

Legislation

DAVID R. MIERS
ALAN C. PAGE

SWEET & MAXWELL

LEGISLATION

By

DAVID R. MIERS, LL.M., D. Jur.

Senior Lecturer in Law, University College, Cardiff

and

ALAN C. PAGE, LL.B., Ph.D.

Senior Lecturer in Law, University of Dundee

LONDON
SWEET & MAXWELL
1982

*Published in 1982 by
Sweet and Maxwell Limited of
11 New Fetter Lane, London.
Computerset by Promenade Graphics Limited, Cheltenham
and printed in Great Britain
by T. J. Press (Padstow) Ltd.,
Padstow, Cornwall*

British Library Cataloguing in Publication Data

Miers, David R.
Legislation.
I. Legislation—Great Britain
I. Title II. Page, Alan C.
328.41'07 JF441

ISBN 0-421-27110-8

ISBN 0-421-27120-5

*All rights reserved.
No part of this publication may be
reproduced or transmitted, in any form
or by any means, electronic, mechanical, photocopying,
recording or otherwise, or stored in any retrieval
system of any nature, without the written permission
of the copyright holder and the publisher, application
for which shall be made to the publisher.*

©
D. R. MIERS & A. C. PAGE
1982

To Maggie and Sheila

PREFACE

Legislation constitutes the single most important source of law in our society. Most central government activity is carried on within a statutory framework. The affairs of local authorities, nationalised industries, public corporations and private commerce are defined and directed by legislation. There is hardly any aspect of the education, welfare, health, employment, housing, income and public conduct of the citizen that is not regulated by statute. The preparation, enactment, interpretation and implementation of legislation are therefore matters of the first importance; not just for those whose behaviour is affected by the law, but also for those who are professionally involved in those matters. For governments, the preparation and enactment each year of a legislative programme implementing their manifesto promises and responding to the more routine requests of departments constitute vital features of their terms of office.

Yet in our experience the importance of legislation in our society is seldom fully appreciated by students; in particular they often seem insufficiently aware of, or unfamiliar with, its importance both as a source of law and as the foundation for the majority of substantive law courses studied. This is undoubtedly due in part to the overwhelming emphasis in traditional, and more seriously, in contemporary legal education, on reading and reconciling cases as the main lawyer-like skills to be acquired. Indeed, by virtue of the emphasis placed on case-handling and precedent, legal education seems to be in danger of perpetuating, consciously or unconsciously, that self-same bias in favour of the common law which earlier generations so roundly condemned when manifested by the judiciary in their approach to the interpretation of statutes.

A second reason lies in the generally fragmentary, and in some instances misleading, treatment of legislation in the available literature. Whereas the conception, formulation, enactment, interpretation and implementation of legislation are inter-related activities, they are nowhere dealt with *as a whole*, systematically and comprehensively. They are instead variously addressed, for different purposes and for different audiences, within political science and government, constitutional law, drafting, legal systems and legal method, jurisprudence and the sociology of law. This fragmentary treatment, in our view, seriously limits students' appreciation of the significance and importance of legislation.

In setting out to redress this imbalance we are conscious of the fact that our subject matter was such that everyone would have his or her own ideas about what the book should or should not contain. We were also aware of the enormous value of earlier disparate contributions to this field. These include C. K. Allen's *Law in the Making*, J. A. G. Griffith's early work culminating in his *Parliamentary Scrutiny of Government Bills* and S. A. Walkland's *The Legislative Process in Great Britain*. Where appropriate we have drawn on these contributions and acknowledge our own indebtedness to them. On the other hand, we have consciously sought to avoid the repetition of the more specialised material found in a Thornton, a Craies or a Maxwell as inappropriate for a work of this general nature. Beyond this our aim essentially has been to provide a systematic and comprehensive account of legislation applicable in the United Kingdom from its inception to its implementation. For reasons explained fully in Chapter 1 we conceive of legislation as a mainly government-inspired activity. Consequently we concentrate on public general Acts and their various non-Parliamentary equivalents, in particular, subordinate legislation and Community legislation.

The book originated in our teaching experience at University College, Cardiff, and was jointly conceived and developed. Because of Alan Page's departure for Dundee in 1979, responsibility for the initial draft of individual chapters was divided; Alan Page was responsible for Chapters 1, 3, 5, and 6, David Miers for Chapters 2, 4, 7 and 8.

