Detailed Contents

Preface	XV
Guide to the Interactive eTextbook and Instructor eResource	xviii
Table of Cases	xxi
Table of Legislation UK and International Legislation	lv
Table of Statutory Instruments	lxxv
Table of Decisions, Directives, Regulations, Treaties and Conventions	lxxvii

PART 1	GENERAL INTRODUCTION	
1	Introduction: The Scope of Constitutional Law	3
	Introduction	4
	The Concept of Constitutionalism	5
	What is a Constitution?	6
	Defining Constitutions	7
	Classifying Constitutions	8
	The Constitution in Flux	14
	The British Islands	16
	The Islands and Europe	17
	The European Union	18
	The United Kingdom and the Commonwealth	18
	Further Reading	21
2	Sources of the Constitution	22
	Introduction	23
	Definitional Difficulties	23
	Legal Sources	25
	Non-Legal Sources of the Constitution	30
	Summary	39
	Further Reading	39

PART 2 FUNDAMENTAL CONSTITUTIONAL CONCEPTS

3	The Rule of Law	43
	Introduction	44
	Contrasting Attitudes to the Rule of Law	44
	Uncertainty in the Western Rule of Law	46
	The Rule of Law as Philosophical Doctrine	47
	The Rule of Law as Political Theory	49
	AV Dicey and the Rule of Law	57
	Summary	66
	Further Reading	66

4	The Separation of Powers	67
	Introduction	68
	Historical Development	68
	The Contemporary Doctrine	69
	Defining the Institutions	70
	The Office of Lord Chancellor	73
	The Supreme Court	74
	The Relationship between Executive and Legislature; Legislature and Judiciary;	
	Executive and Judiciary	75
	Summary	83
	Further Reading	86
5	The Royal Prerogative	87
	Introduction	88
	The Prerogative Defined	88
	The Prerogative before 1688	89
	The Prerogative Today	91
	The Prerogative Illustrated	92
	The Prerogative and Domestic Affairs	93
	Appointment of Prime Minister	93
	The Prerogative of Mercy	95
	Power to Establish Non-Statutory Agencies	96
	The Granting of Honours	97
	Regulation of the Civil Service	97
	Regulation of the Armed Forces	98
	The Prerogative and Foreign Affairs	98
	Judicial Control of the Prerogative	102
	Political Control of the Prerogative	106
	Reform of the Prerogative?	107
	Summary	107
	Further Reading	108
6	Parliamentary Sovereignty	109
	Introduction	110
	Legal and Political Sovereignty	110
	Sovereignty and Written Constitutions	111
	The Source of Sovereignty in the United Kingdom	112
	Dicey and Sovereignty	113
	Academic Arguments Against the Traditional Doctrine of Sovereignty	126
	Parliamentary Sovereignty and the European Union	129
	Constitutional Reform and Parliamentary Sovereignty	132
	Summary	136
	Further Reading	136
PART 3	THE EUROPEAN UNION	
7	Structures and Institutions of the European Union	141
	Introduction	1/2

141
142
143
147

viii

The Institutions of the European Union	152
Understanding Human Rights in Europe	166
Summary	169
Further Reading	170
European Union Law and National Law	171
Introduction	172
Sources of EU Law	172
Direct Applicability and Direct Effect	173
The Interaction between National Courts and the European Court of Justice	183
The Question of Legal Supremacy	185
The Reception of EU Law into the United Kingdom	187
Summary	194
Further Reading	194

PART 4 CENTRAL, REGIONAL AND LOCAL GOVERNMENT

8

9	Central Government	197
	Introduction	198
	The Structure of Government	198
	The Crown	198
	The Channels of Communication between Crown and Government	200
	The Privy Council	201
	Functions of the Privy Council	202
	The Office of Prime Minister	202
	The Civil Service	208
	Appointment and Management	209
	Constitutional Principles and the Civil Service	209
	The Civil Service Code	211
	The Government and the Courts	211
	Summary	218
	Further Reading	218
10	Responsible Government	219
	Introduction	220
	Collective Cabinet Responsibility	220
	Individual Ministerial Responsibility	223
	The Morality of Public Office	228
	Individual Responsibility for Personal Conduct	229
	Government Openness and Government Secrecy	236
	Standards of Public Service and the Openness of Government	236
	Summary	240
	Further Reading	240
11	Devolution and Local Government	241
	Introduction	242
	Northern Ireland	243
	Scotland	247
	Wales	251
	Regional Government for England?	254

London: The Greater London Authority and Mayor	255
Local Government: An Outline	258
Summary	267
Further Reading	267

PART 5	PARLIAMENT	
12	The Electoral System	271
	Introduction	272
	The Electoral Commission	272
	The Franchise	273
	Initiating the Election Process	279
	The Conduct of Election Campaigns	282
	Broadcasting and Elections	283
	Disputed Elections	284
	Political Party Funding	285
	Voting Systems	289
	Reform of the Voting System	291
	The Case For and Against Reforming the Simple Majority System	294
	Summary	296
	Further Reading	297
13	Introduction to the House of Commons	298
	Introduction	299
	The Functions of Parliament	299
	The Life of a Parliament	300
	Summoning, Adjournment, Prorogation and Dissolution	300
	The Organisation of Business	302
	Personnel of the House of Commons	302
	Government and Opposition	306
	Voting in the Commons	307
	Parliamentary Publications and Papers	308
	Summary	309
	Further Reading	309
14	The Legislative Process	310
	Introduction	311
	The United Kingdom Parliament and Devolution	311
	Primary Legislation	311
	Fast-track Legislation	317
	Private Members' Bills	318
	Delegated Legislation	320
	Scrutiny of Legislation by the House of Lords	324
	The Royal Assent	324
	Parliament and European Union (EU) Legislation	325
	Summary	325
	Further Reading	326
15	Scrutiny of the Executive	327
	Introduction	328
	Question Time	328

