# CHAPTER SIX

# THE BRITISH CONSTIUTION & THE JUDICIARY

1. KEY CONCEPTS

This topic comprises two related sections: 1) The British Constitution and 2) The Judiciary. Expect questions on both sections in the exam. The link is that the judiciary is an important part of the constitution and often serves to protect the rights of citizens. Significant twenty first century constitutional reforms have also affected the judiciary.

***What is a constitution?***

A constitution is a set of rules or guidelines which determine how a government should operate. They therefore describe the extent and limitations on the powers of the state.

Typically a constitution describes the following features:

1. The relationship between the citizens and the state
2. The relationship between the different institutions of the state
3. The rights of citizens

Most constitutions are **written**. Some, like the constitutions of the USA or France, are written in one document, or **codified**. Others, like the UK constitution, are described as **unwritten** (although in truth the UK constitution is *partly* written).

***So where do we find the UK constitution?***

There are six main sources to the UK constitution. These are:

**Written sources:**

1. Great works of authority

These include Walter Bagehot’s *The English Constitution* (1867) and Erskine May’s *Parliamentary Practice* (1844). A recent addition to the works of authority is Gus O’Donnell’s *Cabinet Manual* (2010).



1. Statute Law

There are Acts of Parliament which are written once a Bill has been passed by parliament and gained Royal Assent. An example would be the Parliament Acts of 1911 and 1949. More recently there have been the Wales and Scotland Acts of 1998 which established the regional assemblies in Wales and Scotland, and the Constitutional Reform Act (2005) which created the Supreme Court.

1. Treaties

Treaties are agreements with other countries which are binding under international law. They include, for example, the Treaty of Rome, which the UK signed in 1973 to become a member of the European Community.

1. EU Law

The UK is subject to laws passed by the European Parliament. These include laws on carbon emissions and greenhouse gases. (Note: EU law requires the UK to allow voting rights for prisoners, but the UK remains in breach of this legislation.)

**Unwritten sources**

1. Common Law

This is law that has become common practice through tradition and time. It includes judicial precedent (punishment for a given crime should be based on similar punishments issued for previous similar crimes) and Royal Prerogative (powers once held by the monarch which have been handed to the Prime Minister or Ministers, such as the Power to appoint or dismiss ministers and the pardon of criminals).

1. Conventions

These are unwritten practices which have emerged over time. They include the Salisbury Convention (that the House of Lords shall not block a Bill based on a manifesto promise); the convention of **collective responsibility** (the idea that a Cabinet Minister should not openly criticise a decision of the Cabinet or government policy because they are part of and bound by that decision; they must resign from the Cabinet if they are going to criticise the government) and the convention that the Prime Minister is drawn from the House of Commons (which emerged in the twentieth century).

***Characteristics of the British Constitution***

The British constitution compared to the US Constitution

|  |  |
| --- | --- |
| **The British Constitution** | **The Constitution of the USA** |
| Uncodified | Codified |
| Flexible | Rigid/Entrenched |
| Unitary | Federal |
| Monarchical | Presidential |

1. The UK Constitution is **uncodified**

A codified constitution is one that is written in a *single* document. The US Constitution is written in a document of about 7000 words. It was first written in 1787, with the Bill of Rights being added in 1791. It has a special amendment process, which means its provisions are largely fixed or ***entrenched***. Codified constitutions have the status of a ***fundamental law***: that is, no law can be made which contradicts the constitution.

The UK constitution is uncodified. While parts of it are written (eg statute law and great works) these are not held in a single document. Some parts of the UK constitution are ***unwritten****.*

A consequence of the UK having an uncodified constitution is that the court’s power of ***judicial review*** (the process of determining whether a government or public authority is acting beyond their authority) is limited. In the USA the Supreme Court can make judgements as to whether an action taken by the government is unconstitutional and therefore disallowed.

