

THE BRITISH INTERPRETATION ACT

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In his recent major work, "The Interpretation and Application of Statutes", Professor Reed Dickerson included a final chapter dealing with legislative control. Here he postulated that every provision of the typical interpretation act is designed to serve one or more of eight distinct purposes and went on to consider how far those purposes are both legitimate and attainable. The illustrations which followed were mainly taken from the Uniform Statutory Construction Act which, as he observed, followed the English pattern originally laid down in "Lord Brougham's Act" of 1850 and subsequently crystallised in the Interpretation Act of 1889. Since the British have just replaced the Act of 1889, this may be a suitable moment to consider how the new Act matches up with Professor Dickerson's analysis.

The process of preparing the new Act, the Interpretation Act 1978, took a long time. Not comparable with the 27-year period of gestation which preceded the birth of the Uniform Act in 1965, but still substantial in relation to the objective, which was consolidation with only minor amendments. In Britain "consolidation" means re-enactment without change of substance. There is no constitutionality problem, such as reduced the new Indiana Code to the status of a compilation. When the Parliament of the United Kingdom passes an Act, that is the law. The problem is to persuade Parliament to pass it, and to do so without expenditure of precious time on the discussion of amendments. There is no electoral mileage in legislation which merely modernises the Statute Book and no Government would introduce such legislation if it could be used by the opposition (or by restive supporters of their own) as a means of obstructing "programme" Bills. On the other hand modernisation, at least to the extent of re-enacting in one contemporary statute a group of older enactments which have been piled one on another over the years, has a limited (if overrated) utility, and a Bill which does that and no more can be put through without the risk of amendment or any prolonged debate. A drill has been established under which a consolidation Bill is first referred to a Select Committee whose function is to satisfy themselves that the Bill accurately restates the existing law without change of substance. When they have satisfied themselves on that and made their report, all subsequent stages of the Bill in both Houses are taken formally and no amendments can be moved. Since the establishment of the Law Commission in 1965 this drill has been improved so as to permit the inclusion in the Bill of minor amendments of substance recommended by the Commission with the object of getting a more satisfactory consolidation. Some use of this device was made in the Bill for the Interpretation Act 1978. It is worth adding that for these purposes "amendment" includes the repeal without re-enactment of any existing statutory provision which is not demonstrably inoperative. This factor accounts for the retention in the Act of 1978 of a few ancient monuments.

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Before coming to the detail of the new Act, it may be useful to say something about Professor Dickerson's eight purposes. These were –

- (1) To codify an existing usage of words, a general principle of communications, or an otherwise tacit assumption.
- (2) To change the meaning of existing statutes.
- (3) To provide a rule of law for deciding cases in which the ascertained statutory meaning is unresolvably uncertain.
- (4) To terminate a judicial rule of law for applying statutes.
- (5) To establish a new or different usage of words or a new or different principle of communication.
- (6) To establish specific rules to supplement recurrent general rules.
- (7) To enact legislative boilerplate.
- (8) To determine the boundaries of effective legislation.

So far as the British Acts are concerned, purposes (2) and (3) can be eliminated. It is not and never has been among their objects to alter the meaning of existing enactments. Some of the provisions of Lord Brougham's Act and of the 1889 Act were applied to past as well as future Acts, but only where this could be done without changing the effect of the former. The same applies to the 1978 Act, and far too much of the time taken up in drafting the Bill for that Act was devoted to Schedule 2 (Application of Act to existing enactments) which is as likely to mystify as to instruct even the most scientific consumer. Nor have the British Acts attempted to give directions to the courts about how to decide a case in which the ascertained statutory meaning is uncertain. They have no clause (common in other jurisdictions) requiring a "beneficial construction" to be given Acts of Parliament, whatever that may mean, and nothing remotely like section 15 of the Uniform Statutory Construction Act so rightly described by Professor Dickerson as a "mishmash of confusion". There was indeed a recent attempt to promote legislation of that character in a Report from the Law Commission (1969 Law Com. No. 21), but apart from the endorsement of some of the more innocuous proposals by a Government Committee on the Preparation of Legislation which reported in 1975 (Cmnd. No. 6053) nothing has resulted so far. Nor do the British Acts use prefabricated legislation in the way that Professor Dickerson advocates. Boilerplate of British manufacture (such as there is) is not merely put on display to be delivered to express order. It is incorporated in by relevant specification unless rejected expressly or by implication. There is therefore no distinction of principle between classes (6) and (7), and in case of doubt British additives will be attributed below to class (7).

