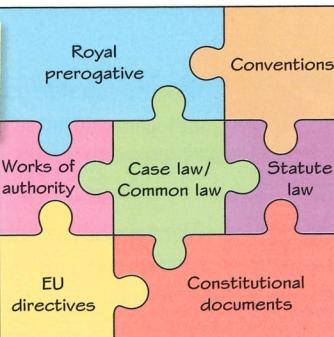


## Types of constitutions

Simply put, a **constitution** is the rules by which the 'game' of governing is played. Governments and all other parts of the state must play by the rules of the constitution.

### The nature of uncodified and codified constitutions

Uncodified constitutions	Codified constitutions
An <b>uncodified</b> constitution refers to a constitution where parts are written down, but there is no one single document outlining the constitution of the state.  The UK Constitution is uncodified – it draws on a variety of sources.  	A <b>codified</b> constitution is a constitution in which the key constitutional structure and arrangement in a state are collected together within a single legal document (see page 164 to read about the US Constitution).    The US Constitution is codified and was written in 1787.
<b>Flexible:</b> the UK Constitution is flexible as any of its sources can be changed without any lengthy or difficult process. However, this is in the context of <b>the rule of law</b> , one of the 'pillars' of the UK constitution, which is the idea that the government is limited by law (see page 92 to find out more on judicial independence).	<b>Rigid:</b> a rigid constitution is one that requires a lengthy and difficult process to alter it.  For example, in the USA an amendment requires a two-thirds majority vote in Congress plus three-quarters of state legislatures.
<b>Unentrenched:</b> the UK Constitution is unentrenched, meaning that constitutional laws are no different from <b>statute laws</b> . <b>Parliament</b> is sovereign so can change the constitution by passing statute law (see page 69). Constitutional provisions do not have a higher legal status than ordinary laws, so laws which modify the constitution are passed by a simple majority in Parliament.	<b>Entrenched:</b> the provisions of a codified constitution are entrenched, in that it is difficult to amend or remove them. Codified constitutions are considered 'higher' law, usually the highest law of the land. This leads to a two-tier legal system in which the constitution stands above law made by the legislature.
<b>Non-judiciable:</b> the UK Constitution is non-judiciable – judges cannot challenge Parliament's ability to make or amend statute laws.	<b>Judiciable:</b> codified constitutions are judiciable, in that a constitutional court decides if government action or laws passed by the legislature are 'constitutional'.
<b>Unitary:</b> a unitary system is based on the principle of <b>parliamentary sovereignty</b> – one of the 'twin pillars' of the UK constitution. This means that supreme power remains in the hands of a single source. Lower government bodies are subordinate to the sovereign body and powers can be taken back from them. In the UK, the power of the Scottish and Welsh parliaments could be taken away from them by Parliament in Westminster. For more on sovereignty, see page 97.	<b>Federal:</b> in a federal state, authority is constitutionally divided between various regions. Central government may have the more important responsibilities but the regional governments are sovereign within their constitutionally defined areas of responsibility. Clashes between central and regional governments are resolved by the constitutional court.
<b>Evolutionary:</b> an evolutionary system is one which has evolved over centuries, constantly changing and adapting to the circumstances. Evolutionary systems do not normally have clear rules and principles governing the country, but as they evolve they tend to fulfil the democratic requirements of the time.	<b>Revolutionary:</b> a 'revolutionary' constitution is one which has been created following a dramatic overthrow of power. Revolutionary systems are usually carefully and clearly designed to ensure all aspects of a democracy are included within it from the beginning.

### Now try this

Why would a codified constitution undermine parliamentary sovereignty?

## Sources of the UK Constitution

This page looks at the five main sources that make up the UK Constitution and the relationship between them.

