

The Constitution Series: 1 – Wales in the United Kingdom

Quick Guide

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The UK Constitution

The United Kingdom (UK) is a constitutional monarchy where the Monarch is the Head of State and appoints the Prime Minister and Ministers who form the UK Government (the “Executive” branch of the UK political system).

The UK is also a parliamentary democracy where the Prime Minister and Ministers sit in Parliament (the “legislative” branch), either as elected MPs in the House of Commons or as peers in the House of Lords.

The UK is often said to have an “unwritten constitution”. While it does not have a single document that is “the Constitution” as most other countries have, aspects of constitutional law and custom are found in diverse sources such as the 1701 Act of Settlement¹, the recent devolution legislation² and commentaries by constitutionalists such as Dicey³ and Bagehot⁴. However, the last Labour Government took steps to formalise aspects of the constitution, for example, placing the civil service on a statutory basis.⁵ It also initiated the process of producing a Cabinet Manual, a single source of information on how the Government works and interacts with the Monarch, Parliament, the judiciary, international organisations, the Devolved Administrations and local government. The Coalition has continued this process⁶ and has pursued its own constitutional agenda, for example, legislating for Fixed Term Parliaments.⁷

The key constitutional principle underpinning the UK political system is said to be Parliamentary Supremacy. This means that Parliament can pass, repeal and alter any of the laws of the UK. All laws receive Royal Assent.

The evolution of the United Kingdom

Diverse experiences of invasion, immigration and patterns of settlement meant that by 1066 (the date of the Norman invasion of England) England, Scotland, Wales and Ireland were seen as distinct geographical and cultural entities. However, while England and Scotland were developing as single kingdoms with a single Monarch, Wales was made up of a number of small kingdoms, although often a powerful ruler would try to expand his influence to become King of all Wales (such as Hywel Dda d.950). The incursions of the Normans into Wales (as in Ireland), created a complex situation where, on the one hand, powerful Norman Marcher Lords were extending their influence into Wales and increasingly

¹ The 1701 Act of Settlement, passed at a time of widespread fear of Catholics, lays down that only Protestant heirs of Princess Sophia, granddaughter of James I of England, may take the British throne.

² Such as the Scotland Act 1998 and the Government of Wales Act 2006.

³ A.V. Dicey, *The Law of the Constitution*, 1885.

⁴ Walter Bagehot, *The English Constitution*, 1867.

⁵ **Constitutional Reform and Governance Act 2010** (C.25)

⁶ **Cabinet Office, Draft Cabinet Manual, 2011**. [accessed 5 April 2011] This was subject to a consultation process that closed on 8 March 2011.

⁷ **Fixed Term Parliaments Bill 2010-11**

the English Crown was seeking to extend its influence amongst often warring Welsh kingdoms.

By the reign of Edward I of England, the House of Gwynedd (Llywelyn I d.1240 and his grandson, Llywelyn II) had made territorial gains and attained some ascendancy over other Welsh princes to the extent that they styled themselves Princes of Wales. The Principality of Wales also existed as a territorial, legal and administrative entity, although it did not cover all of the territory of Wales. When Llywelyn II was declared traitor by Edward I and killed in a skirmish in 1282 the title of "Prince of Wales" was taken up by the English Crown.

Following the demise of Llywelyn II, Wales as a whole was ruled by the King of England but did not become part of the Kingdom of England. The process of legal union with England was to be completed by the "Acts of Union" under the Tudors in 1536 and 1543. The first 'Act of Union' divided the March into seven counties so the distinction between the Principality and the March within the territory of Wales ended. The law of England became the only law of Wales and, to administer it, justices of the peace were appointed in every county. Wales was represented in Parliament by 26 members. A further Act in 1543 established the court of great session, a distinct Welsh system of courts based upon four three-county circuits.

Wales, therefore, became the first distinct territory of what was to become the United Kingdom to be united with England. Subsequently, the *Wales and Berwick Act 1746* ruled that the word "England" in a statute should be taken to include Wales. However, this was repealed by *the Welsh Language Act 1967*. The current territorial definition of Wales in law is the combined area of the counties which were created by section 20 of the *Local Government Act 1972*.⁸

The experience of Scotland and Ireland in becoming part of the United Kingdom differed from that of Wales and from each other. The crowns of Scotland and England were united in 1601 but separate parliaments remained and the Union did not take place until a century later, in 1707. Even after the Union, Scotland retained its distinct legal and administrative systems, although law was made at the Parliament in Westminster.

Ireland had been under the authority of the English crown since the Middle Ages, although its authority was contested and continued to be when the Crown/state became protestant in religion and Ireland remained predominantly catholic. An Irish Parliament had existed since the fourteenth century but was abolished when the *Act of Union* was passed in 1801.

By the early nineteenth century, therefore, there was a United Kingdom made up of England, Scotland and Ireland and Wales. However, the way in which Wales, Scotland and Ireland became part of the union differed greatly, in terms of timing and circumstances. This helps to explain the way in which the United Kingdom was to subsequently change.

