

# The Yardstick

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## Hint or Hoodwink?

Prime Minister Theresa May told the Conservative Party conference in October 2016 that, “We are going to be a fully-independent, sovereign country ... And that means we are going, once more, to have the freedom to make our own decisions on a whole host of different matters, from **how we label our food** to the way in which we choose to control immigration”.

This reference to “food labelling” is too indirect to apply to British weights and measures but, at about the same time, Andrea Leadsom, Environment Food and Rural Affairs secretary, said: “In the Great Repeal Bill we will be bringing the whole body of EU legislation into UK law so that, as the Prime Minister says, the day after you leave the rules are the same as the day before you left. But, at the same time, once we have left the EU, we will get the opportunity to look at how we can change rules that will be better for the UK and whether that’s on **weights and measures** or issues like teaspoons, those are things for the future”.

*We suggest that readers write to their MPs, at the House of Commons, London SW1A 0AA, and ask: does the Conservative government intend to restore the freedom to use pounds and ounces and other imperial units with immediate effect upon the UK’s withdrawal from the European Union? Please forward replies to the Croydon address.*

## Active Resistance to Metrication

In November 2016, Derek Norman, Chairman of Active Resistance to Metrication, the direct action group that converts metric signs, achieved national prominence when ARM’s work was reported by the *Financial Times*, *Express*, *Independent*, *Daily Mail* and *Sun*. The story was picked up overseas by *The Journal* in Ireland, the *Kuwait Times*, *Bangkok Post* and elsewhere. Derek said: “When we took down the first sign, my heart was beating in fear that we would be arrested. After you do it a few times, you lose the fear”. Derek was also interviewed by ITV, available to watch online (search google for: Derek Norman metric signs itv). ARM’s website is [www.activeresistance.org.uk](http://www.activeresistance.org.uk)

John Gardner, Director

BWMA is a non-profit body that exists to promote parity in law between British and metric units. It enjoys support from across Britain’s political spectrum, from all manner of businesses and the general public. BWMA is financed by subscriptions and donations.  
Membership is £12 per year.

## Railways – mile, chain and yard

Readers will recall that *Yardstick 59* reproduced Research Brief T1013, “Analysing the risk of having a mix of imperial and metric measures on the railway”, published by the Rail Safety and Standards Board in December 2014. With regards to the research project’s purpose and direction, the report said:

### **BWMA email to Rail Safety and Standards Board (RSSB), 27 December 2016**

In December 2014, RSSB produced Research Brief T1013, which concerned “Analysing the risk from having a mix of imperial and metric measures on the railway”. This followed Network Rail’s decision to implement the European Rail Traffic Management System (ERTMS), which involved metrication.

However, on 30 June 2015, the public minutes of RSSB meeting “Traffic Operation and Management Standards Committee, Record of Decisions”, included the following note: “... in view of the lack of direction from industry regarding implementation of metrification, there was no reason to continue with stage three of research project T1013 and B Tucker proposed, and TOM SC approved, that the project should be closed”.

I have written to Network Rail to ask why there was a “lack of direction from industry” but they are completely unaware of the issue of metrication – despite announcing it originally. They have explained that Network Rail is being decentralised, and they have no further remit in terms of giving direction to rail regions.

Can RSSB help fill in some of the blanks? What were the circumstances of Network Rail not providing direction; was there a formal closure of the issue, and was a reason given? Is RSSB aware whether ERTMS itself is still proceeding? The people in RSSB who dealt with this issue at the time were Belinda Tucker and Michael Woods.

### **Further BWMA email to RSSB, 30 January 2017**

I sent [my] query a month ago on 27 December and, hearing nothing, sent it again on 17 January. But I have still not had an acknowledgement or a reply. Is there a problem? I look forward to hearing from you shortly.

### **Further BWMA email to RSSB, 13 February 2017**

To the RSSB, I am still waiting for a response to the below query, originally sent in December. Please do not ignore it. Thank you.

### **Holding reply from RSSB, 14 February 2017**

Thank you for the below messages. Please accept my apologies for the delay in responding and not acknowledging your email more promptly. It seems that an automatic response was not issued as it should have happened. Please accept this email as a reassurance that we have received your questions and are currently consulting on those with our Research and Development Team. Once again, I am sorry for the inconvenience caused by the delay. Myself or an appropriate colleague will be in contact again as soon as we can with further information. Ania Feranska, Enquiry Desk

*BWMA enquiries proceeding slowly.*

## **From the Communist Party of Britain Marxist-Leninist website, www.cpbml.org.uk, 14 December 2016**

Metrication: Bin the regulations!

Since decimalisation of the currency in 1970 there has been a continuous campaign by supporters of metrication, promoted by the EU, to enforce changes to weights, measurements and distances. Road signs have been changed, weights and measures in shops changed, weather forecasts changed, and so on. For retailers metric weights and measurements have usually resulted in smaller quantities of goods being sold at effectively higher prices and subsequent confusion for customers. In 2001 the “Metric Martyrs” were market traders prosecuted and hounded for refusing to sell fruit and vegetables in metric weights. Brexit, independence, means we can finally bin all these “infringements” from the EU.

### **“Blair ‘lied to me’ over pledge on old weights”, *Mail On Sunday*, 21 January 2001**

*A recent sort-through of old newspaper articles revealed this article from 2001 that reports a letter from Tony Blair’s office in 1995.*

A Second World War veteran has accused Tony Blair of “breath taking hypocrisy” over a pledge to support imperial weights and measures. Kenneth Mayes received the promise in a letter from Mr Blair’s office when he was Leader of the Opposition in 1995. It said Labour was “*determined to ensure shopkeepers can continue to use pounds and ounces to sell goods such as loose fruit and vegetables*”.

