in the past played a valuable role in promoting the international rule of law, became party to attempts, driven by the US, to bypass multilateral cooperation. The participation in the invasion of Iraq was difficult to reconcile with concepts of legality, notwithstanding the novel arguments put forward by the UK government. This act was part of a broader trend of supporting US international security activity which - there are grounds for believing - involved UK collaboration with rendition, possibly including extraordinary rendition, and becoming complicit in torture. We are also concerned that UK constitutional arrangements, in particular the relatively informal way in which conformance to international legality is regulated, seem to have made such conduct possible, and could do so again in the future.

### 4.2.3 Contribution to international development

How extensive and consistent is the government's contribution to international development?

Just as severe disparities in levels of wealth within a particular state are detrimental to democracy, so such extremes on a global scale have negative democratic connotations. It is hard for people living in countries blighted by extreme poverty to fully enjoy the benefits of democracy, and indeed for democracy to function at all in such circumstances. As part of its commitment to democratic principles, a state should acknowledge and realise its obligation to alleviating international inequalities of this kind. Simply devoting financial resources for aid purposes is not sufficient. It is necessary to ensure that aid programmes accord with internationally agreed norms and that they are not distorted by purposes such as trade benefits or political goals. A country's domestic political and legal arrangements must therefore be aligned with supranational objectives.

A key target for developed countries in the field of development aid was first recommended as long ago as 1969. It entails seeking to raise the level of Overseas Development Aid (ODA) to 0.7 per cent of Gross National Income (GNI). Initially, the target related to Gross National Product (GNP), but since 2001 it has been linked to GNI, which includes income from abroad, while GNP relates solely to internal production. A resolution of the United Nations (UN) general assembly, issued in 1970, called upon advanced economies to work towards the target by the mid-1970s, but this objective has yet to be reached on an international level. Between 1960 and 1969, the average percentage spent by members of the Organisation for Economic Cooperation and Development's (OECD) Development and Assistance Committee (DAC) was 0.45 per cent. In the decade following the introduction of the target (the 1970s), the figure actually fell to 0.32 per cent, rising marginally to 0.33 per cent during the 1980s, only to fall again during the 1990s to 0.27 per cent. Since 2000, that figure has remained static ([OECD, 2011, p. 227](#)). In 2005, existing European Union member states committed to attaining the 0.7 per cent target by 2015 ([Townsend, 2010](#)). The performance of individual countries, including the UK, is considered below.

In disputing the relevance of the 0.7 per cent target, [Clemens and Moss \(2007\)](#) hold that the modelling on which it was initially based is no longer applicable and that there was never agreement within the UN to actually *reach* the target, rather to use it as a yardstick. Furthermore, the ODA/GNI ratio is not considered an effective means of measuring aid commitments. However, though the 0.7 per cent target may be imperfect, it is still an effective means of providing a popular and political focus on the provision of development aid internationally, as well as making it possible for some kind of comparative consideration to be made of the resources devoted to aid over time and a tool by which enhanced commitment can be promoted.

In conjunction with the 0.7 per cent target, the millennium development goals are central to international efforts to coordinate aid. In 2010, the member states of the UN recommitted themselves to these objectives and set out how they might be achieved by 2015. As set out by the UN, the goals are: to eliminate hunger and extreme poverty; to bring about primary level education for all; to advance women's rights; to

reduce levels of child mortality; to achieve better maternal health; to combat diseases, in particular malaria and HIV/AIDS; to bring about a sustainable environment; and to attain more international cooperation in pursuit of development. Up to this point in time, progress towards these goals has not been judged entirely satisfactory, with the UN revealing that: the poorest groups of children have made the weakest advances in nutrition; employment opportunities for women remain inadequate; the chances of children in difficult circumstances of receiving education are still low; the number of urban poor people is rising; and, sanitation and drinking water remain pronounced concerns in a number of countries ([United Nations, 2011](#)). Alongside the millennium development goals, the UK is also a signatory to the Paris Declaration of 2005 and the Accra Agenda for Action of 2008, which seek to make aid more effective through pursuing ownership of aid programmes within the recipient countries; for donors to work to simplify their programmes in countries; for aid to be focused on measured outcomes; and for both donors and recipients to be held to account for these outcomes.