Purpose (8) is perhaps a little oracular, but as expounded later in the chapter it was intended to cover such diverse subjects as the commencement of Acts, the relation between conflicting enactments and the authenticity of conflicting texts.

In fact there is one overriding purpose, common to all the British provisions, which is not mentioned as such in the catalogue. The object of these Acts, including of course the latest one, is to shorten other Acts, neither more nor less. The title "Interpretation" is misleading not only because no guidance is given to the Courts or the public on the question of harmonising conflicting provisions or taking the right direction out of an ascertained ambiguity. It also suggests (all too rightly as some critics could say) that Acts are written in one language and have to be translated into another (to wit, English) in

order to ascertain what they actually say. A better title would be "Acts Abbreviation", which is how Lord Brougham's Act was described in the rubric of that Statute of 1850: but the traditional title was retained in the new Act.

The text of the main provisions of the Act of 1978 is set out below, with notes showing the origin of each clause, the relevant "purpose" under Professor Dickerson's classification (denoted by the letter D), the corresponding clause, if any, of the Uniform Statutory Construction Act (denoted by the letter U), and a brief commentary where appropriate.

Words of Enactment

1. Every section of an Act takes effect as a substantive enactment without introductory words.

1850 s.2; 1889 s.8. D(8). Something of a dinosaur, dating from the time when the standard method of embarking on a fresh subject was to begin again: "And be it further enacted" or "Provided always", or (a happy combination of both) "Provided always and be it enacted." Lord Brougham's own Act contained eight sections, by which the first began "Be it enacted and declared", the last "Be it declared and enacted", and all the others "Be it enacted". A useful case of Physician, heal thyself? This kind of thing, if it exists in the United States at all, would no doubt find its place in a State constitution Act and not in a statutory construction Act.

Amendment or Repeal in Same Session

2. Any Act may be amended or repealed in the session of Parliament in which it is passed.

1850 s.1; 1889 s.10; D(8). Another genuine antique. Until the second half of the 19th century any well-drawn Act would contain a clause to the effect that "This Act may be amended or repealed in the present session of Parliament". This was thought necessary for two reasons. (1) Originally all Acts of a Session were notionally passed simultaneously at the beginning of the first day of the Session. (2) The House of Commons had a wholesome rule of order by which a substantive decision of the whole House could not be reversed in the same Session. The first reason vanished in 1793 but the second is still valid.

Judicial Notice

3. Every Act is a public Act to be judicially noticed as such, unless the contrary is provided by the Act.

1850 s.7; 1889 s.9; D(8).

Time of Commencement

4. An Act or provision of an Act comes into force –
 - (a) where provision is made for it to come into force on a particular day, at the beginning of that day;
 - (b) where no provision is made for its coming into force, at the beginning of the day on which the Act received the Royal Assent.

1793 (c.13); 1889 s.36 (2); D(8). Minor changes of substance were recommended by the Law Commission.

Definitions

5. In any Act, unless the contrary intention appears, words and expressions listed in Schedule 1 to this Act are to be construed according to that Schedule.

1850, 1889 *passim*, and numerous subsequent enactments; D(1); U.26. The Schedule which comprises some 60 definitions, contains no hidden traps except (if these are exceptions) that "person" includes a corporation or unincorporated body such as a partnership; "land" includes houses; and "writing" includes printing etc. Some of the definitions are common to the Uniform Act, but it is not worth picking those out. Many more of the expressions defined would be used in current legislation without definition if they had never been defined by statute. The objective (as always) is brevity. You are (officially) authorised to write "Lord Chancellor" rather than "Lord High Chancellor of Great Britain", or "Comptroller and Auditor General" rather than "Comptroller-General of the receipt and issue of Her Majesty's Exchequer and Auditor-General of Public Accounts appointed in pursuance of the Exchequer and Audit Departments Act of 1866". In fact any modern draftsman would do that without specific authority, but this was consolidation and, as already indicated, it would have caused more trouble to omit a definition of doubtful utility than to reproduce it.

