

Questionnaire for the XVIIth Colloquium between the Councils of State and the Supreme Administrative Bodies of the EEC

United Kingdom Response

1. Preliminary questions on domestic law

1.1. There are procedures for challenging the legality of every administrative decision in the United Kingdom. Conceptually our procedures are not tidy or easy to understand, They are the result of hundreds of years of gradual evolution. We have no Council of State or other Supreme Administrative Body. We have three separate legal systems - one each for England, Scotland and Northern Ireland. At the head of each is the House of Lords which for present purposes acts through a judicial Committee composed of senior judges drawn from the 3 jurisdictions. The House of Lords hears less than 100 cases each year covering many aspects of law and hears less than 10 administrative law cases per year. In practice the only appeals which are heard there are ones which have special permission. In practice the nearest equivalent to a top administrative court in each country is the Court of Appeal in England and Northern Ireland and the Inner House of the Court of Session in Scotland. Each of these courts is also in practice the top civil and criminal appeal court. No judge specialises exclusively in administrative law. In practice there are no significant distinctions between the administrative law which they each apply although the legal language employed is different. For the purposes of this paper it is convenient to limit ourselves to the English position and to regard the Court of Appeal ("the CA") as the Supreme Administrative Court or State Council. Below the CA is the High Court. The judges of the High Court, the CA and the House of Lords have security of tenure till 70 years of age, They are appointed by the Queen on the advice of members of the Government. Sometimes there is a possibility of appeal from an administrative tribunal direct to the CA, Usually the correct legal route involves first a hearing in the High Court. In practice the vast majority of administrative decisions against which a legal challenge is brought are resolved below the level of the CA.

Administrative decisions can be challenged in a variety of ways before a variety of tribunals - some of these consist of lawyers or partly of lawyers but many do not. The courts are concerned in principle with legality - rationality, the correct application of the law and the adoption of correct and fair procedures - and not with the intrinsic merits of the decision. In general the courts will not hear appeals against administrative decisions unless first all avenues for appeal within the administration have been exhausted. In general the courts will not receive evidence which has not been evaluated by the tribunal or decision taker. There are frequently quite short time limits within which any challenge to a decision must be launched,

At present the European Convention on Human Rights (ECHR) is not generally incorporated as such into any of our laws, although the judges interpret and develop our laws in the light of the Convention. Last year the Human Rights Act 1998 was passed by Parliament and it is anticipated that this will come into force on 1.10.2000.

1.2. There is in general no right of appeal to the CA. It is necessary to obtain permission to appeal either from the body or court whose decision is under challenge or from the CA..

1.3. The CA can impose a stay of execution, grant injunctions, quash decisions and remit the matter to be decided again by the decision taker. In principle the CA will not decide the merits itself although rarely, as a matter of discretion where the merits are totally obvious, it will decline to give relief notwithstanding that the claimant has demonstrated a technical illegality on the part of the decision taker. Similarly, rarely the CA will, after quashing a decision itself substitute a new decision if the decision taker would be bound to come to that decision if he considered the matter anew in the light of the decision of the CA.

1.4. The CA has competence in all matters. Civil, criminal and administrative.

1.5. The High Court and various tribunals take decisions which can be appealed. Furthermore, the High Court has jurisdiction to question the legality, rationality and procedural fairness of practically any decision made by a Minister, a local authority, or any other administrative body. Because the High Court has universal jurisdiction we are not seriously troubled by conflicts of competences experienced elsewhere. The same applies to the CA.

1.6. No distinction is made in the Procedural Rules between cases that fall within the scope of Article 6 of the Convention and those that do not.

1.7. Nor is there such a distinction before the courts of lower instance.

1.8. Because the Convention has not been incorporated in our law we have not yet addressed the impact of Article 6,

1.9. The lawfulness of an order such as that in the Oerlemans case and a decision such as that in the Zander case would be considered by the High Court and the CA on appeal. The jurisdiction of these courts in administrative cases is not excluded.