In writing this work we have inevitably accumulated a great many debts. The greatest of these is owed to Bob Ferguson who, despite the pressure of other commitments, read drafts of all of the chapters and made a great many invaluable suggestions. We would also like to thank Dr. A. Mughan, Professor J. C. Wylie, Professor T. C. Daintith, T. St. J. N. Bates and Professor R. Lempert for reading and commenting on various drafts; Joyce Brunton, Christine Davies and Jennifer Dix for typing the final manuscript; and Susanna Marsh for preparing the index. Finally, our thanks go to our publishers for their assistance, encouragement and forbearance.

March 1982

ACP
DRM

TABLE OF CASES

A.G. <i>v.</i> Prince Augustus of Hanover [1957] A.C. 437	191
Attorney General's Reference (No. 1 of 1978) [1978] R.T.R. 377	229
Bailey <i>v.</i> Williamson (1873) L.R. 8 Q.B. 118	157
Beaumont, <i>Re</i> [1980] 1 All E.R. 266	184
Beswick <i>v.</i> Beswick [1968] A.C. 58	203
Black-Clawson International Ltd. <i>v.</i> Papierwerke Waldhof-Aschaffenburg [1975] A.C. 591	181, 185, 189, 202, 204
Bourne <i>v.</i> Norwich Crematorium Ltd. [1967] 2 All E.R. 576	193
Bowles <i>v.</i> Bank of England [1913] 1 Ch. 59	16
Bromley L.B.C. <i>v.</i> Greater London Council [1982] 1 All E.R. 129	179
Buchanan & Co. Ltd. <i>v.</i> Babco Forwarding and Shipping [1978] A.C. 141	189, 208
Buckoke <i>v.</i> G.L.C. [1971] Ch. 655	178
Bulmer (H.P.) Ltd. <i>v.</i> Bollinger [1974] 2 All E.R. 1226	208
Burmah Oil <i>v.</i> The Lord Advocate [1965] A.C. 75	198
Carter <i>v.</i> Bradbeer [1975] 1 W.L.R. 1204	195, 196
Case of Proclamations (1611) 12 Co.Rep. 74	4, 16
Commissioners of Customs and Excise <i>v.</i> Cure and Deeley [1962] 1 Q.B. 340	166
Confédération nationale des producteurs de fruits et légumes <i>v.</i> Council, 16, 17, 19-22/62 [1962] E.C.R. 471	2
Costa <i>v.</i> E.N.E.L., 6/64 [1964] E.C.R. 585	20
Da Costa Case [1963] E.C.R. 31	209
Davis <i>v.</i> Johnson [1979] A.C. 264	189
De Falco <i>v.</i> Crawley B.C. [1980] 1 All E.R. 913	177
Derrick <i>v.</i> Commissioners of Customs and Excise [1972] 3 All E.R. 993	193
D.P.P. <i>v.</i> Schildkamp [1971] A.C. 1	192
Duport Steel <i>v.</i> Sirs [1980] 1 W.L.R. 142	180, 182, 195
Dyson Holdings <i>v.</i> Fox [1975] 3 W.L.R. 744	92
Ealing L.B.C. <i>v.</i> Race Relations Board [1972] A.C. 342	187, 188
Farrell <i>v.</i> Alexander [1977] A.C. 59	44, 191
Federal Steam Navigation <i>v.</i> D.T.I. [1974] 1 W.L.R. 505	184
Firman <i>v.</i> Ellis [1978] 3 W.L.R. 1	188
Fisher <i>v.</i> Bell [1961] 1 Q.B. 394	198
Fothergill <i>v.</i> Monarch Airlines [1980] 3 W.L.R. 209	189, 190, 198
Gouriet <i>v.</i> Union of Post Office Workers [1978] A.C. 435	236
Grey <i>v.</i> Pearson (1857) 6 H.L.C. 61	186
Hadmor Productions Ltd. <i>v.</i> Hamilton [1981] 2 All E.R. 724	203
— <i>v.</i> — [1982] 1 All E.R. 1042	189
Hanlon <i>v.</i> Law Society [1980] 2 W.L.R. 765	178, 187, 192
Heydon's Case (1584) 3 Co.Rep. 7a; 76 E.R. 637	184
Hoffman La Roche (F.) & Co. A.G. <i>v.</i> Secretary of State for Trade and Industry [1975] A.C. 295	167

