

Royaume-Uni
Cour suprême

United Kingdom
Supreme Court

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Soft law, legal norms and sources of law
Lord Carnwath CVO, Justice of UK Supreme Court

Hierarchy of norms in English law¹

(1) Public general statutes

Parliament is sovereign. In the absence of a written constitution the highest form of legal norms consists of the body of general Acts of Parliament, passed by both Houses of Parliament with the formal approval of HM The Queen. Some statutes are regarded as having “constitutional” significance (eg Magna Carta 1215, the Act of Settlement 1701, the European Communities Act 1972). But this expression has no formal significance. Even statutes of this nature can (in theory at least) be repealed or amended by a simple parliamentary majority.

(2) Private or local statutes

Public Acts take effect for the country as a whole. Private or local Acts may provide special laws for a particular part of the country (e.g Greater London), or legal authority (including authorisation and compulsory powers) for a specific project (e.g., the Channel Tunnel, or the Cross Rail underground line).

(3) International and European law

International norms have no formal status in English law, unless and so far as specifically incorporated by domestic statute. Thus, for example, the effectiveness of EU legislation or of CJEU judgments, depends on the 1972 which gives them binding effect. By contrast the European Convention on Human Rights takes effect under the Human Rights Act 2000, by which public bodies are required to act consistently with Convention rights, and the courts are required to “take account” of decisions of the Strasbourg court. If a statute is held to be inconsistent with the Convention, it is not invalidated, but the court may make a “declaration of

¹ In the interests of simplicity I disregard any differences in the laws of other parts of the UK

incompatibility” the effect of which is that Parliament must consider whether or not to amend the law.

(4) Statutory instruments

Much of our statutory law consists of subsidiary legislation, made under authority of statute, by Ministers and others, in the form of regulations, rules, byelaws etc, governing such things as social security, planning, local regulation etc. Such instruments are as effective as statute for most purposes, but are reviewable by the courts on public law principles.

(5) Court decisions

Court decisions both on common law principles and on interpretation of statute are a primary source of law. Under the system of judicial precedent, judgments of the Supreme Court are binding on all lower courts and Court of Appeal decisions are binding on all courts below them. Decisions of the high court are generally regarded as of “persuasive” force only, although likely to be followed unless clearly wrong.

(6) Rules and Practice directions

Procedure in courts and tribunals is generally governed by rules made under their inherent jurisdiction or specific statutory authority, expanded by practice directions. Their legal force in practice may depend on their context and subject-matter.

(7) Circulars and guidance

Government Departments publish a wide range of guidance notes on their practice in relation to the administration of different regulatory schemes. These are not binding in law. In some cases the statute may give specific authority for the publication of such guidance, and require it to be taken into account. More generally they are issued without specific authority. They may be referred to and given weight by the courts in reviewing the working and lawfulness of administrative decisions.