The existence of the letter emerged as a result of the prosecution of Steve Thoburn. Mr Mayes, 79, of Manchester – who has sent the market trader a copy – believes the prosecution is an “absolute disgrace”. He said last night: “I wrote to Mr Blair because I was worried the EU would do away with all our traditions. I felt reassured by his reply but now it is clear he just lied to me. I wanted him to protect my right to buy in pounds and ounces but he has just sold our sovereignty down the river”.

Last night Downing Street said: “This was something the Tory government promised and won a ten-year extension allowing the use of both metric and imperial measures – and that is fully consistent with what the prime Minister has said”.

### **Quentin Letts**

*Stuart Delvin has shared a letter from Daily Mail columnist Quentin Letts: Thank you for your letter. I am afraid I am not terribly good at joining pressure groups, but I doff my flat cap to you at the British Weights and Measures Association.*

## The Real Motives for Compulsory Metrication

By Vivian Linacre

The damaging consequences of compulsory metrication in the UK, particularly for the shopping public, are regularly exposed by the BWMA. Yet while the *effects* are all too clear, the fundamental *causes* have never been revealed. That is because of connivance by successive governments and general acquiescence by the media and public opinion in the presumption that a common system of weights and measures was necessary in creating a Single Market.

But that was a delusion. For the very first priority in forming an Economic Community must be a common currency, from which the UK was nevertheless permitted to opt out; yet we were not permitted to opt out of a common system of measures – a much lesser priority. So the metric monopoly must have been imposed for reasons unconnected with trade. It was surely the highest possible compliment that the EU paid to the imperial system in regarding an alternative system of measures a greater threat than an alternative currency.

Besides, if uniform metrication, enshrined in criminal law, is so vital to the ‘European project’, why has it scarcely ever been enforced? Thousands of retail transactions in Britain are conducted every day in pounds and ounces, entirely disregarded by the local trading standards officer. The sixteen years of this regime have yielded precisely five successful prosecutions, plus several dismissed in court and numerous threats and cautions. This negligible record of implementation, merely paying lip service to the regulations, is further proof that compulsory metrication was imposed to serve a larger, political purpose, the nature of which became apparent from meetings and correspondence throughout the 1990’s with junior trade ministers and their civil servants as well as personal correspondence with Commissioners and Departmental DG’s in Brussels.

From its inception, the strategy of the EEC was to create a counter-balance to the political and economic might of the USA, therefore any close cultural bonds between member states and the USA had to be weakened if not broken. A DTI mandarin explained to me that a shared language and history gave the UK an unfair advantage over our European partners in transatlantic trade, which we were obliged to redress. That was surprising enough, but it was the intense loathing and envy of the Anglo-American relationship, apparent from telephone conversations with Brussels, which convinced me that we could not belong to both the Anglosphere and the EU.

Clearly, metrication could not be enforced in the UK so long as ‘English units’ were in universal use throughout the USA. So Brussels launched a massive propaganda campaign to impress upon Washington that, *following Britain’s conversion*, the USA was the only non-metric country in the world apart from Burma and Liberia! A second campaign was aimed at Britain to proclaim that, within the USA, interested federal agencies were pressing Washington *to step up its metrication programme!* These reciprocal lies had a profound effect: the first everywhere outside the UK and the second everywhere outside North America. For the ultimate aim, a global metric monopoly, could not be attained without conversion of the USA, which presupposed imposition on the UK. So much for the imperative cause of compulsory metrication – entirely irrelevant to the market-place and consumers’ interests.

But there was a second cause, in extreme contrast to the first -- not international but domestic, not daily news but undetected -- yet equally compelling. This was the supermarket revolution, which, after early rumblings in the 1950-60’s, exploded once prices and measures for food and household goods were metricated. When Edward Heath’s ministers insisted in 1971 that business leaders were clamouring for metrication, they had the powerful supermarket lobby chiefly in mind. Why? Because for customers to judge value they must compare price with quality, which requires that quantities are fixed; as was always the case with imperial measures, when everything sold in a jar or can contained one pound and in a bottle 1 or ½ pint; but when 1 pound was relabelled 454g, which of course is not a metric standard unit, then it quickly shrank to 450/425/or whatever – so that several brands of baked beans, looking similar, might vary substantially in contents; likewise the 568ml pint. The whole purpose was to deprive the public of the protection previously afforded by stable imperial measures and thereby prevent us from judging value. This flexibility in product sizes unrelated to unit prices presented the burgeoning supermarket sector with a goldmine which it has been quarrying ever since.

Would we still, but for this second reason, have submitted to compulsory metrication? Eventually, no doubt, so long as the UK remained inside the EU, because of the power of global forces and the growing ‘politically correct’ anti-Americanism in British society. However, it is doubtful whether, but for that first reason, we would have suffered the plague of supermarkets which has wrought such havoc on our urban landscape and social environment. If only we could have avoided the one, we might well have been spared the other – but instead we had the worst of both worlds.

## House of Lords Appeal Committee Hearing, July 15th 2002

On 18 February 2002, Lord Justice Laws ruled that the European Communities Act 1972 was protected from implied repeal, thus upholding the convictions of Steven Thoburn and other traders who sold goods in imperial units.

Lord Justice Laws did, however, certify a question of "general public importance" that could be appealed to the House of Lords: "*Whether the European Communities Act 1972, or any part thereof (and if so which part) is capable of being impliedly repealed?*"

This leave to appeal was refused in a one-hour hearing by the House of Lords Appeal Committee. Here is a contemporaneous note of that hearing.

