Examiners’ report 2011

265 0020 Public law – Zone A

Introduction

As in previous years, the quality of papers ranged from First Class to poor Fails. In this report the Examiners will discuss what constitutes a ‘good’ answer and what does not.

Extracts from candidates’ examination scripts are included in relation to Questions 1 and 4, both of which were statistically popular with candidates. Please note that spelling errors and other linguistic problems have been left as they were on the examination script.

General remarks

As in previous years, irrespective of the actual questions on the examination paper, there are a number of common problems which detract from the quality of the answers given.

The first relates to understanding and correctly interpreting the question. Although a number of the same topics will appear on the paper each year, candidates must appreciate that this does not mean that there is a standard answer which will be adequate for the particular question. It is extremely important that you take care in interpreting what the actual question is asking, and adapt your knowledge of the topic accordingly. The Examiners can spot a ‘rote-learned’ pre-prepared answer and it is rarely adequate for more than a bare pass, if that.

A related issue concerns relevance. One of the main purposes of the 15-minute reading time is to enable candidates to read and reflect on what the questions require, and a correct interpretation is crucial for success. Too often Examiners find that candidates offer a reasonable or good answer on a topic which is not on the examination paper, and answers such as this cannot achieve a pass mark. This emphasises the importance of taking care in reading the paper.

Another general difficulty lies in the length of answers given. While there can be no fixed required length of answer – some very good answers can be very succinct – a few paragraphs on less than two sides of paper is generally not enough to give an adequate analysis and discussion of the particular topic.

The quality of written English is a further difficulty for many candidates. There are occasions when Examiners are faced with a batch of scripts from one centre where the quality of written English is too poor to enable a candidate to pass. This is a matter which needs to be addressed during the academic year, with candidates regularly practising their written English in order to be prepared for the examination.
Specific comments on questions

Question 1
Discuss the case for and against a ‘written Constitution’ for the United Kingdom.

This is a broad question on the advantages and disadvantages of a written constitution which lends itself to many different approaches. One good starting point would be to define the word constitution, and then proceed to discuss the different types of constitutions: written/unwritten, federal/unitary; rigid/flexible and so on. The best candidates were able to discuss, briefly, the origins of written constitutions which then led to discussion of the evolutionary nature of the British constitution and its characteristics and sources. Many correctly point out that it is inaccurate to describe the contemporary constitution as ‘unwritten’ (in light of the many statutory and common law sources), and that it is better labeled as ‘uncodified’.

Attention should then turn to the case ‘for and against’ a written Constitution. Relevant to this issue is the extensive constitutional reform which has been undertaken since 1997: the Human Rights Act 1998, the House of Lords Act 1999, reform of the electoral system (Political Parties Elections and Referendums Act 2000 and Political Parties and Elections Act 2009), the Constitutional Reform Act 2005, the Constitutional Reform and Governance Act 2010. As the best answers pointed out, this amounts to a substantial volume of ‘written’ constitutional law.

The difficulties in drafting a constitution for the United Kingdom should have been discussed. Much (but not all) of this difficulty relates to the status and role of constitutional conventions, and how – if at all – these could be included within a constitutional document. Furthermore, the implications of a written constitution should have been considered. Central to this issue is the extent to which the constitution would become rigid. Many candidates offered a brief discussion of the United States’ Constitution to illustrate this point. The best answers offered an evaluation of the merits/demerits of constitutional rigidity, pointing to the substantial recent constitutional reform (see above) which has been undertaken with little debate or consideration of its impact on the constitution as a whole.

One common problem with this question was that too many candidates failed to answer the question posed, offering a description of a written constitution and then a description of the United Kingdom’s constitution. While this showed knowledge, it did not amount to discussing the case for and against a written constitution which was what was required.