### **UK law and policy commitments**

The purpose of the International Development Act 2002 was to make the grounds on which aid is disbursed more coherent. It applies to all UK bilateral aid (64 per cent of the total in 2010), but only 30 per cent of UK aid that is distributed by the European Union. A central objective of the act was to prevent aid from being deployed for diplomatic ends or for profit, making the reduction of poverty its legal purpose. However, 'tied aid', which it sought to prohibit, is not defined in the act, allegedly because there were technical problems associated with doing so. There is also no definition of 'poverty' in the act (Burall et al., 2006, pp. 33-4). Another statutory component of UK development aid provision is the International Development (Reporting and Transparency) Act 2006, which was initiated as a private members' bill by the Labour MP Tom Clarke. The act creates a requirement for the government to report annually on the UK provision of development aid and, in particular, on the extent to which it is reaching the target for ODA to reach 0.7 per cent of GNI.

Beyond its statutory provision for aid, the UK has a specific Department for International Development (DFID) headed by a cabinet-level secretary of state. In 1964, the Ministry of Overseas Development was first established by the Labour government. Thereafter, whenever there was a change to a Conservative government, the tendency was for the international development function to be folded back into the Foreign Office; only for it to be made a freestanding function again whenever Labour returned to government. However, with the change of government in 2010 from a Labour to a Conservative/Liberal Democratic coalition, DFID was retained as an independent department.

In a statement of its aid priorities, the coalition states that it will no longer 'support projects that are failing to perform', instead money will be redirected to 'programmes that are better placed to combat poverty' ([Department for International Development, 2011, p. 5](#)). For instance, there is a policy of not providing significant aid to those nations that are judged not to need it, most notably with reference to China and Russia. The DFID budget has been protected from the large coalition financial retrenchment programme, signalling a commitment from the coalition to international development; the details of which are set out below in the DFID business plan for 2011-2015 (Case Study 4.2f). The coalition government also show a continued commitment to achieving agreed international objectives as pursued by the previous Labour government, including the millennium development goals and the 0.7 per cent ODA/GNI target. While there is a commitment, again inherited from the previous administration, to place this latter obligation on a statutory basis, it had not yet been acted upon. There is reference to issues important to the Paris Declaration, such as local ownership, a focus on outcomes, and accountability, but at the same time, the present government has advocated making DFID more 'friendly' towards the private sector. An Independent Commission for Aid Impact (ICAI) has been established, to assess DFID aid programmes.

### **Case Study 4.2f: Excerpts from the DFID Structural Reform Plan 2011-15**

#### **1. Honour international commitments [...]**

1.1 Honour UK commitment to spend 0.7% of gross national income on overseas aid from 2013, enshrine this commitment in law and encourage other countries to fulfil their aid commitments [...]

1.2 Support actions to help achieve the Millennium Development Goals [...]

1.3 Use the aid budget to support the development of local democratic institutions, civil society groups, the media and enterprise [...]

#### **2. Introduce transparency in aid [...]**

2.1 Increase independent scrutiny by establishing the Independent Commission for Aid Impact and by strengthening evaluation throughout DFID [...]

2.2 Introduce full transparency in aid and publish details of all new UK aid spending [...]



2.4 Re-orientate DFID's programmes to focus on results [...]

2.5 Give poor people more power and control over how aid is spent [...]

3. Boost wealth creation [...]

3.1 Make DFID more private sector friendly [...]

4. Strengthen governance and security in fragile and conflict-affected countries [...]

5. Lead international action to improve the lives of girls and women [...]

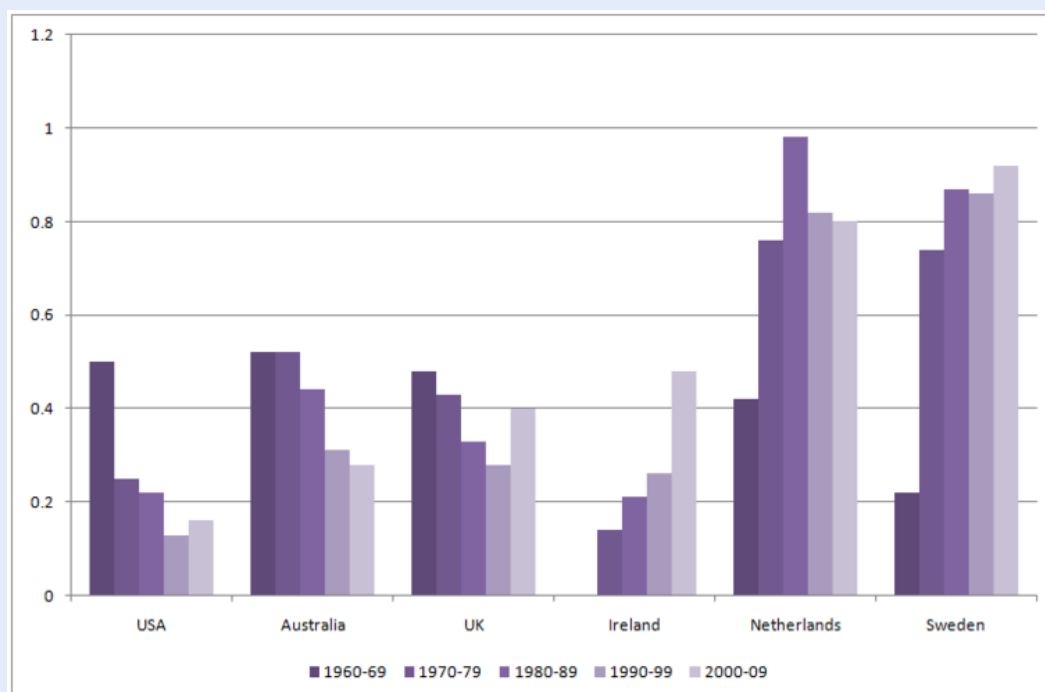
6. Combat climate change [...]