1.10. No different remedies are provided in cases falling within Article 6.

2. Scope of application of Article 6

The problems which are addressed in this part of the questionnaire have not arisen as such in the past domestically since the Convention has not been part of our law.

While many of our administrative tribunals would not be accepted as independent and impartial tribunals this deficiency is regarded as overcome by the existence of a right to go to the High Court - an approach accepted by the Strasbourg Court in *Bryan v United Kingdom* (1995) 21. E.H.R.R.342 (A/335). This has always been accepted as an independent and impartial tribunal. However, problems could arise because of the way our judges are appointed and promoted by, or on the recommendation of, members of the executive. There have not been complaints in the last 50 years that this has led to bias or any other judicial impropriety but the traditional position is difficult to justify in theoretical terms.

Now the problem may have to be faced. Most recently, the Court of Session in Scotland has declared that the age old practice there of the chief prosecuting authority

appointing temporary judges in Scotland conflicts with Article 6, which for the relevant purpose was in force in Scotland. Currently before the European Court of Human Rights is a similar sort of question which relates to a judge in one of the Channel Islands. Possible problems exist in relation to the position of the Lord Chancellor - who alone recommends persons for appointment to the High Court. The Lord Chancellor is a member of the government and also a member of the legislature. This can pose problems for him - as recently when the party manifesto of the now ruling party, produced prior to the election, pledged the party to make judges declare whether or no they were freemasons. Possible problems exist in relation to the position of the Prime Minister, also a member of the government and of the legislature, who alone recommends persons for appointment to the CA and to the House of Lords. Although these are in form recommendations to the Queen, in practice the recommendations are believed to be followed. This practice of members of the government of the day nominating judges may strike of the members of the colloquium as strange. It has not so far given rise to significant practical discontent or to many charges that the Lord Chancellor and Prime Minister have acted for political reasons. Possible further problems exist in relation to the tradition of part time judges who are also appointed on the recommendation of the Lord Chancellor - it is customary to appoint persons in their early forties as judges for a renewable period of 3 years on terms that they sit for one month a year. From those persons are chosen those who are regarded as appropriate to appoint to be full time judges. These persons will act for private clients or the government when they are not sitting as judges.

3. Problems of a fair trial

3.1. While it can fairly be said that many of the tribunals which reconsider the merits of administrative decisions would not qualify as independent, there is a strong tradition that hearings before them should be fair. Most such tribunals are governed by procedural rules which are seen as securing this objective effectively. Potential problems arise because the courts, while independent, can not consider, save at the extremes involving rationality, the merits of the decision. This led to the argument, which was rejected in *Bryant*, that the fair trial took place before a body which was not independent whereas the independent court did not have anything amounting to a fair trial, being limited to a review of legality. In general the processes are regarded as fair and open.

3.2. Lack of incorporation of the Convention has meant that these matters have not been contentious.

3.3. Problems in relation to impartiality of judges used hardly ever to arise. If they are real then the judge will disqualify himself on reading the papers. If the judge does not perceive them as real then, in the High Court and above, any links to the parties or the subject matter of dispute are usually declared in open court by the judge and the parties are asked whether they object to him sitting. They practically never do. As is well known in the Pinochet litigation a judge in the House of Lords failed to declare his link to a subsidiary of a charity which intervened to make submissions in the litigation. The decision was subsequently set aside on that ground. As a result there was a number of cases where losing litigants raised points as to impartiality. Recently, the CA has delivered a judgment setting out the circumstances in which links by a

judge to the parties or subject matter should be regarded as capable of disqualifying him from sitting.

Problems can and do arise in relation to decisions taken by local government authorities. These are often dominated by one political party, There is not a strong tradition of giving reasons for decisions which are taken and it is extremely difficult to challenge the legality of such decisions in particular since the reasons motivating individual councillors may well differ albeit that they conic to the same decision. A recent example occurred in Westminster where the decision to sell to private owners a large number of municipally owned houses was attacked on the ground that it was allegedly motivated by the desire of the ruling party to expel from the area those who were more likely to vote for the opposing party in the next elections.

