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LP 5019/6

2867 2157

香港
中區昃臣道 8 號
立法會大樓
立法會法案委員會秘書
湯李燕屏女士

李女士：

《1999 年釋義及通則(修訂)條例草案》委員會

本年 5 月 16 日來電告知，倘若政府能夠在本年 5 月 19 日前向委員會提供諮詢結果，委員會可以隨即恢復草案的有關工作。

隨函夾附諮詢結果資料文件，概述條例草案的目的及受諮詢人士的主要意見。附件為政府的諮詢文件及各方回應全文。

高級助理法律政策專員單格全

副本送：律政司(經辦人：署理法律政策專員
副法律政策專員(法律意見)
霍思先生
梁滿強先生)

2000 年 5 月 18 日

資料文件

《1999年釋義及通則(修訂)條例草案》諮詢結果

制訂條例草案的論點

討論諮詢結果前，首先概述政府認為須制訂本條例草案的論點如下 —

(1) 建議增設的《釋義及通則條例》（第1章）第19A條，可為法律中複雜模糊的地方提供實用易明的雙語指引。第19A(2)條列明較重要的外在材料（但並非以這些材料為限），可用於解釋條例。第19A(1)條只作出一般性的規定，容許採納其他可能適用的材料。

(2) 第19A條載明可引用材料的種類，迴避了案例法中可否接納為證據的問題，讓訴訟各方及法院無須研究和爭辯案例，可以直接研究訴訟各方提出的材料是否充分適用於解釋所爭論的條例條文，因而可以節省時間和訟費。

(3) 第19A條明確保留了司法的靈活性，沒有要求法院必須引用外在材料，也不禁止法院這樣做。第19A(7)條保障普通法繼續適用。

(4) 政府不是說有迫切需要制訂本條例草案，而是這項準則只適用於少數法例（例如為了限制基本權利的條例）。正如大部分法例一樣，條例草案的目的是為了有效改進整體法例。

諮詢意見

2. 政府把諮詢文件（附件A）送交司法機構、香港城市大學、香港大學、香港律師會及香港大律師公會。各方的反應載於附件，以下是這些回應的重點摘錄。

司法機構(附件 B)

(1) 把判決案件的有關法律原則編纂為成文法則，對法院及法律專業都有幫助。律師可以知道該搜集哪類材料，法院也得以知道哪類材料可以援引。這樣可以減省不必要的爭論和研究。

(2) 第 19A(2) 條載列外在材料的種類，但並非以這些材料為限。法院可以參考其他普通法司法管轄區的判決案件，考慮其他種類的材料是否適用於法例釋義。

(3) 律師有責任提出本身認為適用於某項法例釋義的材料，供法院考慮。法理基礎就是這樣建立起來，過程中也可以找到新的材料種類。

(4) 條例草案不會令到訟費上升。

(5) 第 19A(2) 條沒有說明所列材料可以如何有助法例釋義，第 19A(5) 條給予法院酌情權，可以根據案情決定材料的適用程度。然而，第 19A(5) 條的條文太含糊，應該略為修改，這對法院更有幫助。

香港城市大學(附件 C)

(1) 聽過諮詢文件簡介的教學人員一致支持條例草案。

(2) 條例草案採用正確方法，有效地重新述明目前有關法例釋義的普通法，同時又容許法院進一步推展和延伸普通法。

香港大學(附件 D)

(1) 法律改革委員會列舉充分理據，顯示有需要制訂條例草案。草案實用恰當，有助釐清現行的普通法，同時又能保留司法發展的靈活性。

(2) 訂立清楚說明使用外在材料規則的雙語法例，較依賴一些本地及外地的英文判決書為佳，更能讓公眾人士易於認識有關法律。

(3) 條例草案可以減省法院處理採用哪類外在材料的技術性爭論所需時間（以至訟費）。

(4) 條例草案載列表面適用或可信的外在材料，可以節省訴訟各方研究相關案件採用哪些外在材料所需的訟費。

(5) 雖然沒有迫切需要制訂條例草案，但法律改革不該只限於回應迫切需要，適當情況下還可以主動引進改革。採取"觀望"態度並不實際。如果擱置條例草案，使用外在材料的問題會繼續受到現有的普通法複雜條文所規限，不能夠從雙語法例中受惠。

香港律師會(附件 E)

(1) 律師會憲制事務、人權及法治委員會確認支持草案，一如1999年4月29日致條例草案委員會意見書所述。

(2) *佩珀 訴 哈特(Pepper v Hart)* 案的普通法規則非常複雜，對使用者可能並不清晰。廣泛清晰的指引，可更有系統地訂立使用外在材料的規則。

(3) 條例草案特別適用於香港。香港大部分人口的日常語言並非英語，因此訂立雙語法例清楚說明在法例釋義方面使用外在材料的規則，較援引一些冗長的英文判決書為佳。

香港大律師公會(附件 F)

大律師公會不支持條例草案，認為沒有迫切需要這樣做。

修改條文

3. 政府邀請有關團體/人士就需否修改條例草案條文提出意見。如上文所述，司法機構在附件 B 第 7 段提出，條例草案第 19A(5)條看來太含糊，對法院未必有幫助。

4. 鑑於這點，政府建議作出委員會審議階段修訂，按澳大利亞《1901 年法令釋義法令》第 15AB(3) 條修訂條例草案第 19A(5) 條。司法機構也贊成這樣做。第 15AB(3) 條為法院和法律執業者提供使用外在材料的清晰指引，條文如下 —

"(3) 決定該否根據第(1)款考慮任何[外在]材料，或考慮材料的分量時，除其他有關事項外，還須顧及 —

(a) 有關人士可否按照條文在法令的上下文義及立法目的，援引條文的一般涵義；以及

(b) 不可延長了法律或其他程序卻又別無好處。"

律政司
法律政策科
2000 年 5 月

#18478 v1 - 522-2

附件 A

《1999 年釋義及通則(修訂)條例草案》
《對條例作出釋義時使用外在材料諮詢文件》

導言

立法會專責研究《1999 年釋義及通則(修訂)條例草案》(條例草案)的委員會曾對草案提出多項意見。本文件目的在於就委員會所提各點，徵詢意見。(為方便參考，該條例草案載列於本文件附件1。)

背景

2. 條例草案的目的，是落實法律改革委員會(法改會) 1997 年 3 月《使用外在材料作為法例釋義的輔助工具研究報告書》(法改會報告書) 所提出的建議。報告書已連同本文件一併送交諮詢人士。

3. 法改會報告書是法改會於 1987 年 5 月，應要求研究使用外在材料作為法例釋義的輔助工具這個課題後所撰寫的報告。有關要求源自法改會小組委員會《有關應否採納聯合國國際貿易法委員會的標準法報告書》所作的建議，該建議是關於准許法庭提述法改會《有關聯合國國際貿易法委員會示範法報告書》，作為對解釋有關條例的輔助工具(這項建議已由《1989 年仲裁(修訂)(第 2 號)條例》落實)(法改會報告書第 1-5 段)。

4. 1996 年 2 月，法改會向大律師公會、律師會、司法機構、法律援助署、當時的立法局秘書處，以及立法局司法及立法事務委員會提交一份諮詢文件。

5. 大律師公會對諮詢文件回應：公會確認有充分理據支持訂立內容與法改會報告書建議相類似的法例。至於使用*佩珀(稅務督察)訴 哈特*案[1993 年] AC 593 所容許以外的外在材料，公會相信更廣泛使用背景材料，尋求立法目的的釋義方法將會成為趨勢。不過，公會認為在香港憲制即將面臨轉變的時刻，不適宜推行法改會的有關建議。

6. 1998 年 9 月，政府就條例草案諮詢大律師公會、律師會、某香港大學法律系教授(也是負責報告書的法改會小組委員會主席)，以及司法機構政務長。

7. 大律師公會重申對在當時提交條例草案持保留態度。公會認為，條例草案的倡議人不用對立法機關負責，當時便決定香港該否採用*佩珀 訴 哈特*案的原則是過早的做法。公會認為我們可以先觀察《基本法》新憲制安排實施後數年才作決定。

