3190 3161

The Law Commission and The Scottish Law Commission

(LAW COM. No. 90)

(SCOT. LAW COM. No. 53)

INTERPRETATION BILL

REPORT ON THE INTERPRETATION ACT 1889 AND CERTAIN OTHER ENACTMENTS RELATING TO THE CONSTRUCTION AND OPERATION OF ACTS OF PARLIAMENT AND OTHER INSTRUMENTS

Presented to Parliament by the
Lord High Chancellor and the Lord Advocate
by Command of Her Majesty
June 1978

LONDON
HER MAJESTY'S STATIONERY OFFICE
40p net

Cmnd. 7235

The Law Commission and the Scottish Law Commission were set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are—

The Honourable Mr. Justice Cooke, *Chairman*

Mr. Stephen Edell.

Mr. W. A. B. Forbes, Q.C.

Mr. Norman S. Marsh, C.B.E., Q.C.

Dr. Peter North.

The Secretary of the Law Commission is Mr. J. M. Cartwright Sharp and its offices are at Conquest House, 37–38 John Street, Theobalds Road, London, WC1N 2BQ.

The Scottish Law Commissioners are—

The Honourable Lord Hunter, V.R.D., *Chairman*

Mr. A. E. Anton, C.B.E.

Mr. J. P. H. MacKay, Q.C.

Professor T. B. Smith, Q.C.

The Secretary of the Scottish Law Commission is Mr. J. B. Allan and its offices are at 140 Causewayside, Edinburgh, EH9 1PR.

THE LAW COMMISSION AND
THE SCOTTISH LAW COMMISSION

INTERPRETATION BILL

REPORT ON THE CONSOLIDATION OF THE INTERPRETATION ACT 1889 AND CERTAIN OTHER ENACTMENTS RELATING TO THE CONSTRUCTION AND OPERATION OF ACTS OF PARLIAMENT AND OTHER INSTRUMENTS

To the Right Honourable Lord Elwyn-Jones, C.H.,
Lord High Chancellor of Great Britain, and

the Right Honourable Ronald King Murray, Q.C., M.P.,
Her Majesty's Advocate.

The Interpretation Bill which is the subject of this Report seeks to consolidate the Interpretation Act 1889 and certain other enactments relating to the construction and operation of Acts of Parliament and other instruments. In order to produce a satisfactory consolidation, we have made a number of recommendations which are set out in the Appendix to this Report. One or two of the amendments proposed by these recommendations might have been authorised under the Consolidation of Enactments (Procedure) Act 1949, but the majority could not.

The departments concerned with the production of legislation and subordinate legislation have been consulted in connection with the recommendations. In a context such as this, complete unanimity cannot be expected on every detail, but with one exception, upon which opinion is divided, the recommendations are welcomed by the departments. The exception is recommendation No. 2 relating to words importing the feminine gender.

The amendments proposed by our recommendations include the introduction of two new common-form provisions of exactly the same quality as those comprised in the Act of 1889 as it stands. They will not create substantive law, but merely influence the form of future Acts by eliminating the need for the repetition of standard supplementary provisions and savings.

SAMUEL COOKE,
Chairman of the Law Commission.

J. O. M. HUNTER,
Chairman of the Scottish Law Commission.

April 1978.

10748 A 2

RECOMMENDATIONS

1. Under section 36(2) of the Interpretation Act 1889 an Act which is expressed to come into operation on a particular day is to be construed as coming into operation "immediately on the expiration of the previous day". Under the Acts of Parliament (Commencement) Act 1793 an Act which makes no provision for its commencement comes into force "on" the date endorsed as the date of Royal Assent. In that case, the Act has effect from the first moment of the day of Royal Assent (*Tomlinson v Bullock* (1879) 4 QBD 230).

A. There is no practical distinction for purposes of commencement between the beginning of one day and the end of the previous day, and we recommend that in reproducing the above enactments the moment of commencement should be expressed as the beginning of the relevant day, whether appointed by the Act or depending on the date of Royal Assent.

B. Subsection (2) of section 36 has also become technically defective in the light of two modern developments in the field of commencement. It is common practice for different provisions of the same Act to be brought into force on different dates and for the date (or dates) of commencement to be fixed by order made under the Act, rather than by the Act itself. There is no room for a different rule as to the moment of commencement in such cases, and we recommend that in reproducing section 36(2) they should be treated in the same way as the case where a whole Act is expressed to come into operation on a day specified in the Act.