Extracts from scripts:

Fail

‘The question will examine the following issues
Define Seperation of Powers
(b) Constitutional significance of Seperation of Powers – Aristotle later development by Montesqueiu.
Uncodified Unwritten constitution, Montesquieu theory. Written constitution – Blackstone theory of mixed govermenty theory.
The role of the executive, legisture and judiciary. The interplay between the Executive and Legisture, Executive and Judiciary, Judiciary and Legisture.’
The candidate then explains the role and function of the separation of powers and proceeds to explain the ‘interplay’ between the executive and legislature, executive and judiciary and judiciary and legislature.

There is no conclusion offered.

**Comment**

This is a bad fail. The candidate misinterprets the question and focuses on separation of powers to the exclusion of most other relevant material. There is no discussion of the case for and against a written Constitution – which is what the question required. The written English is poor and key words are misspelled.

Interpretation of the question: poor
Relevance of the answer to the question: poor
Substantive knowledge: poor
Use of authorities: poor
Articulation of argument: poor
Accuracy of information: poor
Clarity of expression: acceptable
Legibility: acceptable

**Third Class**

‘The United Kingdom is traditionally known for its unwritten constitution. Its legal source are derived from both case law and statutes and non-legal sources from conventions. It does have a constitution but the law is not codified and therefore the question which arise is whether there is good governance which is prevailing in the country despite this uncodified constitution.

“Having a written constitution would definitely prove to be advantageous to the whole citizens of the United Kingdom as well as the State. In this respect, this would reduce arbitrary powers which are normally carried out by Parliament. Since Parliament is supreme, they can make or unmake any law, they can legislate on any matter and anyone, including a court of law cannot declare an act of parliament invalid. Those aspects of Parliamentary Sovereignty definitely goes against the first limb of rule of law which states that everyone is equal before the law, irrespective of rank and status. We can therefore we can deduce how there can be inconsistency in the absence of a written constitution. Had there been a codified document regulation all the functions of public bodies including the State, there would not have been this chaotic aspect of Parliamentary Sovereignty which goes against the doctrine of the rule of law.’

The candidate discusses in general terms the protection of rights, democracy and separation of powers.

‘On the other hand, a written constitution might be disadvantageous to both the State and citizens of the United Kingdom. The procedures for a bill to become law is a very long procedure and this may take 6 months to one year. The bill has to be pass through three stages which are the House of Commons for a first reading, a second reading in the House of Lords and finally the Royal Assent. Therefore, it can be deduced that if the law needs to be changed by any member of Parliament due to a lack of inconsistency in the law and to prevent political chaos in the future, it will take a lot of time to
remedy this situation and this lapse of time, citizens might face serious problems.

“It can therefore be submitted that before attempting to codify the constitution of the United Kingdom, proper alternatives and guidance should be consulted to ensure both the benefit of citizens and the State.’

Comment
The candidate offers vague statements about Parliamentary sovereignty going against the rule of law. He or she misinterprets the notion of equality before the law. There are vague statements about democracy and the abuse of power.

There are errors concerning the roles of the executive and the legislature, and errors regarding the process of legislation. There are vague, unexplained, references to ‘political chaos’. Finally, there is a weak and meaningless conclusion.

Interpretation of the question: adequate
Relevance of the answer to the question: just sufficient
Substantive knowledge: poor
Use of authorities: poor
Articulation of argument: poor
Accuracy of information: poor
Clarity of expression: acceptable
Legibility: acceptable

Upper Second
‘Thomas Paine said about the constitution, ‘it is not the act of a government, but rather an act of a people constituting a government … a government without a constitution is a government without legitimate right to govern.

A constitution is usually codified in a written document such as in the United States and France. It establishes the branches of a government a defines the power and functions for each and how they are to relate to one another.

It also defines the rights and freedoms and civil liberties of the people…

As a constitution, according to the likes of AV Dicey and Blackstone, is a set of principles of good and responsible government. These principles such as adherence to the doctrine of the rule of law and the separation of powers, emphasis on the independence of the judiciary…”

There follows a discussion of separation of powers, judicial independence and parliamentary sovereignty. Sources are also discussed, both legal and non-legal. The flexibility/rigidity argument is also discussed before offering a balanced conclusion.

