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978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

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British Government and the Constitution

The first five editions of this well-established book were written by Colin Turpin. This new edition has been prepared jointly by Colin Turpin and Adam Tomkins. This edition sees a major restructuring of the material, as well as a complete updating. New developments such as the Constitutional Reform Act 2005 and recent case law concerning the sovereignty of Parliament, the Human Rights Act, counter-terrorism and protests against the Iraq War, among other matters, are extracted and analysed. While it includes extensive material and commentary on contemporary constitutional reform, Turpin and Tomkins is a book that covers the historical traditions and the continuity of the British constitution as well as the current tide of change. All the chapters contain detailed suggestions for further reading. Designed principally for law students, the book includes substantial extracts from parliamentary and other political sources, as well as from legislation and case law. As such it is essential reading also for politics and government students. Much of the material has been reworked and with its fresh design the book provides a detailed yet accessible account of the British constitution at a fascinating moment in its ongoing development.

Colin Turpin is a Fellow of Clare College and Reader Emeritus in Public Law at the University of Cambridge.

Adam Tomkins is the John Millar Professor of Public Law at the University of Glasgow. His previous books include *Public Law* (2003), *Our Republican Constitution* (2005) and *European Union Law: Text and Materials* (2006).

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British Government and the Constitution

Text and Materials

Sixth edition

COLIN TURPIN

Fellow of Clare College and Reader Emeritus in Public Law

University of Cambridge

ADAM TOMKINS

John Millar Professor of Public Law

University of Glasgow



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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

‘Government without a Constitution is power without a right’

Thomas Paine, *Rights of Man* (1792)

To Monique, our sons and grandchildren **CCT**

To Lauren and Oliver **AT**

Contents

| | |
|---|------------------|
| Preface | <i>Page</i> xvii |
| Acknowledgements | xx |
| Abbreviations | xxiii |
| Table of Cases | xxv |
| Table of Statutes | xlii |
| Table of European Treaties | liii |
| | |
| Part I Constitution, state and beyond | |
| 1 The British constitutional order | 3 |
| 1 Nature of the British constitution | 3 |
| (a) Fundamentals and fluidity | 6 |
| (b) Constitutional safeguards | 8 |
| 2 The constitution and the state | 9 |
| 3 Constitutional law beyond the state | 16 |
| 4 Constitutional reform | 21 |
| (a) No overall agenda? The coherence of constitutional reform | 24 |
| (b) Constitutional continuity | 28 |
| (c) Fate and future of constitutional reform | 28 |
| (d) A written constitution? | 29 |
| | |
| 2 The ideas of the constitution | 33 |
| 1 Democracy and the constitution | 34 |
| (a) Representative democracy | 35 |
| (b) Participatory democracy | 37 |
| 2 Parliamentary sovereignty | 40 |
| (a) Diceyan orthodoxy | 42 |
| (b) Territorial extent of sovereignty: post-colonial independence | 47 |
| (c) Continuing sovereignty and the ‘new view’ | 52 |
| (d) Sovereignty reappraised: three contemporary challenges | 61 |
| (i) Membership of the European Union | 61 |
| (ii) Incorporation of fundamental rights | 62 |
| (iii) Challenge of common law radicalism | 66 |
| (e) Conclusions | 74 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

x

Contents

| | | |
|----------|---|------------|
| 3 | The rule of law | 76 |
| | (a) Government under law | 77 |
| | (b) Equality before the law | 88 |
| | (c) Discretion and the rule of law | 94 |
| | (d) The rule of law: wider conceptions? | 98 |
| | (e) The rule of law and parliamentary sovereignty | 102 |
| 4 | Separation of powers | 103 |
| | (a) A political ideal or a legal principle? | 106 |
| | (b) The courts in the constitution: judicial review and judicial law-making | 112 |
| | (c) Judicial independence and the position of the Lord Chancellor | 115 |
| | (d) The courts and Parliament | 124 |
| | (e) Parliament and the executive | 130 |
| 5 | Accountability | 132 |
| | (a) Access to information and reasons | 135 |
| 3 | Constitutional sources | 138 |
| 1 | Legal rules | 138 |
| | (a) Statute | 139 |
| | (b) Subordinate legislation | 145 |
| | (c) Common law | 146 |
| | (i) Developing constitutional common law: a case study | 150 |
| 2 | Conventions | 156 |
| | (a) How do conventions arise? | 161 |
| | (b) Doubtful conventions | 163 |
| | (i) Going to war | 163 |
| | (ii) Treaties: the Ponsonby Rule | 164 |
| | (iii) Law Officers' advice | 165 |
| | (c) Conventions and laws | 165 |
| | (d) Patriation of the Canadian constitution: a case study | 169 |
| 4 | Devolution and the structure of the United Kingdom | 180 |
| 1 | The United Kingdom as a union state | 180 |
| | (a) Federalism | 181 |
| | (b) Devolution | 187 |
| 2 | The countries of the United Kingdom | 192 |
| | (a) England | 193 |
| | (b) Scotland | 195 |
| | (i) Scotland in the Union | 195 |
| | (ii) Government of Scotland before devolution | 201 |
| | (iii) Devolution under the Scotland Act 1998 | 202 |
| | (iv) Parliament and the devolution settlement | 212 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

| | | |
|----------|---|------------|
| (v) | Conclusion: how settled is the current Scottish settlement? | 216 |
| (c) | Wales | 219 |
| (i) | Devolution under the Government of Wales Act 1998 | 220 |
| (ii) | Dissatisfaction with the 1998 scheme for Wales | 222 |
| (iii) | Devolution under the Government of Wales Act 2006 | 225 |
| (d) | Northern Ireland | 228 |
| (i) | Devolved government 1921–72 | 229 |
| (ii) | Direct rule | 232 |
| (iii) | Renewed search for a settlement | 233 |
| (iv) | Devolution under the Northern Ireland Act 1998 | 237 |
| (v) | Human rights and equality | 240 |
| (vi) | North-South ministerial council and British-Irish council | 242 |
| (e) | Devolution: conclusions | 243 |
| 3 | Local government | 244 |
| (a) | Structure of local government | 247 |
| (b) | Functions of local authorities | 252 |
| (i) | Powers | 254 |
| (ii) | By-laws | 256 |
| (iii) | Ultra vires and judicial control | 256 |
| (c) | Central-local government relations | 259 |
| 5 | The European dimensions | 264 |
| 1 | European Convention on Human Rights | 264 |
| (a) | European Court of Human Rights and its impact on British constitutional law | 266 |
| (b) | Domestic influence of the ECHR | 270 |
| (i) | Before the Human Rights Act 1998 | 270 |
| (ii) | Human Rights Act 1998: its general scheme | 271 |
| (iii) | Impact thus far of the Human Rights Act 1998 | 273 |
| 2 | The European Union | 278 |
| (a) | Nature and development of the European Union | 278 |
| (b) | Institutional structure and law-making powers | 286 |
| (i) | Institutions and bodies of the European Union | 286 |
| (ii) | Law-making in the European Union | 301 |
| (c) | Principles of European law: supremacy, direct and indirect effect and state liability | 305 |
| (i) | Supremacy | 305 |
| (ii) | Direct and indirect effect | 308 |
| (iii) | State liability | 312 |
| (d) | EU law in the United Kingdom | 315 |
| (i) | Impact of EU membership on government and Parliament | 315 |
| (ii) | European Communities Act 1972 | 318 |
| (iii) | Impact of EU membership on questions of public law | 321 |

