

CONSTITUTIONAL REGULATORS: WHAT ARE THEY, AND HOW DO THEY WORK?

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Summary

Ethical standards are vitally important to the UK's democratic system, but have recently been the focus of numerous political controversies. These episodes have resulted in suggestions that the UK's constitutional regulators now need to be strengthened.

The constitutional regulators promote good governance and ensure transparency – functions which are critical to maintaining public trust in politics.

They are founded on principles of independence, efficacy, accountability and legitimacy. These principles are not always straightforward to implement, but should underpin any moves towards their reform.

Background

Constitutional regulators enforce key standards and rules. These cover matters which are viewed as too important to be left purely to constitutional norms, but most of which are not covered by the criminal justice system (though some regulators do have prosecution powers).

Regulation is common to many sectors and professions, including those beyond the scope of this briefing. For example, the medical and legal professions use regulatory standards systems, and many industries operate statutory or voluntary ombudsman schemes.

The focus of this briefing is the regulators and regulatory systems that relate to politics in the UK. This includes various codes that govern the behaviour of politicians or officials, and the regulators that enforce them. It also includes regulators which oversee the processes of politics and governance – such as elections, public appointments or public spending – and those that aim to uphold certain standards of public discourse, for example by regulating the media.

Various terms exist for such organisations; for example, they are often referred to as constitutional watchdogs or guardians. Here, for simplicity, we use the term constitutional regulators throughout.

Why do regulators matter?

Regulation safeguards the integrity of a profession or sector, and protects the public. It establishes the boundaries of acceptable behaviour, ensuring that both the regulated profession and those who come into contact with it understand what [standards should be upheld](#). In politics, such standards most obviously include financial probity and personal conduct. Regulation also guards against unfair competition, often by preventing those in dominant positions from abusing their power. One example is the legal requirement for a purdah period in the run-up to elections, which bars incumbent

Regulation plays a key role in maintaining the reputation of many professions, and the same is true when applied to

What principles underpin constitutional regulation?

Certain principles underpin constitutional regulation. These are not always straightforward to implement and may at times be in conflict with one another. Such conflicts are particularly likely in the case of the regulators that oversee elected politicians.

- One key principle is regulatory independence: constitutional regulators should be able to fulfil their functions without undue pressure. CSPL [has suggested](#) a number of institutional features that support independence, including a clear statutory basis, sufficient resources, and a robust appointment process with a significant independent presence on the panel.
- Regulators should also have the powers necessary to be effective. CSPL suggests that the ability to initiate investigations, determine breaches, publish findings, and issue sanctions or remedial actions are all relevant here. However, it is also widely recognised that certain sanctions against elected politicians – particularly those which might lead to the loss of their position – present a dilemma. Elected politicians are ultimately responsible to the public, so it may be seen as inappropriate for unelected regulators to apply sanctions which would remove them from office. For this reason, some regulatory processes – in particular those relating to alleged breaches of the Code of Conduct for MPs or Ministerial Code – combine investigation by officials with decision-making by politicians.
- Another key principle is accountability. Like other public bodies which exercise important functions, constitutional regulators must themselves be held to account, including by the media and by elected politicians. However, there can be a tension between this principle and that of regulatory independence: the regulators are accountable, in part, to those they regulate. This tension can be eased by setting clear expectations about the appropriate scope and nature of the accountability relationship. Regulators should be accountable for their performance, use of resources and governance; decision-making on particular cases should instead be exempt, but open to appeal. Accountability is often to cross-party bodies, which may also include lay members (as, for example, in the case of the Commons Committee on Standards).
- To be effective, regulators also need to command public legitimacy. This requires transparency about the rules that they oversee, their approach, and their reasoning in particular cases. It also requires that politicians respect the role played by regulation, and do not respond to unwelcome rulings by attacking regulators or the regulatory system.

How can the regulatory system be strengthened?

There is growing agreement that the current regulatory system would benefit from reform. As CSPL has noted, the powers and status of the UK's constitutional regulators vary widely, and this variation is generally the result of historical accident rather than design. Recent [public opinion research](#) by the Constitution Unit found that 79% of respondents – including large majorities of Conservative, Labour, Leave and Remain voters – wanted the regulatory system changed to ensure that politicians who fail to act with integrity are punished.

A number of cross-party or independent bodies have put forward specific reform proposals. These include CSPL and the Commons [Public Administration and Constitutional Affairs Committee](#), as well as external observers such as the [Institute for Government](#) and [Constitution Unit](#). Their findings include the following.

- ACOBA, the Commissioner for Public Appointments, the Independent Aá á tt t á

significant weakening at a Prime Minister's discretion. CSPL and PACAC have both recommended changes in this area. In line with their recommendations, Lord Anderson's current [Public Service \(Integrity and Ethics\) Bill](#) seeks to put the first three of these bodies on a statutory basis. Lord Norton's [House of Lords \(Peerage Nominations\) Bill](#) would do the same for HOLAC, alongside introducing other changes to the Lords appointments system.

- The processes for appointing people to regulatory positions have varying levels of robustness. In particular, there is no requirement for open competition, or a parliamentary pre-appointment hearing, for the Independent Adviser on Ministers' Interests. CSPL has recommended strengthening appointment processes to guarantee regulatory independence.
- Not all regulators can initiate investigations, determine breaches, publish findings and issue sanctions. CSPL and PACAC, as well as the [Boardman Review](#) commissioned as a result of the Greensill Capital controversy, have all recommended that stronger sanctions are needed for ACOBA to be effective. The requirement for the Independent Adviser to consult the Prime Minister before beginning any investigation has also been [widely criticised](#).
- The Elections Act 2022 introduced a 'strategy and policy statement' for the Electoral Commission, written by the government and approved by parliament. The principle of the statement was widely criticised during the legislation's passage, and the Commons [Levelling Up, Housing and Communities Committee](#), the [Speaker's Committee on the Electoral Commission](#), and the [Electoral Commission](#) have all criticised the government's draft statement.
- Upholding and strengthening the regulatory system also requires politicians to respect the role that regulators play, and to refrain from attacking them or questioning their integrity. A healthy regulatory system requires public legitimacy: attacks on regulators over unwelcome rulings may offer short-term political gain, but threaten the long-term health of the system.

Both main UK-wide political parties have emphasised the importance of a sound regulatory system and high ethical standards. Prime Minister Rishi Sunak has [pledged](#) to govern with 'integrity,

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