Source: [Department for International Development \(2011, pp. 7-18\)](#)

### UK aid in practice

As noted above, a key UK commitment is to attainment of the target for GDA at 0.7 per cent of GNI. This target has never been achieved. As Figure 4.2b shows, during the decade 2000 to 2009, the UK reached 0.4 per cent. This figure was an improvement on the previous two decades (0.28 per cent for the 1990s and 0.33 per cent for the 1980s), but worse than the two decades before that (see Figure 4.2b). Moreover, while the UK's increased commitment to ODA stands in stark contrast to the reduced levels observable in Australia and the USA, the share of GDI which both Sweden and the Netherlands committed to aid in the 2000s was double that of the UK.

Figure 4.2b: Overseas Development Aid as percentage of Gross National Income, UK and comparators, 1960s-2000s



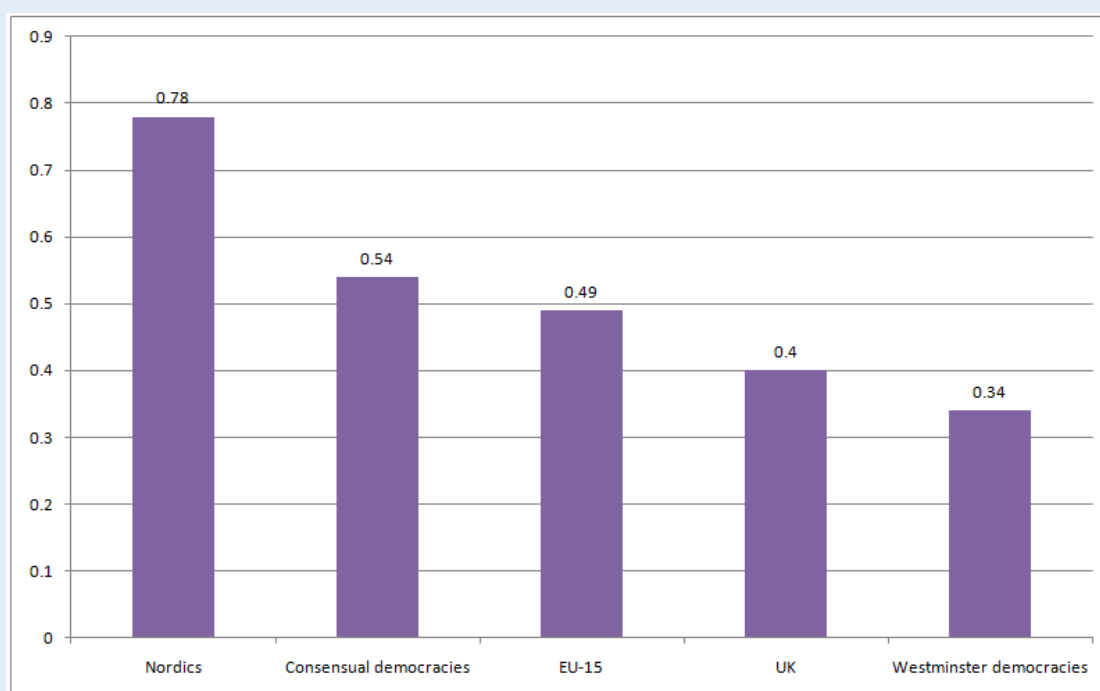
Source: [OECD \(2011, p. 227\)](#)

In 2010, the figure stood at 0.51 per cent, suggesting that the commitment to 0.7 per cent by 2013 was attainable ([OECD, 2011, p. 140](#)). However, these high levels relative to past performance should be considered partly against the background of an economy which has

suffered from the ongoing financial crisis. A rise in ratio was thereby easier to achieve on the same absolute expenditure than it would have been had no such downturn occurred ([Townsend, 2010](#)).