Part II Government

| | | |
|----------|--|------------|
| 6 | Crown and government | 345 |
| 1 | The Crown | 345 |
| | (a) Privileges and immunities of the Crown | 348 |
| 2 | Monarchy and the prerogative | 354 |
| | (a) Appointment of the Prime Minister | 356 |
| | (b) Dismissal of ministers | 360 |
| | (c) Dissolution of Parliament | 362 |
| 3 | Central government | 366 |
| | (a) Ministers | 366 |
| | (i) Conduct of ministers | 373 |
| | (ii) Ministerial solidarity | 376 |
| | (b) The Prime Minister | 385 |
| | (i) The Prime Minister's Office | 390 |
| | (c) The Cabinet | 391 |
| | (i) Neither 'Prime Ministerial' nor 'Cabinet' government: the 'core executive' thesis | 397 |
| | (d) Ministerial committees of the Cabinet | 400 |
| | (e) Government departments | 406 |
| | (i) 'Next Steps': executive agencies | 409 |
| | (f) Non-departmental public bodies | 411 |
| | (i) Control and accountability | 414 |
| | (g) The civil service | 416 |
| | (i) The civil service: principles and conduct | 418 |
| | (ii) Civil servants and ministers | 423 |
| | (iii) Special advisers | 426 |
| 7 | The powers of government | 428 |
| 1 | Executive power | 429 |
| 2 | The government's powers | 433 |
| | (a) Parliamentary legislation | 434 |
| | (i) Making of government bills | 435 |
| | (ii) Implementation and effectiveness of legislation | 441 |
| | (b) Delegated legislation | 445 |
| | (i) Statutory instruments | 451 |
| | (c) Prerogative legislation | 459 |
| | (d) Executive powers | 461 |
| | (i) Prerogative powers | 464 |
| | (ii) Nature of the prerogative | 467 |
| | (iii) Prerogative and statutory powers | 469 |
| | (e) Administrative rule-making (quasi-legislation) | 473 |

| | | |
|--------------------------------|--|------------|
| | (f) Guidance and codes of practice | 479 |
| | (g) Voluntary agreement and self-regulation | 484 |
| Part III Accountability | | |
| 8 | Parties, groups and the people | 493 |
| 1 | The people in the constitution | 494 |
| 2 | Elections and the mandate | 495 |
| | (a) Review of constituency boundaries | 497 |
| | (b) Fairness of the contest | 507 |
| | (i) Election deposit | 507 |
| | (ii) Election expenditure | 508 |
| | (iii) The media | 510 |
| | (c) The electoral system | 514 |
| | (i) Some varieties of proportional representation | 521 |
| | (ii) The Jenkins Report | 524 |
| | (d) The mandate | 526 |
| 3 | The people and government | 531 |
| | (a) Referendums | 533 |
| 4 | Political parties | 539 |
| | (a) Selection of candidates | 540 |
| | (b) Party policy | 541 |
| | (c) Financial resources | 544 |
| 5 | Pressure groups | 546 |
| 6 | Open government | 556 |
| | (a) Code of Practice | 559 |
| | (b) Freedom of Information Act 2000 | 560 |
| 9 | Parliament and the responsibility of government | 565 |
| 1 | Introduction: responsible government | 565 |
| 2 | Individual ministerial responsibility | 571 |
| | (a) A convention of resignation? | 574 |
| | (b) Responsibility of civil servants | 584 |
| 3 | The power of Parliament | 589 |
| | (a) Opposition | 591 |
| | (b) Backbenchers | 599 |
| | (c) The House | 603 |
| 4 | Control and scrutiny | 604 |
| | (a) Policy and administration | 606 |
| | (i) Debates | 606 |
| | (ii) Questions | 608 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xiv

Contents

| | | |
|-----------|--|------------|
| | (iii) Select committees | 613 |
| | (iv) Parliamentary Ombudsman | 623 |
| | (b) Legislation | 630 |
| | (i) Primary legislation | 630 |
| | (ii) Delegated legislation | 635 |
| | (c) Finance | 637 |
| | (i) Public Accounts Committee | 640 |
| 5 | The House of Lords | 642 |
| | (a) Reform | 648 |
| 10 | The courts: judicial review and liability | 654 |
| 1 | Nature and foundations of judicial review | 654 |
| 2 | Grounds of review | 660 |
| | (a) Illegality | 661 |
| | (b) Irrationality | 667 |
| | (c) Proportionality | 675 |
| | (d) Procedural impropriety and unfairness | 682 |
| | (i) Bias | 682 |
| | (ii) Duty to act fairly | 685 |
| 3 | Scope and limits of judicial review | 691 |
| | (a) Scope of judicial review | 691 |
| | (b) Standing | 692 |
| | (c) Ouster clauses | 695 |
| | (d) Judicial review of prerogative powers | 696 |
| 4 | Conclusion: the advance of judicial review | 700 |
| 5 | Liability of the Crown | 702 |
| | (a) Contractual liability | 705 |
| | (b) Tortious liability | 707 |
| | (c) Liability in restitution | 709 |
| 6 | Liability of public authorities | 710 |
| | (a) Contractual liability | 710 |
| | (b) Tortious liability | 711 |
| 7 | Tribunals | 716 |
| | Part IV Liberty | |
| 11 | Liberty and the Constitution | 727 |
| 1 | Sources of protection | 728 |
| | (a) Common law | 728 |
| | (b) Statute | 732 |
| | (c) Statutory interpretation | 733 |
| | (d) Delegated legislation | 737 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xv

Contents

| | | |
|---|--|-----|
| 2 | Liberty and the Human Rights Act 1998 | 739 |
| | (a) The Convention rights | 740 |
| | (i) Absolute and qualified rights | 744 |
| | (ii) Positive and negative obligations | 745 |
| | (iii) Scope of protection | 750 |
| | (b) Convention rights and national security: a case study | 754 |
| | (i) National security before the Human Rights Act 1998 | 756 |
| | (ii) National security after the Human Rights Act 1998 | 762 |
| | (iii) Analysis and subsequent events | 768 |
| 3 | Freedom of expression | 772 |
| | (a) Freedom of expression and democracy | 773 |
| | (b) The ‘ <i>Spycatcher</i> ’ cases | 777 |
| | (c) Freedom of expression as a common law ‘constitutional right’ | 780 |
| | (d) Freedom of expression and statute | 782 |
| | (e) Freedom of expression and the Human Rights Act 1998 | 786 |
| | (f) Conflict of rights | 793 |
| 4 | Freedom of assembly | 796 |
| | (a) Common law: the classic authorities | 798 |
| | (b) Common law preventive powers and breach of the peace | 804 |
| | (c) Freedom of assembly as a ‘constitutional right’ | 810 |
| | (d) Statutory restrictions on freedom of assembly | 811 |
| | Index | 819 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

Preface

This book is concerned with the organisation, powers and accountability of government in the British constitution. It has been written from a lawyer's perspective, modified by an awareness that the British constitution is far from being exclusively the handiwork of lawyers. Judges and other practitioners of the discipline of law have made a notable contribution to it, but so have political philosophers, controversialists of many hues, party organisations, peers, rebels in and out of Parliament and the legions of special interests. Yet lawyers sometimes pretend that the constitution is theirs, teaching and writing about it in myopic isolation.