3.4. The biggest problem in relation to equality of arms is that one side is often financially stronger than the other and may thus be in a position to afford better quality preparation for and representation at the hearing. To a degree this point is met by legal aid. However, this is not available in respect of all types of litigation and in any event is not available to those who, white disadvantaged by lack of money, are not so disadvantaged as to be regarded as worthy of legal aid.

4. Oral procedure

4.1 All substantive hearings before the CA take place orally, usually after submissions of the substance of each parties argument in writing. Substantially, the hearings arc oral and they are by no means a formality.

4.2. All substantive hearings are oral.

4.3. Yes, in those cases where an oral hearing was required. Such a requirement is often expressed in the relevant legislation.

4.4. The High Court and CA arc entitled to quash the decision of lower instance courts because of breaches of rules of procedure.

4.5. In principle the CA will not make the decision for the decision maker. So in general, if the decision maker was obliged to hold an oral hearing and failed to do so, then the court will quash the decision and direct an oral hearing.

4.6. In general all hearings arc open to the public. The CA has a rarely used power to exclude the public if questions of national security etc, arise.

4.7. A person entitled to be heard need not speak but can hand in a document though, if the hearing is in public, the document may be read out aloud. He can expressly waive any right to be heard and he can implicitly do so if he fails to appear at the hearing after having been given due notice.

5. Rules of Evidence

5.1. In the context of administrative law cases English law does not exclude any evidence provided that it is relevant.

5.2. In the case of appeals on the merits from administrative decisions all evidence is admissible provided that it is relevant. Such appeals are heard by various tribunals, Where there is a challenge to the legality of an administrative decision, whether that decision be by the original decision taker or by a tribunal to which there has been an appeal on the merits, the High Court and the CA will not in general accept evidence which was not received in the court below. However, there is a discretion to do so. The evidence is usually on affidavit and relatively seldom controversial.

5.3. Expert evidence is very seldom received afresh in the High Court or the CA in administrative cases. It is frequently received before tribunals. There are no formal legal rules relating to the independence of experts and many experts who give evidence are not independent. The parties chose whom they ask to give evidence ; someone who is independent is generally thought to carry more weight.

5.4. In principle challenges in the High Court and in the CA are concerned with the legality of decisions previously taken. New facts are in general not admitted but there are exceptions in relation to matters which could not have been discovered by the time of an earlier hearing with reasonable diligence. For instance if there has been some alleged breach of natural justice - for instance, bias in the decision taker or a failure to inform one of the parties of the date of the hearing before the tribunal.

6. Parties to the case

6.1 and 6.2. Traditionally the English courts give the right to be heard not merely to the decision taker and parties whose property rights or personal freedom are affected but also to anyone who has "a sufficient interest" in the subject matter of the dispute - a term which is very generously interpreted. Thus various bodies representing the poor or environmental groups or victims of injustice regularly have been heard by the CA. In general such parties must be represented by a duly qualified advocate but an individual whose personal rights are allegedly affected can speak for himself. We have not yet had problems in practice with large numbers of persons appearing separately each alleging that his right, for instance to breathe pure air, has been adversely affected by a decision. The effect of a decision of the CA can be considered from two points of view. In so far as it declares the law it will bind all courts and tribunals with the exception of the House of Lords. In so far as the court quashes a decision it only quashes the decision which is before it. In general, applications to quash a decision must be made within a short period and if that period elapses then it may be too late for the court to be prepared to hear applications to quash similar decisions. If other identical decisions have been made they will need to be separately quashed or withdrawn by the decision maker. This does not in general pose problems. Our procedures permit representative actions whereby one person can bring an action on behalf of many.