Comment
This is a confident and articulate answer. There is a good knowledge of the topic and a good use of authorities. The candidate displays good understanding and follows a logical line of argument.

Interpretation of the question: excellent
Relevance of the answer to the question: excellent
Substantive knowledge: sound
Use of authorities: sound
First class

‘To have a written constitution (or unwritten as the case may be) is really a misnomer. Not all constitutions are written, some laws come by the countries’ conventions. Not all countries have one certain document called the ‘constitution’ where every law lies, even the classic example of the United States’ Constitution does not literally contain all the laws. Constitutions of different countries have many common elements most obviously the institution of the state and their similar roles. Liberal democracies share common values including liberty and democracy, and broadly similar checks upon the abuse of power, separation of power and rule of law…”

There follows a discussion of the evolution of the United Kingdom’s constitution, and a comparison between the UK constitution and that of the USA in terms of flexibility versus rigidity and a recognition that no system is ‘perfect’.

The candidate concludes as follows:

‘Ultimately no system, a special document or otherwise, guarantees anything. The influence of the will of the electorate is always and should always be the priority. It all comes down to responsible behavior of the key constitutional players and the ensuring that these laws/conventions are not taken for granted or abused.’

Comment

The candidate demonstrates an excellent understanding of the topic and is able to intertwine history, philosophy and politics within her answer. There is an excellent use of authorities and the argument is both rational and sophisticated.

Question 2

Critically assess the current law relating to the composition and powers of the House of Lords.

This question proved popular, although it was not well handled by the majority of candidates. One useful starting point was to explain the importance of a bicameral legislature. This then led to an explanation of the role, composition and powers of the current House of Lords. Candidates should have discussed the law-making role of the Lords and explained the Parliament Acts 1911 and 1949 in some detail. In relation to composition, the pre-1999 composition should have been discussed. This should have included a discussion of the Life Peerage Act 1958 and a brief
mention of the Peerage Act 1963. The 1999 Act itself, which removed the majority of hereditary peers, should have been discussed.

The question called for a ‘critical assessment’ of the current law, and this should have led to a discussion of the need for further reform. The focus of this should have been on recent and current proposals for further reform of the composition of the House, which in turn should have led to a discussion of the balance of power between the two Houses, and whether the current balance of power achieved under the Parliament Acts would be sustainable if the House of Lords was to become a fully elected House.

A common problem with this question was that too many candidates ignored the requirement to discuss the law relating to composition and powers. This repeats the comment made in the Introduction to this report: that candidates fail to read and interpret the question properly and fail to address their answer to the question on the paper. In relation to this question it was not enough to write ‘all I know about’ the House of Lords without answering the question. Too many candidates did not discuss the law at all, and as a result, failed. Too many also offered a lengthy discussion of outdated proposals for reform, many spending a great deal of time and space on the Wakeham proposals at the expense of more recent proposals.

**Question 3**

*With reference to statute and case law, discuss the extent to which the United Kingdom is ‘sovereign’ in relation to the European Union.*

This question on sovereignty and European Union, while not statistically ‘popular’ was well handled by most candidates who answered it. A good starting point used by many was to explain the concept of ‘sovereignty’, briefly discussing the difference between legal and political sovereignty before proceeding to focus on legal sovereignty. On legal sovereignty, many adopted AV Dicey’s three-part explanation.

Attention should then have turned to the European Union, with a brief explanation of its origins and evolution. The question called for ‘reference to statute and case law’: this required that candidates explain the major cases decided by the European Court of Justice on the issue of sovereignty, and the major cases on the subject by the domestic courts. In relation to the European case law, the best answers included a discussion of the seminal cases of *Costa v ENEL*, *Van Gend en Loos*, *Internationale Handelsgesellschaft* and *Simmenthal*. In addition many were able to discuss, albeit briefly, the concepts of direct and indirect effect and state liability, again with good use of case law. From the domestic standpoint, the European Communities Act 1972 should have been discussed, with an explanation of how s.2 of the Act operates as the conduit through which EU law enters and becomes effective in domestic law.