We have written this book in the conviction that the law student will arrive at an incomplete and fragmentary view of the constitution unless encouraged to take account of ideas, practices and relationships that occur outside the strict limits of the *law* of the constitution. The law student has much to learn from writers and practitioners in politics, government and public administration, just as students of these subjects can enrich their studies by learning something of the values, constraints and possibilities of the law. If asked a question, say, about the power of Parliament, a lawyer and a political scientist may give very different answers. But they are describing the same institution, and for a full understanding of its place in the constitution each of them needs to take the other's perspective into account.

We have set out in this book to present essential features of British government and the constitution in a way that offers a wider range of views to students of law and we hope also to students of politics and government. The materials in the book are taken not only from law reports, statutes and legal works but from a variety of official and unofficial publications and from the writings of political scientists, parliamentarians and other commentators on the constitution and the practice of government. We have tried in this way to show the variegated texture of a constitution which consists not only of rules – legal, quasi-legal and customary or conventional – but of ideas, habits of mind and shared understandings: a constitution continually reshaped in the daily practice of politics and administration as well as by the deliberate law-making of legislators and judges.

The student of the British constitution soon finds that there are present in it

two opposite principles: a principle of change and a principle of continuity. Until quite recent times, studies of the constitution generally over-emphasised the latter principle, presenting the constitution as something stately and settled, secure in its foundations, strong in its continuity and consistent in its slow evolution. By contrast, a good deal of the more recent literature focuses overly on the changing constitution at the expense of the continuing, the historical and the traditional. For all the reform we have seen to the British constitution in the last thirty years or so, there is much that remains of the old order (see further chapter 1). The ‘venerable constitution’ is still, in all sorts of respects, an apt description. What is needed – and what we hope we have provided here – is a balanced account that addresses both the elements of change and continuity that we find at the heart of the British constitution today.

The first five editions of this book were written by Colin Turpin. This is the first edition to have been jointly prepared by Colin Turpin and Adam Tomkins. We have both worked on each of the chapters and take joint responsibility for them all. Readers of earlier editions will find much that is familiar here but, for this edition, the book has been extensively revised and reworked, as well as updated. Some chapters are new to this edition, others have been substantially restructured, and the order in which the chapters appear has been altered to make clearer sense, we hope, of today’s constitutional law and practice. The book is divided into four parts. Part I (chapters 1–5) deals with the fundamental ideas that govern the constitution (democracy, sovereignty, the rule of law and so forth) and with the multiplicity of sources, both domestic and European, that now contribute to it. In this Part, too, readers will find consideration of constitutional reform and of the structures of devolution that have transformed British government, at least in some parts of the United Kingdom, since 1998. Part II (chapters 6–7) is concerned with central government, with its institutions, personnel and powers. Part III (chapters 8–10) focuses on the various ways in which British government is subject to forms of accountability. In this Part we consider, in turn, the relative roles of the people, of Parliament and of the courts of law in this regard. When we come to the courts (in chapter 10) both the law of judicial review and the principles of liability are discussed. Part IV (chapter 11) considers the extent to which, and the means by which, the British constitution seeks to secure a degree of personal liberty. This is an element of the constitution that has been sorely tested in recent years in the face of a series of apparent threats to national and international security. We consider in some detail the ways in which British constitutional law has responded to this challenge.

Colin Turpin gives especial thanks to Monique for her constant encouragement and practical help with work on the book. Once again he is grateful to the Master and Fellows of Clare College for collective, friendly stimulus and to the students whose enthusiasm, alertness and scepticism make the whole enterprise of teaching and writing about law exciting and worthwhile.

Adam Tomkins thanks his colleagues Gavin Anderson, Aileen McHarg and

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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xix

Preface

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We would both like to acknowledge what a pleasure it has been to work with our publishers at Cambridge University Press. In this regard we are particularly grateful to Finola O'Sullivan, Sinéad Moloney, Elizabeth Davison and Wendy Gater.

We have endeavoured to state the legal and constitutional position as at 1 November 2006, although we have been able to take into account subsequent developments in one or two instances.

Colin Turpin
Adam Tomkins

December 2006

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Frontmatter

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Colin Turpin and Adam Tomkins

Frontmatter

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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

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Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

Abbreviations

| | |
|----------|--|
| ACAS | Advisory, Conciliation and Arbitration Service |
| AMS | additional member system |
| AV | alternative vote |
| BJ Pol S | British Journal of Political Science |
| CFSP | common foreign and security policy |
| CLJ | Cambridge Law Journal |
| CLP | Current Legal Problems |
| Cm | Command Paper (1986–present) |
| Cmd | Command Paper (1919–1956) |
| CML Rev | Common Market Law Review |
| Cmnd | Command Paper (1956–1986) |
| COREPER | Committee of Permanent Representatives |
| CPAG | Child Poverty Action Group |
| Crim LR | Criminal Law Review |
| DUP | Democratic Unionist Party |
| EC | European Community |
| ECB | European Central Bank |
| ECHR | European Convention on Human Rights |
| ECJ | European Court of Justice |
| EEC | European Economic Community |
| EHLRLR | European Human Rights Law Review |
| EL Rev | European Law Review |
| EU | European Union |
| FPTP | first past the post |
| HC | House of Commons Paper |
| HC Deb | House of Commons Debates |
| HL | House of Lords Paper |
| HL Deb | House of Lords Debates |
| HRA | Human Rights Act 1998 |
| ICLQ | International and Comparative Law Quarterly |
| IPPR | Institute for Public Policy Research |
| JHA | justice and home affairs |
| JLS | Journal of Law and Society |

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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxiv

Abbreviations

| | |
|---------|--|
| JMC | Joint Ministerial Committee |
| JR | Judicial Review |
| JUSTICE | British section of International Commission of Jurists |
| LQR | Law Quarterly Review |
| LS | Legal Studies |
| MEP | Member of the European Parliament |
| MLR | Modern Law Review |
| MSP | Member of the Scottish Parliament |
| NDPB | non-departmental public bodies |
| NEDC | National Economic Development Council |
| NILQ | Northern Ireland Legal Quarterly |
| NLJ | New Law Journal |
| OJLS | Oxford Journal of Legal Studies |
| PL | Public Law |
| PPB | party political broadcast |
| PR | proportional representation |
| Pub Adm | Public Administration |
| QMV | qualified majority voting |
| QUANGO | quasi-autonomous non-governmental organisation |
| SDLP | Social Democratic and Labour Party |
| SIAC | Special Immigration Appeals Commission |
| Stat LR | Statute Law Review |
| STV | single transferable vote |
| TEU | Treaty on European Union |
| UUP | Ulster Unionist Party |