Effect is given to the above recommendations in clause 4 of the draft Bill.

2. Section 1(1) of the Interpretation Act 1889 directs that unless the contrary intention appears in an Act passed after 1850—

(*a*) words importing the masculine gender shall include females; and

(*b*) words in the singular shall include the plural, and words in the plural shall include the singular.

This provision was derived from the first sentence of section 4 of Lord Brougham's Act of 1850 (13 Vict. c. 21) which was to the same effect, and has probably contributed more than any other single enactment to the declared objective of Lord Brougham's Act ("An Act for shortening the language of Acts of Parliament"). The contribution would have been little if any greater if the gender rule had been drawn so as to operate both ways, as in section 61 of the Law of Property Act 1925 (c. 20) (construction of deeds, contracts, wills, orders and other instruments). It has however been represented to us that there are legislative contexts (such as nursing and consent to adoption) where the feminine pronoun might with advantage be used to include the masculine, instead of vice versa. It is occasionally so used without the benefit of section 1(1) of the Interpretation Act 1889, as in the following passage in section 36(1) of the Finance Act 1977 (c. 36):—

> "living accommodation is job-related for a person if it is provided for him by reason of his employment, or for his spouse by reason of hers".

In this passage " him " and " his " include " her " and " hers " by virtue of section 1(1): but common sense alone requires the final " hers " to be read as " his " where the person whose accommodation is in question is a married woman.

We recommend that in reproducing 1889 section 1(1) the rule should be made to operate both ways. Effect is given to this recommendation in clause 6 of the draft Bill.

3. The text of section 37 of the Interpretation Act 1889 is as follows:—

" 37. Where an Act passed after the commencement of this Act is not to come into operation immediately on the passing thereof, and confers power to make any appointment, to make, grant, or issue any instrument, that is to say, any Order in Council, order, warrant, scheme, letters patent, rules, regulations, or byelaws, to give notices, to prescribe forms, or to do any other thing for the purposes of the Act, that power may, unless the contrary intention appears, be exercised at any time after the passing of the Act, so far as may be necessary or expedient for the purpose of bringing the Act into operation at the date of the commencement thereof, subject to this restriction, that any instrument made under the power shall not, unless the contrary intention appears in the Act, or the contrary is necessary for bringing the Act into operation, come into operation until the Act comes into operation."

The section has been expounded in *R.* v *Minister of Town and Country Planning* [1951] 1 KB 1 and *Usher* v *Barlow* [1952] Ch. 255, which established that the word " operation " is used in two senses, namely (1) commencement, and (2) effective working. The distinction is expressly drawn in clause 13 of the Bill. We recommend that the following additional amendments should be made in reproducing section 37.

A. As already mentioned, it is common practice for different provisions of an Act to be brought into force at different times. That situation is not expressly contemplated by section 37, but the principle of that section should apply whether it is a whole Act or a particular provision which is to be brought into " operation ".

B. It has been represented to us that there are cases in which statutory powers have to be exercised before an Act or provision comes into force in order to secure the effective working of the Act or provision, not at the time when the Act or provision comes into force but at a subsequent but relatively early date. This is not warranted by section 37, which requires that the purpose must be to bring the Act into operation " at the date of commencement thereof ", but it is within the spirit of the section, and should be covered expressly.

C. Section 37 confers a limited power to do things in advance for the specified purpose of bringing the Act into operation, but subject to the " restriction " that an instrument made under the power must not come into operation until the Act comes into operation unless that is necessary for the same purpose. We consider that the restriction is little more than a repetition in negative form of the limitation contained in the power itself, and could be omitted without detriment; and we recommend accordingly.

Effect is given to the above recommendations in clause 13 of the draft Bill.

4. Section 32(3) of the Interpretation Act 1889 provides that where an Act confers power to make " rules, regulations or by-laws ", the power (in the absence of a contrary intention) is to be construed as including power to rescind, revoke, amend or vary the rules, regulations or by-laws.