Gender and Number

6. In any Act, unless the contrary intention appears—
(a) words importing the masculine gender include the feminine;
(b) words importing the feminine gender include the masculine;
(c) words in the singular include the plural and words in the plural include the singular.

1850 s.4; 1889 s.1; D(1); U.3, 4. Paragraph (b) is new and required a recommendation of the Law Commission. Professor Dickerson's comment on this type of legislation (at p.264) is particularly apposite here; it is normal language to write "man" to mean a person of either sex who belongs to the species man, and "he" to mean he or she, but abnormal to write "woman" or "she" in the same sense. The Indiana Code (Title 34-1-67-2) does not adopt this usage; and it may be observed in passing that Indiana was one of the minority of States who voted against the promulgation of the Uniform Statutory Construction Act by the Commissioners. However, unlike the Uniform Act, the present clause allows for the contrary intention, so no harm is likely to be done. This has been the rule for deeds and other instruments since 1925, and Lincoln's Inn is still standing.

References to Service by Post

7. Where an Act authorises or requires any document to be served by post (whether the expression "serve" or the expression "give" or "send" or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, pre-paying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time when the letter would be delivered in the ordinary course of the post.

1886 s.26; D(6). The common law rule is that where a notice or document is to be given or served it must be handed to the party concerned. The clause does not alter that, but brings in supporting provisions for Acts which expressly

authorise postal service. It is of limited utility because most Acts which authorise postal service of particular notices or documents do so as part of a relatively elaborate clause dealing with other matters such as the proper address for service, service on corporations or firms, service by affixing to relevant premises, and so forth. These provisions might usefully be welded one day into a larger section of "boilerplate", but that was not attempted in the present stage.

References to Distance

8. In the measurement of any distance for the purposes of an Act, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

1889 s.34; D(1). This section looks perhaps too like a substantive enactment. What it means, and might preferably have said, is that where an Act refers to a distance (and does not say or mean something else, for instance when describing a length of road) it is to be read as referring to that distance as the crow flies. Compare section 9 below.

References to Time of Day

9. Subject to section 3 of the Summer Time Act 1972 (construction of references to points of time during the period of summer time), whenever an expression of time occurs in an Act, the time referred to shall, unless it is otherwise specifically stated, be held to be Greenwich mean time.

Statutes (Definition of Time) Act 1880; D(1), (5); U.9. At common law the time of day varied according to the longitude. The advent of the railways made uniformity essential. The Act of 1880 originally served Professor Dickerson's fifth purpose. The re-enactment serves his first.

References to the Sovereign

10. In any Act a reference to the Sovereign reigning at the time of the passing of the Act is to be construed, unless the contrary intention appears, as a reference to the Sovereign for the time being.

1889 s.30; D(1).

Construction of Subordinate Legislation

11. Where an Act confers power to make subordinate legislation, expressions used in that legislation have, unless the contrary intention appears, the meanings which they bear in the Act.

1889 s.31; D(1). Unlike its predecessors, but in common with the Uniform Statutory Construction Act, the Act of 1978 applies directly to subordinate legislation. This present section continues to apply where expressions not defined by the Interpretation Act, but defined or used in a special sense in the Act which confers the power, are used in subordinate legislation without definition. It is ascribed here to Professor Dickerson's purpose (1) as codifying a tacit assumption but may perhaps also partake of purpose (8).

Continuity of Powers and Duties

12. (1) Where an Act confers a power or imposes a duty it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, from time to time as occasion requires.

(2) Where an Act confers a power or imposes a duty on the holder of an office as such it is implied, unless the contrary intention appears, that the power may be exercised, or the duty is to be performed, by the holder for the time being of the office.

1889 s.32(a); D(1), (4). These provisions, originally enacted to counteract the risk of restrictive interpretation (or rather to eliminate the need for recurring *ad hoc* provisions for that purpose), are now little more than statements of the obvious.

