**SUMMARY QUESTIONS**

**ESSAY QUESTIONS**

1. ‘Governments in the UK are elected to create legislation; however, this power may be abused if accountability is not ensured. The role of the Government in this respect therefore requires a system of checks and balances to be exercised to ensure public scrutiny.’ Identify how Parliament can maintain accountability of the Government and critically assess its effectiveness in this role.

**Indicative content outline answer:**

* The State has significant powers, many of which are exercised by the Government. This includes the prerogative powers previously administered by the Monarch.
* The Government has power to sign international treaties, declare war and so on without requiring the permission of Parliament (the prerogative powers).
* The Government has control of the legislative agenda (why it was elected to that position) and as such can determine which Bills are moved through Parliament. Further, with its majority in Parliament it is difficult for legislation to be defeated. This requires an effective role to be played by the Committees and the Lords.
* Passing legislation through Parliament requires effective scrutiny and debates to assess the full impact and implications for legislation.
* Select Committees – no power to compel witnesses and evidence; important aspects such as defence spending which cannot be reviewed; less than 2% of the reports are debated on the floor of the House of Commons.
* Westland Affair and Arms to Iraq are examples of the effectiveness of the scrutiny from Select Committees and how they can create pressure for resignations of Ministers or lead to the downfall of a Government (e.g. Conservatives in 1997).
* Question Time – mostly about political point scoring; no in-depth questions or answers; planted questions; questions known in advance; only once a week for 30 mins (PM Question Time); many of the public do not watch or have an interest in these proceedings; some questions are considered ‘beneath’ Parliament.
* Raises awareness of the relevant political issues; answers must be given and Hansard maintains a permanent record; highlights are shown on the news to allow the public to be aware of the points raised in the sessions.
* House of Lords – unelected second chamber which can delay legislation wanted by the Government / Commons; can be defeated through the Parliament Acts; often seen as out of touch with popular society.
* Enables the experts in the Lords (industrialists, academics, politicians with vast experience) to scrutinise the legislation which the Commons does not have the time or expertise to perform; brings attention to bills which may be important or controversial (the Hunting bill); can delay bills until their impact is fully considered; does not have the strong political ties of the Commons which allows a greater debate on the merits of the bill rather than being compelled to vote with the Member’s party.
* Votes of no Confidence – last resort and the Government should have been made act before such a vote has to take place; shakes the confidence of the public that the country is being effectively governed.
* Enables the Commons to remove a Government which cannot pass legislation; provides a remedy without having to wait for a general election being called under ‘normal’ circumstances.

2. ‘Delegated legislation is a necessary requirement for the effective functioning of the legislative process, it is a purposeful use of expertise, and it enables Parliament to concentrate on issues of national significance.’

Discuss.

