Lesson Four

Influences on Parliament

Aims

The aims of this lesson are to enable you to

- distinguish between European Union regulations, directives and decisions
- describe the work of the various European Courts
- explain how and in what ways European law affects the United Kingdom
- look at the role of the Law Commission
- consider the influence of pressure groups on Parliament

Context

English Law is increasingly closely linked to the policy and the legislation of the European Union and it is important that you should watch out for up-to-date information about that relationship.

In 2016, UK citizens voted to leave the European Union. At the time of writing, this process is a long way from being completed, so the information in this lesson remains operative. Please look out for the latest developments.

AQA A-level Law for Year 1/AS, Chs. 7-8.

4.1 The Sources of European Law

4.1.1 The European Union

The European Union, which in 2017 consisted of 28 states, came into being as the result of several formal agreements, known as Treaties, made between member states. These not only created the Community but also formed the sources of Union (EU) Law.

These treaties are as follows:

(i) In 1951 the Treaty of Paris created the European Coal and Steel Community;

(ii) In 1957 the Treaties of Rome (two) created the European Economic Community and Euratom.

Since then the Treaty of Rome has been amended on a number of occasions, for example each time new members are admitted, but, most notably

(i) **The Single European Act in 1986** which created the Single Market,

(ii) **The Treaty on European Union** (Maastricht Treaty) this was incorporated into English Law by the European Communities (Amendment) Act 1993, and

(iii) **The Treaty of Amsterdam** 1997. The Labour government, under Tony Blair, signed up to parts of the Social Chapter concerning a minimum wage and standardisation of working hours for employees. These issues have now become part of UK law.

(iv) **The Treaty of Nice** (2001), relating to the implications arising from the proposed enlargement of membership of the European Union.

4.1.2 Application of Community Law to the United Kingdom

Parliament enacted the European Communities Act on the 17th October 1972 and this applied European Law to the United Kingdom.

The law from the European Union, just like English law, can be divided into Primary Laws and Secondary Laws.

Primary sources of EU law are the Treaties as listed above, the most important of which is the Treaty of Rome 1957.

Secondary sources of EU law are:

- Regulations
- Directives
- Decisions

Some types of EU law, such as Regulations and the Treaties, are *directly applicable* in the UK without the need for the UK parliament to make an Act of Parliament or issue a Statutory Instrument. Other types of EU law generally only apply in the UK after the UK parliament has effected some form of UK legislation, be this an Act of Parliament or a Statutory Instrument. Directives are not usually directly applicable and are usually brought into UK law by means of a Statutory Instrument, e.g. the Working Time regulations, 1998.

4.1.3 Kinds of European Union Legislation

Regulations are generally directly applicable and must be obeyed by the Member States. **Articles** of the Treaties (i.e. the various sections of a Treaty) are sometimes directly applicable, as in the case of Art. 141 of the Treaty of Rome (equal pay for male and female workers for equal work or work of equal value), but **Directives** are not usually directly applicable.

A **Directive** is generally a framework document setting out minimal standards for all member states to achieve. It does not lay down any specific method for these standards to be incorporated into national laws, but leaves that issue to the national government to decide. As you will see in Lesson Three, there is a method used by the United Kingdom for transposing the directive by using the European Communities Act delegated powers, but sometimes it is not necessary to make anything more than simple changes to existing laws to fulfil the European minimal standard. This was so in the United Kingdom in relation to the Sex Discrimination Act 1975, which already, in many ways, went further than the European Equal Treatment Directive which required the national governments to establish minimum standards for discrimination at work.

Some Directives are so precise as to be capable of creating legal rights without being transposed into national law, and these are said to have Direct Effect.

You need to be aware of:

(a) **Horizontal Direct Effect** – this means that the measure which comes down to us from Europe can be enforced by one individual against another in the national courts;

(b) **Vertical Direct Effect** – this means that such a measure can only be enforced against the State or State Department in the national court.

