Detailed Contents

| Preface | | XVII |
|------------|---|------|
| Table of C | ases | xix |
| Table of U | K and International Legislation | xlvi |
| Table of S | tatutory Instruments | lxii |
| Table of D | ecisions, Directives, Regulations, Treaties and Conventions | lxiv |
| | | |
| PART 1 | GENERAL INTRODUCTION | 1 |
| 1 | Introducing Constitutional Law | 3 |
| | PART A: THE CONSTITUTION | 4 |
| | Introduction | 4 |
| | What is a Constitution? | 5 |
| | Defining Constitutions | , 6 |
| | Classifying Constitutions | 8 |
| | The Concept of Constitutionalism | 15 |
| | PART B: A VERY LITTLE HISTORY | 17 |
| | Introduction | 17 |
| | Early Origins: 1066–1500 | 17 |
| | 1500–1700 | 18 |
| | 1700-1901 | 20 |
| | 1902-Present | 22 |
| | PART C: THE UNITED KINGDOM | 24 |
| | Introduction | 24 |
| | The British Islands | 25 |
| | The Islands and Europe | 27 |
| | The United Kingdom and the Commonwealth | 27 |
| | Further Reading | 30 |
| 2 | Sources of the Constitution | 31 |
| - | Introduction | 31 |
| | Definitional Difficulties | 32 |
| | Legal Sources | 34 |
| | Non-Legal Sources of the Constitution | 40 |
| | Summary | 50 |
| | Further Reading | 51 |
| | , artifer reading | 31 |
| PART 2 | FUNDAMENTAL CONSTITUTIONAL CONCEPTS | 53 |
| 3 | The Rule of Law | 55 |
| 3 | Introduction | 56 |
| | Contrasting Attitudes to the Rule of Law | 57 |
| | Uncertainty in the Western Rule of Law | 58 |
| 19 | oncertainty in the western Rule of Law | 30 |

| | Natural Law and the Rule of Law | 59 |
|---|---|-----|
| | Social Contract Theory | 62 |
| | Law and Order: The Obligation to Obey Law | 64 |
| | Marxism and the Rule of Law | 67 |
| | Dicey and the Rule of Law | 68 |
| | Fuller and the Rule of Law | 72 |
| | Raz and the Rule of Law | 73 |
| | Dworkin and the Rule of Law | 74 |
| | Bingham and the Rule of Law | 75 |
| | The Rule of Law and the Legal System | 77 |
| | Compliance with International Obligations | 83 |
| | The Rule of Law in International Dimension | 84 |
| | Summary | 84 |
| | Further Reading | 85 |
| 4 | The Separation of Powers | 88 |
| | Introduction | 87 |
| | Historical Development | 87 |
| | The Contemporary Doctrine | 88 |
| | Defining the Institutions | 89 |
| | The Office of Lord Chancellor | 90 |
| | The Supreme Court | 91 |
| | The Relationship Between Executive and Legislature; Legislature | |
| | and Judiciary; Executive and Judiciary | 92 |
| | Summary | 103 |
| | Further Reading | 103 |
| 5 | The Royal Prerogative | 105 |
| | Introduction | 108 |
| | The Prerogative Defined | 108 |
| | The Prerogative Before 1688 | 107 |
| | The Prerogative Today | 109 |
| B | The Prerogative Illustrated | 111 |
| F | The Prerogative and Domestic Affairs | 112 |
| | Appointment of Prime Minister | 112 |
| | The Royal Assent | 114 |
| | The Granting of Honours | 114 |
| | Defence and National Security | 114 |
| | Issuing, Refusal or Withdrawal of Passports | 114 |
| | The Protective Jurisdiction of the Courts in Relation to Minors | 115 |
| | The Prerogative of Mercy | 115 |
| | Power to Establish Non-Statutory Agencies | 117 |
| | Regulation of the Civil Service | 117 |
| | Regulation of the Armed Forces | 118 |
| | Royal Fish and Swans and Treasure Trove | 119 |
| | The Prerogative and Foreign Affairs | 119 |
| | Judicial Control of the Prerogative | 123 |
| | Political Control of the Prerogative | 131 |
| | Reform of the Prerogative? | 131 |
| | Summary | 132 |
| | Further Reading | 132 |

