UNIT 1

THE LEGAL ORDER IN ENGLAND AND WALES

The legal order of the United Kingdom is not governed by a single constitutional document but by a combination of statute, common law, and constitutional conventions and practice.

The principal sources of law in England and Wales are Acts of Parliament; European Community law; Statutory Instruments and other subordinate legislation; and the common law as developed through judicial decisions. The hierarchy of these sources is described below. Where there are conflicts between the different sources of law, the principal forum for resolving them are the courts.

Civil law in England and Wales is not set out in a civil code. The civil law derives largely from the common law, but there have also been significant pieces of legislation dealing with particular areas (e.g. exclusions and limitations of liability, enforcement of contracts by third parties, interference with goods, contributory negligence, and contribution between multiple defendants).

Primary legislation

Primary legislation is made by the UK Parliament in Westminster. Before a proposal for legislation (known as a Bill) can become an Act of Parliament, it must be approved by both Houses of Parliament (subject to what is said below) and receive the Royal Assent.

Most Bills which become Acts of Parliament are Government Bills introduced in Parliament by ministers, usually following a process of consultation.

Parliament comprises the House of Commons and the House of Lords. The House of Commons is the elected chamber, consisting of 659 MPs (529 representing English constituencies and 40 representing Wales). The membership of the House of Lords consists of: more than 500 "life peers" (appointed for life by the Queen on the recommendation of the Prime Minister), 26 senior bishops of the Church of England, 12 of the most senior judges, and 92 "hereditary peers" (who have inherited their titles).

A Bill may be introduced in either House. The Commons and the Lords have slightly different procedures, but in each House there will be a debate on the principles of the Bill ("Second Reading"), followed by detailed consideration of its provisions by a committee ("Committee stage"), and a further debate in the House to consider the provisions of the Bill and any amendments made by the committee ("Report" and "Third Reading"). After passing through one House, a Bill will be sent to the other House for consideration. If amendments have been made, it will return to the House where it began for the amendments to be considered.

The House of Lords is generally regarded as a "revising" chamber with a complementary role to that of the Commons. The Lords do not have the power to prevent a Bill which has passed through the Commons from becoming law, but only to delay its enactment. If the two Houses cannot agree, the Commons may present the Bill for Royal Assent without the Lords' agreement after a delay of 13 months (or 1 month for a Bill dealing only with taxation or expenditure).

When a Bill has passed through all its parliamentary stages, it is sent to the Queen for the Royal Assent, after which it becomes an Act of Parliament. It is a constitutional convention that the Royal Assent will be given to any Act passed by Parliament, and Royal Assent has

not been refused in nearly 300 years. In recent years, the number of Acts of Parliament enacted each year has ranged from 25 (in 2001) to 69 (in 1997).

An Act will come into effect on the day of the Royal Assent unless it contains provisions to the contrary. In practice, most Acts either specify a commencement date some time after Royal Assent, or give the relevant Secretary of State the power to bring the Act (or part of it) into effect by making a Commencement Order.

Disputes about the interpretation of legislation may be resolved by the courts. However, since there is no "written constitution" in the UK, it is not possible to challenge an Act of Parliament in court on the basis that it is "unconstitutional". The constitutional doctrine of "Parliamentary sovereignty" holds that Parliament is the supreme legislative authority, in the sense that it may make and repeal any law, and that no other body may repeal or question the validity of an Act of Parliament.

However, the doctrine of Parliamentary Sovereignty is qualified by the UK's membership of the European Union. By virtue of the European Communities Act 1972, European Community Law forms part of the law of England and Wales. Domestic legislation must be interpreted so as to comply with Community law wherever possible. Furthermore, if an Act of Parliament cannot be interpreted consistently with Community law, then the courts must give effect to Community law rather than the domestic legislation.

The Human Rights Act 1998, which incorporated the European Convention on Human Rights into UK law, gives the courts another power to call Acts of Parliament into question. So far as possible, domestic legislation must be interpreted to be compatible with Convention rights. Where a provision in an Act of Parliament cannot be interpreted so as to comply with the Convention, the higher courts may make a "declaration of incompatibility". Once such a declaration is

made, a Minister may make a Remedial Order to amend the Act and remove the incompatibility.