4.2 EU Legislation

(a) The Council and Commission together make:

i) Regulations which are binding completely on all member states without the state having to do anything to enact the regulations into their own law,

ii) Directives which are binding as to their results but allow national authorities to choose the form and method, and

iii) Decisions which are entirely binding on those to whom they are addressed.

Recommendations and Opinions are not binding.

(b) It can occur that European Union Law is at variance with national Law and when this happens the Court of Justice of the European Union has made it clear on many occasions that EU Law must prevail and that the English Courts must apply such Law even though it conflicts with what has been laid down by the British Parliament.

(c) **The Court of Justice of the European Union** (sitting in Luxembourg) consists of 15 judges usually sitting in chambers of 3 or 5 judges.

They sit in full sessions (see left) when hearing cases brought by a member state or one of the institutions. In September 1989 a Court of First Instance was newly created by Article 168A. The Court of First Instance may hear certain cases brought by national or legal persons (i.e. Persons or Corporations). There is a right of appeal to the European Court but only on points of law.

(d) The procedure of the Court is unlike that of English Courts, being based largely upon the continental legal process. An unusual feature is that an Advocate General (of which there are six) sits on the bench with the judges and after the parties have stated an outline of their case, the case is adjourned for the Advocate General to consider the arguments in depth. After this he will deliver an opinion on the law in this case and this cannot be commented on by the parties. The Court then gives its decision, which often, but not always, follows the opinion of the Advocate General.

Whilst this is not a feature of English Courts it does at least give the judges time to take a considered and learned independent view of the law in that particular case rather than being required to come to a speedy decision on the day of the hearing.

Important: This Court must NOT be confused with the Court of Human Rights (see below).

4.2.1 The European Court of Human Rights

(a) **The European Court of Human Rights** was set up in 1950. It is separate from the European Union but plays a major part in European law. Recourse to this Court may be had by those who feel that they have not received justice in their own country. The decisions of this Court can be enforced only by the goodwill of those states signatory to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in 1950. The UK incorporated the Convention into UK law in 2000.

The European Court of Human Rights (left) is a distinct body and should not be confused with the Court of Justice of the European Union. Decisions made by the CJEU are binding on member states of the Union and must be followed by the English Courts. The European Court of Human Rights does not bind the English Courts but political pressure may be brought to change an unacceptable state of human rights.

(b) The main rights conferred by the **European Convention on Human Rights** include:

- Article 2 – the Right to Life;
- Article 3 – the Right not to be subject to torture or degrading treatment;
- Article 4 – the Right not to live in slavery/servitude;
- Article 5 – the Right to liberty and security of the person;
- Article 6 – the Right to a fair trial;
- Article 8 – the Right to respect for one's private and family life, home and correspondence;
- Article 9 – the Right to freedom of thought, conscience and religion;
- Article 10 – the Right to freedom of expression;
- Article 11 – the Right to freedom of peaceful assembly and association with others;
- Article 12 – the Right to marry and form a family.

Section 2 of the Human Rights Act 1998 requires that a court or tribunal must take into account any judgment, decision or declaration of the European Court of Human Rights in reaching a decision.

Section 3 requires all legislation to be read and given effect as far as possible in a way that is compatible with Convention Rights. Any superior court may make a Declaration of Incompatibility, which has the effect of declaring that a piece of legislation is incompatible with the rights laid down in the Convention. A relevant government minister has the power to revoke, amend or allow that incompatible legislation. Indeed, at the introduction of a Bill, a Minister concerned must state in Parliament that the proposed legislation either is or is not compatible with Convention rights.

Section 6(1) provides that it is unlawful for a Public Authority to act in any way inconsistent with such a Right, which, if breached, could lead to proceedings in court.