A. A power to amend or revoke is usually required for other kinds of subordinate legislation to be made under an Act, and the restriction of section 32(3) to rules, regulations and by-laws has led to a proliferation of *ad hoc* provisions authorising amendment and revocation of Orders in Council, Ministerial orders and other instruments. To take only one volume of recent statutes, such provisions are to be found in 1975 c.68 s.38(2) and (3); c.69 s.26(2); c.70 s.28(2); c.71 s.123(4); c.72 s.106(3); c.76 s.18(3); c.77 s.55(4) and c.78 s.13(6) and s.14(4). We consider that when section 32(3) is reproduced, it should be extended so as to dispense with the need for such *ad hoc* provisions in the future. On the other hand there are certain instruments made under statutory powers for which a power to revoke or amend is unnecessary, and others for which such a power would be inappropriate. Two of the enactments mentioned above (1975 c.71 s.123(4) and c.77 s.53(4)) exclude particular orders from the power to revoke or amend. There are other instances, for example compulsory purchase orders, where power to revoke or amend is never conferred. Some selectivity is therefore required if section 32(3) is extended as we propose. The line is not easy to draw but we believe that it will be sufficient for practical purposes to exclude from the extended provision any subordinate legislation which is not made by statutory instrument.

Accordingly we recommend that the existing provision should be extended so as to cover, in addition to rules, regulations and by-laws, Orders in Council, orders and other types of subordinate legislation made by statutory instrument. With this limitation there should seldom be need for an express provision excluding the implied power to revoke or vary. Effect is given to this recommendation in clause 14 of the draft Bill, coupled with the definition of " subordinate legislation " in clause 21(1) and clause 24(3).

B. In connection with section 32(3), it has been represented to us that there are certain cases in which it would be desirable to bring together in a single instrument the effects of a series of previous instruments without revoking the latter. This situation is no doubt rare, but we recommend that the opportunity should be taken to make it clear that collation as well as amendment and revocation is covered by the implied power. Effect is also given to this recommendation in clause 14.

5. Section 38(2) of the Interpretation Act 1889 contains a number of important saving provisions which are implied (subject to the contrary intention) where an Act repeals any other enactment. The common law rule was that when an Act is repealed it is treated as if it had never been enacted except as to matters and transactions past and closed; and the effect of section 38(2) is to modify that rule by preserving the previous operation of the repealed Act and rights and liabilities acquired or incurred under it. It is settled that the benefit of these savings is not confined to express repeals but extends to any enactment which abrogates or limits the effect of a previous enactment (*Moakes* v *Blackwell Colliery Co.* [1926] 2 KB 64 at p.70

The common law rule applies, and section 38(2) does not, where a temporary Act expires by effluxion of time. Accordingly *ad hoc* savings have been necessary in such Acts. The usual saving, e.g. section 17(3) of the Prevention of Terrorism (Temporary Provisions) Act 1976 (c.8), is to the effect that section 38(2) of the Interpretation Act is to apply on the expiration of the temporary Act as if it was then repealed by another Act. Temporary Acts are not a major feature of modern legislation, but we recommend that such savings should be generalised by extending section 38(2) to expirations. Effect is given to this recommendation in subsection (2) of clause 16 of the draft Bill.

6. Section 38(1) of the Interpretation Act 1889 provides that where an Act repeals any provisions of a former Act and re-enacts them with or without modification, references in "any other Act" to the provisions so repealed are to be construed (unless the contrary intention appears) as references to the provisions so re-enacted.

A. The words "any other Act" are ambiguous, and it is unsettled whether the translation operates upon internal references to the provisions repealed which occur in the Act containing those provisions. We recommend that this ambiguity should be resolved so as to include internal, as well as external, references to the repealed provisions. Effect is given to this recommendation in clause 17(2)(*a*) of the draft Bill.

Under clause 22(1) and paragraph 3 of Schedule 2, this restatement of section 38(1) will operate in relation to repeals and re-enactments effected by Acts passed after 1889. The change, if it is one, can safely be made retrospective to this extent. In so far as section 38(1) has been relied upon for the translation of "internal" references, the restatement will give effect to the intention. In so far as the section has not been so relied upon, the restatement will (harmlessly) duplicate express translations effected by former Acts. What is inconceivable is that any former Act which intended *not* to translate internal (as opposed to external) references to provisions repealed and re-enacted would have relied for that purpose on the doubt whether section 38(1) applied to them. In such a case (if there ever was one) an express provision would have been necessary, and this would establish the contrary intention for the purposes of clause 17(2).