| 6 | Parliamentary Sovereignty | 134 135 |
|--------|---|------------|
| | Introduction | 135 |
| | Legal and Political Sovereignty | 138 |
| | Sovereignty and Written Constitutions | 139 |
| | Dicey and Sovereignty | 153 |
| | Alternative Views on Sovereignty | 156 |
| | Parliamentary Sovereignty and the European Union during UK Membership Devolution and the Human Rights Act | 159 |
| | The Emergence of the 'Constitutional Statute' | 162 |
| | Shared, or Bi-Polar, Sovereignty? | 163 |
| | Summary | 167 |
| | Further Reading | 167 |
| | | |
| PART 3 | THE EUROPEAN UNION | 169 |
| 7 | Structures and Institutions of the European Union | 171 |
| | Introduction | 172 |
| | The European Union | 174 |
| | The Institutions of the European Union | 177 |
| | Sources of EU Law | 192 |
| | Direct Applicability and Direct Effect | 193 |
| | Understanding Human Rights in Europe | 204 |
| | Summary | 206 |
| | Further Reading | 207 |
| 8 | European Union Law and National Law | 208 |
| | Introduction | 208 |
| | The Interaction Between National Courts and the Court of Justice | |
| | of the EU (CJEU) | 209 |
| | The Question of Legal Supremacy | 212 |
| | The Reception of EU Law into the United Kingdom from 1973 to 2020 | 214 |
| | 'Brexit': The UK's Withdrawal from the EU | 219 |
| | The Brexit Process and Legislation | 222 |
| | Summary | 226 |
| | Further Reading | 227 |
| PART 4 | CENTRAL, REGIONAL AND LOCAL GOVERNMENT | 229 |
| 9 | Central Government | 231 |
| , | Introduction | 232 |
| | The Crown | 232 |
| | The Channels of Communication Between Crown and Government | 234 |
| | The Privy Council | 235 |
| | Functions of the Privy Council | 236 |
| | The Office of Prime Minister | 236 |
| | The Cabinet Office | 241 |
| | The Civil Service | 241 |
| | | 241 |
| | Appointment and Management Constitutional Principles and the Civil Service | 242 |
| | The Civil Service Code | 243 |
| | THE STATE OUT THE OUT | 444 |

| | The Government and the Courts | 246 |
|--------|---|-----|
| | Summary | 252 |
| | Further Reading | 252 |
| 10 | Ministerial Responsibility | 253 |
| | Introduction | 254 |
| | Collective Cabinet Responsibility | 254 |
| | Individual Ministerial Responsibility | 257 |
| | The Morality of Public Office | 262 |
| | Individual Responsibility for Personal Conduct | 263 |
| | Public Inquiries into the Conduct of Government | 266 |
| | Summary | 271 |
| | Further Reading | 272 |
| 11 | Devolution and Local Government | 273 |
| | Introduction | 274 |
| | Northern Ireland | 275 |
| | Scotland | 284 |
| | Wales | 292 |
| | Regulating Relations Between the Nations | 298 |
| | A Voice for England? | 298 |
| | London: The Greater London Authority and Mayor | 299 |
| | Local Government: An Outline | 302 |
| | Summary | 312 |
| | Further Reading | 312 |
| | | |
| PART 5 | PARLIAMENT | 315 |
| 12 | The Electoral System | 317 |
| | Introduction | 318 |
| | The Electoral Commission | 318 |
| | The Franchise | 319 |
| | Constituencies and the Boundary Commissions | 324 |
| | Initiating the Election Process | 326 |
| | The Conduct of Election Campaigns | 328 |
| | Broadcasting and Elections | 329 |
| | Disputed Elections | 330 |
| | Political Party Funding | 332 |
| | Voting Systems | 336 |
| | Reform of the Voting System | 338 |
| | The Case For and Against Reforming the Simple Majority System | 340 |
| | Reforming the Simple Majority System | 343 |
| | Summary | 344 |
| | Further Reading | 344 |
| 13 | Introduction to the House of Commons | 345 |
| | Introduction | 346 |
| | The Functions of Parliament | 346 |
| | The Life of a Parliament | 347 |
| | Summoning, Adjournment, Prorogation and Dissolution | 348 |
| | The Organisation of Business | 349 |

