

2024 UNIT SPECIFICATION

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| Title: | (Unit 12) Public Law |
| Level: | 6 |
| Credit Value: | 15 |

- NOTES:** (1) All case law citations are only examples of the matters to which they refer and other cases may be equally relevant
 (2) Statutory citations are to be read: “as amended”

| Learning outcomes The learner will: | Assessment criteria The learner can: | Knowledge, understanding and skills |
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| 1. Understand the key features of UK public law | 1.1 Explain the sources of public law and their interrelationship | 1.1 The elements which typically constitute UK public law, eg the idea of ‘the rule of law’, the sources and nature of the UK constitution; <ul style="list-style-type: none"> • civil liberties and human rights in the UK; • the administration and review of UK law through its public institutions, courts and tribunals. |

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| | <p>1.2 Analyse the impact on UK public law of the law of the European Union</p> <p>1.3 Analyse the impact of international law on UK public law</p> <p>1.4 Apply an understanding of the key features of UK public law to a given situation</p> | <p>1.2 The institutions of the EU and their functions; the EU legislative process; the categories of EU primary and subordinate legislation;</p> <ul style="list-style-type: none"> • Treaty on European Union (TEU), Treaty on the Functioning of the European Union (TFEU) • The Withdrawal Agreement between the EU and UK, including the Northern Ireland Protocol and Windsor Framework; • means by which provisions of the Withdrawal Agreement take effect in UK law; • the European Union (Withdrawal) Act 2018 and the concept of 'retained EU Law' and possible impact of the Retained EU Law (Revocation and Reform) Bill 2022-23 • the European Union (Withdrawal Agreement Act) 2020. <p>1.3 Key sources of international law in domestic English law:</p> <ul style="list-style-type: none"> • treaties and customary international law; • the relationship between international law and domestic law is one of dualism whereby the two systems function separately and is regulated by two key principles:(a) the principle of non-justiciability; • and (b) the principle of no direct effect. <p>1.4 Application of understanding to a complex scenario.</p> |
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| | <p>1.5 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>1.5 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
| <p>2. Understand the meaning of “the rule of law”</p> | <p>2.1 Explain the key elements which make up the rule of law in the UK</p> | <p>2.1 The exposition of Dicey on the rule of law in Introduction to the Study of the Law of the Constitution (1885);</p> <ul style="list-style-type: none"> • an explanation of the following elements identified by Lord Bingham: <i>The Rule of Law</i> (2010); • ie, the law must be accessible, intelligible, clear and predictable: <u>Fothergill v Monarch Airlines Ltd</u> (1981); • questions of right and liability should be resolved by law and not the exercise of discretion: <u>Scott v Scott</u> (1913); • the law of the land should apply equally to all (Lord Denning: “be you ever so high the law is above you”): <u>Gouriet v Union of Post Office Workers</u> (1977); • the law must afford adequate protection for human rights: <u>Engel v The Netherlands (No 1)</u> (1976); • the law must protect the constitutional right of access to justice: <u>R. (on the application of Unison) v Lord Chancellor</u> (2017) SC; • ministers and public officers must exercise the powers conferred on them according to the <u>application of S) v Secretary of State for the Home Department</u> (2006); • the adjudicative procedures provided by the state should be fair: <u>R v Sussex Justices Exp McCarthy</u> (1924); • the state should comply with its obligations in international law: <u>The Cristina</u> (1938). |