1. The UK Constitution is **flexible**.

A flexible constitution is one that can be easily changed or ***amended***. The UK constitution is very easily amended. There is no special system for amendment. All it takes is an Act of Parliament (a change in ***statute law)***, or a new treaty, or new European legislation. It can therefore be said that in the UK ***“there are no extraordinary means of amendment”.*** By contrast, in the USA there is a special amendment process which is different to the normal law-making (legislative) process. Amendments in the USA require support from two thirds of Congress (their version of Parliament) and three quarters of the states. Examples of changes in the UK constitution include:

* The Treaty of Rome: the treaty which the UK signed to join the European Community
* The Maastricht Treaty: the treaty which created the European Union from the European Union
* The 1973 European Communities Act: The Act which signed Britain to the European Community
* The 1997 Scotland Act: the Act which created *devolved* power to a Scottish Parliament
* The 1997 Wales Act: the Act which created *devolved* powers to a Welsh Assembly
* The 1999 House of Lords Act: the Act which limited the House of Lords to 92 *hereditary* (inherited) peers
* The 2005 Constitutional Reform Act: the Act which led to greater *separation of powers* in the UK by creating, in 2009, a Supreme Court which was separate from the House of Lords.

All of these were quickly and easily implemented. It would have been far more difficult to implement these changes in the USA because of the special amendment process which they have.

1. The UK Constitution is *(arguably)* **unitary**

Most commentators still regard the British constitution as unitary. This is because all power in the UK ultimately resides with the Westminster parliament. This is called ***parliamentary sovereignty***. In theory, the Westminster parliament could pass an Act or Parliament to replace a local authority or reduce the powers of the regional assemblies in Scotland and Wales. On four occasions the Northern Ireland Assembly (Stormont) has been suspended by the Westminster parliament.

However, it is unlikely that the Scottish Parliament or Welsh Assembly would be suspended, as this would cause a major constitutional crisis. For this reason some observers suggest that the UK constitution is now a **union constitution** (one which disperses power from a central authority to regional assembles).

The constitution of the USA is **federal.** This is where the powers of the States are enshrined in the constitution and the power of central (or *Federal*) government is constitutionally limited. In effect, the States have powers and rights provided by the constitution, not by the federal government, which cannot be taken away (***entrenched***).

1. The UK Constitution is **monarchical.**

In the UK the *Head of State* is the monarch (the queen), whereas in the USA and France the Head of State is the president (so their constitutions are ***presidential***). The monarch’s powers are limited by the constitution and ultimately it is now parliament that is sovereign (i.e. has the most power). This is ***parliamentary sovereignty***.

2. PRINCIPLES OF THE UK CONSTITUTION:

1. **Parliamentary Sovereignty:**

This is the idea that ultimately power in the British system of government lies with the Westminster Parliament and not with the monarch, or the Prime Minister, or even the government of the day. Parliament is the sovereign decision-making body in the UK. All governments are required to bring their policies for approval to parliament (this is the process by which a government Bill becomes an Act of Parliament, or the legislative process).

1. **Constitutional monarchy:**

The Glorious Revolution (1689) established the principle that the balance of power had shifted away from the monarch to Parliament and that Ministers are answerable to parliament, not to the monarch. The Queen is constrained by the constitution in what she can and can’t do. For example, she cannot enter the House of Commons and she must sign legislation passed by parliament.

1. **The Rule of Law:**

This is the principle that nobody is above the law in the UK, not even the Prime Minister of a member of the royal family. It derives, originally, from the *Magna Carta* (1215). As a result, Princess Anne was fined under the Dangerous Dogs Act in 2001, and, in 2006, Tony Blair gained the distinction of being the only serving Prime Minister to be interviewed by the police (over issues relating to Labour Party funding).

3. DISCUSSION: WHAT ARE THE STRENGTHS AND WEAKNESSES OF THE UK CONSTITUTION?

Observers argue that the UK constitution has both strengths and weaknesses. **The strengths are:**

1. **It is flexible.**

It is easy to change and can easily adapt to changing political and social change. This is more difficult with codified constitutions. For example, the French Constitution has had to be rewritten 13 times since it was written in 1791. In the Constitution of the USA the Second Amendment allows citizens the right to carry guns (the right to bear arms). Despite several attempts to change this constitutional right, the fact that it is a codified right means that it is difficult to amend.

