

CRAIES
ON
LEGISLATION

SWEET & MAXWELL

CRAIES ON LEGISLATION
A PRACTITIONERS' GUIDE TO THE NATURE,
PROCESS, EFFECT AND
INTERPRETATION OF LEGISLATION

Tenth Edition

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FOREWORD TO THE EIGHTH EDITION

On being asked to write this foreword to a new edition of *Craies*, my first reaction was to wonder what there was to justify a new edition. Statutes have been with us from the beginning of English law and, although the emphasis of judgments varies over the years, give or take a little, the basic principles remain much the same.

If I had paused to think, it would have immediately become clear that exactly the opposite was the case. There can have been few sectors of the law that have been so fundamentally altered in the last 30 years as the law affecting the making and construction of legislation affecting the United Kingdom. When the last edition (called *Craies on Statute Law*) was published, in practice there was only one legislative body that could make original law—the Queen in Parliament. In the 30 years which have passed since, laws made by the European Union have become an ever increasing source of United Kingdom legislation. Admittedly, in strict law European law is only part of English law by virtue of s.2(1) of the European Communities Act 1972 but if and so long as that section remains unrepealed, European law has the force of law in the United Kingdom. A Directive which has direct effect is enforceable in the United Kingdom without any intervention of the United Kingdom Parliament. Even where a Directive requires to be given effect by an enactment of the United Kingdom Parliament, the principles of European Union law are of basic importance in construing the enabling Act.

Nor is the impact of European law the only major change that has occurred in this field. The creation of a devolved legislature for Scotland (and to a lesser extent the powers of the National Assembly for Wales) introduced new legislatures and new problems of delimiting the powers devolved to them. In the circumstances it is not surprising that this enormous change in the range of the book has led to it being renamed *Craies on Legislation* to reflect the much wider field that it now has to encompass.

In addition to all this, Human Rights have arrived as a major focus of Parliamentary debate and court litigation. As an advocate in 1970, you had to be a brave man to mention the European Convention of Human Rights as a possible aid to construction of an English Statute. Over the years the courts became gradually more willing to approach the construction of legislation on the basis that Parliament should be taken to have intended to comply with the nations' treaty obligations. It was this Judge made presumption that was eventually adopted by Parliament in the Human Rights Act 1998. Since the Act came into force, this statutory presumption that legislation complies with the Human Rights Convention has become ever more common a feature of litigation. Sometimes it seems that we could get rid of all other causes of action. There is no doubt that the Act has basically affected the rights of the individual against the State and its operation is one of the central problems of the moment.

All that I have said so far relates to changes in the effect of legislation produced by new statutory provisions. In addition, there have been changes due to judicial decision. In the longer run, judicial rumblings as to the existence of rights so fundamental that not even a sovereign Parliament can ignore them may prove to be the most emotive developments of our day. But currently the biggest judicially introduced change has been the controversial decision in *Pepper v Hart* enabling the court to look at Parliamentary proceedings for the purpose of construing an ambiguous statutory provision.

I have by now said enough to show that the editor of the new edition has been faced with formidable difficulties. The legal world is very fortunate that Mr Greenberg has grappled with these problems with a masterly command. He has dealt with all the points that I have mentioned and a great many more besides. This edition is more of a rewriting than an editing of the last edition but it draws on the authority of the last edition and illuminates all the material which is new since that date. It is a masterly piece of work which could only have been written by a man with a profound and perspicacious knowledge of his subject. It will be indispensable.

Lord Browne-Wilkinson
May 2004

EDITOR'S PREFACE TO THE EIGHTH EDITION

The aim of *Craies*

It is more than 30 years since *Craies* was last revised. When the last edition was published the United Kingdom did not belong to the European Communities, there was neither a Scottish Parliament nor a National Assembly for Wales, and the European Convention on Human Rights had not been incorporated into the law of the United Kingdom. In these and other ways, legal and political changes have made it necessary to alter the scope of the work considerably.

The essence of the work has not, however, changed. The purpose remains to provide practical guidance about legislation in the United Kingdom. The method remains to concentrate on providing answers to questions that are likely to occur to the users of legislation and to rely where possible on concise quotation from judicial decisions and other relevant documents.

