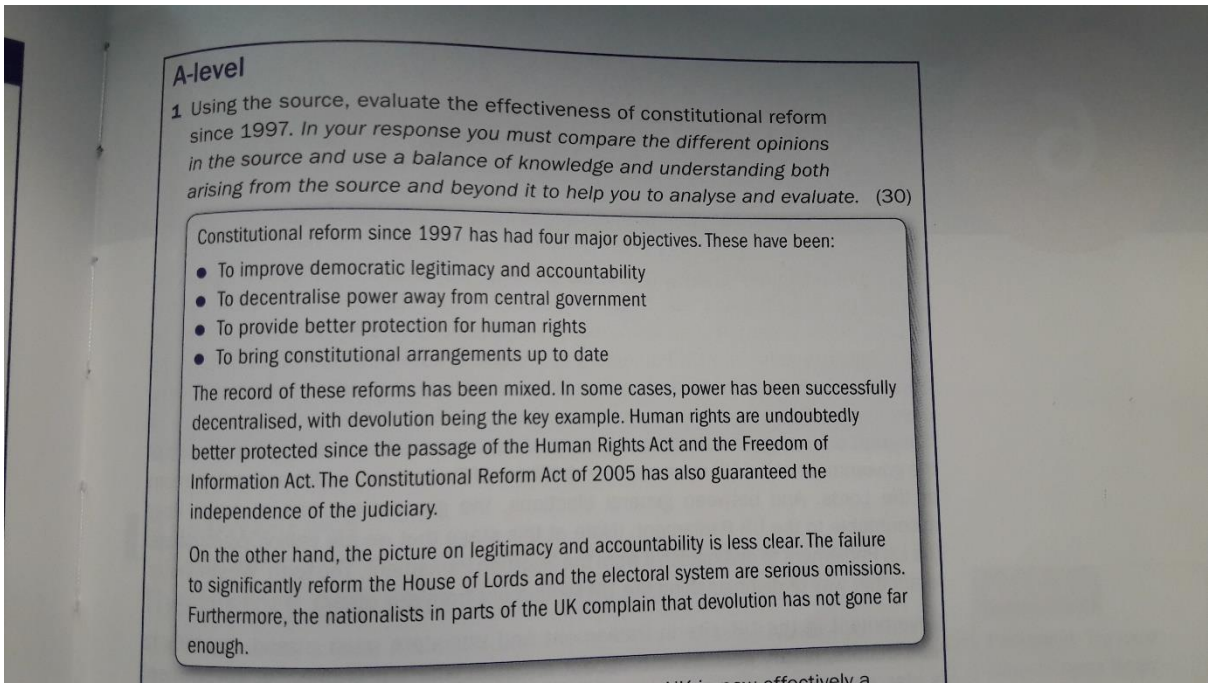

A-level

1 Using the source, evaluate the effectiveness of constitutional reform since 1997. *In your response you must compare the different opinions in the source and use a balance of knowledge and understanding both arising from the source and beyond it to help you to analyse and evaluate.* (30)

Constitutional reform since 1997 has had four major objectives. These have been:

- To improve democratic legitimacy and accountability
- To decentralise power away from central government
- To provide better protection for human rights
- To bring constitutional arrangements up to date

The record of these reforms has been mixed. In some cases, power has been successfully decentralised, with devolution being the key example. Human rights are undoubtedly better protected since the passage of the Human Rights Act and the Freedom of Information Act. The Constitutional Reform Act of 2005 has also guaranteed the independence of the judiciary.

On the other hand, the picture on legitimacy and accountability is less clear. The failure to significantly reform the House of Lords and the electoral system are serious omissions. Furthermore, the nationalists in parts of the UK complain that devolution has not gone far enough.