Where too many candidates went wrong with this question was in discussing parliamentary sovereignty while ignoring the impact of the European Union. This again is an illustration of a failure to read and interpret the question with sufficient care.
Question 4

Critically assess the role of the House of Commons in the law-making process and the scrutiny of government administration.

This straightforward question gave rise to a few very good answers but also a high number of poor answers.

On the legislative process, candidates should have explained that there are different types of Bills, the principal type being the Public Bill. The different stages – First Reading, Second Reading, Committee, Report and Third Reading – should have been explained. The ‘critical assessment’ required should have included a discussion on the problems entailed in adequate scrutiny: time constraints, government majorities.

On the scrutiny of administration, candidates should have discussed and critically assessed scrutiny afforded by such means as Question Time, debates, and most importantly Select Committee enquiries. Many of the best candidates were able to discuss the concept and importance of the convention of ministerial responsibility and the manner in which the various procedures underpinned the convention. A few also discussed the importance of the government retaining the confidence of the House of Commons and the role of Votes of Confidence.

A common problem was that many candidates answered only half of the question, for whatever reason confining their answers either to the law-making process or to the scrutiny of administration. Answering half a question cannot result in a pass mark. Another common problem was that many candidates turned this question into one on ministerial responsibility and wrote ‘all they knew’ about both collective and individual responsibility. While relevant, a detailed discussion of that concept, at the expense of parliamentary procedures was not what this question required and such answers failed.

Extracts from scripts

Fail

‘This question requires the examination of the process of the House of Commons in scrutinizing and approving government bill. The procedure by which the House of Commons scrutiny the governments bill essentially comprise five stage, First reading, second reading, committee stage and third reading.

The first reading:

First reading is largely cerimonal and dummy copy of the bill is placed on the table on the day of presentation in the HC. When the moment of presentation is reached the speaker called the sponsoring minister and the clark read the short title of the bill and a minister or whip acting behalf on his. No debates takes place at this stage. Names a day for the second reading of the bill. Once the first reading procedure is completed then the bill is printed and published.

Second reading:

Second reading is the stage at which significant parliamentary scrutiny of legislative proposals become possible. The house consider the principle and marites of the bill. A vote is take on whether to give the bill a second reading. Although the opposition will seek to score parliamentary point in the course of debates. The outcome of the second reading will hardly even be in doubts. It is to be noted that under section 19 of HRA the sponsoring minister make a
statement print that in his view the provision of the bill is compatible with the Convention rights.

Following its second reading a bill is normally referred to a standing committee consisting between 16 to 5 members nominated by committee of selection. The committee involves with bill clause by clause consideration of the bill. They deal with the bill as when necessary. The committee may generally amend the bill as it think fit. It provides that amendment should be related subject matter of the bill.

The bill of first class constitutional important this requiring a very rapid passage. Certain financial measure includes at least part of each year’s finance bill referred to a committee of the whole house enabling all MPs to scrutiny the every technical rules of the bill.

The final HC stage is the third reading. A debated is to be held at this stage with only verbal amendments allowed except for bills of most political or constitution importance.

One of the major problem with the whole process of scrutiny is the control exerted by the executive. As indicated above the government will enforce the party line through the whip office to ensure that the legislation is to be carried out. The government in the majority this is the case. The select committee is powerful because the involves all MPs to scrutiny the bill. The government can also use its voting power.

The House of Commons modernization committee in its report published in July 1997 confirmed that the proceeding of standing committee were often devoted to political partisan debate rather than constructive and systematic scrutiny of legislative. It observed that the rule of government backbencher on standing committee were remain silent and vote as direct as a result of this tactic sometime important section of the public bill did not receive proper scrutiny because of imposition of time allocation order.’

Comment
From the very beginning of the answer to the end, the candidate restricts him or herself to the legislative process, ignoring the requirement to discuss the scrutiny of government administration. The candidate demonstrates some detailed knowledge of the procedure for the scrutiny of bills. However, this is marred by poor expression and spelling. If the question had been solely on legislation this might have achieved a bare pass. As it is, it had to fail.