Institute of Patent Agents <i>v.</i> Lockwood [1894] A.C. 347	166
Italian Finance Administration <i>v.</i> Simmenthal, 106/77 [1978] E.C.R. 629	21
Jenkins <i>v.</i> Kingsgate [1981] 1 W.L.R. 972	179
Kaplan [1978] R.T.R. 119	229
Letang <i>v.</i> Cooper [1965] 1 Q.B. 232	193
MacCarthys <i>v.</i> Smith [1980] 3 W.L.R. 929; [1979] 3 All E.R. 325	23
McEldowney <i>v.</i> Forde [1971] A.C. 632	166
Maizena Gesellschaft mbH <i>v.</i> Council of the European Communities, 139/79 [1980] E.C.R. 3333, 3393	169
Magor and St. Mellons R.D.C. <i>v.</i> Newport Corporation [1952] A.C. 189	181, 182, 205
Maunsell <i>v.</i> Olins [1975] A.C. 373	186, 187, 191, 194
Minister of Health <i>v.</i> R., <i>ex p.</i> Yaffe [1931] A.C. 494	166
Ministry of Defence <i>v.</i> Jeremiah [1979] 3 W.L.R. 857	243
Norwhale, The [1975] 2 All E.R. 501	191
Number 20 Cannon Street Ltd. <i>v.</i> Singer & Friedlander Ltd. [1974] 2 All E.R. 577	194
Ogden Industries Property Ltd. <i>v.</i> Lucas [1970] A.C. 113	195
Oxford <i>v.</i> D.H.S.S. [1977] 1 L.R. 884	244
Quazi <i>v.</i> Quazi [1979] 3 W.L.R. 833	189, 192
Parsley <i>v.</i> Beard [1978] R.T.R. 263	229
Peake <i>v.</i> Automotive Products Ltd. [1977] 3 W.L.R. 853	243
Price <i>v.</i> Civil Service Commission [1977] 1 W.L.R. 1417	244
— <i>v.</i> Davies [1979] R.T.R. 204	229
R. <i>v.</i> Bow Road Domestic Proceedings Court, <i>ex p.</i> Adedigba [1968] 2 Q.B. 572	195
— <i>v.</i> Chief Immigration Officer, <i>ex p.</i> Bibi [1976] 3 All E.R. 843	189
— <i>v.</i> Criminal Injuries Compensation Board, <i>ex p.</i> Lain [1967] 2 Q.B. 864	5
— <i>v.</i> Governor of Brixton Prison, <i>ex p.</i> Schtraks [1964] A.C. 556	197
— <i>v.</i> Governor of Pentonville Prison, <i>ex p.</i> Cheng [1973] A.C. 931	196
— <i>v.</i> Immigration Appeal Tribunals [1972] 1 W.L.R. 1390	156
— <i>v.</i> Kelt [1977] 3 All E.R. 1099	192
— <i>v.</i> Lemon [1979] A.C. 617	236
— <i>v.</i> Local Commissioner for Administration, <i>ex p.</i> Bradford Metropolitan City Council [1972] 2 W.L.R. 1	203
— <i>v.</i> Metropolitan Police Commissioner, <i>ex p.</i> Blackburn [1968] 2 Q.B. 118	178
— <i>v.</i> Metropolitan Police Commissioner, <i>ex p.</i> Blackburn (No. 3) [1973] Q.B. 241	178
— <i>v.</i> Sheer Metalcraft Ltd. [1954] 1 Q.B. 586	155
— <i>v.</i> Sheffield Supplementary Appeal Tribunal, <i>ex p.</i> Shine [1975] 1 W.L.R. 624	179
Ramsay <i>v.</i> I.R.C. [1981] 2 W.L.R. 449	96
River Wear Commissioners <i>v.</i> Adamson (1877) 2 App.Cas. 743	186
Roberts <i>v.</i> British Railways Board [1975] 1 W.L.R. 396	179
Rookes <i>v.</i> Barnard [1964] A.C. 1129	198
Roquette Freres <i>v.</i> Council of the European Communities, 138/79	169