6.3. It is difficult to generalise in this context although it is broadly correct to say that one can not appear in the CA unless one has taken part in the court or tribunal from whose decision an appeal is being brought. However, if the reason for non-participation in the inferior court or tribunal is not one's own fault then one will be heard. Moreover, the CA will at times as a matter of discretion hear people who have no right to be heard. For instance, sometimes a dispute between a citizen and a local authority will raise issues of national importance and a government minister may ask to be heard in order to raise points which it may not be in the interest of either of the other litigants to raise.

6.4. At present any rights will not spring from the Convention as such. However, because of our courts' generally relaxed approach to the question of locus standi and their willingness to hear people who have an apparently genuine and understandable interest in the subject of the dispute, nearly all who want to be heard are heard. The court prefers to rely on its power to control the course of the trial in which it does not

hesitate to use its powers to limit the time which a party is allowed to address the court.

7. The right of the Public to the pronouncement of the judgment

7.1. No problems arise with respect to the obligation to pronounce the judgment publicly save occasionally in the context of national security, police informers and persons seeking political asylum. In such cases procedures are usually worked out between the parties and the court which leave the parties content.

7.2. The invariable practice of the CA is either to give a reasoned judgment orally or to hand written reasons down in open court while declaring the result orally. The same is true in the High Court,

8, Reasonable delay of definitive judgments in administrative law suits.

8.1 Present Situation in each country (considered from the point of view of judicial organisation)

- a) In general the courts require alternative avenues of appeal to be exhausted before they are prepared to deal with a matter by way of judicial review.
- b) From an English perspective, the concept of Administrative Courts has no meaning. Most administrative decisions can be appealed within the administration. No useful general figures can be given as to how long this takes.
- c) As indicated at the beginning of this answer, the situation in England in relation to the possibilities of appeal, the number of instances, what instances and the prior need for administrative appeals is not homogeneous but utterly confusing even to the English lawyer. One can find out the answer to any particular problem with a good degree of certainty but it is impossible to generalise. No useful purpose would be served by setting out details for the Colloquium in relation to these matters. In general the CA will, when quashing a decision, send it back to the decision taker for renewed consideration in the light of the judgment of the court.
- d) What one can say is (that cases involving liberty and children are by custom given a high degree of priority. It is common to bring such matters before the court in a matter of weeks and not unusual to bring them before the court in a matter of days or, in liberty cases, hours.

8.2. The present situation in each country (considered from the point of view of mechanisms for neutralising some effects of delays); instances

- a) In English law in general there is no right to compensation upon the annulment of an illegitimate administrative decision. There is a degree of dissatisfaction with this in some circles. To a degree the problem is overcome by the use of the Ombudsman institution. Where the Ombudsman recommends payment for maladministration his recommendation is nearly always followed.
- b) The unlawful dismissal of a civil servant would be regarded in England as analogous to breach of contract and he would be compensated. He might well be reinstated in his former post but this would not be a matter of right, There is no procedure which would allow an individual as a matter of right compensation for delays in judgment. He might receive an ex gratia payment if the delay amounted to maladministration.

The traditional route for those who are aggrieved by delay in the administration is to persuade someone to raise the matter in Parliament, to complain to a government minister or to raise the matter in the local authority concerned.

In the judicial context, if the problem is securing a fast hearing, parties can apply to the court for expedition so that their case overleaps others in the waiting list. The waiting list is structured so that liberty and children cases and cases raising points of widespread importance have priority. The same categories have the best chance of being allowed to overleap others,

If the problem is delay after the oral hearing, the traditional route would be for the advocate of the aggrieved party waiting for a judgment either to mention the matter informally to the judge concerned or to write to a senior judge asking him to see what he can do.

8.3 Present situation in each country statistics

Because of the unstructured way our administrative law cases come before the courts it is impossible to reply meaningfully and accurately to the questions as posed. In general. However, the information below will give a general idea.

