2.7 The Judiciary: Independence, Neutrality and the Supreme Court

EDEXCEL 9PL0 · about 60 minutes · Write-in edition

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. Short answer questions may be answered in short sentences; extended answers and the two levels-marked questions must be answered in full sentences with developed explanation and evidence. Spend approximately 15 minutes on the source-based question and 45 minutes on the final 30-mark essay.

1 Evaluate the extent to which the UK judiciary is independent of the other branches of government.

(Total for Question 1 is 30 marks)

2 Using the source, analyse the claim that security of tenure alone is sufficient to ensure judicial independence.

(Total for Question 2 is 30 marks)

Mark scheme · 2.7 The Judiciary: Independence, Neutrality and the Supreme Court

Question 1

Level 1 Basic, limited knowledge of mechanisms for judicial independence with little or no developed analysis or evaluation. Examples, if present, are generalised.	**1-6**
Level 2 Clear knowledge of several mechanisms supporting independence and some analysis of how they operate, but evaluation may be partial or rely on assertion rather than evidence.	**7-12**
Level 3 Detailed knowledge and sound analysis of how independence is supported and limited, using specific examples such as the Constitutional Reform Act 2005 and the Judicial Appointments Commission; evaluation is developed but may not address all significant counterarguments.	**13-18**
Level 4 Well-developed, balanced analysis that integrates wide-ranging and accurate examples, considers structural, financial and cultural constraints, and weighs evidence to reach a reasoned judgement on the extent of independence.	**19-24**
Level 5 Sophisticated, wide-ranging and well-evidenced evaluation that addresses multiple lines of argument and counterargument, including institutional reforms, remaining vulnerabilities, and recent developments, and reaches a clear, well-supported conclusion on the extent of judicial independence.	**25-30**

Indicative content:

- Arguments that the judiciary is substantially independent: security of tenure for judges, clear removal process, and judicial immunity from suit for acts done in judicial capacity strengthen independence.
- The Constitutional Reform Act 2005 established structural safeguards, notably creating the Supreme Court to separate senior judges from the legislature, and reformed the role of the Lord Chancellor to reduce political influence.
- The Judicial Appointments Commission reduces ministerial patronage over appointments, promoting merit-based selection and enhancing independence compared with the pre-2005 system.
- Mechanisms of neutrality and professional ethics, including guidance on political activity, expectations of recusal and published judgments, support impartial decision-making and public confidence.
- Limits and qualifications: the executive retains control over court budgets and administrative resources, which can create indirect pressure; financial dependence can be used subtly to influence priorities.
- Limits and qualifications: the UK lacks a codified constitution and some protections rely on convention and political culture, which could be weakened under sustained political pressure.
- Recent legislative or policy changes, or government rhetoric, can affect perceptions of independence even if legal safeguards remain; students may cite how changes to appointment procedures or budgetary control would matter in practice, without needing to rely on judicial review cases.
- A reasoned conclusion should weigh strong formal and institutional safeguards against real-world constraints and argue that the judiciary is significantly independent in judicial decision-making, but that independence is not absolute and depends on complementary safeguards including transparent appointments, secure funding, and a political culture that respects the rule of law.

Question 2

Level 1 Basic, limited engagement with the source; simple description of security of tenure with little or no analysis of its sufficiency; evaluation is absent or assertions are unsupported.	**1-6**
Level 2 Clear identification of points in the source about security of tenure and other safeguards; some analysis of how tenure contributes to independence, with limited evaluation of its sufficiency and some use of own knowledge.	**7-12**
Level 3 Detailed analysis of the source and use of relevant wider knowledge, weighing the strengths of security of tenure against other factors; evaluation is present but may be partial or one-sided.	**13-18**
Level 4 Well-developed analysis using both extracts and substantial own knowledge, addressing counterarguments and the limits of security of tenure; reaches a reasoned judgement supported by evidence.	**19-24**
Level 5 Sophisticated analysis and evaluation driven by the source, integrating wide-ranging own knowledge, identifying nuances and trade-offs, and reaching a balanced, well-substantiated judgement about the claim.	**25-30**

Indicative content:

- Extract A notes that security of tenure protects judges from being removed for unpopular decisions, allowing them to decide without fear of dismissal, which directly supports independence.
- Extract B also points out that tenure is necessary but not sufficient, because other conditions such as financial security, appointment processes and the absence of political pressure also matter.
- Extract B argues that weak appointment safeguards and executive control over court budgets can create indirect pressures, so tenure alone cannot guarantee full independence.
- Analysis could explain how tenure prevents direct dismissal by the executive but does not remove subtler forms of influence, for example through control of salaries, promotions, or court resources that affect morale and capacity.
- The Judicial Appointments Commission reduces executive patronage in appointments; reference to the JAC shows that appointment processes are another essential safeguard alongside tenure.
- Reference to the Constitutional Reform Act 2005 and the Supreme Court's institutional separation from the House of Lords supports the argument that structural reforms complement tenure.
- Counterargument from the source could be that in a system with weak conventions or where government controls budgets, tenure would be less protective; the student can use historical or hypothetical examples to show how other institutions could undermine independence despite tenure.
- Evaluation should weigh the strong protective effects of tenure against the real-world constraints and show that a combination of safeguards, including JAC appointments, financial security, transparent disciplinary arrangements and a culture of neutrality, is required to secure genuine independence.