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Foreword

The jurisdiction of the Queen’s Bench judges to supervise the lawfulness of official action is one deeply rooted in history, as evidenced by the names of old prerogative writs. Some of the leading cases were decided long ago. But a glance at almost any page of the text of this new edition provides a powerful reminder of what any lawyer practising in this field instinctively knows, that a very large proportion of the authorities on which applications for judicial review now turn have been decided in the last 30 to 35 years or so. During that period, the field has seen intense activity, which continues apace.

This puts an immense premium on familiarity with the law as it develops. Knowledge of favourite authorities mastered in university or law school years ago is no substitute for knowledge of what has been decided more recently. But the proliferation of decisions and the ready availability of transcripts can all too easily reduce the law to a shapeless jumble of single instances and lead to the citation of decisions, which illustrate the application of a familiar rule and, in truth, decide nothing. So the abundant materials must, to present a coherent picture, be marshalled, dissected and ordered.

This is a task calling for learning, skill and experience, qualities which the contributors to this volume are superbly qualified to provide. The result is a work which will be of great value to all who are called upon to conduct litigation and make decisions in this very important field. It is, after all, important to remember, as Lord Hailsham of St Marylebone pointed out in his 1983 Hamlyn Lectures, that Thomas Fuller’s great injunction — “Be you never so high, the law is above you” — applies to judges no less than ministers.

Tom Bingham

House of Lords

5 October 2005

As indicated in the Preface, this Foreword is retained exactly as written by Lord Bingham in 2005, as a mark of respect for him.

Professor Helen Fenwick

10 October 2010

Preface

The 4th edition of this work, in which I have taken over the editorship from The Hon Mr Justice Supperstone, James Goudie QC and The Hon Mr Justice Walker, is concerned with the impact of new developments once they have more fully taken effect, rather than with their innovation. This edition comes at a point when the Human Rights Act 1988 has been in force for a decade; it takes account of significant developments under that Act affecting judicial review by introducing a new Chapter, **CHAPTER 9**, on proportionality. The chapter sets out to provide a thorough analysis of how proportionality works, examining the way that UK judges have handled it in judicial review cases. **CHAPTER 4**, explaining the impact of the Act on judicial review, has been considerably revised in this edition to consider a number of the most significant cases on the impact of the European Convention on Human Rights in this context. Similarly, **CHAPTER 21**, dealing with devolution, has been revised to take account of a range of developments in that area over the last five years, pointing out that the political sensitivities involved and the complexity of the devolution arrangements, have led to quite frequent resort to the courts by way of judicial review.

Developments in the law of judicial review in Scotland, and in European Union law as it affects judicial review, are described in **CHAPTERS 22** and **15** respectively. As regards the substantive and procedural law of judicial review in England and Wales, as described in other chapters of this edition, there have been substantial developments in a number of areas over the last five years. In this edition **CHAPTER 8** is concerned only with the principle of 'reasonableness', since proportionality receives extended treatment in new **CHAPTER 9**; **CHAPTER 8** focuses in particular on recent developments in the law relating to 'substantive legitimate expectations'. **CHAPTER 11** deals with the rules of natural justice, ending with consideration of the relevance of Article 6 ECHR in this context. In **CHAPTER 12**, dealing with bias, very recent developments relating to the tension between predisposition and predetermination are explored. As **CHAPTER 13**, considering other grounds of review, explains, the extent to which the courts envisaged review for mistake of fact as independent of review for unreasonableness has recently been clarified. **CHAPTER 19**, dealing with the early stages of procedure, discusses the recent changes to the traditional approach to disclosure which mean that it has become more flexible and less prescriptive.

The objective of this edition has been two-fold. First, it has been to ensure that

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all recent developments in judicial review have been covered. That I hope has been achieved with the assistance of our distinguished team of contributors to whom I am indebted for their efforts. This edition has welcomed a number of new contributors with whom it has been a pleasure to work. Secondly, it has been to set individual chapters in context with extensive cross-references to relevant discussion elsewhere in the book.

In this regard, I must of course acknowledge the debt this edition owes to the work of The Hon Mr Justice Supperstone, James Goudie QC and The Hon Mr Justice Walker in bringing the previous editions of this work to completion. For all the patience, encouragement and support received from the publishers, I am very grateful.

Lord Bingham sadly died as this work reached completion. We have included his Foreword exactly as it was written in 2005 for the previous edition, as a mark of respect for him.

The work endeavours to state the law as at 1 October 2010.

Professor Helen Fenwick

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Introduction – The Hon Mr Justice Supperstone; The Hon Mr Justice Walker

The Ambit of Judicial Review – The Hon Mr Justice Supperstone

Illegality: the problem of jurisdiction – Lord Justice Laws and Ben Hooper MA (Oxon), Barrister

Discretion and Duty: the Limits of Legality – Peter Wallington MA, LL.M., Barrister

Unreasonableness and Proportionality – The Hon Mr Justice Walker

Procedural Rules and Consultation – The Rt Hon Lord Justice Elias; Andrew Blake BA (Cantab), LL.M., Barrister

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Remedies: Mandatory, Prohibiting and Quashing Orders – The Hon Mr Justice Walker

Declarations, Injunctions and Money and Restitutionary Remedies – The Hon Mr Justice Walker

Devolution – Rt Hon Lord Justice Richards (Wales)

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