Secondary legislation

Many Acts of Parliament delegate legislative powers to public authorities such as Secretaries of State, local authorities, or statutory agencies and committees.

Secondary legislation made by central government and statutory bodies may have various titles such as Orders in Council, Regulations or Rules, all of which may be referred to collectively as "Statutory Instruments". The number of Statutory Instruments (SIs) made in a year is often more than 3,000. The purposes for which SIs may be made are governed by the relevant Act of Parliament, and include setting the commencement date of primary legislation, filling out the details necessary to implement broad statutory provisions, and in some cases amending primary legislation (e.g. SIs made to implement EU legislation in the UK).

The procedural requirements which apply to a particular SI depend on the provisions of the parent Act of Parliament, but there is also a general requirement that all SIs must be published. Some SIs (e.g. most commencement orders) are not subject to any Parliamentary procedure, and once signed they will come into force on the date stated in the SI. However, most are subject to some form of Parliamentary control.

An SI may simply have to be "laid" before Parliament (i.e. deposited at an office in the House) before it can come into force, without there being any requirement for Parliamentary scrutiny. However, the most common procedure is the "negative resolution

procedure" which generally means that the SI is laid before Parliament and comes into effect on the date stated, but that it will be annulled if a motion to that effect is passed within a specified period (usually 40 days). Alternatively, under the "affirmative resolution procedure" an SI can only come into force if it is approved by Parliament.

When the House of Commons is called upon to consider a motion to approve or annul an SI, there may be a debate in the House or the matter may be referred to a Standing Committee. SIs may also be scrutinised by a Joint Committee of both Houses which reports on whether SIs have been made in accordance with the provisions of the relevant enabling Acts, and by the recently-established Lords Committee on the Merits of Statutory Instruments, which will consider all SIs laid before Parliament.

In July 1999 certain law-making powers were transferred to the National Assembly for Wales, which is located in Cardiff and consists of 60 Assembly Members (AMs) elected to represent Welsh constituencies and regions. The Assembly has the power to make SIs affecting Wales, but primary legislation on Welsh affairs continues to be made by the UK Parliament. The Assembly has responsibility for matters including economic development, education, the environment, health, housing, tourism and transport; but it does not have responsibility for civil or criminal law.

All subordinate legislation must comply with the terms of the enabling Act of Parliament, and will be invalid if it exceeds the powers which the Act confers or if a mandatory statutory procedure was not followed in making it. Subordinate legislation may also be challenged on other grounds, e.g. that it conflicts with rights granted by other primary legislation, the European Convention on Human Rights or directly effective EC Law; that it is irrational, oppressive, or made for an improper purpose; or that its terms are too vague. Such a challenge may be made by bringing judicial review proceedings in the High Court, or by raising the validity of the instrument as a defence in proceedings

brought to enforce it. The usual remedy is a declaration that the instrument is invalid, but the High Court may also quash subordinate legislation.

The Courts

Decisions of the courts of England & Wales, and particularly of the appeal courts, play an important role in the development of the law. Not only do they provide authoritative rulings on the interpretation of legislation, but they also form the basis of the common law, which accounts for most civil and commercial law.

The common law is derived from court decisions in previous cases (or case law). An important feature of the common law system is the doctrine of precedent (or *stare decisis*). This essentially means that, in deciding a particular case, the court must have regard to the principles of law laid down in earlier cases which raised the same issues, and where such a precedent is "binding" the court is required to follow the reasoning of the earlier case. To understand how the doctrine of precedent works, it is necessary to identify which courts' previous decisions will be binding on other courts, and which elements of those decisions will be binding in a particular case.

In general, as to which courts' decisions bind which other courts, the general principle is that a court will be bound by earlier decisions made by a higher court. Appeal courts may also be bound by earlier decisions of the same court. In order to determine which precedents may be binding on a particular court, it is necessary to appreciate the hierarchy of the various courts in the legal system of England & Wales.

Civil, commercial and family proceedings in England & Wales are administered primarily by the county courts and the High Court, the latter handling the more substantial and complex cases.

County courts in England and Wales handle most types of civil claim at first instance (and most also deal with family issues). Magistrates' courts (which are primarily criminal courts) also have limited civil jurisdiction in family matters and in certain other cases. D