Anticipatory Exercise of Powers

13. Where an Act which (or any provision of which) does not come into force immediately on its passing confers power to make subordinate legislation, or to make appointments, give notices, prescribe forms or do any other thing for the purposes of the Act, then, unless the contrary intention appears, the power may be exercised, and any instrument made thereunder may be made so as to come into force, at any time after the passing of the Act so far as may be necessary or expedient for the purpose –

- (a) of bringing the Act or any provision of the Act into force; or
- (b) of giving full effect to the Act or any such provision at or after the time when it comes into force.

1889 s.37; D(6). A very common provision of British Acts is to the effect that the Act “shall come into force on such day as the Minister may by order appoint”. This may be regarded either as a condition, similar in essentials to saying that the Act is to come into force on the first day on which a judge of the High Court runs from the Law Courts to the Palace of Westminster in less than ten minutes; or as a power conferred on the Minister by the Act. In the latter sense it can be (and indeed has been) argued that the Act can never come into force. This section makes it unnecessary to fend off that argument by elaborating the commencement clauses of individual Acts. It is attributed here to purpose (6), as supplementing commencement clauses. It also belongs to purpose (8) as determining the boundaries of effective (subordinate) legislation.

Implied Power to Amend

14. Where an Act confers power to make –

- (a) rules, regulations or bylaws; or
- (b) Orders in Council, orders or other subordinate legislation to be made by statutory instrument, it implies, unless the contrary intention appears, a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke, amend or re-enact any instrument made under the power.

1889 s.32; D(7). Paragraph (b) is new, and required a recommendation of the Law Commission. For the previous 90 years the implied power to revoke and amend was confined to rules, regulations or bylaws, and any Act which conferred power to make Orders in Council, orders, schemes or the like had to provide expressly for their revocation and amendment. The cream of the joke was the Act which conferred both a power to make rules and a power to make orders. There the practice was to provide expressly for the revocation and amendment of the latter only. Strictly right, of course, but this is the kind of thing that gets the legislative draftsmen disliked.

Repeal of Repeal

15. Where an Act repeals a repealing enactment, the repeal does not revive any enactment previously repealed unless words are added reviving it.

1850 s.5; 1889 s.11(1); D(4); U.24. The common law was of course to the opposite effect. Once an Act was repealed it was treated (except as regards transactions past and closed) as if it had never been enacted. So any enactment repealed by the repealed Act was revived unless re-repealed by the repealing Act (for a possible instance of the technique see 2 N.D. *Journal of Legislation* at p.14).

General Savings

16. (1) Without prejudice to section 15, where an Act repeals an enactment, the repeal does not, unless the contrary intention appears –

- (a) resolve anything not in force or existing at the time at which the repeal takes effect;
- (b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed.

(2) This section applies to the expiry of a temporary enactment as if it were repealed by an Act.

1889 s.38(2); D(4); U.25(a). See note on section 15 above. The clause applies to an implied repeal, *e.g.*, where words are substituted in a previous enactment. Subsection (2) of the section is new and required a recommendation of the Law Commission.

Repeal and Re-Enactment

17. (1) Where an Act repeals a previous enactment and substitutes provisions for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into force.

1850 s.6; 1889 s.11(2); D(8). This is another provision originally designed to save words in commencement sections. It has little relevance to modern legislation in which repeals are synchronised with the replacements.

(2) Where an Act repeals and re-enacts, with or without modification, a previous enactment, then, unless the contrary intention appears, –

- (a) any reference in any other enactment to the enactment so repealed shall be construed as a reference to the provision re-enacted;
- (b) in so far as any subordinate legislation made or other thing done under the enactment so repealed, or having effect as if so made or done, could have been made or done under the provision re-enacted, it shall have effect as if made or done under that provision.

1889 s.38(1); D(1); U.21. Section 21 of the Uniform^r Statutory Construction Act achieves the same result as paragraph (a) from the opposite direction. Paragraph (b) is new, and required a recommendation of the Law Commission.

Duplicated Offences

18. Where an Act or omission constitutes an offence under two or more Acts, or both under an Act and at common law, the offender shall, unless the contrary intention appears, be liable to be prosecuted and punished under either or any of those Acts or at common law, but shall not be liable to be punished more than once for the same offence.

1889 s.33; D(4). This again looks rather too like a substantive enactment. What it actually does is to eliminate the need for a saving in Acts which create new offences in a field already occupied by other legislation or by the Common Law, where it might otherwise be argued that the previous law was repealed by implication.