<i>Sagnata Investments Ltd. v. Norwich Corporation</i> [1971] 2 Q.B. 614	203
<i>Seaford Estates v. Asher</i> [1949] 2 K.B. 481	182
<i>Shearer v. Bercaïn Ltd.</i> [1980] 3 All E.R. 295	177
<i>Sheridan v. Webster</i> [1980] R.T.R. 349	229
<i>Simmonds v. Newell</i> [1953] 1 W.L.R. 826	155
<i>Skyrail Oceanic v. Coleman</i> [1980] I.L.R. 596	244
<i>Stock v. Frank Jones (Tipton) Ltd.</i> [1978] 1 W.L.R. 231	186, 187
<i>Surjit Kaur v. The Lord Advocate</i> [1981] S.L.T. 322	189
<i>Sussex Peerage Claim</i> (1844) 11 Cl. & Fin. 85	186
<i>University of Reading v. MacCormack</i> [1976] I.R.C.R. 491	244
<i>Variola v. Italian Finance Administrative</i> , 34/73 [1973] E.C.R. 981	21
<i>Vestey v. I.R.C.</i> [1980] A.C. 1148	95, 178, 179

TABLE OF STATUTES

1539	Statute of Proclamations (31 Hen. 8, c. 26)	143	1920	Emergency Powers Act (10 & 11 Geo. 5, c. 55)	145
1689	Bill of Rights (1 W. & M. Sess. 2, c. 2)—			Government of Ireland Act (10 & 11 Geo. 5, c. 67)	7
	Art. 1	16	1932	Import Duties Act (22 & 23 Geo. 5, c. 8)	68
	Art. 2	16	1936	Public Order Act (1 Edw. 8 & 1 Geo. 6, c. 6)—	
1714	Riot Act (1 Geo. 1, c. 5)	43		s. 5A(1)	228
1824	Vagrancy Act (5 Geo. 4, c. 83)—			(5)	230
	s. 4	77		Private Legislation Procedure (Scotland) Act (26 Geo. 5 & 1 Edw. 8, c. 52)	10, 11
1832	Cholera Prevention Act (2 & 3 Wm. 4, c. 10)	143	1944	National Fire Service (Regulations) Indemnity Act (7 & 8 Geo. 6, c. 35)	157
1850	Lord Brougham's Act (13 Vict. c. 21)—		1945	Supplies and Services (Transitional Powers) Act (9 & 10 Geo. 6, c. 10)	17
	s. 2	88		Statutory Order (Special Procedure) Act (9 & 10 Geo. 6, c. 18)	10, 11
1868	Promissory Oaths Act (31 & 32 Vict. c. 72)—		1946	Statutory Instruments Act (9 & 10 Geo. 6, c. 36) ...	41, 142, 151, 158, 163
	s. 4	179		s. 1(1)	142
1870	Extradition Act (33 & 34 Vict. c. 52)—			(2)	142
	s. 3(1)	196–197		s. 2	154
1876	Customs Consolidation Act (39 & 40 Vict. c. 36)—			s. 4(1)	155, 156, 157, 164
	s. 42	193		(2)	155
1889	Interpretation Act (52 & 53 Vict. c. 63)	190		s. 5	158
1893	Rules Publication Act (56 & 57 Vict. c. 66)	151, 155		s. 6	158
	s. 1	151, 154		s. 7(1)	158
	s. 3	154	1947	Supplies and Services (Extended Purposes) Act (10 & 11 Geo. 6, c. 55)	17
	(2)	154	1948	Laying of Documents Before Parliament (Interpretation) Act (11 & 12 Geo. 6, c. 59)	156
1899	Private Legislation Procedure (Scotland) Act (62 & 63 Vict. c. 47) ...	11, 14, 30	1949	Consolidation of Enactments (Procedure) Act (12, 13 & 14 Geo. 6, c. 33)	40, 41, 43, 44, 46
1908	Punishment of Incest Act (8 Edw. 7, c. 45)	216		s. 2	41
1911	Parliament Act (1 & 2 Geo. 5, c. 13)	127, 128			
	s. 1(1)	127			
	s. 2	127, 128			
	Official Secrets Act (1 & 2 Geo. 5, c. 28)—				
	s. 8	230			
1914	Government of Ireland Act (4 & 5 Geo. 5, c. 90)	128			
	Welsh Church Act (4 & 5 Geo. 5, c. 91)	128			