When international comparisons are made to other members of the DAC, the UK has clearly lagged behind a number of states that exceeded the target during the period 2000 to 2009, including Denmark (0.87 per cent), Luxembourg (0.88 per cent), the Netherlands (0.8 per cent), Norway (0.91 per cent) and Sweden (0.92 per cent). However, the UK has been performing better than Germany (0.33 per cent), Spain (0.33 per cent), Italy (0.19 per cent) and the US (0.16 per cent), while having a similar level as France (0.41 per cent). Figure 4.2c sets out the performance of the UK against our groups of comparator democracies for the period 2000-2009. It shows the Nordics performing best, exceeding the target, while the consensual democracies committed an average of 0.54 per cent of GNI to ODA. The UK, on the other hand, is below the EU-15 average (0.49 per cent), but above the average for the Westminster democracies (0.34 per cent).

Figure 4.2c: Overseas development aid as a % of gross national income, UK and groups of comparator democracies, 2000-2009.



Source: [OECD \(2011, p. 227\)](#)

While spending levels can be measured and placed in comparison, the extent to which the UK is facilitating the achievement of shared global objectives on aid is often difficult to disentangle. It involves complex collective action, the totality of which any one state can only contribute to, rather than to unilaterally influence. However, the approach taken by the UK towards the millennium development goals has been praised by the House of Commons International Development Committee. The committee has argued that the UK had taken an effective lead on women and children's health, as well as action against malaria, but it also stated that continuous engagement was required and that there were other areas where progress was required ([International Development Committee, 2010](#)).

In 2011, the same committee assessed the approach of the new coalition government towards development aid, noting that there would be substantially more funding directed towards nations that were fragile or impacted upon by war. Such spending stood at £1.8 billion in 2010 and was projected to reach £3.8 billion by 2014-15. In the difficult circumstances presented by these countries, ensuring the effectiveness of spending would be problematic. At the same time, the amount of aid channelled to more stable countries where better outcomes were easier to achieve was likely to decrease ([International Development Committee, 2011a](#)). In its recent consideration of the proposed changes to the aid programme for India, the committee supported the intended refocusing of funds upon the poorest states within India. However, it argued that this shift should only be implemented if agreed to by the Indian government, reflecting the principle of local ownership. Furthermore, the committee raised concerns about the government policy of directing 50 per cent of its Indian aid budget (£280 million per year for the period 2011-15) through the private sector by 2015. While it did not object to the use of the private sector *per se* and indeed supported it in principle, the committee held that its use required careful consideration and suggested that earmarking a total before planning this aspect of the programme might not be the best way to proceed ([International Development Committee 2011b](#)).

During the Audit period under consideration, there have been achievements in securing a more extensive, consistent contribution to international aid. It has been the longest period in UK history in which a free-standing department represented at cabinet-level and devoted to international development has functioned. The value of such an autonomous body is that it promotes the cause of development in its own right. If primary responsibility for aid is located inside a foreign affairs or military department, there is a danger that consistency will be lost or subordinated to political, diplomatic or military concerns. Under UK constitutional arrangements, a separate department entails a specific Commons select committee shadowing its brief, another valuable outcome.

The UK has also displayed a clear commitment both to promoting international cooperation to secure international development and endeavouring to attain international objectives once established. Improvements have been made in particular regarding the 0.7 per cent ODA/GDI target. The agreement and pursuit of internationally agreed goals can be a means of ensuring a consistency of approach and increased contributions to aid, as well as its ultimate effectiveness. The domestic legislative framework has also been aligned more clearly to these ends. Another important consideration is the political dimension. A change of government has not signalled an alteration in the underlying approach to aid. The coalition has retained DFID as an independent department and key commitments undertaken by the previous Labour government, as well as protecting the financing of aid. We hope that this development will help ensure consistency over time as well as across aid policy.

However, Democratic Audit sees certain reasons for caution. The International Development Act 2002 does have inherent flaws, most notably in its failure to rule out 'tied aid'. Also, a statutory commitment to the 0.7 per cent target has not yet been established and, given that it is due to be reached next year, it seems to have been left a little late (although what precisely such a law might achieve is debatable). Progress towards the 0.7 per cent target has been accelerated in part by economic contraction, though not wholly. Meanwhile, the UK still lags well behind certain other nations in this respect. Despite the coalition government's commitment to international aid, certain policies may prove to be problematic; with the focus on unstable states potentially making clear success harder to achieve. Moreover, the plan to utilise the private sector more extensively in delivering aid raises a number of concerns and should therefore be approached with caution.