B. Section 38(1) is also defective in so far as the translation of references to the repealed enactment is confined to references which appear in other Acts. In practice the translation is equally required for references which appear in subordinate legislation or in documents which are not legislative in character. Accordingly section 38(1) is seldom if ever relied upon in Consolidation Acts. The normal practice is to include an express saving (without prejudice to the operation of section 38) to the following effect:

> "Where any enactment or document refers . . . to any of the repealed enactments, the reference shall, except where the context otherwise requires, be construed as a reference to this Act or to the corresponding provision of this Act".

We recommend that section 38(1) be extended so as to cover references to enactments repealed and re-enacted, whether those references occur in Acts of Parliament or any other enactment or document. Effect to this

recommendation is given in clause 17(2)(*a*), clause 23(2) and (3) and clause 24(2) of the draft Bill.

C. Another standard saving, which appears regularly in Consolidation Acts, provides that subordinate legislation made, and other things done, under the enactments repealed are to be treated as made or done under the corresponding provision of the Consolidation Act. Frequently this, and the extended version of section 38(1) referred to above, are the only savings needed in a Consolidation Act—see for example Costs in Criminal Cases Act 1973 (c.14) s.21(3) and (4); Independent Broadcasting Authority Act 1973 (c.19) s.39(2) to (4); Legal Aid Act 1974 (c.4) s.42(2) and (3). We recommend that this additional saving be introduced alongside the original saving in section 38(1). Effect to this recommendation is given in sub-section (2)(*b*) of clause 17 of the draft Bill.

7. Subsections (1) and (2) of section 35 of the Interpretation Act 1889 read as follows:—

> "(1) In any Act, instrument or document, an Act may be cited by reference to the short title, if any, either with or without a reference to the chapter, or by reference to the regnal year in which the Act was passed, and where there are more statutes or sessions than one in the same regnal year, by reference to the statute or session, as the case may require, and where there are more chapters than one, by reference to the chapter, and any enactment may be cited by reference to the section or subsection of the Act in which the enactment is contained.
>
> (2) Where any Act passed after the commencement of this Act contains such reference as aforesaid, the reference shall, unless a contrary intention appears, be read as referring, in the case of statutes included in any revised edition of the statutes purporting to be printed by authority, to that edition, and in the case of statutes not so included, and passed before the reign of King George the First, to the edition prepared under the direction of the Record Commission; and in other cases to the copies of the statutes purporting to be printed by the Queen's Printer, or under the superintendence or authority of Her Majesty's Stationery Office."

A. Subsection (1) was derived from section 3 of Lord Brougham's Act which was to the same effect but with certain differences of detail:—

(1) The earlier section did not authorise citation by short title. Short titles were by no means unknown in 1850 (see e.g. Towns Improvement Clauses Act 1847, s.4; House of Commons Costs Taxation Act 1847, s.11), but were not the general rule. By 1889 the practice was firmly established. Only a handful of Acts of the previous decade, and none later than 1893, received short titles under the Short Titles Act 1896.

(2) In prescribing the details of citation by regnal year and chapter, Lord Brougham's Act distinguished between Acts made before 7 Henry 7 and those made after 4 Henry 7 (the apparent overlap was illusory). In the former case provision was made for citation by statute if more than one in the same regnal year; in the latter for citation by statute or session if more than one in the same regnal year (see e.g. I Mary, Sessions 1 to 3, 13 Chas. 2 Stats. 1 and 2. The Act of 1889 omitted this distinction, and referred to "statutes or sessions" regardless of the date of the Act to be recited.

(3) Lord Brougham's Act directed that the citation by regnal year, statute or session and chapter should be sufficient " without reciting the title of such Act [or the provision of such section] so referred to ". This was omitted in 1889, no doubt as having already done its work.