Interpretation of the question: poor
Relevance of the answer to the question: partial
Substantive knowledge: just sufficient
Use of authorities: poor
Articulation of argument: acceptable
Accuracy of information: just sufficient
Clarity of expression: poor
Legibility: just sufficient

Third
‘In United Kingdom House of Commons issue is all time a big issue. In House of Commons the making process is an sensitive and important part as well. It
can be stated that House of Commons is elected chamber so there is more need to scrutinize of government administration.

House of Commons law making process is not more difficult process but sometimes it takes long time, it depends on the circumstances and issues of bill. This are discussed at below by maintaining some stages.

First of all in the Parliament bring a new issue and have to submit by knowing all parliament members. This stage is called first reading. In this stage is not more important, then this outlet are bill paper send for second reading.

Second reading is more vast place. Here need to some change, that’s mean nowhere need to some cut are where need to some add, then it send for third reading. This is same activies like second reading.

After third reading it send for committee stages. In committee stage has check out as a limitation time. If there is maked some confusion they can send it again for second reading. Normally, this situation does not happen within few session.

Then completing by committee stage it has been send for HL. HL check all evidence and relevant issue if they need to change or add they can do. After finishing HL send in Parliament. Finally there need for signing of the Crown.

In the HC scrutiny of government administration has three part which has been discussed at below.

Question time. In Prime Minister gives question from parliament member once a week for 30 mins. He/she is responsible only those questions which is under his activities and which are not under any minister.

Minister is responsible only once a month and which is related his issues. All of these answers are recorded under Official Journal.

Questions can be a very effective way of embarrassing ministers including the PM. Robin Cok suffered over the Siera Leone affair from tough questioning in the HC. She considered resigning from the Westland affair in 1986, but the fact that he did not and neither did Robin Cook who blamed his civil servants, no one resigned over the arms to Iraq affair despite a damming report on the administration by Sir Richard Scott.

Debate. For emergency debate any MP may apply to the speaker to raise an urgent matter for debate. If this is granted then the matter will be raised immediately question time and private notice question. Secondly at the time of general debate it has been discussed in general issue in simply way.

Select Committee. In every select committee have 9 to 11 membership. All these select committee chosen by whips. The select Committee activities is to expenditure, to run the pol9icy of the government.

In recent developments the members of select committee has increased to 15. In 2001 reform Whips power has been decreased and the selection power of select committee has been transferred in committee of selection.

Select Committee have the power to send papers and person to the members.

Select committee has also power to make a sub-committee if they think. Sometimes they publish an unanimous report which is criticize government.
Select committee have some also limitation power. They do not have the power to compel a minister at a right time and they do not have power to charge the minister for their any wrong activities.

Select committee only publish 25% of on report.

Powers of subpoena. They can be allow3ed by subpoena without knowing the HL. Because HC have already said.

For …. and business. They failed to find out the truth at the Iraq war because of civil servants evidence.

In summary, the HC’s role is going very effective way with their government administration. So after all they need to more ….. increased for side of select committee and committee stage.

Comment
This long answer contains many good points on both the scrutiny of legislation and administration. However, there are also some serious errors and the answer is extremely difficult to interpret. This is a good example of an answer where the examiners have to employ interpretative skills in order to understand what is being argued.

Interpretation of the question: poor
Relevance of the answer to the question: acceptable
Substantive knowledge: just sufficient
Use of authorities: poor
Articulation of argument: poor
Accuracy of information: just sufficient
Clarity of expression: poor
Legibility: acceptable

Upper Second
"The House of Commons of United Kingdom underpins a great aspect in the constitution of United Kingdom. The House of Commons is part of the bicameral chamber of the Parliament of UK found at Westminster. .... House of Commons is elected Member and Members of Parliament have win election to sit in House of Commons.

The process of proposing bills and making the bills to become statute is done via a three stage process. .... A first reading in the House of Commons, a second reading, a committee stage, a report stage and lastly third stage where Parliament accept the laws. The Bills then goes to the House of Lords whereby same stage process is repeated, but it goes to the Queen for the royal assent.

