

1417. Construction of consolidation Acts. Initially a consolidation Act¹ is to be construed in the same way as any other Act. If, however, a real doubt as to its meaning arises² the following rules apply:

- (1) unless the contrary intention appears, an Act stated in its long title³ to be a consolidation Act is presumed not to be intended to change the law, and so its words must be construed exactly as if they remained in the earlier Act⁴;
- (2) the above presumption means that in case of real doubt the earlier law may be considered⁵, even if the words are not identical⁶;
- (3) in so far as the Act constitutes consolidation with amendments, its words are to be construed as if they were contained in an ordinary amending Act⁷; and
- (4) if there is inconsistency in the sections of a consolidation Act it may be necessary to look at the respective dates of their first enactment to explain the inconsistency⁸.

¹ As to the nature of a consolidation Act see para 1225 ante.

² As to cases of real doubt see para 1374 ante.

³ As to the long title of an Act see para 1264 ante.

⁴ *Mitchell v Simpson* (1890) 25 QBD 183 at 190, CA; *Gilbert v Gilbert and Boncher* [1928] P 1 at 7-8, CA; *Nottinghamshire County Council v Middlesex County Council* [1936] 1 KB 141 at 145, DC; *Beswick v Beswick* [1968] AC 58, [1967] 2 All ER 1197, HL; *DIP v Schildkamp* [1971] AC 1, [1969] 3 All ER 1640, HL; *Atkinson v United States of America Government* [1971] AC 197, [1969] 3 All ER 1317, HL; *Mannell v Ollis* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL; *Edwards (Inspector of Taxes) v Clark* [1968] Ch 1225 ante; but must yield to plain words to the contrary (*Hughes v Robertson* [1898] AC 616 at 624, HL; *MaConnell v E Hill & Co Ltd* [1916] 2 Ch 37 at 63; *Gilbert v Gilbert and Boncher* [1928] P 1 at 8, CA; *Crey v IRC* [1960] AC 1 at 13, [1959] 3 All ER 603 at 606, HL; *Beswick v Beswick* [1968] AC 58 at 79, [1967] 2 All ER 1197 at 1206, HL, per Lord Hodson, and at 84 and 1209 per Lord Guest).

⁵ *Farell v Alexander* [1977] AC 59 at 73, [1976] 2 All ER 721 at 726, HL, per Lord Wilberforce; *Cullen v Rogers* [1982] 2 All ER 570 at 574, [1982] 1 WLR 729 at 743, HL. See also *Mitchell v Simpson* (1890) 25 QBD 183 at 190, CA, per Lord Esher; *Smith v Baker & Sons* [1891] AC 325 at 349, HL; *Barett (Inspector of Taxes) v Whiting* [1965] 1 All ER 685, [1965] 1 WLR 433, CA; *Mannell v Ollis* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL, per Lord Reid, and at 394 and 47 per Lord Simon of Glaisdale; *R v Sheppard* [1981] AC 394, [1980] 3 All ER 899, HL; *R v Heron* [1982] 1 All ER 993, [1982] 1 WLR 451, HL; *R v West Yorkshire Coroner, ex p Smith* [1983] QB 335, [1982] 3 All ER 1098, CA.

⁶ *Re A Solicitor* [1956] 1 QB 155 at 167, [1955] 3 All ER 305 at 313. It is possible for it to be the scrutiny of the earlier law which itself raises the doubt. The courts tend to discourage investigation of the earlier law: see *IRC v Jolner* [1975] 3 All ER 1050, [1975] 1 WLR 1701, HL; *Metropolitan Police Comm v Curran* [1976] 1 All ER 162, [1976] 1 WLR 87, HL; *Farell v Alexander* [1977] AC 59, [1976] 2 All ER 721, HL, especially at 73 and 726 per Lord Wilberforce, who deprecated the courts' previous willingness to investigate the antecedents of consolidation Acts; *Johnson v Merton* [1980] AC 137 at 166, [1979] 3 All ER 37 at 46, HL, per Lord Hailsham of St Marylebone LC, and at 62 and 51 per Lord Simon of Glaisdale; *R v West Yorkshire Coroner, ex p Smith* [1983] QB 335 at 355, [1982] 3 All ER 1098 at 1104, CA, per Lord Lane CJ. However, it is recognised that consideration of antecedents may be necessary for the purpose of establishing an Act's historical and social context and therefore the relevant statutory objective: see *Farell v Alexander* [1977] AC 59 at 84, [1976] 2 All ER 721 at 735, HL, per Lord Simon of Glaisdale; and *Johnson v Merton* supra.

⁷ In such cases the rules regarding 'straight' consolidation apply only to provisions unaffected by such amendments: see *Atkinson v United States of America Government* [1971] AC 197 at 249, [1969] 3 All ER 1317 at 1336, HL, per Lord Upjohn; *Metropolitan Police Comm v Curran* [1976] 1 All ER 162 at 165, [1976] 1 WLR 87 at 90, HL, per Lord Diplock; *Farell v Alexander* [1977] AC 59 at 83, [1976] 2 All ER 721 at 734, HL, per Lord Simon of Glaisdale; *R v Heron* [1982] 1 All ER 993 at 999, [1982] 1 WLR 451 at 459, HL, per Lord Scarman. These passages indicate that where appropriate the court will be able to use the relevant Lord Chancellor's Memorandum under the Consolidation of Enactments (Procedure) Act 1949 (see para 1247 ante) or Law Commission report (see para 1225 ante) to ascertain that no relevant alterations to the existing law were thereby introduced and for other purposes of interpretation. *Cliff v H* [1966] 3 All ER 560 at 566 per Sir Jocelyn Simon P.

⁸ *Higgs and Hill v Stepney Borough Council* [1914] 1 KB 505 at 510, DC. Where provisions of a consolidation Act have their origin in different items of legislation, the same word may have different meanings in different provisions: see para 1485 post.

1418. Construction of codifying Acts. In construing a codifying Act¹ the proper course is, in the first instance, to examine its language and to ask what is its natural meaning². The object of a codifying Act has been said to be that on any point specifically dealt with by it the law should be ascertained by interpreting the language used, instead of roaming over a number of authorities³. After the language has been examined without presumptions, resort may be had to the previous state of the law only on some special ground, for example for the construction of provisions of doubtful import, or of words which have acquired a technical meaning⁴. These principles have been applied to the Bills of Exchange Act 1882⁵, the Sale of Goods Act 1893⁶, and the Marine Insurance Act 1906⁷.