Citation of Other Acts

19. (1) Where an Act cites another Act by regnal year, statute, session or chapter, or a section or portion of an Act by number or letter, the reference shall, unless the contrary intention appears, be read as referring –
 - (a) in the case of Acts included in any revised edition of the statutes printed by authority, to that edition;
 - (b) in the case of Acts not so included but included in the edition prepared under the direction of the Record Commission, to that edition;
 - (c) in any other case, to the Acts printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office.
- (2) An Act may continue to be cited by the short title authorised by any enactment notwithstanding the repeal of that enactment.

1889 s.35(2). Short Titles Act 1896 s.3; D(8); U.19. Right down to 1963 the Acts of the Parliaments of England, Great Britain and the United Kingdom were identified as chapters of the session in which they were passed, and the session as the session of the regnal year (or more often two and very occasionally three regnal years) in which the session was held. In the earliest editions of the statutes there were discrepancies in the regnal years or chapters attributed to particular Acts, as well as the numbering of sections. Thus the main enactments which (until 1957) provided for the exclusion of "placemen" from the House of Commons were to be found either as 6 Ann. c.41 ss.24 and 25 (Statutes of the Realm) or as 6 Ann. c.7 ss.25 and 26 (Statutes at Large). The discrepancy in the numbering of the sections arose because in the Statutes at Large section 20 was printed as 20 and 21, the latter of which (contrary to the practice noted under clause 1 above) had no enacting words of its own. The Interpretation Act 1889 naturally gave preference to the official editions. Since 1896 almost every public Act has had a short title incorporating the calendar year in which the Act was passed (the Sale of Goods Act 1893 actually has the wrong one); and since 1963 the Acts have been numbered consecutively as chapters of the calendar year rather than as chapters of the session.

References to Other Enactments

20. (1) Where an Act describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described or cited includes the words, sections or other parts referred to unless the contrary intention appears.

1889 s.35; D(1); U.22. Oddly enough, the rule is the opposite in Parliamentary proceedings, where an amendment to leave out "from X to Y" leaves both X and Y standing in the text.

- (2) Where an Act refers to an enactment, the reference, unless the contrary intention appears, is a reference to that enactment as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including any other provision of that Act.

D(6); U.21. This provision is new to the British Act and required a recommendation of the Law Commission. It will replace *ad hoc* clauses which have become very common though the need for them is doubtful. Note that the clause does not at least expressly operate on future amendments. If a section referred to in the one Act of Parliament is amended by a subsequent Act, the question whether the reference is now to be construed as applying to the original section or to that section as amended or to both is a question of construction of the subsequent Act. Section 21 of the Uniform Statutory Construction Act, on the other hand, operates primarily if not exclusively upon future re-enactments, revisions and amendments, and does not even allow for a contrary intention.

The above are the substantive sections of the U.K. Act of 1978. Each of the sections serves one or more of Professor Dickerson's listed purposes other than (2) and (3). They are hopefully effective and certainly legitimate in terms of U.K. constitutional theory. In Professor Dickerson's classification the highest scorer is class (1), provisions expressing assumptions which would be made in conversation or narrative but might be disputed in a statute. Class (8) comes next, followed by classes (6) and (7) combined, with class (4) in close attendance. The Uniform Statutory Construction Act, despite its ancestry, scores less than half in the way of analogues. Only nine of its 28 operative sections are reflected here, the most notable absentees being those which attempt to dictate the method of ascertaining the meaning of the language used in an Act, such as sections 2, 13 and 15.

The remaining sections of the Act deal with its application to Acts future and past and to subordinate legislation, and with other supplementary matters. The Act is in no sense a landmark in the field of statutory construction Acts. Apart from two or three useful innovations noted above, it merely brings together in one place what remains of the Act of 1889 after almost a century in which the wind of change has been blowing (gently at first but of late with increasing strength rising to gale force) on the authorities, institutions and concepts which that Act defined, together with a few subsequent enactments by which new authorities, institutions or concepts have been defined for purposes of legislation in general. It is a truism that most practising lawyers believe they know what is and is not to be found in the Act of 1889, but few actually look it up to make sure. The new Act, once the novelty has worn off, will no doubt achieve the same status.