I agree with the source that reform against the objectives of human rights and decentralisation have been effective and that any further changes in these areas would result in radical change to our constitutional arrangements which are not neccessay. I do not agree with the source that the first past the post system should be criticised as it was clear in 2011 the people do not wish to have a proportional system, however the point the source makes on accountability is very important, with the issue of an elected dictator still prevalent in our system the prime minister is often beyond adequate scrutiny when they secure a large majority in the house. Overall then I will argue that reform has been largely effective but there remain significant areas of improvement on modernisation and accountability.

The most significant argument made in support of my thesis that reform has been largely effective is the increased protection of rights which the source claims are now “undoubtedly better protected”. The Human Rights Act 1998 brought into domestic law the European convention on human rights charter (Nothing to do with the EU btw) which Britain signed up to in 1951. The reason however that this bill in 1998 is significant then is that it allowed British Citizens to get a European standard of human rights within British courts. Before this time if you wanted to appeal to human rights law you had to go to the European Court of Human Rights directly which could cost up to £30,000 and take on average 5 years. By bringing these rights into domestic statute law the reforming New Labour government made access to justice easier and cheaper. Some key examples of where the HRA has enhanced rights have been the obligation on police to now investigate all deaths in custody, the protection of family life for long term unmarried couples, and supporting the implementation and enforcement of the modern slavery act 2015. However it could be argued that human rights in the UK remain at the discretion of parliament. This is because parliament is supreme and no law can bind a future parliament. It means that any government could put forward legislation at any time to rescind the HRA. Unlike in the USA, our rights therefore are not entrenched with a special type of constitutional law. This is because we do not have a codified constitution combined with the convention of parliamentary supremacy. Where the government acts against the Human Rights Act it is possible for the ECHR to declare that the government’s behaviour is incompatible with human rights. However, the only mechanism for becoming compliant with human rights is for parliament to

pass legislation. A good example of this is prisoner voting rights. In 2005 the ECHR declared that it was incompatible with human rights that UK prisoners were not able to vote. Parliament however decided to keep the ban in place. Only in 2017 has the issue been resolved where a very small number of prisons will be allowed to vote if they are on day release. Another interesting example are control orders for suspected terrorists. The anti-terrorism act 2001 allowed for foreign nationals "the Belmarsh 8" to be detained indefinitely without charge because of their threat to the public. This was declared incompatible with human rights and also against the ancient principle of habeas corpus. The government therefore sought to pass new legislation which would allow them to keep the suspected terrorists under close supervision. The new law allowed the home secretary to pass "control orders" which effectively enabled the practice of "imprisonment" to continue whilst released. A clear example of parliament both responding to the judiciary but also retaining overall its own wishes. In 2011 the issue was resolved where control orders were abolished and replaced with less close monitoring whilst being free. So where parliament wishes to and the government has sufficient majority it is possible that human rights are overruled. However it could be argued that this is actually an effective balance because if law on human rights was fully made by judges we would have the situation of judicial tyranny and some important measures to protect the rights of the public vs the individual would not be able to be passed putting the majority at risk from the minority. This all comes back to the idea of the social contract in which the public consent to some reduced rights in order to obtain security. Therefor the current balance between parliament and the judiciary on human rights in my view is effective.

The second argument the source makes to support my view that reform has been effective is decentralisation. Since 1997 we now have devolved governments in Scotland, Northern Ireland, and in Wales with Scotland especially having significant powers over taxation as well. This has enabled the UK to develop an effective and modern union. The devolved governments use various PR systems to ensure that they are modern institutions and the people are very satisfied with the results. The source makes the argument that some nationalist claim that reform is not effective because it has not resulted in even more devolution. However this is not a valid argument in the case of Scotland because any more devolution would result either in federalism or independence. The former would cause deep constitutional change and be very disruptive to our system of parliamentary sovereignty the latter was voted against by the people in 2014. In fact nationalist do not argue for decentralisation, but disconnection. Decentralisation has proved to be more difficult in Northern Ireland – which is currently under direct rule- however this does not mean we need more reform, but that the reform we have is difficult to implement in the politically complex context of norther Ireland.