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| | <p>2.2 Analyse the factors which have the potential to undermine the rule of law in the United Kingdom</p> <p>2.3 Apply an understanding of the elements constituting the rule of law to a given situation</p> <p>2.4 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>2.2 The factors include:</p> <ul style="list-style-type: none"> • pressure from the Executive: eg, adverse government reaction to judgments on control orders; • deference on the part of the courts: <u>R (Chester) v Secretary of State for Justice (2013) SC</u>, <u>(R(Begum) v Home Secretary (2021) SC</u>; • international pressure: <u>R (Corner House Research and Another) v Director of the Serious Fraud Squad (2008) HL</u> and <u>Binyam Mohammed v Secretary of State for Foreign and Commonwealth Affairs (2010)</u>; • the potential of civil unrest: eg, arising from protests related to ‘Black Lives Matters’, policing legislation and environmental protests • attacks on the judiciary as “enemies of the people” (2017) • Government actions during the COVID-19 pandemic <p>2.3 Application of understanding to a complex scenario.</p> <p>2.4 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| <p>3. Understand the nature of the UK constitution</p> | <p>3.1 Analyse the sources of the constitution</p> | <p>3.1 The main sources: statutes defined as ‘constitutional statutes’, eg, the Act of Settlement 1700, Union with Scotland Act 1707, European Communities Act 1972, Scotland Acts 1998, 2012 and 2016, Government of Wales Acts 1998 and 2006, Wales Act 2017, Northern Ireland Acts 1998, 2000, 2006 and 2009;</p> <ul style="list-style-type: none"> • Human Rights Act 1998; • see <u>Thoburn v Sunderland City Council</u> (2002) and <u>R (HS2 Action Alliance Ltd) v Secretary of State for Transport</u> (2014) for a discussion of constitutional statutes; • constitutional case law: <u>Entick v Carrington</u> (1765); • law and custom of Parliament (Erskine May); • constitutional conventions; • proposals for reform; eg Bill of Rights Bill 2022-23 and the arguments for and against; • the implications of the European Union (Withdrawal) Act 2018; the European Union (Withdrawal Agreement) Act 2020, key provisions in the Withdrawal Agreement between the UK and EU • s 29 of the European Union (Future Relationship Act) 2020. |
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| | <p>3.2 Analyse the consequences of constitutional changes effected by devolution</p> | <p>3.2 Consideration of the principal powers of the devolved legislatures;</p> <ul style="list-style-type: none"> • analysis of the relationship between the Scottish Parliament and the UK Parliament and the problems that have arisen, including the West Lothian Question, contentious financial issues, eg, the Exchequer subsidy to Scotland compared with England ('the Barnett formula') and the Sewel Convention; • Legislative competence of the devolved legislatures • Supreme Court judgments on legislative competence • constitutional and administrative implications of Scottish independence referendum on 18 September 2014 and calls for a second referendum: • the Senedd Cymru or Welsh Parliament; applicability of the Barnett formula and Sewel Convention to Wales; • the state of devolution in Northern Ireland, including the Northern Ireland Protocol and Windsor Framework; • the impact of Brexit on the relationship between the UK government and devolved governments • proposals for devolution in England; |
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| | <p>3.3 Explain the organisation, functions and powers of the Judiciary</p> <p>3.4 Analyse the composition and function of the Executive</p> | <p>3.3 Explanation of the organisation of the courts systems in Britain;</p> <ul style="list-style-type: none"> • the procedure for the appointment and dismissal of judges; • the role of the Supreme Court; • Crime and Courts Act 2013; • Justice and Security Act 2013. <p>3.4 Consideration of the composition of the Executive;</p> <ul style="list-style-type: none"> • the sources of executive power, including the prerogative power and its relationship with statute (<u>R (Miller) v Secretary of State for Exiting the European Union</u> (2017) SC) and the European Union (Notification of Withdrawal) Act 2017; • Public Interest Immunity (PII) procedure: <u>R (Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs</u> (2010) CA; • the scope for the exercise of the prerogative power by the Executive; • the review of prerogative powers (<u>R (Miller) v The Prime Minister and Cherry v Advocate General for Scotland</u> (2019) SC); • cabinet and ministerial responsibility; • powers of the Prime Minister; • Dissolution and Calling of Parliament Act 2022 • the status of the civil service: (<u>CCSU v Minister for the Civil Service</u> (1984) and Constitutional Reform and Governance Act 2010; • Civil Service Code; |