1. **It leads to effective government**

Because the UK constitution is flexible governments can introduce new measures to speedily respond to changing circumstances, such as the Scotland Act 1998, which allowed for Scottish devolution. This was in response to the results of the Scottish Devolution Referendum 1997. Similarly the Attlee government in 1945 was able to nationalise key industries and establish the NHS.

1. **It has allowed for stability and continuity of democratic rule.**

Changes to the constitution have come about through democratic pressure (no revolution has been necessary). We therefore have parliamentary sovereignty and a constitutional monarch and within Parliament power lies with the elected House of Commons rather than the unelected House of Lords. The powers of the Lords were reduced by the Parliament Acts of 1911 and 1949 and the Constitutional Reform Act (2005) further enhanced the separation of powers in the UK. These changes have also been facilitated by the flexibility of the constitution.

1. **The constitution is based on history and tradition: the wisdom of the past**

Because the UK constitution has ***evolved,*** rather than arisen as a result of revolutionary upheaval, it embodies the wisdom of previous generations. This is a conservative notion that institutions which have stood the test of time are allowed to continue, but also to change, within our constitution. It has evolved organically and have allowed the ‘dignified’ aspects of the constitution, the monarchy and the House of Lords, to continue to play a useful function in our system of government.

**The weaknesses are:**

1. **It has allowed for elective dictatorships**

IN 1976 the Conservative peer, Lord Hailsham warned that governments with a large majority in the House of Commons could implement whatever policies they wished. The House of Lords is able only to delay Bills rather than block them. Governments were only truly accountable to voters every 5 years during elections, in between elections they are free to pass whatever laws they like and have the capacity to erode civil liberties. Parliament is sovereign, so governments cannot be effectively challenged if they have a large majority. A codified constitution would limit the powers of the executive (the government) as it does in the USA.

1. **It produces centralised government with few checks and balances**

Power in the UK system of government is concentrated centrally in the Westminster parliament. In a federal system power would be more widely dispersed. Since Scottish and Welsh devolution there has been less centralisation, but too much power still resides with Westminster.

1. **The constitution is vague**

Because the constitution is partly unwritten it is vague and uncertain. Unwritten elements of the constitution are open to interpretation and because the constitution can be easily changed by Act of Parliament there are few safeguards.

1. **It fails to protect citizen’s rights**

The Human Rights Act (1998) does not provide sufficient protection to citizen’s rights. The provisions of the European Convention on Human Rights (to which the Act commits the UK) can be ‘set aside’ by the government (as in the case of prisoner voting rights, which successive governments have repeatedly ignored).

5….EXAMPLES OF RECENT CONSTITUTIONAL REFORM

**The Blair Governments (1997-2007)**

Tony Blair’s governments were among the great constitutional reforming governments in Britain.

In 1998 they introduced devolution to Scotland and Wales, establishing the Scottish Parliament and the Welsh Assembly.

In 1998 they passed the Human Rights Act which signed Britain up to the European Convention on Human Rights.

In 1999 they introduced reform of the House of Lords. Hereditary peers were limited to 92 (previously there had been no limit on the number of hereditary peers who could attend the Lords).

In 2000 the passed the Freedom of Information Act which required public bodies to release information held on citizens upon request.

In 2005 they passed the Constitutional Reform Act which increased the separation of powers in the UK by placing the Law Lords (renamed Justices) away from the House of Lords and into a new Supreme Court. This change came into effect in 2009. The CRA (2005) also established the independent Judicial Appointments Commission which removed the Prime Minister’s role in the appointment’s process.

**The Brown government: 2007-2010**

Gordon Brown also sought to introduce significant constitution change, although his proposals were shelved because of the demands of dealing with the economic crisis which began in 2008. He wanted to transfer powers from the Prime Minister to Parliament, including the power to declare war and the power to dissolve Parliament (call a general election); and he sought to replace the House of Lords with a second elected chamber.

**The Coalition Government: 2010-2015**

The coalition government led by David Cameron and Nick Clegg passed the Fixed Term Parliament Act (2011). This removed the power of a Prime Minister to determine the date of the next general election within 5 years. For example, Harold Wilson was elected in 1964 and called another election in 1966. He was also elected in February 1974 and called another election in October 1974 (to try to gain a majority instead of running a minority government). Now, the date of general elections are now fixed every five years (although this was circumvented by a 2/3 majority vote in parliament in 2017).