Whereas the Human Rights Act 1998 has had a significant impact on the laws of this country, it can be argued that Parliamentary Sovereignty in respect of this Act is still maintained, because, while our courts have to "take into account" European Court of Human Rights judgments and interpret legislation, as far as possible, in a way which is compatible with the Convention, they cannot override an existing Act of Parliament. Instead they issue a 'declaration of incompatibility'. Where a court issues a declaration of incompatibility, the government of the day can proceed with its proposals regardless.

4.3 Issues of European Law

A number of issues have arisen whereby the European Court of Justice has ruled the actions of the United Kingdom to be contrary to EU law. These problems should be looked at under two headings:

(i) Causes of Action
(ii) Remedies available

(i) Causes of Action

(a) Where a member state fails to implement a directive within the time scale set down by the Directive, or fails to implement it correctly then the Commission has the right to take that member state to the Court of Justice for a ruling that this is

the case. This has happened to the United Kingdom on a number of occasions.

The COMMISSION v UNITED KINGDOM [1983] related to the failure to fully implement the Equal Pay Directive, and the COMMISSION v UNITED KINGDOM [1994] related to the failure to implement the Collective Redundancies Directive fully. The United Kingdom's response was to pass new regulations under the delegated powers of the European Communities Act 1972.

(b) Where, in a case brought before the European Court of Justice on a referral from a national court, the court rules that the law currently applied in the national legal system is in contravention of EU law.

English law cases include the armed forces dismissal of pregnant women which was held to be contrary to the Equal Treatment Directive of the EU, although not in breach of the United Kingdom Sex Discrimination Act 1975. Consequently the Sex Discrimination Act has been amended to reflect this ruling.

The European Court of Justice has jurisdiction to give a Preliminary Ruling on a question of European Law which has been referred to it by a court of the Member State via Article 234 of the EC Treaty. Such rulings may cover the interpretation of the Treaty, acts of Community institutions or statutes of bodies established by the Council etc. Article 234 is designed to ensure a uniform interpretation of EU Law by the courts of the Member States. Notable references by our courts include VAN DUYN V HOME OFFICE [1974]; MACARTHY'S V SMITH [1975].

(c) Finally there is a cause of action against the member state when it passes law which contravenes the laws of the EU. As indicated above, the European Communities Act 1972 states that Community law is to take precedence, and so when the United Kingdom passed the Merchant Shipping Act, 1988, it ran into stormy waters.

The Act, amongst other things, prevented persons not domiciled in the United Kingdom from registering and operating fishing trawlers from UK ports, thus preventing the Spanish and Dutch so-called 'quota hoppers' from having access to British fishing quotas under the Common Fisheries Policy of the EU.

This was contrary to a fundamental right in the Treaty of Rome for all European Union citizens to move freely within the EU. and establish businesses anywhere in the EU. Thus

in the landmark series of decisions in *R v SECRETARY OF STATE FOR TRANSPORT (Ex parte Factortame) [1994-6],* generally known as FACTORTAME, the name of the company involved, the Court of Justice ruled that a properly passed and enacted UK statute was in fact illegal under EU law. This is a significant move by the European Court and established that where UK law and EU law are in conflict, the EU law prevails.

(ii) Remedies

The European Court of Justice has the power to fine Member States which fail to implement European legislative measures.

Firstly, where a Directive is capable of Direct Effect, then the applicant in any case may rely upon it rather than the national law of the member state in order to obtain compensation, and thus by-pass the problems in the domestic law not complying with EU law. This happened in the case mentioned above of the pregnant forces personnel who were dismissed. The right to compensation in such cases however is limited to persons who were employed by public bodies. The leading case on this point is *FOSTER v BRITISH GAS [1990].*

Secondly in *FRANCOVICH AL BONIFACI V ITALIAN REPUBLIC [1991]* the European Court ruled that when a member state fails to implement a directive properly, or, as in this case, at all, then a citizen who has lost rights as a result may sue the member state for damages. This may lead to governments having to pay very large amounts of damages where they have wrongly implemented directives, and a number of cases are pending in the United Kingdom relating to such wrongful implementation.

