Bennion on Statute Law

Part II - Statutory Interpretation

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Guides to Legislative Intention I: Rules of Construction

As we saw in the previous chapter, the law lays down various guides to legislative intention, or interpretative criteria. Now examining these more closely we see that they can be identified as consisting of the following: six common law *rules*, a varying number of *rules* laid down by statute, eight *principles* derived from legal policy, ten *presumptions* as to legislative intention, and a collection of linguistic *canons* of construction which are applicable to the deciphering of language generally. These criteria are described in detail in this and the next three chapters.
The six common law rules of statutory interpretation are:

1 the basic rule,
2 the informed interpretation rule (recognising that the interpreter needs to be well informed on all relevant aspects),
3 the plain meaning rule,
4 the effectiveness rule *{ut res magis valeat quam pereat)*,
5 the commonsense construction rule, and
6 the functional construction rule (concerning the function of different elements in an enactment, such as long title and sidenotes).

In addition there are various statutory rules, usually laid down for the purpose of shortening the verbiage used in legislation.

Basic rule of statutory interpretation

The basic rule of statutory interpretation is that it is taken to be the legislator's intention that the enactment shall be construed in accordance with the guides laid down by law; and that where in a particular case these do not yield a plain answer but point in different directions the problem shall be resolved by a balancing exercise, that is by weighing and balancing the factors they produce. For at least the past half century the teaching of this subject has been bedevilled by the false notion that statutory interpretation is governed by a mere three 'rules' and that the court selects which 'rule' it prefers and then applies it in order to reach a result. The error perhaps originated in an article published in 1938 by J Willis,

a Canadian academic. After warning his readers that it is a mistake to suppose that there is only one rule of statutory interpretation because 'there are three—the literal, golden and mischief rules', Willis went on to say that a court invokes 'whichever of the rules produces a result which satisfies its sense of justice in the case before it' (Willis 1938, p 16). Academics are still producing textbooks which suggest that the matter is dealt with by these three simple 'rules' (see eg Zander (1989) pp 90-114). However, as demonstrated at length in my 1984 textbook *Statutory Interpretation,* and more briefly in this part of the present book, the truth is far more complex.

Willis, and those who have followed him, are wrong in two ways. First, there are not just three guides to interpretation but a considerable number. Second, the court does not 'select' one of the guides and then apply it to the exclusion of the others. The court takes (or should take) an overall view, weighs all the relevant factors, and arrives at a balanced conclusion. What is here called the basic rule of statutory interpretation sets out this truth. It is a *rule* because it is the duty of the interpreter to apply it in every case. (Thus Cotton LJ said in *Ralph* v *Carrick* (1879) 11 Ch D 873, 878 that judges 'are bound to have regard to any rules of construction which have been established by the Courts'.) It is the basic rule because it embraces all the guides to legislative intention that exist to be employed as and when relevant.

Informed interpretation rule

Next it is a rule of law, which may be called the informed interpretation rule, that the interpreter is to infer that the legislator, when settling the wording of an enactment, intended it to be given a fully informed, rather than a purely literal, interpretation (though the two usually produce the same result). Accordingly, the court does not decide whether or not any real doubt exists as to the meaning of a disputed enactment (and if so how to resolve it) until it has first discerned and considered, in the light of the guides to legislative intention, the overall context of the enactment, including all such matters as may illumine the text and make clear the meaning intended by the legislator in the factual situation of the instant case.

This rule is a necessary one, for if the drafter had to frame the enactment in terms suitable for a reader ignorant both of past and contemporary facts and legal principles (and in particular the principles of statutory interpretation), he would need to use far more words than is practicable in order to convey the legal meaning intended.

In interpreting an enactment, a two-stage approach is necessary. It is not simply a matter of deciding what doubtful words mean. It must first be decided, on an informed basis, whether or not there *is* a real doubt about the legal meaning of the enactment. If there is, the interpreter moves on to the second stage of resolving the

doubt. (The experienced interpreter combines the stages, but notionally they are separate.) As Lord Upjohn said: 'you must look at all the admissible surrounding circumstances before starting to construe the Act' *(R* v *Schildkamp* [1971] AC 1, 23).

The interpreter of an enactment needs to be someone who is, or is advised by, a person with legal knowledge. This is because an Act is a legal instrument. It forms part of the body of law, and necessarily partakes of the character of law. It cannot therefore be reliably understood by a lay person. Moreover the meaning of the enactment which is needed by any person required to comply with the Act is its *legal* meaning.

The informed interpretation rule is to be applied no matter how plain the statutory words may seem at first glance. Indeed the plainer they seem, the more the interpreter needs to be on guard. A first glance is not a fully-informed glance. Without exception, statutory words require careful assessment of themselves and their context if they are to be construed correctly. A danger of the first glance approach lies in what is called *impression.* When the human mind comes into contact with a verbal proposition an impression of meaning may immediately form, which can be difficult to dislodge. Judges often say that the matter before them is 'one of impression' but it is important that the impression should not be allowed to form before all surrounding circumstances concerning the enactment in question have been grasped.

The informed interpretation rule thus requires that, in the construction of an enactment, attention should be paid to the entire content of the Act containing the enactment. It should also be paid to relevant aspects of: (1) the state of the law before the Act was passed, (2) the history of the enacting of the Act, and (3) the events which have occurred in relation to the Act subsequent to its passing. These may be described collectively as the legislative history of the enactment, and respectively as the pre-enacting, enacting, and post- enacting history.

Another aspect of the need for an informed interpretation relates to the factual situation in the case before the court. In order to determine the legal meaning of an enactment as it applies in a particular case it is necessary to know the relevant facts of the case and relate them to the factual outline laid down by the enactment. It is by reference to these that the parties submit to the court their opposing constructions of an enactment whose meaning is disputed.

For the purpose of applying the informed interpretation rule, the context of an enactment thus comprises, in addition to the other provisions of the Act containing it, the legislative history of that Act, the provisions of other Acts *in pari materia,* and all facts constituting or concerning the subject-matter of the Act. Viscount Simonds said in *A-G* v *Prince Ernest Augustus of Hanover* [1957] AC 436, 463:

> … it must often be difficult to say that any terms are clear and unambiguous until they have been read in their context . . . the elementary rule must be observed that no one should profess to understand any part of a statute . . . before he has read the whole of it. Until he has done so he is not entitled to say that it or any part of it is clear and unambiguous.

The surrounding facts are also important to the understanding, and therefore correct interpretation, of an Act. For example why does s l(3)(a) of the Factories Act 1961 (a consolidation Act) require the inside walls of factories to be washed every *14 months}* An annual spring cleaning one could understand, but why this odd period? Sir Harold Kent, who drafted the original provision in the Factories Act 1937, gives the answer: factory spring cleaning takes place at Easter, and Easter is a movable feast (Kent 1979, p 88).

In determining whether consideration should be given to any item of legislative history or other informative material, and if so what weight should be given to it, regard is to be had (a) to the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the enactment, taking into account its context in the Act or other instrument and the legislative intention; and (b) to the need to avoid prolonging legal or other proceedings without compensating advantage. (This statement of the law is taken from s 15AB(3) of an Australian statute, the Acts Interpretation Act 1901 as amended by the Acts Interpretation Amendment Act 1984, s 7. In turn s 15AB was derived from clause 5(3) of the draft Bill proposed in the present book (see p 344 below).)

The informed interpretation rule does not go so far as to permit the court to take into account material which is not generally available. As Lord Reid said in *Black-Clawson* v *Papierwerke* [1975] AC 591, 614: 'An Act is addressed to all the lieges and it would seem wrong to take into account anything that was not public knowledge at the time'. Nevertheless the mind of the interpreter can never be too well stocked. A conscientious judge, like a conscientious legislator or drafter, keeps himself fully informed about what is going on in the world.

Legislative history

An enactment does not stand alone. It is part of the Act containing it. The Act in its turn is part of the total mass of legislation loosely referred to as the statute book, which is itself part of the whole *corpus juris.* The enactment must therefore be construed in the light of its overall context. Subject to certain restrictive rules (for example that restraining reference to *Hansard),* a court considering an enactment is master of its own procedure *(R* v *Board of Visitors of Wormwood Scrubs Prison, ex pane Anderson* [1985] QB 251). It therefore has the power, indeed the duty, to consider such aspects of the legislative history of the enactment as may be necessary to

arrive at its legal meaning, and must give them their proper weight. For a correct understanding of an item of *delegated* legislation, it is necessary not only to consider the wording of the enabling Act, but also the legislative history of that Act *{Crompton* v *General Medical Council* [1981] 1 WLR 1435, 1437).

Pre-enacting history

The interpreter cannot judge soundly what mischief an enactment is intended to remedy unless he knows the previous state of the law, the defects found to exist in that law, and the facts that caused the legislator to pass the Act in question. The first book on statutory interpretation in England, written in the sixteenth century, said that interpreters who disregard the pre-enacting history are much deceived 'for they shall neither know the statute nor expound it well, but shall as it were follow their noses and grope at it in the dark' (cited Plucknett 1944, p 245).