Other attempts at constitution reform failed. These include the introduction of recall elections (whereby constituents unhappy with their MP can petition for a by-election); the introduction of the AV voting system in general elections (defeated in the 2011 referendum); and proposals to create a second elected chamber rather than continue with the unelected House of Lords.

The coalition government also saw a referendum on Scottish Independence in 2014 which, it has been passed, would have seen the break-up of the United Kingdom.

**The Cameron government: 2015-2016**

The Cameron government has pledged further constitutional reform, including:

* devolved powers to Scotland and Wales,
* English votes for English laws in Westminster,
* a British Bill of Rights (repealing the Human Rights Act),
* and a new constitutional relationship with the European Union (based on the outcome of an ‘in/out’ referendum in 2017)

Of these the first and last were passed. As a result of the referendum, held early in 2016, Britain is leaving the EU.

**Theresa May’s Government 2016-Present**

Theresa May’s government is overseeing the withdrawal of Britain from the EU which will have huge constitutional implications, particularly for citizen’s rights, parliamentary sovereignty.

6. DISCUSSION: SHOULD BRITAIN HAVE A CODIFIED CONSTITUTION?

**Arguments for a codified constitution**

* It could ***limit government powers*** and prevent an ‘elective dictatorship’ by more clearly defining the roles, responsibilities and powers of government. Governments with large majorities in the House of Commons would not be able to arbitrarily extend their powers.
* It would ***end the vagueness*** of the current, partly unwritten constitution by creating clear rules for government
* It would codify a Bill of Rights which would ***protect the rights of citizens***. These rights could not be eroded by government as they would be enshrined in the constitution.
* Politically ***neutral judges*** (the Supreme Court) would be able to ***interpret*** the constitution, ensuring that its provisions are properly upheld. This happens in the USA.
* Citizens would become ***more educated*** about its provisions as it would reflect the values and goals of our society.

**Arguments for a codified constitution**

* A codified constitution would become rigid and ***difficult to change*** and slow the response of governments to changing circumstance.
* ***Who would write the constitution?*** Different writers (likely to be constitutional lawyers) might have different ideas about its provisions. This might reflect a particular ***political bias*** or issues of significance in a particular ‘snapshot’ in time.
* It places too much ***power in the hands of unelected judges*** who would interpret the constitution. Codified constitutions are complex, legalistic and sometimes difficult to understand.
* It is ***incompatible with parliamentary sovereignty*** because a codified constitution would become a fundamental law.
* It would not necessarily be durable. The French constitution has had to be rewritten 13 times.
* If the current constitutional arrangements work, ***why change*** it? As John Major once said of the House of Lords: “If it ain’t broke, don’t fix it!”

7. THE JUDICIARY

**An important aspect of the British Constitution is the relationship between the judiciary (the courts) and the other branches of government: the executive (the government) and the legislature (Parliament). The rest of this chapter explores important aspects of that relationship.**

8. THE POLITICISATION OF THE JUDICIARY?

An important constitutional debate within AS Government and Politics is whether the judiciary has become increasing ***politicised*** (controlled by politicians) over the last fifty years.

**Has the judiciary become increasingly politicised?**

***Yes it has: the courts have been influenced by politicians***

Examples in favour of the proposition are:

1. In the 1980s under Margaret Thatcher’s Conservative government new trade union laws were passed which restricted industrial action (strikes). Suddenly the courts found themselves having to rule on whether a strike was legal or not (that is, was the ballot conducted properly within the law) and whether picket lines (protests at the gates to a workplace) were legal. This dragged the courts into the political arena.
2. The New Labour Prime Minister, Tony Blair, was accused of appointing senior judges who broadly agreed with his ideas. This concept of appointing friends or those who are likely be ‘yes’ men is known as ***cronyism.*** Faced with such criticism, Blair himself ended the practice by creating an independent Judicial Appointments Commission as part of the Constitutional Reform Act (2005).The commission now independently recommends appointments to the Prime Minister who accepts their nominations.
3. Two pieces of legislation arguably pulled the courts further into making political decisions. These were the **Human Rights Act 1998** (which required the courts to make judgements on infringements of newly codified rights for British citizens and which, arguably, has helped create a ***rights culture*** in Britain) and the **Freedom of Information Act 2000** (which required the courts to make judgements on whether public authorities should release information to individuals). The Human Rights Act brought into focus the failure of the UK to provide ***voting rights for prisoners,*** which is required under the European Convention on Human Rights. In 2015 over 1000 prisoners raised their case with the European Court of Human Rights, saying that their right to vote under Article 3 of the European Convention of Human Rights was being infringed. However, Parliament has consistently refused to extend voting rights to prisoners in the UK in defiance of the European ruling.