Thirdly under the ruling in FACTORTAME, mentioned above, damages may be claimed against the member state for such wrongful actions.

Thus it can be seen that the influence of the European Court of Justice over English law is growing quite enormously. It might be expected then, that the number of cases being referred to the Luxembourg court would be increasing, but this is not necessarily true. The reason for this is the growing acceptance by the English law courts and tribunals that they can apply EU law principles themselves without referring the case to Luxembourg. Increasingly therefore, English and Scots judges are become more familiar with the intricacies, subtleties and differences that EU law brings to our own law.

4.4 Other Influences on Parliament

4.4.1 How can the law be influenced?

The main sources of law in the English Legal System are Acts of Parliament, case law (law made by judges in the higher courts) and European Union laws. Once a law is made such is the nature of a modern Western society that there will come a time when it requires modification or reform. Society does not stand still and so the law supporting this society cannot stand still either – it has to keep pace with changes in society if it is to remain credible.

In this section we will concentrate on how Acts of Parliament are reformed. This is because Acts of Parliament, or statutes, are the main source of law. Judge-made law plays a less significant role because it cannot respond fast enough to the needs of society and judges can only reform the law within narrow parameters. See *R* v *R* (1991). Parliament can reform the Law in one of four ways:

- repealing obsolete laws
- creating new laws
- consolidating laws passed previously to face new situations
- codifying a number of laws dealing with the same situation

4.4.2 How are reforms in the law initiated?

As we have already learnt, statutes are enacted by Parliament and the House of Commons has a dominant role in the process. A party with a large majority of seats could in theory enact any statute it wished. However, in reality it has to remember that it is beholden to the electorate who gave it power. Not all ideas to reform the law come from Members of Parliament themselves. Reform of the law can be instigated by the following:

- the Law Commission
- Royal Commissions
- political, media and pressure groups
- politicians themselves

We shall consider each of these in turn.

4.5 The Law Commission

The Law Commission was established by the Law Commissions Act 1965 to review the law of England and Wales with a view to its systematic development and reform.

The Law Commission aims to make the law:

- simpler
- fairer
- more modern and
- cheaper to use.

The Law Commission has 5 full-time Commissioners. The Chairman, who is a High Court judge, holds office for up to 3 years. The other Commissioners are experienced judges, barristers, solicitors or legal academics. They usually hold office for up to 5 years and are appointed by the Lord Chancellor. The Law Commission works on self-initiated projects of law reform, as well as projects recommended to it by judges, lawyers and government departments. Every few years a 'Programme of Law Reform' has to be submitted to the Lord Chancellor for approval.

The Law Commission can, however, only do so much research into law reform because it has to operate within an annual budget. The Law Commission divides its work into various areas and each area has a project team made up of distinguished lawyers and academics. The project areas include:

- Commercial and Common law
- Criminal law and evidence
- Property, Family and Trust law
- Public law

Each year the Law Commission produces an annual report in which it explains its work of the previous year and the projects it is currently working on and planning.

When working on an area of law, the Law Commission undertakes thorough research and usually publishes a consultation paper which sets out its proposals for reform in that area of law. This is sent to various people and organisations with an interest, so that they can read the proposals and respond within a given time frame.

The Law Commission then goes through the responses and produces a final report. This report is laid before Parliament and it is up to the government of the day to decide whether or not it wishes to take the report forward by introducing its recommendations by way of a Bill. There is no set number of reports which become Acts of Parliament. In some years only one or maybe none of the reports actually become law whilst in other years six or seven reports might become law. It depends on the political will of the government of the day.

Many Law Commission reports are left in report stage for years because the government either fears difficulty in getting through Parliament or considers it too expensive a piece of reform to introduce however desirable it might be. For instance, in 1993 the Law Commission produced a report entitled, *Legislating the Criminal Code: Offences Against the Person and General Principles.* It was over a decade before its recommendations were implemented, under the Domestic Violence Crime and Victims Act 2004, and, even then, the report's recommendations were not implemented in full.