¹ As to the nature of a codifying Act see para 1226 ante.

² It is an inversion of the proper order of consideration to start by inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear interpretation in conformity with this view: *Bank of England v Vagliano Bros* [1891] AC 107 at 144, HL; *Robinson v Canadian Pacific Rly Co* [1892] AC 481, PC; *Bristol Tramways & Carriage Co Ltd v Fiat Motors Ltd* [1910] 2 KB 831 at 836, CA; *Hall v Hayman* [1912] 2 KB 5 at 12; *R v Fulford* [1987] QB 426, [1987] 2 All ER 65, CA; *R v Smithwarite* [1992] 1 All ER 808 at 922, 984, 4 App 101, 228 at 233, CA, per Lord Taylor CJ. Cf *British Home Assurance Corp Ltd v Paterson* [1902] 2 Ch 404, where the Partnership Act 1890 was held to be declaratory only of some of the principles of law relating to principal and agent, so that the case was to be decided by reference to other such principles.

³ *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL; *Robinson v Canadian Pacific Rly Co* [1892] AC 481, PC.

⁴ *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL; *Wamble, Sons & Co v Rosenberg & Sons* [1911] 1 KB 743 at 762, CA; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1902] 2 QB 130 at 141, [1901] 2 All ER 487 at 492, per Diplock J.

⁵ See *Bank of England v Vagliano Bros* [1891] AC 107 at 145, HL.

⁶ See *Abbott & Co v Wolley* [1895] 2 QB 97, CA; *Bristol Tramways & Carriage Co Ltd v Fiat Motors Ltd* [1910] 2 KB 831 at 836, CA. The Sale of Goods Act 1893 has now been repealed and replaced by the Sale of Goods Act 1979, a consolidating Act. See also the enactment of the Act, although the Court of Appeal had subsequently been reversed by the House of Lords. See also *INSURANCE* v vol 25 (Cases) para 297. See further *Pollman SS Co Ltd v Young* [1915] 1 KB 924, CA; *British and Foreign Marine Insurance Co Ltd v Samuel Sanday & Co* [1916] 1 AC 650 at 673, HL; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1902] 2 QB 130, [1901] 2 All ER 487. The last two cases contain erroneous references to the Marine Insurance Act 1906 being a consolidation Act; as to the informed interpretation of such Acts see para 1417 ante.

⁷ See *Hall v Hayman* [1912] 2 KB 5 at 14, where it was held that a provision of the Act embodied the law as declared by the Court of Appeal before the passing of the Act, although the Court of Appeal had subsequently been reversed by the House of Lords. See also *INSURANCE* v vol 25 (Cases) para 297. See further *Pollman SS Co Ltd v Young* [1915] 1 KB 924, CA; *British and Foreign Marine Insurance Co Ltd v Samuel Sanday & Co* [1916] 1 AC 650 at 673, HL; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1902] 2 QB 130, [1901] 2 All ER 487. The last two cases contain erroneous references to the Marine Insurance Act 1906 being a consolidation Act; as to the informed interpretation of such Acts see para 1417 ante.

(b) Enacting History

1419. Nature of enacting history. The enacting history of an Act is the surrounding corpus of public knowledge which relates to its introduction into Parliament as a Bill, and subsequent progress through Parliament until it is ultimately passed. In particular, the enacting history is the extrinsic material assumed to be within the contemplation of Parliament when it passed the Bill for the Act, including the record of proceedings on that Bill in Parliament¹.

¹ The information is described as the surrounding corpus of knowledge because the central source of information as to Parliament's intention must always be the text of the Act itself: see para 1440 post. It comprises reports and other material on which the Act is based, the text of the Bill and amendments

proposed to it, reports of parliamentary debates and proceedings on the Bill, explanatory memoranda officially issued in connection with the Bill, and other contemporaneous material upon which Parliament may be presumed to have acted. Much of this material emanates from the executive, rather than from the legislature itself. As to the role of the executive see paras 1242-1243, 1325 et seq ante.

1420. Special restriction on parliamentary materials (the exclusionary rule). Except as allowed by virtue of the rule in *Pepper v Hart*¹ or the court's inherent jurisdiction², it is a rule of practice, known as the exclusionary rule³, that it is not permissible to look to reports of proceedings which took place in either House of Parliament during the passage of the Bill for that Act for assistance in construing an Act⁴.

- 1 The rule laid down in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL; see para 1421 post.
- 2 See para 1422 post.
- 3 See *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 630, [1993] 1 All ER 42 at 60, HL, per Lord Browne-Wilkinson.
- 4 *Hatmor Productions Ltd v Hamilton* [1983] 1 AC 191 at 232, [1983] 1 All ER 1042, HL, per Lord Diplock. That the exclusionary rule is one of practice rather than substance was indicated in *Black-Claydon International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 614, [1975] 1 All ER 810 at 814, HL, per Lord Reid. The rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1993] 1 All ER 42, HL, has reduced the significance of the exclusionary rule but, since that rule remains in existence (the rule in *Pepper (Inspector of Taxes) v Hart* supra forming an exception to it rather than abrogating it), it should remain in an account of the interpretative criteria. For the history of, and reasons for, the exclusionary rule see Bennion, *Statutory Interpretation* (2nd Edn, 1992), 2nd Supp (1995).

1421. First exception to the exclusionary rule; the rule in *Pepper v Hart*. The rule in *Pepper v Hart*¹ provides that, notwithstanding the exclusionary rule², where, in the opinion of the court determining the legal meaning³ of an enactment⁴, that enactment is ambiguous⁵ or obscure⁶ or its literal meaning⁷ leads to an absurdity⁸, the court may have regard to any statement on the Bill for the Act containing the enactment, as set out in the Official Report of Debates⁹, which (1) is clear¹⁰; (2) was made by or on behalf of the minister or other person who was the promoter of the Bill¹¹; and (3) discloses the mischief aimed at by the enactment, or the legislative intention underlying its words¹². The court may also have regard to such other parliamentary material (if any) as is relevant for understanding that statement and its effect¹³.

In allowing an advocate to cite such material the court must ensure that he or she does not in any way impugn or criticise the statement or the reasoning of the person making it¹⁴. The court may overrule an earlier decision which is not binding on it and was arrived at before the rule in *Pepper v Hart* was introduced¹⁵.