Proceedings commenced at 11am in Committee Room 1 in the House of Lords. Present were Neil Herron for the convicted traders and about twenty members of the public and law students. BWMA was represented by John Gardner and Derek Norman. BWMA's friend Alistair McConnachie was also present.

The three law lords were Lord Bingham of Cornhill, Lord Steyn and Lord Scott of Foscote.

Mr Shrimpton, representing Sunderland green-grocer Steven Thoburn and other traders, said that the means by which the Divisional Court had ruled that there was no conflict between the European Communities Act 1972 and the Weights and Measures Act 1985 was that there was a "hierarchy of laws". So, even though the Divisional Court found that the 1985 Weights and Measures permitted the pound and the yard, it resolved the conflict by saying that the 1972 Act was a constitutional act and therefore overruled the later 1985 act.

One of the law lords said that the 1972 Act gave powers to the executive wide enough to allow the amendment of subsequent acts. Mr Shrimpton replied that Henry VIII powers could not be projected into the future. One of the other law lords asked: could not Parliament refer to the 1972 Act when legislating for later acts, thus allowing them to overrule earlier acts? Mr Shrimpton said that no such formula was needed for Parliament to repeal earlier acts; implied or express repeal are the same thing in this respect.

Mr Shrimpton said that the Divisional Court's reconciliation of the two Acts was based on projecting the power of the 1972 Act into the future. Mr Shrimpton acknowledged that the

1972 Act referred to acts "passed or to be passed" but said this did not matter: "Parliament cannot do it" - when considering law, the courts had to look to the later Act. If the later Act is clear, it must take precedence, because Parliament cannot bind its successors. It was impossible, Mr Shrimpton said, for a minister using Henry VIII powers to repeal a later statute.

Mr Shrimpton was asked: did not the 1985 Act contain provision to remove units of measurement? Mr Shrimpton replied (slightly exasperatedly) that it did not contain a provision to remove the whole imperial system; this was why the minister used the 1972 Act.

The law lords asked whether Mr Shrimpton accepted that the *Factortame* case<sup>1</sup> limited the power of the Queen in Parliament. Mr Shrimpton said that it did, since the Merchant Shipping Act 1988 should have overridden the 1972 Act; however, Mr Shrimpton pointed out that implied repeal was not argued by the government. Mr Shrimpton accepted that, on the face of it, the 1972 Act sought to bind future Parliaments. One of the law lords asked what he meant by "on the face of it". Mr Shrimpton said that, while the 1972 purported to bind future Parliaments, no Parliament could bind its successors, since Parliament's power existed in the present. Mr Shrimpton was asked whether any other constitutional lawyer questioned *Factortame*. Mr Shrimpton said none, aside from the present counsel. Mr Shrimpton said there was a tendency to accept the decision on face value, without considering how it was reached, and that the obvious defence, implied repeal, was not argued.

The law lords expressed puzzlement over a point; in order to implement EC directives, the government could either use a regulation under

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<sup>1</sup> *R (Factortame Ltd) v Secretary of State for Transport* was a case brought against the UK government by a Spanish fishing company which claimed the Merchant Shipping Act 1988 breached EU law by requiring ships registered in the UK to be at least 75% British owned. British courts ruled in favour of the fishermen, making the *Factortame* case the time an Act of Parliament was dis-applied when found to be contrary to EU law. A defence open to the UK government, yet not argued, was that the Merchant Shipping Act 1988 impliedly repealed the European Communities Act 1972, since it was the later Act. Since implied repeal was not argued, *Factortame* was not binding authority on the *Metric Martyrs* case, leaving Shrimpton free to argue the implied repeal point when defending Steven Thoburn.

the 1972 Act, or a new Act of Parliament. Mr Shrimpton was asked if he was aware of the criteria? Mr Shrimpton replied that either one of the two routes could be chosen on a case-by-case basis. He said he thought it possible that the 1972 Act was used in the case of metric conversion for political reasons, such as the possibility that the government might not get the legislation through Parliament. Whatever the reasons, the minister used the Henry VIII power to produce a wrecking amendment.

Mr Shrimpton said the case of *Factortame* was not relevant because it did not address the constitutional point. The metric martyr case was of enormous public importance; to rule that Henry VIII powers could repeal a later act would generate a constitutional crisis. For these reasons, he said, the issues could not be argued in half an hour before the Appeal Committee.

Eleanor Sharpston QC, acting for Sunderland City Council, said there was no inconsistency between the two Acts in 1985 when the Weights and Measures Act was passed. This was because the 1972 Act was not due to take effect until 2000. There was a future conflict, she said, but not an internal conflict in 1985. She said: "If there is no inconsistency, there is no right to leave of appeal". She added, "It is a case of interest to academics and constitutional lawyers but not Your Honours' house". Ms Sharpston further argued that since the 1985 Act was a consolidation act, it did not presume to change the law.

There was also no inconsistency, she said, between the general power of amendment in section 2(2) of the European Communities Act 1972 and the later provision for the use of certain weights and measures in section 1(1) of the 1985 Act. Ms Sharpston said Parliament could delegate the power to amend primary legislation and did so successfully in this case.

Ms Sharpston was asked why the government passed the metric regulations in the way that it did. Ms Sharpston said she had been asked the same question by Lord Justice Laws, and could not answer; she was counsel for Sunderland City Council, not the government. She said that European Court judgements made it clear that any question as to the meaning or effect of EC directives should be treated as a matter of law. Ms Sharpston said that statutes such as the 1972

European Communities Act and the 1988 Human rights Act were vehicles to bring in obligations arising from international treaties. It strained the rule of implied repeal, she said, for a consolidation act to repeal a vehicle.