Most, but not all, administrative decisions can only be challenged in the High Court if permission is given. This weeding out of unarguable cases is a device much employed in our jurisdiction. Some 4,500 applications for permission were made of which 1000 were held to be seriously arguable. About 400 of these progressed no further through the courts but were settled by the parties. The remainder were decided by the High Court.

The decision of the High Court as to whether to grant permission takes less than 5 months in 75% of the cases and less than 7 months in 85% of the cases. The High Court disposes of 75% of its cases within 10 months of permission being granted and 95% of its cases within 16 months.

Appeals come to the CA both from the High Court and also from a number of different tribunals. The CA does not in general hear appeals unless permission had been given by itself or by the lower court. Permission is given if the point is seen as seriously arguable.

The total number of applications either for permission to appeal or for permission to apply for judicial review¹ was 451, the total disposed of was 429 and the total outstanding was 166. The total number of appeals set down in the CA was 175, the total disposed of was 228 and the total outstanding was 114.

If permission to appeal is refused by the lower court, then the decision on whether permission to appeal is to be given takes, in 90% of the cases less than 6 months and

¹Judicial review applications can not be heard by the High Court unless that Court has given permission which it only does if the point is seriously arguable. If such permission is refused (then application can be made in the CA who can consider afresh whether the matter is seriously arguable. These applications are known as permission to apply for judicial review applications.

in 50% of the cases less than 3 months. Once permission has been given the CA disposes of appeals in 90% of the cases in less than 12 months from the date of permission and in 50% of the cases in less than 7 months.

8.4 Action to be taken by Supreme Administrative Courts

in the past few years very serious, and on the whole successful, efforts have been made to computerise the information in an intelligible way in order to enable the progress of each case to be supervised. Judges and administrators work together in the process of supervision. Target timetables have been laid down in relation to each class of litigation and regular reports are submitted which establish what percentages of various categories of case achieve the targets and which identify the cases which have failed to do so and give reasons in each case. Annually the results are published for public consumption.

9. The decisions of the Council of State or Supreme Administrative Court

9.1. In principle judicial review is available in the High Court in respect of every administrative decision.

9.2. No. Administrative law cases usually involve no judicial decisions of consequence before the hearing. Procedural decisions prior to the main hearing are not usually taken by the same persons as constitute the chamber which makes the substantive decision. That is not seen as a problem. The chamber which makes the substantive decision, which is the one in front of which the main oral hearing takes place, will usually first see the papers a few days before the oral hearing and give its decision at the conclusion of that hearing or shortly afterwards. There is no problem unless a judge has died during this short period. Fortunately (his is not a frequent occurrence. If it happens the parties would be entitled to a rehearing but might well agree to accept the verdict of the survivors if they are agreed.

9.3. The court can review the legality of the exercise of discretion by administrative bodies but in principle can not substitute its own discretion even if the decision of the administrative body is quashed.

**XVIIth Colloquium between
the Council of State and
the Supreme Administrative Judicial Bodies
of the EEC**

A. Background

This note seeks to provide answers to the questionnaire relating to the XVIIth Colloquium between the Council of State and the Supreme Judicial Bodies of the EEC (the "Colloquium") from the standpoint of Scots law. Although the substance of Scots administrative law is similar to that of the administrative law of England and Wales, the court structure is significantly different.

Scots law has two parallel jurisdictions, one for criminal law and one for everything else. The criminal courts have no general supervisory jurisdiction in respect of administrative acts, although they do have jurisdiction to determine whether an act of the Lord Advocate in his capacity as head of the prosecution service is beyond the powers transferred to him by the Scotland Act 1998. The civil courts consist of a hierarchy comprising, in descending order, the House of Lords (sitting as a Scottish court, that is, as a different court from when it sits in appeals from English courts), the Court of Session (which is divided into a first instance body, the Outer House, and an appellate body, the Inner House), the Sheriff Court and the District Court. Administrative law is within the jurisdiction of this hierarchy, although it is generally only courts from the Outer House of the Court of Session upwards that have jurisdiction to hear administrative law cases.