 The Freedom of Information Act has proved to be less controversial. Despite the anticipated avalanche of requests, few significant cases have emerged under the FOI.

1. In the summer of **2011** there were copycat **riots** and looting across Britain, sparked by the police shooting of a suspected gangland member, Mark Duggan. David Cameron, recalled from his holidays, declared that the courts should deal with the rioters and looters robustly. Bowing to populist political pressure, Magistrates Courts opened 24/7 and issued some sever punishments for rioting, looting or incitement to riot.
2. Arguably, in acting as ‘guardians of the constitution’ and defending **civil rights** or **civil liberties** (see the extradition of Abu Hamza and Abu Qatada and arguments about prisoner voting rights in the section below) the courts are acting politically.

**Civil rights/civil liberties** (the terms are interchangeable): are those rights or freedoms that are conferred upon citizens by the state. They include freedom of speech, freedom of movement, freedom from arbitrary arrest, freedom of assembly, freedom of association and freedom of religious worship. In the UK the Human Rights Act (1998) further established civil rights for UK citizens. They are different to **human rights**, which are natural rights based on moral principles (such as life, liberty, and freedom from torture).

***No it hasn’t: the courts have always been independent***

1. The courts in the UK have always challenged politicians and defended the constitutional principle of **the rule of law**. Thus, for example, Tony Blair was interviewed by the police whilst serving as Prime Minister.
2. Minsters who might try to interfere in the judicial process can be threatened with **ultra vires** (the ruling that they are acting “beyond their powers”). Thus, in the case of the Jamie Bulger murder (1993), when the then Home Secretary, Michael Howard, openly suggested the they two killers, aged 10, should receive life sentences, the courts warned him not to interfere. Howard was reflecting populist pressure stirred up by the media, notably the Daily Mail.

 Similarly, when, in 2001, the Labour Home Secretary, David Blunkett, suggested that lorry drivers must be fined if they were found to bring illegal immigrants into the UK, the courts ruled that each case should be tried on its merits and that blanket fines could not be imposed unless parliament passed legislation to that effect.

1. The courts have regularly criticised successive British governments for failing to comply with European law on the **rights of prisoners to vote**. Eg ***Hirst v UK 2005.***
2. From 2004 until 2012 the courts defied calls from successive Home Secretaries to **deport** suspected terrorists **Abu Hamza and Abu Qatada** to the United States and Jordan respectively. Eventually, in 2012, the European Courts ruled that the extraditions could be allowed because sufficient assurances about their treatment in the countries to which they were being extradited has been secured.
3. Critical to the argument that the judiciary has not been politicised is the creation of the separate Supreme Court in 2009. This was a result of the **Constitutional Reform Act (2005).** The twelve Law Lords, who previously sat in the House of Lords (which was the final court of appeal in the land) were moved to the new Supreme Court (a separate building across Parliament Square) and were given the tile of ***justices***. There are 12 justices, only one of whom is female (Baroness Hale). The establishment of the Supreme Court further enhanced the principle of the ***separation of powers*** in the UK**.**

**The Separation of Powers:**

This is the democratic ideal, proposed by the Enlightenment philosopher, Montesquieu, the three branches of government – the **legislature**, the **executive** and the **judiciary** – should not be controlled by the same people, otherwise power becomes concentrated in the hands of an elite. The UK does not have genuine separation of powers because the executive includes the Cabinet, the government’s policy-making body, which also sits in Parliament, the legislature. We say, therefore, that Britain has **‘fused’** or **‘overlapping’** powers.