### Key historical documents

Constitutional documents are very old (sometimes ancient) laws which signify an important stage in the UK's democratic history and still bear some relevance today. They include:

- Magna Carta (1215)
- Bill of Rights (1689)
- Act of Settlement (1701)
- Acts of Union (1707)
- Parliament Acts (1911 and 1949)
- The European Communities Act (1972).



Magna Carta introduced the concept of **habeas corpus** – the right to be brought before a court to hear the charges against you, and especially to secure release unless lawful grounds are shown for the detention.

### 1 Statute law

Arguably, the most significant source of the UK's constitution are **statute laws**. These are laws passed by Parliament; as Parliament is sovereign, this means statute laws are sovereign.

For example, the Freedom of Information Act is an example of statute law.

### 2 Works of authority

**Authoritative works** refer to books written to help explain the workings of the UK's uncodified and somewhat complicated constitutional arrangements. These books have become so vital to our understanding that they are now considered part of the UK constitution.

For example, authoritative works include Erskine May's *Parliamentary Practice* (1844).

### 3 Common law and case law

**Common law** exists where judges make decisions based on long-established practices or form an opinion of a fair and just outcome. The UK judicial system works on the principle of precedence, which means that once the senior judiciary have decided on a case, similar cases will be considered in the same light.

### 4 Conventions

**Conventions** are traditions and customs that have developed over centuries throughout the UK's evolutionary system. They are not laws. For example, while all rules relating to elections are laws, the idea that a prime minister should resign after they have lost an election is in fact a convention, not a law. Does that mean it would be OK if the PM didn't resign? Clearly not! Just because something isn't a law in the UK's constitutional structure does not make them any less significant than laws.

### 5 EU treaties/law

European Union (EU) **treatingies** are an additional source of the UK Constitution.

The Treaty of Rome 1957, the Maastricht Treaty 1992 and the Lisbon Treaty 2009 are all examples.

### Relationship between the sources

- EU laws currently take precedence over all other sources, although they will be replaced by statute laws after Brexit.
- Statute law supersedes all other sources (except EU law until Brexit).
- Common law cannot contradict statute law, but has equal authority to it.
- Authoritative works and conventions are not binding but are considered extremely strong guidance, which are usually adhered to.

### Now try this

Why are some sources seen as being more rigid than others?

## Constitutional reforms since 1997

Constitutional reforms refer to any reforms of the system of government, but specifically to changes made since 1997 by the Blair and subsequent governments. You need to know the significance of these reforms.

### How the constitution has changed since 1997

Reforms that enhance democracy	Reforms that decentralise power
<ul style="list-style-type: none"> <li><b>House of Lords (HoL) reform 1999:</b> took away power from the most undemocratic element of the HoL, the hereditary peers.</li> <li><b>Electoral reform:</b> introduced proportional representation (PR) in all devolved assemblies, leading to much fairer representation of the people's views.</li> <li><b>Recall:</b> the 2015 Act introduced a process by which an MP can be recalled by their constituency to face a by-election.</li> <li><b>Reforms in the House of Commons:</b> the Wright Reforms redistributed power to <b>backbenchers</b> (see page 83 for more on the role of backbenchers) and from the government.</li> <li><b>English votes for English laws (EVEL):</b> that laws concerning England only have a greater input from MPs representing English constituencies.</li> </ul>	<ul style="list-style-type: none"> <li><b>Devolution:</b> devolved powers to Scotland, Wales and Northern Ireland put local representatives in charge of local issues.</li> <li><b>Exiting the EU:</b> returned all decision-making powers back to Parliament, which is directly accountable to the British people.</li> <li><b>Elected mayors:</b> gave powers over large areas to locally elected mayors. For example, London, West Midlands, Liverpool, Manchester.</li> <li><b>Police and crime commissioners (PCC):</b> elected representatives who are responsible for the efficient and effective policing of an area.</li> </ul>
Reforms that enhance rights	Reforms that modernise the system
<ul style="list-style-type: none"> <li><b>Human Rights Act 1998:</b> made the European Convention on Human Rights (ECHR) law accessible in UK courts, making it easier for UK citizens to access the rights.</li> <li><b>Freedom of Information Act 2000:</b> provided public access to documents held by public authorities.</li> </ul>	<ul style="list-style-type: none"> <li><b>Fixed-term Parliaments Act 2011:</b> fixed the dates of UK general elections to once every five years to reduce the PM's prerogative power (see page 88 for more on the PM's power).</li> <li><b>Constitutional Reform Act 2005:</b> established the <b>Supreme Court</b> in place of the Law Lords and separated the role of Lord Chancellor into three separate roles and people.</li> </ul>