Prior to the decision in *Pepper v Hart*, a limited exception to the exclusionary rule had been accepted with regard to subordinate legislation passed in order to implement the United Kingdom's obligations under European Community law. Where draft regulations presented to Parliament purported to give full effect to a decision of the European Court of Justice, in ascertaining the intention of Parliament the English court was entitled to have regard to the speech made by the responsible minister when those draft regulations were so presented¹⁶.

- 1 The rule was laid down in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL.
- 2 As to the exclusionary rule see para 1420 ante.
- 3 As to the legal meaning see para 1373 ante.
- 4 As to the nature of an enactment see para 1232 ante.

- 5 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. As to when there is ambiguity see para 1470 note 6 post; and *Chief Adjudication Officer v Foster* [1993] AC 754 at 772, [1993] 1 All ER 705 at 717, HL, per Lord Bridge of Harwich; *Resitak v Crickmore* [1994] 2 All ER 112 at 116, [1994] 1 WLR 420 at 426, CA; *R v Secretary of State for the Home Department, ex p Mehan* [1994] QB 474 at 485, [1994] 2 All ER 494 at 503.
- 6 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson.
- 7 As to the presumption favouring a literal meaning see para 1470 post.
- 8 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. As to the presumption against absurdity see para 1477 post.
- 9 The Official Report is more usually referred to as *Hansard*. Any party intending to refer to any extract from *Hansard* must, unless the judge otherwise directs, serve upon all other parties and the court copies of any such extract together with a brief summary of the argument intended to be based upon that extract: see *Practice Note* [1995] 1 All ER 234; sub nom *Practice Direction (Hansard: Citation)* [1995] 1 WLR 192.
- 10 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 638-640, [1993] 1 All ER 42 at 67-69, HL, per Lord Browne-Wilkinson.
- 11 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson. See also *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] QB 552, [1994] 1 All ER 457, DC, (minister's statement made on advice of Attorney General). As to the initiation of Bills see paras 1242-1244 ante.
- 12 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 634, [1993] 1 All ER 42 at 64, HL, per Lord Browne-Wilkinson.
- 13 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 640, [1993] 1 All ER 42 at 69, HL, per Lord Browne-Wilkinson. It seems that, so far as it extends, the rule in *Pepper v Hart* supra must be taken to have abrogated the previous rule prohibiting reference to amendments made to a Bill during its progress: see *Viscountess Rhondda's Claim* [1992] 2 AC 339 at 383, 399, HL; *DPP v Manners* [1978] AC 43 at 48, sub nom *R v Manners* [1978] 2 All ER 96 at 100, CA (affd on other grounds sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL).
- 14 *Pepper (Inspector of Taxes) v Hart* [1993] AC 593 at 639, [1993] 1 All ER 42, HL, per Lord Browne-Wilkinson.
- 15 *Stubbings v Webb* [1993] AC 498, [1993] 1 All ER 322, HL.
- 16 See *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL.

1422. Second exception to the exclusionary rule; the court's inherent jurisdiction. The court, as master of its procedure, has a residuary inherent jurisdiction to allow citation of materials which are otherwise precluded by the exclusionary rule¹ and are not permitted by the rule in *Pepper v Hart*², where the need to carry out the legislator's intention³ appears to the court so to require⁴.

- 1 As to the exclusionary rule see para 1420 ante.
- 2 The rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL; see para 1421 ante.
- 3 As to the need to ascertain and implement the legislator's intention see para 1372 ante.
- 4 The court retains an overall control of its procedure, and if it thinks fit will disregard the exclusionary rule since it is a rule of practice rather than of law, and was in fact contravened by the decision in the very case in which it was first laid down: see *Millar v Taylor* (1769) 4 Burr 2303. It was afterwards disregarded or questioned in many cases decided before *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL; see eg *Earl of Shrewsbury v Son* (1859) 6 CBNS 1; *Re Mew and Thorne* (1862) 31 LJ Bcy 87 at 89; *Dunmummond v Dunmummond* (1866) 36 LJ Ch 153 at 160; *Hebban v Puchas* [1871] LR 3 PC 605 at 648-649; *Ridsdale v Clifton* [1879] LR 2 PD 276; *R v Bishop of Oxford* (1879) 4 QBD 525 at 549-550, 576-577 (but see *Julius v Bishop of Oxford* (1880) 49 LJQB 577 at 578); *South Eastern Ry Co v Railway Comrs* (1880) 5 QBD 217 at 236-237; *Heron v Rathmuis and Railway Improvement Comrs* [1892] AC 498 at 501-502, HL; *Lumsden v IRC* [1914] AC 879 at 908, 922, HL; *Edwards v A-G for Canada* [1930] AC 124 at 143, PC; *Re C, an Infant* [1937] 3 All ER 783 at 787; *Saguate Investments Ltd v Norwich Corp* [1971] 2 QB 614 at 624, [1971] 2 All ER 1441 at 1445, CA; *Beswick v Beswick* [1968] AC 38 at 103, [1967] 2 All ER 1197 at 1223, HL; *R v Warner* [1966] 2 AC 256 at 279, [1966] 2 All ER 356 at 366, HL; *McMillan v Crouch* [1972] 3 All ER 61 at 76, [1972] 1 WLR 1102 at 1119, HL; *Isling Borough Council v Race Relations Board* [1972] AC 342 at 367, [1972] 1 All ER 105 at 119, HL; *Chanter v Race Relations Board* [1973] AC 868 at 900, [1973] 1 All ER 512 at 526, HL; *Racial Communications Ltd v Pay Board* [1974] 3 All

ER 263 at 267, [1974] 1 WLR 1149 at 1153; *R v Greater London Council, ex p Blackburn* [1976] 3 All ER 185 at 189, [1976] 1 WLR 550 at 556, CA; *Dockers' Labour Club and Institute Ltd v Race Relations Board* [1976] AC 285 at 288-299, [1974] 3 All ER 592 at 594-602, HL; *R v Manners* [1976] 2 All ER 96 at 100, [1976] 2 WLR 709 at 713, CA (aff'd sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL); *Tuck v National Freight Corp* [1979] 1 All ER 215 at 236, [1979] 1 WLR 37 at 55, HL; *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 311-312, [1979] 2 All ER 881 at 897-898, CA; *R v Secretary of State for the Environment, ex p Norwich City Council* [1982] QB 808 at 824; sub nom *Norwich City Council v Secretary of State for the Environment, ex p Norwich City Council* [1982] QB 808 at 824, CA; *Hahnor Productions Ltd v Hamilton* [1983] 1 AC 191 at 204, [1982] 2 All ER 724 at 733, CA, per Lord Denning, MR (but see on appeal [1983] 1 AC 191 at 232-233, [1982] 2 All ER 1024 at 1046-1047, HL, per Lord Diplock); *Pierce v Benis* [1986] QB 384 at 392, [1985] 1 All ER 1011 at 1017; *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL (see also para 1421 text and note 16 ante); *JH Rayner (Miscing Lane) Ltd v Department of Trade and Industry, Maclaine Watson & Co Ltd v International Tin Council* [1990] 2 AC 418 at 483; sub nom *Maclaine Watson & Co Ltd v Department of Trade and Industry, Maclaine Watson & Co Ltd v International Tin Council* [1989] 3 All ER 523 at 531, HL; *Stake-on-Trent City Council v B & Q plc* [1991] Ch 48 at 66, [1991] 4 All ER 221 at 232.