On the other hand, some Law Commission reports are rushed through in a matter of months if there is a loophole in the law which needs closing urgently. This was the case with the law of Theft. The existing law had a loophole which allowed a certain type of mortgage fraud. To close this loophole, the Law Commission produced the report, *Offences of Dishonesty: Money Transfers* in October 1996 and within two months the government enacted the Theft (Amendment) Act 1996. Such a speedy approach is uncommon because the Law Commission prefers to have a thorough investigation into the law in question, involving as many people as possible.

The Law Commission also undertakes work to consolidate existing statute law and revises statue law.

At the beginning of 2007 there were 15 Law Commission reports, one from as far back as 1996, awaiting decisions by the government.

4.6 Royal Commissions

Whereas the Law Commission is a permanent body looking into law reform, Royal Commissions are set up on an 'ad hoc' basis, that is, as required to look into an area of law which might need reforming. In addition, whereas the Law Commission is essentially made up of lawyers who have specialist knowledge in a particular area of law, Royal Commissions are made up from a range of people who have interest in the topic in hand. The Royal Commission researches into the problem area within a given framework and produces a report for the government which may or may not be made into legislation.

Whether or not recommendations of Royal Commission are acted upon by the government in power at the time is hugely dependent on their political agenda. How will reforms be greeted by the public? Will it diminish or increase their chances of re-election at the next general election?

4.7 Media and Pressure Groups

It is important that the public can influence the implementation of new laws. This stems from the fact that Parliament (the law-making body) only has the power to make laws because, in the House of Commons, the Members have been voted in by the electorate. The electorate is placing its trust in Parliament to bring in new laws which will best effect the running of the country. However, there are times when Parliament might appear to be immune from events in the country and the public feel the need to bring these events to the attention of parliament and in particular the government. How do they do this?

Members of the public can write to their local MP or attend the local 'surgery' of the MP to voice the relevant issue. If the issue is one which is within the remit of an established '**pressure group'** then it can be taken up by this pressure group which can undertake a range of high publicity events to bring the matter to the attention of the government and the media. Some occupations, such as farmers and solicitors, have strong pressure groups that act on their behalf but the many other pressure groups focus on single issues.

Examples of the types of issues they might focus on include animal welfare, education, the environment, equality for ethnic minorities, health, housing, rural affairs and welfare rights. Pressure groups will take full advantage of the media to help promote their concern in the hope that such pressure will result in either the government or an individual MP taking up their cause with the ultimate aim of a new law being made. Similarly, pressure from the **media** itself (e.g. the *News of the World*'s campaign to "name & shame" paedophiles in 2000) can play a part in introducing new laws, by putting pressure on M.Ps ("lobbying") to canvass support for a cause.

In a case where there is great public disquiet (e.g. the murder of Stephen Lawrence, or the Brixton Riots, left), the Government may also set up a Public Enquiry to look at ways of preventing similar problems arising in the future. An attempt is made not only to investigate the causes but also to recommend laws to prevent a recurrence.

4.8 Politicians themselves

Each political party has policies which it tries to 'sell' to the public as the best policies for the country. At a general election the electorate will vote for the various political parties and the party which gets the most MPs in parliament will have the majority in parliament and will form the government. Each party will have

prepared a document known as an 'election manifesto' in which it will have outlined its policies on education, health, defence, social services and so on. If the party is successful in getting most votes and forms the next government it will be expected to act on these policies and introduce new laws based on them. This is known as the *electoral mandate*.

This will be relatively straightforward for a government which has a large majority in the House of Commons as it will be difficult for MPs from other parties to vote against new laws. However, if the government has a small majority in the House of Commons it can be very difficult for it to get its policies translated into new laws. This is why a government with a small majority will seek alliances with some of the other parties to try to guarantee support.