8. 政府則認為，根據《基本法》第六十四條，政府作為條例草案的倡議人，要對立法會負責，而只要立法機關以過半數票通過草案，便能把草案擬定人的用意落實為法律。根據現行新憲制安排，回歸前香港所採用的普通法法例釋義原則—包括*佩珀 訴 哈特*案的原則—按照《基本法》第八、十八和一百六十條，回歸後繼續適用於香港。因此，政府看不到有任何理據要把條例草案押後。

9. 條例草案於 1999 年 3 月 10 日由律政司司長提交立法會，隨後轉交所屬條例草案委員會審議。委員會原先由四名律師和三名非法律專業人士組成，先後召開四次會議。原定的第五次會議押後召開，而條例草案的審議工作也因而擱置，以便政府可以考慮條例草案委員會提出的各點事項。

10. 本文件首先載述條例草案的各主要實施條文和作用或目的，隨後列出條例草案委員會提出的要點和政府對有關事項的回應。

條例草案內容概要和作用

(a) 目的和結構

11. 條例草案的目的，是落實法改會的一致建議，把使用外在材料作法例釋義事宜編纂為成文法則，並作出清晰規定。

12. 在結構方面，條例草案在《釋義及通則條例》(第 1 章) 加入新訂的第 19A 條，對原第 19 條(指明應以尋求立法目的的釋義方法來闡釋法例)作出增補，以便在使用外在材料確定有關條例的作用和目的方面，提供指引。

13. 條例草案的《摘要說明》第 10 段表明，新訂第 19A 條是以澳大利亞聯邦的《1901 年法令釋義法令》第 15AB 條為基礎。第 15AB 條是於 1984 年加入的，執行與上述 1901 年法令第 15AA 條(在 1981 年加入，相等於香港法例第 1 章第 19 條)相同的職能，而新訂第 19A 條的用意也是執行有關的職能。

14. 香港法例第 1 章新訂第 19A 條與澳大利亞第 15AB 條的主要分別，是新訂第 19A 條沒有相等於第 15AB(1)(a)條的條文。15AB(1)(a)條容許考慮使用外在材料，來確定有關條文的涵義是條文的文本所表達的一般涵義。法改會雖然同意這個考慮是有例可援，但沒有建議在新訂第 19A 條加入有關規定，主要是為約制外在材料的使用，和避免律師費大幅增加(法改會報告書第 11.60 段)。

15. 1901 年法令第 15AB(1)(a)條訂明：在以下兩個情況可以考慮使用外在材料，以決定條文的涵義，即當 —

(i) 條文有歧義或語意含糊；或

(ii) 條文所表達的一般涵義會導致明顯荒謬或不合理的結果。

16. 第 15AB 條除了在相關性一項外，對於可能對法例釋義有幫助的材料種類沒有設定限制，但第(2)款則列出有關外在材料的主要類別(Brazil“法例釋義改革—澳大利亞使用外在材料的經驗及續篇：草擬較簡單的法例(Reform of Statutory Interpretation—The Australian Experience of Use of Extrinsic Materials: With a Postscript on Simpler Drafting)”(1988 年) 62 ALJ 504)。

17. 第 15AB(1)(b)(i)和(ii)及(2)條，分別納入新訂第 19A(1)(a)和(b)及(2)條內。

18. 法律界認為該澳大利亞條款運作得很成功。例如：Brazil (第 511-512 頁)引述[1984 年]《成文法評論》(Statute Law Review) 187 期的評論，認為第 15AB 條代表一個“似乎有良好發展前景的連貫性計劃”。他表示該條款已為法庭、審裁處和其他法律使用者樂意接受和使用。有關條文最令人擔憂之處 — 可能會造成案件訴訟及準備時間大大延長，從而導致法律費用大幅增加 — 似乎仍未發生。法庭對於使用第 15AB 條採取謹慎態度，並提出警告：外在材料未必能夠補救法律條文無法體現國會立法原意的缺點 (*女皇 訴 Bolton; Ex parte Bean* 案 (1986 年) 6I AJLR 37)。

19. Brazil 還表示(第 511 頁)，該新訂條款採用列明有關指引的做法較為可取，勝過把原則交由連串的司法判決來決定，和要求法律使用者找出有關決定。在這方面，這裏可能要指出，第 15AB 條的制定，是在 10 年前左右便預示了*佩珀 訴 哈特*案的判決對普通法原則造成重大改變(見下文第 23 段)。

20. 部分澳大利亞的成員州，包括新南威爾士、西澳大利亞和澳大利亞首都直轄區，都訂立內容與第 15AB 條相若的法例(Bennion

《法例釋義》(Statutory Interpretation)第三版，第 516 頁)。在維多利亞州，《1984 年釋義法令》第 35 條只表示，對法令或附屬法文書進行釋義時，"可以考慮任何有關的事宜或文件，包括但不應局限於……國會有關訴訟程序的報告"。在南澳大利亞，法庭認為第 15AB 條應該通過與州立法例作類推的方式使用(*聯邦科學及工業研究組織 (Commonwealth Scientific and Industrial Research Organization) 訴 Perry 案*(第 2 號)(1988 年) 53 SASR 538，546)。

(b) 司法機構的職責：保留酌情權和靈活性

21. 與澳大利亞第 15AA 條和第 15AB 條的情況一樣(Brazil，第 505 頁)，香港法例第 1 章第 19 條與新訂的第 19A 條有一重大分別。第 19 條載有指令，規定對條例所作的釋義必須以法例的立法目的為依歸。新訂的第 19A 條基本上沒有載列任何指令，只有其中第(5)款有一指令，規定給予任何外在材料的重視程度"不得大於在有關情況下屬恰當者"。新訂的第 19A 條沒有**規定**法官或條例的使用者**需要**提述任何外在材料或**不准**提述任何材料。法庭可以不受干預，自由訂立該否考慮運用任何外在材料酌情權的準則。此外，新訂第 19A(7)(a)條訂明：該新訂條款對普通法只有具增補而無減損作用，尤其是對於在作出釋義時使用外在材料的法律規則更是這樣，而新訂第 19A(7)(b)條，對於任何有歧義或語意含糊的條文，不得作出會減損個人權利或特權的釋義的法律規則，也有類似的規定。

22. 澳大利亞第 15AB 條與新訂第 19A 條都有相同目標，就是希望通過法庭採用適當的指引和酌情權，訂明和規限可以使用的外在材料類別和方式，從而讓使用外在材料作法例釋義的做法達至理想結果。第 19A 條只給予外在材料作為法例釋義輔助工具的地位，沒有涉及任何法律規則。Brazil 認為就澳大利亞條款來說，法庭的經驗印證了這個看法。

23. 另一評論者 Bennion [1993 年]在《成文法評論》149 和 157 期表示，“雖然在 *佩珀 訴 哈特*案並沒有這樣說，但第 15AB(1)條顯然提出了放寬上議院訂立的不採納外在材料規則的限制條件”。上議院注意到會繼續朝着以尋求立法目的作法例釋義的方向發展，訂立了一個類似第 15AB(1)(b)條按兩階段進行的方法，作為提述國會材料的準則。做法是首先要決定有關法例在一般涵義中是否有歧義或語意含糊，或會得出荒謬或不合理的結果。假若答案是肯定的話，便獲准進入第二階段和提述包括部長或條例草案倡議人陳述的其他材料，不過有關陳述必須明確清晰。

24. 英國的法庭對第 15AB 條所採取的態度，與澳大利亞法庭相若，對可以提述何種國會材料也採取謹慎的做法。1993 年，適用於上議院民事上訴的《實務指示》由《實務指示》上議院：支持文件(Supporting Documents)[1993 年] 1 WLR 303 作出修訂，規定“支持文件包括國會議事錄摘錄，只會在特殊情況下才會被接納”。假若使用外在材料的做法出現濫用情況，香港必要時可根據*佩珀 訴 哈特* 案和其他相關案例或新訂第 19A 條，制訂類似的實務指示。

