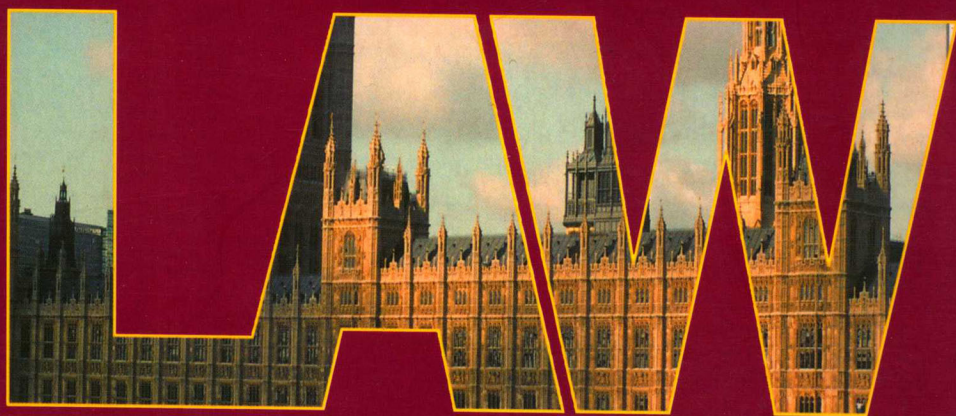


# CONSTITUTIONAL & ADMINISTRATIVE



SEVENTH EDITION

Hilaire Barnett

 **Routledge·Cavendish**  
Taylor & Francis Group



# **CONSTITUTIONAL & ADMINISTRATIVE LAW**

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# CONSTITUTIONAL & ADMINISTRATIVE LAW

This new edition of Barnett's *Constitutional & Administrative Law* is published against the background of continuing constitutional reform and change. Current reform plans include limiting the powers of the executive and making the executive more accountable. House of Lords reform remains on the agenda and a review of elections and voting systems is under way. The government also envisages a national debate on the constitution and citizen's rights and responsibilities – a debate which ultimately might lead to a written constitution.

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**Hilaire Barnett, BA, LL.M.**, formerly Senior Lecturer in Law, Queen Mary, University of London.



*For Matthew and Essie and George*

## ..... PREFACE .....

The United Kingdom's constitution, while of ancient origins, remains both dynamic and vibrant. As every public lawyer is only too aware, nowadays, the proper boundaries of constitutional and administrative law are both increasingly wide and subject to debate. In compiling any textbook on this subject, one of the principal preliminary tasks lies in defining the scope of material to be included and the approach to be adopted in relation to that material. The task of writing is made more problematic by the many and varied depths in which, and the means by which, the subject is taught both in the United Kingdom and overseas. Full time students, part time students, students on long distance learning programmes and students combining both constitutional and administrative law within a one year course, all have differing needs. The aim in this book has been to provide sufficient detail to meet all such needs in a user-friendly manner.

As emphasised in the introductory chapters, the study of the United Kingdom's constitutional and administrative law involves rather more than a learning of rules of law, and necessarily encompasses – over and above an understanding of legal rules – an understanding of history, government, politics and conventional practices which form the foundations of the contemporary constitution. As a result, any constitutional and administrative law textbook must incorporate sufficient information relating to such matters so as to enable students to view the constitution in its historical, political and conventional context. In this book, I have addressed the subject in this manner in order to provide a rounded, contextual explanation of the United Kingdom's constitution, which goes beyond pure law while also adequately covering the law.

As previously, the text is divided into seven main parts. Part I provides a general introduction to the scope of constitutional law, the sources of the constitution and the structure of the United Kingdom. In Part II, the fundamental concepts of the constitution are considered: the rule of law, separation of powers, the royal prerogative and parliamentary sovereignty. In Part III, the European Union and Community is discussed. The material is divided into two chapters. Chapter 7 considers the evolution, aims and structure of the Union and Community and the principal institutions and their respective powers. In Chapter 8, the sources of Community law and the relationship between national and Community law are discussed.

In Part IV, the structure of government is discussed, Chapter 9 considering the role of Prime Minister, Cabinet and the Civil Service, Chapter 10 discussing the concept of responsible government and ministerial responsibility and Chapter 11 the devolution of power to the Northern Ireland Assembly, Scottish Parliament and Welsh Assembly and local government.

Part V is devoted to the United Kingdom Parliament: Westminster. Chapter 12 discusses the electoral system, and Chapter 13 introduces the reader to the House of Commons. Chapters 14 and 15 are devoted to parliamentary procedures for the scrutiny of legislative proposals

and scrutiny of government administration. The House of Lords, its role, functions and the current reform proposals are considered in Chapter 16. Parliamentary privilege is discussed in Chapter 17.

Part VI focuses on the individual and the state, covering civil liberties, immigration and asylum, police powers and the protection of human rights. The subject of state security is discussed in Chapter 24. Part VII introduces administrative law. Judicial review of administrative action comprises two chapters, the first dealing with the role and scope of judicial review and procedural matters; the second analysing the grounds for judicial review. The complementary role, functions and powers of Commissioners for Administration are considered in Chapter 27.

Revising the text for a new edition always presents challenges. This edition is published in the shadow of the government's continuing constitutional reform programme. As outlined in *The Governance of Britain*, CM 7170, published in July 2007, the government is undertaking consultations on reform of the office of Attorney General, on limiting the powers of the executive under the prerogative and transferring some of these to Parliament, on further reform of the House of Lords, on a British Bill of Rights and in the longer term, possibly, the introduction of a written constitution.

The Treaty of Lisbon, signed by Member States of the European Union in 2007, represents a further major development. The provisions of the Treaty will only come into force once all Member States have ratified the Treaty according to their own constitutional procedures. If ratified the Treaty is due to come into force in January 2009, although some major provisions relating to the institutions of the EU will not come into effect until 2014. The prognosis for the Treaty was thrown into doubt by the result of the Irish referendum in which the people rejected the Treaty.

Details of the progress of these and other developments and proposals will be reported on the companion website to this text. My thanks to Fiona Kinnear and the team at Routledge-Cavendish, with whom as before it has been a pleasure to work. Particular thanks go to Robert Jago of the University of Surrey, Dr Adam Lazowski of the University of Westminster and Dr Prakash Shah and Mr Ian Yeats of Queen Mary, University of London for their generous help and support.

I would also like to thank all the students, past and present – both at home and, particularly, in the Far East – who over the years have deepened my understanding of the difficulties they face in studying such a rich, varied and essentially protean subject as that of the constitution of the United Kingdom. Family and all friends are again owed a large and unquantifiable debt of gratitude, not just for all their support, but also for allowing me the necessary time and solitude in which to update the text.

*Hilaire Barnett*  
June 2008

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