Mr Shrimpton made a reply lasting around five or ten minutes. He said there was very clearly a conflict between the two Acts: if asked for advice, he would say that Mr Thoburn could sell in pounds and ounces, while Ms Sharpston would say Mr Thoburn could not. Mr Shrimpton asked: "The 1985 Act says you can sell a pound of bananas and the 1972 Act says you cannot. How can there be no inconsistency?" Mr Shrimpton said that the "hierarchy of acts" was not in any of the prosecution submissions. Mr Shrimpton said that, when he had said in the Divisional Court that there was no hierarchy of acts, Lord Justice Laws had replied, "We are not in the first year of law school". Mr Shrimpton said that Lord Justice Laws' ruling was, nevertheless, based on this concept. One of the Law Lords remarked to Mr Shrimpton that perhaps they were in the third year of law school.

Mr Shrimpton said that, if Lord Justice Laws' ruling was upheld, it would mean that a Court would be free to depart from the words of an Act of Parliament. This would be a revolutionary decision with awesome consequences. There would effectively be a new constitution for Britain, yet there had been no revolution, no war, no defeat, no occupation. Mr Shrimpton noted that Lord Justice Laws had said he (Shrimpton) had argued the case with passion; Mr Shrimpton said he accepted that criticism. Mr Shrimpton said that the New Zealand Court, whose legal system is closest to Britain, had ruled that Human Rights legislation was not protected from implied repeal. All other European Union countries had implied repeal. Mr Shrimpton asked that leave be granted so that the arguments could be fully argued.

The law lords retired to a separate room and returned about fifteen minutes later at 12.15pm. In a statement lasting less than a minute, they said that leave to appeal was refused. No reason was offered, except an indication that they did not consider that the appeal would "give rise to points capable of reasonable argument". There were murmurs of "shame" and "disgrace" from members of the public as the law lords left the committee room.

## BWMA analysis: Lord Justice Laws and “inconsistency”

During the July 2002 House of Lords Appeal Committee hearing, Eleanor Sharpston relied upon the suggestion by Lord Justice Laws that there was *no inconsistency* between the European Communities Act 1972 and the Weights and Measures Act 1985; thus, there was no implied repeal of the former’s metrication requirements. This assertion requires close examination.

Section 2(2) of the European Communities Act 1972 reads as follows:

Subject to Schedule 2 to this Act, at any time after its passing Her Majesty may by Order in Council, and any designated Minister or department may by regulations, make provision -

- (a) for the purpose of implementing any Community obligation of the United Kingdom, or enabling any such obligation to be implemented, or of enabling any rights enjoyed or to be enjoyed by the United Kingdom under or by virtue of the Treaties to be exercised; or
- (b) for the purpose of dealing with matters arising out of or related to any such obligation or rights or the coming into force, or the operation from time to time, of subsection (1) above;

and in the exercise of any statutory power or duty, including any power to give directions or to legislate by means of orders, rules, regulations or other subordinate instrument, the person entrusted with the power or duty may have regard to the objects of the Communities and to any such obligation or rights as aforesaid ...

Section 4 of the European Communities Act 1972 refers to laws “passed or *to be passed*”:

The provision that may be made under subsection (2) above includes, subject to Schedule 2 to this Act, any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this part of this Act, shall be construed and have effect subject to the foregoing provisions of this section; but, except as may be provided by any Act passed after this Act, Schedule 2 shall have effect in connection with the powers conferred by this and the following sections of this Act to make Orders in Council and regulations.

In plain English, the above passages were designed to enable ministers to implement EC Directives by way of statutory instruments, and so amend not only Acts existing prior to 1972, but future Acts. Michael Shrimpton’s argument was that these provisions could not change a later Act where inconsistency existed since, under British

constitutional law, later Acts take precedence in the event of a conflict.

In his online discussion (see the following pages), Shrimpton says of the rulings: “*The House of Lords seized, with utter intellectual dishonesty, on one passage which said there was no inconsistency*”; and that Lord Justice Laws was: “... *inconsistent in his approach to the issue of inconsistency!*”

The inconsistency of Lord Justice Laws - in his approach to inconsistency - is illustrated by the following two paragraphs from his February 2002 judgement; in one he says:

(25) “It is plain in my judgment that the subsection assumes, and therefore confirms, the continuing legality of the use of the yard and the pound alongside that of the metre and kilogram, without predominance of either system. Accordingly the regime of weights and measures under the 1985 Act would by force of the Metrication Directive as amended in 1989 be **inconsistent** with the European scheme, in relation to goods sold loose in bulk, as after 31 December 1999”.

Thus, Lord Justice Laws is acknowledging that the metrication requirements of the European Directive are inconsistent with the the imperial provisions of the Weights and Measures Act 1985. In paragraph 48, however, Lord Justice Laws says:

(48) “I have reached the conclusion that Mr Shrimpton’s submission on implied repeal fails on the short ground that there is **no inconsistency** between s.1 of the 1985 Act and ECA s2(2). Generally, there is no inconsistency between a provision conferring a Henry VIII power to amend future legislation, and the terms of any such future legislation”.

Here, Lord Justice Laws is saying that there is no inconsistency, because section 2(2) of the European Communities Act can be used to change the later Act.

The flaw in Lord Justice Laws’ logic is that inconsistency must exist if section 2(2) is to be *invoked* to remove the conflicting provisions of the later Act.