(c) 儘管有*佩珀 訴 哈特*案但仍提出條例草案的原因

25. *佩珀 訴 哈特*案(不論此案出現之前或之後)涉及的普通法規則及使用外在材料的考慮因素，基本上毫無關連但內容複雜，有關案例也不是一般法例使用者能夠隨時查閱。此外，法改會留意到儘管*佩珀 訴 哈特*案確立有關使用外在材料的準則，但仍然有些問題還未解決，例如除了參考二讀發言外，未能肯定可以使用哪些國會材料。因此，較佳的做法是把合理已定的規則寫入單一、簡單而容易查閱的法定文件內（法改會報告書第 11.49－11.55 段），即是將普通法的立場編成法例、加以釐清，又或在有需要時稍加修改。

26. Bennion 在《法例釋義》第三版第 521 頁中指出："為了發揮最大效用，有關法例釋義的法令應該把所有清楚訂明的法例釋義司法規則編纂為成文法則。" 新訂的第 19A 條基本上能夠列明解釋條例時使用外在材料的規定，為所有條例使用者概要說明了普通法現況，而第 19A(1)和(2)條所用的文字也可以酌情解釋，讓司法體系日後可以完全自由發展，第 19A(7)條訂明的普通法保留條文也肯定了這一點。

(d) 第 19A(2)條及普通法規則

27. 隨後的條文說明新訂的第 19A(2)(a)至(i)條如何收納和釐清普通法規則中，有關每類外在材料的考慮因素。有關說明也顯示普通法規則的複雜程度。附件 2 載列了 Halsbury's Laws of England 第四版第 44(1)冊(再版)及 1999 年(Halsbury's)補編中有關立法歷史的文章，以供參閱。

第 19A(2)(a)條：並非條例一部分的事情

28. "並非條例一部分的事情"的提述包括詳題、弁言及內容指引，例如索引、標題及旁註。這些指引與條例中宣布的法例分開處理。早期有些法官（例如：Re Woking UDC [1914] 1 Ch 300，332 及*女皇 訴 Hare* [1934] 1 KB 354，355 案）認為不該理會旁註。然而，在*女皇 訴 Schildkamp* [1971] AC 1，10 案，里德大法官說"並不反對把所有這些事情列為考慮因素，只要大家知道這些事情並非與法令本身具同等分量。"條例草案第 2(b)條對第 1 章第 18(2)及(3)條作出相應修訂，規定如某條文屬新訂的第 19A 條所述的情況，便可以使用先前條文、旁註及條文標題等外在材料對條例作出釋義。

第 19A(2)(b)條：(香港的)官方報告書

29. 條文反映*佩珀 訴 哈特*案摒棄"補缺去弊"與"意圖"兩詞的區別。然而，在委員會報告書及其他提交國會前的資料中，兩者是有區別的。在第 1040 頁，布朗·威爾金森大法官(Lord Browne-Wilkinson)說過："參考報告書以找出法例所針對的弊端，而不去找出國會制定法例的意圖，這樣劃分極不合邏輯。"

30. 採納這些報告書的廣泛案例，見於 Halsbury's 第 1423 段及法改會報告書第 6.26-6.38 段。

31. 在 *Newcastle City Council 訴 Gio General Ltd* (1998) 72 AJLR 97，112 案，澳洲高等法院有以下聲言 —

> "[法院可以參照的]資料包括參考法律條文的立法歷史，以及各法律改革機構詳述有待改革之處的有關報告書。"

第 19A(2)(c)條：(其他司法管轄區的)官方報告書

32. 採納這些報告書是香港始創的做法，是澳洲法令第 15AB 條所沒有的。這個做法符合普通法的發展趨向，即在適當情況下對不採納外在材料規則作出例外的安排。正如法改會報告書第 11.69－11.70 段所述，加插這項條文是為了清楚訂明對條文作出釋義時，可考慮其他司法管轄區的有關官方報告書，這些落實報告書建議的司法管轄區所奉行的法例，是香港法例參照的模式。上文第 30 及 31 段所述的案例與這些報告書的使用有關。

第 19(A)(2)(d)條：條約

33. 接納條約及有關資料的先例依據載於 Halsbury's 第 1426 段及法改會報告書第 2.53－2.74 段。第 19A(2)(d)條消除了有關疑慮，就是 *Ellerman Lines Ltd 訴 Murray* [1931] AC 126 案的原則(法例

出現歧義，法院才有權參考有關條約)還是 *Salomon 訴 Customs and Excise Commrs* [1967] 2 QB 116 案的原則(若制定法例是為執行國際義務，法院可以參考有關條約)適用於香港，因為該條實際上否定了第一項原則(法改會報告書第 2.64 段指出，有意見希望上議院釐清此事或透過法律釐清)。

第 19A(2)(e)條：摘要說明及其他有關文件

34. Halsbury's 第 1425 段註明："摘要說明為解釋條例草案的涵義而設，顯然與解釋接着產生的法令息息相關，因此可以接納。"這項原則適用於第 19A(2)(e)條所述，在條文制定之前向立法會議員解釋條例草案的其他有關文件。

第 19A(2)(f)條：二讀發言

35. 特別針對二讀發言放寬不採納國會資料規定的主要先例依據，見*佩珀 訴 哈特*案第 1056 頁。Halsbury's 第 1421 段則列明新的先例依據。繼*佩珀 訴 哈特*案之後，有關二讀發言的香港案件包括：*香港賽鴿會 訴 律政司*[1995] 2HKC 201(CA)案(法改會報告書第 6.19 段)及 *Matheson PFC Limited 訴 Jansen* (1994) CA No. 72 of 1994 案，未載，(法改會報告書第 6.79 段)。

第 19A(2)(g)條：立法會的委員會報告

36. 在第 1056 頁，*佩珀 訴 哈特*案以十分小心的字眼，准許提述二讀發言以外的國會資料，但條件是有關材料必須把成文法文字補缺去弊之處或立法意圖"清楚披露出來"。在 *Sunderland Polytechnic 訴 Evans* [1993] ICR 392 案，僱傭上訴法庭引述次官曾向常設委員會作出的聲明，解釋有關條文。法改會報告書第 9.58 至 9.63 段臚列此案和其他使用這些材料的先例依據。

第 19A(2)(h)條：條例宣布為有關的文件

37. 這是法定條文，並採納了澳洲法令第 15AB(2)(f)條。法改會認為這是有用的條文，並建議法律草擬人員在為落實某條約而制定的條例中採用第 19A(2)(h)條，規定在解釋條例時，條約本身和條約的預備文件都可視作有關文件(法改會報告書第 11.75 及 11.88 段)。《仲裁條例》(第 341 章)第 2(3)條有關聯合國國際貿易法委員會示範法，正好顯示這個建議已獲採納。

第 19A(2)(i)條：辯論正式記錄中的有關材料

38. 法改會報告書第 11.76 至 11.81 段列明這項條文的先例依據。法改會認為只參考二讀發言太過狹隘。舉例說，政策局局長在委員會審議階段所作的聲明，可能符合*佩珀 訴 哈特*案的準則。*佩珀 訴 哈特*案接納在國會向部長提出的問題。在第 1058G 頁，布朗·威爾金森大法官表示，"這宗案件具說服力的地方，是部長聽取幕僚的意見後所給予的一連串答案，都是貫徹始終，方向一致的，而且在條例草案通過成為成文法前，從沒有撤回或改變過。"

(e) 條例草案既屬成文法則的陳述又屬法律改革

39. 法改會報告書第 11.49 段清晰指出，新訂第 19A 條既把普通法原則編纂為成文法則，同時也屬符合這些原則的有限度法例改革。為方便參閱，現把第 11.49 段全文抄錄如下 —

> "11.49 委員會確定以下多項支持法例改革的原因 —
>
> (1) 儘管*佩珀 訴 哈特*案已確立了若干準則，但有些問題仍然還未解決，例如未能肯定可以使用哪些"其他國會資料"。