Under the doctrine of judicial notice, the court is taken to know the relevant law prevailing within its jurisdiction. This applies both to past and present law. Accordingly there can be no restriction on the sources available to the court for reminding itself as to the content of past and present law *(Black-Clawson International Ltd* v *Papierwerke Waldhof-Aschaffenberg AG* [1975] AC 591, 637).

Where a subject has been dealt with by a developing series of Acts, the courts often find it necessary, in construing the latest Act, to trace the course of this development. By seeing what changes have been made in the relevant provision, and why, the court can better assess its current legal meaning (eg *R* v *Governor ofHolloway Prison, ex pane Jennings* [1982] 3 WLR 450, 458).

Where an Act uses a term with a previous legal history it may be inferred that Parliament intended to use it in the sense given by the earlier history, and again the court is entitled to inform itself about this (eg *Welham* v *DPP* [1961] AC 103, 123). Lord Reid said: 'Where Parliament has continued to use words of which the meaning has been settled by decisions of the court, it is to be presumed that Parliament intends the words to continue to have that meaning' *{Truman Hanbury Buxton & Co Ltd* v *Kerslake* [1955] AC 337, 361).

If two Acts are *in pari materia,* it is assumed that uniformity of language and meaning was intended. This attracts the considerations arising from the linguistic canon of construction that an Act is to be construed as a whole. Such Acts 'are to be taken together as forming one system, and as interpreting and enforcing each other' *{Palmer's Case* (1785) 1 Burr 445, 447). This has even been applied to repealed Acts within a group *{Ex pane Copeland* (1852) 22 LJ Bank 17, 21). The following are *in pari materia:*

1 Acts which have been given a collective title.
2 Acts which are required to be construed as one.

3 Acts having short titles that are identical (apart from the calendar year).
4 Other Acts which deal with the same subject matter on the same lines (here it must be remembered that the Latin word *par* or *parts* means equal, and not merely similar). Such Acts are sometimes loosely described as forming a code.

Consolidation

Consolidation brings together different Acts which are *in part materia,* so the relevant pre-enacting history is that of the consolidation Act's component enactments. This fights against the presumption that such an Act is prima facie to be construed in the same way as any other Act. If any real doubt as to its meaning arises, the following rules apply:

1 Unless the contrary intention appears, an Act stated in its long title to be a consolidation Act is presumed not to be intended to change the law *{Gilbert* v *Gilbert and Boucher* [1928] 1, 8; *R* v *Governor of Brixton Prison, ex pane De Demko* [1959] 1 QB 268, 280-1; *Atkinson* v *US Government* [1971] AC 197).
2 In so far as the Act constitutes straight consolidation, its words are to be construed exactly as if they remained in the earlier Act. Re-enactment in the form of straight consolidation makes no difference to legal meaning. It does not import parliamentary approval of judicial decisions on the enactments consolidated, because Parliament has not had those decisions in mind. Not even the drafter will have had them in mind. He will not have taken time to look them up, because his concern is simply to reproduce accurately the statutory wording.
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.

Straight consolidation consists of reproduction of the original wording without significant change; consolidation with amendments is any other consolidation (see p 70 above). For examples of consolidation Acts where there was real doubt and the earlier law was looked at, see *Mitchell* v *Simpson* (1890) 25 QBD 183, 188; *Smith* v *Baker* [1891] AC 325, 349; *IRC* v *Hinchy* [1960] AC 748, 768; *Barentz* v *Whiting* [1965] 1 WLR 433.
A common type of consolidation with amendments arises where a consolidation Act incorporates either corrections and minor improvements made under the Consolidation of Enactments (Procedure) Act 1949, or (as is more common in recent legislation) 'lawyer's law' amendments proposed by the Law Commission. In such cases the court may look at any official memorandum published in connection with an Act *{Atkinson* v *United States of America Government* [1971] AC 197).

Where, without any express indication that an amendment is intended, a consolidation Act reproduces the previous wording in *altered* form the court must construe it as it stands. It is not permissible, just because the Act is described as a consolidation Act, to treat it as if it reproduced the original wording *(Pocock* v *Steel* [1985] 1 WLR 229, 233). In *Re a solicitor* [1961] Ch 491 the court applied this rule where the Solicitors Act 1843, s 41, providing that *application* for a costs order could not be made after one year, had been consolidated in the Solicitors Act 1932, s 66(2) to the effect that *the order* must be made within one year. A change in meaning should not be effected in a provision purporting to be straight consolidation, since this amounts to a fraud on Parliament. For an example see Bennion 1986(4) (omission of 'any' from Companies Act 1985, s 196(2)).

Codification

Codification consists in the useful reduction of scattered enactments and judgments on a particular topic to coherent expression within a single formulation. It may therefore condense into one Act rules both of common law and statute. The codifying Act may also embrace custom, prerogative, and practice. In *Mutual Shipping Corporation of New York* v *Bay shore Shipping Co of Monrovia* [1985] 1 WLR 625, 640 Sir Roger Ormrod remarked that codification of what had previously been no more than usage 'converts a practice into a discretion and subtly changes its complexion'.

A codifying Act is prima facie to be construed in the same way as any other Act. If however any real doubt as to its meaning arises, the following rules apply:

1 Unless the contrary intention appears, an Act stated in its long title to be a codifying Act is presumed not to be intended to change the law.

2 In so far as the Act constitutes codification (with or without amendment) of common law rules or judicial sub-rules, reports of the relevant decisions may be referred to but only if this is really necessary.

3 In so far as the Act constitutes consolidation of previous enactments (with or without amendment), the rules stated above in relation to consolidation Acts apply.

These are aspects of the plain meaning rule discussed below. They accord with the classic principle laid down by Lord Herschell LC in *Bank of England* v *Vagliano* [1891] AC 107, 144 (see p 76 above).

For a case where there was real doubt, and the previous law was looked at, see *Yorkshire Insurance Co Ltd* v *Nisbet Shipping Co* [1962] 2 QB 330.

Enacting history

The enacting history of an Act is the surrounding corpus of public knowledge relative to its introduction into Parliament as a Bill, and subsequent progress through, and ultimate passing by, Parliament. In particular it is the extrinsic material assumed to be within the contemplation of Parliament when it passed the act, which may or may not be expressly mentioned therein *(Salomon* v *Commrs of Customs and Excise* [1967] 2 QB 116). Judicial notice is to be taken of such facts 'as must be assumed to have been within the contemplation of the legislature when the Acts in question were passed' *(Govindan Sellappah Nayar Kodakan Pillai* v *Punchi Banda Mundanayake* [1953] AC 514, 528). The court may permit counsel to cite any item of enacting history in support of his construction of the enactment where the purpose is to show that his construction is not contrary to that item *(Cozens* v *North Devon Hospital Management Committee; Hunter* v *Turners (Soham) Ltd* [1966] 2 QB 318, 321; *Beswick* v *Beswick* [1968] AC 58, 105).

In considering whether to admit an item of enacting history, the court needs to bear in mind that it is unlikely to be proper to take the item at face value. Material should not be used in the interpretation of the enactment without correct evaluation of its nature and significance. This may in some cases greatly prolong the court proceedings if the item is admitted. Justice Frankfurter accurately summed up the constraining factors: 'Spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute.' (Frankfurter 1947, p 234.)

Although the court has power to inspect whatever enacting history it thinks fit, it will be governed by the submissions of the counsel on either side, at least where they are in agreement. (See *M/S Aswan Engineering Establishment Co* v *Lupdine Ltd* [1987] 1 WLR 1, 14).

A court, after admitting an item of legislative history, often finds that it carries the matter no further. The question of marginal utility arises here, since admitting the item inevitably adds to trial costs. In an Australian case the judge commented:

> I have necessarily ventured far into the use of legislative history only, in the outcome, to discover that it leads to no conclusion different from that which would have followed from a disregard of anything extrinsic to the words of the legislation itself. *(Dugan* v *Mirror Newspapers Ltd* (1979) 142 CLR 583, 599.)

Committee reports may be referred to as useful sources of enacting history. *(Black-Clawson International Ltd* v *Papierwerke Waldhof- Aschaffenberg AG* [1975] AC 591, 647; see also *Fothergill* v *Monarch Airlines Ltd* [1981] AC 251.)

In *Eastman Photographic Materials Co Ltd* v *Comptroller-General of Patents* [1898] AC 571 the House of Lords considered the meaning

of a provision of the Patents, Designs and Trade Marks Act 1888 based on the report of a departmental commission. Lord Halsbury LC said (p 573):'. . . I think no more accurate source of information as to what was the evil or defect which the Act of Parliament now under construction was intended to remedy could be imagined than the report of that commission.'

In *Assam Railways and Trading Co Ltd* v *IRC* [1935] AC 445, 458, Lord Wright stressed that Lord Halsbury here approved the citation of the commission's report 'not directly to ascertain the intention of the words used in the Act' but merely 'to show what were the surrounding circumstances'.