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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

Table of Cases

| | |
|--|------------------------------------|
| A v B plc [2002] EWCA Civ 337, [2003] QB 195..... | 754 |
| A v Head Teacher and Governors of Lord Grey School [2004] EWCA Civ 382, [2004] 4 All ER 628 | 11 |
| A v Secretary of State for the Home Department [2004] UKHL 56, [2005] 2 AC 68..... | 7, 274, 277, 680, 755, 756, 762–72 |
| A v Secretary of State for the Home Department (No 2) [2005] UKHL 71, [2006] 2 AC 221..... | 731 |
| A v United Kingdom (1998) 27 EHRR 611..... | 747 |
| Abbasi v Secretary of State for Foreign and Commonwealth Affairs [2002] EWCA Civ 1598 | 112 |
| Accession to the ECHR, Opinion 2/94 [1996] ECR I-1759 | 284 |
| Adams v Naylor [1946] AC 543 | 707 |
| Adams v Scottish Ministers 2004 SC 665 | 206–8, 211, 256, 666 |
| Adegenro v Akintola [1963] AC 614 | 360–1 |
| Agricultural Training Board v Aylesbury Mushrooms Ltd [1972] 1 WLR 190..... | 452 |
| Air Canada v Secretary of State for Trade (No 2) [1983] 2 AC 394..... | 150 |
| Airedale NHS Trust v Bland [1993] AC 789 | 114 |
| Akumah v Hackney LBC [2005] UKHL 17, [2005] 2 All ER 148 | 254 |
| Albert (Prince) v Strange (1849) 1 H & TW 1 | 152 |
| Albert v Lavin [1982] AC 546 | 805, 807, 808 |
| Amministrazione delle Finanze dello Stato v Simmenthal SpA, Case 106/77 [1978] ECR 629 | 306–8 |
| Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147..... | 415, 443, 661, 695 |
| Anufrijeva v Southwark LBC [2004] QB 1124..... | 276 |
| Appleby v United Kingdom (2003) 37 EHRR 38..... | 815–16 |
| Argyll (Duchess of) v Duke of Argyll [1967] Ch 302..... | 152 |
| Arlidge v Islington Corpn [1909] 2 KB 127 | 256 |
| Ashworth Hospital Authority v MGN Ltd [2002] UKHL 29, [2002] 1 WLR 2033 | 786 |
| Associated Provincial Picture Houses Ltd v Wednesbury Corpn [1948] 1 KB 223 | 256, 504, 655, 667, 782 |
| Aston Cantlow Parochial Church Council v Wallbank [2003] UKHL 37, [2004] 1 AC..... | 546, 750, 751 |
| Attorney General v De Keyser's Royal Hotel Ltd [1920] AC 508..... | 469–70, 472, 697 |
| Attorney General v English [1983] 1 AC 116..... | 783, 784 |
| Attorney General v Fulham Corpn [1921] 1 Ch 440..... | 256 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxvi

Table of Cases

| | |
|---|-----------------------------|
| Attorney General v Guardian Newspapers Ltd [1987] 1 WLR 1248 | 271, 777–8, 780 |
| Attorney General v Guardian Newspapers Ltd [1992] 1 WLR 874 | 784 |
| Attorney General v Guardian Newspapers Ltd (No 2) [1990] 1 AC 109..... | 13, 271, 775, 778–9, 780 |
| Attorney General v Jonathan Cape Ltd [1976] QB 752..... | 150–5, 169, 777 |
| Attorney General v News Group Newspapers Ltd [1987] QB 1 | 783 |
| Attorney General v Newspaper Publishing plc [1988] Ch 333 | 369, 777 |
| Attorney General v Times Newspapers Ltd [1974] AC 273 | 269, 780 |
| Attorney General v Times Newspapers Ltd [1992] AC 191 | 777 |
| Attorney General v Wilts United Dairies Ltd (1921) 37 TLR 884 | 140–1 |
| Attorney General (ex rel McWhirter) v Independent Broadcasting Authority (1973) QB 628 | 514 |
| Attorney General for Canada v Attorney General for Ontario [1937] AC 326..... | 315 |
| Attorney General for Canada v Hallet & Carey Ltd [1952] AC 427 | 455, 464 |
| Attorney General for Hong Kong v Ng Yuen Shiu [1983] 2 AC 629 | 478 |
| Attorney General for New South Wales v Trethowan [1932] AC 526, (1931) 44 CLR 394 | 59, 60 |
| Austin v Metropolitan Police Commissioner [2005] EWHC 480, [2005] HRLR 20 | 796, 810 |
| Ayr Harbour Trustees v Oswald (1883) 8 App Cas 623..... | 711 |
| Bainbridge v Postmaster-General [1906] 1 KB 178 | 348 |
| Barrett v Enfield LBC [2001] 2 AC 550 | 712, 713–14, 715 |
| Bates v Lord Hailsham [1972] 1 WLR 1373..... | 454 |
| BBC v Johns [1965] Ch 32 | 346 |
| Beatty v Gillbanks (1882) 9 QBD 308 | 798–800, 801, 802, 803 |
| Begum v Tower Hamlets LBC [2003] UKHL5, [2003] 2 AC 430 | 112, 276, 684, 685 |
| Belfast Corpn v OD Cars Ltd [1960] AC 490..... | 149 |
| Belgian Linguistic Case (No 2) (1968) 1 EHRR 252..... | 745 |
| Bellinger v Bellinger [2003] 2 AC 467 | 64, 65, 66 |
| Bibby v Chief Constable of Essex (2000) 164 JP 297..... | 804 |
| Bishop of Natal, Re (1864) 3 Moo PCCNS 115 | 461 |
| Blackburn v Attorney General [1971] 1 WLR 1037..... | 49, 469, 696 |
| Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG [1975] AC 591 | 128 |
| Blair v Lochaber District Council 1995 SLT 407..... | 692 |
| Blathwayt v Lord Cawley [1976] AC 397 | 271 |
| Boddington v British Transport Police [1999] 2 AC 143..... | 86, 148, 658, 661 |
| Bowles v Bank of England [1913] 1 Ch 57..... | 43 |
| Bowman v United Kingdom (1998) 26 EHRR 1 | 509 |
| Brannigan and McBride v United Kingdom (1995) 17 EHRR 539 | 268 |
| Brasserie du Pêcheur v Germany, C-46/93 [1996] ECR I-1029..... | 314 |
| Brazil v Chief Constable of Surrey [1983] 1 WLR 1155..... | 147 |
| Bribery Comr v Ranasinghe [1965] AC 172 | 59 |
| Brind v United Kingdom 77-A DR 42 (1994)..... | 782 |
| British Airways Board v Laker Airways Ltd [1984] QB 142..... | 115 |
| British Coal Corpn v R [1935] AC 500..... | 49 |
| British Medical Association v Greater Glasgow Health Board [1989] AC 1211 | 354 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxvii

