**Topic 1**  Flexibility of the UK constitution: Essay Plan

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**STEP 1: Introduce essay by summarising and classifying the UK constitution, before proposing an argument**

1) Define ‘constitution’:
   A set of rules and principles which:
   (a) Define a state’s fundamental political principles
   (b) Establishes the framework of the government of the state; and,
   (c) Guarantees rights and freedoms to citizens

2) The most distinguishing feature of UK’s constitution is perhaps that it is uncodified (i.e. unwritten). There is no single authoritative source/document setting out the rules which establish and regulate government. Rather, the UK constitution is derived from four different sources and from the way they interact. These are:
   (a) Legislation
   (b) Case law
   (c) Constitutional conventions
   (d) The Royal Prerogative

3) Introduce your argument: E.g.
   Due to its uncodified nature, the UK constitution demonstrates a fairly high degree of flexibility. It is relatively easy to change aspects of the UK constitution via normal legislative procedures, with no special or complex arrangements being required for constitutional amendments.

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**Main body**

**STEP 2: Outline the arguments FOR the UK constitution having a high degree of flexibility**

Consider each of the 4 sources of the constitution in turn:

1) **STATUTE:**
   (a) There are no special majorities or other arrangements needed to pass laws that will change the constitution. Rather, Parliament can change the constitution by merely
enacting a statute via the ordinary legislative process (i.e. a simple majority in Parliament and Royal Assent). It is therefore arguably easy for the UK constitution to change and evolve.

(b) This contrasts with many other states, such as the US, in which for an amendment to be made to the constitution, a 2/3 majority in Congress is required as well as support from 3/4 of the individual states.

(c) Examples of ordinarily-enacted statutes which have made fundamental changes to the UK constitution:

- **Parliament Acts 1911 and 1949**: Enabled legislation to be enacted in some circumstances without the consent of the House of Lords.
- **European Communities Act 1972**: Incorporated EU law into the UK legal system.
- **Scotland Act 1998**: devolved power away from the Westminster Parliament to Scotland.

2) CASE LAW:

Case law by its nature is flexible, because decisions in cases reflect the large amounts of discretion that judges/courts have in deciding cases, and therefore also reflect the changing social, economic, political and moral standards of society.

Case law alters, adds to and impacts upon the UK constitution in the following 3 ways:

(a) JUDICIAL INTERPRETATION OF STATUTES:

Judges in their interpretation of Acts of Parliament may make decisions that add new concepts to, or clarify areas of our constitution. E.g. *R v Secretary of State for Transport, ex p Factortame (No 1)* and (No 2): The House of Lords effectively suspended the operation of an Act of Parliament in conflict with EU law.

(b) DEVELOPMENT OF THE COMMON LAW:

The common law has established and developed key principles of the UK constitution, such as:

(i) **Residual freedom:**

I.e. unless the law clearly prohibits it, a citizen is free to do/say whatever he wishes.

(ii) **Actions of the state need legal authority:**

State officials (e.g. police, army) may not take action without legal authority to do so, and may not act arbitrarily. E.g. in *Entick v Carrington*, the court found that the Secretary of State had no legal authority to issue such a general arrest warrant.

(iii) **Legal disputes to be resolved by the judiciary:**

I.e. *Case of Prohibitions 1607*: Held that the monarch may not make arbitrary rulings to decide legal matters, and that such disputes must be resolved by a court of law.
(iv) **Habeas corpus and individual liberty:**

The right of an individual to mount a legal challenge against unlawful detention by the state (as of *Art. 5, HRA 1998*, this principle is now also enshrined in statute)

(v) **Right to a fair hearing:** The courts developed the ‘rules of natural justice’, providing that decision-makers should be unbiased and allow each party to put their case properly (As of *Art. 6, HRA 1998*, this principle is now also enshrined in statute)

(vi) **Parliamentary supremacy:** (see Topic 3 Parliamentary Supremacy)

The notion that the courts will not question the validity of an Act of Parliament is rooted in a rule developed by the courts, called the ‘Enrolled Act’ rule.

(c) **JUDICIAL REVIEW** (see Topic 6 Judicial Review):

JR is a mechanism enabling the courts to review and determine the lawfulness of actions taken by the government/public bodies. The power of JR allows the High Court to influence the UK constitution by holding the state to account for its actions, preventing it from acting arbitrarily.