In *R* v *Allen (Christopher)* [1985] AC 1029, 1035 Lord Hailsham of St Marylebone LC said that the present practice is for courts to look at committee reports 'for the purpose of defining the mischief of the Act but not to construe it'. However in *British Leyland Motor Corporation Ltdv ArmstrongPatents Co Ltd [1*986] AC 577 the House of Lords allowed detailed argument relating to the Gregory Report (Report of the Copyright Committee (1952) Cmd 8662), upon which the Copyright Act 1956 was based. The argument was permitted to go beyond merely ascertaining the mischief, and touched on the intended legal effect of certain of the Act's provisions.

Bills are often preceded by government white papers and similar memoranda. Resort may be had to these in interpretation of the ensuing Act. Thus the House of Lords in *Duke* v *GEC Reliance Ltd* [1988] 2 WLR 359 referred 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. Lord Templeman said (pp 368-369):

> If the government had intended to sweep away the widespread practice of differential retirement ages, the 1974 White Paper would not have given a contrary assurance and if Parliament had intended to outlaw differential retirement ages, s 6(4) of the Sex Discrimination Act 1975 would have been very differently worded in order to make clear the profound change which Parliament contemplated.

In *Pickstone* v *Freemans pic* [1989] AC 66, 27 Lord Oliver said that though an explanatory note attached to regulations is not part of the regulations it 'is of use in identifying the mischief which the regulations were attempting to remedy'.

Hansard reports, and other reports of parliamentary proceedings on the Bill which became the Act in question, are of obvious relevance to its meaning. They are of doubtful reliability and limited availability however. The Canadian jurist JA Corry suggested that 'to appeal from the carefully pondered terms of the statute to the hurly-burly of Parliamentary debate is more like appealing from Philip sober to Philip drunk' (Corry 1954, p 632). The American realist Charles P Curtis described the court which unrestrainedly pursues enacting history as 'fumbling about in the ashcans of the legislative process

for the shoddiest unenacted expressions of intention' (Curtis 1949). A further objection is that once legislators realised that their statements might influence judicial interpretation they would inevitably insert in them passages designed only for this purpose. Thus would be perverted, not only the judicial technique of interpretation, but the very legislative process itself.

Out of considerations of comity, that is the courtesy and respect that ought to prevail between two prime organs of state the legislature and the judiciary, and because such materials are essentially unreliable and pursuit of them involves an expenditure of time and effort that can only add to costs, *Hansard* and other parliamentary materials such as amendment papers and explanatory memoranda are not in general admissible for purposes of statutory interpretation. In 1982 Lord Diplock said:

> There are a series of rulings by this House, unbroken for a hundred years, and most recently affirmed emphatically and unanimously in *Davis* v *Johnson* [1979] AC 264, that recourse to reports of proceedings in either House of Parliament during the passage of the Bill that on a signification of royal assent became the Act of Parliament which falls to be construed is not permissible as an aid to its construction. *(Hadntor Productions Ltdv Hamilton* [1983] 1 AC 191, 232.)

Nevertheless the court retains a residuary right to admit parliamentary materials where, in rare cases, the need to carry out the legislator's intention appears so to require. Courts must be in charge of their own procedure, and it is ultimately for the court with the duty of interpreting a particular enactment to decide what items of enacting history it will permit counsel to cite, having regard to the various relevant considerations (including the need not to protract the proceedings without commensurate benefit). The numerous precedents for citation of parliamentary material cancel out dicta saying it can *never* be done. In *Pierce* v *Bemis* [1986] QB 384, 392 for example Sheen J allowed counsel to cite, and himself cited in his judgment, extensive details as to the parliamentary proceedings on the Bill which became the Merchant Shipping Act 1906, including details as to how the clause that became the Merchant Shipping Act 1906, s 72 was added to the Bill during its passage through the House of Commons.

The House of Lords has justified reference to *Hansard* in the case of an amendment to an Act made by regulations which, though subject to parliamentary approval, could not be amended by Parliament *(Pickstone* v *Freemans pic* [1989] AC 66.)

A treaty (a term which may be used to cover any type of international agreement) is not self-executing in English law *(Fothergill* v *Monarch Airlines Ltd* [1981] AC 251). The enacting history of an Act to implement an international treaty includes the terms of the treaty, its preparatory work or *travaux preparatoires {Porter* v *Freudenberg* [1915] 1 KB 857, 876; *Post Office* v *Estuary*

Radio Ltd [1968] 2 QB 740, 761; *Fothergill* v *Monarch Airlines Ltd* [1981] AC 251), the decisions on it of foreign courts, known as *la jurisprudence,* and the views on it of foreign jurists, known as *la doctrine.*

A treaty may have three different kinds of status, considered as a source of law.

1 An Act may embody, whether or not in the same words, provisions having the effect of the treaty. This may be referred to as direct enactment of the treaty.
2 An Act may say that the treaty is itself to have effect as law, leaving the treaty's provisions to apply with or without modification. This may be referred to as indirect enactment of the treaty.
3 The treaty may be left simply as an international obligation, being referred to in the interpretation of a relevant enactment only so far as called for by the presumption that Parliament intends to comply with public international law.

The interpretation of a treaty imported into municipal law by indirect enactment was described by Lord Wilberforce as being 'unconstrained by technical rules of English law, or by English legal precedent, but [conducted] on broad principles of general acceptation' *{Buchanan (James) & Co Ltd* v *Babco Forwarding and Shipping (UK) Ltd* [1978] AC 141, 152). This echoes the dictum of Lord Widgery CJ that the words 'are to be given their general meaning, general to lawyer and layman alike . . . the meaning of the diplomat rather than the lawyer' *(R* v *Governor of Pentonville Prison, ex pane Ecke* [1974] Crim LR 102). Dicta suggesting that the court is entitled to consult a relevant treaty only where the enactment is ambiguous (see, *Ellerman Lines Ltd* v *Murray* [1931] AC 126; *IRC* v *Collco Dealings Ltd* [1962] AC 1; *Warwick Film Productions Ltd* v *Eisinger* [1969] 1 Ch 508) can no longer be relied on. The true rule is that in this area, as in others, the court is to arrive at an informed interpretation. The Vienna Convention on the Law of Treaties (Treaty Series No 58 (1980); Cmnd 7964) contains provisions governing the interpretation of treaties (the details are set out in Bennion 1984(1), pp 539-540).

Post-enacting history

It may be thought that nothing that happens after an Act is passed can affect the legislative intention at the time it was passed. This overlooks two factors: (1) in the period immediately following its enactment, the history of how an enactment is understood forms part of the *contemporanea expositio,* and may be held to throw light on the legislative intention; (2) the later history may, under the doctrine that an Act is always speaking, indicate how the enactment is regarded in the light of developments from time to time.

Contemporary exposition of an Act *(contemporanea expositio)* helps to show what people thought the Act meant in the period immediately after it was passed. Official statements on its meaning are particularly important here, since the working of almost every Act is supervised, and most were originally promoted, by a government department which may be assumed to know what the legislative intention was. Official statements by the government department administering an Act, or by any other authority concerned with the Act, may be taken into account as persuasive authority on the meaning of its provisions *{Wicks* v *Firth (Inspector of Taxes)* [1983] 2 AC 214).

In *Hanning* v *Maitland (No 2)* [1970] 1 QB 580 the Court of Appeal admitted statistics showing that, whereas £40,000 a year was being appropriated by Parliament towards the expenses under a legal aid enactment, only about £300 a year was actually being expended. This followed an earlier restrictive court ruling on the operation of the enactment, and suggested that the ruling did not conform to Parliament's intention.

One element in the post-enacting history of an Act is delegated legislation made under the Act. This may be taken into account as persuasive authority on the meaning of the Act's provisions *(Britt* v *Buckinghamshire County Council* [1964] 1 QB 77; *Leung* v *Garbett* [1980] 1 WLR 1189; *R* v *Uxbridge JJ, ex pane Commissioner of Police of the Metropolis* [1981] QB 829).

In *Jackson* v *Hall* [1980] AC 854, 884 Viscount Dilhorne rejected the submission that the contents of a form produced pursuant to rules made by the Agricultural Land Tribunals (Succession to Agricultural Tenancies) Order 1976 could be relied on as an aid to the construction of the Agriculture (Miscellaneous Provisions) Act 1976. Yet in *British Amusement Catering Trades Association* v *Westminster City Council* [1988] 2 WLR 485 the House of Lords declined to take this as authority for the general proposition that subordinate legislation can never be used as an aid to statutory interpretation, citing *Hanlon* v *The Law Society* [1981] AC 124. They held that the meaning of the term 'cinematograph exhibition' as defined in the Cinematograph (Amendment) Act 1982, s 1(3) should be arrived at by reference to the Cinematograph (Safety) Regulations 1955.

Where a later Act is *in pari materia* with an earlier Act, provisions of the later Act may be used to aid the construction of the earlier Act. In determining whether the later provision *alters* the legal meaning of the earlier, the test as always is whether or not Parliament intended to effect such an alteration *(Casanova* v *R* (1866) LR 1 QB 444, 457). Such an intention is more readily gathered where the Acts are expressly required to be construed as one, since this is a positive indication that Parliament has given its mind to the question.

