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BOOK REVIEW
by W. A. Wilson

F. A. R. Bennion, ***Statutory Interpretation***, Second edition, Butterworths, 1992. cxlix + 925 pp. £130.

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When the first draft of this review had been completed, a protein plaque or two moved in the reviewer's senile brain and he remembered that he had in fact reviewed the first edition for this journal.[1] This was indeed fortunate as it prevented him from revealing the fossilization of his mind by repeating much of what he had written in 1986. It also led to an investigation of whether anything said in that review had been noticed by the author. A complaint made then that the definition of 'Scotland' did not mention the Island of Rockall Act 1972 which made Rockall part of Scotland has had effect; the reviewer now ungraciously points out that the discussion of what is 'England' does not mention section 10 of the Channel Tunnel Act 1987, which incorporates the tunnel system up to the 'frontier' into England. Moreover, there remains the failure to refer to the lukewarm approach of the House of Lords to the *Barras* principle, the presumption that when Parliament continues to use a word which has been interpreted by the courts it intends the word to continue to have the judicial meaning, but the author can no doubt contend that the doctrine has been given a new lease of life by the Court of Appeal in *EWP Ltd v. Moore*,[2] and *A-G v. Brotherton*.[3]

The new edition is even larger than the last and runs to 925 pages, partly because of some repetition; for example, the full name of the Privy Council is given twice on the same page as is the statement that its jurisdiction extends only to Great Britain. A host of new cases has been added. In recognition of the enlightened recruitment policies of the Parliamentary Counsel Office the 'draftsman' has now become the 'drafter'.

The main change in this edition, however, is a rearrangement of the order of the sections of the Code, the content of the sections being largely as before. The first of the six divisions deals with 'Interpreter, Instrument and Enactment'. Many of these sections are descriptive rather than prescriptive and contain sentences such as 'Most legislators are not lawyers, however, and need to rely on skilled advice'. Partly, this is because the author rightly recognizes that many users of the Statute Book approach it in a different way from a judge who is presented with two opposing interpretations with supporting

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arguments. The part of this division relating to instruments explains the processes by which primary and secondary legislation is produced and such matters as commencement and extent. Division Two deals with meaning, legislative intention and methods of interpretation.

The remaining four divisions treat rules of construction, principles, presumptions and canons but, as the author admits, the boundaries between them are far from clear. Rules deal with such things as the use of Hansard and the extent to which the long title can be used in interpretation. On the latter subject, the author points to the inconsistent decisions on whether the effect of unambiguous operative provisions can be cut down by the long title and he seems to incline to

[1] [1986] Stat. LR 605
[2] .[1992] 1 All ER 880.
[3] [1992] 1 All ER 230.

the view that they can be so affected; this, perhaps, does not give sufficient weight to what was said about the effect of the preamble in *Prince Ernest Augustus of Hanover*.

Division Four is devoted to 'Interpretative Principles Derived from Legal Policy' which are, for example, that law should serve the public interest, and that law should be just and not subject to casual change. The 'Principle Against Doubtful Penalisation' is also in this division although other presumptions are discussed in Division Five which also contains an interesting treatment of purposive construction which the author regards as a modernized form of the mischief rule. Canons in Division Six are the familiar *eiusdem generis*, *expressio unius* and so on.

While the rearrangement of sections is an improvement one feels that the best order has not yet been found. What other criticisms can be made?

The treatment of EEC and EEC-derived law is on the light side. There is no mention of *Marleasing SA v. La Comercial Internacional de Alimentacion SA*[4], in which the Court of Justice of the Communities held that a national court is bound to try to interpret national legislation so that it will comply with the requirements of Community law whether the legislation was passed before or after the creation of the Community obligation. This means that EEC law must be examined not only when the UK legislation has been passed to implement an EEC obligation but in all cases in which the EEC has legislated in the field under consideration. Moreover, the importance which EEC law has now assumed in the UK would suggest that a book on UK statutory interpretation should deal with how EEC regulations should be interpreted, when directives have direct effect and so on.

These criticisms are, however, minor and the book retains its unique place as a well from which all concerned with statutory interpretation must regularly quaff. Interesting developments abound in this subject. Since the book went to press there has been *Smith v. Schofield*[5] in which it was said that seventeen pages of algebra used to show the consequences of one construction of a tax

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Act should have been proved by an expert witness and not merely put before he judge; this does raise sharply the difference between argument and evidence. As this review was going the House of Lords has permitted the citation of Hansard; Mr Bennion will have to start on his next edition.

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[4] C-106/89.
[5] 65TC669