Since *Pepper (Inspector of Taxes) v Hart* supra there have been a number of cases where parliamentary materials must be taken to have been admitted under the residuary jurisdiction, since the conditions in *Pepper (Inspector of Taxes) v Hart* supra were not satisfied. See eg *R v Warwickshire County Council, ex p Johnson* [1993] AC 583 at 592; sub nom *Warwickshire County Council v Johnson* [1993] 1 All ER 299 at 305, HL; *Chief Adjudication Officer v Foster* [1993] AC 754 at 772, [1993] 1 All ER 705 at 717, HL; *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 at 555; sub nom *Doody v Secretary of State for the Home Department* [1993] 3 All ER 92 at 101, HL; *R v Jefferson* [1994] 1 All ER 270 at 281, [1994] 99 Cr App Rep 13 at 22, CA; *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Rees-Mogg* [1994] QB 552 at 566, [1994] 1 All ER 457 at 465, DC; *A-G v Associated Newspapers Ltd* [1994] 1 All ER 556 at 564, [1994] 2 WLR 277 at 285; *Restick v Cricmore* [1994] 2 All ER 112 at 116, [1994] 1 WLR 420 at 426, CA; *Steele, Ford & Newton (a firm) v Crown Prosecution Service (No 2)* [1994] 1 AC 22 at 37, [1993] 2 All ER 760 at 780, HL; *Littrell v United States of America (No 2)* [1994] 4 All ER 203 at 209-210, [1995] 1 WLR 82 at 88, CA, per Rose LJ.

1423. Committee reports leading up to Bill. Before Parliament legislates on a topic, an ad hoc committee of inquiry may be set up to investigate the alleged mischief and propose a remedy. This may be a Royal Commission, a parliamentary select committee, a departmental committee, or some other body. Alternatively the task may be entrusted to a standing body such as the Law Commission¹.

The ensuing report may or may not be published; and may or may not be formally presented to Parliament. In any event it constitutes part of the enacting history of any Act based on the report, and may be cited and taken into consideration as such accordingly².

¹ As to the Law Commission see para 1244 ante.

² *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenburg AG* [1975] AC 591 at 647, [1975] 1 All ER 810, HL, per Lord Simon of Glaisdale. In this case the view of the majority was that neither the recommendations of the committee nor its commentary on the draft Bill attached to its report were to be taken into account, but cf at 623 and 823 per Viscount Dilhorne, and at 651-652 and 847 per Lord Simon of Glaisdale. See also *Hawkins v Catherale* (1855) 6 De GM & G 1 at 21 per Turner LJ; *River Wear Comrs v Adamson* (1877) 2 App Cas 743 at 763, HL, per Lord Blackburn; *Eastman Photographic Materials Co Ltd v Comptroller-General of Patents* [1898] AC 571 at 573, HL, per the Earl of Halsbury LC; *Ladore v Bennett* [1939] AC 468 at 477, [1939] 3 All ER 98 at 102, PC; *Pillai v Mudanayake* [1953] AC 514 at 528, [1953] 2 All ER 833 at 837, PC; *Rookes v Barnard* [1964] AC 1129, [1964] 1 All ER 367, HL; *National Provincial Bank v Ainsworth* [1965] AC 1175, [1965] 2 All ER 472, HL; *Lesang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA; *Hestons Transport (St Helens) Ltd v Transport and General Workers Union* [1973] AC 15, [1972] 3 All ER 101, HL; *Central Asbestos Co Ltd v Dodd* [1973] AC 518 at 529, [1972] 2 All ER 1135 at 1138, HL, per Lord Reid; *W v L* [1974] QB 711 at 718, [1973] 3 All ER 884 at 890, CA; *Fulkehill v Monach Airlines Ltd* [1981] AC 251 at 281, [1980] 2 All ER 606 at 718, HL, per Lord Diplock; *R v Oluogboje* [1982] QB 320, [1981] 3 All ER 443, CA; *R v Blacham* [1983] 1 AC 109, [1982] 1 All ER 882, HL; *R v Mourir* [1987] Crim LR 561; *Hampshire County Council v Milburn* [1991] 1 AC 325, [1990] 2 All ER 257, HL; *R v Harsgferry Road Metropolitan Stipendiary Magistrate, ex p Sialatan* [1991] 1 QB 260, [1991] 1 All ER 324, DC; *DPP v Bull* [1995] QB 88, [1994] 4 All ER 411, DC; *Re C and another*

(minors) (adoption: parent: residence order) [1994] Fam 1 at 10, [1993] 3 All ER 313 at 320, CA. It seems that former decisions to the contrary (see eg *Martin v Hemming* (1854) 18 Jur 1002; *Ewart v Williams* (1854) 3 Drew 21 at 24; *Assam Railways and Trading Co v IRC* [1935] AC 445, HL; *Re Colbourne Engineering Co Ltd's Application* (1954) 72 RPC 169) should now be disregarded.

1424. White papers etc. Government white papers explaining a legislative project, and similar official explanatory material, may be relied on by the court when construing the resulting legislation¹.

¹ Eg, reference was made to the 1974 government White Paper *Equality for Women* (Cmnd 5724) as a guide to Parliament's intention in enacting provisions of the Sex Discrimination Act 1975 in *Duke v GEC Reliance Ltd* [1988] AC 618 at 641, [1988] 1 All ER 626 at 637, HL, per Lord Templeman. It seems that contrary authorities (see eg *Katikiro of Buganda v A-G* [1960] 3 All ER 849 at 855, [1961] 1 WLR 119 at 127, PC) should now be disregarded.

1425. Explanatory memoranda on Bills. When a Bill is introduced into the House of Commons or House of Lords, memoranda may be provided by the promoter of the Bill (usually the government) for the guidance of members of Parliament. Being designed to throw light on the meaning of the Bill, such memoranda are of obvious relevance to the construction of the ensuing Act, and are admissible accordingly¹.

