Review of the 1st edition of Statutory Interpretation

by D. G. T. Williams

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BOOK REVIEWS

Statutory Interpretation. Codified, with a Critical Commentary. By F. A. R. Bennion M.A. (OXON.), Barrister. [London: Butterworths. 1984. cii, 884 and (Index) 20 pp. Hardback £85-00 net.]

THE author of this wide-ranging analysis of the principles of statutory interpretation was formerly one of the Parliamentary Counsel. Believing that "statutory interpretation is still not regarded as a subject meriting thoroughgoing research, or serious academic exposition" (p. xxvii) he has over several years sought to remove some of "the confusion that has bedevilled this vexed subject" (p. xxxiv). He was, for instance, chairman of the Statute Law Society from 1977.to 1979; and he is the author of an earlier and shorter work (now in its second edition (1983)) on *Statute Law*. This new and remarkable book is a significant contribution to an area of the law which is—in part because of Francis Bennion's persistence—rapidly improving in academic and professional recognition.

A Code of twenty-two Parts provides the structure of the book. Early on (at p. xxv) the reader is instructed on how to use the book; and it is evident that the author's own skill as a draftsman has been brought into play in the formulation of the Code. Division One (consisting of only seven Parts but extending over 400 pages) is concerned with the wider issues, explanations, principles, rules, presumptions and canons of statutory interpretation, all of which are assessed in accordance with the author's assertion that in the process of interpretation a court "takes an overall view, weighs all the relevant factors, and arrives at a balanced conclusion" (p. 260). Such an approach is not unlike that adopted by Cooke J. in the Court of Appeal of New Zealand who said, with regard to mandatory and directory requirements (a topic considered by Bennion at pp. 21-27), that the effect of these requirements "depends less on clear and absolute rules than on overall evaluation" (*A J. Burr Ltd. v. Borough of Blenheim* [1980] 2 N.Z.L.R. 1, 4, C.A.). Division Two of the Code (consisting of the remaining fifteen Parts) is designed to supplement the propositions advanced in Division One; and it is here that one finds detailed treatment of the territorial "extent" of an enactment, problems of legislative history, familiar Latin maxims employed in statutory interpretation, purposive construction (as a modern version of the mischief rule), and much else. The author seeks to link the two Divisions and explain the individual Parts by offering a general introduction at the outset, a particular introduction to each Part, and—through the imaginative use of Appendices—a guide on advocacy in court, a very useful checklist of interpretative criteria, and a list of terms. Needless to say, the tables of statutes and cases are very large; and in the text one finds innumerable dicta and references to relevant judicial decisions assembled in the Commentaries accompanying each of the 396 sections of the Code.

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Statutory construction is a subject which Francis Bennion understands well through practice and research. Despite the novelty of the presentation, his views on interpretation are conservative: he wants predictability wherever possible (and hence—as at pp. 310 and 527—Lord Denning is explicitly or implicitly criticised) and he sees many of the well-tried techniques of the courts as entirely consistent with the application of common sense ("English law is at bottom a sensible thing" (p. 266)) and with the so-called purposive construction (which, as adopted by British courts, "does not require or permit a wholesale jettisoning of the grammatical meaning. Since the purpose is mainly to be gathered from the language used, it must by definition broadly conform to that language" (p. 673)). In the course of the book there are, of course, many separate items and topics for discussion, from the wider principles of constitutional and administrative law to consideration of such matters as the use of delegated legislation to determine the commencement of legislation (where reference could now be made to the criticisms of "optional" legislation expressed by the Royal Commission on Environmental Pollution ((1984) Cmnd. 9149, para. 3.50); amendment of Acts of Parliament through the medium of delegated legislation (on which reference should perhaps

have been made to the criticisms expressed in the Donoughmore Report on Ministers' Powers ((1932) Cmd. 4060, pp. 36-38 and 65); the strict legal extent to be given to various parts of the British Isles (with reference, for example, to the unique status of Berwick upon Tweed, the definition of Scotland (though with no reference to the Island of Rockall Act 1972), the constitutional ambiguities of Monmouthshire, and the principality of Wales (where, according to the Laws in Wales Act 1535, the people used "a speech nothing like nor consonant to the natural mother tongue used within this realm,'1 a legislative reflection corrected in the preamble to the Welsh Language Act 1967)); and (in the context of legislative history) the use of Hansard, the nature of preambles, and (surprisingly, with no reference to *Chandler v. Director of Public Prosecutions* [1964] A.C. 763) the function of sidenotes or marginal notes.

Amid the vast material included in the book and accepting the need for compression in the treatment of some matters, there are inevitably some criticisms or corrections which might be offered. The principles of administrative law are obviously relevant in a study of statutory interpretation, and at various points in the book there are comments on the application .for judicial review (pp. 67-74), natural justice (pp. 725-731) along with *audi alteram partem* (pp. 762-765) and *nemo debet esse judex in propria causa* (pp. 778-779) as ancillary legal maxims, public interest immunity (pp. 752-753), ouster clauses (pp. 748-750), and (as already indicated) several issues related to delegated legislation (though with no reference to the repeal and referendum provisions of the Scotland Act 1978 and the Wales Act 1978). Some of the more general statements on administrative law—a volatile subject by any standards—are perhaps outdated or incomplete: for instance, the assertion (at p. 68) that the "general supervisory jurisdiction of the High Court on judicial review is based on what is called the *Wednesbury* principle" or the statement (at p. 727) that whenever "an enactment confers a *judicial* decision-making function on a person or body, Parliament is prima facie taken to intend that it shall be exercised in accordance with the relevant rules or principles of natural justice." Other queries could be raised, though doubtless many of these would fall foul of the *de minimis* principle (as explained at pp. 765-768).

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The author has concentrated chiefly on English and Scottish law, with occasional references to the case-law and the literature of other common law jurisdictions. Professor Pearce's work on *Statutory Interpretation in Australia* (1974) is referred to at several points. What Francis Bennion has attempted to produce is an authoritative guide to the law and practice of statutory interpretation worked out in British courts over several centuries. He is acutely aware of the pragmatic approach often adopted by judges, he is realistic about the political overtones of some recent cases, he takes full account of new developments such as the influence on interpretation of the European Convention on Human Rights, and he is prepared to accept qualifications and exceptions to the principles or rules expounded in the book. Many of the commentaries reflect the author's own style and attitudes, but he consistently adheres to the pronouncements of judges as the basis for each section of the Code. The aim of the Code, as the Introduction suggests (at p. xxx), is to describe the "modern common-law system of statutory interpretation, presenting it in a coherent, self-consistent way. Attention is also paid to the learning of the past, without knowledge of which our present system cannot be understood. The old lawyers still have much to teach." Francis Bennion's blend of old and new and his search for an "overall evaluation" rather than hard and fast rules have resulted in a major work which can be used for purposes of reference (almost as a dictionary of statutory construction) and/or read as an original and challenging analysis of the subject. Statutory interpretation will never be the same again.

D. G. T. WILLIAMS.