3) **CONSTITUTIONAL CONVENTIONS**

(a) I.e. Rules of constitutional behaviour in the UK that are not legally enforced, yet are considered binding.

(b) Despite being central to the operation of the UK constitution, these rules are non-legal. By their nature they are therefore flexible. They may be created, or dispensed with, without the delay, formalities or procedure associated with formal changes to the legal structure of the constitution, such as enacting amendments to a written constitutional document.

(c) Examples of constitutional conventions in the UK are:

(i) The monarch will always give Royal Assent to Bills which have passed through Parliament.

(ii) Parliament meets throughout each year (not just every 3 years as the legal rule requires)

(iii) Ministers are collectively and individually responsible to Parliament; they must resign in cases of personal misconduct (*Peter Mandelson*) or if they wish to publicly oppose a government policy (*Baroness Warsi*)

(iv) The monarch does not play an active part in government or party politics, and her executive powers are instead exercised by the government

(v) All government ministers will be members of the House of Commons or Lords, and the Prime Minister will be a member of the House of Commons (although increasingly they are members of the House of Commons solely)

4) **THE ROYAL PREROGATIVE**

(a) Define: The Royal Prerogative is another non-legal source of the constitution from which the UK government derives power to take actions. It refers to the powers which were in the past exercised by the Monarch, and today legally remain in the hands of the Crown, yet for the most past are today exercised by the government.
(b) Adds flexibility to the UK constitution because: Being non-legal, decisions that affect the constitution can be made under the Royal Prerogative relatively easily and flexibly without needing the formal procedure associated with constitutional amendments. The government may take actions under the Royal Prerogative powers without needing to pass an Act of Parliament.

(c) Areas which fall within the Royal Prerogative are:

(i) Foreign affairs
   (1) Declarations of war and deployment of troops overseas
   (2) Recognition of foreign states

(ii) Domestic affairs:
   (1) Giving of Royal Assent to bills (by the Queen)
   (2) Summoning of Parliament (following the Fixed-term Parliaments Act 2011, the power to dissolve Parliament is no longer an aspect of the Royal Prerogative)
   (3) Appointment and dismissal of government Ministers, including the PM

STEP 3: Outline the arguments AGAINST the UK constitution having a high degree of flexibility

1) STATUTE REPEAL IS PRACTICALLY DIFFICULT:
Statutes which have had a large impact on the UK constitution may legally be repealed. However, in a practical sense it is nearly impossible to repeal them without great political, economic and social upheaval, suggesting the constitution is not as flexible as it may seem. Examples of the practical difficulties and high stakes associated with repeal:

- **ECA 1972**: the UK is embedded economically and politically to such an extent within the EU that withdrawal may have a devastating effect on the UK economy and international relations.
- **HRA 1998**: the withdrawal of fundamental rights and civil liberties would likely provoke political and social turmoil in the UK.
- **Scotland Act 1998**: the re-assertion of Westminster’s rights to legislate for Scotland would be, politically speaking, almost impossible.

2) STATUTE ENACTMENT IS SLOW
(a) The process of changing the constitution by enacting new statutes is in fact a very lengthy process. Coupled with the high pressures on Parliament time, this makes the constitution far less flexible, and easily changeable than it appears on its surface.

(b) Examples that illustrate the protracted & drawn out process of constitutional change:

- **HRA 1998**
- Reform of the House of Lords
3) CONSTITUTIONAL CONVENTIONS ARE DEEP-ROOTED

As they are not legally binding CCs may in theory be dispensed with flexibly. However, in reality some appear too profoundly established within the constitution to be removed. For example, the following conventions are highly unlikely to ever be dispensed with due to the practical obstacles preventing it:

• The Queen gives Royal Assent to all bills passed by Parliament.
• The Queen acts only on ministerial advice.
• Ministers are individually and collectively responsible to Parliament.

STEP 4: Conclude

Conclude as to the flexibility of the UK constitution, touching on points such as:

• The constitution is flexible because it is able to evolve with the changing political, social, economic and moral circumstances of the era (e.g. promoting political devolution in Scotland; granting independence to former colonies, referendum on Scottish independence).
• The practical difficulties of effecting constitutional change make the process far more difficult than it seems on first appearance.
• Yet, the lack of procedural formalities required for constitutional change cannot be ignored, and is at the heart of the constitution’s flexibility.