¹ In the first House the promoter of a public Bill may preface it with what is called an explanatory memorandum. This explains the contents and objects of the Bill. It must be framed in non-technical language, and must not be argumentative. If passed by the Public Bill Office as satisfying these requirements, it appears on the front of the Bill when first printed by either House. Where the Bill is promoted by the government, and involves expenditure, it must also be prefaced by a financial memorandum. As to the doctrine of the exclusive financial initiative of the Crown see para 1223 ante. A financial memorandum outlines the financial effect of the Bill, and gives estimates of the amount of money involved. The same principles apply to it as to an explanatory memorandum. In practice, a government Bill always includes an explanatory memorandum. Since 1968 this has included forecasts of changes in manpower requirements in the public sector expected to result from the Bill: see 773 HC Official Report (5th series) cols 1546-1547. In the case of financial Bills, the two types of memoranda are combined in the form of what is called an explanatory and financial memorandum. When, following the making of amendments, the Bill is later reprinted these memoranda are dropped. This means that they are usually not accurate guides to the final Act. As to enactment procedure see para 1245 ante.

1426. Construction of treaty Acts. There is a presumption that Parliament intends to fulfil, rather than break, an international agreement¹. Thus, where an Act is intended to give effect to such an agreement, any doubt as to its meaning should if possible be resolved in favour of that which is consistent with the provisions of the agreement². Where, however, on an informed construction³ there is no real doubt⁴ about the legal meaning of an enactment⁵, effect must be given to that meaning, even if it is not in accordance with an international agreement or is contrary to international law⁶.

In accordance with general principle⁷, the court will assume that a treaty Act⁸ is not intended to conflict with international law and, so far as is possible, will construe the Act accordingly⁹. If an international agreement has been embodied in legislation in other jurisdictions, the court will lean towards adopting an interpretation of the meaning of words which has been adopted in those jurisdictions¹⁰. In construing an international agreement which has been incorporated into English law a court may have regard to versions of the agreement in other languages¹¹. It is right for a court to have regard to the fact that international conventions are usually more loosely worded

than Acts of Parliament, but there is no reason to abandon English methods of interpretation in favour of continental methods².

- 1 *Salomon v Customs and Excise Comrs* [1967] 2 QB 116 at 143, [1966] 3 All ER 871 at 875, CA, per Diplock LJ; *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 757, [1967] 3 All ER 663 at 682, CA, per Diplock LJ; *Midway Drydock and Engineering Co Ltd v Andrea Ursula, The Andrea Ursula* [1973] QB 265 at 271, [1971] 1 All ER 821 at 825 per Brandon J; *Federal Steam Navigation Co Ltd v Department of Trade and Industry* [1974] 2 All ER 97 at 112, [1974] 1 WLR 505 at 523, HL, per Lord Wilberforce; *R v Secretary of State for the Home Department, ex p Singh* [1976] QB 198 at 207, [1975] 2 All ER 1081 at 1083, CA, per Lord Denning MR; *Quazi v Quazi* [1980] AC 744 at 808, [1979] 3 All ER 897 at 903, HL, per Lord Diplock; *Garland v British Rail Engineering Ltd* [1983] 2 AC 751, [1982] 2 All ER 402, HL. See also para 1222 ante; but cf *Sunjit Kaur v Lord Advocate* [1980] 3 CMLR 79, Ct of Sess.
- 2 *Quazi v Quazi* [1980] AC 744 at 808, [1979] 3 All ER 897 at 903, HL, per Lord Diplock.
- 3 As to the informed interpretation rule see para 1414 ante.
- 4 As to cases of real doubt see para 1374 ante.
- 5 As to the legal meaning see para 1373 ante.
- 6 *Colko Dealings Ltd v IRC* [1962] AC 1 at 19, [1961] 1 All ER 762 at 765, HL, per Viscount Simonds; *Warwick Film Productions v Eisinger* [1969] 1 Ch 508, [1967] 3 All ER 367; *Wooden (KV Ceylon) Rubber and Tea Co Ltd v IRC* [1971] AC 321, [1970] 1 All ER 801, PC.
- 7 See para 1439 post.
- 8 As to treaty Acts see para 1222 ante.
- 9 *Stag Line Ltd v Foscolo, Mango and Co Ltd* [1932] AC 328 at 350, HL, per Lord MacMillan; *Solomon v Customs and Excise Comrs* [1967] 2 QB 116 at 143, [1966] 3 All ER 871 at 875, CA, per Diplock LJ; *Post Office v Estuary Radio Ltd* [1968] 2 QB 740 at 757, [1967] 3 All ER 663 at 682, CA, per Diplock LJ; *Midway Drydock and Engineering Co Ltd v Andrea Ursula, The Andrea Ursula* [1973] QB 265, [1971] 1 All ER 821; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.
- 10 See *Riverton Meat Co Pty Ltd v Lancashire Shipping Co Ltd* [1961] AC 807 at 840, 855, 874, [1961] 1 All ER 495 at 502, 512, 524, HL.
- 11 *Corozzi v Pan American Airways Inc* [1969] 1 QB 616, [1969] 1 All ER 82, CA; *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.
- 12 *James Buchanan & Co Ltd v Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, [1977] 3 All ER 1048, HL; *Fothergill v Monarch Airlines Ltd* [1981] AC 251, [1980] 2 All ER 696, HL.

(c) Post-enacting History

1427. Use of official statements. Official statements published by the government department administering an Act¹, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions².

- 1 As to agencies authorised to administer an Act see para 1325 ante.
- 2 Enactments relating to tax, for example, cannot be administered without the taking of a view by the Board of Inland Revenue or the Commissioners of Customs and Excise on doubtful points of statutory interpretation. These rulings are communicated to officials of the department and to taxpayers and their advisers. Often they are published, either individually or as part of a regular series. The courts have regard to them in interpretation: see eg *Hanning v Maitland (No 2)* [1970] 1 QB 580, [1970] 1 All ER 812; *Oram (Inspector of Taxes) v Johnson* [1980] 2 All ER 1 at 6, [1980] 1 WLR 558 at 562 per Walton J; *IRC v Trustees of Sir John Aird's Settlement* [1982] 2 All ER 929 at 937, [1982] 1 WLR 270 at 273 per Nourse J; *Wicks v Firth (Inspector of Taxes)* [1983] 2 AC 214 at 230, [1983] 1 All ER 151 at 154-155, HL, per Lord Bridge (contra at 236 and 159 per Lord Templeman); *Matrix-Securities Ltd v IRC* [1994] 1 All ER 769 and 791, [1994] 1 WLR 334 at 356, HL, per Lord Browne-Wilkinson.

