

**Thursday 23 May 2013 – Morning**

**AS GCE LAW**

**G152/01/1 Sources of Law**

**INSERT– QUESTION PAPER**

**Duration: 1 hour**



#### **INSTRUCTIONS TO CANDIDATES**

- Write your name, centre number and candidate number in the spaces provided on the Answer Booklet. Please write clearly and in capital letters.
- Use black ink. HB pencil may be used for graphs and diagrams only.
- Answer **one** question; either question 1 (all parts) **or** question 2 (all parts).
- Read each question carefully. Make sure you know what you have to do before starting your answer.
- If additional space is required, you should use pages 14–16 of the Answer Booklet. If you use additional sheets of paper, fasten these securely to the Answer Booklet.
- Do **not** write in the bar codes.

#### **INFORMATION FOR CANDIDATES**

- The number of marks is given in brackets [ ] at the end of each question or part question.
- The total number of marks for this paper is **60**.
- Candidates are reminded of the need to write in continuous prose, where appropriate. In answering part **(a)** and part **(c)(ii)** questions you will be assessed on the quality of your written communication (QWC) including your use of appropriate legal terminology. These questions are marked with an asterisk (\*).
- This document consists of **8** pages. Any blank pages are indicated.

#### **INSTRUCTION TO EXAMS OFFICER/INVIGILATOR**

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Answer **one** question.

- 1 Read the source materials below and answer parts **1(a)** to **1(c)** which follow.

### Exercise on Legislation and Delegated Legislation

#### Source A

An Act of Parliament creates a new law or changes an existing law. An Act is a Bill approved by both the House of Commons and the House of Lords and formally agreed to by the reigning monarch (known as Royal Assent). Once implemented, an Act is law and applies to the UK as a whole or to specific areas of the country.

UK Parliament website at: <http://www.parliament.uk>

#### Source B

Delegated legislation, as the name suggests, involves Parliament giving power to other bodies and individuals to make law on their behalf. Some of these bodies (like public corporations and the Privy Council) are not elected. Therefore it is important that controls exist to guard against misuse of power. Parliament exercises a number of controls including the ultimate control of revocation. However, the courts have come to play an increasingly important role in the control of delegated legislation. 5

“[T]he lawfulness of a byelaw is potentially subject to challenge before the courts in judicial review proceedings. Moreover, where a defendant has been charged with an offence contrary to a byelaw, he or she has a collateral defence where they are able to show that, for example, the byelaw in question exceeds the authority under which it was made: see *Boddington v British Transport Police* (1999), where the House of Lords confirmed this important principle but ruled that on the facts of the case, a byelaw prohibiting smoking in a railway carriage did not exceed the terms of section 67(1) of the **Transport Act 1962**. Other defences include that the correct procedure for making the byelaw has not been followed. In other words, challenges to the lawfulness of a byelaw may be made on both procedural and substantive grounds.” 10 15

*Byelaws and Proportionality*. Neil Parpworth. Justice of the Peace. 2008. 172 JPN 484. 26 July 2008.

In recent cases the Divisional Court has also shown itself willing to embrace principles derived from the **Human Rights Act 1998** (such as proportionality) when dealing with the lawfulness of delegated legislation. 20

It is often argued that parliamentary controls are weak and ineffective in dealing with the current quantity of delegated legislation and that the courts are inaccessible to many people.

Answer **all** parts.

- 1 (a)\* Describe the process by which an Act of Parliament is made using **Source A** and your own knowledge. [15]

Start writing your answer to Question 1(a)\* on page 2.

- (b) Explain which type of *ultra vires* would be the most likely outcome in each of the following applications for judicial review, using **Source B** and other cases:

- (i) Branock Town Council has used powers under local planning byelaws to ban the display of all exterior Christmas decorations as there is a small risk that a few houses may erect ugly displays. [5]

Start writing your answer to Question 1(b)(i) on page 5.

- (ii) The Minister for Transport has used powers granted to her under the **Road Traffic Act 1988** to increase the rate of income tax. [5]

Start writing your answer to Question 1(b)(ii) on page 6.