1949	Parliament Act (12, 13 & 14 Geo. 6, c. 103) ...	41, 127, 128	1967	Abortion Act (c. 87)	131
1951	Price Control and Other Orders (Indemnity) Act (14 & 15 Geo. 6, c. 59)	157	1968	Commonwealth Immigrants Act (c. 9)	114
1956	Restrictive Trade Practices Act (4 & 5 Eliz. 2, c. 68)	63		National Loans Act (c. 13)—	
1958	Import Duties Act (6 & 7 Eliz. 2, c. 6)—			s. 1	127
	s. 13(4)	157		Rent Act (c. 23)—	
1959	Obscene Publications Act (7 & 8 Eliz. 2, c. 66)	73		s. 98	92
1960	Betting, Gaming and Lotteries Act (8 & 9 Eliz. 2, c. 60)	227, 228		Industrial Expansion Act (c. 32)	148
1961	Restriction of Offensive Weapons Act (9 & 10 Eliz. 2, c. 22)	198		Theatres Act (c. 54)	73, 131
1962	Town and Country Planning Act (10 & 11 Eliz. 2, c. 38)—			Gaming Act (c. 65)	228
	s. 149(1)	98, 99		s. 2(1)	91
	(3)	98, 99		Sched. 2, para. 20(1)(b)	91
1964	Resale Prices Act (c. 58)	62		Race Relations Act (c. 71)	182
1965	Law Commissions Act (c. 22)	51		Town and Country Planning Act (c. 72)—	
	s. 3(1)	42, 51		s. 37(3)	99
	Finance Act (c. 25)—			s. 38	98
	Sched. 6, para. 24(4)	103		Trade Descriptions Act (c. 29)—	
	Statutory Orders (Special Procedure) Act (c. 43)	10		s. 24	229
	Trade Disputes Act (c. 48)	198	1969	Children and Young Persons Act (c. 54)—	
	Murder (Abolition of the Death Penalty) Act (c. 71)	132		s. 1(1)	237
	Superannuation Act (c. 74)	100		Divorce Reform Act (c. 55)	131
	Southern Rhodesia Act (c. 76)	157	1970	Chronically Sick and Disabled Persons Act (c. 44)	45
	War Damage Act (c. 18)	3, 198		Town and Country Planning Regulations (London) Indemnity Act (c. 57)	157
1967	Misrepresentation Act (c. 7)	230	1971	Rolls Royce Purchase Act (c. 9)	55
	Parliamentary Commissioner Act (c. 13)—			Misuse of Drugs Act (c. 38)—	
	Sched. 1	100		s. 28	229
	Criminal Law Act (c. 58)—			Pensions (Increase) Act (c. 56)—	
	s. 10	43		s. 8(2)(a)	240
	Sched. 3, Pt. III	43		Industrial Relations Act (c. 72)	89, 238
	Royal Assent Act (c. 23)	130		Immigration Act (c. 77)	142
	Sexual Offences Act (c. 60)	131		s. 2(6)	90
	Companies Act (c. 81)—		1972	Road Traffic Act (c. 20)	142, 230
	s. 67	147		Northern Ireland (Temporary Provisions) Act (c. 22)	114
				Legal Advice and Assistance Act (c. 50)—	
				s. 11(2)	157
				Town and Country Planning Act (c. 52)—	
				s. 287	147