### 4.2.4 Domestic oversight of international policy

How far is the government's international policy subject to effective parliamentary oversight and public influence?

When the representatives of any government operate in an international context, they require a degree of discretion and diplomacy, such as if there is a need to reach rapid agreement over an urgent security issue. If multilateral negotiations are taking place, in order for agreements to be concluded it may prove necessary for participants to alter their previously stated positions. There may also be politically or security sensitive issues involved that states are reluctant to publicise in full.

For these reasons, well-informed and effective democratic supervision of external policy, either by elected representatives or electors, can be problematic. Yet, there is no reason that government should not be accountable for its foreign actions just as much as its internal ones. Furthermore, there is no clear distinction between the external and the domestic policy fields. Governments may interact with each other over a range of activities - including trade, finance, security, the environment and health - that clearly have a direct impact on the citizens they represent. It is therefore important that the requirements of effective foreign policy do not override the democratic principle stating that powers exercised by ministers and officials are clearly defined, open to scrutiny and ultimately subjected to democratic control. There is a pronounced necessity for elected representatives to play a part in this process because in many states the role of the judiciary in this regard tends to be relatively circumscribed.

#### ***External policy and UK constitutional arrangements***

An understanding of provision for democratic oversight of external policy in the UK requires an assessment of certain constitutional arrangements. As discussed above, the handling of the relationship between international and domestic laws in a state can be considered through the prism of two models - monist and dualist (see Sections [4.2.1](#) and [4.2.2](#)). Under monist system, international agreements entered into by a country can be incorporated directly into its internal law. Dualist arrangements, on the other hand, are categorised by a separation of external commitments and domestic law. International agreements only become internal law if specifically enacted by legislation (though courts may treat customary international law as part of UK law and take treaty commitments into account). Indeed even if parliament legislates in violation of treaty commitments, UK courts will by tradition uphold such legislation.

A potential danger of monist systems is that a government can in effect change national law through entering into treaty commitments with other nations. For this reason, the constitutions of monist states often include provisions for the oversight of the executive, which is intended to act as a check upon the arbitrary entry into international agreements. For instance, under the constitution of the US, which can broadly be categorised as a monist system, ratification of treaties by the president is subject to approval from two thirds of the Senate. The executive in the US can, to some extent, bypass this procedure through classifying commitments as executive agreements rather than treaties (Jowell

and Oliver, 2011). However, the Senate possesses a real power and has used its veto, for better or worse, to dramatic effect at times in the past, such as when preventing US ratification of the Treaty of Versailles in 1919 and 1920. The mere potential for it to use this power in turn gives it a wider influence over external policy.

The UK, by contrast, adheres more closely to the dualist model, the implications of which for the democratic oversight of external policy are complex. If a government wishes to incorporate a treaty into UK law, or is required to do so by the terms of the agreement, then it is subject to the parliamentary scrutiny that any bill, whether domestic or foreign, would be subjected to (for an assessment of the effectiveness of the parliamentary legislative process, see Section [2.4.2](#)). However, a parallel tendency exists for the external activities of the UK executive not engaging domestic legislative change to be subject to less rigorous oversight (Jowell and Oliver, 2011).

An important component of the low level of parliamentary involvement in UK foreign policy is the royal prerogative. The prerogative is a set of powers deriving historically from the era of actual monarchical rule. These powers have in practice largely been devolved to ministers and to some extent officials, with the prime minister often playing a prominent role in their exercise (see also Section [2.4.3](#)). The prerogative is relied on exceptionally heavily in the conduct of foreign policy where it can be used to issue declarations of war (though this practice has apparently become an internationally anachronism) and to deploy the armed forces in potential or actual hostile circumstances abroad, as well as direct the disposition of the armed forces within the UK (see Section [2.5.1](#)). The prerogative enables the state to acquire and cede territory, send and receive ambassadors, and conduct diplomacy. It is also relied upon for treaty-making ([Ministry of Justice, 2009](#)).

Royal prerogative powers have by definition never been approved by parliament. In the main, parliament has no formal role in their exercise. Moreover, the courts have generally proved reluctant to involve themselves in scrutinising the exercise of the prerogative, particularly with respect to foreign affairs (Burall et al., 2006). Of course, any government is in theory accountable to parliament for all that it does. Furthermore it must secure the consent of the Commons if it is to obtain the funds to support foreign policy. In some cases, particularly the control of the military, prerogative and statutory powers are interwoven with each-other, giving parliament a slightly firmer role (see Section [2.5.1](#)).