Table of Cases

| | |
|--|---------------------|
| British Oxygen Co Ltd v Board of Trade [1971] AC 610..... | 473, 667 |
| British Railways Board v Herrington [1972] AC 877 | 113 |
| British Railways Board v Pickin [1974] AC 765..... | 44–6, 50 |
| Broadmoor Special Hospital Authority v Robinson [2000] QB 775 | 693 |
| Brogan v United Kingdom (1998) 11 EHRR 117 | 268 |
| Bromley LBC v Greater London Council [1983] 1 AC 768..... | 257, 258, 530 |
| Bropho v State of Western Australia (1990) 171 CLR 1 | 351 |
| Brown v Stott [2003] 1 AC 681 | 744 |
| Brown v Thomson 462 US 835 (1983)..... | 505 |
| Buchanan v Jennings [2004] UKPC 36 | 129 |
| Bugdaycay v Secretary of State for the Home Department [1987] AC 514..... | 672 |
| Bulmer v Bollinger [1974] Ch 401 | 299, 310, 317, 319 |
| Burmah Oil Co Ltd v Bank of England [1980] AC 1090..... | 557 |
| Burmah Oil Co Ltd v Lord Advocate [1965] AC 75 | 87, 88, 470, 734 |
| Bushell v Secretary of State for the Environment [1981] 1 AC 75..... | 462, 687 |
| Camelot Group plc v Centaur Communications Ltd [1999] QB 124 | 786 |
| Campaign for Nuclear Disarmament v Prime Minister [2002] EWHC 2759..... | 113 |
| Campbell v MGN Ltd [2004] UKHL 22, [2004] 2 AC 457 | 754 |
| Campbell and Cosans v United Kingdom [1982] 4 EHRR 293 | 752 |
| Cannock Chase District Council v Kelly [1978] 1 WLR 1 | 256 |
| Caparo Industries v Dickman [1990] 2 AC 605..... | 713 |
| Carltona Ltd v Commissioners of Works [1943] 2 All ER 569 | 461–2, 667 |
| Case of Proclamations (1611) 12 Co Rep 74..... | 459, 697 |
| Central Control Board v Cannon Brewery Co Ltd [1919] AC 744..... | 734 |
| Chagos Islanders v Attorney General [2004] EWCA Civ 997 | 93 |
| Chahal v United Kingdom (1995) 23 EHRR 413..... | 759, 762, 763 |
| Chandler v DPP [1964] AC 763..... | 11–12, 112, 696 |
| Cheall v APEX [1983] QB 126 | 271 |
| Cheney v Conn [1968] 1 All ER 779..... | 42 |
| Chequepoint SARL v McClelland [1997] QB 51 | 300 |
| Chester v Bateson [1920] 1 KB 829 (DC) | 142 |
| Chief Constable of North Wales Police v Evans [1982] 1 WLR 1155 | 655 |
| Christians against Racism and Fascism v United Kingdom (1980) 21 DR 138 | 813 |
| Christie v Leachinsky [1947] AC 573 | 733 |
| CILFIT v Ministry of Health, Case 283/81 [1982] ECR 3415 | 298 |
| City of Chicago Tribune Co (1923) 139 NE 86..... | 774 |
| City of Edinburgh DC v Secretary of State for Scotland 1985 SC 261 | 661 |
| Coleshill and District Investment Co Ltd v Minister of Housing and Local Government [1969] 2 All ER 525 | 483 |
| Collins v Hertfordshire County Council [1947] KB 598..... | 708 |
| Commission of the European Communities v United Kingdom, Case 61/81 [1982] ECR 2601 (ECJ)..... | 288–90, 321 |
| Commission of the European Communities v United Kingdom, Case 246/89R [1989] ECR 3125 | 328 |
| Congreve v Home Office [1976] QB 629 | 141 |
| Cooper v Wandsworth Board of Works (1863) 14 CBNS 180 | 149, 685 |
| Costa v ENEL, Case 6/64 [1964] ECR 585 | 61, 305–6, 307, 313 |

| | |
|--|---|
| Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 | |
| | 112, 339, 417, 660, 668, 682, 689, 697–700, 759 |
| Crédit Suisse v Allerdale Borough Council [1997] QB 306..... | 254, 693, 711 |
| CREEDNZ Inc v Governor General [1981] 1 NZLR 172..... | 666 |
| Crocket v Tantallon Golf Club 2005 SLT 663..... | 692 |
| Crown Lands Commissioners v Page [1960] 1 QB 274..... | 706 |
| Cullen v Chief Constable of the Royal Ulster Constabulary [2003] UKHL 39, [2005] 1 WLR 1763 | 753 |
| Customs and Excise Comrs v ApS Samex [1983] 1 All ER 1042..... | 299 |
| Customs and Excise Comrs v Cure & Deeley Ltd [1962] 1 QB 340..... | 455 |
| | |
| D v National Society for the Prevention of Cruelty to Children [1978] AC 171 | 11 |
| Davidson v Scottish Ministers 2002 SC 205..... | 354, 704 |
| Davidson v Scottish Ministers [2005] UKHL 74, 2005 SLT 110 | 93, 141, 703 |
| Daymond v South West Water Authority [1976] AC 609 | 656–7 |
| De Falco v Crawley Borough Council [1980] QB 460..... | 480 |
| De Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Land and Housing [1999] 1 AC 69 | 678 |
| Defrenne v Sabena, Case 43/75 [1975] ECR 455 | 310 |
| Denning v Secretary of State for India (1920) 37 TLR 138 | 417 |
| Derbyshire County Council v Times Newspapers [1992] QB 770 | 271 |
| Derbyshire County Council v Times Newspapers [1993] AC 534.... | 271, 730, 774–7, 780 |
| Dimes v Grand Junction Canal Proprietors (1852) 3 HLC 759..... | 682 |
| Donoghue v Stevenson [1932] AC 562 | 114 |
| Doughty v Rolls Royce [1992] 1 CMLR 1045 | 311 |
| Douglas v Hello! Ltd [2001] QB 967 | 753, 794 |
| Douglas v Hello! Ltd [2005] EWCA Civ 593, [2005] QB 125 | 754 |
| DPP v Bhagwan [1972] AC 60 | 734 |
| DPP v Jones [1999] 2 AC 240 | 811, 815 |
| Dr Bentley's case (1723) 1 Stra 557 | 148 |
| Duke v GEC Reliance [1988] AC 618 | 336, 338 |
| Duncan v Jones [1936] 1 KB 218..... | 146, 731, 800, 801–2, 803, 810 |
| Dunn v R [1896] 1 QB 116 | 417 |
| Duport Steels Ltd v Sirs [1980] 1 WLR 142..... | 126–8 |
| | |
| Edinburgh and Dalkeith Railway Co v Wauchope (1842) 8 CJ & Fin 710 | 43, 45, 46 |
| Ellen Street Estates Ltd v Minister of Health [1954] 1 KB 590 | 59 |
| Entick v Carrington (1765) 19 St Tr 1029 | 10, 78–80, 81, 728 |
| Eshugbayi Eleko v Government of Nigeria [1931] AC 662..... | 8 |
| | |
| Faccini Dori v Recreb, C-91/92 [1994] ECR I-3325 | 311 |
| Factortame. <i>See</i> R v Secretary of State for Transport, ex p Factortame | |
| Findlay, Re [1985] AC 318 | 666, 667 |
| Fitzpatrick v Sterling Housing Association [2001] 1 AC 27..... | 64 |
| Foster v British Gas [1991] 2 AC 306 | 11 |
| Foster v British Gas, C-188/89 [1990] ECR I-3313 | 311 |
| Fothergill v Monarch Airlines Ltd [1981] AC 251 | 99 |
| Francis v Yiewsley and West Drayton Urban District Council [1963] 2 QB 133..... | 147 |

