Identify and explain how the constitution may be informally amended.

The US constitution is a written, codified document and has survived for over 200 years. This has been possible because it has changed and adapted to take into account developments in US society. The 'Founding Fathers' laid down two formal procedures for proposing amendments to the constitution. The first requires Congress to call a national convention at the request of two-thirds of the states –along the same lines as the original convention in Philadelphia. This procedure has never been used. The second method requires a two-thirds majority in both houses of Congress. Once proposed an amendment needs to be ratified by three-quarters of the states. This can be done either through a vote in the state legislatures, or by special state ratifying conventions. The latter has only been used once, for the 21st amendment in 1933.

Although over 10,000 amendments have been suggested only 40 have been approved by Congress and only 27 have been approved by states. The difficulty in formally amending the Constitution can be illustrated by the problems encountered by the Equal Rights Amendment in the 1980's. Having passed both Houses of Congress successfully, its ratification journey was halted in 1982 after 35 states had given their approval. Thus, it fell just three states short of enactment. The amendment procedure was deliberately made difficult by the Founding Fathers in an effort to preserve political stability. Despite this, however, over the years a number of procedures for informally amending the Constitution have evolved.

The first informal procedure involves the Constitution being kept up to date by judicial interpretation. The Supreme Court has the power to interpret the constitution and, in doing so, has been prepared to ignore precedent and overturn previous judgements. A famous example of such is case is Roe and Wade which affirmed the right of women to seek abortion during the first three months of pregnancy. This indicates the power of the Courts to interpret the constitution for modern society. The fact that in the 90's, when conservative morality swept across American, the Supreme Court devolved states the power to determine the terms of abortion indicates the power it has in interpreting and

reinterpreting the constitution to reflect public opinion of the day (Casey and Planned Parenthood, 1992). The Constitution, therefore, through judicial review is constantly being adapted and reshaped.

The second procedure whereby the Constitution can be informally amended relates to 'Constitutional' legislation passed by Congress. Congress can use flexible devices to flesh out the constitution. These are called Acts of Congress. For example, the Civil Rights Act (1964) clarified the constitutional position on racial discrimination in the states. A further example can be found in the Wars Power Resolution Act (1973). Although the constitution states that only Congress can officially start a war, the Act enables the President (who is also Commander in Chief of the Army) to send US army troops to war, just so long as he informs Congress within 60 days and give them a further 60 days to respond. Thus it can be seen that 'Congressional' legislation also plays a role in adding meat to the skeleton of the Constitution.

The constitution makes no mention of foreign policy issues, other than to describe the powers of President and Congress in war and negotiating treaties. Over the years, however, two key doctrines have developed which guide US foreign policy. The Monroe Doctrine declares that the US army have the right to intervene in foreign policy situations in 'America's back yard' which may threatened order in the US. The Cuban missile crisis would be an example of such a case. The Truman Doctrine declares that the US army are obliged to intervene in foreign affairs so as to defend the free world. Although neither of these doctrines have been embodied in the US constitution they still govern US foreign affairs. Thus indicating the possibility for the constitution to be informally amended and added to.

As in Britain, written principles do not give the full picture of how the US Constitution works. There are also 'conventions' or informal practices which determine the real operation of government. Executive agreements are pacts or contracts made by the President with foreign powers. Not being classed as 'treaties', they do not require the formal approval of Congress. It is understood that, in the conduct of foreign policy, the

President must have some flexibility and this devise provides him with such freedoms. Yet we will not find regulations governing such agreements written down formally in the archives of Congress.

There are similar ‘conventions’ affecting the operation of Congress. Though both Houses have similar powers with regard to the development of the federal budget, it is understood that the House of Representatives plays a leading role and the Senate will be led by the House. In foreign affairs the position is reversed. The House may debate foreign issues, but is not expected to attempt to usurp the Senate’s pre-eminence in the field. Again these unwritten conventions have evolved over time and cannot be found in the written constitution.

The doctrine of the separation of powers, enshrined in the Constitution, also disguises the existence of an important political practice. Although, unlike Britain, the executive branch is not strictly responsible to Congress and its members, including the President, and cannot be removed by Congress for purely political reasons, it is clear that there is a constant requirement for officers of the administrations to report to Congress and to respond to its criticisms. Powerful congressional committees regularly submit Department Heads for close scrutiny and it is understood that, should criticism become severe enough the President must remove the individual in question even though he is neither constitutionally nor legally obliged to do so. This particular development in the practical operation of government has simply arisen over the years and is, therefore, an informal gradual amendment to constitutional doctrine.