### Focus on Wright Reforms

The Wright Committee was established in 2009 to improve the procedures and relevance of Parliament. It made a number of recommendations, which included:

- Chairs of departmental and other **select committees** (read about how Parliament scrutinises the government on page 82) should be directly elected by secret ballot of the **House of Commons**.
- Members of select committees should be elected from within party groups.
- Backbench business should be scheduled by the House rather than by **ministers**.
- The House should decide its sitting pattern for itself.
- An effective e-petitions system should be introduced, including the possibility that members of the public might be able to compel an issue to be debated in the House.
- One backbench motion per month should be routinely scheduled for debate.

The aim was that the House of Commons should have more scope to choose and schedule its activities. The Wright Committee was introduced in full in 2010 by the coalition government.

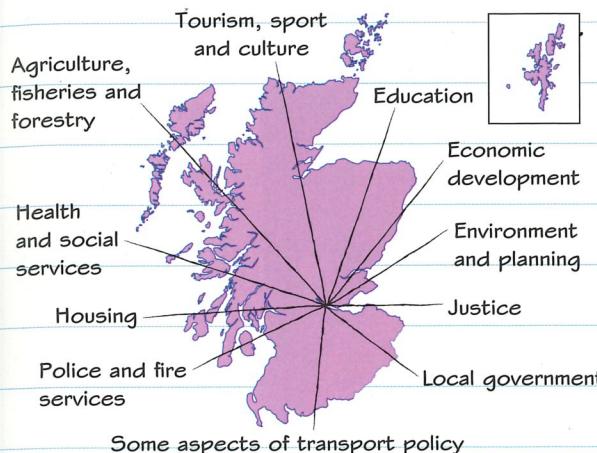
### Now try this

What effect did electing chairs and members of select committees have?

## UK devolved bodies

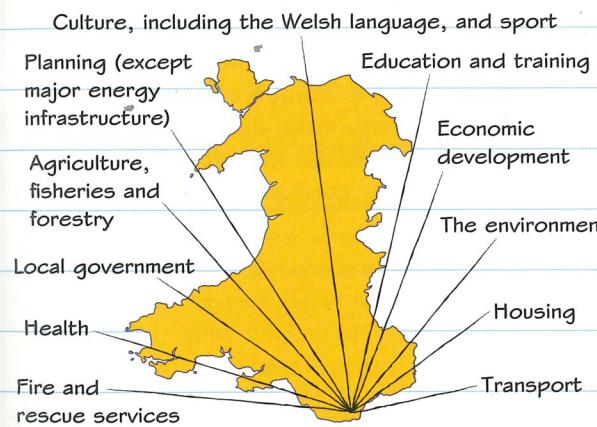
Since 1998 there have been devolved assemblies in three of the four component nations of the UK. However, their role and powers differ radically.