**Indicative content outline answer:**

* Major pieces of legislation are created through Parliament at Westminster. However, given the time constraints on Members or Parliament, and the fact that they have to represent their constituents, run surgeries, and numerous other functions, they have limited scope to debate and vote on Bills.
* To provide a more effective function and in order to pass the vast majority of legislation that is required each year, much of the legislative functions are delegated to other bodies. The delegation is undertaken with the permission of Parliament and there are controls applied to ensure abuse is prevented.
* This frees Parliamentary time to pass legislation such as in relation to defence, welfare and education (for example), and allows more ‘mundane’ but necessary and important laws to be passed by authorities such as Ministers. It also enables legislative provisions to be delegated to experts in the area so that the best and most informed judgements can be made regarding the impact or proposed legislation and a more informed critical perspective on impact which the proposed legislation is likely to have.
* The act of delegating legislation to someone other than Parliament is achieved through a Parent or Enabling Act. This identifies the authority of the person/body to legislate in a specific area and what they are to achieve. Hence strict controls are applied over what this person/body may do and the limitations to their authority.
* The three types of delegated legislation are statutory instruments; orders in council and by-laws.
* Statutory Instruments: These allow a body other than Parliament to pass legislation. It may be that a Bill that has passed through the stages in Parliament as primary legislation but has omitted technical information which is to be entered before a commencement order is provided. Such a task may be most appropriately undertaken by a Minister through an enabling Act rather than requiring the Act to go through the same procedures again in Parliament. To ensure that abuse does not take place, Statutory Instruments are subject to control by either negative resolutions or positive resolutions. There is also parliamentary scrutiny available through the Joint Committees on Statutory Instruments, which is a Select Committee that may take oral and written evidence from the relevant government department.
* Orders in Council: These are sometimes used for emergency legislation but their ordinary function is to provide legislation where an ordinary Statutory Instrument would be inappropriate. It is also the mechanism used to give effect to the resolutions of the United Nations Security Council.
* By-laws: These issue local authorities and public corporations with powers through enabling Acts such as the Local Government Act 1972 and the Public Health Act 1936 to create by-laws.
* A key advantage of the use of delegated legislation is that Parliament (the House of Commons) contains people from all walks of life. This is its very advantage when deliberating Bills – people with real life experience can comment upon what they think will be the implications of proposed laws and how it will likely affect their constituents. However, this is also the weakness of the system. Such people do not necessarily have the expertise to fully understand or appreciate the proposed laws. Where the task of legislating is out-sourced (although with the full control systems at the disposal of Parliament and the courts to limit the possibility of abuse) it should enable experts – those people in the geographical location, participants in an industry or people with technical expertise – to fully participate in legislation. Hence, it may be advantageous in creating informed laws, and leaving Parliament to concentrate on the laws which will affect society at large – welfare, education, defence and so on.

**PROBLEM QUESTIONS**

1. The planning department of Redmount Borough Council (RBC) has been given the power (through delegated legislation) to build a new road through parkland. This legislation will enable the compulsory purchase of farmland and privately owned parkland where necessary to facilitate the build programme. The enabling Act requires RBC to consult with local people regarding the impact of this proposal before a final decision is made. Further, the Council is required to consult with interested pressure groups when reaching its conclusion.

The Council failed to consult with many of the local residents, instead restricting its consultation to three of the most powerful businessmen in the area. Having obtained their agreement (probably in part due to the purchase price of their property and the fact they do not live in the area), RBC sought to proceed with the build.

Advise Hamish, a farmer who lives and owns property in an area proposed for the new road, who was not consulted, as to any mechanism available to him to challenge the decision. Further, explain who may be the most powerful groups involved in the decision-making in terms of the Parliamentary process, media campaigning, and gaining the support of other powerful groups.

**Indicative content outline answer:**

* When Parliament issues an enabling Act as part of delegated legislation, it may stipulate requirements to be adhered to in reaching decisions. Here there is an express requirement for the Local Authority to consult with local people affected by compulsory purchase and the impact of the development, and also to consult with interested pressure groups.
* The enabling Act places these obligations on the body fulfilling the requirements of the Act. That body is required to adhere to these measures.
* RBC has not consulted as it is required and hence Hamish, as a person with sufficient interest in the Act, does have the right to seek to have the decision reviewed.
* Control is available through Standing Committees; debates in Parliament and through the courts. The most applicable control here is through the courts.
* The court may order a judicial review of RBC’s actions for acting *ultra vires* (beyond its powers).
* Here, RBC has not consulted with the relevant bodies and hence this is an issue of procedural *ultra vires* (i.e. RBC has not complied with a mandatory procedural requirement of consultation).
* The court is not empowered to review the decision that has been made by the body given such powers, but rather the review is in relation to ensuring that this body has followed the procedural steps as required in the enabling Act.
* Hamish may request a judicial review of RBC’s decision under a form of procedural impropriety (as in *Lee v Secretary of State for Education* (1967)).
* The court, if it finds in favour of Hamish’ arguments, can quash the decision reached by RBC and compel it to go through the required procedural steps properly before reaching its conclusion (which may be the same as was found in the first instance).