In the USA there is more genuine separation of powers between the Cabinet, Congress and the Supreme Court. None of the personnel from each branch can be a member of another branch of government.

1. In 2010 the Supreme Court ruled that lengthy **control orders** (house arrest for suspected terrorists which could be imposed for up to 16 hours per day) were an erosion of civil liberties in the UK.
2. In 2010, the Supreme Court was involved in the decision to convict three MPs and one member of the House of Lords for their part in the **expenses scandal** (2008). They had been accused of wrongly claiming expenses under the rules set out by parliament. This is the first time that a court had been involved in passing judgement on parliamentary proceedings for over nine hundred years. The MPs tried to claim that the court should not be involved in the case because of the principle of ***parliamentary privilege*** (the idea that MPs should be free from the law, particularly the law of slander), but the Supreme Court ruled that this principle did not apply to such criminal behaviour.
3. As we have seen (‘yes’ arguments above) Blair created a separate **Judicial Appointments Commission** in 2005 which stripped the power of the Prime Minister to make ‘political’ appointments to the judiciary and placed the process in the hands of an independent commission.
4. Ultimately judges argue that **Parliament makes the law** and the judges simply interpret it.
5. In support of judicial independence is the notion that judges are paid a **high salary** so that they can make judgements free from political interference (“***without fear or favour”*** from politicians).
6. Judges also serve a **fixed tenure**, or period of working, (***“during good behaviour”)*** until they retire at 70.
7. Judges are also bound by the principle of **political neutrality** (they should not openly express political views or their support for a political party). In 1999 the Law Lord, Lord Hoffman, was criticised for his links to the human rights group Amnesty International when he was involved over the decision to extradite the former dictator, General Pinochet, to Chile. The extradition decision was over-ruled because of his involvement in Amnesty International. General Pinochet sought asylum in the UK in the 1980s. A subsequent court secured Pinochet’s extradition.
8. Equally, politicians should not comment on live cases which are ***sub-judice*** (under consideration and therefore prohibited from public discussion).

**The Importance of the Supreme Court of the UK**

The Supreme Court was established by the Constitutional Reform Act (2005) and was finally opened in 2009. It occupies a separate building to Parliament and involved the removal of the 12 Law Lords (now called Justices) to the new site across Parliament Square. Although there are 12 Justices, they always sit in odd numbers (3, 5, 7 or 9) in order to ensure a majority verdict.

They are:

* The highest court of appeal in the land
* They hear cases of public importance regarding points of law

9. JUDICIAL NEUTRALITY

Judges are not supposed to make political pronouncements nor declare support for a particular political party. Their neutrality is guaranteed by their security of tenure (until the age of 70) and their high salary (so that they can make judgements “without fear or favour”). Senior judges are no longer appointed by the Prime Minister, but by an independent Judicial Appointments Commission.

However, judges are criticised for coming from a narrow socio-economic background (J.A. Griffiths): most are white, male middle class and middle aged (the only female Supreme Court Justice is Baroness Hale, the remaining 11 are men). 70% of judges went to public school and 78% to Oxford or Cambridge universities. As such, the values they hold are likely to be the dominant middle class values of society and their judgements are sometimes criticised for reflecting this.

Sometimes judges do make political statements. As we have seen, Lord Hoffman was criticised for his membership of Amnesty International in the Pinochet deportation hearing. Lord Woolf (a former Lord Chief Justice) spoke out against the 2005 Constitutional Reform Act; and Lord Philips (a former Lord Chief Justice) spoke out against Gordon Brown’s proposals for the creation of a separate Ministry of Justice (its functions used to be part of the Home Office) in 2007.

10. DEBATE: ARE CIVIL LIBERTIES UNDER THREAT IN THE UK?

There are two principal bodies which, from time to time, protect civil liberties in the UK and guard against authoritarian government. These are Parliament and the Courts. Since the events of 9/11 and 7/7 and, more recently, the murder of Private Lee Rigby (an off-duty soldier), the tension between protecting individual liberty and protecting the public from terrorist attacks has proved a difficult balance for successive governments and has brought new challenges for Parliament and the UK courts.