| | Personnel of the House of Commons | 350 |
|----|---|------------|
| | Members of Parliament | 352 |
| | Government and Opposition | 354 |
| | Voting in the Commons | 355 |
| | Parliamentary Publications and Papers | 356 |
| | Summary | 357 |
| | Further Reading | 357 |
| 14 | The Legislative Process | 358 |
| | Introduction | 359 |
| | The United Kingdom Parliament and Devolution | 359 |
| | Primary Legislation | 359 |
| | Fast-Track Legislation | 367 |
| | Delegated Legislation | 372 |
| | Scrutiny of Legislation by the House of Lords | 376 |
| | The Royal Assent | 378 |
| | Summary | 378 |
| | Further Reading | 379 |
| 15 | Scrutiny of the Executive | 380 |
| | Introduction | 381 |
| | Question Time | 381 |
| | Emergency Debates | 384 |
| | Daily Adjournment Debates | 385 |
| | Early Day Motions | 385 |
| | Select Committees of the House of Commons | 386 |
| | Government Openness and Government Secrecy | 392 |
| | The Freedom of Information Act 2000 (FoIA) | 393 |
| | Scrutiny of National Finance | 398 402 |
| | Summary Further Reading | 402 |
| | Further Reading | 402 |
| 16 | The House of Lords | 404 |
| | Introduction | 405 |
| | The Composition of the House of Lords | 406 |
| | General Debates | 412 413 |
| | The Scrutiny of Legislation The Amendment of Legislation | 413 |
| | The Balance of Power between the House of Lords and the House | 414 |
| | of Commons | 416 |
| | Select Committees in the House of Lords | 419 |
| | Members' Interests in the House of Lords | 421 |
| | Reform of the House of Lords | 421 |
| | The House of Lords Act 2014 and House of Lord (Expulsion and | |
| | Suspension) Act 2015 | 425 |
| | Summary | 426 |
| | Further Reading | 427 |
| 17 | Parliamentary Privilege | 428 |
| | Introduction | 429 |
| | The Principal Privileges | 431 |

| | The Current Scope and Role of Privilege | 431 |
|--------|---|-----|
| | Members' Interests and Members' independence | 444 |
| | Publication of Parliamentary Proceedings | 455 |
| | Summary | 458 |
| | Further Reading | 458 |
| | | |
| | | |
| PART 6 | THE INDIVIDUAL AND THE STATE | 459 |
| 18 | The Protection of Human Rights | 461 |
| | Introduction | 462 |
| | The Emergence of the Constitutional Protection of Rights | 462 |
| | PART A: THE EUROPEAN CONVENTION ON HUMAN RIGHTS AND | |
| | FUNDAMENTAL FREEDOMS | 463 |
| | PART B: THE HUMAN RIGHTS ACT 1998 | 469 |
| | Reform of the Human Rights Act 1998 | 488 |
| | Summary | 489 |
| | Further Reading | 490 |
| | | |
| 19 | Freedom of Expression and Privacy | 491 |
| | Introduction | 492 |
| | Freedom of Expression | 492 |
| | Freedom of Expression and the Human Rights Act | 492 |
| | Restrictions on Freedom of Expression | 495 |
| | Privacy | 509 |
| | GDPR and Data Protection Act 2018 | 517 |
| | Press Freedom and Privacy | 520 |
| | Summary | 522 |
| | Further Reading | 523 |
| | | |
| 20 | Freedom of Association and Assembly and Police Powers | 524 |
| | Introduction | 525 |
| | Freedom of Association | 525 |
| | Freedom of Assembly | 526 |
| | Indirect Restrictions on Freedom of Assembly | 527 |
| | Public Order ** | 531 |
| | Police Powers in Relation to the Detection and Investigation of Crime | 542 |
| | Summary | 556 |
| | Further Reading | 556 |
| | | |
| 21 | State Security | 558 |
| | Introduction | 559 |
| | The Security Services | 560 |
| | Interception of Communications and Communications Data | 567 |
| | The Investigatory Powers Act 2016 | 568 |
| | The Investigatory Powers Tribunal | 569 |
| | Parliamentary Scrutiny of the Security Services | 570 |
| | Official Secrets | 571 |
| | Emergency Powers | 577 |
| | Terrorism | 578 |