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| | <p>3.5 Analyse the composition, functions and powers of Parliament</p> | <ul style="list-style-type: none"> • the provisions of the Crown Proceedings Act 1947; • Ministerial Code; • role of special advisers; • role of lobbyists and the establishment of a statutory register of lobbyists; • status of the armed forces and the intelligence and security services: Justice and Security Act 2013; • status of the Sovereign and position as fount of honour. <p>3.5 A summary of the nature of Parliamentary Sovereignty: ie no Parliament is bound by its predecessor and there is nothing on which it is unable to legislate;</p> <ul style="list-style-type: none"> • the doctrine of express and implied repeal; • the ‘manner and form’ argument including the referendum requirement in Scotland Act 2016, the institutions which make up Parliament; • the composition of the House of Lords and the House of Commons and the status of the Sovereign (fount of honour); • House of Lords Act 1999; • proposals for the further reform of the House of Lords; • the interrelationship between the component institutions of Parliament and, in particular, the provisions of the Parliament Acts 1911 and 1949; • relevant case law: <u>R (Jackson) v Attorney General</u> (2005); • law and custom of Parliament (<i>Erskine May</i>); |
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| | | <ul style="list-style-type: none"> • public bill procedure and the procedure for dealing with the different classes of subordinate legislation: advantages and disadvantages - see also Legislative and Regulatory Reform Act 2006 re delegated powers; • the work of Select Committees; • procedure for supply and the role of the Comptroller and Auditor General; • the doctrine of the separation of powers as defined by Locke in Second Treatise of Government (1690) and by de Montesquieu in The Spirit of the Laws (1754); • the extent to which Parliament, the Executive and the Judiciary are separate in fact; • The Constitutional Reform Act 2005; • the utility of such separation; • the relationship between Parliament and the executive as illustrated by the “meaningful” and “indicative” votes regarding Brexit; • the arrangements for Parliamentary elections and the penalties for non-compliance, <u>Watkins v Woolas</u> (2010); • Political Parties Elections and Referendums Act 2000, Elections Act 2022; • financing of political parties; • The electoral system, Parliamentary Voting System and Constituencies Act 2011 and electoral reform; • the scope of parliamentary privilege, including MPs’ expenses as in <u>R v Chaytor</u> (2010); |
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| | <p>3.6 Analyse the status, powers and composition of the different classes of executive agencies and Non-Departmental Public Bodies (NDPBs)</p> <p>3.7 Explain the powers, organisation and functions of local authorities</p> | <ul style="list-style-type: none"> • Part 3 Constitutional Reform and Governance Act 2010; • Independent Parliamentary Standards Authority (IPSA); • Members’ interests. <p>3.6 Executive agencies, eg HM Prison Service and the Driver and Vehicle Licensing Agency;</p> <ul style="list-style-type: none"> • Non-Departmental Public Bodies (NDPBs): (i) executive bodies, eg the Human Fertilisation and Embryology Authority, (ii) advisory bodies, eg the Law Commission, (iii) tribunals, eg the Valuation Tribunal for England; • levels of ministerial responsibility and the distinction between ‘policy’ and ‘operations’ (<u>R v North and East Devon Health Authority ex p Coughlan</u> (2000)). <p>3.7 A knowledge of the sources of the powers of local authorities; the powers of local authorities to make by-laws: <u>Kruse v Johnson</u> (1898);</p> <ul style="list-style-type: none"> • the ways in which local authorities obtain revenue and the controls on their expenditure; • the provisions for the declaration of the interests of local authority members and the arrangements for their regulation; • the arrangements for elections for local authorities; • Local Democracy, Economic Development and Construction Act 2009; |