To then argue, as Lord Justice Laws does, that there is no inconsistency, because the inconsistency has been removed, sidesteps the point in dispute; *is it lawful for the 1972 Act to be used in this way?*

On the basis of this hokum, the question of implied repeal was denied appeal to the House of Lords.

## The Shrimpton Emails

In January and August 2006, in an online discussion group, Michael Shrimpton answered various questions on the Metric Martyrs case. Excerpts of his answers are reproduced here.

*12 January 2006:* The Weights and Measures Act 1985 saved the pound, and it required a novel constitutional doctrine, adopted without the benefit of argument, to impose in effect the will of the Heath government in 1972 on that of the Thatcher government in 1985, more than a decade after the Heath government had been defeated at the polls, and Heath himself replaced as leader of the Conservative Party. Government policy, reflected in the Act, was to abandon moves towards metrification; indeed the very reason the consolidation process started in 1979 was the decision that year, announced by Mrs. Sally Oppenheim, to abandon metrification.

The House of Lords did not criticise this interpretation of the 1985 Act [to preserve both the imperial and metric systems]; indeed, as I recall there was no cross-petition to the House of Lords by any of the prosecuting authorities on the very clear ruling by the Divisional Court that the 1985 Act provided for the Imperial and metric systems to operate side by side with no preference for one over the other, i.e. in effect, they accepted that we were right in our arguments on the proper construction of the Weights and Measures Act 1985, now a constitutional icon, as it the was the first time (subject to an argument on the Sex Discrimination Act 1978) that the Queen in Parliament over-ruled European Community law. The famous Merchant Shipping Act of course did not follow for another three years.

Crucially for the first time since 1972, it was acknowledged that the bitterly controversial section 2 of the ECA 1972 contained a Henry VIII power. This appears to have limited the use of section 2; indeed, I am unaware of any attempt since the Thoburn case to use the Henry VIII power in section 2 to amend primary legislation enacted after 1972. They may have tried, but if so I am not aware of it. If they did, and there were another court challenge, the unanimous opinion on Implied Repeal of the 1972 Act by the four Law Officers of the Crown

would no doubt be placed before the court.<sup>2</sup> That opinion, by the way, was consistent with the assurances given to the House of Commons by a Law Officer and the Lord Chancellor to the House of Lords on Implied Repeal, on the faith of which the legislation was passed.

Some of the commentators on this have really not grappled with the constitutional and democratic issues at all. An elected government implements a manifesto promise and abandons metrification, starts to consolidate the law in the light of the change in policy, and has that Act overturned on the basis of a Henry VIII Power, exercised without serious debate, contained in an Act, passed by a previous Administration which was thrown out, which only got through Parliament after they told Parliament that (i) what did happen was unthinkable and could never happen and (ii) the Henry VIII power could only be used to amend existing legislation and then only in a minor way.

*12 January 2006:* I should point out that we also challenged the right of the EU under public international law to violate the *jus cogens*, that is to say we took a fundamental point, based on the United Nations Charter, the 1969 Vienna Convention on the Law of Treaties and the 1970 declaration of Principles on International Law, that the treaty provisions on which the concept of supremacy was based, somewhat shakily it has to be said, were themselves void for conflict with the *jus cogens* rule of normative force that a state is entitled to national sovereignty and freedom from interference in its internal affairs. Whilst a state may enter into a treaty with internal effect, if giving that treaty internal effect violates fundamental internal norms, such as the rule that Parliament may not bind its successors, the treaty provision is void. The Divisional Court with respect did not deal with this point, although whether that was because they saw no answer to it or not I cannot say.

*13 January 2006:* Lord Heseltine could only get at the pound by using the 1972 Henry VIII Enabling Power, i.e. by generating a constitutional, political or an international crisis. The courts came up with what some thought a neat solution [the hierarchy of Acts], the result of which was

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<sup>2</sup> We will publish extracts of the Law Officers report, 14 June 1971, reference FCO 30/1049, in the next *Yardstick*.

no clash with the EU, no immediate clash between the Courts and Parliament, and no need for the Government to risk its majority by pushing through amending legislation, but many would argue that it's a patch, and has led to a crisis of confidence in the courts ... The fact remains that after hearing argument a court for the first time in our history declined to apply the express words of an Act of Parliament, and preferred an earlier enactment which did not bind the later Parliament.

6 August 2006: We succeeded on the following seven major points:

- (i) we were correct in our argument that the Weights and Measures Act 1985 authorised the use of Imperial measurements throughout the United Kingdom;
- (ii) we were correct that implied repeal had not been argued before the House of Lords in *Factortame Nos 1-5*;
- (iii) we were correct in arguing that the *Factortame* decisions were not binding authority and had no status as precedent as the critical point had not been argued;
- (iv) we were correct in asserting that the supremacy of community of law could not apply in the United Kingdom and that the application of community law depended upon the construction of domestic statutes, i.e. the ECA 1972;
- (v) we were correct in arguing that that the ECA 1972 could be amended or repealed by Parliament without reference to the EU;
- (vi) our argument that the key Court of Appeal authority, *Ellen Estates*, had been upheld by the House of Lords in *IRC v Colco Dealings Ltd* was not disputed before the Divisional Court, nor was our assertion that my argument was essentially identical to that of the Attorney-General before the House of Lords in the *Colco* case seriously challenged;
- (vii) the Court agreed that a later statute could impliedly repeal an earlier even though it incorporated an international treaty.

We *lost* on implied versus express repeal, but only on the basis of decisions which were not referred to in argument and on which we had no opportunity to address the court - decisions which I say were irrelevant.