(2) [依靠法院]逐步澄清法律，既零碎、緩慢，也缺乏完整性，而立法則可以訂定一套清晰全面的法則。

(3) *佩珀 訴 哈特*案着重法令草案發起人的二讀發言，以致適用範圍有限，但普通法適用地區都趨於進一步放寬不採納外在材料的規則。若擴大範圍，法例會賦予法院酌情決定權，以便參考更多立法歷史的材料，包括摘要說明。

(4) 制定法例可把放寬不採納外在材料的規則事宜及其益處公布周知。

(5) 制定法例有助列明表面可靠的外在材料，並略去通常不可靠的外在材料。

(6) 制定法例可澄清闡釋條約時使用外在材料的事宜，以及處理其他有待解決的事項，例如因疏忽引致錯誤裁判的問題及立法前的適用問題。[根據法改會報告書第 12.39 段，法改會總結稱：因疏忽引致錯誤裁判的事宜應該由法院裁定。]

(7) 制定法例可加強《釋義及通則條例》(第 1 章)第 19 條規定採用的“立法目的釋義法”，因為往往只有參考外在材料才可找出立法目的。

(8) 制定一條明確解釋使用外在材料的雙語法規，比倚賴許多判決(當中不少可能由外地作出)更理想。”

40. 必須指出：第 19A(2)條並不是一條完整無缺的法則。為了方便起見(節省為使資料可獲採納而需要參考案例所耗費的時間和訟費)，第 19A(2)條列明可作為解釋輔助工具的較重要外在材料，也不是巨細無遺和以此為限。舉例來說，其他法規、課本、其他法院判決和字典等外在材料都沒有收列在內。不過，第 19A(1)條所涵蓋的一般性原則，以及第 19A(7)條保留適用普通法的條文，已經包括了這些材料。

41. 假如整條第 19A(2)條是一條法則(清楚列明現行的既定規則)，則各段所蘊含的法律改革可(通過釐清少許不明朗的地方，令條文更加清晰，特別是讓公眾可以認識有關法例)分析如下 －

- 第 19A(2)(a)條表明*女皇 訴 Schildkamp* 案的原則適用於連同條例條文印行的資料的使用，例如：標題和旁註(見上文第 28 段)。

- 第 19A(2)(b)條表明官方報告可用作輔助工具，以找出立法目的，而不僅是所針對的弊端(見上文第 29 至 31 段)。

- 第 19A(2)(c)條是香港始創的條文，澄清了法院有權提述其他司法管轄區的官方報告(見上文第 32 段)。

- 第 19A(2)(d)條表明，*Salomon v Customs and Excise Comrs* 案的原則適用於解釋落實條約的成文法則，而 *Ellerman Lines Ltd. v Murray* 案的原則也遭駁回(見上文第 33 段)。

- 第 19A(2)(e)條澄清法院有權提述摘要說明，或該款列明在通過成為法例前提交立法會議員審閱解釋條例草案的其他有關文件(見上文第 34 段)。*佩珀 訴 哈特*(*Pepper v Hart*)案沒有觸及這個問題。

- 第 19A(2)(f)條反映*佩珀 訴 哈特*案判決中對提述二讀的發言，因此屬成文法則的陳述，而不是法律改革或澄清(見上文第 35 段)。

- 第 19A(2)(g)條澄清法院有權提述立法會的委員會報告，儘管*佩珀 訴 哈特*案側重二讀發言(見上文第 36 段)。

- 第 19A(2)(h)條是一項實用條文，在適用時，可以作為法律草擬人員的指引，以聲明某份文件，例如官方報告或落實為條例的條約，與解釋某條例有關(見上文第 37 段)。

- 第 19A(2)(i)條與第 19A(2)(g)條相類似，澄清法院有權提述二讀發言以外官方辯論記錄的有關材料(見上文第 38 段)。

(f) 預計條例草案可節省訟費

42. 必須指出：*佩珀 訴 哈特*案及其他有關的判決已經為當局使用外在材料樹立先例，特別是作為一個不採納立法歷史材料的例外情況。因此，若引致額外費用，都是由於目前普通法所帶來的結果，而非本條例草案所致。

43. 相反而言，根據"Vagliano 原則"，儘管*佩珀 訴 哈特*案(在上文有關新訂第 19A(2)(a)至(i)條提及)所得的結果，預計制訂條例草案可節省訟費，因為草案釐清了普通法尚未明朗的地方；更重要的是，條例草案也是一份可供公眾查閱、具連貫指引的雙語文件，說明什麼是外在材料。藉着法則節省訴訟費用，好處是大幅減省時間和資源，不必為確定法律涵義而研究案件並在法庭上討論和爭辯。立法較訴訟便宜。赫歇耳大法官說過："不用像以往般瀏覽多份先例"(*英格蘭銀行 訴 Vagliano* [1891] AC 107, 144)，只須提述已經確立的法規。

(g) 本條例草案不適用於《基本法》釋義

44. 新訂第 19A 條並不適用於《基本法》，這是基於該條本身的條款和第 1 章的條文。新訂第 19A 條的主要條文，載於該條的第(1)和(2)款，訂明可以用作"對條例作出釋義"的材料。這與第 1 章現有條文的涵義範圍相符，特別是第 2(1)條，其中訂明除非在第 1 章"或其他條例、文書出現用意相反之處"，否則"本條例的條文適用於本條例、其他現行的條例...及根據或憑藉這些條例而訂立或發出的文書"。

45. 解釋《基本法》的規則與解釋香港條例的規則大致相同，兩者都按文意和目的來解釋條文用語。

46. 不過，上述兩類規則也有所不同，主要因為《基本法》的性質和地位有別於香港條例。"《基本法》是已經確立的憲制文件"，牴觸《基本法》的[條例條文]沒有效力"(*吳嘉玲及其他人 訴入境事務處處長* [1999]1 HKLRD 315，339I-J)。由於條例隸屬於《基本法》，所以解釋條例時，應該確定條例符合《基本法》，一正如解釋次要法律條文時，也必須確定附屬法例符合條例。

47. 法院會應用《基本法》有關條文的憲法釋義原則，而不是香港法例第 1 章的原則，來解釋為實施《基本法》而制定的條例。如果條例牴觸《基本法》，法院便會根據所涉及的程度，裁定條例違憲及無效。如果條例符合《基本法》，法院便會按立法目的，包括按條例所實施的《基本法》有關條文，對條例作出解釋。

條例草案委員會對條例草案的批評要點

48. 政府要求委員會暫時擱置條例草案，以考慮委員提出的意見時，委員會四位法律界委員表示現階段傾向不支持條例草案。委員會的討論環繞上文所述法律原則的詳細內容。一位業外委員表示傾向同意法律界委員的觀點。另一位業外委員鑒於條例草案可以釐清這方面的法律問題，曾表示支持，但自第一次會議後便辭去委員會的職務。第三位業外委員迄今仍然沒有表示任何意見。

49. 現把委員會法律界委員對條例草案提出的主要批評撮述如下，並隨後提出政府的回應。

(1) **由於第 19A(1)條的範圍太大，而第 19A(2)條所列出的材料並非巨細無遺和以此為限，因此條例草案並非必需也不可取。律師仍須尋求其他可能合用的材料，而業外當事人會懷疑還有什麼遺漏。**

50. 雖然法改會承認並無迫切需要在這方面作出法律改革，但認為應該釐清普通法 (法改會報告第 11.52 段)。此外，法改會認為

不該只在有迫切需要時才作出法律改革。許多法例可能都沒有這種迫切需要(一如打擊販賣毒品或徵收稅項的需要)。不過，為使法例更為明確或更易於認識，並節省訴訟費用，根據上文第 43 段所述的 Vagliano 原則制定法例，以編纂、釐清或整固現有法律是恰當的，也對市民帶來便利。

51. 正如上文第 40 段指出，第 19A(2)條並不是一條完整無缺的法則，只列明可作為解釋輔助工具的較重要外在材料，也並非巨細無遺。法院可根據第 19A(1)條所涵蓋的一般性原則，以及第 19A(7)條保留適用普通法和日後發展的條文，酌情決定接納其他與案情可能有關的外在材料。