The general method of challenging administrative decisions is, in Scots law, by way of judicial review and it is with this procedure that this note is concerned. However, it should be noted that judicial review is a subsidiary remedy; it is not available where a particular statute has provided for another remedy, although it may become available when that other remedy has been attempted without success.

B. Answers to Questions where Scots Law different

1. Preliminary questions on domestic law

- 1.1 In general, all administrative decisions involving the exercise of a power granted to a body are subject to review under administrative law. Unlike English law, the question as to whether the body whose acts are examined is one of public or private law is not decisive. According to existing case law, the power must be granted by one person, to be exercised by a second person, and to be exercised in a way that will affect a third person. It is the third person that is entitled to bring proceedings for judicial review.
- 1.2 Judicial review proceedings must be brought in the Outer House of the Court of Session. Parties have an automatic right to appeal from all decisions of the Outer House to the Inner House and also an automatic right to appeal against the decision of the Inner House on the whole merits of a case to the House of Lords. Furthermore, a party is entitled to ask for leave to appeal from a judgment of (the Inner House on a preliminary point in proceedings to the House of Lords. It is for the Inner House to decide whether or not leave should be granted. A decision to refuse or grant leave is not appealable to the House of Lords. Where a "devolution issue" (a question essentially as to whether a member of the Scottish Executive has exceeded his powers under the Scotland Act 1998; this therefore includes questions as to whether such a person has acted in breach of a right granted under the ECHR) is raised by a party to proceedings, any party to proceedings is

entitled to take the case to the Privy Council for decision, whether the point arises in the Court of Session, the High Court of Justiciary or the House of Lords.

- 1.3 See English law.
- 1.4 The House of Lords has no jurisdiction to hear cases concerning Scottish criminal law; neither has the Court of Session.
- 1.5 Appeals only lie from the Inner House of the Court of Session to the House of Lords. There is no possibility of appealing directly from the Outer House (which would be the equivalent of the English 'leapfrog' procedure from the High Court of Justice).
- 1.6 No.
- 1.7 No distinction is made in any court.
- 1.8 See English law.
- 1.9 See English law.
- 1.10 Article 6 has no direct effect in Scotland at the moment although it does have indirect effect in that no member of the Scottish Executive had power to do any act that breaches a right granted by the European Convention of Human Rights. It is generally only in proceedings to which a member of the Scottish Executive is a party that a breach of Article 6 might be pleaded before the domestic court as giving a right to have a particular act set aside. This will be all criminal proceedings (as the Lord Advocate, who is the head of the Scottish prosecution service, is also a member of the Scottish Executive) and a significant proportion of judicial review proceedings (as these will often relate to acts the ultimate responsibility for which lies with a member of the Scottish Executive). The appropriate remedy would be the reduction (quashing) of the act and all the related proceedings. In criminal proceedings, if the time limit for prosecution had not expired, the court would be entitled to remit the case to the trial court to re-try it in accordance with acceptable procedure, if possible.

2. Scope of application of Article 6

- 2.1 Article 6 has no direct effect in Scotland as of yet (although it has indirect effect in that the Scotland Act 1998 (creating the Scottish Parliament) provided that no power to do any act inconsistent with a right granted by the European Convention of Human Rights) and so no difficulties appear from the case law as to the scope of Article 6.
- 2.2 See above,
- 2.3 There is none.
- 2.4.1 N/A
- 2.4.2 N/A
- 2.5-.7 See English law.
- 2.8.1 The Outer House and the Inner House of the Court of Session, as well as the House of Lords, have jurisdiction in relation to social security proceedings.
- 2.8.2 No.

3. Main Problems of a fair trial

- 3.1 We suspect that one of the most contentious points will prove to be the access of a party to documents held by government departments and relating to the decision under review.

