



CHIEF EXAMINER REPORT

JANUARY 2026

LEVEL 6 UNIT 12 – PUBLIC LAW

The purpose of the report is to provide candidates and training providers with guidance as to the key points candidates should have included in their answers to the January 2026 examinations.

The 'suggested points for responses' set out points that a good (merit/distinction) candidate would have made.

Candidates will have received credit, where applicable, for other points not addressed.

Chief Examiner Overview

Only one candidate sat the paper in this session. The data is too limited for constructive feedback and evaluation.

Candidate Performance and Suggested Points for Responses

It is noted that the low numbers of candidates taking the Level 6 exams limits the scope for constructive feedback to be given and for firm conclusions to be reached. Therefore, feedback on candidate performance may be limited.

Section A

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Unwritten/uncodified nature of the UK constitution • Why it is said to be flexible/easy to change • Main sources of the constitution • Statute: • Examples of constitutional statutes; e.g. Bill of Rights 1689, Parliament Acts 1911 and 1949, Human Rights Act 1998, European Union (Withdrawal) Act 2018 • Flexible, as no need for special procedures to make constitutional changes • Case law: • Common law; e.g. development of civil liberties/natural justice (<u>Entick v Carrington</u> (1765)) • Statutory interpretation (<u>Miller (No 1)</u> (2017)) • Flexible, subject to doctrine of precedent • Constitutional conventions • Definition (<u>Re amendment of the constitution of Canada</u> (1982)) • Examples, e.g. collective cabinet responsibility, Sewel Convention • Flexible as a non-legal source • Royal prerogative • Definition • Examples, e.g. royal assent, signing of international treaties • Flexible as prerogative powers can be removed by statute; e.g. Crown Proceedings Act 1947 • Arguments against flexibility • Politically difficult to repeal some statutes; e.g. devolution legislation • Lack of political will/pressure on parliamentary timetable • Some conventions very deep-rooted; e.g. Monarch will always grant royal assent	

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Dicey's definition of parliamentary sovereignty, including ◦ Parliament's unlimited legislative competence ◦ No person/body can question an Act of Parliament • Express/implied repeal • Definition of implied repeal (<u>Ellen Street Estates v Minister of Health</u> (1934)) ◦ Qualification of doctrine in relation to 'constitutional statutes' (<u>Thoburn v Sunderland City Council</u> (2002)) ◦ Definition of constitutional statutes • Definition of the rule of law (Dicey) ◦ An absence of arbitrary power; ◦ Equality before the law; and ◦ Basic constitutional rights of individuals derived from judicial decisions • Modern definitions of the rule of law; e.g. Lord Bingham's version: emphasis on human rights/international law • Reasons for potential conflict: Parliamentary sovereignty means that Parliament can legislate contrary to the rule of law • Examples of conflict; e.g. <u>Mortensen v Peters</u> (1906) – breach of international law; War Damages Act 1965 – retrospective legislation • Judicial opinion; e.g. <u>Jackson v A-G</u> (2005) – whether UK courts would strike down Acts breaching the rule of law	

Question 3(a)	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• No right to privacy in English law (<u>Wainwright v Home Office</u> (2006)) • Human Rights Act 1998: Horizontal effect of Convention rights (<u>Douglas v Hello! Ltd</u> (2005)) ◦ Article 8: ECHR: right to private and family life ◦ Development of breach of confidence as vehicle for enforcing Convention rights • Reasonable expectation of privacy ◦ Analysis of case law such as <u>Murray v Express Newspapers Ltd</u> (2007) regarding circumstances leading to a reasonable expectation of privacy	

Question 3(b)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
- Article 10 ECHR: Newspaper's right to freedom of expression - Analysis of Proportionality: Approach of courts where two Convention rights are involved - Evaluation of case law in which courts seek to strike an appropriate balance between the right to private life and freedom of expression (<u>Campbell v MGN</u> (2005))	

Question 4	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
- Leggatt Report: need to bring coherence to the tribunal system 2007 Act: new, unified tribunal system created as an executive agency of the Ministry of Justice - Independence of courts and tribunals and their judicial nature (s 1 2007 Act), but tribunals have specific jurisdiction - Appointment of Senior President - Appeals possible from courts and tribunals - Main tribunals, the First-tier Tribunal with an appeal to the Upper Tribunal and, with permission, to Court of Appeal; position of Employment Tribunal - Composition; e.g. staffed by persons with specialist expertise - Procedures: intended to be cheaper and simpler than courts; e.g. legal representation, rules of evidence - Judicial review: Statutory restrictions on Upper Tribunal's amenability to judicial review	