Europe

Craies remains a work about legislation in the United Kingdom.

This edition, however, pays particular attention where necessary to that portion of legislation in the United Kingdom that implements obligations arising out of membership of the European Union. And the final Part of this edition aims to provide sufficient information about legislation emanating from the Treaties and institutions of the European Union for the reader both to put implementing legislation into its proper context and also to understand something about the effects in the United Kingdom, direct and indirect, of legislation of the Communities.

Subordinate legislation

The relative importance of forms of legislation other than Acts of Parliament has continued to grow since the last edition of *Craies*, and this is reflected by a change of emphasis in this edition.

The Appendix

The Appendix to this work is used to permit, without unduly disrupting the flow of the text, the inclusion of both a certain amount of historical material and also some lengthy extracts of judgments and other documents which expound important ideas or principles in a manner likely to be helpful to a reader who requires to look into them in particular depth.

Editorial capacity

The lapse of time since the last edition has made it necessary to rewrite rather than merely to revise. But much of the material is drawn from the last edition, as

well as from a variety of other sources. Expressions of opinion should not be imputed to the present editor, and it should be noted that he writes in an exclusively private capacity.

Date of work

This edition aims to present the law as at the end of April 2004.

In many places, examples of legislation are given in order to illustrate what is feasible or precedented: they are not exclusively drawn from legislation presently in force.

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Other acknowledgments

I thank God for enabling me to accomplish this task, and my wife Julia and my children Yisroel, Avi, Shira and Elisheva, for their love, encouragement and support.

The revision of *Craies* after such a long interval was entirely the idea of its consultant editor, Michael Goodman. I am deeply indebted to him both for his original idea and also for his constant encouragement and support.

I also thank the publishers for their kind and attentive treatment.

Invitation to comment

It is hoped that this work will now be revised regularly and frequently. With that in mind, I will welcome comments, criticisms and suggestions, which may be sent to the publishers.

Daniel Greenberg
London
May 2004

EDITOR'S PREFACE TO THE TENTH EDITION

I have reprinted the preface to the eighth edition, since it describes the nature of the work and the principal changes of approach made since earlier editions.

The tenth edition contains only one significant change of approach, and the new material is almost entirely required simply in order to keep the work up to date.

The significant addition is the very welcome introduction of specialist contributions from experts in their field. This is an initiative which I hope to expand in future editions, but it has already made a significant contribution to the breadth and authority of the tenth edition. I have particular pleasure in thanking the following expert contributors. Madeleine MacKenzie, of the Office of the Scottish Parliamentary Counsel, has very kindly significantly improved and expanded the material on Scottish devolution, and Brenda King, the First Legislative Counsel in Belfast, has very kindly done the same service for the material on Northern Ireland devolution. Each of them fields a staggering workload and it was immensely kind of them to make time to contribute to this new edition; inevitably, however, they could only spare a limited amount of time for this exercise, and as a result any remaining omissions or inaccuracies in the text as it affects Scotland or Northern Ireland are still my sole responsibility. Robin Dormer offered some kind thoughts on consolidation, while he was still the Draftsman in Charge at the Law Commission of England and Wales, as did John Saunders from the Statute Law Revision team in the Law Commission. Saira Salimi, formerly of the Office of the Parliamentary Counsel and now Deputy Official Solicitor to the Church Commissioners, provided an improved and expanded version of the material on EU legislation, and continued to offer her invaluable support and advice on the work as a whole (although since I rarely listen to good advice, defects again remain my sole responsibility). Finally, I am delighted that the issue of the large number of readers who have to apply a basic common law approach to legislation within different legislative contexts around the world has begun to be addressed, and I hope it is only a beginning, by the inclusion of an Appendix designed to offer thoughts on the material throughout the work from the perspective of a lawyer operating in India, very kindly written by Dr K.N. Chaturvedi, a former Secretary to the Government of India in the Law Ministry.

It is always a pleasure to receive comments from readers, which can be sent to the publishers or direct to me.

Daniel Greenberg
London
May 2012

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