To return to the text of section 35(1) as it stands, we observe in the first place that it is otiose in so far as it purports to authorise the citation of an Act by a short title by which it is otherwise authorised to be cited. This applies to all the 2,000 odd enactments scheduled to the Short Titles Act 1896 and to every other Act which includes a short title clause. Secondly the provision for citation by regnal year, statute/session and chapter cannot be taken literally as authority for the subsidiary citations which are used in the Chronological Table of the Statutes and in Schedules of amendments or repeals, such as Schedule 3 to the draft Bill. Only two of the references in the first column of that Schedule identify " the regnal year in which the Act was passed " (these being comparatively rare cases in which the relevant Session of Parliament was begun and ended in the same regnal year). Thirdly section 35(1) is and always has been inappropriate to the Acts of the Parliament of Scotland, which were numbered by calendar year and chapter and not by reference to regnal years (This defect was not inherent in the Bill for the Interpretation Act as introduced, which referred to regnal or calendar years; but for reasons which do not appear on the record the calendar year was dropped in the course of the parliamentary proceedings).

These problems, as well as the change in the citation of Acts of 1963 onwards introduced by the Acts of Parliament (Numbering and Citation) Act 1962, could be looked after by suitable redrafting of subsection (1) of section 35 in the Consolidation Bill. But the question is whether that is worth doing. The methods used for identifying previous statutes would be exactly as they are if subsection (1) of section 35 were not in force. There is no comparable provision for the identification in U.K. Acts of Acts of the Parliament of Northern Ireland either by their short titles or by regnal year (or calendar year since 1944) and chapter; and there is no provision authorising the identification in such Acts of subordinate legislation by S.R. & O. or S.I. year and number. Both are regularly so identified in U.K. statutes without specific statutory authority. The choice therefore lies between expanding section 35(1) so as to authorise these citations, and repealing it as unnecessary. We recommend the latter option, to which effect is given by Schedule 3 to the draft Bill.

B. Subsection (2) of section 35 was and is still required in order to govern the selection between the chapters or sections attributed to the same Act in different editions of the earliest statutes. A once well-known instance of the problem was 6 Ann c.41 sections 24 and 25 (Statutes of the Realm) *alias* 6 Ann c.7 sections 25 and 26 (Statutes at Large). A similar problem, not dealt with by subsection (2) as it stands, arises in relation to some of the Acts of the Parliament of Scotland. We recommend that in these cases also preference should be given to the edition published by authority. Effect is given to this recommendation by subsection (1) of clause 19 of the draft Bill.

8. The great majority of Acts of Parliament contain references of some kind to other existing enactments which, or some of which, have been

amended by intervening legislation. This raises the theoretical question whether the reference is intended to denote the enactment in the form in which it was originally passed or in the form in which it stands at the time of the reference. The intention is almost invariably the latter. Where it is not, words are added to make that clear—see for example paragraph 7(1) of Schedule 2 to the Acquisition of Land (Authorisation Procedure) Act 1946, which refers to sections 78 to 85 of the Railways Clauses Consolidation Act 1845 " as originally enacted and not as amended . . . by section 15 of the Mines (Working Facilities and Support) Act 1923."

Nevertheless the practice has grown up, no doubt to be on the safe side, of including in Acts which contain such references a clause to the effect that they are to be construed as referring to the enactments in question as amended by subsequent Acts. On an approximate estimate such a clause now appears in two out of every three Acts. Although the general purpose is the same, these clauses differ from each other in detail, ranging from the simplest form—" Any reference in this Act to any enactment is a reference to that enactment as amended by any subsequent enactment " to the full treatment—" Unless the context otherwise requires, any reference in this Act to any other enactment is a reference thereto as amended, and includes a reference thereto as extended or applied, by or under any other enactment, including this Act ".

Apart from the expenditure of paper and ink upon clauses the need for which is at best doubtful, these provisions are disturbing because it is seldom self-evident why the clause appears in different forms in different Acts, and does not appear at all in the others.

We recommend accordingly that the consolidation should include a clause designed to eliminate these recurrent *ad hoc* clauses. Effect to this recommendation is given in clause 20(2) of the draft Bill.