9 August 2006: John [Lord Justice] Laws was inconsistent in his approach to the issue of inconsistency! This was maddening, because he accepted our argument that the 1985 Act permitted the use of pounds, whereas the 1972 Act made it a criminal offence. By the way, we also won another big defence point - that the orders which depended on the 1985 Act collapsed with the 1972 orders, which were clearly *ultra vires*.

The House of Lords seized, with utter intellectual dishonesty, on one passage which said there was no inconsistency - but that absurd finding (how on earth can two statutes be consistent when the very thing expressly authorised by one statute is outlawed by the other?) missed the obvious point that Laws only reconciled the two by finding that the latter could be governed by the earlier - a constitutional abortion without precedent.

Basically what Laws was saying that under the novel constitutional theory he had invented [the hierarchy of Acts], which was wholly contrary to established precedent, the 1972 Act could be reconciled to later Acts by mere use of a prospective Henry VIII power, i.e. since the 1972 Act could be used to control later legislation and remove any inconsistency, no later Act could be said to be inconsistent with it. This involved the absurd and dangerous notion that Parliament could bind its successors.

The Henry VIII power was of course only obtained because, apart from Enoch Powell and a couple of others, nobody in the House of Commons or Lords understood constitutional or statute law and had the wool easily pulled over their eyes in 1972 - it was so easy for the Law Officers to get away with it, it was ridiculous, and the reputation of Parliament has deservedly suffered.

The House of Lords [in the July 2002 hearing] had in front of them, but chose to ignore, the unanimous 1971 opinion of all four Law Officers of the Crown, released into the public domain during the case [under the 30-year rule], arguing the same point I was.

Of course, the Law Officers knew that the judges would not uphold the constitution of this country, and in due course, although everybody hoped there would never be an Act inconsistent with community law, the judges, unconstitutionally, refused to obey an Act of

Parliament in the Factortame case, "setting it aside". Of course, the judges are not a court of appeal from Parliament, and what the judges did was no less unconstitutional than the Divine Right of Kings.

The judges [in Factortame] were lucky that once again Parliament was both technically illiterate and supine - Parliament barely understood what was being done [that an Act of Parliament was giving way to the earlier 1972 Act] and, to the extent it did understand, acquiesced in this extraordinary affront. Brussels has been very fortunate in the quality of puppet judges and politicians it has found in this country ...

We overturned the basis for the Morgan judgment [Steven Thoburn's first trial in Sunderland], which was surrender of sovereignty. Morgan basically equated the passage of the ECA 1972 with military defeat and surrender - essentially, he was [putting Britain on the same footing] as Germany in 1945, and putting the European Commission [in a role equivalent to] the Allied Control Commission [which extended Allied control over Germany]. Miss Sharpston did not put it as baldly as that of course, but lost her argument that community law was supreme; since it depends on Parliament, it can't be.

The case was exhausting, partly because so many bad points were taken by Sunderland Council. Eleanor Sharpston and I agreed at the outset that we should concentrate on the point of principle - supremacy of community law versus supremacy of Parliament. Sunderland however insisted on fighting every point, no matter how absurd - thus they argued, apparently in all seriousness, that the 1985 Act did not authorise the use of Imperial measurements at all!

The consolidation point was another bad one. The greatest of all test cases on implied repeal was based on a consolidation statute, but I could never get either Bruce Morgan or John Laws to acknowledge the point. It doesn't make a difference - either an Act says something or it didn't ...

The lessons of Metric Martyrs are clear - we cannot trust the judges ... No democracy must ever again sign an international treaty with self-executing provisions. The Metric Martyr and Factortame cases demonstrate that self-executing treaties are incompatible with democratic government.

*17 August 2006 (in response to a question whether the trial was fixed):*

If any pressure was applied, it was applied after the end of argument - i.e. we did rather better than some people hoped.

The hearing was very carefully monitored, I suspect electronically. I have reason to believe privileged communications were compromised.

It may even be that the hierarchy argument wasn't the Court's at all but was suggested, possibly by Bingham, who appeared to have been chosen carefully and should have recused himself.

Obviously in the events which happened I have lost confidence in the integrity of our senior judiciary. After we leave the EU there should be a public inquiry into the Metric Martyr and Factortame cases, with the judges forced to give evidence under oath and their MI5 files made available for public inspection. Obviously the surviving Martyrs should be granted Royal Pardons, or have their convictions over-turned in the Act which pulls us out. There will need to be a schedule of improper convictions in the act which repeals the ECA 1972.

Best wishes, Michael

*Vivian Linacre notes:* During the passage of the European Communities Bill in 1972, absolute assurances were given in Parliament that Britain remained sovereign; for example:

Geoffrey Rippon, co-signatory of the Act that took the UK into the EEC, declared (15 February 1972), "The House as a whole may therefore be reassured that there is no question of this Bill making a thousand years of British law subservient to the Code Napoleon"; the Lord Chancellor Lord Hailsham stated during the debates on the Bill (25 July 1972), "There is nothing in this Bill, I believe, which derogates from British pride, from British traditions, from British honour or ... from British sovereignty ..."; Lord Hailsham further (7 August 1972) quoted a dictum of Professor Sir William Wade QC, "If no statute can establish the rule that the courts obey Acts of Parliament, similarly no statute can alter or abolish that rule"; and again (12 September 1972), "it is not possible to derogate from the sovereignty of Parliament"; and yet again (12 September 1972), "Instead of a written Constitution we have the sovereignty of Parliament. That is our safeguard".

