

**THE LAW SOCIETY OF SCOTLAND
EXAMINATIONS**

PUBLIC LAW

Thursday 10 February 2022

**0900 – 1200
(Three hours)**

Candidates should answer THREE questions ONLY

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Question 1

Section 1(a) of the Constitutional Reform Act 2005 section 1(a) provides as follows:
'This Act does not adversely affect the existing constitutional principle of the rule of law'.
What do you understand by the principle of the rule of law and how is it secured in the United Kingdom?

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 UK government is proposing replacing the Human Rights Act 1998 with a British Bill of Rights. What might the Act's replacement involve and how persuaded are you of the case for doing so? In your answer to the question concentrate on possible changes to sections 2 to 4 of the Human Rights Act.

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 decisions in the *Scottish Continuity Bill* case [2018] UKSC 64 and the UNCHR *Incorporation Bill* case [2021] UKSC 42 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 EITHER a) the UK Parliament OR b) 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