When the Labour Party came to power in May 1997, and when re-elected in June 2001, it did so with a huge majority and so in theory it had a lot of power and the ability to get most of its policies passed through Parliament. Even with its current, much reduced, majority, it still has a great deal of power. In this respect it could be argued that the House of Lords plays a vital role in preventing possible abuse of power by such a strong government.

Besides policies introduced by the government, and as mentioned in Lesson 1, individual MPs can introduce Bills into Parliament. It is often quite difficult for these Bills to become law as they are given less parliamentary time and may not have the support of the majority of MPs in the House of Commons. However, this procedure enables some issues to get an airing and they might even become government-sponsored Bills at a later date.

Further reading can be found in *AQA A-level Law for Year 1/AS,* Chs. 7-8.

4.9 Advantages and Disadvantages of the Influences on Parliament

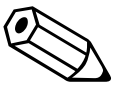
Remember that answers are not 'right' or 'wrong'. What is important is that you are able to explain and justify your viewpoint.

4.9.1 Advantages

Suggestions include:

- In theory, pressure groups give ordinary members of the public the opportunity to influence law making.

- As an independent body, the Law Commission can be said to free from party political bias.

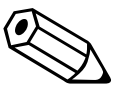
Activity 1	Look back through this lesson and through the relevant sections of your textbook and think of at least two more points that you consider to be advantages of the influences on Parliament.
	i) ii)

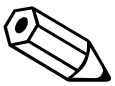
4.9.2 Disadvantages

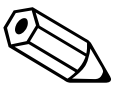
Suggestions include:

- It could be said that some pressure groups representing minority interests have excessive influence on the law-making process.

- Law Commission recommendations do not have to be accepted by Parliament, which, it could be argued, renders much of its work a waste of time and tax-payers' money.

Activity 2	Look back through this lesson and through the relevant sections of your textbook and think of at least two more points that you consider to be disadvantages of the Parliamentary law-making process.
	i) ii)

Activity 3	1. Thinking about the current process which will see us leave the EU in 2019, give two examples of how our legal system will change.
	2. Our laws are influenced by a number of external sources. Can you name three? 3. The case of Factortame was a very important milestone in English Law. Why was this? 4. The issue of human rights predated the creation of the European Union. How did human rights come about and when? 5. Can you sum up the role of the Law Commission in a sentence?

Revision Points	
	1. What are the principal treaties underlying EU Law? (see 4.1) 2. Distinguish between Regulations, Directives and Decisions (4.2) 3. Is the European Court of Human Rights anything to do with the European Union? (4.2) 4. What happens when EU law and national laws are in conflict? How is this resolved by the European Court of Justice? (4.3) 5. What remedies are available to anyone who suffers loss due to national laws not complying with EU laws? (4.3) 6. Why does the law need to be reformed? (4.4.1) 7. When was the Law Commission set up and what is its remit? (4.5) 8. Give an example of a pressure group. (4.7)
	1. 2. 3. 4. 5. 6. 7. 8.

AQA Subject Content	Each of the lessons in this pack of course materials is linked to a particular section of the AQA syllabus (specification). This lesson relates to subject content within Unit 1, Section A: Parliamentary Law Making. Before going any further, ensure that you fully understand the following concepts:
	• role of the Law Commission • political, media and pressure group influences • effect of membership of the European Union • effect of the Human Rights Act 1998 • advantages and disadvantages of the influences on Parliament

Suggested Answers to Activity Three

1. We will no longer be bound by the decisions of the CJEU, we will be able to independently make our own laws, EU Regulations and Directives will no longer apply to the UK unless those laws are adopted by Parliament, etc.

2. Law Commission, media, Royal Commission, changing moral standards, EU (currently), politicians themselves.

3. It was the first time that Parliamentary sovereignty had been successfully challenged by a foreign body.

4. 1950, European Convention on Human Rights.

5. Example: 'The Law Commission was established by the Law Commissions Act 1965 to review the law of England and Wales with a view to its systematic development and reform.