### Scottish Parliament and government



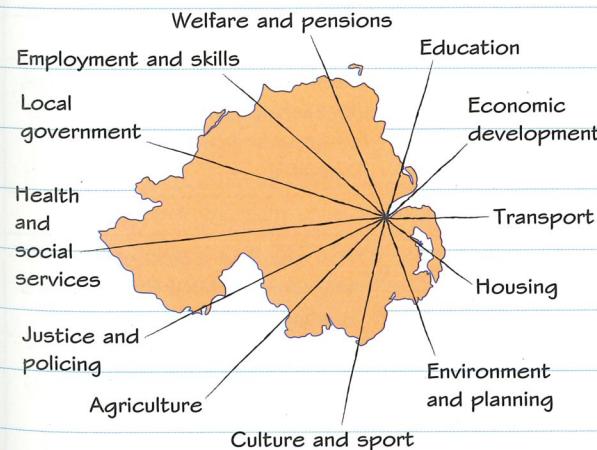
- The Scotland Act 1998 gave primary powers and income tax-varying power, ± 3p per pound.
- The Scotland Act 2012 gave a small extension of powers, increase of tax-varying power to ± 10p and **devolution** of some additional taxes.
- The Scotland Act 2016 extended powers in relation to transport, energy and social security benefits, and to set income tax rates and thresholds, as well as to receive the proceeds of national VAT.

### Welsh Assembly and government



- The Wales Act 1998 gave secondary legislative powers to the Assembly.
- The Wales Act 2006 provided for an additional referendum on primary legislative powers.
- The Welsh devolution referendum in 2011 voted 'yes' to give the Welsh Assembly direct law-making power in 20 devolved areas, such as health and education.
- The Wales Act 2014 gave minor tax powers and a referendum on income tax-varying power.
- The Wales Act 2017 provided for a reserved powers model and a transfer of further powers in transport and energy, and gave income tax-varying power to ± 10p without a referendum.

### Northern Ireland Assembly and Executive



- The Northern Ireland Act 1998, based on the Belfast Agreement, created the Assembly and related institutions and gave the Assembly power to legislate in transferred matters.
- The St Andrews Agreement (2006) renewed devolution in 2007.
- Devolution of policing and criminal justice in 2010.
- The Corporation Tax (Northern Ireland) Act 2015 devolved power to set corporation tax.

### Primary and secondary legislation

Power to make **secondary legislation** is set out in primary legislation. Primary legislation provides the framework while secondary legislation adds the detailed rules and procedures. The devolved Parliament and Assemblies have different areas over which they can make primary legislation.

### Now try this

Why does the Scottish Parliament have more powers than the Welsh Assembly?

## Devolution and its impact

Since the Blair government introduced devolved assemblies at the end of the 1990s, there has been sufficient time to assess whether devolution has been a success or not.

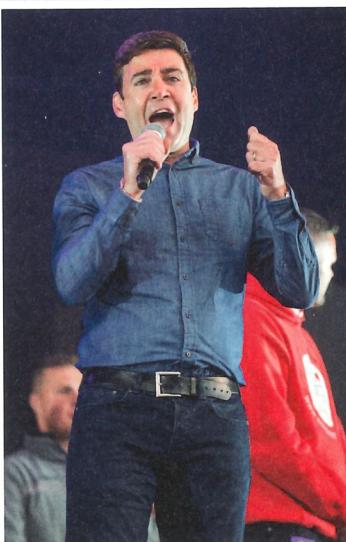
### Devolution in England: elected mayors

In 2000, the Blair government established an elected mayor in London, supported by the Greater London Assembly. The government tried to extend this by creating elected regional assemblies, but the idea failed to win support. Only one referendum took place, in the north-east, where the idea was heavily defeated by a 78 per cent 'no' vote in 2004.

The coalition government (2010–2015) tried to reintroduce the idea with directly elected 'metro mayors' to develop what the then chancellor George Osborne called the 'northern powerhouse'. Twelve cities held referenda: Leicester and Liverpool established mayors, Bristol elected its first mayor in 2012 and the remaining nine cities rejected mayors.

In 2017, metro mayors were elected in Greater Manchester (Lab), Liverpool City Region (Lab), the West Midlands (Tory), Tees Valley (Tory), West of England (Tory), and Cambridgeshire and Peterborough (Tory); Sheffield City Region elected Labour MP Dan Jarvis as its mayor in 2018.