1972	European Communities Act (c. 68).....	7, 22, 119	1976	Rent (Agriculture) Act (c. 80).....	106
	s. 2(1).....	21, 22	1977	Rent (Agriculture) (Amend- ment) Act (c. 17).....	106
	(2).....	147, 148, 159, 170		Redundancy Rebates Act (c. 22).....	116
	(4).....	22, 24, 147		Rent Act (c. 42).....	92
	s. 3.....	21		Criminal Law Act (c. 45).....	49
	Sched. 2, para. 1(1)....	148, 149		Housing (Homeless Persons) Act (c. 48)—	
	Local Government Act (c. 70)—			s. 3(1).....	92
	s. 239.....	9		(2).....	92
	s. 240.....	10		s. 12.....	177
1973	Guardianship Act (c. 29)—			Pensioners' Payment Act (c. 51).....	118
	Sched. 2, Pt. II.....	100	1978	Interpretation Act (c. 30)....	190
	Statute Law (Repeals) Act (c. 39)—			Theft Act (c. 31).....	49
	s. 1(1).....	43		Protection of Children Act (c. 37)—	
	Sched. 1, Pt. V.....	43		s. 1(b).....	229
	Local Government (Scot- land) Act (c. 65)—			Consumer Safety Act (c. 38)....	241
	s. 82.....	9		Scotland Act (c. 51).....	119
1974	Northern Ireland Act (c. 28).....	47		Wales Act (c. 52).....	119
	Sched. 1, para. 1.....	164	1979	Social Security Act (c. 18)....	7
	Health and Safety at Work etc. Act (c. 37)—			Charging Orders Act (c. 53)....	7
	s. 2.....	92	1980	Petroleum Revenue Tax Act (c. 1).....	16
	Consumer Credit Act (c. 39)—			Bees Act (c. 12).....	7
	s. 4.....	176		National Health Service (In- valid Direction) Act (c. 15).....	3
	Sched. 2.....	103		Education Act (c. 20).....	99
	Control of Pollution Act (c. 40).....	235		Competition Act (c. 21)—	
	Trade Union and Labour Relations Act (c. 52)....	89		s. 1.....	91
	s. 1(2).....	89		Companies Act (c. 22).....	7
	Prevention of Terrorism (Temporary Provisions) Act (c. 55).....	55		Licensed Premises (Exclu- sion of Certain Persons) Act (c. 32).....	230
1975	Remuneration, Charges and Grants Act (c. 57)—			Licensing (Amendment) Act (c. 40).....	132
	s. 1.....	147		Deer Act (c. 49).....	132
	Sex Discrimination Act (c. 65).....	243, 244		Criminal Justice (Scotland) Act (c. 62).....	49
	s. 74.....	229		Local Government Planning and Land Act (c. 65)....	7
	(2)(b).....	229		Highways Act (c. 66).....	45
1976	Lotteries and Amusements Act (c. 32).....	230	1981	European Assembly Elec- tions Act (c. 8).....	7
	Finance Act (c. 40).....	72		Matrimonial Homes and Property Act (c. 24)....	132
	Drought Act (c. 44).....	55		The Transport Act 1962 (Amendment) Act (c. 32).....	132
	Race Relations Act (c. 74)—				
	s. 65.....	229			
	(2)(b).....	229			
	s. 70.....	228			

1981	Zoo Licensing Act (c. 37)	132	1981	Contempt of Court Act (c. 49)	49
	Indecent Displays (Control) Act (c. 42).....	132, 221, 222, 223		Transport Act (c. 56)	83
	s. 1	222		Employment and Training Act (c. 57)	238
	(3)(b)	222		s. 1	218
	(6)	222		Sched. 1	218
	Disabled Persons Act (c. 43)	132		Companies Act (c. 62)—	
	Forgery and Counterfeiting Act (c. 45)	132		s. 39	177
	Criminal Attempts Act (c. 47)	49		Wildlife and Countryside Act (c. 69)—	
				s. 37	103
			1982	Local Government (Miscellaneous Provisions) Act	222

AUSTRALIA

1901	Acts Interpretation Act—	
	s. 15AA(1)	199
1981	Statute Law Revision Act	199

NEW ZEALAND

1924	Acts Interpretation Act—	
	s. 5(j)	199

EUROPEAN ECONOMIC COMMUNITY

1957	E.E.C. Treaty of Rome	167, 168, 208
	Art. 100	169
	Art. 119	22
	Art. 148	168
	Art. 149	168
	Art. 189.....	21, 168, 171
	Art. 191	168

CONTENTS

	<i>page</i>
<i>Preface</i>	vii
<i>Table of Cases</i>	xi
<i>Table of Statutes</i>	xv
 1. Preliminary Questions	 1
What is legislation?	1
Who legislates?	11
Restrictions on the legislature	18
 2. Institutional Arrangements for the Preparation of Legislation	 25
The preparation and implementation of the legislative programme	25
The condition of the statute book	36
Law reform	48
 3. The Pre-Parliamentary Stages	 53
The role of government	54
The role of outside groups	56
The preparation of proposals	59
The role of Parliament	72
Conclusion	77
 4. The Preparation of a Bill	 78
Expectations and responsibilities	78
The drafting process	83
Scrutiny of drafting	104
 5. The Parliamentary Stages	 107
“The demands of the government”	107
“The rights of the minority”	111
Public Bill procedure	113
Conclusion	136
 6. Legislation without Legislatures	 140
Subordinate or delegated legislation	141
● Community legislation	167