Section B

Question 1	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Arrest ○ Power of arrest – s 24(3) PACE: reasonable grounds for suspecting an offence has been committed ○ Arrest necessary – s 24(5) PACE - to allow prompt and effective investigation of the offence (s 24(5)(e)) ○ Manner of arrest – fact of arrest and grounds, even if obvious (s 28) ○ PC Breen does not state grounds of arrest adequately • Section 117: Arrest of Jarod unlawful, so police cannot use reasonable force; force used may be unreasonable ○ Detention at police station ○ Arrest lawful once s 28(4) complied with ○ Detention reviews not carried out every six hours (s 40) • Refusal to inform daughter ○ Right to have someone informed of arrest and detention (s 58) ○ Police may delay for up to 36 hours if reasonable grounds for believing that telling named person of arrest will lead to interference with or harm to evidence connected with an indictable offence: attempted murder is indictable, but tenuous grounds for reasonable belief ○ Written authorisation must be provided by officer of correct rank (inspector): Not complied with • Fingerprinting ○ Power to take fingerprints without consent of person detained at police station (s 61) ○ Under arrest for recordable offence/fingerprints not already taken ○ Inspector must authorise: authorisation not obtained • Search of church hall ○ Powers of entry and search after arrest (s 32) ○ Indictable offence: power to enter premises in which arrested person was at time of or immediately before arrest (s 32(2)(b)) ○ Reasonable grounds for suspicion that there is evidence in premises relating to that offence or to connected/similar indictable offence ○ Immediate power only: search not immediate	

Question 2	25 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Amenability/ Standing ○ The SoS is a public body ○ Public law matter ○ Standing ○ Timing ○ Remedies – see below • CPR ○ Illegality: Fettering of discretion - over-rigid application of policy; SoS should be willing to listen to someone with something new to say (<u>British Oxygen v Ministry of Technology</u> (1970)); ○ Illegality: Failing to take into account relevant considerations; that CPR's technology was demonstrably environmentally friendly (<u>Roberts v Hopwood</u> (1925)) ○ Irrationality: definition of <u>Wednesbury</u> (1948) unreasonableness – policy precludes the adoption of new technologies • MEP ○ Legitimate expectation - extent to which SoS should be bound by the guidelines (<u>ex p. Coughlan</u> (2000)); whether failure to follow guidelines is an abuse of power (<u>Niazi</u> (2008)) ○ Illegality: Ulterior purpose – excessive reliance on imported products (<u>Congreve v HO</u> (1976) and/or irrelevant consideration (<u>Padfield v Minister of Agriculture</u> (1968)) ○ Irrationality (<u>Wednesbury</u> as above) • Remedy: quashing order	

Question 3(a)	13 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Definition of freedom of expression – Article 10(1): the right to impart information and ideas without interference by public authority • Qualified right – limitations in Article 10(2) ○ Prescribed by law - must have clear legal basis, viz Reduction of Emissions Act 2024 ○ Justified by reference to legitimate aim; e.g. national security, public safety, protection of health ○ Necessary/proportionate • Proportionality – application of <u>Bank Mellat</u> (2013) test: ○ Objective sufficiently important to limit fundamental right? ○ <i>Yes; combating climate change by reducing carbon emissions</i> ○ Measure rationally connected to objective? ○ Connected – <i>yes; ban on opposition likely to make it easier to expand nuclear power</i> ○ Do measures go further than necessary? ○ <i>Yes; blanket ban on opposing nuclear power disproportionate; government information campaign more proportionate</i> • Fair balance struck between the rights of the individual and the interests of the community? <i>Balance too far in favour of the community</i>	

Question 3(b)	12 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Section 6 HRA: court as public authority should act compatibly with Conventions rights ((s 6(1) & (3) HRA) • Provisions of HRA 1998 courts should consider: ○ Section 2: decisions of ECtHR persuasive: Court of Appeal must take into account ECtHR jurisprudence ○ Section 3: interpretative obligation on courts: <u>Ghaidan v Godin-Mendoza</u> (2002) – s 3 requires a broad, purposive approach based on the importance of the fundamental right involved; e/g/ narrow interpretation of ‘in public’ ○ Section 4: declarations of incompatibility – s 4 empowers Court of Appeal to make such a declaration, but incompatible legislation remains in force. Sandra’s conviction would therefore stand.	

Question 4(a)	14 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Retained EU law: 'snapshot' of EU law applying in UK on IP completion day • Direct EU legislation includes EU regulations • Power for ministers to adopt statutory instruments correcting 'deficiencies' in retained EU law, e.g. to correct inappropriate references to EU institutions/Member States • REULA 2023 relabelled retained EU law as assimilated law from the end of 2023, so Lucas must rely on assimilated law • Supremacy of retained EU law ended by REULA 2023: any retained direct EU legislation (such as an EU Regulation) must give way to domestic law if the two are incompatible • Novel Pharmaceutical Products Act 1982 prevails over later Regulation 2013/41, so Lucas's claim fails	

Question 4(b)	11 marks
Data too limited for valid feedback.	
Suggested Points for Response:	
• Controlling the march • Section 12 POA 1986 – Chief officer of police may give directions imposing conditions if they reasonably believe that ○ public procession will cause serious public disorder/ damage/ disruption or has intimidatory purpose ○ noise generated may seriously disrupt the activities of a nearby organisation or may have a significant impact on people nearby • Senior police officer (in response to s 11 notice before the march): chief officer of police, i.e. Chief Constable • Grounds for reasonable belief: ○ threshold for disorder/disruption may be met given last year's events ○ noise threshold may be met due to drums and amplifier • Chief Constable may issue directions diverting the march away from Neilson's headquarters ○ Banning the march • Section 13 POA – if chief officer of police reasonably believes the powers under s.12 will not be sufficient to prevent serious public disorder, she may apply to the local council for a ban on processions for up to three months • The council may then, with Home Secretary's consent, make such an order • On facts s 13 threshold unlikely to be met	