Cambridge University Press

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Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxix

Table of Cases

| | |
|---|---------------|
| Francovich and Bonifaci v Italy, C-6 and 9/90 [1991] ECR I-5357 | 284, 313–15 |
| Fraser v Evans [1969] 1 QB 349 | 152 |
| Fraser v MacCorquodale 1992 SLT 229 | 200 |
| Friend v Lord Advocate [2005] CSIH 69 | 211 |
| Furniss v Dawson [1984] AC 474 | 113 |
| Garland v British Rail Engineering Ltd [1983] 2 AC 751 | 299 |
| Germany v Parliament and Council ('Tobacco Advertising'), C-376/98 [2000] ECR I-8419 | 284 |
| Ghaidan v Godin-Mendoza [2004] UKHL 30, [2004] 2 AC 557 | 64–6, 753 |
| Gibson v Lord Advocate 1975 SLT 134 | 198–200 |
| Gillick v West Norfolk and Wisbech Area Health Authority [1986] AC 112 | 484 |
| Gillies v Secretary of State for Work and Pensions [2006] UKHL 2, [2006] 1 WLR 781 | 717 |
| Glamorgan County Council v Rafferty [1987] 1 WLR 457 | 256 |
| Glasgow Corp'n v Central Land Board 1956 SC (HL) 1 | 13 |
| Godden v Hales (1686) 11 State Tr 1165 | 53 |
| Golden Chemical Products Ltd, Re [1976] Ch 300 | 462 |
| Golder v United Kingdom (1975) 1 EHRR 524 | 111, 268, 269 |
| Goodwin v United Kingdom (1996) 22 EHRR 123 | 784, 785–6 |
| Gorringe v Calderdale Metropolitan Borough Council [2004] 1 WLR 1057 | 713 |
| Gough v Chief Constable of Derbyshire [2002] QB 1213 | 340 |
| Greene v Secretary of State for Home Affairs [1942] AC 284 | 758 |
| Griffin v South West Water Services [1995] IRLR 15 | 311 |
| Hales v R (1918) 34 TLR 589 | 417 |
| Hamilton v Al Fayed [2001] 1 AC 395 | 141 |
| Handyside v United Kingdom (1976) 1 EHRR 737 | 809 |
| Hardy v Motor Insurers' Bureau [1964] 2 QB 745 | 486 |
| Harris v Minister of the Interior 1952 (2) SA 428 | 56–8 |
| Hashman v United Kingdom (2000) 30 EHRR 241 | 805 |
| Hatton v United Kingdom (2003) 37 EHRR 28 | 680 |
| Hazell v Hammersmith and Fulham LBC [1992] 1 AC 1 | 254 |
| Hector v A-G of Antigua and Barbuda [1990] 2 AC 312 | 775 |
| Hedley Byrne & Co v Heller & Partners [1964] AC 465 | 708 |
| Hill v Chief Constable of South Yorkshire [1990] 1 WLR 946 | 733, 737 |
| Hill v Chief Constable of West Yorkshire [1989] AC 53 | 714 |
| Hirst v Chief Constable of West Yorkshire (1986) 85 Cr App Rep 143 | 810–11 |
| Holden v Chief Constable of Lancashire [1987] QB 380 | 715 |
| Home Office v Dorset Yacht Co Ltd [1970] AC 1004 | 708, 712, 714 |
| Hubbard v Pitt [1976] QB 142 | 728, 810, 814 |
| Imutran Ltd v Uncaged Campaigns Ltd [2001] 2 All ER 385 | 794 |
| International Transport Roth v Secretary of State for the Home Department [2002] EWCA Civ 158, [2003] QB 728 | 68 |
| Internationale Handelsgesellschaft, Case 11/70 [1970] ECR 1125 | 306 |
| IRC v National Federation of Self-Employed and Small Businesses [1982] AC 617 | 692–3 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxx

Table of Cases

| | |
|---|------------------------------------|
| IRC v Rossminster Ltd [1980] AC 952 | 79, 134 |
| IRC v Rossminster Ltd [1980] AC 967 (CA) | 79 |
| Ireland v United Kingdom (1978) 2 EHRR 25 | 747 |
| Jackson v Attorney General [2005] UKHL 56, [2006] 1 AC 262 | 46–7, 60, 71–4, 333–4, 494, 634 |
| Jameel v Wall Street Journal Europe [2006] UKHL 44, [2006] 3 WLR 642 | 777 |
| Jenkins v Attorney-General (1971) 115 Sol Jo 674 | 469 |
| Jordan v United Kingdom (2003) 37 EHRR 52 | 746 |
| Joyce v DPP [1946] AC 347 | 51 |
| Kaur v Lord Advocate 1980 SC 319 | 270 |
| Kavanagh v Hiscock [1974] QB 600 | 802 |
| Kay v Lambeth LBC [2006] UKHL 10, [2006] 2 AC 465 | 754 |
| Kearney v HM Advocate [2006] UKPC D1 | 211 |
| Kent v Metropolitan Police Commissioner [1981] The Times, 15 May | 813 |
| Khawaja v Secretary of State for the Home Department [1984] AC 74 | 8 |
| Klass v Germany (1978) 2 EHRR 214 | 745 |
| Kleinwort Benson Ltd v Lincoln City Council [1999] 2 AC 349 | 114 |
| Köbler v Austria, C-224/01 [2003] ECR I-10239 | 315 |
| Kruse v Johnson [1898] 2 QB 91 | 256 |
| Kuddus v Chief Constable of Leicestershire [2001] UKHL 29, [2002] 2 AC 122 | 715 |
| Laker Airways Ltd v Department of Trade [1977] QB 643 | 480 |
| Lam Chi-ming v R [1991] 2 AC 212 | 730 |
| Laughland v Wansborough Paper Co Ltd 1921 1 SLT 341 | 200 |
| Lauri v Renad [1892] 3 Ch 402 | 99 |
| Lavender (H) & Son Ltd v Minister of Housing and Local Government [1970] 1 WLR 1231 | 666 |
| Lawal v Northern Sport Ltd [2003] UKHL 35, [2004] 1 All ER 187 | 148 |
| Leach v Money (1765) 3 Burr 1692 | 768 |
| Lee v Bude and Torrington Junction Rly Co (1871) LR 6 CP 576 | 44, 45, 46 |
| Leech v Deputy Governor of Parkhurst Prison [1988] AC 533 | 149 |
| Lewis v Attorney General of Jamaica [2001] 2 AC 50 | 700 |
| Lindley v Rutter (1981) QB 128 | 147 |
| Litser v Forth Dry Dock and Engineering [1990] 1 AC 546 | 338 |
| Liversidge v Anderson [1942] AC 206 | 134, 731, 757–8 |
| Lloyd v McMahon [1987] 1 AC 625 | 687 |
| Lochner v New York 198 US 45 (1905) | 31 |
| L'Office Cherifien des Phosphates v Yamashita-Shinnihon Steamship Co Ltd [1994] 1 AC 486 | 99 |
| London United Investments plc, Re [1992] Ch 578 | 733 |
| Lonrho plc v Tebbit [1991] 4 All ER 973 | 708 |
| Lord Advocate v Dumbarton District Council 1988 SLT 546 (IH), [1990] 2 AC 580 (HL) | 351, 703 |
| Lord Advocate v Scotsman Publications Ltd [1990] 1 AC 812 | 779 |
| Loutchansky v Times Newspapers Ltd (No 2) [2002] QB 783 | 777 |