(2) 由於第 19A(2)條沒有表示所列材料對解釋條文有何幫助，因而須就表列的每項材料爭辯對法院有何幫助。該表會擴大法律執業者需要研究和審查的材料範圍。

52. 政府認為第 19A(2)條不會擴大*佩珀 訴 哈特*案前後的普通法研究範圍。例如，Halsbury's 第 1422 段引述了一系列案件，說明一項原則，就是法院既是制定本身程序的機構，即具有剩餘固有司法管轄權，在法院認為有需要執行立法者原意時，容許引用因不採納外在輔助工具規則所剔除的材料、或根據*佩珀 訴 哈特*案規定不獲接納的材料。法院如果認為合適，可以不理會上述規則，因為這只是慣常做法而不是法律。

53. 法改員會知悉，法院認為《澳洲法令》第 15AB(2)條的列表很有用，而且對有關材料的採用作出了明確而合適的限制(法改會報告書第 8.45 及 11.63 段)。"如有人企圖擴大可予研究的材料類別"，須就多花的訟費發出適當命令(*Melluish (Inspector of Taxes) v BMI (No. 3) Ltd* [1995] 3 WLR 631, 645，布朗·威爾金森大法官，法改會報告書第 11.79 段)。相信律師也知道，根據*佩珀 訴 哈特*案，外在材料必須"清楚顯示"立法意圖，法院才會容許採用作為參考資料。

54. 這項先例依據是應付濫用情況的既定限制，如有需要，也可以輔以適當的施行指引(法改會報告書第 11.130-11.131 段)。至於訴訟方面，律師有責任只確定與當事人案件法律上有關的證據，而現行司法案件管理制度可以提供額外保障，避免有人在採用材料時，不理會這些材料的實質內容，或是否與案件有關。第 19A(2)條只是把外在材料確認出來，以方便法律界、一般市民和司法機構，而沒有增加根據普通法已經確定或有充分爭辯理由為可接納的外在材料。法院因此可以免除爭辯這些材料會否獲接納的程序，而直接研究材料是否與案有關(包括材料是否清楚顯示立法原意)，並酌情決定法院會否容許參考有關材料(見上文第 21 至 24 段有關司法機構的角色)。

(3) 至於第 19A(2)條所列各項，如要把這些材料提交作為證據，第 19A(2)(c)條(用作條文藍本的其他司法管轄區官方報告)會引發冗長辯論。第 19A(2)(g)條(立法會的委員會在條文制定之前所作的有關報告)及(i)條(立法會及立法會全體委員會會議過程正式記錄中的有關材料)也不適宜，因為這些材料可能引起混淆，而且即使可以提供協助，也往往有利於援引條例草案的一方。

55. 正如上文所述，第 19A(2)條所列的外在材料，全部已獲確定，或最低限度有充分爭辯理由為可接納的材料，是普通法不採納外在材料規則的例外情況。因此，如果第 19A(2)(c)、(g)及(i)條所列的材料可能在某一案件中與某一條例的釋義有關，即使根據現行法例，律師也有理由爭辯這些材料為可接納和有關的證據。因此，如果第 19A(2)條列出有關材料，律師和法院便可免除爭辯材料可否接納的程序，直接處理材料是否與案有關的問題，並由法院酌情決定會否容許採用外在材料。

(4) 有關法例釋義採納使用外在材料的法例並非十分混亂。即使不編纂擬議的成文法則，法律執業者仍可以輕易參考 Halsbury's 和政府提交條例草案委員會的文件中引述的案例。

56. 上文第 27 至 38 段有助說明這方面的案例法(以訂立貨品銷售法例的成文法則之前為例)雖然可以確定，但卻很廣泛而差別很大，有時還會不清楚。編纂為成文法則的好處，是律師不需要研究和引用與採納外在材料有關的案件，從而節省時間和費用。

(5) 根據目前的趨勢，不採納外在材料的規則會有愈來愈多例外情況。如果香港跟隨澳大利亞把法例釋義的適用規則編纂為成文法則，便無法從其他司法管轄區的普通法發展中獲益。

57. 上文第 21 段已經指出，條例草案保留了司法機構的酌情權和靈活性。香港法院可以自行採用認為適合的其他普通法司法管轄區的任何發展。新增的第 19A 條給予酌情權，而第 19A(7)條已經訂明保留適用的普通法規定。

(6) 雖然第 19A 條並沒有包括與澳洲法令第 15AB(1)(a)條等同的條文(規定外在材料可用來確定法定條文的一般涵義)，一方律師可以辯稱條文的文本所表達的一般涵義導致荒謬或不合理的結果；而另一方則可以表示有外在材料支持一般涵義。如果條文涵義清晰明確，便無須參考外在材料。

58. 由於根據*佩珀 訴 哈特*案所訂立參考外在材料的條件之一，是法例的一般涵義必須有歧義或語意含糊或導致荒謬結果，因此，這方面的爭辯只會因普通法而不會因條例草案而起。有關條文一般涵義的爭辯會否容許作為外在材料參考之用(不論是根據普通法或條例草案)，完全由法院根據案情作出酌情決定。不過，不管是普通法或條例草案，也不容許偏離條文的一般涵義，除非有歧義、語意含糊、荒謬或不合理的情況出現。在 ***Executors of the Estate of Ball v Commissioner of Taxation (Cth)***案(1984) 59 ALJR 149, 150，澳大利亞高等法院判定，在參考條例的摘要說明或二讀發言時，不能改變清楚明示的條文涵義。此外，在 ***R v Boton; Ex parte Beane*** 案(1987) 61 ALJR 190, 191，法院強調二讀發言等外在材料雖然要

認真考慮，但不能視作具決定作用，並只是協助釋義的工具之一而已。法院的功能仍然是實施國會以法律明示的意向。

(7) **如果涉及的範圍較*佩珀 訴 哈特*案廣泛，條例草案會引致訟費增加。政府向委員會提交的資料顯示，《澳洲法令》第 15AB 條制定後，澳洲律師和法律代表須花更多時間在案件上，直至法院認為有需要就外在材料的使用作出明確和合適的限制為止。由於律師或法律代表需要在聆訊以外進行廣泛研究，新訂的第 19A(2)條會令到訟費大幅增加。**

59. 上文第 52 至 55 段有關委員會第(2)及(3)點的考慮意見，大致可以同樣適用於這一點。新訂的第 19A(2)條並不比自*佩珀 訴 哈特*案後普通法所訂立的範圍更為廣泛。律師或法律代表也不須進行較普通法所需的更大規模研究。反過來說，根據 Vagliano 原則，預期新訂的第 19A 條會節省訟費(見上文第 43 及 50 段)，因為這份易為市民所認識的簡單文件，從眾多互不相干的案件中確認出較為重要和廣為接納的外在材料，省卻律師或法律代表尋找這些案件，法院也無須就這些條件作冗長的討論，從而節省訟費。

結論和諮詢意見

60. 基於本文所討論的原因，政府認為有充分理由制訂條例草案，給這方面的法律問題提供清晰明確、廣為市民認識的指引，既可節省訟費，也沒有任何不利之處。如對這項結論有任何意見，請於 2000 年 4 月 20 日前提出。

律政司
法律政策科
2000 年 3 月 27 日

#18726 v1 - 522-ANNEXA

附件 B

便箋

發文人：	司法機構政務長	受文人：	律政司
檔　號：	SC 261/8/36 II		(經辦人：單格全先生)
電話號碼：	2825 4244　傳真：2501 4636	來文檔號：	LP 5019/6
日　期：	2000 年 4 月 12 日	日　期：	2000 年 3 月 27 日