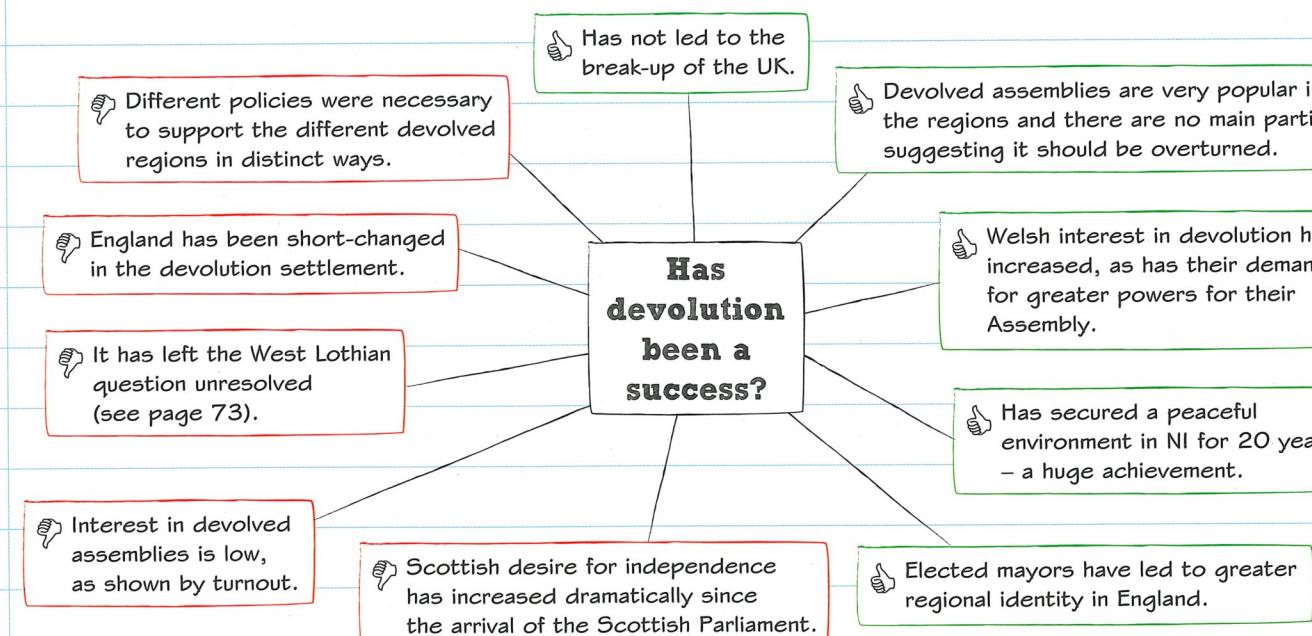
The powers of the new metro mayors vary but they include developing an economic growth strategy and making policy on housing, skills and transport.



Andy Burnham, mayor of Greater Manchester, speaking at a concert for victims of the Manchester Arena bombing in 2017.

Mayors have responsibilities and powers across the city regions, unlike existing city mayors or local council leaders, who only make decisions for their local authority. This does not include the mayor of London and the Greater London Authority, who have quite different powers.

### Has devolution been a success?



### Now try this

Why may metro mayors help economic regeneration in an area?

## Are further reforms desirable?

You need to consider whether reforms introduced since 1997 have been extensive enough or whether there is scope for more reform.