Where a term is used without definition in one Act, but is defined in another Act which is *in pari materia* with the first Act, the definition

may be treated as applicable to the use of the term in the first Act. This may be done even where the definition is contained in a later Act. Thus in *Wood* v *Commissioner of Police of the Metropolis* [1986] 1 WLR 796 the Divisional Court construed the undefined term 'offensive weapon' in the Vagrancy Act 1824, s 4, in the light of the definition of that term laid down for different though related purposes by the Prevention of Crime Act 1953, s 1(4).

Where Parliament passes an Act which on one (but not the other) of two disputed views of the existing law is unnecessary, this suggests that the other view is correct. Thus in *Murphy* v *Duke* [1985] QB 905 it was held that since the meaning of the House to House Collections Act 1939 which was applied in *Emanuel* v *Smith* [1968] 2 All ER 529, would render the Trading Representations (Disabled Persons) Act 1958 unnecessary the latter case must be held to have been decided *per incuriam.* (This sensible view was dissented from on doubtful grounds in *Cooper* v *Coles* [1987] QB 230.)

Where it is clear that an enactment proceeds upon a mistaken view of earlier law, the question may arise of whether this effects a change in that law (apart from any amendment directly made by the enactment). Here it is necessary to remember that, except when legislating, Parliament has no power authoritatively to interpret the law. That function belongs to the judiciary alone. When legislating, Parliament may, with binding effect, *declare* what the law is to be considered to be or have been. But a declaratory enactment must be intended as such. A mere inference that Parliament has mistaken the nature or effect of some legal rule does not in itself amount to a declaration that the rule is other than what it is *(Dore* v *Gray* (1788) 2 TR 358, 365; *IRC* v *Dowdall, O'Mahoney & Co Ltd* [1952] AC 401, 417, 421; *IRC* v *Butterley & Co Ltd* [1955] 2 WLR 785, 807-808). However the view taken by Parliament as to the legal meaning of a doubtful enactment may be treated as of persuasive, though not binding, authority *(Cape Brandy Syndicate* v *IRC* [1921] 2 KB 403, 414; *Camille & Henry Dreyfus Foundation Inc* v *IRC* [1954] Ch 672, 690).

The court will not only be guided by later Acts, but by later delegated legislation which is *in pari materia* with the enactment being construed. *(R* v *Newcastle-upon-Tyne Justices, ex pane Skinner* [1987] 1 WLR 312.)

Under the doctrine of precedent or *stare decisis* dynamic processing of an enactment by the court produces sub-rules which are of either binding or persuasive authority in relation to the future construction of the enactment. Where Parliament subsequently indicates that it adopts any such sub-rule, the status of the sub-rule becomes equivalent to that of legislation. If Parliament has a subsequent opportunity to alter the effect of a decision on the legal meaning of an enactment, but refrains from doing so, the implication may be that Parliament approves of that decision and adopts it (eg *Denman*

v *Essex Area Health Authority* [1984] 3 WLR 73). This is an aspect of what may be called *tacit legislation.*

The House of Lords held in *Otter* v *Norman* [1988] 3 WLR 321 that the provision of one meal only a day, namely continental breakfast, amounted to 'board'. In so holding it was influenced by the fact that Parliament had impliedly adopted a similar ruling on the meaning of this term laid down by the Court of Appeal in *Wilkes* v *Goodwin* [1923] 2 KB 86.

The court may treat as of persuasive authority in the construction of an enactment the view of an official committee reporting on the meaning of the enactment (eg *Mohammed-Holgate* v *Duke* [1984] QB 209).

Plain meaning rule

Where the meaning is plain it must be followed, but for this purpose a meaning is 'plain' only where no relevant interpretative criterion points away from it. It is thus a rule of law (which may be called the plain meaning rule) that where, in relation to the facts of the instant case, (a) the enactment under enquiry is grammatically capable of one meaning only, and (b) on an informed interpretation of that enactment the interpretative criteria raise no real doubt as to whether that grammatical meaning is the one intended by the legislator, the legal meaning of the enactment corresponds to that grammatical meaning and is to be applied accordingly. As it is put in Halsbury's *Laws of England:*

> If there is nothing to modify, nothing to alter, nothing to qualify the language which a statute contains, the words and sentences must be construed in ±eir ordinary and natural meaning. (4th edn, Vol 36 para 585.)

The plain meaning rule determines the operation of nearly every enactment, simply because nearly every enactment has a straightforward and clear meaning with no counter-indications.

Rule where meaning not 'plain'

Where on the facts of the instant case the enactment is grammatically ambiguous, the legal meaning is determined by weighing the interpretative factors in the manner explained in the previous chapter. Where the enactment is semantically obscure, the interpreter first arrives at the 'corrected version' (see pp 89-90 above). This is then treated as if it were the actual text, of which the meaning may be either 'plain' or not. In other words the plain meaning rule either will or will not apply to the corrected version.

Effectiveness rule *(ut res tnagis valeat quant pereat)*

It is a rule of law that the legislator intends the interpreter of an

enactment to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). He must thus construe the enactment in such a way as to implement, rather than defeat, the legislative purpose. As Dr Lushington put it in *The Beta* (1865) 3 Moo PCC NS 23, 25:

> . . . if very serious consequences to the beneficial and reasonable operation of the Act necessarily follow from one construction, I apprehend that, unless the words imperatively require it, it is the duty of the court to prefer such a construction that *res majis [sic] valeat, quam pereat.*

The rule requires inconsistencies within an Act to be reconciled. Blackstone said: 'One part of the statute must be so construed by another, that the whole may, if possible, stand: *ut res magis valeat quam pereat,* (Blackstone 1765, i 64). It also means that, if the obvious intention of the enactment gives rise to difficulties in implementation, the court must do its best to find ways of resolving these.

An important application of the rule is that an Act is taken to give the courts such jurisdiction and powers as are necessary for its implementation, even though not expressly conferred (eg *Buckley* v *Law Society (No 2)* [1984] 1 WLR 1101).

Commonsense **construction rule**

It is a rule of law (which may be called the commonsense construction rule) that when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, the court should presume that the legislator intended common sense to be used. Thus Lord Lane CJ said when construing an enactment: 'We are dealing with the real world and not some fanciful world' *(Gaimster* v *Marlow* [1984] QB 218, 225).

Many judicial dicta say that common sense, or good sense, or native wit, or the reason of the case, are expected by Parliament to be applied in the interpretation of its laws (see eg *Barnes vjarvis* [1953] 1 WLR 649,652). Indeed common sense is a quality frequently called for in law generally (eg *R* v *Rennie* [1982] 1 WLR 64).

It follows that when a particular matter is not expressly dealt with in the enactment this may simply be because the drafter thought it went without saying as a matter of common sense (eg *Re Green's Will Trusts* [1985] 3 All ER 455; *R* v *Orpin* [1975] QB 283). Where the court fails to employ common sense it may be right to conclude that the decision is arrived at *per incuriam* and should, when opportunity offers, be overruled (as happened in *R* v *Pigg* [1982] 1 WLR 762).

Greater includes less The requirement that common sense shall be used in interpretation brings in such principles as that the greater includes the less, which the law recognises in many contexts in

accordance with the maxim *omne tnajus continet in se minus* (eg *R* v *Cousins* [1982] QB 526). Common sense may not provide an answer where the elements are incommensurable. Thus one cannot measure whether an *actual* minor assault is 'greater' or 'less' than a *threat* to carry out a major assault (eg the Australian case of *Rosza* v *Samuels* [1969] SASR 205).
The concept that the greater includes the less is akin to the reverse concept that it is common sense to assume that an Act remedying a lesser mischief is also intended to remedy a greater mischief of the same class (eg *Quiltotex Co Ltd* v *Minister of Housing and Local Government* [1966] 1 QB 704, 712).

Separate ingredients Where the enactment uses a phrase mentioning two or more ingredients, it is common sense to conclude that if the ingredients are each present separately the description is met. Caution is needed however where the phrase has a special meaning amounting to more than the sum of its parts. This arose in *Leech Leisure Ltdv Hotel and Catering Industry Training Board* (1984) *The Times,* 18 January), which concerned the Industrial Training Levy (Hotel and Catering) Order 1981, art 3. This imposes a levy on businesses providing 'board and lodging' for guests or lodgers. It was argued that a self-catering establishment which provided lodging, and also operated a cafe in which cooked meals and snacks could be consumed, was liable to the levy. *Held* the phrase 'board and lodging' is a composite one, and it is not satisfied where lodging is provided and, as an independent activity, food is also made available.

Formal ambiguity Formal or syntactical ambiguity can sometimes be resolved by the use of common sense. In *The Complete Plain Words,* a manual written to improve the use of language by civil servants, Sir Ernest Gowers cited as an example of formal ambiguity an instruction contained in a child care handbook: 'If the baby does not thrive on raw milk, boil it' (Gowers 1973, p 191). The way the instruction is worded raises a theoretical doubt which common sense is enough to resolve. The same is true of a government regulation cited by Gowers: 'No child shall be employed on any weekday when the school is not open for a longer period than four hours.' (ibid, p 163).

Interpretation by non-lawyers In the rare cases where an enactment is to be applied by non-lawyers such as juries and lay magistrates it is particularly important that room should be found for a commonsense approach (eg *R* v *Boyesen* [1982] AC 768).

