

JUDICIAL REVIEW

by

THE RT HON. THE LORD CLYDE
and
DENIS J. EDWARDS



W. GREEN

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A Lord of Appeal in Ordinary

and

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given.

PREFACE

So much has already been published on the subject of judicial review that something of an apology may be required for the production of another volume. However, what we have endeavoured to present in this book is a systematic account of judicial review, primarily directed at the principles and practice of Scots law, but with some regard particularly to English law. Moreover, without attempting to embark upon a comparative study of the subject, we have also sought to find assistance from several other jurisdictions on particular issues. We have sought to set the subject of the work against a background not only of the origins and history of review in Scotland but also of its constitutional context. In that connection two recent developments may provide justification enough for a new book. These are the passing of the Human Rights Act 1998 and the creation of a Scottish Parliament under the Scotland Act 1998. These measures were still being debated when our work was in course of preparation and it is still too early to achieve a mature evaluation of their implications. But the consequences of each of these enactments will be of considerable significance for judicial review and we have tried to take account of each of them.

Co-authorships may give rise to a variety of problems. In our case we have been working in comparative isolation from each other, with one of us in London and the other in Hong Kong, corresponding by telephone, fax, and latterly e-mail. Inevitably the careful reader will be able to identify differences in style and language in the course of the text, but we have at least endeavoured to iron out any gross inconsistency in the substance of it.

Having aimed at a systematic study of the subject we have not attempted to include a comprehensive or exhaustive reference to all of the considerable case law on the subject. We have endeavoured to identify and illustrate the principles and provide something of a foundation for research or guidance. Our intention has been to provide a statement of the law which may be of use for professional practice as well as academic study. We have sought to state the law as at October 1, 1999.

We should record our gratitude to The Hon. Lord Reed, Christopher Himsworth and Robert McCreadie, Advocate, who read over the text in its nearly completed state on behalf of SULI. We have adopted nearly all of their many useful comments, while recognising that we retain responsibility for the substance of the text. We must also thank the staff of Greens for their work in processing our script and Professor George Gretton, the Director of SULI, for his patient supervision. Last, but not least, we must record our thanks to our respective wives, Ann and Kirstine, for their tolerating over a considerable period the distraction which the production of this volume has entailed.

Clyde
Denis Edwards

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