However, we will see that the Executive sits in the House of Commons. In fact, this is the better way of scrutiny of the government. It shows that government acts under law and also are accountable to electorate. In House of Commons, the scrutiny took place as asking questions to members of the Cabinet. This is question, prime minister question, debates and select committees. These scrutiny show that the government is working in transparency and also showing public the way they work and providing public confidence."
In addition to vote of confidence and parliamentary procedures, we also have the convention of ministerial responsibility. The ministerial responsibility consists of two limbs. First the Collective Ministerial Responsibility and secondly, the Individual Ministerial Responsibility…”

Comment
The extracted passages show a very good understanding of the working of Parliament, although the discussion is lacking in detail.

Interpretation of the question: sound
Relevance of the answer to the question: sound
Substantive knowledge: sound
Use of authorities: acceptable
Articulation of argument: sound
Accuracy of information: acceptable
Clarity of expression: acceptable
Legibility: sound

First class
‘The House of Commons the elected House in the United Kingdom has two major roles: law making and scrutiny of government administration. In its lawmaking role the House of Commons is somewhat limited given the fact that this process is controlled by the executive. However in the scrutiny of government administration the Commons is more effective since members have more opportunity to contribute to this process through questions, motions and select committees….

Select Committees offer more opportunities for Members to scrutinize the executive effectively. While the Whip (government and opposition) selects members for such committees, members can develop expertise and contribute more in this process. Select Committee have some resources although by no means adequate to carry out their functions such as experts, researchers etc….

While not totally effective some scrutiny of the executive and the law making process offer Members of the House of Commons opportunities to contribute to the parliamentary process, hold the executive accountable and contribute to the development of legislation. The scrutiny role is critical under the separation of powers and members have an opportunity to represent their community and their interests in the law making process hence contributing to constitutionalism.’

Comment
The candidate presents a confident, succinct introduction and then offers a critical explanation of the law-making process. In relation to scrutiny of administration, the discussion is thorough. The conclusion, above, is well balanced and mature.
Question 5

Discuss the manner in which the law regulates the electoral system of the House of Commons to achieve:

  a) Equality between candidates standing for elections; and
  b) Equality between voters in terms of parliamentary representation.

This question was statistically ‘popular’ with candidates. It gave rise to some very good answers but also some which were very poor. Where answers were poor, this was generally caused by a failure to interpret the question correctly and to offer an answer relating to one, but not both, parts of the question.

A good starting point, and one adopted by the best candidates, would have been to explain the constitutional importance of the concept of equality in relation to electoral systems. Candidates should then have turned their attention to each part of the question, allowing sufficient time to cover both parts.

On equality between candidates standing for elections, the main issues for consideration were the size of constituencies and, briefly, the role of the Electoral Commissions in regulating boundaries to ensure a degree of equality in the number of voters per constituency. Also important was the regulation of the election campaign itself: the question of election expenditure (limits, the appointment of an agent, accounting, offences relating to expenditure). At the national level, the control over political parties and recent reforms relating to the registration of donations should have been mentioned, but not discussed in detail.

On equality between voters ‘in terms of parliamentary representation’, the key issue here is the electoral system used for general elections. Candidates should have been able to discuss in detail the merits and demerits of the Simple Majority System and to explain the concept of proportional representation and alternative systems. The recent referendum on whether or not the Alternative Vote should be used for future general elections was mentioned by many. Also relevant to this question is the issue of the franchise, and the best candidates were able to discuss recent reforms (the local connection qualification) and controversial issues such as the disenfranchisement of prisoners highlighted by the 2005 case of Hirst v United Kingdom, to which the government has yet to respond with remedial legislation.
**Question 6**

‘Parliamentary privilege aims to protect individual members of both Houses of Parliament and Parliament itself from outside interference.’ Critically assess this statement.

This question required a discussion of both the collective privileges of the Houses of Parliament (with the emphasis being on the House of Commons) and the individual privileges of Members of Parliament. Many candidates were able to explain the historical importance of privilege as a protective device against the Crown, and that while the Crown does not represent a threat nowadays, it remains important that Parliament and its members are protected from any outside interference.