## Sainsbury's Supermarkets Ltd

*Terence Jones received the following from Sainsbury's Customer Services on 11 September 2016. Note how it has been "nearly three decades" since metrication of packaged goods (which came in on 1 October 1995):*

The legal requirement for products is to apply metric labelling for the weight or volume and we are also required to unit price most items by reference to metric quantities. We switched over to metric labelling in the 1990s and after nearly three decades our customers are now very familiar with metric weights and measures.

Whilst it is legally permissible to apply imperial units, there is a vast amount of information that is currently required to be applied to a label, much of which is legislative (as defined in part by the recently issued Food Information Regulations 2014). Consequently, we believe that adding further information such as imperial weights and measures would make the label more difficult for most customers to read and we do not presently have any plans to introduce such labelling.

I appreciate this may be somewhat disappointing to you but I hope that I have been able to give you an adequate explanation of our reasons for keeping within the current legislative requirements for metric labelling.

Ruth O'Hanlon, Sainsbury's Careline

## In the Commons, 21 October 2016 (during a debate on the Sexual Offences (Pardons) Bill)

*David Davis (Secretary of State for Exiting the European Union):* ... My hon. Friend Craig Whittaker made a very fair point, which people ought to consider. In the past, many other offences have been committed which I would term victimless crimes.

*Stewart Hosie SNP Deputy Leader:* Such as?

*David Davis:* The metric martyrs are a prime example. Steve Thoburn sadly died with a criminal conviction for selling produce in imperial measures. That, I would argue, was a victimless crime. The customers were perfectly happy to buy the produce and Steve Thoburn was happy to sell it. There was no victim, but he died with a criminal conviction. He still has a criminal conviction. He has not been posthumously pardoned.

*John Nicolson Shadow SNP Spokesperson (Culture, Media and Sport):* I am sorry, but I am struggling to make the connection with the metric martyrs, whom I do not recall being chemically castrated, arrested or tortured. Perhaps the hon. Gentleman will remind me of that detail, which I have forgotten.

*David Davis:* I was not aware that the hon. Gentleman's Bill applied only to people who had been chemically castrated and tortured. Is he now saying that that is the case? The point that he is making is a complete nonsense, and he must know that. I was responding to an intervention from Stewart Hosie, who asked whether there were any examples of victimless crimes committed by people who had a criminal record and had not been pardoned, and I gave him a perfectly good example. Moreover, he was nodding in agreement when I gave him that example ... My point is this. I think that the Bill would have been easier to justify if it had included all past offences and all past convictions for crimes which are no longer crimes, and which were victimless. That would have been a perfectly logical thing to do. I think it is very difficult to pick out only certain crimes to justify the Bill, rather than including all convictions for offences of that kind.

## Decimal Watch: "4-year-old 'acting like a slobbering drunk' after pharmacy dispenses wrong dose of antipsychotic drug", Saskatoon, Canada, CBC News, 17 October 2016

The mother of a four-year-old boy is left with a lot of questions after a Shoppers Drug Mart pharmacy messed up her son's prescription, giving the boy 10 times the correct dose of an antipsychotic drug over a period of several months ... The boy's doctor faxed a prescription to the Westgate Plaza Shoppers Drug Mart in Saskatoon. The prescription was for a 0.3 ml dose of the liquid form of a drug called Risperidone, often used to treat mental or emotional disorders. Instead, the pharmacy dispensed three millilitres to the boy: 10 times what was prescribed. The overdose went unchecked and undetected for months with each refill. "The first time we gave Adam the dosage, about 30 minutes after, he was acting like a slobbering drunk. He couldn't stand up, he was drooling, he couldn't walk on his own. We had to carry him," Jackson-Buller said. Jackson-Buller consulted her doctor, who told her the issues could be a side effect from the medication and would wear off. Another doctor at a clinic thought Adam had a virus. But weeks passed and Adam's condition got worse.

The error was finally discovered by accident four months later when Jackson-Buller again called one of Adam's doctors to say the side effects had not gone away and Adam was still feeling sick. "She said, 'Let's up the dose, how much is Adam receiving?' I pulled out the Risperidone bottle and said he's receiving 3 millilitres. She said to me, 'No, no that's too much, he should not be receiving that amount, it's too high for a child his age' ..."

## Betterware better

*The Betterware catalogue has reinstated imperial units alongside metric, in brackets; José O'Ware, who had been pursuing the company, wrote to them on 31 May 2016:* A company that listens and responds to suggestions from customers, well done and thank you. I enclose a copy of a [previous] letter I sent to Betterware requesting you consider adding the imperial sizes to the all metric measurements shown in your catalogue. I have received my first catalogue at my new address and was delighted to see you now show the imperial conversions of the metric sizes throughout the catalogue. As a consequence of this, I have given your agent an order for just over £40.

## Mike Plumbe's letter to *The Times*, 5 September 2016

Sir, Mike Cuddeford asks why "archaic" imperial appears alongside metric. The metric system is, on the face of it, simpler than imperial. In fact, once you learn how to use it, imperial is far more versatile and it has units that more nearly match everyday "objects". When making estimations, it is easier to make mistakes of magnitude in metric. In dispensing medicine, we know that errors, sometimes fatal, are made by misplacing metric decimal points. These errors cannot happen in imperial. Now we have voted for Brexit, the British Weights and Measures Association is getting inquiries from shopkeepers who want to revert to imperial. It is the system preferred by many customers.