《1999 年釋義及通則(修訂)條例草案》

《對條例作出釋義時使用外在材料諮詢文件》

本文與上述來文有關。

2. 司法機構已經表達了意見，認為政府制訂政策落實法律改革委員會的建議和提交條例草案審議前，必須先修訂法例，因此我們在現階段不會再作評論。

3. 我們對條例草案諮詢文件的意見大致如下。

4. 如果大部分的有關法律原則都是源自案例(正如目前情況)，把這些原則編纂成法例對法院及法律界都有幫助。上述條例草案目的在於列舉解釋條文時可以提述的外在材料及材料類別。這無疑對法院和律師都有幫助，因為不僅律師可以知道應該研究哪類材料，法院也可以知道應該參考哪些材料，從而減省不必要的爭論及研究。

5. 至於是否有某些材料與某宗案件有關，以及法院應該如何衡量那些材料的重要性，兩者是截然不同的問題。畢竟，律師必須研究每宗案件，蒐集與案件有關或對案件有幫助的資料。訴訟經常會爭辯以下兩個問題：有沒有某類材料與案件有關及有多大關係、這些材料有否寫入法例之內及法例草擬得有多妥善。除非訴訟各方在這兩個問題上取得共識，否則難免有所爭辯。

6. 法例准許向法院提述什麼材料，而什麼材料又真正與案件有關和法院應該怎樣衡量這些材料，這兩個問題也許有些含糊不清。

7. 第19A(2)條沒有說明列明的材料怎樣有助解釋條文。第19A(5)條則訂明法院考慮過每宗案件的案情後，可以酌情決定材料的有用程度。法院經常都要作出這類決定。然而，我們重申於1998年11月所提出的意見：這項條款似乎過於含糊，未必能夠幫助法院解釋條文，該條款的涵義應該力求精確。

8. 第19A(2)條所列的材料類別並非以這些為限，法院可以參閱其他普通法司法區的案例，研究是否有其他有助釋義的材料。鑑於其他司法區的司法體系發展各異，如果律師認為有其他材料有助某條法規的釋義，可以(也有責任)要求法院考慮那些材料。法理基礎就是這樣逐步建立起來，過程中更會找到新的材料類別。上述條例草案不會令到訟費大幅增加。

司法機構政務長
(梁振榮代行)

#18412 v1 - NL522-ANNEX B

附件 C

香港金鐘道 66 號
金鐘道政府合署高座 4 樓
律政司
署理法律政策專員
區義國先生

傳真送遞及郵遞

區義國先生：

貴司派出單格全先生和梁滿強先生到本校法律學院出席《1999 年釋義及通則(修訂)條例草案》會議，謹此致謝。出席會議人士包括：Anton Cooray 教授、戴逸華教授、柏利恩副教授、霍陸美珍副教授、施法華副教授、Anthony Upham 副教授、何秩生副教授、Denis Edwards 助理教授、羅敏威先生(講師)、洪寧寧女士(講師)和本人。

Cooray 教授和羅敏威先生就條例草案擬備了簡短的陳述書。現把列述他倆意見的陳述書夾附於後。

其他出席會議的教學人員都一致支持條例草案。草案不單有效地重新述明有關法例釋義的現行普通法法則，還讓法院可以進一步推展並延伸普通法。

承貴司派員到本學院講解條例草案，並即時討論其中要點，謹代表學院同人深表謝意。日後若有條例草案或法律改革委員會文件擬作諮詢，本院樂於一盡綿力。

署理法律學院院長史達偉

連附件
2000 年 5 月 15 日

對使用外在材料解釋法例的意見

1. *佩珀 訴 哈特(Pepper v Hart)*[1993]2 WLR 1 案權威地列明使用國會資料解釋法例的原則。澳大利亞聯邦的《法令釋義法令》第 15AB 條賦予使用外在材料解釋法例的法定效力。

2. 對*佩珀 訴 哈特*原則和使用其他外在材料的主要批評和關注，針對的並不是外在材料的效用，而是實際使用的問題。

對使用外在材料的主要批評包括 —

a. 涉及的訟費和時間；

b. 欠缺明確規則，不能衡量外在材料的適用程度和分量以確定立法意圖；以及

c. 使用外在材料的限制。

根據 1988 年 Patrick Brazil 在澳大利亞法律雜誌發表的文章，第 15AB 條一向運作良好，並沒有出現重大問題。澳大利亞近年似乎也沒有什麼文章批評第 15AB 條。

3. 把解釋法例的普通法原則編纂為成文法則，可以參考以下兩個方法 –

(i) 儘可能把有關原則明確扼要地列出，以求清楚明朗；或

(ii) 儘可能把原則扼要地列出，但仍保留相當空間，讓法官在判案時可以靈活採用有關原則，以作出公正的裁決。

建議的條例草案採納了第二種方法，我們相信這是正確的做法。雖然第 19AB(5)條的語意看來有點含糊，但這樣的用語其實有助法官決定一般原則是否適用於個別案件的特定情況。

4. 把有關原則編纂為成文法則的做法看來是個正確的決定，而且這做法在澳大利亞一向運作良好。但該否把這些釋義原則的適用範圍擴大至解釋《基本法》條文則是另一回事。鑒於《釋義及通則條例》只適用於解釋條例，因此 —

(i) 可以在條例中小心加入條文，清楚列明有關條例的條文並不適用於解釋《基本法》；或

(ii) 不提及《基本法》。

如果採用後一種做法，法官可以在解釋《基本法》時自由選擇該否引用或修改有關原則的要點。

由香港城市大學 Cooray 教授和講師羅敏威先生擬備。

#18510 v1 - NL522-C

附件 D

香港大學法律學院

傳真信息

收件人：律政司　　發件人：陳弘毅教授

經辦人：區義國先生

日期：2000 年 5 月 17 日

區義國先生：

關於：《釋義及通則（修訂）條例草案》

感謝閣下蒞臨本校教師研討會就上述條例草案發表演說，本院多位教學人員現向立法會上述條例草案委員會遞交一份聯名意見書，以供考慮。煩請代為轉交。

由於提交意見的同事都是在電子郵件上簽署，因此意見書並沒有他們的親筆署名。

法律學院院長陳弘毅教授

《1999 年釋義及通則（修訂）條例草案》
‘對條例作出釋義時使用外在材料’的意見

我們是香港大學法律學院的教學人員，現以個人身分提出下述意見。

基於下列原因，我們支持訂立建議的法例－

1. 我們同意，法律改革委員會 1997 年 3 月的詳細報告書闡明了確有充分理由訂立建議的法例。我們認為建議的法例十分有用可取，既有助釐清目前的普通法立場，還充分保留靈活性進一步發展這方面的普通法。

2. 我們更加相信，制定雙語法規，明確解釋外在材料的用處，較依賴本地及外地英文判決書為佳，因為市民大眾可以更易於認識法律。

3. 我們也留意到普通法司法管轄區都趨於廢除接納證據方面的人為規則，容許法院在法律程序中使用可靠的相關材料。這樣，法院得以在聆訊過程中更有效地剔除不相關和不可靠的材料，並且可以使用案件管理來盡量減少濫用材料。近期的一個明顯例子就是廢除了民事訴訟傳聞證據的規則。我們相信，訂立建議的法例，可以節省法庭處理該否接納某類外在材料的技術性爭辯所需的時間（訟費也會相應減少）。

4. 關於搜集外在材料會令訟費大幅增加的問題，我們認為無論是否訂立建議的法例，法律執業者仍須依據*佩珀 訴 哈特*[1993] AC593 案的原則，進行所需的資料搜集工作。另一方面，建議的法例列舉了表面相關或可靠的外在材料，因而可以減省需要就有關案件研究可否接納外在材料的費用。

5. 我們同意沒有迫切的立法需要，但認為法律改革應該先知先覺，而不是待有迫切需要時才作出回應。我們又注意到，法律改革委員會於 1996 年進行諮詢時，有意見認為儘管有十足理據

提議立法，但當時香港憲制架構改變在即，也不是落實委員會建議的合適時候。四年後的今天（期間普通法仍然依循*佩珀 訴哈特*案原則），我們認為若還採取"觀望"的態度是不切實際的。我們明白建議的法例如果不能在本立法年度通過，便有可能就此擱置。那麼，使用外在材料的問題仍須受普通法這方面的現行複雜規則（或許只能按判例而作零星發展）所規限，訴訟各方不能從雙語法例中受惠。

