

Bennion on Statute Law

*** *Page 342*

Appendices

*** *Page 343*

Appendix A - Draft Processing Bill

A BILL

To declare the powers of courts and other persons or bodies in relation to the interpretation of Acts and statutory instruments.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

1. Powers of the court

Without prejudice to a court's implementation of a legislative text under which (whether expressly, or by an implication arising from a deliberate omission or use of a term of wide meaning or otherwise), any power is conferred on or delegated to the court, it is hereby declared, for the avoidance of doubt, that a court has the powers referred to in sections 2 to 4 below in relation to a legislative text relevant to the case before it.

2. Obsolescent text

- (1) This section applies where it appears to the court that, through the passage of time since the enactment, or original enactment, of the text, its effect is doubtful.
- (2) If the mischief or object to which the text was directed has changed its nature, the court shall apply the text, subject to such modifications as may be requisite, to the changed mischief or object.
- (3) Subsection (2) does not apply where the change is such that the interests of justice require the text to be treated as spent.

3. Defective text

- (1) This section applies where it appears to the court that, through grammatical error, syntactical ambiguity, omission, transposition or

intrusion, logical error, punctuation mistake or other formal defect, the effect of the text is doubtful.

(2) Where it is clear what form the legislator intended the text to take, the court shall apply it in that form.

(3) In any other case the court shall apply it in the form best suited to serve the object of the text as intended by the legislator.

4. Unintended effect

(1) This section applies where it appears to the court that, because the text goes narrower or wider than the object, or is based on an error of law or fact, or is otherwise misconceived, it does not carry out the legislator's intention, or goes wider than the intention.

(2) Where it is clear what the effect of the text should have been in order to carry out the legislator's intention and no more, the court shall give the text that effect.

(3) In any other case the court shall apply the text as it stands apart from this section.

5. Intention of the legislator

(1) In construing any reference in this Act to the intention of the legislator, the court shall have regard to the principles set out in this section.

(2) The intention is primarily to be derived from the legislative text itself (including any source referred to in the text).

(3) The court may refer to any other source in addition if it thinks fit to do so having regard to the requirements of justice, including —

(a) the desirability of persons being able to rely on the meaning conveyed by the text itself, and

(b) the need to avoid prolonging legal proceedings without compensating advantage.

(4) The court shall have regard, so far as may be relevant, to the procedures by which, in accordance with constitutional practice, the text may be taken to have been created and validated as law.

(5) In the case of a statutory instrument the court shall, so far as may be relevant, have regard to the intention of Parliament in delegating power to make the instrument as well as to the intention of the person or body by whom it was made.

6. Interpretation

In this Act —

'court' includes a tribunal, arbitrator or other person or body with the function of interpreting a legislative text;

'legislative text' means a provision of an Act or statutory instrument and references to the enactment of a text shall be construed accordingly;

'the legislator' in relation to an Act means Parliament, and in

relation to a statutory instrument means the person or body by whom it was made.

7. Short title

This Act may be cited as the Legislation (Powers) Act 19 .