- (iii) Pentire District Council has given Lesscost Supermarkets planning permission to build a new superstore without consulting local people as required by the planning permission byelaws. [5]

Start writing your answer to Question 1(b)(iii) on page 7.

- (c) **Source B** refers to controls over delegated legislation.

- (i) Describe the controls over delegated legislation operated by **both** Parliament **and** the courts using **Source B** and your knowledge. [15]

Start writing your answer to Question 1(c)(i) on page 8.

- (ii)\* Discuss the effectiveness of the controls exercised over delegated legislation by **both** Parliament **and** the courts. [15]

Start writing your answer to Question 1(c)(ii)\* on page 11.

- 2 Read the source materials below and answer parts **2(a)** to **2(c)** which follow.

### Exercise on EU Law

#### Source A

Article 267 of the **Treaty on the Functioning of the European Union** (formerly Article 234 **EC Treaty**) allows a national court or tribunal to send a reference to the Court of Justice where an interpretation on a point of EU law is required. The procedure has been a fundamental mechanism by which the European Court of Justice has developed the legal principles of the European Union.

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#### Source B

“[W]here a Member State has not adopted the implementing measures required by a directive within the prescribed periods and where the provisions of the directive appear to be ‘unconditional and sufficiently precise’, they are directly applicable. A state is not permitted to rely, as against individuals, upon its own failure to perform the obligations which the directive entails. Furthermore, those provisions may be relied upon directly by the individual, where the national state has not implemented them within the required time. But the directive is not enforceable against a private individual – it being said that the directives have vertical but not horizontal effect. That is, they can be used against governments, but not against private parties.

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An example of such a measure is the so-called ‘working time’ Directive, which regulates the permissible number of working hours in a week to 48 and makes provision for a certain number of weeks’ paid holiday.”

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*Learning the Law*. 12th Edition. Glanville Williams. Sweet & Maxwell. 2002.

In *Marshall v Southampton and South West Hampshire Area Health Authority*, the Health Authority dismissed Miss Marshall, aged 62, as they maintained a compulsory retirement age of 60 for women and 65 for men. Miss Marshall wanted to carry on working and argued sex discrimination on the basis that the British **Sex Discrimination Act 1975** did not accurately reflect **Directive 76/207** on Equal Treatment which would make her treatment discriminatory and unlawful. In an Article 234 (now Article 267) referral, the European Court of Justice (ECJ) held that since the provisions of **Directive 76/207** were unconditional, clear and precise, they could be relied upon by Miss Marshall ‘vertically’. This means that Miss Marshall could rely on the Directive against the State or a State authority acting as an employer, as was the case with the Health Authority.

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A common criticism of this judgment is that it makes an arbitrary and unfair distinction between employees who work for the State and those who work for private parties. However, the ECJ would argue that the distinction would not be necessary if the Member State had correctly implemented the Directive into domestic law.

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Answer **all** parts.

- 2 (a)\* Describe **and** illustrate the Article 267 reference procedure, using the **sources** and other cases. [15]

Start writing your answer to Question 2(a)\* on page 2.

- (b) Explain what kind of referral, if any, could be made to the European Court of Justice in each of the following situations, using the **sources** and other cases:

- (i) A Magistrates' Court is hearing a case involving UK Sunday trading laws which may be in breach of EU Law. [5]

Start writing your answer to Question 2(b)(i) on page 5.

- (ii) The UK Supreme Court is hearing a case involving the interpretation of a point of EU law under the European Common Fishing Policy. [5]

Start writing your answer to Question 2(b)(ii) on page 6.

- (iii) An Employment Tribunal is hearing a case involving the interpretation of a point of EU Law under the Equal Treatment Directive. The same point of law was the subject of an earlier **Article 267** referral. [5]

Start writing your answer to Question 2(b)(iii) on page 7.

- (c) **Source B** concerns direct effect.

- (i) Describe **both** horizontal **and** vertical direct effect using **Source B** and other cases. [15]

Start writing your answer to Question 2(c)(i) on page 8.

- (ii)\* Discuss the problems associated with direct effect which lead to unfairness in some situations. [15]

Start writing your answer to Question 2(c)(ii)\* on page 11.



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