1428. Use of delegated legislation made under Act. Delegated legislation made under an Act may be taken into account as persuasive authority on the meaning of its provisions¹. This is because delegated legislation, like some official memoranda², originates in the government department responsible for initiating and administering

the relevant Act³ and may therefore be assumed to reflect a correct view of the intention of its promoters⁴.

- 1 See *Hales v Bolton Leathers Ltd* [1950] 1 KB 493 at 505, [1950] 1 All ER 149 at 153, CA (on appeal [1951] AC 531 at 539, [1951] 1 All ER 643 at 646, HL, per Lord Simonds, at 544 and 649 per Lord Norman, and at 548 and 651 per Lord Oaksey, who thought that regulations might be looked at as being an interpretation placed on the words of an Act by an appropriate government department: see para 1325 ante); *Vaidyk v Minister of Pensions* [1955] 1 QB 29 at 37, [1954] 2 All ER 723 at 726; *Stephens v Cuckfield RDC* [1966] 2 QB 373 at 380-381, [1966] 2 All ER 716 at 718, CA; *Brit v Buckinghamshire County Council* [1964] 1 QB 77, [1963] 2 All ER 175; *Leung v Garbett* [1980] 2 All ER 436, [1980] 1 WLR 1189, CA; *Hanlon v Law Society* [1981] AC 124, [1980] 1 All ER 763, CA; *R v Usbridge Justices, ex p Comr of Police of the Metropolis* [1981] QB 829, [1981] 3 All ER 129; *Jenkins v Lombard North Central* [1984] 1 All ER 828, [1984] 1 WLR 307; *Pharmaceutical Society of Great Britain v Storkwain Ltd* [1986] 2 All ER 635 at 639, [1986] 1 WLR 903 at 908-909, HL; *R v Newcastle upon Tyne Justices, ex p Skinner* [1987] 1 All ER 349, [1987] 1 WLR 312; *British Amusement Catering Trades Assocn v Westminster City Council* [1989] AC 147, [1988] All ER 740, HL; *Deposit Protection Board v Dalia* [1993] Ch 243, [1993] 1 All ER 599 (affd [1994] QB 474 at 486, [1994] 2 All ER 494).
- 2 As to official memoranda see para 1427 ante.
- 3 As to government departments and executive agencies see para 1325 ante.
- 4 It may indeed be looked on as a kind of contemporaneous exposition: see para 1429 post. Cf *Re Methodist Church Union Act 1929, Barker v O'Connell* [1971] Ch 215, [1970] 3 All ER 314, where a deed of union executed contemporaneously for the purposes of an Act was taken into account under the doctrine of contemporaneous exposition in the special circumstances of the case; *Jackson v Hall* [1980] AC 854, [1980] 1 All ER 177, HL. For the importance in statutory interpretation of the intention of the promoters see the rule in *Pepper (Inspector of Taxes) v Hart* [1993] AC 593, [1992] 1 All ER 42, HL; and para 1421 ante.

1429. Later use of contemporaneous exposition. The construction of Acts may be elucidated in later times by what is called contemporaneous exposition¹, that is, by reference to contemporary statements indicating how they were understood (possibly mistakenly, having regard to their wording) at the time when they were passed².

It is said that the doctrine of contemporaneous exposition should not be applied to the construction of modern Acts³. However the reason for this view is by no means obvious, and it seems that for what it is worth the doctrine should be applied to Acts whenever passed⁴.

- 1 The term derives from the maxim given by Coke in the form *contemporanea expositio est fortissima in lege* (contemporaneous exposition is the most powerful in law): 2 Co Inst 11.
- 2 *M'Williams v Adams* (1852) 1 Macq 120 at 137, HL; *Montrose Peerage Claim* (1853) 1 Macq 401 at 406, HL; *Smith v Linds* (1858) 27 LJCP 196 at 200; *Governors of Campbell College, Belfast v Valuation Comrs for Northern Ireland* [1964] 2 All ER 705 at 727, [1964] 1 WLR 912 at 941, HL, per Lord Upjohn. It may be that an established practice which has grown up founded on the same or very similar words used in an earlier Act can sometimes be a guide to contemporary opinion: see *R v Cuthbert* (1867) LR 2 QB 379 at 382; *Income Tax Special Purposes Comrs v Penseil* [1891] AC 531 at 591, HL.
- 3 *Clyde Navigation Trustees v Laird* (1883) 8 App Cas 658 at 673, HL; *Ashleton Smith v Owen* [1906] 1 Ch 179 at 213; *Goldsmiths' Co v Wyatt* [1907] 1 KB 95 at 107, CA; *Sadler v Whiteman* [1910] 1 KB 868 at 890, CA.
- 4 In *Trustees of the Clyde Navigation v Laird* (1883) 8 App Cas 658, HL, the question was whether the Clyde Navigation Consolidation Act 1858 required navigation dues to be paid on logs which were chained together and floated down the River Clyde. It was proved that from the passing of the Act until the time when the case was decided (a period of a quarter of a century) these dues had been levied and paid without protest. Lord Blackburn said (at 670) that this raised 'a strong prima facie ground' for thinking that there must exist 'some legal ground' for exacting the dues. This seems preferable to the view of Lord Watson (at 673) that such usage was of no value. See also *Campbell College, Belfast (Governors) v Comr of Valuation for Northern Ireland* [1964] 2 All ER 705, [1964] 1 WLR 912 at 930-931, HL, per Viscount Radcliffe; and para 1428 note 4 ante.

1430. Use of committee reports on Act. The court may treat as of persuasive authority on the construction of a statutory provision the view of a post-enactment official committee reporting on the meaning of the provision¹.

¹ Eg the Report of the Royal Commission on Criminal Procedure 1981 (Cmnd 8092) contained an account of how the power of arrest conferred by the Criminal Law Act 1967 s 2(4) (now repealed) and similar enactments should be exercised. In *Mohammed-Folgate v Duke* [1984] QB 209, [1983] 3 All ER 526, CA, it was held that this account reflected the proper basis for the exercise of the power of arrest and could be relied on as authoritative.