9. The application of the Interpretation Act 1889 to subordinate legislation is selective, not to say capricious. Section 6 (meaning of " county court " in England and Wales) applies to Orders in Council as well as Acts. Contrast section 29 (" county court " in Northern Ireland) which applies only to Acts. Subsection (1) of section 35 authorises the citation of Acts by short title, or by regnal year and chapter, where the citation is made in " any Act, instrument or document ". But subsection (2), which governs the references to regnal year and chapter in the case of the early statutes for which there were variations in different editions, applies only to references occurring in Acts of Parliament; and subsection (3), under which a quotation of words from a previous Act is treated as inclusive, applies only where the quotation is made in an Act. Similarly in section 36 subsection (1) defines " commencement " when used in and in relation to Acts only; while subsection (2) regulates the time of day at which an Act or subordinate legislation comes into operation when expressed to come into operation on a particular day. The effects of sections 11 and 38 (repeals) depend upon the meaning of the word " enactment " as used in those sections. It is clear that subsection (1) of section 38, which translates references to provisions repealed and re-enacted, applies only to the repeal of Acts by Acts and is confined to references in other Acts. On the other hand the savings contained in section 11(1) and section 38(2) may and probably do apply where

(as occasionally happens) subordinate legislation is repealed by Act of Parliament, though not by subsequent subordinate legislation. The general definitions contained in the Act of 1889 (sections 12 to 30) apply only to Acts of Parliament. Under section 31 expressions used in subordinate legislation have the same meaning as in the parent Act, but this provision imports the general definitions only where the expression defined occurs both in the parent Act and in the subordinate legislation, not where it occurs in the latter only.

Naturally the draftsmen of subordinate legislation have not left it there. Most instruments of any elaboration contain a clause applying the Interpretation Act as it applies to an Act of Parliament; and instruments which revoke previous subordinate legislation usually go on to provide expressly that section 38 is to apply as if the revocation were a repeal of an Act by an Act. The practice (as of 1971) is described in Halsbury's Statutes, Vol. 32 "Statutes" at p. 407. A great deal of space in the Statutory Instruments series is occupied by such provisions, which would not be needed if the Interpretation Act were directly applied to subordinate legislation without the curious distinctions described above.

Accordingly we recommend that (subject to certain minor exceptions referred to below) the following amendments should be made in the application of the Act of 1889 to subordinate legislation:—

(1) All definitions, and all other provisions except those capable only of application to Acts of Parliament (sections 8, 9 and 10) should apply, so far as applicable and unless the contrary intention appears, to subordinate legislation made after the consolidation comes into force.

(2) The provisions relating to repeals (sections 11(1) and (2) and section 38(1) and (2)) should also apply where subordinate legislation is repealed either by Act or by subordinate legislation.

(3) In those provisions, and in other provisions which relate to the impact of an Act on other legislation, references to other enactments should include subordinate legislation.

The exceptions referred to above relate to Orders in Council under section 5 of the Statutory Instruments Act 1946, which are *sui generis*, and Orders in Council under two Acts relating to Northern Ireland, which are dealt with by another Recommendation.

Effect is given to this recommendation in subsections (1), (2) and (4) of clause 23 of the draft Bill.

10. The Interpretation Act does not apply to Acts of the Parliament of Northern Ireland. It was originally extended to such Acts by the Interpretation Act 1921 (12 Geo. 5 [N.I.] c.4): but that Act, and the Act of 1889 as applied by it, were repealed by the Interpretation Act (Northern Ireland) 1954 section 48(1) and (2). In general therefore the two codes are separate, the one applying to Acts of the Parliament of the United Kingdom and the other to Acts of the Parliament of Northern Ireland, to Measures of the Northern Ireland Assembly, and (by specific application) to Orders in Council under modern legislation which have the effect of such Acts.

The question does arise however whether and how far the provisions of the Interpretation Act 1889 relating to the effects of repeals (sections 11 and 38) operate in cases where Acts of the Parliament of Northern Ireland are repealed by Acts of the Parliament of the United Kingdom, or contain references to enactments of either Parliament which are so repealed. If an Act of Northern Ireland which repealed a previous Act of Northern Ireland is itself repealed by U.K. legislation, is the original repeal preserved by section 11(1) or section 38(2)(*a*) of the Act of 1889? If an enactment referred to in an Act of Northern Ireland is repealed and re-enacted by U.K. legislation, is the reference translated into a reference to the new enactment by section 38(1) of the Act of 1889?

It is on account of such doubts that *ad hoc* applications of section 38 are often included in Acts which repeal Northern Ireland legislation. A recent example of such an Act is the Social Security (Consequential Provisions) Act 1975 (c.18), section 2(4)(*b*) of which provides as follows:

> "(4) Section 38 of the Interpretation Act 1889 (effect of repeals)—
>
> . . . .
>
> (*b*) has the same operation in relation to any repeal by this Act of an enactment of the Parliament of Northern Ireland or of the Northern Ireland Assembly (or of any provision of an Order made under, or having the same effect as, such an enactment) as it has in relation to the repeal of an Act of the Parliament of the United Kingdom (references in section 38 of the 1889 Act to Acts and enactments being construed accordingly)."

