



THE LAW SOCIETY OF SCOTLAND
QUALIFIED LAWYERS ASSESSMENT

PUBLIC LAW

3 November 2021

0830 – 1000
(90 minutes)

Candidates are required to answer TWO out of four questions.

Question 1

The UK Government has established an independent review of how the Human Rights Act 1998 is operating in practice and whether any change is needed.

What changes did the Human Rights Act make in the protection of human rights in UK domestic law? Is any change in your view needed?

Question 2

The Judiciary and Courts (Scotland) Act 2008 provides a statutory guarantee of the 'continued independence' of the judiciary in Scotland, modelled on section 3 of the Constitutional Reform Act 2005. What do you understand by the 'independence' of the judiciary? Why does it matter and how is it secured in Scotland?

Question 3

'Judicial review is available, not to provide machinery for an appeal, but to ensure that the decision maker does not exceed or abuse his powers or fail to perform a duty which has been delegated or entrusted to him. It is not competent for the court to review the act or decision on its merits, nor may it substitute its own opinion for that of the person or body to whom the matter has been delegated or entrusted' (West v Secretary of State for Scotland 1992 SC 385, 413 LP (Hope)).

What are the principal differences between judicial review and an appeal? Explain TWO ways in which a decision maker may abuse its powers.

Question 4

The Lord Advocate is the head of the systems of criminal prosecutions and investigations of deaths in Scotland. She is also the Scottish Government's most senior legal adviser. Following the Alex Salmond Affair there have been calls for the roles to be split. Should they in your view be split? Do you foresee any difficulties as a result of doing so? Would such a change require legislation and if so by which Parliament?

END OF QUESTION PAPER