### Arguments for and against introducing a codified constitution in the UK

- |  |  |
|--|--|
| <ul style="list-style-type: none"> <li> The major principles of the constitution would be <b>entrenched</b>, safeguarding them from interference by the government of the day.</li> <li> With an entrenched constitution, <b>individual liberty would be more securely protected</b>. Despite the Human Rights Act (for more on this important legislation see page 10), rights are still not adequately protected since they lack entrenchment.</li> <li> The power of the <b>executive would be constrained</b> by a rigid, codified document. Codification would provide a counter-balance to the power of the executive.</li> <li> In a codified system, independent <b>judges</b> are able to protect the constitution to ensure that its provisions are upheld.</li> </ul> | <ul style="list-style-type: none"> <li> A codified constitution would be <b>less responsive</b> and adaptable than an uncodified one. Since 1997, many constitutional reforms have been enacted to update the UK Constitution.</li> <li> The US Constitution has had an entrenched Bill of Rights for centuries but it didn't stop African-Americans being lynched without any kind of trial – entrenched constitutions do not guarantee people's rights in practice.</li> <li> Government power may be <b>more effectively constrained by regular elections</b> than by a constitutional document.</li> <li> Judges are not the best people to regulate the constitution because they are unelected and socially unrepresentative. An uncodified constitution protects against the tyranny of the unelected judiciary.</li> </ul> |
|--|--|

### Arguments for and against greater devolution to or in England

- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li> It would provide a solution to the West Lothian question. This asks whether Scottish, Welsh or Northern Irish MPs have the same right to vote at Westminster as English MPs on matters concerning England, while English MPs cannot vote on matters affecting only the devolved assemblies.</li> <li> It would facilitate a more federal model of government. (This can also be seen as a disadvantage.)</li> <li> It would provide stronger regional identity in parts of the UK.</li> <li> England is the largest and most prosperous part of the UK, but it is the only nation without a devolved body.</li> <li> Under the current system, England receives less money per person than the other parts of the UK.</li> <li> EVEL (see page 70) does not resolve the West Lothian question and makes Scottish MPs second-class representatives at Westminster, weakening the unity of the UK.</li> <li> Some parts of the UK have a very strong identity and would want the ability to make more decisions for their regions locally. For example, Devon and Cornwall.</li> </ul> | <ul style="list-style-type: none"> <li> It could complicate the relationship between the regions and Parliament.</li> <li> It would result in even more asymmetric devolution. This refers to devolution arrangements that are unbalanced. In the UK, devolved powers differ sharply between territories – Scotland has the most devolved powers and England has the least.</li> <li> There is little public support for an English Parliament and the idea is not supported by any major political party.</li> <li> England would dominate a federal assembly and its relationship with Westminster would be complicated.</li> <li> EVEL has resolved the West Lothian question and been used in Westminster to pass English-only legislation.</li> <li> As the largest component in the UK, most English people don't make a clear distinction between England and the UK.</li> <li> Many areas of England don't have a strong local identity, seeing themselves as English or even British.</li> </ul> |
|--|---|

### Now try this

Why would an English Parliament resolve the West Lothian question and improve the symmetry of devolution in the UK?

## Other possible reforms

An additional area in which to consider further reforms of the UK Constitution is within the two chambers in Parliament.

### Reform of the House of Commons

Weakness	Proposed reform	Possible consequences
The prime minister is not sufficiently accountable	Reform PM's Questions and increase regularity of the Liaison Committee	Create more meaningful, rational debate of issues
Departmental select committees are still often ignored and not valued	Give them enforcement powers	More accountable government
MPs have little control over legislation	More power to legislative committees and remove membership from whips	Legislative committees become more independent, better scrutiny of legislation
Government majorities render the House of Commons useless	A change in the electoral system might improve the House of Commons's operation	Coalitions and minority government might empower MPs
MPs lack research facilities	Increase research support	Commons would be more effective in making ministers accountable