However, in seeking to oversee the exercise of the prerogative, and by extension important portions of external policy, parliament is dependent less upon hard powers and more upon informal influence. Its levers include mechanisms of varying degrees of effectiveness, such as parliamentary questions and debates. A number of select committees in both houses consider external policy from different perspectives. In all of its activities in securing government accountability in this area, as in any other, the effectiveness of parliament is restricted by the strong position of the executive within its primary chamber, the House of Commons (see [Introduction](#) to Section 2.4 and Section [2.4.3](#)). Such role as it has in the deployment of the prerogative may be dependent upon constitutional conventions, which are by their very nature vaguely defined and cannot directly be legally enforced (Turpin and Tomkins, 2011). Foreign policy is reserved to central government within the UK, with any role exercised by the devolved administrations limited to consultation, depending upon whether the conventions impact upon them specifically ([Ministry of Justice et al., 2007](#)).

### ***Reforming the prerogative in external policy***

In recent years the royal prerogative, including in so far as it applies to external policy, has been subject to reform. A convention has seemingly developed that parliament should be consulted, preferably in advance, over UK engagements in armed conflict. The government is committed to bringing forward legislation to clarify the role of parliament, but it has not yet appeared (see Section [2.5.1](#)).

Such a shift, though it may be politically delicate, would not in principle be difficult to execute. It is an important principle of the UK constitution that the royal prerogative cannot be extended and that parliament has the power to modify or replace parts of it through legislation - though for it to do so in practice requires a government to desire the imposition of restraints upon its own powers. Recently reform of the prerogative was brought about by the Constitutional Reform and Governance Act 2010, enacted by the Labour government of Gordon Brown. One of the effects of this act was to place the management of the civil service and the diplomatic service on a statutory basis, where previously it had been carried out under the prerogative. This change followed on from an earlier reform, whereby responsibility for the Intelligence and Security Agencies, which can also play an important part in external policy, was shifted from the prerogative to a statutory footing during the 1990s. However, the precise difference that will be made by the change of basis for the civil and diplomatic services is difficult to ascertain.

The Constitutional Reform and Governance Act also altered arrangements regarding the role of parliament in one of the most fundamental features of foreign policy - treaty-making. As discussed above, parliament has a formal role in treaties that involve alterations to domestic law, but traditionally any part it played in other international agreements was provided for by a convention known as the 'Ponsonby rule'. The rule had its origins in an undertaking made to the Commons by Arthur Ponsonby in 1924, the Labour foreign affairs minister, that the government would make the text of treaties available to the House before they came into force. Over time a convention developed that a treaty had to be tabled for 21 sitting days before it came into force. Over a ten year period from 1997 to 2007, about 30 to 35 treaties were tabled per year under the rule. The rule also provided that, if a debate were requested through the 'usual channels' - that is the whips - time

would be made for it. In 2000, the government undertook that it would also facilitate debates if select committees requested them. However, requests for debates were highly unusual ([Ministry of Justice et al., 2007](#)).

While treaties are still made under the royal prerogative, part two of the Constitutional Reform and Governance Act puts the 21 day rule on a statutory basis. The Commons can resolve that the treaty should not be ratified, though a minister can seek to ratify it again by making a statement as to why its ratification is necessary, although the Commons can block it again. The Lords does not possess the same blocking power as the Commons. It is also possible for a minister, in exceptional circumstances, to bypass this process entirely. It is not entirely clear that placing the Ponsonby rule on a statutory footing will make debates (or indeed votes) on treaties substantially more likely than they were when it was a convention. This legislative change was not accompanied by an overhaul of the parliamentary mechanisms for considering treaties, as such, a treaty committee, for which some reform campaigners have called for, was not introduced. There has been no equivalent established to the system used in some Nordic states whereby ministers are mandated by parliamentary committees in advance of international negotiations as to the position they can take (Burall et al., 2006). Moreover, it leaves many key features of the prerogative in foreign affairs wholly intact, including the conduct of diplomacy, with no formal position for parliament. It is only once an agreement is concluded that parliament has a more firmly defined role.

### ***External policy and public impact***

Since the ultimate source of democratic authority must be the people, the views of the public should be crucial to external policy formation. It is necessary for their opinions to have both formal and informal means of expression. Therefore, outlets for a range of different outlooks on external policy and the possibility of a well-informed public debate should be clearly established.