(v) Principles derived from Legal Policy

A. LEGAL POLICY

1431. Nature of legal policy. One of the four categories of interpretative criteria applicable to statutory construction¹ consists of principles derived from legal policy. Legal policy is not confined to the operation of legislative texts, but applies throughout the law. It consists of the collection of principles which the judges consider the law has a general duty to uphold. It is akin to public policy, and may indeed be regarded as its legal aspect. The courts use the two terms more or less interchangeably². The principles comprised in legal policy cannot be numbered, and through the decided cases are constantly being developed³. The courts draw on many diverse sources in formulating legal policy⁴.

The courts ought not to enunciate a new head of legal policy in an area where Parliament has demonstrated a willingness itself to intervene legislatively where it considers necessary⁵. Legal policy is not static⁶ and in some areas it may change drastically over a period⁷, in response to changes in the perceived view of public needs and attitudes⁸.

¹ As to the interpretative criteria see para 1375 ante; and as to the basic rule of statutory interpretation see para 1376 ante.

² For the nature of public policy see *R v St Gregory Inhabitants* (1834) 2 Ad & El 99 at 107-108; *Amitable Society v Bolland* (1830) 4 Bli NS 194; *Egerton v Earl Brounlow* (1853) 4 HL Cas 1 at 123; *Coxhead v Mullis* (1878) 3 CPD 439 at 442; *Municipal Building Society v Keir* (1884) 9 App Cas 260 at 273; *Re Mirams* [1891] 1 QB 594 at 595; *Mogul SS Co v McGregor, Gow & Co* [1892] AC 25 at 45, HL; *Janson v Driefontein Consolidated Mines Ltd* [1902] AC 484 at 500, 507, 511.

³ Eg in *R v Lemou* [1979] AC 617, [1979] 1 All ER 893, HL, it was necessary to decide whether the common law offence of blasphemous libel requires proof only of an intention to publish the offending matter, or also requires proof that the accused actually intended to cause offence. Lord Scarman (at 604 and 927) described this question as 'one of legal policy in the society of today'.

⁴ Eg in *Kirkham v Chief Constable of the Greater Manchester Police* [1989] 3 All ER 882 at 892-893 (on appeal [1990] 2 QU 283, [1990] 3 All ER 246, CA) (Pudor Evans), in considering whether legal policy required damages for negligence to be disallowed where the negligence consisted in giving a suicidal person an opportunity (which he took) actually to commit suicide, had regard to whether suicide is an ecclesiastical offence.

⁵ *Re Highbury Ltd* [1987] Ch 200, [1986] 3 All ER 673 concerned the question whether parties could determine by agreement between them that a floating charge would become crystallised if the chargor ceased trading. Hoffman J was asked to declare that to allow this was an innovation which was contrary to public policy. He declined to do so, saying (at 215 and 680-681) that these 'are matters for Parliament rather than the courts and have been the subject of public debate in and out of Parliament for more than a century'. He added: 'The limited and pragmatic interventions by the legislature [in this field] make it in my judgment wholly inappropriate for the courts to impose additional restrictive rules on the ground of public policy.'

⁶ 'The fact that opinion grounded on experience has moved one way does not in law preclude the possibility of its moving on fresh experience in the other; nor does it bind succeeding generations, when

conditions have again changed': *Bowman v Secular Society Ltd* [1917] AC 406 at 467, HL, per Lord Sumner.

⁷ Lord Devlin (*The Judge* (1979), p 15) referred to certain aspects of mid-nineteenth century legal policy as 'a Victorian Bill of Rights, favouring (subject to the observance of the accepted standards of morality) the liberty of the individual, the freedom of contract, and the sacredness of property, and which was highly suspicious of taxation'. Such a description would not fit the legal policy of today.

⁸ Lord Reid commented on 'a steady trend' towards regarding the law of negligence as depending on principle rather than precedent: *Dorset Yacht Co Ltd v Home Office* [1970] AC 1004 at 1026, [1970] 2 All ER 294 at 297, HL. On another aspect of legal policy, Lord Hailsham of St Marylebone said: 'The categories of public interest are not closed, and must alter from time to time whether by restriction or extension as social conditions and social legislation develop': *D v NSPCC* [1978] AC 171 at 230, [1977] 1 All ER 589 at 605, HL. In relation to tax avoidance, Lord Diplock said that it would be disingenuous to suggest, and dangerous on the part of those who advised on elaborate tax-avoidance schemes to assume, that the principle in *WT Ramsay Ltd v IRC* [1982] AC 300, [1981] 1 All ER 865, HL (see STAMP DUTIES para 1011 text and note 4 ante), did not mark a significant change in the approach adopted by the courts: *IRC v Burmah Oil Co Ltd* [1982] STC 30 at 32, HL. The judicial development of the extent of judicial review (see para 1358 ante) which began in the 1970s required a broadening of the concept of locus standi: *R v HM Treasury, ex p Smedley* [1985] QB 657 at 669, [1985] 1 All ER 589 at 595, CA, per Slade LJ ('The speeches of their Lordships in *R v IRC, ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617, [1981] 2 All ER 93, HL, well illustrate that there has been what Lord Roskill described (at 656 and 116) as a "change in legal policy", which in recent years greatly relaxed the rules as to locus standi').

1432. Deriving interpretative principles from legal policy. Because it takes Parliament as intending that general principles of legal policy should apply to the construction of its enactments unless the contrary intention appears, the common law has developed specific principles of statutory interpretation by reference to those general principles¹. A principle of statutory interpretation (as opposed to a rule, presumption or canon)² can therefore be described as a principle of legal policy formulated as a guide to legislative intention³. In a particular case different elements of legal policy, for example the safeguarding of personal liberty and the need for state security, may conflict. The court then needs to weigh the conflicting elements and decide which should have predominance⁴. The conflict may, however, be more apparent than real⁵.

¹ Eg the principle of construction that if the literal meaning of an Act would permit a person to profit from his own wrong, it may be correct to infer an intention by the legislator that a strained construction should be given in such cases, is derived from the general principle that it is undesirable that a person should be allowed so to profit. As to this principle see further para 1453 post.

² See para 1375 ante.

³ For the detailed principles see para 1433 et seq post.

⁴ This is in accordance with the usual technique of statutory interpretation, where criteria other than principles derived from legal policy may also come into consideration: see para 1378 ante.