| | The Special Immigration Appeals Commission | 597 |
|--------|--|-----|
| | Summary | 600 |
| | Further Reading | 601 |
| | | |
| PART 7 | JUDGES AND THE LEGAL SYSTEM | 603 |
| 22 | Judges and the English Legal System | 605 |
| | Introduction | 606 |
| | PART A: THE JUDICIARY | 607 |
| | The Constitutional Role of Judges | 607 |
| | Judicial Functions | 610 |
| | Judicial Independence | 611 |
| | A Diverse and Representative Judiciary? | 616 |
| | Judicial Accountability | 619 |
| | PART B: THE ENGLISH LEGAL SYSTEM | 622 |
| | The Principle of Open Justice | 622 |
| | Categories of Law | 626 |
| | Developing the Law | 627 |
| | Statutory Interpretation: An Introduction | 628 |
| | The Doctrine of Precedent | 632 |
| | Summary | 637 |
| | Further Reading | 637 |
| | | |
| PART 8 | ADMINISTRATIVE LAW | 639 |
| 23 | Judicial Review: Introduction, Jurisdiction and Procedure | 641 |
| | Introduction | 642 |
| | Judicial Review and the Human Rights Act 1998 | 645 |
| | The Growth in Public Administration | 646 |
| | The Courts' Interpretation of Public Bodies | 648 |
| | The Basis for Judicial Review | 651 |
| | Standing to Apply for Judicial Review | 653 |
| | The Existence of Alternative Remedies | 658 |
| | A Matter of Public – Not Private – Law | 658 |
| | Limitations on Judicial Review | 665 |
| | Remedies | 676 |
| | Default Powers | 678 |
| | Summary | 678 |
| | Further Reading | 679 |
| 24 | Grounds for Judicial Review I: The Substantive Grounds for Judicial Review | 681 |
| | Introduction | 681 |
| | The Traditional Doctrine of <i>Ultra Vires</i> | 682 |
| | The Constitutional Basis for Judicial Review | 684 |
| | Illegality | 686 |
| | Irrationality: Wednesbury Unreasonableness | 705 |
| | The Doctrine of Proportionality | 708 |
| | Summary | 716 |
| | Further Reading | 717 |

| | 25 | Grounds for Judicial Review II: Procedural Impropriety | 718 |
|-------|-------|--|-----|
| | | Introduction | 719 |
| | | Procedural Impropriety under Statute | 719 |
| | | Breach of Natural Justice | 721 |
| | | The Rule against Bias: Nemo Iudex in Causa Sua | 724 |
| | | The Right to a Fair Hearing: Audi Alteram Partem | 728 |
| | | The Duty to Give Reasons | 734 |
| | | The Concept of Legitimate Expectations | 739 |
| | | Summary | 744 |
| | | Further Reading | 744 |
| | 26 | Tribunals and Inquiries | 745 |
| | | PART A: TRIBUNALS | 746 |
| | | Introduction | 746 |
| | | The Range of Tribunals | 747 |
| | | Reforming the System | 748 |
| | | Summary | 756 |
| | | Further Reading | 756 |
| | | PART B: INQUIRIES | 757 |
| | | Introduction | 757 |
| | | Non-Statutory Inquiries | 758 |
| | | Statutory Inquiries | 759 |
| | | The Inquiries Act 2005 | 760 |
| | | Summary | 766 |
| | | Further Reading | 766 |
| | 27 | Commissioners for Administration: Ombudsmen | 767 |
| | | Introduction | 768 |
| | | Commissioners for Administration in the United Kingdom | 768 |
| | | The Parliamentary and Health Services Ombudsman | 769 |
| | | Ombudsmen for Northern Ireland, Scotland and Wales | 785 |
| | | Local Government Ombudsmen | 786 |
| | | The Information Commissioner | 788 |
| | | The Legal Services Ombudsman | 788 |
| | | The Housing Ombudsman | 789 |
| | | Reforming the Ombudsman Service | 789 |
| | | Summary | 789 |
| | | Further Reading | 790 |
| | ograp | phy | 791 |
| Index | X | | 813 |