	Emergency Debates	332
	Daily Adjournment Debates	332
	Early Day Motions	332
	Select Committees of the House of Commons	333
	Scrutiny of National Finance	339
	Summary	343
	Further Reading	344
16	The House of Lords	345
	Introduction	346
	The Composition of the House of Lords	347
	General Debates	353
	The Scrutiny of Legislation	354
	The Amendment of Legislation	355
	The Balance of Power between the House of Lords and	
	the House of Commons	356
	Select Committees in the House of Lords	360
	Members' Interests in the House of Lords	361
	Reform of the House of Lords	362
	Summary	366
	Further Reading	366
17	Parliamentary Privilege	367
	Introduction	368
	The Principal Privileges	369
	The Current Scope and Role of Privilege	370
	Members' Interests and Members' Independence	379
	Publication of Parliamentary Proceedings	390
	Summary	393
	Further Reading	394

PART 6 THE INDIVIDUAL AND THE STATE

18	The Protection of Human Rights	397
	Introduction	398
	The Emergence of the Constitutional Protection of Rights	398
	PART A: THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND	
	FUNDAMENTATL FREEDOMS AND THE HUMAN RIGHTS ACT 1998	399
	The European Convention on Human Rights and	
	Fundamental Freedoms	399
	The Human Rights Act 1998	404
	Part B: THE SUBSTANTIVE RIGHTS	418
	Case Law	418
	Summary	448
	Further Reading	449
19	Freedom of Expression and Privacy	451
	Introduction	452
	Freedom of Expression	452
	Freedom of Expression and the Human Rights Act	452
	Restrictions on Freedom of Expression	454

	The Law of Confidence	467
	Privacy	469
	Summary	478
	Further Reading	479
20	Freedom of Association and Assembly	480
	Introduction	481
	Freedom of Association	481
	Freedom of Assembly	482
	Indirect Restrictions on Freedom of Assembly	483
	Public Order	486
	Summary	497
	Further Reading	497
21	The Police and Police Powers	498
	Introduction	499
	The Home Office	499
	Police and Crime Commissioners (PCCs)	500
	National Crime Agency (NCA)	502
	Police Powers in Relation to the Detection and Investigation	
	of Crime	507
	Alternatives to Prosecution	522
	Summary	523
	Further Reading	523
22	State Security	525
	Introduction	526
	The Security Services	527
	The Interception of Communications	534
	The Intelligence Services Commissioner and the Tribunal	536
	Parliamentary Scrutiny of the Security Services	537
	Official Secrets	538
	Emergency Powers	543
	Terrorism	544
	The Special Immigration Appeals Commission	554
	Closed Material Proceedings (CMP)	556
	Summary	557
	Further Reading	557
PART 7	ADMINISTRATIVE LAW	
23	Judicial Review: Introduction, Jurisdiction and Procedure	561
23	Judicial Review: Introduction, Jurisdiction and Procedure	00 I

Introduction	562
Judicial Review and the Human Rights Act 1998	564
The Growth in Public Administration	565
The Courts' Interpretation of Public Bodies	567
The Basis for Judicial Review	569
Standing to Apply for Judicial Review	571
The Existence of Alternative Remedies	574

xii

	A Matter of Public – Not Private – Law	574
	Limitations on Judicial Review	581
	Remedies	589
	Default Powers	591
	Summary	591
	Further Reading	592
24	Grounds for Judicial Review I: The Substantive Grounds for Judicial Review	593
	Introduction	594
	The Traditional Doctrine of Ultra Vires	594
	Illegality	597
	Irrationality: Wednesbury Unreasonableness	613
	Summary	619
	Further Reading	619
25	Grounds for Judicial Review II: Procedural Impropriety	621
	Introduction	622
	Procedural Impropriety under Statute	622
	Breach of Natural Justice	623
	Summary	642
	Further Reading	642
26	Commissioners for Administration: Ombudsmen	643
	Introduction	644
	Commissioners for Administration in the United Kingdom	644
	The Parliamentary Commissioner for Administration	645
	The Complaints Procedure	646
	The Problem of Accessibility and Public Awareness	651
	Reform of the Office of Parliamentary Commissioner	655
	Commissioners for Northern Ireland, Scotland and Wales The Health Service Commissioners	656 657
	Local Government Commissioners	657
	The Information Commissioner	659
		660
	The Legal Services Commissioner European Union Ombudsman	660
	-	660
	Summary Further Reading	661
27	Tribunals and Inquiries	662
- /	PART A: TRIBUNALS	663
	Introduction	663
	The Range of Tribunals	664
	Reforming the System	665
	Recent Reforms	666
	Summary	672
	Further Reading	672
	PART B: INQUIRIES	673
	Introduction	673
	Non-statutory Inquiries	674
	Statutory Inquiries	675
	- •	

The Inquiries Act 2005	676
Summary	681
Further Reading	682
Bibliography	683
Index	701

xiv