Functional construction rule

The various components of an Act or statutory instrument have

been described in chapters 3 and 4. It is a rule of law (which may be called the functional construction rule) that in construing an enactment the significance to be attached to each type of component of the Act or other instrument containing it must be assessed in conformity with its legislative function and juridical nature as a component of that type.

Knowledge of the relevant parliamentary procedure (including royal assent procedure) will assist the interpreter to give correct weight to each component of an Act, judged as an aid to construction. Some components, although part of the Act, carry little if any weight for this purpose: they are intended as nothing more than quick guides to content. Other components (for example the long title) owe their presence in the Act wholly or mainly to the procedural rules applicable to parliamentary Bills, and are to be regarded in that light.

Are there 'second class' components?

Any suggestion that certain components of an Act are to be treated, for reasons connected with their parliamentary nature or history, as not being part of the Act is unsound and contrary to principle. As Scrutton LJ said in relation to the short title:

> . . . I do not understand on what principle of construction I am not to look at the words of the Act itself to help me understand its scope in order to interpret the words Parliament has used in the circumstances in which they were legislating. (In *re the Vexatious Actions Act 1886*—In *re Bernard Boaler* [1915] 1 KB 21, 40).

To suppose, as some judges have done, that the components of a Bill which are subject to printing corrections by parliamentary clerks (such as punctuation, sidenotes and headings) cannot be looked at in interpretation of the ensuing Act is to treat them as in some way 'unreliable'. Dicta to this effect in cases such as *R* v *Schildkamp* [1971] AC 1 ignore two major considerations. One is that the entire product is put out by Parliament as its Act and the courts have no authority to question this (Bill of Rights 1688, art 9) and the other is that by virtue of the Interpretation Act 1978, s 19(1) a reference to an Act is a reference to it *as officially published* and this includes all components. Such dicta transgress the principle of law expressed in the maxim *omnia praesumuntur rite et solemniter esse acta donee probetur in contrarium* (all things are presumed to be rightly and duly performed unless the contrary is proved). They are also open to objection as introducing an unjustified distinction between the interpretation of Acts and that of statutory instruments. A statutory instrument is not subject to the making of printing corrections by parliamentary clerks. The headings, marginal notes and punctuation of a statutory instrument must necessarily therefore be treated as being as much part of the instrument as any other

component. To avoid an unjustified distinction (never drawn in practice), the same must be taken to be true of an Act. In their 1969 report on statutory interpretation, the Law Commissions said 'it seems clear that the courts when dealing with [delegated] legislation apply the same general common law principles of interpretation which they apply to statutes' *(The Interpretation of Statutes* (Law Com No 21), para 77).

Components used in different ways

Apart from the distinctions between components which have been mentioned so far, there is another type of distinction to be drawn. A component of one kind, for example a section of an Act, may be used in different ways and thus have different functions. Thus a section or similar item may be one of the substantive provisions of the Act, or it may be purely concerned with the machinery of bringing the Act into operation. Difficulty is caused by the fact that under our system provisions of the latter type (known as commencement and transitional provisons) are not clearly differentiated in the arrangement of the Act.

That internal distinctions of this kind may be relevant in interpretation is illustrated by the following dictum of Nourse J in relation to the Development Land Tax Act 1976, s 45(4) and (8):

> One thing which is clear about sub-ss (4) and (8) is that the former is a permanent provision and the latter is a transitional one. On a superficial level I can see the attractions of the argument which appealed to the Special Commissioners. But I think it would be very dangerous, in trying to get to the effect of the permanent provision, to attach too much weight to the particular wording of the transitional one. *(IRC* v *Metrolands (Property Finance) Ltd* [1981] 1 WLR 637, 649.)

Categories of components

For purposes of interpretation the components of an Act may be classified as operative components, amendable descriptive components, and unamendable descriptive components.

Operative components

The operative components of an Act or statutory instrument are those that constitute the legislator's pronouncements of law, or in other words consist of *enactments.* In an Act they consist of *sections* and *Schedules,* either of which may incorporate a *proviso* or a *saving.* They carry the direct message of the legislator, forming the Act's 'cutting edge' *(Spencer* v *Metropolitan Board of Works* (1882) 22 Ch D 142, 162). All other components serve as commentaries on

the operative components, of greater or lesser utility in interpretation depending on their function.

Sections Each section is deemed to be a substantive enactment, without the need for enacting words other than the Act's initial enacting formula (Interpretation Act 1978, s 1). To aid the reader, the modern drafter makes use of paragraphing in his undivided section, or in his subsection. The provision remains a single sentence, but is printed with indentations and paragraph numbers so as to bring out the sense and aid cross-referencing. Judges take notice of the paragraphing as a guide to what are intended to be the units of sense (eg *The Eastman Photographic Materials Co Ltd* v *The Comptroller-General of Patents, Designs and Trade-Marks* [1898] AC 571, 579, 584; *Nugent-Head* v *Jacob (Inspector of Taxes)* [1948] AC 321, 329). Drafters take great care to design a section so that it deals with a single point. Under the present system of precision drafting, the way the sections are organised and arranged is a useful guide to legislative intention.

Schedules The Schedule is an extension of the section which induces it, and is to be read in the light of the wording of that section. Material is put into a Schedule because it is too lengthy or detailed to be conveniently accommodated within the section, or because it forms a separate document (such as a treaty). If by mischance the inducing words were omitted, the Schedule would still form part of the Act if that was the apparent intention. A note of the section or sections in which the inducing words appear is given in the margin at the head of the Schedule. Sometimes an error is made in citing the relevant section or sections (eg the heading to the Crown Proceedings Act 1947, Sched 1, which omits a reference to s 13 of the Act). Such an error does not affect the validity of the Schedule.

Whether material is put in a section or in a Schedule is usually a mere matter of convenience. Little significance should therefore be attached to it. As Brett LJ said in *A-G* v *Lamplough* (1878) 3 Ex D 214, 229: 'A schedule in an Act is a mere question of drafting, a mere question of words. The schedule is as much a part of the statute, and is as much an enactment, as any other part.'

Since an Act is to be read as a whole, a Schedule does not have 'second-class' status as compared to a section. In *IRC* v *Gittus* [1920] 1 KB 563, 576 Lord Sterndale MR gave the following guidance on conflicts between a Schedule and the inducing section:

> If the Act says that the Schedule is to be used for a certain purpose and the heading of the part of the Schedule in question shows that it is prima facie at any rate devoted to that purpose, then you must read the Act and the Schedule as though the Schedule were operating for that purpose,

and if you can satisfy the language of the section without extending it beyond that purpose you ought to do it. But if in spite of that you find in the language of the Schedule words and terms that go clearly outside that purpose, then you must give effect to them and you must not consider them as limited by the heading of that part of the Schedule or by the purpose mentioned in the Act for which the Schedule is prima facie to be used. You cannot refuse to give effect to clear words simply because prima facie they seem to be limited by the heading of the Schedule and the definition of the purpose of the Schedule contained in the Act.

For a case where ambiguous words in a Schedule were construed by reference to a heading see *Quaker, Hall & Co Ltd* v *Board of Trade* [1962] Ch 273.

The proviso A proviso is a formula beginning 'Provided that . . .' which is placed at the end of a section or subsection of an Act, or of a paragraph or sub-paragraph of a Schedule, and the intention of which is to narrow the effect of the preceding words. It enables a general statement to be made as a clear proposition, any necessary qualifications being kept out of it and relegated to the proviso.

As Mervyn Davies J said in *Re Memco Engineering Ltd* [1986] Ch 86, 98 'a proviso is usually construed as operating to qualify that which precedes it'. In *Mullins* v *Treasurer of Surrey* (1880) 5 QBD 170, 173 Lush J said: 'When one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso'. While the substance of this dictum is undoubtedly correct, the treatment of the proviso as qualitatively different from the rest of the section is not. The entire section, including the proviso, is an operative component of the Act *(Gubay* v *Kington (Inspector of Taxes)* [1984] 1 WLR 163).

Judges used to cast doubt on the value of a proviso in throwing light on the meaning of the words qualified by it. This was because provisos, like savings, were often put down as amendments to Bills by their opponents, and accepted to allay usually groundless fears. This still happens in the case of private Bills; but is no longer true of public general Acts.

In the case of precision drafting, the proviso is to be taken as limited in its operation to the section or other provision it qualifies *(Leah* v *Two Worlds Publishing* Co [1951] Ch 393, 398); *Lloyds and Scottish Finance Ltd* v *Modern Cars & Caravans (Kingston) Ltd* [1966]
1 QB 764, 780-781). Where however the Act is the subject of disorganised composition, what is in form a proviso may in fact be an independent substantive provision *(Rhondda UDC* v *Taff Vale Railway* [1909] AC 253, 258; *Eastbourne Corpn* v *Fortes Ltd* [1959]
2 QB 92, 107. The proviso is then said not to be a 'true' proviso *(Commissioner of Stamp Duties* v *Atwill* [1973] AC 558, 561).