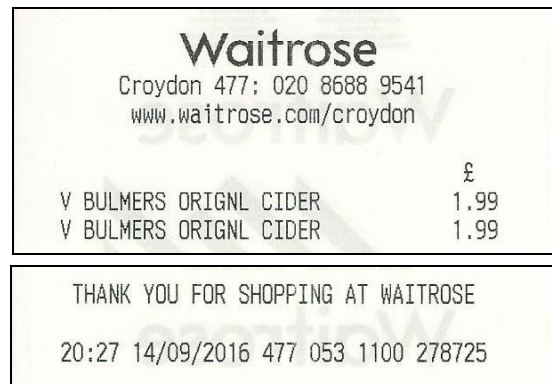
*Our friend Quentin Williamson writes:* My Volkswagen Touran can (and has been) altered to show everything in imperial units: I have 300 miles worth of petrol left, it is doing 43 mpg, the temperature today is 73°F, and the oil temperature is 196°F. My old Vauxhall Zafira only did metric.

## Metric downsizing – Bulmers Cider

In September 2016, Bulmers downsized their bottles of cider from 568ml (i.e. one pint) to 500ml. Here are the two bottles side by side; the 568 bottle is to the left:



For a brief period, both bottles were on sale together and John Gardner did a test purchase at Waitrose. Each bottle was handed to the cashier separately, so that they were scanned through the till one at a time. The 568ml bottle went first, at £1.99, and then the 500ml bottle, also at £1.99, representing a 12% price rise in real terms. Here is the receipt:



## BWMA letter to Bulmers, 28 December 2016

Our Association campaigns for the retention of imperial weights and measures, and is disappointed that HP Bulmers has replaced its 568ml bottles of cider (i.e. one pint) with 500ml bottles. This change was not reported on Bulmer’s website blog or twitter account. Please explain why the reduction to a metric-rounded size was made. In particular, why did not Bulmers pursue the alternative strategy of labelling the 568ml bottles as “one pint” (as it is entitled to do as a supplementary indication) and drawing consumers’ attention to the benefits of the larger, traditional quantity? We await your explanation with interest, and hope that Bulmers will reintroduce the 568ml/1 pint bottle.

## Reply from Bulmers, 14 February 2017

This is a relaunch of our Bulmers brand – it’s a brand new look, brand new bottle and brand new identity. The new bottle is an intrinsic part of Bulmers’ relaunch, and aligns with other ciders in the market. As with any relaunch, we conducted extensive qualitative and quantitative research with Bulmers drinkers and a wider group of cider drinkers, who showed a preference towards both the new shape and design. I hope this gives you sufficient information. Theresa Payne, Consumer Relations.



## Letter from the Office for Criminal Justice Reform, to Neil Herron, 31 July 2007

Thank you for your letter of 6 July addressed to the Prime Minister enclosing a copy of the Metric Martyrs newsletter and petition form for a Royal Pardon for those known as the “Metric Martyrs”. Your letter has been passed to me for a response. It may be helpful if I explain broadly the policy and convention relating to the Royal Prerogative of Mercy, and the particular factors which have a bearing on the granting of a Free Pardon.

It is the practice of the Lord Chancellor and Secretary of State to recommend the use of the Royal Prerogative of Mercy to grant a Free Pardon only in cases where:

- (1) It is impractical for the case to be referred to an appellate court; and
- (2) new evidence has arisen, which has not been before the courts, which demonstrates beyond any doubt that no offence was committed or that the defendant did not commit the crime.

The effect of a Free Pardon is that the conviction is disregarded to the extent that, as far as possible, the person is relieved of all penalties and other consequences of the conviction. Only the courts have the power to quash a conviction, and the criteria adopted in considering whether to make a recommendation to Her Majesty to grant a Free Pardon have proper regard to the constitutional position that the courts decide whether a person is guilty of an offence, and not the Government.

I understand that those known as the “Metric Martyrs” were convicted because they were using equipment which operated by reference to imperial units only; or because their prices were marked by reference to imperial units only. Their appeal to the High Court was dismissed and I have no reason to believe that they were not properly convicted. The recent development which seems to have prompted the current campaign for a pardon only affects “supplementary indications”, i.e. the use of imperial units on the label or the machine in addition to metric units. The relevant European Directive permits member states to allow supplementary indications until 31 December 2009. It has now been proposed that the Directive will be amended so that member states can allow supplementary indications indefinitely.

This new proposal does not appear to provide grounds on which to grant a Free Pardon to the “Metric Martyrs”. It is not evidence that they did not commit their offences. The offences in question remain in force, and even if they did not, this would not be grounds for a Free Pardon, as citizens are expected to comply with the law as it is at the time. This is not therefore a case in which the Lord Chancellor and Secretary of State would feel able to make a recommendation to her Majesty the Queen.

Any person who believes they have been the victim of a miscarriage of justice can apply to the Criminal Cases Review Commission (CCRC) for a review of their case. The CCRC has the power to review possible miscarriages of justice in England, Wales and Northern Ireland, to gain access to documents and other material which may be relevant to its investigations, and to refer to the appropriate court any case in which there is a real possibility that the conviction will not be upheld. Unless, however, there are exceptional circumstances, the CCRC is not empowered to refer cases until the court appeal system has been exhausted. Their address is Alpha Tower, Suffolk Street, Queensway, Birmingham B1 1TT.

Paul Jackson, Head of the Miscarriages of Justice Team, Better Trials Unit

*Criminal Justice System, working together for the public*

*BWMA gratefully records the Patronage of the late The Hon. Mrs Gwyneth Dunwoody, MP, Lord Shore, Vice-Admiral Sir Louis Le Bailly, KBE, CB, Lord Monson and Sir Patrick Moore, CBE*

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