Cambridge University Press

978-0-521-69029-4 - British Government and the Constitution: Text and Materials, Sixth Edition

Colin Turpin and Adam Tomkins

Frontmatter

[More information](#)

xxxi

Table of Cases

| | |
|---|--------------------------------|
| M v Home Office [1994] 1 AC 377 (HL) | 89–93, 150, 328, 347, 582, 704 |
| McCartan Turkington Breen v Times Newspapers Ltd [2001] 2 AC 277 | 773 |
| Macarthys Ltd v Smith [1979] 3 All ER 325 | 322, 334 |
| Macarthys Ltd v Smith [1981] QB 180 | 326 |
| Macarthys Ltd v Smith, Case 129/79 [1980] ECR 1275 | 326, 327 |
| McConnell v United Kingdom (2000) 30 EHRR 289 | 116, 125 |
| MacCormick v Lord Advocate 1953 SC 396 | 41, 196–8, 199, 200 |
| McDonald v Secretary of State for Scotland 1994 SC 234 | 703 |
| McEldowney v Forde [1971] AC 632 | 231 |
| Macgregor v Lord Advocate 1921 SC 847 | 703, 707 |
| Mackenzie v Stewart (1752) Mor Dic 7443 | 45 |
| McKerr, Re [2004] UKHL 12, [2004] 2 All ER 409 | 149 |
| McLeod v Metropolitan Police Commissioner [1994] 4 All ER 553 | 805 |
| McLeod v United Kingdom (1999) 27 EHRR 493 | 805 |
| McLoughlin v O'Brian [1983] 1 AC 410 | 114 |
| Madras Electric Supply Corp'n Ltd v Boarland [1955] AC 667 | 349 |
| Madzimbamuto v Lardner-Burke [1969] 1 AC 645 | 51, 167–8 |
| Malone v Metropolitan Police Commissioner [1979] Ch 344 | 10, 80–1, 82, 728 |
| Malone v United Kingdom (1984) 7 EHRR 14 | 81, 269, 475 |
| Manuel v Attorney General [1983] Ch 77 | 43, 50–2, 75 |
| Marcic v Thames Water Utilities Ltd [2003] UKHL 66, [2004] 2 AC 42 | 715 |
| Marleasing v La Comercial Internacional de Alimentacion, C-106/89 [1990] ECR I-4135 | 312, 335, 336, 338–9 |
| Marshall v Southampton and SW Hampshire Area Health Authority, Case 152/84 [1986] ECR 723 | 311, 336 |
| Matthews v Ministry of Defence [2003] UKHL 4, [2003] 1 AC 1163 | 110–11, 354 |
| Merkur Island Shipping Corp'n v Laughton [1983] 2 AC 570 | 100, 444 |
| Merricks v Heathcoat-Amory [1995] Ch 567 | 704 |
| Mitchell v Glasgow City Council 2005 SLT 1100 | 712 |
| Molyneux, Ex p [1986] 1 WLR 331 | 234, 469 |
| Moss v McLachlan [1985] IRLR 76 | 147, 802, 806, 807 |
| Murray v Rogers 1992 SLT 221 | 200 |
| | |
| N v Secretary of State for the Home Department [2005] UKHL 31, [2005] 2 AC 296 | 749 |
| Ndlwana v Hofmeyr 1937 AD 229 | 49 |
| Netherlands v Parliament and Council ('Biotechnology Directive'), C-377/98 [2001] ECR I-7079 | 284 |
| New York Times Co v Sullivan (1964) 376 US 254 | 775 |
| Nicholls v Tavistock Urban District Council [1923] 2 Ch 18 | 256 |
| Nicol (D & J) v Trustees of the Harbour of Dundee 1915 SC (HL) 7 | 694 |
| Nottinghamshire County Council v Secretary of State for the Environment [1986] AC 240 | 671 |
| NUT v St Mary's Church of England Junior School [1997] 3 CMLR 630 | 311–12 |
| | |
| Observer and Guardian v United Kingdom (1991) 14 EHRR 153 | 269, 779, 780 |
| O'Kelly v Harvey (1883) 10 LR Ir 285 | 800 |
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| | |
|---|--------------------|
| O'Rourke v United Kingdom, Application No 39022/97, unreported, 26 June 2001.. | 748 |
| Osman v United Kingdom (1998) EHRR 245 | 714–15, 746 |
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| Pepper v Hart [1993] AC 593..... | 129, 141, 443, 444 |
| Percy v DPP [1995] 1 WLR 1382..... | 805 |
| Percy v Hall [1997] QB 924..... | 256 |
| Pettitt v Pettitt [1970] AC 277 | 113 |
| Phelps v Hillingdon LBC [2001] 2 AC 619 | 713, 715 |
| Phillips v Eyre (1870) LR 6 QB 1 | 99 |
| Pickin v British Railways Board [1974] AC 765..... | 46, 47, 50 |
| Pickstone v Freemans [1989] AC 66..... | 336–8 |
| Pickwell v Camden LBC [1983] QB 962 | 257, 258 |
| Piddington v Bates [1961] 1 WLR 162 | 147, 802 |
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| Plaumann v Commission, Case 25/62 [1963] ECR 95 | 297 |
| Poplar Housing and Regeneration Community Association Ltd v Donoghue [2001] EWCA Civ 595, [2002] QB 48 | 751 |
| Porter v Magill [2001] UKHL 67, [2002] 2 AC 357 | 148, 257, 662, 683 |
| Post Office v Estuary Radio Ltd [1968] 2 QB 740 | 459 |
| Poyser and Mills' Arbitration, Re [1964] 2 QB 467 | 721 |
| Prebble v Television New Zealand Ltd [1995] 1 AC 321 | 141 |
| Prescott v Birmingham Corpn [1955] Ch 210..... | 257 |
| Pretty v United Kingdom (2002) 35 EHRR 1 | 747, 749 |
| Pringle, Petitioner 1991 SLT 330 | 200 |
| Prohibitions del Roy (1607) 12 Co Rep 63..... | 697 |
| Province of Bombay v Municipal Corpn of the City of Bombay [1947] AC 58 | 350–1 |
| Publico Ministero v Ratti, Case 148/78 [1979] ECR 1629..... | 310 |
| Pulhofer v Hillingdon LBC [1986] AC 484 | 257, 670 |
| Pyx Granite Co Ltd v Ministry of Housing and Local Government [1960] AC 260 .. | 147 |
| Quigly v Chief Land Registrar [1993] 1 WLR 1435..... | 655 |
| R v A (No 2) [2001] UKHL 25, [2002] 1 AC 45 | 680 |
| R v Advertising Standards Authority Ltd, ex p Vernons Organisation Ltd [1992] 1 WLR 1289 | 780 |
| R v Barnsley Metropolitan Borough Council, ex p Hook [1976] 1 WLR 1052 | 676 |
| R v BBC, ex p Lavelle [1983] 1 WLR 23 | 692 |
| R v BBC and ITC, ex p Referendum Party [1997] COD 459 | 514 |
| R v Birmingham City Council, ex p Mohammed [1999] 1 WLR 33 | 259 |
| R v Board of Inland Revenue, ex p MFK Underwriting Agents [1990] 1 WLR 1545.. | 688 |
| R v Board of Visitors of HM Prison the Maze, ex p Hone [1988] 1 AC 379..... | 687 |
| R v Boundary Commission for England, ex p Foot [1983] QB 600 | 504, 505 |
| R v Bow Street Metropolitan Stipendiary Magistrates, ex p Pinochet Ugarte (No 2) [2000] 1 AC 119 | 148, 682–3 |
| R v Bradley [2005] EWCA Crim 20, [2005] Cr App R 397 | 443 |
| R v Brent LBC, ex p Awua [1996] AC 55..... | 480 |
| R v Bristol Magistrates Court, ex p E [1999] 1 WLR 390..... | 737 |