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| | <p>3.8 Explain the powers, organisation and functions of police authorities</p> <p>3.9 Explain the statutory and common law rules governing corruption</p> <p>3.10 Apply an understanding of the nature of the UK constitution to a given situation</p> <p>3.11 Critically evaluate a given issue or situation to predict probable legal implications</p> | <ul style="list-style-type: none"> • Local authority elected mayors: Local Government Act 2000; Localism Act 2011; • Cities and Local Government Devolution Act 2016. <p>3.8 A knowledge of the sources of the powers of police authorities;</p> <ul style="list-style-type: none"> • appointment of members; • election of Police Commissioners and Crime Commissioners; • their finance and controls on expenditure; • duty of police to enforce the law (<u>R v Commissioner of Police of the Metropolis (ex p Blackburn)</u> (1968)); • Crime and Courts Act 2013 establishing a National Crime Agency. <p>3.9 An explanation of the main provisions of the Bribery Act 2010;</p> <ul style="list-style-type: none"> • the common law on misfeasance and misconduct in public office, eg <u>Karagaozlu v Commissioner of Police of the Metropolis</u>(2007) and <u>R v Cosford</u> (2013). <p>3.10 Application of understanding to a complex scenario.</p> <p>3.11 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| <p>4. Understand the citizen’s civil liberties and human rights</p> | <p>4.1 Analyse the liberties enshrined in statute and the residual liberties at common law</p> <p>4.2 Explain how the UK courts deal with issues of incompatibility between UK legislation and the provisions of the ECHR</p> <p>4.3 Summarise the jurisdiction and powers of the European Court of Human Rights (ECtHR)</p> | <p>4.1 The key provisions of the Human Rights Act 1998 enacting the European Convention on Human Rights (the ECHR);</p> <ul style="list-style-type: none"> • residual liberties; • common law liberties as in <u>Entick v Carrington</u> (1765) and <u>Somerset v Stuart</u> (1772); • proposals for repealing HRA 1998 and replacing it with a British Bill of Rights: the Bill of Rights Bill 2022-23 • Independent Human Rights Act Review and the response of the Government. <p>4.2 HRA98 s4(2) and (4(6); <u>R v A (No 2)</u> (2002)_and <u>Ghaidan v Godin-Mendoza</u> (2004) on the approach of the UK courts;</p> <ul style="list-style-type: none"> • effect of incompatibility: <p>4.3 Procedures for the citizen to access the ECtHR;</p> <ul style="list-style-type: none"> • eg exhaustion of domestic remedies; • powers of the European Court of Human Rights (the ECtHR); • problems with ECtHR in relation to ‘margin of appreciation’; • proportionality: <u>Bank Mellat v HM Treasury</u> (2013) SC. |
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| | <p>4.4 Analyse the effectiveness of the statutory and common law provisions for guaranteeing freedom of expression</p> <p>4.5 Analyse the statutory and common law provisions for both ensuring and curtailing the freedom of the citizen</p> | <p>4.4 Common law provisions: <u>R v Shayler</u> (2002);</p> <ul style="list-style-type: none"> • the provisions of Article 10 of the ECHR: <u>Reynolds v Times Newspapers Ltd</u> (1999) and <u>Jameel (Mohammed) v Wall Street Journal Europe Sprl</u> (2005); • <u>Flood v Times Newspapers Ltd</u> (2012) SC; • Defamation Act 2013 replacing common law defences; • defamation and the internet; • Contempt of Court Act 1981 and the position of the press; • the Official Secrets Acts 1911-89; • the Public Interest Disclosure Act 1998 (the ‘whistle-blower’s charter’); • Leveson Report (2013); • Royal Charter on the Press; • phone hacking. <p>4.5 The Habeas Corpus Acts 1640-1862;</p> <ul style="list-style-type: none"> • the common law on <i>habeas corpus</i>: <u>R v Governor of Pentonville Prison ex p Azam</u> (1974), <u>Rahmatullah v Foreign Secretary</u> (2011)); • the provisions of the Police and Criminal Evidence Act 1984 in relation to stop and search: <u>Osman v DPP</u> (1999); • formalities for arrest, detention and treatment in custody, and search and seizure of property: <u>R (van der Pijl v Crown Court at Kingston)</u> (2012); • right to legal advice; • powers to retain fingerprints, DNA and photographs: Protection of Freedoms Act 2012; |
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| | | <ul style="list-style-type: none"> • <u>S & Marper v United Kingdom</u> (2010) ECtHR; • status of evidence improperly obtained: PACE 1984 ss76 and 78 and <u>R v Chalkley</u> (1998); • regime for disclosure of convictions:(<u>R(T) v Chief Constable of the Greater Manchester Police</u> (2013)); • provisions which ensure for the citizen a right to a fair trial: Article 6 ECHR; the key provisions of the Freedom of Information Act 2000: <u>R (Evans) v Attorney-General</u> (2015) SC; • Justice and Security Act 2013; • the state of the law on privacy: the provisions of Articles 8 and 10 ECHR and the case law on breach of confidence and in particular <u>Wainwright v Home Office</u> (2003), <u>Douglas v Hello!</u> (2001) <u>Campbell v MGN Ltd</u> (2005) and <u>PJS v News Group Newspapers Ltd</u> 2016 SC; • entrapment; • undercover police operations; • Outcome of review of Undercover Policing (2013); • Regulation of Investigatory Powers Act 2000 • Coronavirus Act 2020 and emergency regulations to combat the coronavirus pandemic. |
