

T.J. Grout

# Public Law



**NATIONAL  
AWARD**



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# PUBLIC LAW

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# Preface

Although primarily aimed at the needs of students following the BEC National Level Public Law Option Module, this book may be used as an introductory text for those studying public or constitutional law at Higher BEC, professional or degree level. The text may also be usefully employed by those studying GCE Constitutional Law at Advanced Level.

The text attempts to introduce the reader to the institutions dominating the public law field and to explain to him the legal constraints on their activities, at the same time indicating the limitations of purely legal restrictions and pointing out the political and administrative restraints in operation.

In accordance with the BEC approach of student-centred learning, assignments are provided at the end of each chapter to carry the learning process beyond the confines of the book. A list of further reading is appended. Where possible the relevant law is presented as a grievance-remedial device and the latter part of the book seeks to stress the individual's relationship with the State. The "money theme" is emphasised by a chapter on government finance. Wherever possible the underlying legal rules are illustrated by reference to case law.

Readers are reminded that law is a living subject and that any textbook on a legal topic requires supplementing by reference to case law and statutory developments. *The Times* newspaper, in the absence of the availability of an adequate set of law reports, publishes a selection of recently-decided cases.

In the preparation of this book I would like to express my thanks to Mr. P. J. Pace LL M, Barrister, who suggested that I undertake the task, and to Mr. D. A. F. Sutherland of Macdonald & Evans without whose encouragement and limitless patience this work would never have been completed. I am also indebted to my wife, Mrs. C. E. Grout, who typed the manuscript of the book, and to whom the finished work is dedicated.

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# Legislation

## CHAPTER OBJECTIVES

After studying this chapter you should be able to:

- \* outline the processing of legislation through Parliament;
- \* distinguish between the different kinds of primary legislation;
- \* appreciate the various influences on the law-making process;
- \* understand the approaches adopted by judges in applying Acts of Parliament to individual cases; and
- \* outline the attempts made to devolve power to Wales and Scotland.

## INTRODUCTION

Legal rules are primarily derived from custom, case law and statute. To this list must now be added the laws of the European Communities, which are examined in the next chapter. Although it would be wrong to regard custom and case law, that is, common law, as totally static, the major method by which reform of the law is achieved is by the enactment of statutes. Acts of Parliament are of especial importance in the public law field as by far the greater part of government's powers is derived from statute or delegated legislation (which is dealt with in Chapter 3). Changes in the law giving new or more extensive powers to government are made by statute. Tax may not be levied nor public money spent without the authority of an Act of Parliament (*see* Chapter 9).

Statute law is then of vital importance in public law. In this chapter we will examine the way Parliament enacts statute law, the pressures on the law-making process, the legal status of statute law and, in outline, the way judges approach the important task of giving a meaning to statute law.

### Some terminology and definitions

Statute law is the law passed by Parliament in the form of Acts of Parliament. Parliament consists of three elements, the House of Commons, the House of Lords and the Queen. Draft Acts of Parliament are known as Bills and in order to become law must receive the assent of all the three elements making up Parliament (although in

certain circumstances the assent of the House of Lords is no longer needed). Bills are of various types.

### *Public Bills*

These are Bills of general effect which will affect the general law. Most public Bills are introduced by the government and thus the overwhelming majority of them will eventually become law.

### *Private Members' Bills*

These are public Bills introduced by backbench MPs. Many of these Bills fail to reach the statute book, often through lack of parliamentary time or government hostility.

### *Private Bills*

These are Bills sponsored by persons or bodies outside Parliament. They are usually only for the benefit of a particular group of persons or a particular area. They undergo a special and expensive parliamentary procedure described below.

### *Hybrid Bills*

These are Bills introduced as public Bills but which affect a particular private interest in a manner different from other private interests of the same class, for example, a Bill nationalising some, but not all, companies in a particular section of industry. Such Bills are never created hybrid as a matter of legislative intent, but, if found hybrid, a Bill must then follow a tortuous process which combines both public and private Bill procedure.

## **PUBLIC BILL PROCEDURE**

Bills, except those concerning finance, may be introduced into either House. However, for the purpose of the present description, it will be assumed that the Bill is first introduced in the House of Commons. A Bill is normally introduced by the minister responsible for it presenting a "dummy" of the Bill at the table of the House. A "dummy" is simply a piece of paper bearing the Bill's short title. This is read out by one of the clerks and the Bill is then deemed to have been read a first time. At the conclusion of this purely formal stage the Bill is then ordered to be printed and published and a date is fixed for its next stage, the second reading. Consolidated Fund Bills and Bills imposing taxation follow a different procedure, their introduction being based upon resolutions of the House (this is dealt with more fully in Chapter 9).

Following the first reading, the Bill is then sent to the Public Bill Office where it is scrutinised to see if there is any evidence that it is

hybrid in nature or whether it contains any financial clauses (which are subject to a special procedure).

### **Second reading**

This second stage in the passage of the Bill provides for debate on the principles of the proposed legislation. At the conclusion of the debate the Bill is either passed on to its next stage, the committee stage, or rejected. Rejection can arise either by a reasoned amendment explaining why the Bill should not be read a second time or by an amendment postponing the date of second reading, usually to a date when Parliament will not be sitting. Otherwise no amendment of the Bill's provisions is possible, although amendments may be suggested and the minister in charge of the Bill may then indicate his willingness (or otherwise) to consider particular changes in the Bill's provisions. At this stage any provision involving central government expenditure or taxation requires authorisation by a resolution of the House (which must be proposed by a minister).

Second readings can involve lengthy proceedings on the floor of the House, where the availability of time for legislative and other purposes is at a premium. Thus the Commons' Standing Orders (SOs) provide two devices for the removal of second readings to a committee.

#### *Scottish Grand Committee*

This committee considers the second reading stage of Bills relating exclusively to Scotland (so certified by the Speaker) if a minister moves the reference of the Bill to the committee, provided that fewer than ten members object. The committee consists of all those MPs who represent Scottish constituencies, together with ten to fifteen other MPs appointed so as to ensure that the committee's constitution reflects the balance of the parties in the House.

#### *Second reading committee*

This committee consists of between sixteen and fifty members and may consider the second reading of any public Bill referred to it. Standing Order 66 requires the reference to the committee to be moved by a minister who has given ten days' notice of the motion. The reference can only be made if fewer than twenty MPs object. The idea of this committee is to remove non-controversial legislation from the floor of the House but in practice the device is rarely used.

### **Committee stage**

At this stage the Bill is considered in detail, clause by clause if necessary. By SO 40 all Bills are sent to a standing committee except Consolidated Fund Bills (for the effect of these, *see* chapter 9),