3.2 There are lots of contentious issues.

3.3 Some problems have arisen recently concerning structural independence of temporary judges and others subject to analogous provisions for appointment and tenure. It is, however, unclear whether these problems will be of a temporary nature. There have so far not been any objections to a particular judge's hearing a case for any reason connected with Article 6.

3.4 See English law.

4. Oral Procedure

See English law in relation to the House of Lords. Procedure in Scottish courts is always principally oral. There are no problems concerning access to oral hearings in courts of lower instance for the public. A court is entitled to hold hearings *in camera* for specific reasons such as the anonymity of certain types of victims of crime, the protection of children etc.). However, it has yet to be argued (no ease has been taken from Scotland to Strasbourg) that a decision to hold such a hearing breaches Article 6.

5. Rules of Evidence

5.1 See English law.

5.2 In general, the House of Lords is not entitled to hear evidence at all as appeals before it are generally confined to points of law. The same rule applies in the Inner House of the Court of Session. As regards first instance proceedings in the Outer House, there are no rules, specific to judicial review proceedings, as to the admissibility of evidence. The general law of evidence applies,

5.3 See 5.2

5.4 See 5.2

6. Parties to the case

6.1 See English law.

6.2 Any person who has 'title and interest' to sue is entitled to petition the Outer House for judicial review of a particular decision. 'Title' requires a person to be a party to some sort of legal relationship in the broadest sense and 'interest' requires that that legal relationship will be in some way affected by the decision to be reviewed. However, there is no general right to intervene in proceedings raised by someone else that also has title and interest to sue in respect of the particular act, although such proceedings may not preclude the person desiring to intervene from raising proceedings of his own.

6.3 No: see 6.2

6.4 Probably not, although the question is undecided in Scots law.

7. The right to public pronouncement of the judgment

See English law,

8. Reasonable delay of definitive judgments in Administrative Law Suits

8.1 As follows:

- No previous complaint required; see 6.2;
- time limits are imposed on certain steps in judicial review proceedings and a party that fails to comply with those steps may lose the case as a result, although the court has an inherent discretionary power to extend time limits *ex post facto* where justice so requires;

- see Background;
- see 1.2;
- [what does the question mean?]
- the House of Lords must, if it allows an appeal, remit the case to the Inner House for execution; if it refuses the appeal, the judgment can be extracted for execution without further court procedure;
- Outer House and Inner House of Court of Session: cases are generally heard in the order in which the petitions starting them are lodged in court; House of Lords: see English law.

8.2 A person that succeeds in judicial review proceedings may be entitled to damages, although to date only one award of damages has been made where the conduct complained of amounted to unlawful expropriation. Damages are simply one of the remedies available to the Court of Session (Outer and Inner House) in hearing petitions for judicial review and are, it is thought, to be paid by the person whose decision is the subject of the challenge.

As regards annulment of public service, see English law.

8.3 The following information is available in the Court records:

- (a) The answer to these questions is not readily available;
- (b) 147;
- (c) 129;
- (d) 18;
- (e) the precise figure is not available but not more than five;
- (f) the figures are not available.

8.4 It is possible to determine the point in proceedings which any particular case has reached and how long the case has been on-going. However, the overall timetable is partly in the hands of the parties and cannot be too closely regulated by the courts administration. As to (c) and (d), see English law.

9. The decision of the Council of State or Supreme Administrative Court

9.1 No.

9.2 Scottish courts do not comprise chambers in a Continental European sense. In the Outer House, a judge sits alone. In the Inner House, the quorum of judges is required to hear a case is any three Court of Session judges. If a judge who is one of the quorum becomes unable to continue hearing the case, whether through long-term illness or death, and the court is as a result inquorate (fewer than three judges sitting) then the case would have to begin *de novo*. The same applies in the House of Lords as applies in the Inner House.

9.3 Judicial review proceedings are also capable of being taken in respect of the exercise of a discretionary power by an administrative body.