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| | <p>4.6 Analyse the effectiveness of the statutory and common law provisions governing freedom of assembly and public order</p> | <p>4.6 The main statutory and ECHR provisions relating to assemblies and processions: <u>Austin v United Kingdom</u> (2012), <u>City of London v Samede</u> (2012);</p> <ul style="list-style-type: none"> • Police Act 1996; • the Public Order Act 1986 (POA86); the provisions in the Police, Crime, Sentencing and Courts Bill 2021 extending police powers and further proposed extensions in the Public Order Bill 2022-23; other public order offences under the POA86 (as amended); • particularly riot (s1), violent disorder (s2), affray (s3), using threatening and abusive language (s4), and disorderly conduct (s5); the provisions of the Protection from Harassment Act 1997; • and the common law on breach of the peace: <u>Bibby v Chief Constable of Essex Police</u> (2001) and <u>R (Laporte) v Chief Constable of Gloucestershire Constabulary</u> (2006) HL; • the Criminal Justice and Police Act 2001, the Serious Organised Crime and Police Act 2005 and the Police Reform and Social Responsibility Act 2011. |
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| | <p>4.7 Analyse the impact of the provisions of the anti-terrorist legislation passed since 1999 on the freedom of the individual</p> <p>4.8 Apply an understanding of the citizen’s civil liberties and human rights to a given situation</p> <p>4.9 Critically evaluate a given issue or situation to predict probable legal implications</p> | <p>4.7 The effect of this legislation on curtailing the freedom of the citizen as in: Part V Terrorism Act 2000: <u>R v Gul (Mohammed)</u> (2013);</p> <ul style="list-style-type: none"> • Prevention of Terrorism Act 2005; • Terrorism Prevention and Investigation Measures Act orders: nature of T-Pims; • <u>Secretary of State for the Home Department v JJ and Others</u> (2007), stop and search, eg, <u>Gillan and Quinton v United Kingdom</u> (2009) ECtHR; • extraordinary rendition (<u>R (Binyam Mohamed) v SoS Foreign Affairs</u> (2010) CA; role of security services; • issue of evidence obtained by torture: <u>A v Home Secretary (No 2)</u> (2005) HL; • Closed Materials Procedure (CMP): <u>Al-Rawi v Security Services</u> (2011), <u>A v UK</u> (2009), Justice and Security Act 2013. <p>4.8 Application of understanding to a complex scenario.</p> <p>4.9 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| <p>5. Understand the way in which administrative acts and omissions are supervised and controlled</p> | <p>5.1 Explain the various means by which the actions of public bodies can be reviewed and controlled</p> <p>5.2 Analyse the jurisdiction, role and powers of the High Court in relation to judicial review</p> | <p>5.1 Understanding the key elements of judicial review;</p> <ul style="list-style-type: none"> • the powers of tribunals and the terms of reference of the Parliamentary Commissioner for administration, the Health Service Commissioner and the Commissioners for Local Administration in England, Wales, Scotland and N Ireland; • the Crossman Catalogue. <p>5.2 The provisions of Part 54 Civil Procedure Rules;</p> <ul style="list-style-type: none"> • time limits; • the law in relation to standing (<i>locus standi</i>) for applicants as in <u>R v IRC ex p National Federation of the of Self-Employed and Small Businesses Ltd</u> (1982); • the requirement that the matter be a public law issue as in <u>O’ Reilly v Mackman</u> (1983); • and that the body complained against must be a public law body or a body exercising public law functions as in <u>R v Disciplinary Committee of the Jockey Club ex p Aga Khan</u> (1993); • the High Court cannot substitute its own view for that of the decision maker on the substantive issue; • the categories of administrative fault for which judicial review will lie, ie, illegality, irrationality and procedural impropriety - <u>CCSU v Minister for the Civil Service</u> (1984) and relevant case law; • eg, on illegality - <u>Roberts v Hopwood</u> (1925), <u>Congreve v Home Office</u> (1976), |