A reference to a section includes any proviso to the section, since the proviso forms part of the section. Thus the repeal of the section also repeals the proviso *(Horsnail* v *Bruce* (1873) LR 8 CP 378, 385; cf *Piper* v *Harvey* [1958] 1 QB 439, where the proviso extended beyond the repealed enactment). In accordance with principle, the repeal may be effected by implication.

Savings A saving is a provision the intention of which is to narrow the effect of the enactment to which it refers so as to preserve some existing legal rule or right from its operation. A saving thus resembles a proviso, except that it has no particular form. Furthermore it relates to an existing legal rule or right, whereas a proviso is usually concerned with limiting the new provision made by the section to which it is attached. A saving often begins with the words 'Nothing in this [Act] [section] [etc] shall . . .'.
Very often a saving is unnecessary, but is put in *ex abundanti cautela* to quieten doubts *{Ealing London Borough Council* v *Race Relations Board* [1972] AC 342, 363). There is an example of this in the Welsh Language Act 1967, which deals with the use of Welsh in legal proceedings and matters. Its final provision is s 5(3), which reads: 'Nothing in this Act shall prejudice the use of Welsh in any case in which it is lawful apart from this Act'. An important example of a saving is the Interpretation Act 1978, s 16, relating to the effect of repeals.
A saving is taken not to be intended to confer any right which did not exist already *{Alton Woods' Case* (1600) 1 Co Rep 40b; *Arnold* v *Gravesend Corpn* (1856) 2 K & J 574, 591; *Butcher* v *Henderson* (1868) LR 3 QB 335; *R* v *Pirehill North JJ* (1884) 14 QBD 13, 19). An unsatisfactory feature of savings, and a reason why drafters resist the addition of unnecessary savings, is that they may throw doubt on matters which it is intended to preserve, but which are not mentioned in the saving (eg *Re Williams, Jones* v *Williams* (1887) 36 Ch D 573). This is an aspect of the application of the *expressio unius* principle (see pp 201-203 below).

Amendable descriptive components

An amendable descriptive component of an Act is one that (a) in some way describes the whole or some part of the Act, and (b) was subject to amendment (as opposed to a mere printing correction) when the Bill for the Act was going through Parliament. The following are amendable descriptive components: long title, preamble, purpose clause, recital, short title, example.

Long title The long title of an Act (formerly and more correctly called the title) appears at the beginning of the Act. As it is really no more than a remnant from the Bill which on royal assent became the Act, its true function pertains to the Bill rather than the Act.

It sets out in general terms the purposes of the Bill, and under the rules of parliamentary procedure should cover everything in the Bill. If the Bill is amended so as to go wider than the long title, the long title is required to be amended to correspond. Although thus being of a procedural nature, the long title is nevertheless regarded by the courts as a guide to legislative intention.

The long title begins with the words 'An Act to . . .'. Being drafted to comply with parliamentary procedural rules, it is not designed as a guide to the contents of the Act. It is a parliamentary device, whose purpose is in relation to the Bill and its parliamentary progress. Under parliamentary rules, a Bill of which notice of presentation has been given is deemed to exist as a Bill even though it consists of nothing else but the long title. Once the Bill has received royal assent, the long title is therefore vestigial.

The long title is undoubtedly part of the Act, though its value in interpretation has often been exaggerated by judges (eg *Fielding* v *Morley Corpn* [1899] 1 Ch 1, 3, 4; *Suffolk County Council* v *Mason* [1979] AC 705; *Gold Star Publications Ltd* v *DPP* [1981] 1 WLR 732). The courts have been inconsistent on the question of whether the effect of operative provisions should be treated as cut down by the long title. This is to be expected, since the weight of other relevant interpretative factors is bound to vary. Thus in *Watkinson* v *Hollington* [1944] KB 16 the Court of Appeal resorted to the long title to cut down the plain literal meaning of the phrase 'the levying of distress' in the Courts (Emergency Powers) Act 1943, s 1(2) and exclude from it the impounding of trespassing cattle by the ancient remedy of levying distress *damage feasant.* This was because the consequence of applying the literal meaning of s 1(2) would have been unfortunate. On the other hand, in *In the Estate ofGroos* [1904] P 269 the court declined to limit the application of the Wills Act 1861, s 3 to British subjects merely because of the reference to them in the long title (see also, to like effect, *Ward* v *Holman* [1964] 2 QB 580).

We may summarise by saying that the long title is an unreliable guide in interpretation, but should not be ignored. It may arouse doubt where it appears to conflict with the operative parts of the Act; and this doubt should then be resolved by a balancing exercise in the usual way. It is not right to say with Slade LJ in *Manuel* v *A-G* [1982] 3 WLR 821, 846 that the court is not entitled to look at the long title unless the operative provisions are ambiguous, because this strikes at the basis of the informed interpretation rule. Lord Simon of Glaisdale said:

> In these days, when the long title can be amended in both Houses, I can see no reason for having recourse to it only in case of an ambiguity— it is the plainest of all guides to the general objectives of a statute. But it will not always help as to particular provisions.' *(Black-Clawson*

International Ltd v *Papierwerke Waldhof-Aschaffenberg AG* [1975] AC 591, 647).

Preamble The courts are reluctant to allow a preamble to override inconsistent operative provisions. Thus it was laid down by the House of Lords in *A-G* v *Prince Ernest Augustus of Hanover* [1957] AC 436 that the preamble should not be allowed to contradict plain words in the body of an Act. The recital of facts in the preamble to an Act does not amount to conclusive proof that the facts are true; but constitutes prima facie evidence of them *(R* v *Sutton* (1816) 4 M & S 532; *A-G* v *Foundling Hospital* [1914] 2 Ch 154; *Dawson* v *Commonwealth of Australia* (1946) 73 CLR 157, 175). Further evidence is then admissible *(DFC of T (NSW)* v *W R Moran Pty Ltd* (1939) 61 CLR 735).
Since the preamble may be a guide to the legal meaning of an enactment, it is unsafe to construe the enactment without reference to the preamble; indeed to do so contravenes the informed interpretation rule. The repeal of a preamble by a Statute Law Revision Act does not affect the meaning of the Act *(Powell vKempton Park Racecourse Co Ltd* [1899] AC 143).

Purpose clauses A purpose clause, which is an optional component of an Act, is an express statement of the legislative intention. When present, it is included in the body of the Act. It may apply to the whole or a part of the Act. An example is the Income and Corporation Taxes Act 1970, s 488(1): 'This section is enacted to prevent the avoidance of tax by persons concerned with land or the development of land.'
Drafters tend to dislike the purpose clause, taking the view that often the aims of legislation cannot usefully or safely be summarised or condensed by such means. A political purpose clause is no more than a manifesto, which may obscure what is otherwise precise and exact. Moreover detailed amendments made to a Bill after introduction may not merely falsify the purpose clause but even render it impracticable to retain any broad description of the purpose. The drafter's view is that his Act should be allowed to speak for itself. (See Renton 1975, para 11.7.)

Recitals A recital has the same function as a preamble, but is confined to a single section or other textual unit. It is so called because it recites some relevant matter, often the state of facts that constitutes the mischief the provision is designed to remedy. There may be recitals in this sense within a preamble. Or indeed they may occur anywhere else in an Act. The specialised use of the term however confines it to a statement beginning 'Whereas . . .' which forms the prefix to a distinct enactment. For example the Statute Law (Repeals) Act 1975, s 1(3) begins: 'Whereas this Act repeals so much of section 16(4) of the Marriage Act 1949 as requires a

surrogate to have given security by his bond . . ." and then goes on to release surrogates from their bonds.
A recital in a private Act is strong but not conclusive evidence of the truth of what is recited *(Wyld* v *Silver* [1963] 1 QB 169, 187; *Neaverson* v *Peterborough Rural Council* [1901] 1 Ch 22).

Short title When using the short title as a guide to legislative intention, it must be remembered that its function is simply to provide a brief label by which the Act may be referred to. As Scrutton LJ said: '. . . the short title being a label, accuracy may be sacrificed to brevity' *(In re the Vexatious Actions Act 1886-in re Bernard Boaler* [1915] 1 KB 21, 40). This does not mean that such limited help as it can give must be rejected, and judges not infrequently mention the short title as being at least confirmatory of one of the opposing constructions (eg *Lonrho Ltd* v *Shell Petroleum Co Ltd* [1982] AC 173, 187).

Examples Where an Act includes examples of its operation, these are to be treated as detailed indications of how Parliament intended the enactment to operate in practice *(Amin* v *Entry Clearance Officer, Bombay* [1983] 2 AC 818). If however an example contradicts the clear meaning of the enactment the latter is accorded preference, it being assumed in the absence of indication to the contrary that the framer of the example was in error. Acts containing examples include the Occupiers Liability Act 1953, s 2(3) and (4), the Race Relations Act 1968, s 2(2), the Sex Discrimination Act 1975, s 29(2), and the Consumer Credit Act 1974, s 188 and Sched 2.