然而，我們想強調一點，方便法律執業者及廣大市民認識建議法例所載的所有外在材料，至為重要，尤其是建議的第 19A(2)(e)條提述提交立法會議員省覽或只作參考的有關文件，包括立法會參考資料摘要。立法會參考資料摘要以往屬機密文件，但目前已經公開供市民查閱。由於建議的法例也適用於先前制定的法規，因此政府應該採取積極措施，讓市民可以查閱上述立法會參考資料摘要，以及向立法會議員提供的其他文件。

2000 年 5 月 17 日

#18516 v1 - NL522-ANNEX D

簽署人名單

Anne R Carver	凌嘉蓮
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DR B Rwezaura	Professor Michael Wilkinson
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張達明*	莫勤保
陳偉漢	周偉信
Jill Cottrell	張憲初

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* 法律改革委員會委員，曾於 1997 年參與《使用外在材料作為法規釋義的輔助工具報告書》的出版工作，已經申報利益。

附件 E

香港律師會

本會檔號：PA0005/00/38529

來函檔號：LP5019/6　　傳真送遞/郵遞

香港

金鐘道 66 號

金鐘道政府合署

高座 4 樓律政司

法律政策科

單格全先生

單格全先生：

有關：《1999 年釋義及通則(修訂)條例草案》－
《對條例作出釋義時使用外在材料諮詢文件》

3 月 27 日的來信收悉，多謝貴科於本年 4 月 17 日派員就上述條例草案為本會憲制事務委員會舉行簡介會。

在簡介會上，委員要求解除以往提交立法會的機密資料分類，並請政府保證切實考慮。委員會確認 1999 年 4 月 29 日提交上述條例草案委員會的意見書立場，支持改革建議。

謹候回覆。

香港律師會
執業者事務部總監
黃淑玲
(電郵：dpa@hklawsoc.org.hk)

2000 年 4 月 28 日

律師會憲制事務委員會

對《1999年釋義及通則(修訂)條例草案》的意見

意見概述

委員會原則上同意建議的法例，因為*佩珀 訴 哈特*案的普通法規則非常複雜，對使用者來說可能並不清晰。在法例中訂立廣泛清晰的指引，可更有系統地訂立使用外在材料的規則。這種方式特別適用於香港，因為我們大部分人口的日常語言並非英語，因此訂立雙語法例清楚說明在法例釋義方面使用外在材料的規則，較援引一些冗長的英文判決書更佳。

詳細意見

(1) 目前沒有迫切需要訂立建議的法例。但另一方面，也沒有充分理據延遲通過有關法例。

(2) 有人擔心法律執業者可能會濫用規定，在不必要的情況下援引外在材料，從而提高訟費和延長審訊時間。但是，澳大利亞自1984年制定同類法例以來，援引時都極為克制。此外，若法例條文看來清楚明白，澳大利亞司法部也不會輕易援引外在輔助材料(見法律改革委員會報告書(下稱"報告書")第8.20段)。目前，普遍濫用規定的危機不大。如有需要，首席法官可以發出實務指引，以遏止/盡量減少濫用的情況。

(3) 建議的法例與澳大利亞的法例明顯不同之處，是建議的法例刪減了使用外在輔助材料來證實法定條文的一般涵義的條文。委員會贊成法律改革委員會刪除這項條文的建議(見報告書第11.59及11.60段)。這樣做有助避免/盡量減少不必要地引用外在材料的情況。

(4) 擬議的第19A(2)(a)條所述的事宜，並非條例一部分，而是載列於刊有條例文本並由政府印務局印行的文件內。表面看來，這項條文容許政府制定法例後，印行"解釋文件"來解釋立法原意。

報告書第 11.66 及 11.67 段提及澳大利亞法例也有類似的條文，有關條文所指的資料基本上是詳題、旁註和標題。目前引用法規的人士實際上也會援引這些材料，協助解釋法例的涵義。目前似乎沒有任何證據顯示政府會利用這項條文印行其他的解釋文件來偏離現行的做法。如果政府要這樣做，公眾和立法會議員必然會激烈反對。無論如何，根據建議的第 19A(1)條，法院完全有權以解釋文件並非"*有助於確定該條例的涵義*"為理由，決定不理會有關文件。

(5) 法律執業者和公眾能夠方便取閱法例列出的所有外在材料，最為重要。建議的第 19A(2)(e)條特別提及曾經呈交或提交立法會議員的任何其他有關文件，這項條文所指的文件包括立法會的參考資料摘要。由於建議條例也適用於以往制定的法規，政府應該確保所有立法會的參考資料摘要及提交立法會議員以往被列為"機密"的其他文件，現在必須可讓市民查閱。

香港律師會
憲制事務委員會

1999 年 4 月 29 日

#18535 v1 - NL522-ANNEX E

附件 F

香港大律師公會

來函檔號： LP 5019/6

香港
金鐘道 66 號
金鐘道政府合署
高座 4 樓律政司
高級助理法律政策專員
單格全先生

單格全先生：

有關：《1999 年釋義及通則(修訂)條例草案》 －
《對條例作出釋義時使用外在材料諮詢文件》

本年 3 月 27 日來函收悉，多謝你就隨函夾附的諮詢文件邀請我們提出意見。

本會執行委員會在上次會議討論過有關事項後，認為目前沒有迫切需要，所以不會支持通過《1999 年釋義及通則(修訂)條例草案》。

大律師公會主席湯家驊

副本送：署理法律政策專員
霍思先生
梁滿強先生

2000 年 5 月 8 日

#18730 v1 - 522-ANNEX F

1417. Construction of consolidation Acts. Initially a consolidation Act[1] is to be construed in the same way as any other Act. If, however, a real doubt as to its meaning arises[2] the following rules apply:

(1) unless the contrary intention appears, an Act stated in its long title[3] 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 Act[4];

(2) the above presumption means that in case of real doubt the earlier law may be considered[5], even if the words are not identical[6];

(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 Act[7]; 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 inconsistency[8].

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 Boucher* [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; *DPP 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; *Maunsell v Olins* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL; *Edwards (Inspector of Taxes) v Clinch* [1981] Ch 1 at 5, [1980] 3 All ER 278 at 280, CA, per Buckley LJ (affd [1982] AC 845, [1981] 3 All ER 543, HL).
This presumption applies so far as it appears that the Act consists of 'straight' consolidation (see para 1225 ante); but must yield to plain words to the contrary (*Inglis v Robertson* [1898] AC 616 at 624, HL; *MacConnell v E Prill & Co Ltd* [1916] 2 Ch 57 at 63; *Gilbert v Gilbert and Boucher* [1928] P 1 at 8, CA; *Grey 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 *Farrell 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; *Barentz (Inspector of Taxes) v Whiting* [1965] 1 All ER 685, [1965] 1 WLR 433, CA; *Maunsell v Olins* [1975] AC 373 at 382, [1975] 1 All ER 16 at 17, HL, per Lord Reid, and at 392 and 27 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 Joiner* [1975] 3 All ER 1050, [1975] 1 WLR 1701, HL; *Metropolitan Police Comr v Curran* [1976] 1 All ER 162, [1976] 1 WLR 87, HL; *Farrell 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 Moreton* [1980] AC 37 at 56, [1978] 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 *Farrell v Alexander* [1977] AC 59 at 84, [1976] 2 All ER 721 at 735, HL, per Lord Simon of Glaisdale; and *Johnson v Moreton* 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 Comr v Curran* [1976] 1 All ER 162 at 165, [1976] 1 WLR 87 at 90, HL, per Lord Diplock; *Farrell 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. Cf *H 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 bear different meanings in different provisions: see para 1485 post.

1418. Construction of codifying Acts. In construing a codifying Act[1] the proper course is, in the first instance, to examine its language and to ask what is its natural meaning[2]. 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 authorities[3]. 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 meaning[4]. These principles have been applied to the Bills of Exchange Act 1882[5], the Sale of Goods Act 1893[6], and the Marine Insurance Act 1906[7].