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| | | <p><u>British Oxygen v Ministry of Technology</u> (1970);</p> <ul style="list-style-type: none"> • on irrationality – <u>Associated Picture Houses v Wednesbury Corporation</u> (1948) <u>CCSU</u> (above); • on procedural impropriety – <u>Ridge v Baldwin</u> (right to fair hearing), <u>Dimes v Grand Junction Canal</u>; <u>Porter v Magill</u> (rule against bias), <u>R v Soneji</u> (breach of express procedural requirement); • the circumstances in which the Government can obtain a Public Interest Immunity (PII) Certificate from the Court and relevant case law; • the position of the executive in relation to tort and contracts under the Crown Proceedings Act 1947; • the remedies available to a successful applicant for judicial review and their adequacy or otherwise: <u>Roy v Kensington Family Practice Committee</u> (1992); • the concept of <i>judicial deference</i> which may arise when a court considers government policy and national security (<u>R(Begum) v Home Secretary</u> (above); • the doctrine of legitimate expectation, see <u>R v North and East Devon Health Authority ex p Coughlan</u> (2001), <u>R (Niazi) v Secretary of State for the Home Department</u> (2008) and <u>Mandalia v Home Secretary</u> (2015); • doctrine of proportionality; • Independent Review of Administrative Law and provisions in the Judicial Review and Courts Act 2022 regarding the effect of quashing orders |
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| | <p>5.3 Explain the jurisdiction, role and powers of tribunals</p> <p>5.4 Explain the statutory procedures for convening, holding and reporting public enquiries</p> <p>5.5 Analyse the effectiveness of judicial review, tribunals, public enquiries and ombudsmen as vehicles for providing redress for the citizen.</p> | <p>5.3 The powers of tribunals;</p> <ul style="list-style-type: none"> • supervision of tribunals; • the provisions of the Leggatt Report: <i>Tribunals for Users</i> (2002); • the changes made to the tribunal system in the Tribunals, Courts and Enforcement Act 2007; • the strengths and weaknesses of the 2007 Act. <p>5.4 Key provisions of the Inquiries Act 2005 and the Inquiry Rules 2006.</p> <p>5.5 Judicial review:</p> <ul style="list-style-type: none"> • cost of judicial review; • limitations on judicial review remedies (less generous than civil law); • ouster clauses, see <u>Anisminic Ltd v Foreign Compensation Commission</u> (1969) (HL), cf. <u>R (Privacy International) v Investigatory Powers Tribunal</u> (2019)(SC); • ombudsmen: limitations on remedies; • slowness of ombudsman procedures; • ombudsman access free to complainants; • ombudsman limitations on jurisdiction; • public enquiries: slow procedures; • evidence not on oath; • no guarantee of implementation of recommendations; rights of audience limited; • limited facility for cross-examination; • tribunals: the impact of the Leggatt reforms, ie, increased independence from government; |
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| | <p>5.6 Apply an understanding of the way in which administrative acts and omissions are supervised and controlled to a given situation</p> <p>5.7 Critically evaluate a given issue or situation to predict probable legal implications</p> | <ul style="list-style-type: none"> • improved access for the citizen; • improved quality of delivery; • improved case management <p>5.6 Application of understanding to a complex scenario.</p> <p>5.7 A reasoned opinion of likely legal implications, including remedies and defences, where appropriate.</p> |
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| Additional information about the unit | |
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| Unit aim(s) | To accredit a broad and detailed understanding of Public Law |
| Details of the relationship between the unit and relevant national occupational standards (if appropriate) | This unit may provide relevant underpinning knowledge and understanding towards units of the Legal Advice standards |
| Details of the relationship between the unit and other standards or curricula (if appropriate) | Na |
| Assessment requirements specified by a sector or regulatory body (if appropriate) | Na |
| Endorsement of the unit by a sector or other appropriate body (if required) | Na |
| Location of the unit within the subject/sector classification | 15.5 Law and Legal Services |
| Name of the organisation submitting the unit | CILEx (The Chartered Institute of Legal Executives) |
| Availability for delivery | 1 September 2009 |

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