On collective privileges of the House, the right to determine its own composition and procedure is the central issue. Case law such as *Bradlaugh v Gossett* and *Stockdale v Hansard* should have been discussed, albeit briefly. The judges’ refusal to intervene in parliamentary proceedings as illustrated by *Pickin v BRB* should also have been discussed.

On individual privileges, freedom from arrest in relation to civil matters should have been considered, but briefly. More importantly, freedom of speech as guaranteed by Article IX of the Bill of Rights should have been discussed in detail, together with illustrative case law.

The best answers also included a discussion of the recent problems posed by financial interests. The enquiry into Standards in Public Life was relevant as was the recent expenses scandal which culminated in the Parliamentary Standards Act 2009 and the establishment of the Independent Parliamentary Standards Authority (IPSA).

**Question 7**

Explain the key provisions of the Human Rights Act 1998 and, with reference to case law, assess their effectiveness in guaranteeing rights and freedoms in the United Kingdom.

Candidates should begin by explaining the background to the Human Rights Act 1998. This could include the perceived weakness in the domestic protection of rights caused by the traditional approach to rights and freedoms and the ‘problem’ posed by parliamentary sovereignty, and the disadvantages of having to apply to the Court of Human Rights Strasbourg under the European Convention on Human Rights.

A discussion of the Human Rights Act could then be undertaken (see Chapter 15.3 of the subject guide). The question called for a discussion of the ‘key provisions’ of the Act. These are ss.2, 3, 4, 6, 10 and 19. The best candidates were able to cite these provisions and to offer case law which illustrates the judges’ interpretation of the sections (particularly ss.2, 3, 4 and 6). The best candidates also demonstrated good understanding of the manner in which the courts – as public bodies – have extended the law (particularly in relation to privacy) to cover private rather than public bodies (on this see Textbook, eighth edition p.546 and Chapter 20, pp.571–579; ninth edition pp.426–433; Chapter 20, pp.456–461).

Case law illustrating the effectiveness of the Act should have been offered (see Klug, F. and K. Starmer, *Standing Back from the Human Rights Act: how effective is it five years on?* In the Study Pack at p.209, and Lord Irvine, *Constitutional Reform and a Bill of Rights* in the Study Pack at p.227).
The question did not require a discussion of further reform, although many good candidates were able to discuss the proposal that Britain should adopt a Bill of Rights to supplement the European Convention on Human Rights.

**Question 8**

‘The procedural restrictions on applications for judicial review (such as sufficient interest and ‘timeliness’) are necessary to strike the correct balance between governance according to law and protecting public bodies from unnecessary interference with their work.’

This was a statistically ‘popular’ question and one which was generally well handled. A good starting point would have been to explain the constitutional role of judicial review and the need to strike the ‘correct’ balance between government according to law and protecting the administrative process from ‘unnecessary interference’.

Having set the scene, attention could then be turned to the procedural restrictions (note that the words ‘such as’ in the quotation means that the discussion should extend beyond just sufficient interest and ‘timeliness’).

The best candidates were able to discuss the differing categories for sufficient interest (or standing): individual, representative group, interest group and to use the relevant case law, for example: Schmidt; Liverpool Taxi Fleet Operators; Greenpeace v Rose Theatre Trust.

The requirement that applications must involve a matter of public, as opposed to private law required consideration (O’Reilly; Winder; Roy) and did the requirement that the body challenged be a public body: City Panel v Jockey Club ex parte Aga Khan.

Time limits for review (generally s.31 Senior Courts Act 1981, but more strict time limits in other statutes) and ouster clauses should have been considered, together with case law demonstrating the judges’ approach to such restrictions, for example, Ostler; Smith v East Elloe; Anisminic.

Having discussed the procedural restrictions, the best answers included a brief reference to the problem posed by the concept of justiciability, which may cause an application to be denied on the ground that the matter is best determined by the executive rather than the courts of law.