

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PUBLIC LAW

Thursday 9 February 2023

**0900 – 1200
(Three hours)**

Candidates should answer THREE questions ONLY

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Question 1

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 2

In the *Miller* case the UK Supreme Court said that Brexit would involve as "fundamental" a change in the United Kingdom's constitutional arrangements as joining the European Community in 1973.

What has that change involved?

Question 3

The Independent Human Rights Act Review was launched in December 2020 to examine the framework of the Human Rights Act 1998, how it is operating in practice and whether any change is required.

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

Question 4

“The Scottish Parliament is a Parliament of bounded competence.”

How does it differ from the UK Parliament in this respect? What light does the UK Supreme Court’s decision in the *Scottish Independence Referendum Bill* case [2022] UKSC 31 shed on our understanding of its competence?

Question 5

“Holding the executive government accountable has become the dominant function of all modern legislatures.”

By what means does the Scottish Parliament seek to hold executive government accountable and how effective is it in doing so?

Question 6

“The petitioner's case fails to appreciate the limitations under which the court operates when asked to review the decision of a specialist tribunal such as the respondents. As the Lord Ordinary correctly reasoned, the task of forming a view on whether a miscarriage of justice may have occurred ...has been entrusted by Parliament to the respondents. There is no statutory appeal process. The respondents' determinations are therefore susceptible to review by the court, but only on conventional grounds of illegality.” (Lord Carloway).

Explain the background to this statement. What are the “conventional grounds of illegality”?

END OF QUESTION PAPER