| | |
|--|-------------------------|
| R v British Coal Corpn, ex p Vardy [1993] ICR 720..... | 671, 688–9 |
| R v Brown [1994] 1 WLR 1599..... | 113 |
| R v Cambridge Health Authority, ex p B [1995] 1 WLR 898..... | 259, 656, 692 |
| R v Chief Constable of Devon and Cornwall Police, ex p CEBG [1982] QB 458..... | 805 |
| R v Chief Constable of South Wales, ex p Merrick [1994] 1 WLR 663..... | 730 |
| R v Chief Constable of Sussex, ex p International Trader's Ferry [1999] 2 AC 418 | 340, 668, 675, 802, 811 |
| R v Chief Immigration Commissioner, Gatwick, ex p Kharrazi [1980] 1 WLR 1396..... | 478 |
| R v Chief Immigration Commissioner, Heathrow, ex p Salamat Bibi [1976] 1 WLR 979..... | 477 |
| R v Chief Metropolitan Stipendiary Magistrate, ex p Choudhury [1991] 1 QB 429 | 271 |
| R v Cornwall County Council, ex p Huntington [1994] 1 All ER 694..... | 696 |
| R v Criminal Injuries Compensation Board, ex p Cook [1996] 1 WLR 1037..... | 721 |
| R v Criminal Injuries Compensation Board, ex p Lain [1967] 2 QB 864..... | 478, 696 |
| R v Criminal Injuries Compensation Board, ex p Schofield [1971] 1 WLR 926..... | 415 |
| R v Derbyshire County Council, ex p Times Supplements Ltd [1991] COD 129..... | 256 |
| R v Director of Serious Fraud Office, ex p Smith [1993] AC 1..... | 730 |
| R v Disciplinary Committee of the Jockey Club, ex p Aga Khan [1993] 1 WLR 909..... | 692 |
| R v DPP, ex p Duckenfield [1999] 2 All ER 873..... | 483 |
| R v DPP, ex p Kebilene [2000] 2 AC 326..... | 680 |
| R v Ealing LBC, ex p Times Newspapers Ltd (1986) 85 LGR 316..... | 663 |
| R v East Sussex County Council, ex p Tandy [1998] AC 714..... | 258 |
| R v Felixstowe Justices, ex p Leigh [1987] QB 582..... | 694 |
| R v Gaming Board, ex p Benaim and Khaida [1970] 2 QB 417..... | 415, 687 |
| R v Gloucestershire County Council, ex p Barry [1997] AC 584..... | 259 |
| R v Goldstein [1983] 1 All ER 434..... | 322 |
| R v Grant [2005] EWCA Crim 1089..... | 86 |
| R v H [2004] UKHL 3, [2004] 2 AC 134..... | 353 |
| R v Halliday, ex p Zadig [1917] AC 260..... | 756–7, 758 |
| R v Hallstrom, ex p Miah [1986] QB 1090..... | 734 |
| R v Henn [1978] 1 WLR 1031 (CA), [1981] AC 850 (ECJ and HL)..... | 298, 322 |
| R v Higher Education Funding Council, ex p Institute of Dental Surgery [1994] 1 All ER 651..... | 137 |
| R v HM Treasury, ex p British Telecommunications plc, C-392/93 [1996] ECR I-1631..... | 315 |
| R v HM Treasury, ex p Smedley [1985] QB 657..... | 129, 693 |
| R v Horseferry Road Magistrates' Court, ex p Bennett [1994] 1 AC 42..... | 85–6 |
| R v Horseferry Road Magistrates' Court, ex p Bennett (No 4) [1995] 1 Cr App Rep 147..... | 86 |
| R v Howell [1982] QB 416..... | 808 |
| R v Human Fertility and Embryology Authority, ex p Blood [1999] Fam 15..... | 415 |
| R v Immigration Appeal Tribunal, ex p Manshoora Begum [1986] Imm AR 385..... | 478 |
| R v International Stock Exchange Ltd, ex p Else (1982) Ltd [1993] QB 534..... | 299 |
| R v IRC, ex p Preston [1985] AC 835..... | 705 |
| R v Jones [2006] UKHL 16, [2006] 2 WLR 772..... | 555, 767, 771, 817 |
| R v Khan [1997] AC 558..... | 84 |
| R v Lewisham LBC, ex p Shell UK Ltd [1988] 1 All ER 938..... | 257, 663, 711 |