

to determine [their] form of government' – a clear rejection of the notion that sovereignty over Scotland lies with Westminster. It is possible, therefore, that Scottish judges in the future will make findings at least to the effect that devolution, bolstered as it was with emphatic democratic endorsement by the Referendum of 1997, is an entrenched principle which may not be unilaterally removed or modified by the Westminster Parliament.

## Question 3

Would you agree that the notions of the separation of powers and the rule of law are entirely overshadowed in the UK Constitution by the doctrine of parliamentary sovereignty? Take account of the impact of [the Human Rights Act 1998](#) in your answer.

### Answer plan

This question is very commonly asked. Clearly, the assumption that parliamentary sovereignty is the dominant feature of the constitution should be tested. The question of how far the doctrine has been affected by the UK's membership of the EU should be touched on, but cannot be considered in detail if the other two main issues are to receive adequate coverage. Obviously, it amounts to a very important issue in itself (which is considered in Chapter 2), but it would not be appropriate to examine it in detail here. In considering the doctrine of the separation of powers, comparisons can usefully be made with other jurisdictions, such as the USA. Mention of specific aspects of the Human Rights Act (HRA) 1998, specific European Convention on Human Rights (ECHR) Articles and relevant case law is essential in dealing with the final part of the question.

Essentially, the following matters should be discussed:

- the concept of the rule of law as put forward by Dicey;
- the extent to which the rule of law finds expression in the constitution;
- the doctrine of the separation of powers as propounded by Montesquieu;
- instances in which the doctrine is breached or observed;
- the impact of the HRA and [the Constitutional Reform Act](#) on both of the above;
- the meaning of the doctrine of parliamentary sovereignty;
- the weakening of the doctrine which has taken place due to Britain's membership of the EU.