The third point the source makes is that the 2005 Reform Act which separated the judiciary from the legislature is an example of effective change. I would agree. In combination with the HRA we now have a much more powerful judiciary which is fully independent with appointments being handled by the JAC. The newly created Supreme Court can now ensure the government is held to account more robustly. For example, in 2011 the supreme court ruled that the police cannot keep DNA records of innocent people. Furthermore, the reform of the role of Lord chancellor has gone somewhat towards reducing the power of the executive to act at will without scrutiny as this office no longer is head of the judiciary whilst sitting on the executive. Judicial reform on the whole has been highly effective.

On this issue of scrutiny of the government some progress has been made with the Freedom of Information Act 2000 but this point raised by the source is one of the key counter points to my thesis that reform has been effective. The most famous success of this law was the revelation that MPs were abusing the expenses system exposed by the *Telegraph* in 2008. The government had tried to supress the information but the High Court forced the publication. This led to a huge level of public scrutiny into the behaviour and conduct of many MPs. However as the source points out the view of constitutional reform regarding accountably remains "less clear" this is because the FoI act enables the government to conceal whatever it deems might prejudice the activity of government, furthermore

the security forces are exempt. However a tribunal was set up to support claimants to get information out of the government that it was trying to conceal but this is hardly an effective system. The access to government information remains as the source suggest a key area needing reform and is the strongest counter point to my overall argument that on the whole reform has been effective.

Another area in which the source raises is the modernisation of the House of Lords bringing it into line with modern democratic standards. The House of Lords retains 92 hereditary peers, 26 Bishops, and the rest of the house is appointed undemocratically. The chamber can only hold up legislation for a year, and because of the parliament acts laws can be forced through. Furthermore, the Salisbury convention means it cannot block a government from enacting its manifesto therefore resulting in a very weak second chamber which lacks legitimacy as stated in the source. On the other hand, it could be said reform has been effective because the house is full of experts, free from political party intrigue, and able to provide a different level of scrutiny than the house of commons. The house of commons largely does try to comply with the suggestions of the Lords and as we have seen when the government does not have a majority in the house, the house of Lords becomes especially powerful as recently demonstrated with the defeat of the Brexit Bill- 15 times! Overall, I do not agree with the source that the House of Lords needs further reform. In recent years it has been highly effective at holding the government to account and if it were elected it would begin to mirror the House of Commons and serve a similar role. However Reform of the Lords is a key area for many democrats that show reform has not been effective against the objective of democratisation, but I do not agree.

The most important point the source raises to suggest reform has not gone far enough is on the system of accountability and the problems of an "elected dictatorship". When the government has a landslide victory delivered through our FPTP system it is able to act at will. Through the whips system the PM can command the legislature, through the prerogative power of patronage the PM can command complete loyalty in the cabinet, and through the control of the legislature the PM can control the judiciary and ignore declarations of incompatibility. It is the power given to the PM through our voting system, the whips, and patronage which really affect the ability for power to be checked. An example of this would be Tony Blair taking us into the Iraq war despite huge protests, protests from our allies in Europe, and a lack of a UN resolution. Therefore there is significant need to report the prerogative powers and the whip system if we are to have a truly modernised system which is able to scrutinise power. It is not feasible to reform FPTP as the public rejected this in 2011. Furthermore the power of the PM to call an election at their discretion to secure the most favourable outcome was attempted to be limited by fixed term parliaments Act 2011, but again parliamentary supremacy wins out as only a two thirds majority vote can result in an election being called. Therefore this point on accountability is the strongest argument the source makes to claim that reform is not effective.

In conclusion I would agree with the source the human rights and judicial independence have been effective, especially working together our rights are better protected. Second most effective has been decentralisation especially to Scotland. However the issues of an elected dictatorship prerogative powers remain creating a lack of accountability therefore supporting the case that reform against the objective of accountability and scrutiny is not effective.