In a parliamentary system such as in the UK, the primary formal route through which public influence is wielded is via parliament, since the executive, which conducts policy, is not directly elected. The formal power of the electorate from this perspective is at its peak when a general election is held. However, foreign policy issues are rarely decisive at these times. An arguable exception was the 2005 general election, at which electoral support for the Liberal Democrats appeared to be boosted because of the two main parties support for the controversial invasion of Iraq, which the Liberal Democrats opposed (although this was not reflected in the distribution of seats, owing to the nature of the electoral system which works against third parties; see Section [2.1.4](#)). Often the range of options on offer to voters is restricted by a general tendency towards consensus over foreign policy amongst the main parties. This convergence extends beyond the contents of party manifestos. For instance, parliamentary committees considering external matters place a premium on consensus. Sections of the media also tend - particularly when a military conflict has begun - to prioritise patriotism over the balanced appraisal of issues (Burall et al., 2006; Blick, 2005). Thus while there are means of achieving influence other than through more formal political processes, such as through pressure groups and public campaigns, a degree of consensus amongst opinion formers can restrict their impact.

Issues involving external policy-making have long been surrounded by exceptionally high levels of official secrecy. In keeping with this tradition, the opening up of policy making to public exposure that followed the introduction of the Freedom of Information Act 2000 has made less of an impact in foreign policy than other areas (see Section [2.3.5](#)). Many of the exemptions under the act explicitly involve, or could be applied to, external activity. An absolute exemption applies to information involving the intelligence and security agencies, and special forces, whereas a prejudice test is applied to information involving international relations and defence. Various other exemptions, such as those intended to protect policy formulation processes, could feasibly be applied to external policy. One of the only two uses of the ministerial veto on the release of information under the Freedom of Information Act to date related to a request for the minutes of cabinet meetings at which the attorney general's advice on the legality of the invasion of Iraq was discussed in March 2003 (see Section [2.3.5](#)). On occasions, however, the government has been more open than strictly required by the law in its release of information, such as in the case of the various public inquiries that have been held into the military intervention in Iraq of 2003. However, there is a perception that the issuing of previously classified information can be carried out in a partial way and - as with intelligence about supposed weapons of mass destruction in Iraq - can serve to mislead the public (Blick, 2005).

Partly because of the tendencies towards consensus and the high levels of confidentiality surrounding decisions, it is possible for major developments in foreign policy to take place without fully being subject to public or political debate. In the post-Second World War period, the UK developed an increasingly close relationship with the US (Riddell, 2004). This linkage has at times been the determining factor in major foreign policy decisions, as the participation in the invasion of Iraq demonstrated. Unlike the other key dimension of UK external policy (participation in the European Union), at no point was a definite decision taken in public to initiate the Atlantic alliance, with no specific pledge made in any party manifesto along these lines, no referendum and no parliamentary vote (Burall et al., 2006).

Opinion research, co-commissioned by Democratic Audit in 2006, suggested that the views of the public regarding the general course of external policy and the way in which it is overseen might be significantly at variance with current practice. Questions were asked about the overall orientation of the UK as between the US and the European Union. Of those surveyed, 66 per cent supported being more critical of the US, even publicly, while only 26 per cent favoured the securing of private influence through public support for the EU. Half (49 per cent)

supported policy that involved equal association with the US and the EU; 22 per cent with only the EU; 7 per cent with only the US; and 20 per cent neither of those choices. On the issue of democratic oversight, 85 per cent preferred 'Parliament as a whole' to determine external objectives, as opposed to 13 per cent 'the Prime Minister, ministers and their advisers'. A large majority, 86 per cent, agreed with the idea of parliamentary committees mandating ministers in advance of international negotiations. In addition, 89 per cent favoured the UK working through the UN to protect the interests of the UK and its allies, while only eight per cent supported the more unilateral use of military intervention. Despite being told of the importance of the arms industry to the UK, 83 per cent were opposed to exports of its products to states with poor records on human rights ([Democratic Audit et al., 2006](#)).

Democratic Audit regards it as a fundamental flaw in UK democracy that the executive continues to wield powers, under the royal prerogative, that are archaic and have never been formed in a democratically satisfactory nature, nor subjected to effective democratic control. While we acknowledge that ministers and officials may require some degree of discretion in the conduct of external policy, it should be within a democratically determined framework. If the UK possessed a written constitution, it seems inevitable that the powers currently existing under the prerogative would probably be redefined within such a text and probably subjected to clearer parliamentary - and perhaps judicial - control. Short of the codification of democratic arrangements for the UK in this way, it seems clear that the prerogative should be placed on a statutory basis by parliament, which should also have some kind of clearly prescribed and meaningful role in its ongoing exercise.

Unfortunately, the royal prerogative continues to be used heavily in the conduct of foreign policy. Two modifications of this position have taken place during the period of the present Audit, involving the power to manage the civil and diplomatic services and the role of parliament in treaty-making, which nonetheless continues to be carried out under the prerogative. It is not clear that the impact of either change will be immense and much of the foreign affairs dimension of the prerogative remains intact. As a consequence, the role of parliament in overseeing external policy is considerably restricted.