Unamendable descriptive components

An unamendable descriptive component of an Act is one which describes the whole or some part of the Act, and is not subject to any amendment (as opposed to a mere printing correction) when the Bill for the Act is going through Parliament. It is part of the Act, and may be used in interpretation so far as, having regard to its function, it is capable of" providing a reliable guide. The following are unamendable descriptive components: chapter number, date of passing, enacting formula, heading, sidenote or marginal note, punctuation, format.

Chapter number The only significance of the chapter number for statutory interpretation is in determining which of two Acts receiving royal assent on the same date are to be treated as first in time. Thus where two Acts passed on the same day are inconsistent, the chapter numbers indicate which of them, being deemed the later, is to prevail. Where two or more Acts receive assent by the same letters patent, chapter numbers are allocated according to the order in which the short titles are set out in the schedule to the letters

patent. Accordingly where Acts are shown as receiving royal assent on the same day, the chapter number shows the deemed order of passing.
The chapter number for a public general Act is in large arabic figures. It is in small roman for local Acts (including Provisional Order Confirmation Acts), and small *italicised* arabic for personal Acts (if printed). This is important because the type face of the chapter number is the only thing that tells the reader which sort of Act he is looking at, or is being referred to.

Date of passing The passing of the Act and the receiving of royal assent amount to the same thing *(R* v *Smith* [1910] 1 KB 17). The significance of the date of passing is therefore that, unless the contrary intention appears, it is also the date of commencement.

Headings A heading within an Act, whether contained in the body of the Act or a Schedule, is part of the Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore often inaccurate, guide to the material to which it is attached. In accordance with the informed interpretation rule modern judges consider it not only their right but their duty to take account of headings (eg *Dixon* v *British Broadcasting Corpn* [1979] QB 546; *Customs and Excise Commrs* v *Mechanical Services (Trailer Engineers) Ltd* [1979] 1 WLR 305; *Lloyds Bank Ltd* v *Secretary of State for Employment* [1979] 1 WLR 498; *Re Phelps (deed)* [1980] Ch 275).
Where a heading differs from the material it describes, this puts the court on enquiry. However it is most unlikely to be right to allow the plain literal meaning of the word? to be overridden purely by reason of a heading *(Fitzgerald* v *Hall Russell & Co Ltd* [1970] AC 984, 1000; *Pilkington Bros Ltd* v *IRC* [1982] 1 WLR 136, 145). However where general words are preceded by a heading indicating a narrower scope it has been held to be legitimate to treat the general words as cut down by the heading *(Inglis* v *Robertson and Baxter* [1898] AC 616).

Sidenotes A sidenote or marginal note to a section is part of the Act. It may be considered in construing the section or any other provision of the Act, provided due account is taken of the fact that its function is merely to serve as a brief, and therefore necessarily inaccurate, guide to the content of the section *(R* v *Schildkamp* [1971] AC 1, 10). For example the Bail Act 1976, s 6 makes it an offence if a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody. The sidenote reads: 'Offence of *absconding* by person released on bail' (emphasis added). Absconding is not the only possible reason for failing to

surrender to bail. Does the sidenote restrict the width of the section? The answer returned in ***R*** v ***Harbax Singh*** [1979] QB 319 was no.

Thring said that the sidenotes, when read together in the arrangement of sections at the beginning of the Act, 'should have such a consecutive meaning as will give a tolerably accurate idea of the contents of the Act' (Thring 1902, p 60). This is an aim drafters pursue, so that the arrangement of sections (or collection of sidenotes) gives a helpful indication of the scope and intention of the Act.

Format The layout or format is part of the Act. It may be considered in construing any provision of the Act, provided due account is taken of the fact that it is designed merely for ease of reference. Megarry V-C said extra-judicially that 'arrangement may be of the highest importance in suggesting one interpretation and concealing another' ((1959) 75 LQR 31). For example it is the modern practice to break a long section or subsection into paragraphs. Where a provision consists of several numbered paragraphs with the word 'or' before the last paragraph only, that word is taken to be implied before the previous paragraphs after the first (R E Megarry (1959) 75 LQR 29; ***Phillips*** v ***Price*** [1958] 3 WLR 616).

The following statement of the reasons for dividing an Act into parts was given by Holroyd J in the Australian case of ***Re The Commercial Bank of Australia Ltd*** (1893) 19 VLR 333, 375:

> When an Act is divided and cut into parts or heads, ***prima facie*** it is, we think, to be presumed that those heads were intended to indicate a certain group of clauses as relating to a particular object . . . The object is prima facie to enable everybody who reads to discriminate as to what clauses relate to such and such a subject matter. It must be perfectly clear that a clause introduced into a part of an Act relating to one subject matter is meant to relate to other subject matters in another part of the Act before we can hold that it does so.

In ***Chalmers*** v ***Thompson*** (1913) 30 WN (NSW) 162 the court considered a section of the Children's Protection Act (a consolidation Act). The section, relating to ill-treatment of children, appeared in a Part headed 'Adoption of Children'. The question was whether a child's natural father could be convicted of contravening the section. The court held that he could, reaching this result by consulting the preconsolidation version, which was not divided into parts.

If material is put into the form of a ***footnote*** it is still fully a part of the Act, and must be construed accordingly ***(Erven Warnink BV*** v ***Townend & Sons (Hull) Ltd*** [1982] 3 All ER 312, 316). For other cases where the court was guided in its construction of an enactment by its typography and layout see ***Piper*** v ***Harvey*** [1958] 1 QB 439; ***In re Allsop*** [1914] 1 Ch 1; ***Dormer*** v ***Newcastle-on-Tyne Corp*** [1940] 2 KB 204.

Punctuation Since fashions in punctuation change, an Act should be construed with regard to the fashion prevailing when it was passed. The Australian case *of Moore* v *Hubbard* [1935] VLR 93 concerned the construction of an enactment making it an offence to deface 'any house or building or any wall fence lamp post or gate'. The defendant had defaced a post carrying electric lines. He was convicted on the ground that the word 'post' stood by itself, and appealed. *Held* The enactment, having been passed in the days when it was not customary to use hyphens in legislation, should be read as if it was written 'any house or building, or any wall, fence, lamp- post, or gate'.

Incorporation by reference

It is a common device of drafters to incorporate earlier statutory provisions by reference, rather than setting out similar provisions in full. This device saves space, and also attracts the case law and other learning attached to the earlier provisions. Its main advantage is a parliamentary one however, since it shortens Bills and cuts down the area for debate. The functional construction rule applies to incorporation by reference, since the provisions incorporated are in a sense components of the Act or other instrument into which they are incorporated.

Where two Acts are required by a provision in the later Act to be construed as one, every enactment in the two Acts is to be construed as if contained in a single Act, except in so far as the context indicates that the later Act was intended to modify the earlier Act. The like principle applies where more than two Acts are to be construed as one, or where a part only of an Act is to be construed as one with other enactments *{Canada Southern Railway Company* v *International Bridge Company* (1883) 8 App Cas 723, 727; *Han* v *Hudson Bros Ltd* [1928] 2 KB 629; *Phillips* v *Parnaby* [1934] 2 KB 299). Construction as one often causes difficulty to the interpreter. This is because it is a 'blind' form of drafting, far inferior to textual amendment. Mackinnon LJ, a member of the committee whose proposals led to the Arbitration Act 1934, recorded how the drafter of the Act came to see him about the rejection of the committee's recommendation that there should be no legislation by reference in the Act:

I declined to take any interest in it: I reminded him of our request, but 'Here', I said, 'is the detestable thing—legislation by reference of the worst sort'. By way of defence he said what we had proposed was impossible. A Bill so drafted would be intelligible to any MP of the meanest parts; he could debate every section of it, and move endless amendments. (MacKinnon 1942, p 14).

An enactment sometimes incorporates into the Act a whole body

of law as it existed at a given time. This may include the practice prevailing at that time, as well as the substantive law then operative. The provisions thus incorporated may not otherwise continue in force. This form of legislation by reference may be called *archival drafting* because it requires persons applying the Act, after a considerable period has elapsed since the relevant date, to engage in historical research in order to find out what the law thus imported amounts to. The effect of archival drafting is to 'freeze' the body of law, so far as thus imported, in the form it was in on the relevant date. Subject to any amendments subsequently made for the purposes of the applying Act, the body of law is to be interpreted for those purposes at any subsequent time, unless the contrary intention appears, as if it had remained unaltered since that date. Thus the Representation of the People Act 1983, s 5(1) says that residence is to be determined 'in accordance with the general principles formerly applied'.

Rules laid down by statute (statutory definitions)

For the purposes of shortening language, and avoiding repetition, Parliament often finds it convenient to lay down limited rules of interpretation by statute. Whether or not framed as such, these are usually in essence *definitions* of some word or phrase, which must then be understood in the stipulated sense. Wherever the defined term appears, the text must be read as if the full definition were substituted for it *(Thomas* v *Marshall* [1953] AC 543, 556; *Suffolk County Council* v *Mason* [1979] AC 709, 713).

