

O. Hood Phillips' Constitutional and Administrative Law

Sixth Edition

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Paul Jackson

Sweet & Maxwell

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CONSTITUTIONAL
AND ADMINISTRATIVE LAW

SIXTH EDITION

BY

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PREFACE TO THE SIXTH EDITION

MUCH rewriting and revision have been needed once again to bring the book up to date, for Constitutional and Administrative law is a very wide and constantly changing subject. Reference has been made to a number of recent cases and statutes, as well as to White Papers and reports of commissions and committees.

The revised Chapters 3 and 4 are now entitled "Parliamentary Supremacy I and II," the latter developing further the problem of self-limitation in connection with the European Communities Act and the relation between British constitutional law and Community law. A new Chapter 5 on the United Kingdom and the European Communities includes the provisions for direct elections to the European Assembly, an analysis of sections 2 and 3 of the European Communities Act and an account of references to the European Court of Justice. Brief comments on the recent *Simmenthal* case have been inserted at the end of Chapters 4 and 5. The attempt is made to deal with these important matters from the point of view of British constitutional law.

Chapter 23 on rights and duties generally has been rewritten so as to include a discussion of the European Convention on Human Rights, and the question of whether the United Kingdom should enact a new Bill of Rights and (if so) how that might be done. It also includes a new section on discrimination on grounds of race or sex. The main provisions of the European Convention are recited in each of the following chapters on particular rights.

A note about the new Application for Judicial Review has been inserted in Chapter 32, though it was not found practicable to alter, in the light of the new Rules of Court, the many references to administrative law remedies throughout the book.

Devolution to Scotland and Wales is dealt with in the Appendix. It was not known at the time of writing how many of the Lords' amendments the Commons would accept, but the Scotland Act and the Wales Act, which received the Royal Assent on July 31, 1978 were enacted in substantially the form outlined in the Appendix. A note is added on the prospect for England, whose people are still not fully alive to devolution.

Topics revised or expanded include: collective responsibility of Ministers; defeat of a Government in the Commons and dissolution of Parliament; confidentiality among Ministers and ex-Ministers; insistence by the Lords on their amendments; the prospect for the

Second Chamber; the voting system; privileges of the Commons; the new method of nominating bishops; the changed method of electing the Conservative leader; the position of the armed forces when acting in aid of the civil power; investigation of complaints against the police under the Police Act 1976; the position of EEC nationals with regard to immigration; offences against the State; demonstrations and picketing; Commissioners for Local Administration and Health Service Commissioners; application of the doctrine of estoppel to public authorities, including the Crown; and Crown privilege in litigation. Constitutional developments in Northern Ireland have been briefly sketched where appropriate. It is no longer feasible to include a section on trade unions while treatment of the Commonwealth has been further reduced. A revised view is expressed concerning the authority of Judicial Committee precedents in the courts of independent Commonwealth countries which retain appeals to the Privy Council.

The report of *E. Coomes (Holdings) Ltd. v. Shields* [1978] I.R.L.R. 263 (C.A.) came too late to be mentioned in the text. A first glance at that case might give the impression that Lord Denning M.R. was giving the great weight of his authority to the doctrine of supremacy of Community law in British courts over the legislative power of Parliament; but that question was never in issue, and all three judges based their judgments on the interpretation of the Equal Pay Act 1970 and the Sex Discrimination Act 1975, advertent in different degrees to Article 119 of the Treaty of Rome as they are directed to do by the European Communities Act. Lord Denning was clearly speaking *obiter* when he said: "Suppose that the Parliament of the United Kingdom were to pass a statute inconsistent with Article 119: as, for instance, if the Equal Pay Act gave the right to equal pay only to unmarried women, I should have thought that a married woman could bring an action in the High Court to enforce the right to equal pay given to her by Article 119." His Lordship added a less sensational, but more immediately practical dictum, to the effect that Parliament probably intended industrial tribunals and the Employment Appeal Tribunal to apply Community law.

Nor was it possible to include any reference to the Suppression of Terrorism Act 1978, giving effect to the European Convention on the Suppression of Terrorism, under which it is no longer possible in proceedings under Extradition and Fugitive Offenders Acts or the Backing of Warrants (Republic of Ireland) Act to plead that the offence was of a political character in cases of violence ranging from murder to grievous bodily harm, offences involving explosives and fire-arms and offences in relation to aircraft. The courts are given jurisdiction in respect of certain offences committed outside the

United Kingdom. On the other hand a fugitive criminal may allege that his extradition is being sought with a view to trying or punishing him on account of his race, religion, nationality or political opinions, or that he might, if surrendered, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, religion, nationality or political opinions.

The Government has issued its long-awaited White Paper on *Reform of Section 2 of the Official Secrets Act 1911*, Cmnd. 7285 (1978), for discussion, before legislation, on replacement of "catch-all" section 2. Although it is based generally on the recommendations of the Franks Committee (1972), there will not yet be an Official Information Act imposing a duty on Government to disclose information on demand. Mere receipt of official information would no longer be a criminal offence. There would be no criminal sanctions for the disclosure of government economic information (except currency), or Cabinet or Cabinet Committee documents unless they fall into a specific category of protected information; a separate category of information would be created relating to security and intelligence, the test for criminal sanctions being "causing serious injury" rather than "prejudicial to the nation"; and protection would be extended to confidential information about private individuals and concerns, whether given to the Government or held by the Government from any source.

The Queen has delegated to the Governor-General of Canada the powers of accrediting Canadian diplomats, authorising declarations of war and signing treaties. The functions retained by Her Majesty are ceremonial only.

Among those who have kindly helped us with information or advice we should like specially to mention Professor L. Neville Brown and Mr. Bryn Perrins of Birmingham University and Mrs. Patricia Leopold of Reading University.

Although we severally undertook the preliminary work on particular chapters or sections, we have collaborated throughout on the text of this edition. The publishers revised the Tables of Contents, Cases and Statutes and the Index.

July 1978

O.H.P.
P.J.

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