**Parliament’s role in protecting civil liberties**

A key function of Parliament (see Chapter 7) is to scrutinise the government and, at times, to ***safeguard civil liberties*** in a democratic state. This is particularly true of opposition MPs and members of the House of Lords, but sometimes backbench MPs from the government benches rebel against their own party.

***Examples include:***

In 2005 Parliament voted against the introduction of ***90 detention without trial*** for suspected terrorists. At the time, the maximum anyone could be held without trial was 28 days (this was reduced to 14 days under the coalition government in 2010). Tony Blair sought to extend this to 90 days, but was defeated in the House of Commons. The idea of detention without trial for extended periods runs contrary to the Habeas Corpus Act (1679) which prevents unlawful arrest or detention.

In 2008 Gordon Brown sought to extend detention without trial to ***42 days****.* He was defeated in the House of Lords.

The introduction of **ID cards** was proposed by New Labour whilst in government, but was eventually defeated in the Lords in 2010.

The Lords also defeated a government proposal to keep the **DNA** of innocent people on the National DNA Database in 2008.

**The Courts’ role in protecting civil liberties**

The Courts are made up Criminal Courts and Civil Courts. All criminal cases begin their hearings in the Magistrates Courts, which hear 97% of all cases. However, Magistrates Courts cannot sentence offences which are likely to result in more than six months imprisonment. More serious cases are heard by the Crown Courts. Appeals on sentences invoked by the Crown Courts are heard by the Court of Appeal. Occasionally a further appeal can be made to the Supreme Court. It is also possible to for appeals to be heard in the European Court of Justice or the European Court of Human Rights, but ultimately the UK is sovereign and is not bound by European Court rulings.

Civil cases include family matters (such as divorce and custody of children) and matters relating to debt and bankruptcy. After Magistrate Court hearings, these are heard by the High Court and appeals are heard by the Court of Appeal and, on rare occasions, the Supreme Court. Again, the European Courts are a further route for appeal.

***Examples include:***

In 2010 the Supreme Court ruled that ***control orders*** of up to 16 hours were unreasonable. Control order are a form of house arrest which were applied to suspected terrorists.

Rulings that suspected terrorist such as Abu Hamza and Abu Qatada should not face **deportation**. Successive Home Secretaries argued that both men were dangerous and should be deported to countries where they were wanted to face trial for terrorist-related offences. Abu Qatada faced extradition to Jordan, but the courts ruled that evidence against him was gained through torture by the Jordanian authorities and therefore he would not be given a fair trial. Abu Hamza faced extradition to the United States, but the courts argued that media publicity around his involvement with terrorism meant that, again, he would not face a fair trial. In both cases assurances were secured by the relevant countries which satisfied both the European and British Courts that both men could receive a fair trial and both were deported in 2013. In defending these and other suspected terrorists (such as Abid Nasser and Ahmad Faraz Khan) the courts invoked the Human Rights Act (1998), which is based on the European Convention of Human Rights. The Home Secretary, Theresa May, argued that the Human Rights Act protects the rights of individuals (including suspected terrorists) and the expense of the need to protect the public. She and David Cameron have called for a repeal of the Human Rights Act and the creation of a new British Bill of Rights which would redress this balance.

Rulings made by the European Courts that **prisoners should have the right to vote** under article 3 of the European Convention on Human Rights (to which Britain is a signatory under the Human Rights Act 1998). Parliament has repeatedly refused to comply with such rulings.

**A new Counter Terrorism Bill** will be placed before Parliament in 2015. This will include police powers to apply to the courts for an order to limit the “harmful activities” (those activities which “threaten the functioning of democracy” or risk public disorder) of an individual. There would be a ban on the incitement of hatred (including broadcast material) and the prohibition of ‘proscribed’ extremist organisations. Some groups, such as Liberty, will see some of the provisions of the Bill as being in direct contravention of the European Convention of Human Rights, conflicting with such principles as freedom of speech and freedom of assembly. A separate Bill, the Communications Bill (the so-called **Snooper’s Charter**), is also likely to be reintroduced to Parliament which, if passes, would allow the police and state authorities to gather data on individual’s phone calls, internet use, email and social media. This is arguably in conflict with the right to privacy.