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 etc 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 Fulling* [1987] QB 426, [1987] 2 All ER 65, CA; *R v Smurthwaite* [1994] 1 All ER 898 at 902, 98 Cr App Rep 228 at 233, CA, per Lord Taylor CJ. Cf *British Homes Assurance Corpn 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; *Wimble, Sons & Co v Rosenberg & Sons* [1913] 3 KB 743 at 762, CA; *Yorkshire Insurance Co Ltd v Nisbet Shipping Co Ltd* [1962] 2 QB 330 at 343, [1961] 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 Wolsey* [1895] 2 QB 97, CA; *Bristol Tramways etc 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 Sale and Supply of Goods Act 1994.

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 vol 25 (Reissue) para 297. See further *Pollurian SS Co Ltd v Young* [1915] 1 KB 922, 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* [1962] 2 QB 330, [1961] 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 Parliament[1].

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 1420 post. It comprises reports and other material on which the Act is based, the text of the Bill and amendments

附件 2

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 jurisdiction[2], it is a rule of practice, known as the exclusionary rule[3], 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 Act[4].

1 Ie 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 *Hadmor 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-Clawson 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 rule[2], where, in the opinion of the court determining the legal meaning[3] of an enactment[4], that enactment is ambiguous[5] or obscure[6] or its literal meaning[7] leads to an absurdity[8], 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 Debates[9], which (1) is clear[10]; (2) was made by or on behalf of the minister or other person who was the promoter of the Bill[11]; and (3) discloses the mischief aimed at by the enactment, or the legislative intention underlying its words[12]. The court may also have regard to such other parliamentary material (if any) as is relevant for understanding that statement and its effect[13].

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 it[14]. 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 introduced[15].

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 presented[16].

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; *Restick 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 Mehari* [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* [1922] 2 AC 339 at 383, 399, HL; *DPP v Manners* [1978] AC 43 at 48, sub nom *R v Manners* [1976] 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 rule[1] and are not permitted by the rule in Pepper v Hart[2], where the need to carry out the legislator's intention[3] appears to the court so to require[4].

1 As to the exclusionary rule see para 1420 ante.
2 Ie 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 Scott* (1859) 6 CBNS 1; *Re Mew and Thorne* (1862) 31 LJ Bcy 87 at 89; *Drummond v Drummond* (1866) 36 LJ Ch 153 at 160; *Hebbert v Purchas* [1871] LR 3 PC 605 at 648–649; *Ridsdale v Clifton* [1877] 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 Rly Co v Railway Comrs* (1880) 5 QBD 217 at 236–237; *Herron v Rathmines and Rathgar Improvement Comrs* [1892] AC 498 at 501–502, HL; *Lumsden v IRC* [1914] AC 877 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; *Sagnata Investments Ltd v Norwich Corpn* [1971] 2 QB 614 at 624, [1971] 2 All ER 1441 at 1445, CA; *Beswick v Beswick* [1968] AC 58 at 105, [1967] 2 All ER 1197 at 1223, HL; *R v Warner* [1969] 2 AC 256 at 279, [1968] 2 All ER 356 at 366, HL; *McMillan v Crouch* [1972] 3 All ER 61 at 76, [1972] 1 WLR 1102 at 1119, HL; *Ealing Borough Council v Race Relations Board* [1972] AC 342 at 367, [1972] 1 All ER 105 at 119, HL; *Charter v Race Relations Board* [1973] AC 868 at 900, [1973] 1 All ER 512 at 526, HL; *Racal 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 (affd sub nom *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL); *Tuck v National Freight Corpn* [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* [1982] 1 All ER 737 at 744, CA; *Hadmor 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 1042 at 1046–1047, HL, per Lord Diplock); *Pierce v Bemis* [1986] QB 384 at 392, [1986] 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 (Mincing 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; *Stoke-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 Crickmore* [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 769 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 Commission[1].

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 accordingly[2].

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 Gathercole* (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, [1955] 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; *Letang v Cooper* [1965] 1 QB 232, [1964] 2 All ER 929, CA; *Heatons 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; *Fothergill v Monarch Airlines Ltd* [1981] AC 251 at 281, [1980] 2 All ER 696 at 718, HL, per Lord Diplock; *R v Olugboja* [1982] QB 320, [1981] 3 All ER 443, CA; *R v Bloxham* [1983] 1 AC 109, [1982] 1 All ER 582, HL; *R v Mousir* [1987] Crim LR 561; *Hampshire County Council v Milburn* [1991] 1 AC 325, [1990] 2 All ER 257, HL; *R v Horseferry Road Metropolitan Stipendiary Magistrate, ex p Siadatan* [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 legislation[1].

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 accordingly[1].

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 agreement[1]. 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 agreement[2]. Where, however, on an informed construction[3] there is no real doubt[4] about the legal meaning of an enactment[5], effect must be given to that meaning, even if it is not in accordance with an international agreement or is contrary to international law[6].

In accordance with general principle[7], the court will assume that a treaty Act[8] is not intended to conflict with international law and, so far as is possible, will construe the Act accordingly[9]. 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 jurisdictions[10]. In construing an international agreement which has been incorporated into English law a court may have regard to versions of the agreement in other languages[11]. 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 methods[12].

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; *Medway 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 *Surjit 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 *Colco 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; *Woodend (KV Ceylon) Rubber and Tea Co Ltd v IRC* [1971] AC 321, [1970] 2 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; *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; *Medway 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 *Riverstone 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 *Corocraft 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 Act[1], or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions[2].

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 provisions[1]. This is because delegated legislation, like some official memoranda[2], originates in the government department responsible for initiating and administering

the relevant Act[3] and may therefore be assumed to reflect a correct view of the intention of its promoters[4].

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 Normand, 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); *Vandyk v Minister of Pensions* [1955] 1 QB 29 at 37, [1954] 2 All ER 723 at 726; *Stephens v Cuckfield RDC* [1960] 2 QB 373 at 380–381, [1960] 2 All ER 716 at 718, CA; *Britt 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; *Haulon v Law Society* [1981] AC 124, [1980] 1 All ER 763, CA; *R v Uxbridge 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] 2 All ER 577, [1994] 2 WLR 732, HL); *R v Secretary of State for the Home Department, ex p Mehari* [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'Gorman* [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 exposition[1], 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 passed[2].

It is said that the doctrine of contemporaneous exposition should not be applied to the construction of modern Acts[3]. 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 passed[4].

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 Lindo* (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 Cutbush* (1867) LR 2 QB 379 at 382; *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531 at 591, HL.

3 *Clyde Navigation Trustees v Laird* (1883) 8 App Cas 658 at 673, HL; *Assheton 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 provision[1].

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-Holgate 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 construction[1] 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 interchangeably[2]. The principles comprised in legal policy cannot be numbered, and through the decided cases are constantly being developed[3]. The courts draw on many diverse sources in formulating legal policy[4].

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 necessary[5]. Legal policy is not static[6] and in some areas it may change drastically over a period[7], in response to changes in the perceived view of public needs and attitudes[8].

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; *Amicable Society v Bolland* (1830) 4 Bli NS 194; *Egerton v Earl Brownlow* (1853) 4 HL Cas 1 at 123; *Coxhead v Mullis* (1878) 3 CPD 439 at 442; *Municipal Building Society v Kent* (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, HL.

3 Eg in *R v Lemon* [1979] AC 617, [1979] 1 All ER 898, 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 664 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 QB 283, [1990] 3 All ER 246, CA) Tudor Evans J, 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 Brightlife 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 has 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 principles[1]. 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 intention[3]. 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 predominance[4]. The conflict may, however, be more apparent than real[5].

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, 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 *Bairstow 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, *Bairstow v Queen's Moat Houses plc* [1998] 1 All ER 343, CA.

1290 Implied amendment
NOTE 1—See, however, *Bairstow 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: *Bairstow 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 (Minors) 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 ss 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 due 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: *Duncan v Bedfordshire CC* [1997] ELR 299.