2. The (fictitious) Police and National Security Act 2005 provides that, in relation to the increased security risks from terrorist activities in recent years, retailers may not offer for sale prohibited items. The list of prohibited items identified in the statute includes radio-based devices which may be used to hear communications between members of the police service. As Ron (an off-duty police officer) was walking past a retail outlet of ABC, he looked in the window and saw a newly developed police scanner displaying a price tag of £85. The information on the display box of the scanner lists as one of its features—‘full access to police communications—listen to what they don’t want you to hear’.

Ron knew of the Act, having attended a briefing session run by the police service, and reports ABC to the appropriate authorities. Consequently, ABC is charged with a breach of the 2005 Act.

In relation to the methods of statutory interpretation available to the judiciary, assess the potential liability of ABC in the above scenario.

**Indicative content outline answer:**

* The Legislature pass the Acts of Parliament and these are interpreted and applied by the judiciary. The judges therefore look towards the text of the legislation in their rulings, and if its provisions are uncertain or ambiguous, their task is to interpret and give it meaning.
* Despite the comprehensive drafting of legislation there may be errors contained in the text or there may be aspects of the provisions that are challenged by the parties. Hence interpretation is a key role performed by the judiciary.
* To assist the judiciary in the correct interpretation and application of the legislation as enacted by Parliament, the courts may look to the ‘long title’ of the Act in cases of ambiguity to identify what the Act was designed to achieve.
* The courts may also use the punctuation employed in the text where it would help to remove some ambiguity (*Director of Public Prosecution v Schildkamp* [1971]), and many pieces of legislation contain examples of how the legislation should be interpreted (see the Consumer Credit Act 1974 in Schedule 2).
* Since *Pepper v Hart*, sources such as Hansard can now be used if they would benefit the judges’ interpretation of the legislation.
* The judges may refer to dictionaries for definition of the text of a statute in the Literal method of interpretation, and the courts have also been permitted to refer to Reports of the Law Commission and White Papers when using the Mischief Rule.

#### *The Literal Rule*

* This has been a method of interpretation traditionally used in the courts and, as its name suggests, involves the judges looking at the text of the legislation and giving it its plain and ordinary meaning.
* It is the most ‘pure’ form of interpretation as the intention of Parliament is sought through a direct examination of the text.
* Assistance has also been provided in this matter through Parliament enacting the Interpretation Act 1978 which includes many definitions of words, and enables the judges to seek definitions without recourse to the Oxford English Dictionary and similar materials that may not provide the meaning Parliament had intended.

#### *The Golden Rule*

* This method of interpretation provides the court with the option of interpreting ambiguous legislation in a way that would otherwise lead to an absurd result if its literal meaning were given (see *Adler v George*).
* This, however, is only one use of the method of interpretation, and where the wording of the text is clear, yet its literal application would lead to a result that is against public policy, then the Golden Rule may be used in preference to the Literal Rule (see *Re Sigsworth*).

#### *The Mischief Rule*

* As the name suggests, this rule of interpretation looks to the mischief that the legislation was enacted to avoid, and interprets it accordingly. This rule was established in light of *Heydon’s Case*, and has been applied by the courts in modern scenarios (see *Smith v Hughes*).

##### The Purposive / Teleological Method

* Particularly following the UK’s accession to the European Union (EU), the courts in this jurisdiction have an obligation to follow the European Court of Justice’s decisions (when considering laws either emanating from the EU or with an EU dimension) to use a purposive approach to interpretation. As opposed to the previous rules of interpretation outlined, this approach looks to the spirit or intent of the legislation, and seeks to give effect to it in as wide a means as possible.
* As statutory interpretation has such an impact on the use of legislation and its application, it is essential that all those in business are aware of the various forms of interpretation and the rules that underpin these. Interpretation can alter or impact on how the legislation is given effect and knowledge of these trends can ensure the business works in conformity with the law (particularly in the light of substantial claims that are often made against businesses – tort actions, claims of discrimination and so on).