

Year 12 Government Term 1—The UK Supreme Court

Origins, aims & functions of the UK Supreme Court

- It was set up in 2009 as part of the Constitutional Reform Act, 2005
- It is the highest legal authority in the UK
- It created a clear separation of powers between the judiciary & other branches of government
- It replaced the Law Lords which had sat in the House of Lords
- The UKSC must respect parliamentary sovereignty & cannot strike down Acts of Parliament as unconstitutional



Appointment Process

1. Vacancy occurs
2. 5 member selection committee created
3. Commission nominates a candidate
4. The Lord Chancellor (justice secretary) accepts or rejects the nominee
5. Lord Chancellor notifies PM
6. PM recommends nominee to monarch
7. Monarch confirms appointment by issuing letters patent



Supreme Court Judges

- There are 12 Supreme Court Judges
- Judges have to have held judicial office for at least 2 years OR have been qualified as a barrister or solicitor for at least 15 years
- The Supreme Court has been criticised for its lack of diversity - domination of public school & Ox-bridge background
- Judges are permanent until compulsory retirement at 75 & can only be removed for gross misconduct
- The Supreme Court is free from political pressure
- Judges are known as 'my Lord' or 'my Lady' but these are courtesy titles and not real peerages



European Court of Human Rights and the UKSC

- Under the Human Rights Act 1998, the UKSC has the power to decide whether an action by a public body or a law is in breach of the ECHR
- If the SC finds a breach of ECHR law then it will declare a 'declaration of incompatibility' which requires the government or public body to reverse the action
- On rare occasions the UKSC has sent cases back to Strasbourg for reconsideration
- The Horncastle case was an example of this
- The UKSC must also take EU law into consideration when hearing cases that concern European treaties which the UK has signed up to
- The UKSC can refer a case to the European Court of Justice in Luxembourg for a final verdict
- Brexit will impact only on the UKSC & EU Law not the UKSC & ECHR



UKSC main roles

- It is a final Court of Appeal on criminal cases for all the UK except Scotland and civil cases for the entire UK
- It hears appeals on points of law from the general public & of national importance
- It enforces the ECHR in the UK & reduces the number of cases on behalf of UK citizens
- It acts as a final Court of Appeal for a number of British overseas territories & former colonies such as Jamaica



Judicial Appointments Commission (JAC)

- Set up to nominate new UKSC judge
 - It is an independent body
- Comprises:
- The President of the Supreme Court
 - Deputy president of UKSC
 - Member of JAC for England & Wales
 - Member of JAC for Northern Ireland
 - Member of Judicial Appointments Board for Scotland



The Horncastle case (2009)

- The ECHR ruled that a person convicted by statements from witnesses not in court, had been denied a fair trial
- The UKSC disagreed because the UK courts had always accepted witness statements from witnesses not in court



How is judicial independence maintained?

- Legal training & experience
- Crime of contempt of court
- Independent appointments
- Physical separation of powers
- Security of tenure
- Guaranteed salaries



How is judicial impartiality maintained?

- Judges are out of the public eye
- Restrictions on political activity
- Decisions must be based on law
- Legal experience
- Legal training
- Legal review / appeals



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Al Rawi & others v The Security Service & Others (Appellants 2011)

- In certain terrorist trials, the security service wanted to give evidence in secret
- A defeat for the UK government
- UKSC said that even in serious cases, the accused had a right to a fair trial and see all the evidence against him
- It was a victory for supporters of open & transparent justice



Trump International Golf Club Ltd v Scottish Ministers (2015)

- Trump Golf Club claimed that the Scottish Government had exceeded their powers by allowing a new wind farm to be built by their new golf club
- The UKSC found in favour of the Scottish Government & that they had not exceeded their powers



Great Ormond Street Hospital v Yates & Gard (2017)

- The parents of seriously ill baby, Charlie Gard, wanted to take him abroad for treatment
- Great Ormond Street hospital said this was not in Charlie's best interests
- The Court supported the hospital & said that Charlie's parents could not take him abroad
- It reaffirmed that parents do not have the ultimate say on their child's care
- Charlie died shortly afterwards



Commissioner of Police of the Metropolis v DSD

- Two victims of serial rapist, John Worboys, won the case against the MET Police for not taking their allegations seriously enough at the time
- The UKSC said their human rights had been breached



Government disagreement with the UKSC

- On rare occasions the government may disregard ECHR decisions
- In 2005 the UKSC ruled that Britain's law denying prisoners the vote was incompatible with the ECHR but the government took no action



UKSC impact on government, the legislature & the making of policy

- The UKSC acts as a significant check & balance on government & parliament in regard to both legislative & executive actions
- Under the Human Rights Act (1998) all government bills must include a statement saying the bill is either compatible or incompatible with Human Rights
- This makes the government more cautious when drawing up bills
- The UKSC may disagree with the government that an act is compatible



Is the Judiciary too powerful in the UK?



- Yes as judges are unelected & so cannot be easily removed & they make life or death decisions which massively impact lives
- No as judges only interpret the laws & Parliament signed up to the 1998 Human Rights Act. Judges are trained to look at cases impartially & the judges have to check that no one is above the law



The key principles of the UK judiciary

1. *Judicial Independence* - judges are free from government interference, salaries are not set by the government.
2. *Judicial impartiality* - Judges are neutral & objective when making decisions & are not swayed by personal opinion or pressure. However the background of many judges can be seen as unbalanced and harmful to neutrality.
3. *Separation of powers* - The judiciary is separate, physically & in terms of personnel from parliament.
4. *Ultra Vires* - Everyone is subject to the laws of the land, including the government. Anyone who exceeds their powers is seen as *ultra vires* & going beyond the power of the law & therefore illegal.
5. *Judicial review* - Court proceedings where judges review the legality of a decision or action made by a public body including the government.



UK SC 	US SC 
12 members	9 members
Nominated by independent commission	Nominated by president
Confirmed by monarch	Confirmed by Senate
Small groups of justices hear cases	All justices hear cases
Tenure until 75	Life Tenure
Paid through independent fund	Paid through Congress but no pay cuts
Cannot overturn primary legislation	Can overturn legislation or govt action
Protects rights through Human Rights Act	Protects rights through amendments
Cases can be appealed to ECHR	There is no higher authority