### Should the House of Lords be reformed?

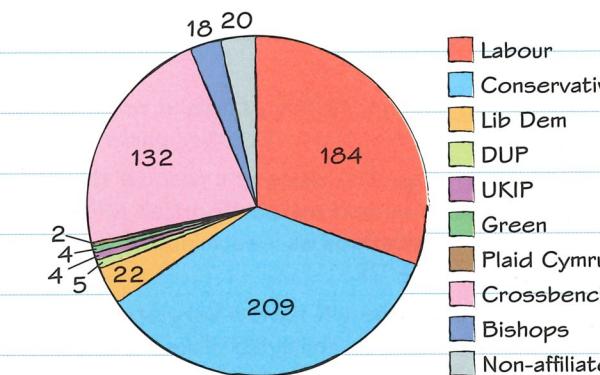
- ➔ Full or partial election would raise the **legitimacy** of the second chamber.
- ➔ If elected it might **Challenge the authority of the Commons**.
- ➔ Election would **eliminate the many experts who sit in it**, including the experience of the ex-ministers and PM in the Lords.
- ➔ The current Lords more closely mirrors the popular vote at the last general election than the Commons.
- ➔ The current chamber works well. It is the most active chamber in the world. It sits for longer and meets more frequently than any other.
- ➔ Since 1999, the Lords has proved to be a useful check on the executive-dominated Commons. If elected, it would be dominated by parties and less likely to hold the Commons to account.
- ➔ Reducing the size of the Lords would make it a more effective chamber.

### An alternative 'reform' of the Lords?

The cost of running the **House of Lords** has been criticised – members can claim £300 a day with little scrutiny of the work they actually do. The size of the Lords soared after Cameron created many new peers (295 between 2010 and 2017).

Devised by a committee led by Lord Burns in 2017, the reform suggests:

- reducing the size of the Lords to 600 within ten years and maintaining this until at least 2047
- new peerages will be restricted to a 15-year term
- political peers should be appointed in relation to a party's election performance, taking into account the number of seats it wins as well as the vote share it achieved.



How the House of Lords would look were it reduced and based on parties' 2017 election performance.

### Now try this

Why would reform of the Lords enhance the legitimacy of Parliament?

## Parliament

All representative democracies have three aspects to their state: a legislature, an executive and a judiciary.

### Legislature, executive and judiciary

The UK is unusual as the legislature and executive are fused (joined together), as shown below. This means that its executive (government) sits in the legislature (**Parliament**). This is known as a 'parliamentary system' and has many consequences, as you will find out.

#### Legislature

The body that has the power to make, revoke and change laws. It also has the role of scrutinising the executive and holding them to account. In the UK, this is Parliament.

#### Executive

The body that runs the country and proposes laws to the legislature. In the UK, this is called the government and consists of the PM, Cabinet, junior ministers, their advisers and civil servants.

The body that interprets and applies the law. It does this to uphold the rule of law in society.

### Parliamentary government

The UK Parliament is made up of three parts: the **House of Commons** (for more on this chamber see page 76), the **House of Lords** (see page 76) and the monarchy. The terms 'parliament' and 'government' are often misunderstood and sometimes used interchangeably. It is essential to clearly understand the difference between these two terms.

- Parliament is sovereign (for a discussion of sovereignty in the UK, go to page 97). This means that there is no higher authority in the UK. All laws must be passed by Parliament; no other authority can make, amend or unmake their laws.
- Parliamentary systems are based on a fusion of powers between the legislature and the executive. This means that government governs in and through Parliament.
- The prime minister is not directly elected, but is selected by being the leader of the largest party in the Commons.
- The prime minister is head of government, but not head of state.
- The prime minister heads a Cabinet, the vast majority of whom are elected and are individually accountable for their actions. The prime minister controls their appointment and dismissal (see page 88 for more on the power of the PM).
- All members of the Cabinet and the government are from the Commons or Lords and are accountable to that House.
- The government can be removed by Parliament – despite fixed terms, if a government loses a vote of no confidence an election is called.

**Confidence and supply** – in the event of a minority government, the government can rely on a limited agreement with another party (or parties) to keep itself in office. The supporting party will provide backing on a vote of no confidence, and will vote through the government's budget ('supply').

### Now try this

Outline a difference in the role of the executive and the legislature.