For a more than a century, the demand for Irish Home Rule and independence from the United Kingdom was expressed, often with violence on both sides, until the *Government of Ireland Act 1920* created the Irish Free State as a dominion of the British Empire. This would become the wholly independent Republic of Ireland in 1949, thereby ending its links with the British Crown and ceasing to be part of the United Kingdom. However, the six counties in the North, with a predominantly protestant population, were constituted as the Province of Northern Ireland which retained a devolved Parliament within the United Kingdom until 1972 when Direct Rule from Westminster was established.

⁸ *The Interpretation Act 1978* (Chapter 30). The 1972 counties were re-organised by the *Local Government (Wales) Act 1994* but the territory of Wales remained unchanged.

Territorial Offices

The recognition that the UK is a “multi-nation state” was reflected in the creation of territorial offices with Secretaries of State for Scotland, Wales and Northern Ireland at different times.

Following the *Act of Union* between England and Scotland in 1707, a Scottish Secretary was part of the Government but the position was abolished after the 1745 Jacobite uprising. However, in 1885 the *Secretary of Scotland Act* was passed which formalised the position of the Scottish Secretary and created the Scottish Office. The post was later elevated to that of a Secretary of State.⁹

In Wales, although some Welsh outposts of Whitehall departments had been in existence since the early twentieth century, such as the Welsh Department of the Board of Education (1907), the Welsh Office and post of Secretary of State for Wales were not created until 1964 by the Wilson Labour Government. The first incumbent was Jim Griffiths, the then MP for Llanelli.¹⁰

The post of Secretary of State for Northern Ireland and the Northern Ireland Office were created on the introduction of Direct Rule in 1972.¹¹

Devolution

In the late 1990s devolution transferred some powers from Whitehall and Westminster to Scotland, Wales and Northern Ireland, creating new democratic institutions to make and execute decisions on matters that had previously been dealt with by the territorial offices and the Secretaries of State.

UK devolution is characterised by asymmetry. Unlike a federal system, where states or provinces share sovereignty with the centre and have comparable powers with each other, the devolved arrangements in the UK differ sharply between territories.

The **National Assembly for Wales** was created by the *Government of Wales Act 1998*. This Act has been superseded by the *Government of Wales Act 2006* (“2006 Act”) which makes the devolved structures in Wales closer to those of Scotland, for example, with Ministers appointed by the Monarch. It has also gave the Assembly, from May 2007, the powers to make “Assembly Measures” in matters where it had legislative competence.¹² A referendum was held on March 3 2011 which approved the implementation of Part 4 of the Act, giving the Assembly a broader legislative competence defined under 20 subject areas in the Schedule 7 to the 2006 Act.

Scotland has a Parliament with primary law-making powers. It also has the power to vary the rate of income tax. The assumption in the *Scotland Act 1998* is that all domestic policy functions have been devolved. *The Scotland Act 1998* states what is reserved to the UK Parliament in London, notably foreign policy, defence policy and social security. The *Scotland Bill 2011*, when enacted, will hand control of some taxes and other powers from Westminster to the Scottish

⁹ **Scotland Office, History of Scottish Representation in Government, webpages** [Accessed 5 April 2011]

¹⁰ National Records Office, National Digital Archive of Datasets, *Democracy and Devolution Proposals for Scotland and Wales, Note by the Prime Minister, 16 September 1974*, Record CAB/129/179/18 [accessed 5 April 2011]

¹¹ **Northern Ireland Office** [Access 5 April 2011]

Parliament.¹³

The **Northern Ireland Assembly** was set up as an upshot of the ongoing peace process as part of the 1998 Good Friday Agreement. It has some primary legislative powers but no tax-raising powers. It has a power-sharing executive which requires parties elected by both sides of the religious/political divide to work together. Devolution was suspended from October 2002 but was restored on 8 May 2007, following an agreement to form an executive between the Democratic Unionist Party and Sinn Fein.¹⁴

As the Scottish Parliament, National Assembly for Wales and Northern Ireland Assembly are created by statutes of the Westminster Parliament, they could, in theory, be repealed by it. However, most commentators think that this would be highly unlikely to occur without the approval of referendums, which were used to sanction their creation.

Westminster continues to legislate for the UK as a whole for some issues and for **England**. This has led some people to question whether MPs who do not sit for English seats should be allowed to vote on legislation that only affects England. This is known as the West Lothian Question. The Coalition Agreement agreed between the Conservative and Liberal Democrat parties in May 2010 stated that the Government would establish a commission to consider the West Lothian question.¹⁵

Further information

For further information on **The Constitution**, please contact **Alys Thomas** (Alys.Thomas@wales.gov.uk) or **Owain Roberts** (Owain.Roberts@wales.gov.uk), Research Service.

See also:

- Vernon Bogdanor *The New British Constitution*, Oxford, Hart Press, 2009.
- John Davies, *The History of Wales*, 2nd Edition, Penguin, 2007.
- K. O. Morgan, *Rebirth of a Nation: Wales 1880-1980*, Oxford Paperbacks, 1981.
- **UCL Constitution Unit**
- **Glossary of terms**

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¹³ **Scotland Bill 2010-2011**

¹⁴ **BBC News, How United is the UK?**

¹⁵ HM Government, *Coalition: Our Programme for Government*, May 2010