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1. What is administrative law?

Administrative (or public) law is generally concentrated on the control of the Government (or public authorities).

Wade and Forsyth have indicated that:

The primary purpose of administrative law [...] is to keep the powers of Government within their legal bounds, so as to protect the citizen against their abuse. The powerful engines of authority must be prevented from running amok.1

This control is sometimes affected by use of the courts and judicial review provides one (of a number) of legal controls on administrative actions. De Smith, Woolf and Jowell argue that “judicial review should be seen in the context of the general administrative system where different mechanisms are employed to hold public bodies accountable.” They suggest that these mechanisms also include, inter alia, the use of ombudsmen, tribunals, internal reviews and action by Members of Parliament, the National Audit office and regulatory agencies.

Professor Paul Craig has explained the conceptual justification for judicial intervention in this way:

It is readily apparent that the execution of legislation may require the grant of discretionary power to a minister or an agency. Parliament may not be able to foresee all the eventualities and flexibility may be required to implement the legislation. The legislature will of necessity grant power subject to conditions [...]
Herein lies the modern conceptual justification for judicial intervention. It was designed to ensure that those to whom such grants of power were made did not transgress the sovereign will of Parliament.

He went on to suggest that if the courts did not intervene, ministers or agencies would be allowed to exercise a power in areas not specified by Parliament. The 2000 edition of the Treasury Solicitors’ publication, *The Judge Over Your Shoulder* provides a useful description of who is affected by administrative law indicating that:

1.2 “Administrative” or “public” law governs the acts of public bodies and the exercise of public functions. Public bodies include “non-departmental public bodies”, such as the Committee on Standards in Public Life, and Next Steps Agencies like HM Prison Service.

1.3 Private sector bodies may also be subject to administrative law when they exercise a public function. Generally, bodies exercise public functions when they act and have authority to act for the collective benefit of the general public. The activities of City institutions with market regulatory functions, like the London Stock Exchange, are a good example.

2. Judicial Review

2.1 What is it?

Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action made by a public body. It is a challenge to the way in which a decision has been made. It is not really concerned with the conclusions of that process and whether those were ‘right’, as long as the law has been correctly applied and the right procedures have been followed. The court will not substitute what it thinks is the 'correct' decision. This may mean that the public body will be able to make the same decision again, so long as it does so in a lawful way. If you want to argue that the
decision was incorrect, judicial review may not be best for you. You should look at the alternative remedies

Judicial review may be appropriate where:
- an unlawful decision or action (2) has been taken by a public body (3); and,
- no alternative remedy (4) is available

Judicial review is a High Court procedure for challenging administrative actions.

Delegated legislation may also be challenged. It allows individuals, businesses or groups to challenge in court the lawfulness of decisions taken by Ministers, Government Departments and other public bodies.

These bodies include local authorities, the immigration authorities, and regulatory bodies (such as OFCOM and the OFGEM) and some tribunals. In the case of *R v HM the Queen in Council, ex parte Vijayatunga*, Mr Justice Simon Brown (now Lord Brown of Eaton Under Heywood) observed that “judicial review is the exercise of the court's inherent power at common law to determine whether action is lawful or not; in a word to uphold the rule of law”.

Her Majesty’s Courts Service indicates that:
The supervisory jurisdiction [of the Administrative court], exercised in the main through the procedure of Judicial Review, covers persons or bodies exercising a public law function - a wide and still growing field.

In the case of *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC374 (often referred to as the *GCHQ* case), Lord Diplock observed that:

The subject matter of every judicial review is a decision made by some person or (body of persons) whom I shall call the ‘decision maker’ or else a refusal by him to make a decision.

2.2 Source of Judicial review
It is based not on statute but on common law. Until the Second World War over mighty government was not seen to be a problem. Courts generally left well alone when the decision of a minister or public authority was challenged. Put simply the courts didn’t want to know.

In 1949 Lord Denning warned of change to come. He spoke in a lecture at a time of post war Labour government nationalisation and the welfare state. “we have not yet settled the principles upon which to control the new powers of the executive...The Courts must do this...Properly exercised the new powers of the executive lead to the Welfare State: but abused they lead to the totalitarian state.”

In the last fifty years judges have developed rules to enable them to impose legal control over the exercise of government power. Today this has been extended to control anybody exercising a public function.

To date British parliament has not intervened to stop them and significantly in the Human Rights Act 1998 parliament has extended the scope of judicial review.

### 2.3 Whose decisions are challenged?

The sort of public bodies whose decisions may be challenged include:

- government ministers and departments;
- local authorities & health authorities;
- chief constables & prison governors;
- some tribunals (but not if you can appeal to a higher tribunal or court);
- magistrates, coroners and county courts; and,
- boards of school governors (but not independent schools).

### 3. First Ground of Review- IRRATIONALITY

#### 3.1 Role of courts and Merit review
Judicial review is not concerned with the 'merits' of a decision or whether the public body has made the 'right' decision. The only question before the court is whether the public body has acted unlawfully. In particular, it is not the task of the courts to substitute its judgement for that of the decision maker.

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