⁵ See *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 334, [1991] 1 WLR 890 at 906-907, CA, per Lord Donaldson MR, commenting on the dictum of Mann LJ in *R v Secretary of State for the Home Department, ex p B* (1991) 'The independent, 29 January, DC, that the court was aware of the tension which arose between considerations of liberty and the freedom to live where one wished on the one hand and considerations of national security upon the other hand. Although they give rise to tensions at the interface, 'national security' and 'civil liberties' are on the same side; 'in accepting, as we must, that to some extent the needs of national security must displace civil liberties, albeit to the least possible extent, it is not irrelevant to remember that the maintenance of national security underpins and is the foundation of all our civil liberties': *R v Secretary of State for the Home Department, ex p Cheblak* supra at 334 and 906-907 per Lord Donaldson MR.

1249 Queen's Printer of Acts of Parliament

NOTE 2—For an example of letters patent appointing the Queen's Printer see London Gazette, 4 September 1997.

1261 The proviso

NOTE 5—Reserve Forces Act 1980 s 125 repealed; Reserve Forces Act 1996 Sch 11.

Part 2. Passing, Commencement, Amendment and Cessation

1283 Relation of an enactment to past law and fact

NOTE 2—See *Bainstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA (no power under Supreme Court Act 1981 s 87(3), in making Rules of Court, to effect implied retrospective amendment of inconsistent primary legislation).

1287 Presumption regarding procedural enactments

NOTE 7—See, however, *Bainstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

1290 Implied amendment

NOTE 1—See, however, *Bainstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

1305 Repeal etc by subordinate legislation

NOTE 1—Such a power must be construed narrowly and strictly: *Bainstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

1308 Savings for accrued rights, etc

NOTE 3—See also *R v Dover Magistrates' Court, ex p Webb* (1998) 162 JPR 295 (application for forfeiture order); and *Marsal v Apong* [1998] 1 WLR 674, PC (statute could not be interpreted retrospectively so as to impair an existing right or obligation).

Part 3. Extent and Application of Acts

No further updating since publication of Volume 44(1) (Reissue).

Part 4. Operation of Acts

1328 Investigating agencies

NOTE 3—1964 Act s 18, Sch 2 now Police Act 1996 s 29, Sch 4.

1357 Statutory penalties

NOTE 5—1979 Act consolidated in Justices of the Peace Act 1997. 1979 Act s 61(2) now 1997 Act s 60(2).

1360 Tort of breach of statutory duty

NOTE 11—*X (Almon) v Bedfordshire CC*, cited, applied in *Bowden v South West Water Services Ltd* [1998] 3 CMLR 330 (no right of action in tort under Water Industry Act 1991 or Water Resources Act 1991 which created comprehensive regulatory regimes enforceable in public rather than private law).

1362 Money due under an Act

NOTE 2—1925 Act s 83 substituted: see now s 83(12); Land Registration Act 1997 s 2.

Part 5. Statutory Interpretation

1383 Definitions relating to places

NOTE 16—1964 Act s 62 now Police Act 1996 s 101(1); 1978 Act Sch 1, amended by the 1996 Act Sch 7 para 32.

1387 Definitions relating to distance and time

NOTE 4—1994 Order revoked. As to the years 1998, 1999, 2000, 2001 see the Summer Time Order 1997, SI 1997/2982.

1417 Construction of consolidation Acts

NOTE 6—See *Johnson (Inspector of Taxes) v The Prudential Assurance Co Ltd* [1996] STC 647 (ambiguous or obscure provisions, falling within first exception to exclusionary rule formulated in *Pepper v Hart* (see para 1421) gave rise to real and substantial difficulty or ambiguity and entitled court to seek assistance from parliamentary materials and antecedents of consolidation Act).

1421 First exception to the exclusionary rule; the rule in *Pepper v Hart*

TEXT AND NOTES—Where the court is seeking to construe a statute purposively and consistently with any relevant European legislation, or the object of the legislation under consideration is to introduce into English law the provisions of an international convention or European directive, it is of particular importance to ascertain the true purpose of the statute, and in those circumstances the court may adopt a more flexible approach to the admissibility of parliamentary materials than that established for the construction of a particular provision of purely domestic legislation: *Three Rivers DC v Governor and Company of the Bank of England (No 2)* [1996] 2 All ER 363.

Part 6. Subordinate Legislation

1499–1526 Subordinate Legislation

As to the making of subordinate legislation by the National Assembly for Wales, including the disapplication of certain Parliamentary procedures in relation to such subordinate legislation, see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 42M ante.

1501 The legislation and antecedents

NOTE 7—1946 Act s 2, 3(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

1502 Power to make regulations

NOTE 1—1946 Act s 8(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 6—For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer': 1946 Act s 8(1)(c); 1996 Act supra s 1.

NOTE 7—1946 Act s 8(1)(c) amended: 1996 Act s 1.

1504 Express application of the legislation to other documents

NOTE 2—1946 Act s 2 amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

1505 The Statutory Instruments Reference Committee

NOTE 5—1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

1506 Requirements as to individual documents

NOTES 3, 5, 6—1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTE 6—1946 Act s 8(1)(c) amended: 1996 Act supra s 1.

1507 Statutory Instruments Issue List

NOTES 1, 3—1946 Act s 3(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 2—For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer': 1946 Act s 3(1); 1996 Act supra s 1.

TEXT AND NOTE 5—Words 'and purporting to bear the imprint of the Queen's Printer' omitted: 1946 Act s 3(1); 1996 Act s 1.

1508 Annual editions of statutory instruments

NOTES 3, 5—1946 Act s 2(1) amended: Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTE 5—1946 Act s 3(1) amended: 1996 Act supra s 1.

1511 Ignorance of statutory instrument

TEXT AND NOTE 2—For 'sold by the Queen's Printer' read 'sold by or under the authority of the Queen's Printer': 1946 Act s 3(2); Statutory Instruments (Production and Sale) Act 1996 s 1.

TEXT AND NOTE 3—For 'issued by' read 'issued by or under the authority of': 1946 Act s 3(2); 1996 Act supra s 1.

1515 Instruments subject only to laying before Parliament

TEXT AND NOTE 12—For 'sold by' read 'sold by or under the authority of': 1946 Act s 8(1)(c); Statutory Instruments (Production and Sale) Act 1996 s 1.

NOTES 13, 14—1946 Act s 4(2) amended: 1996 Act supra s 1.

1521 Grounds for challenging subordinate legislation

NOTES 3–7—Subordinate legislation which purports to give powers which substantially interfere with common law or statutory rights is ultra vires, unless the interference is expressly or impliedly authorised by the empowering Act and proportional to the object of the subordinate legislation itself: *Duman v Bedfordshire CC* [1997] ELR 299.