Statutory definitions may be general, or restricted to the appearance of the defined term in the defining Act. Whether it is so stated or not, the definition does not apply if the contrary intention appears from an Act in which the defined term is used, since the legislator is always free to disapply a definition whether expressly or by implication *(Jobbins* v *Middlesex County Council [* 1949] 1 KB 142,160; *Parkes* v *Secretary of State for the Environment* [1978] 1 WLR 1308). A contrary legislative intention displacing a statutory rule of construction relating to a particular term may be manifested by the enactment which uses the term spelling out, in a way different to the statutory rule, how the term is to be construed *(Austin Rover Group* v *Crouch Butler Savage Associates* [1986] 1 WLR 1102).

A term may be defined differently in different Acts, according to the purpose of the Act (eg *Earl of Normanton* v *Giles* [1980] 1 WLR 28, which was concerned with varying definitions of 'livestock'). It is even possible for a term to have different meanings within the same Act (eg the Protection of Birds Act 1954, s 14(1), which gives 'wild bird' one meaning in ss 5, 10 and 12 of the Act and a different meaning elsewhere in the Act). This produces obvious risk of confusion.

The wording of a definition may in relation to certain uses of

the defined term produce a meaning that is unexpected or unlikely. This does not require the meaning to be rejected if the wording of the definition is clear. It does however suggest caution, and such cases have attracted judicial censure (eg *Lindsay* v *Cundy* (1876) 1 QBD 348, 358; *Bradley* v *Baylis* (1881) 8 QBD 195, 210, 230; *R* v *Commissioners under the Boilers Explosion Act 1882* [1891] 1 QB 703, 716). The Factories Act 1961, s 175 was unexpectedly held to require a film studio to be treated as a 'factory' since articles (namely films) were made there *(Dunsby* v *British Broadcasting Corporation* (1983) *The Times,* 25 July; cf *Savoy Hotel Co* v *London County Council* [1900] 1 QB 665, 669, where the Savoy Hotel was treated as a 'shop').

It is a drafting error (less frequent now than formerly) to incorporate a substantive enactment in a definition (eg *Wakefield Board of Health* v *West Riding & Grimsby Railway Company* (1865) LR 1 QB 84). A definition is not expected to have operative effect as an independent enactment. If it is worded in that way, the courts will tend to construe it restrictively and confine it to the proper function of a definition.

Sometimes a drafter causes confusion by defining an established term in a misleading way. For example the Parliament Act 1911, s 1(2) gives 'Money Bill' a meaning slightly different from that borne by the term in parliamentary usage. Erskine May comments:

> … the number of bills which are money bills in both senses of the term is sufficiently large to create the mistaken belief that the term has only one meaning. As the framers of the Parliament Act did not realise the inconvenience of using an established term in a new and partly different sense, the resulting ambiguity must be frankly recognised. (May 1976, p 810).

Sometimes a term is given a definition which is omitted in later legislation within the same field. Here it is assumed, unless the contrary intention appears, that the definition is intended to continue to apply (eg *Newbury District Council* v *Secretary of State for the Environment* [1981] AC 578, 596).

Statutory definitions, which may be simple or complex, can be divided into the following six types: clarifying, labelling, referential, exclusionary, enlarging, and comprehensive—some of these overlap:

Clarifying definition This clarifies the meaning of a common word or phrase, by stating expressly that as used in the Act it does or does not include specified matters. The purpose is to avoid doubt. As Viscount Dilhorne said: 'It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they [do] or not' *(IRC* v *Parker* [1966] AC 141, 161). A term may have a fairly certain meaning, yet give rise to uneasiness by the drafter about leaving it to stand without comment. The remedy is to specify the main ingredients, and rely for any others on the potency of the term

itself. This greatly reduces the danger area. The formula is 'T means A, B, C or D, or any other manifestation of T'. An example is the following definition contained in the Supreme Court Act 1981, s 72(5): ' "intellectual property" means any patent, trade mark, copyright, registered design, technical or commercial information or other intellectual property'.

Labelling definition This uses a term as a label denoting a concept which can then be referred to merely by use of the label. Instead of the drafter having to keep repeating the description of the concept, the label alone can be used. In its simplest form a labelling definition may be very brief. Thus the Courts Act 1971, s 57(1) stated that in the Act 'the Judicature Act 1925' meant the Supreme Court of Judicature Act 1925. This enabled a commonly used abbreviated short title to be employed throughout the Act. A common device is for an amending Act to use the label 'the principal Act' to described the Act it is amending.

A labelling definition may be in indirect form. Thus the Employment Protection (Consolidation) Act 1978, s 58(5) states: 'Any reason by virtue of which a dismissal is to be regarded as unfair in consequence of subsection (1) or (3) is in this Part referred to as an inadmissible reason'.

In selecting a label the drafter must bear in mind that words have their own potency. Whatever meaning may be expressly attached to a term, the dictionary or legal meaning exercises some sway over the way the definition will be understood by the court. As Richard Robinson said: 'it is not possible to cancel the ingrained emotion of a word merely by an announcement' (Robinson 1952, p 77). An example related to dictionary meaning arose in *Eastleigh BC* v *Betts* [1982] 2 AC 613, 628, where the definition said that a person is to be taken to have, or not to have, a 'local connection' with a place by reference to stated concepts such as normal residence, employment, and family connections. The House of Lords treated the stated concepts not in their ordinary sense but as coloured by the overall idea of 'local connection'. An example related to legal meaning is furnished by *McCollom* v *Wrightson* [1968] AC 522, where the House of Lords considered the apparently comprehensive definition of 'gaming' in the Betting, Gaming and Lotteries Act 1963 s 55(1) and held that the common law meaning of 'gaming' must be taken to apply so as to cut down the width of the statutory definition.

Referential definition This attracts a meaning already established in law, whether by statute or otherwise. Thus the Charities Act 1960, s 45(1) says that in the Act 'ecclesiastical charity' has the same meaning as in the Local Government Act 1894. The method carries a danger. Suppose the Act referred to is amended or repealed? Here the principle is clear. Unless the amending or repealing Act contains

an indication to the contrary, the amendment or repeal does not affect the meaning of the referential definition.

Exclusionary definition This expressly deprives the term of a meaning it would or might otherwise be taken to have. Such a definition tends to mislead however if a wide term is artificially cut down by an unexpected extent. Thus the long title of the Animal Boarding Establishments Act 1963 says it is 'An Act to regulate the keeping of boarding establishments for animals'. All the way through, the Act refers to 'animals'. Only when the reader gets to the definition section at the end is he informed that the term 'animal' means cats and dogs only.
The short title of an Act may warn the reader, and so justify a definition of this kind. Thus a definition of'suspected' as 'suspected of being diseased' could be criticised if it were not contained in a measure called the Diseases of Animals Act 1950 (see s 84(4)).

Enlarging definition This adds a meaning that otherwise would or might not be included in the term. The formula is 'T includes X', which is taken to signify 'T means a combination of the ordinary meaning of T plus the ordinary meaning of X'. In other words the mention of X does not affect the application of the enactment to T in its ordinary meaning *{Nutter* v *Accrington Local Board* (1878) 4 QBD 375, 384; *Deeble* v *Robinson* [1954] 1 QB 77, 81-2; *Ex pane Ferguson* (1871) LR 6 QB 280, 291).
The Income and Corporation Taxes Act 1970, s 454(3) begins: 'In this Chapter, "settlement" includes any disposition, trust, covenant, agreement or arrangement . . .'. In *Thomas* v *Marshall* [1953] AC 543, 556 Lord Morton, considering an earlier version of this definition in the Income Tax Act 1952, s 42, said: 'the object of the subsection is, surely, to make it plain that. . . the word "settlement" is to be enlarged to include other transactions which would not be regarded as "settlements" within the meaning which that word ordinarily bears'.
An enlarging definition may not fall to be applied to its full literal extent. Thus in a later case the House of Lords held the definition considered in the previous example to be restricted by implication to 'settlements' (in the enlarged sense) which contain an element of bounty *(IRC* v *Plummer* [1980] AC 896).
An enlarging definition may make the term include a division or section of the matter in question (eg the Employment Protection (Consolidation) Act 1978, s 58(6)); *Bradley* v *Baylis* (1881) 8 QBD 210, 230).
Where an enactment contains an enlarging definition of a term, words used in connection with the term in its normal meaning are by implication required to be modified as necessary.

Comprehensive definition This provides a full statement of the meaning of the term, specifying everything that is to be taken as

included in it. Thus the Charities Act 1960, s 46 says: '"charitable purposes" means purposes which are exclusively charitable according to the law of England and Wales'. This comprehensively describes the concept in question. It is also an example of a referential definition, since it draws on the legal meaning of 'charity'.

Interpretation Act 1978

The general Interpretation Act currently in force is the Interpretation Act 1978. This replaced the Interpretation Act 1889, which in turn replaced the first Interpretation Act, known as Lord Brougham's Act 1850.

The basic idea of an Interpretation Act is indicated by the long title to Lord Brougham's Act: 'An Act for shortening the Language used in Acts of Parliament'. An Interpretation Act is thus essentially a collection of labelling definitions.

Every interpreter needs to bear in mind the provisions of the Interpretation Act 1978, which are constantly overlooked in practice.

For a list of terms defined generally by Act see the title 'Act of Parliament' in the official publication *Index to the Statutes.*