We also accept that there is a need for some degree of confidentiality in international affairs. However, the level of secrecy associated with such policy in the UK has long been excessive and can be manipulated to suit the political convenience of the government of the day, rather than genuine public interest. The Freedom of Information Act has had the effect, in part, of perpetuating this tendency. The restriction of publicly available information about foreign policy reduces the possibility for meaningful discussion of the issues involved. This deficiency is aggravated by the unusually high level of consensus that tends to develop around certain aspects of external policy - in particular, the relationship with the US. The wider limitations on the ability of parliament to oversee the executive restrain its ability to bring the views of the public to bear, yet there is no other clear means by which this outcome can be achieved.

## Conclusion

The present Audit has found some areas of progress in the extent to which the UK promotes democracy internationally. Improvements have been made in general attitudes towards development aid and in actual policy delivery in this area. We are pleased that the Department for International Development now seems to possess a relatively secure existence and that there is a cross-party consensus about the importance of development aid to meet agreed international objectives. However, accelerated progress towards the central target for assistance to reach 0.7 per cent of gross national income followed a long period of stagnation. Comparisons with other established democracies, particularly in northern Europe, underline that there is much room for improvement in this respect.

Similarly, enhancements that have been made to the role of parliament in overseeing external policy are limited. While the civil and diplomatic services now have a basis in an act of parliament, and there is a new statutory role for parliament in treaty-making, the fundamental position that external policy is primarily a matter of royal prerogative and, therefore, subject only to circumscribed democratic control remains. We are concerned about the persistence of this tradition, which partly arises from the dualist tendency in the handling of international agreements within the UK constitution.

Progress that has been made is more than offset by a serious range of new and emerging negative aspects of the UK contribution to international democracy. The UK has a long-term tendency to not fully to commit itself to international human rights instruments, which is regrettable and does not help strengthen the standing in the world of such conventions. In seeking, in some respects, to weaken the application of the European Convention on Human Rights, the UK is negating its support for international human rights principles further. Perhaps most problematic of all is that the UK was associated with the US tendency to reject multilateralism and pursue its own perceived interests regardless of the impact upon international law and the supranational organisations, in particular the United Nations, which are associated with maintaining it. Such activity is all the more worrying because of the marked dependence of international law upon the willingness of states - particularly those that are the most powerful - to sustain it.

We note that the UK has a rhetorical tendency to present itself not only as a leading democratic state, but a force for democracy in the world. Democratic Audit suggests that the reality of UK international policy in many cases does not match these claims and in some cases directly contradicts it. Far from being an exemplar state for democracy the UK is often at best moderate and, in some cases, well below par



in its performance. Available measures of nominal commitment to human rights suggest that the UK's relative performance is relatively poor for an established democracy. However, with regard to overseas development aid, the UK exhibits an improved record, but is still far from being a world leader.

That there are inconsistencies, even contradictions, in the UK's international policies with respect to democratic values should not be surprising. Many of the democratic shortcomings we identify throughout this Audit in relation to the UK's domestic political system are inevitably reflected in the positions that the UK adopts with respect to foreign policy and international law. The tension in the UK constitution between the difficulties of executive discretion and the rule of law is paralleled with the difficulties which the UK has in reconciling mechanisms intended to uphold the international rule of law and human rights with the UK's traditional governmental arrangements. The conduct of successive UK governments towards the international maintenance of human rights is suggestive of an underlying ambivalence towards such values. Meanwhile, corporate power seems able to influence the undermining of principles governing the promotion of human rights in international relations, especially when commercial advantage is judged to be at stake.

It also seems evident that recent UK foreign policy, most obviously the war in Iraq, is likely to have impacted negatively on domestic perceptions of British democracy. In the wake of the decision-making process which led to the UK supporting the US-led invasion of Iraq, profound questions have been raised about parliament's role in relation to decisions to go to war and about parliamentary oversight of the intelligence services. Attempts to reform areas such as the royal prerogative have confirmed the democratic illegitimacy of such executive devices, but has not yet effectively replaced them with new approaches to decision-making. Perhaps most importantly of all, the war in Iraq underlined the growing tension between political participation and political representation in contemporary Britain (Beetham, 2003). The scale of popular protest and direct action spawned by the UK government's support for the 'war on terror' stands in clear contrast to declining participation in elections and party politics. It is one of the most bitter ironies of the period since our last Audit that UK foreign policy decisions justified with reference to promoting democracy abroad are highly likely to have increased popular disillusionment with representative democracy at home.

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