7.	Interpretation	176
	Interpretation and application	176
	The significance of judicial interpretation	178
	The constitutional theory of judicial interpretation	180
	The characteristic forms of argument in interpretation	183
	Reform of judicial interpretation	196
8.	The Impact of Legislation	211
	The impact and the efficacy of legislation	212
	Principal variables influencing the impact of legislation	220
	<i>Appendix: The Interpretation of Legislation Bill 1981</i>	245
	<i>Index of Books and Articles</i>	247
	<i>Index</i>	257

CHAPTER ONE

PRELIMINARY QUESTIONS

This book is primarily about the making, interpretation and impact of legislation applicable in the United Kingdom. In this introductory chapter we examine four preliminary questions. First, what is legislation, how may it be defined and what forms does it assume; secondly, who makes it; thirdly, why is it necessary; and finally, what legal, as opposed to political or conventional, restrictions, if any, are there on those making it?

WHAT IS LEGISLATION?

DEFINITION AND FORMS

The expression “legislation” is commonly used in at least two senses. First, the expression is used to convey something of the nature of the activity involved: its use denotes the enactment of rules of law or the process of deliberate law-making or law changing. As we shall see not all legislation lays down rules, but this normally constitutes its dominant and explicit purpose. In this respect legislation differs from, for example, adjudication, the primary function of which is the settlement of disputes in accordance with pre-existing rules. To the extent that judges do make law, for example where there is no appropriate rule available, they do so only interstitially within the context of the discharge of their primary function.

The second and more obvious sense in which the expression “legislation” is used is to denote the results or products of the legislative process under discussion; in this sense it may be coterminous with Acts of Parliament in the case of the United Kingdom; Regulations, Directives and Decisions in the case of the European Economic Community and so on. Once again we may distinguish these results or decisions from other decisions including judicial decisions. There are several points of contrast here. To the extent that legislation serves as a mechanism for the settlement of disputes or the resolution of conflicts it frequently embodies compromises and trade-offs between the conflicting interests. Judicial decisions, on the other hand, normally favour one party. In

legislative acts the words used are themselves the formulation of the rule; legislative rules are "rules in fixed verbal form."¹ In judicial decisions, on the other hand, the words used by the judge in stating the basis for his decision are treated as only one possible formulation or approximation of the rule, and the rule itself may be recast or reformulated for the purpose of subsequent decisions. However, we regard the most important contrast between legislative and judicial decisions as being the prospective and general qualities of legislative decisions. Legislative decisions normally look to the future and to abstractly defined categories of persons and events. By contrast judicial decisions are retrospective and specific. They are directed in the first place to the past relations and conduct of the parties and to the determination of the dispute between them.

As used in these two senses the expression presupposes a fairly high degree of political and legal differentiation. At a minimum it implies first, as we have suggested, a distinction between general rules which are intended to govern human conduct in an indeterminate number of future instances and individual rules or commands which are intended to apply in a specific instance or a limited number of instances only. Secondly, it implies the existence of some person or agency, the legislature, which is equipped and authorised to promulgate such general rules.² Let us examine each of these implications more fully.

Generality is frequently treated as being the hallmark of legislation. Under the EEC Treaty a distinction must be drawn between legislative acts whose validity can be impugned only in severely limited circumstances, and administrative or executive acts whose validity can be challenged more freely. In distinguishing these two categories of acts the European Court has stressed the general and abstract character of legislative acts. "... a regulation, being essentially of a legislative nature, is applicable not to a limited number of persons, defined or identifiable, but to categories of persons viewed abstractly and in their entirety ... a measure which is applicable to objectively determined situations and which involves immediate legal consequences in all Member States for categories of persons viewed in a general and abstract manner cannot be considered as constituting a decision."³ Some writers have gone so far as to insist that legislation must be general and not particular in

¹ Twining and Miers, *How To Do Things With Rules* (2nd ed., 1982), pp. 143-144.

² Akzin, "Legislation: Nature and Functions", in *International Encyclopaedia of Social Sciences* (Sills ed., 1968), Vol. 9, p. 221.

³ Cases 16, 17, 19-22/62, *Confédération nationale des producteurs de fruits et légumes v. Council* [1962] E.C.R. 471, 478-479.