Such provisions would be unnecessary if it were made clear that while the Interpretation Act 1889 continues to apply only to the provisions made by Acts of the Parliament of the United Kingdom, the impact of those provisions upon other "enactments" extends to enactments of the Parliament of Northern Ireland and other Northern Ireland legislation; and we recommend accordingly. Effect is given to this recommendation in clause 24(2) of the draft Bill.

11. Section 27 of the Interpretation Act 1889 did not define "committed for trial" as respects Ireland. The reason for this omission is not clear, but it may have been that Irish lawyers were content to rely on some dicta of Palles C.B. in *R. (Feely) v. Fitzgibbon* (delivered in Nov. 1888 and reported in Judgments of the Superior Courts in Ireland (1890) 191 at page 195) regarding the meaning of the expression "return for trial" which was then more commonly used in Ireland. The learned Chief Baron appeared to regard "trial" as referring exclusively to trial by a jury, summary offences being "heard" or "heard and determined" as opposed to "tried". Unfortunately, the work in which this Judgment appears has not been available to the public for a very long time and, as most enactments now in force in Northern Ireland refer to "committed for trial" rather than "returned for trial", the absence of a definition of the former corresponding to that in force in England, suggests inconsistency in the interpretation of the law of two parts of the United Kingdom. Any such inconsistency has already been removed, as respects Northern Ireland enactments, by the inclusion in section 42(4) of the Interpretation Act (Northern Ireland) 1954

(c.33) of a Northern Irish version of the definition in section 27 of the Act of 1889. We recommend that a similar version should be made applicable to Westminster Acts extending to Northern Ireland, but with one change, namely, the substitution of the words " on indictment " for the words " before a judge and jury ". This change is necessary because, for a temporary period, section 2 of the Northern Ireland (Emergency Provisions) Act 1973 c.53 (as amended by section 18 of the Northern Ireland (Emergency Provisions) (Amendment) Act 1975 c.62) authorises certain indictable offences to be tried without a jury. It is, however, desirable that the expression " committed for trial " should cover committals for trial of these offences and the form of the definition we recommend for Northern Ireland provides accordingly.

Effect is given to this recommendation in paragraph (*b*) of the definition in Schedule 1 to the draft Bill.

12. Section 3 of the Interpretation Act 1889 defines " land " as including messuages, tenements, and hereditaments, houses, and buildings of any tenure. The definition was derived from section 4 of Lord Brougham's Act. It has never been appropriate for Scotland, where messuages and hereditaments are unknown to the law. Most modern Acts in which the meaning of " land " is significant contain their own definition (see for example the Town and Country Planning Act 1971 (c.78) section 290(1), the Town and Country Planning (Scotland) Act 1972 (c.52) section 275(1) and the Community Land Act 1975 (c.77) section 6(1)). The points looked after by such definitions are the inclusion of (1) buildings and structures, (2) lakes, rivers and foreshore (land covered with water), (3) particular estates or interests in land and (4) easements (in Scotland servitudes) and other rights over and in land. We recommend that for the purposes of future Acts the definition in section 3 should be re-written so as to cover these points. Effect is given to this recommendation in Schedule 1 to the draft Bill. It is very improbable that any damage would be done by applying this definition retrospectively to Acts passed since 1850 which do not contain their own: but in order to be on the safe side the draft Bill retains the present definition for such Acts (Schedule 2 paragraph 5).

Printed in England by Her Majesty's Stationery Office

310748 Dd 594856 K6 7/78

HER MAJESTY'S STATIONERY OFFICE

Government Bookshops

49 High Holborn, London WC1V 6HB
13a Castle Street, Edinburgh EH2 3AR
41 The Hayes, Cardiff CF1 1JW
Brazennose Street, Manchester M60 8AS
Southey House, Wine Street, Bristol BS1 2BQ
258 Broad Street, Birmingham B1 2HE
80 Chichester Street, Belfast BT1 4JY

Government publications are also available through booksellers

ISBN 0 10 172350 4