2.8 Judicial Review and the Judiciary's Power Over Government: 30-minute Pack

EDEXCEL 9PL0 · about 30 minutes

Total Marks

Name: _____ Date: ____ / ____ / _____

Answer ALL questions. For levels-marked questions write well-structured, developed responses in full sentences and use accurate political knowledge.

1 Using the source extracts evaluate the claim that judges are rightly acting as a constitutional backstop to protect rights and Parliament.

© Revision Library | revisionlibrary.co.uk

(Total for Question 1 is 30 marks)

© Revision Library | revisionlibrary.co.uk

Mark scheme · 2.8 Judicial Review and the Judiciary's Power Over Government: 30-minute Pack

Question 1

Level 0 No relevant content.	**0**
Level 1 Basic, limited use of the source and limited knowledge of judicial review or the HRA. Analysis and evaluation are minimal and unsupported.	**1-6**
Level 2 Some accurate use of the source combined with relevant factual knowledge. Analysis addresses the claim but evaluation is uneven or descriptive rather than balanced.	**7-12**
Level 3 Clear and accurate use of both source extracts, combined with well-selected factual knowledge about judicial review and the HRA. Balanced analysis with developed lines of evaluation and some judgement.	**13-18**
Level 4 Thorough, well-integrated use of the source material and wide, accurate knowledge. Sustained, well-reasoned evaluation engaging multiple perspectives and reaching a supported judgement.	**19-24**
Level 5 Sophisticated evaluation that makes excellent use of both extracts and extensive, precise knowledge; develops balanced and original lines of argument and reaches a nuanced, well-substantiated conclusion.	**25-30**

Indicative content:

- Use Extract A to show the courts see themselves as protecting rights and the constitutional role of Parliament, with examples such as Miller I (Article 50) and Miller II (prorogation) that stopped executive acts affecting parliamentary sovereignty or citizens rights.
- Use Extract B to present the democratic legitimacy challenge, explaining that critics claim judicial review can displace political decision making and that judges are not directly accountable to voters.
- Discuss the Human Rights Act 1998's role in empowering courts to assess the compatibility of public authority acts with Convention rights and to apply proportionality, increasing substantive review.
- Consider counterarguments that judicial review is procedural and legal rather than policy making, and that remedies such as declarations of incompatibility respect parliamentary sovereignty by leaving primary law in place.
- Discuss practical safeguards limiting judicial power: standing rules, the high thresholds in Wednesbury review, and the remedial limits where Parliament can change the law after a declaration of incompatibility.
- Consider the political and legal interaction: courts protect Parliament's role in a system of parliamentary sovereignty, but Parliament can respond by legislating and thus reasserting political control.
- Evaluate whether courts are acting 'rightly' by balancing rule of law and rights protection against democratic principles, and reach a considered judgement acknowledging both necessary judicial oversight and the need for caution about judicial overreach.

© Revision Library | revisionlibrary.co.uk