

The Yardstick

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Election

Just after the dispatch of the April *Yardstick*, which requested that readers write to their Members of Parliament, the Prime Minister called the general election, thus dissolving Parliament. Only two readers received replies from MPs before this occurred, and a third had a reply while their former MP was an election candidate. These replies are reproduced inside (the three MPs were returned).

Brexit

The government triggered Article 50 on 29 March 2017, and published its white paper on the European Union (Withdrawal) Bill (formerly the "Great Repeal Bill") the day after. One of the purposes of the Bill is to preserve all laws that were made in the UK to implement EU obligations, so that domestic law "functions properly after exit". This includes the metric regulations. The white paper states that, after Brexit, Parliament can "amend, repeal and improve any piece of law".

Pint cans

In the past month, pint cans have been seen on sale for the following: Foster's lager, Strongbow cider, Carling lager, Coors Light Beer, Carlsberg beer, Stella Artois lager, and Magners cider. Evidently a summer initiative. Only Magners did not bear the word pint.

Honorary Member

We are delighted to welcome award-winning American novelist and essayist Micah Nathan as a new Honorary Member. Micah's novels are translated into five languages, and include bestselling *Gods of Aberdeen* and *Losing Graceland*. Micah's essays have received an Associated Press Award, and his non-fiction appears frequently in *Vanity Fair*.

New address

BWMA has a new address: 29 Chart House Road, Ash Vale, Surrey GU12 5LS. This replaces the Croydon address. Apologies to any members who have had a slow reply during the past couple of months. Any mail sent to Croydon will be forwarded to the new address until the end of September.

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. Cheques or postal orders payable to "BWMA", 29 Chart House Road, Ash Vale, Surrey GU12 5LS.

Railways – mile, chain and yard

Yardstick 59 reported Research Brief T1013, “*Analysing the risk of having a mix of imperial and metric measures on the railway*”, produced by the Rail Safety and Standards Board (RSSB) in December 2014. However, in June 2015, the RSSB website stated that, “... 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 ... the project should be closed”. Following an absence of replies from RSSB,* we wrote to the Department for Transport:

BWMA letter to Department for Transport, 6 February 2017

In 2013, Network Rail announced that it intended to remove miles, chains and yards from the railway system, and use instead metric units. It was explained that this was part of the implementation of the “European Rail Traffic Management System (ERTMS)”.

In 2014, the Rail Safety and Standards Board conducted the initial part of a study assessing the safety risks arising from metrication. However, the RSSB’s assessment was not concluded; according to its website in mid-2015, “... 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”.

Please can the Department for Transport help with the following information:

- Are British railways proceeding with ERTMS?
- If British railways *are* proceeding with ERTMS, is the intention still to replace imperial units with metric units?
- If British railways are *not* proceeding with ERTMS, can the DfT confirm whether miles, chains and yards are to continue being used on the railways?

Reply from the Department for Transport, 27 March 2017

Thank you for your letter of 6 February 2017 ... To answer your questions, targeted deployments of the European Railway Traffic Management System (ERTMS) on the UK rail network are being considered on a case-by-case basis. ERTMS operates on metric units, however, in this country we have a special exemption which allows us to display imperial or metric units on the in-cab display that the driver sees.

Niall Le Mage, ERTMS Programme Manager, Rail Digital Services

The above reply was not entirely useful, so we wrote in similar terms to the Office of Rail and Road on 2 May 2017; they replied on 5 May:

We have contacted the relevant teams at ORR regarding your enquiry. Please see below the information and advice they have provided.

1. Are British Railways proceeding with ERTMS?

It is still the intent to proceed with ERTMS; however the plans previously published that showed the entire network to be fitted are now no longer policy. The current situation is that ERTMS is being brought into use on the central section of Thameslink (St. Pancras to London Bridge) and on parts of the Crossrail route (Paddington to Heathrow). In addition a DfT review is taking place for other potential locations for ERTMS within the next 5 years. Clearly with the election taking place at the moment, we do not know how long it will be before decisions will be announced. The Cambrian route is already operating with ERTMS.

Network Rail is currently in the process of installing ERTMS signalling systems, ERTMS systems have the metric system built into them. Other measurement systems used by the railway e.g. GPS based systems used by track maintenance staff and track measurement trains are also designed with the metric system built in, these then have an imperial measurement system overlaid. Finding your exact location on a railway can be difficult. This is particularly important for the passing of emergency messages between train/track staff and signallers, but also for the accurate location of faults.

2. If British railways are proceeding with ERTMS, is the intention still to replace imperial units with metric units?

ERTMS fundamentally uses metric units within the system (metres and kph). It is still industry policy to display to the driver metric units on future deployments of any size; however Crossrail and Thameslink projects have both identified that for their current short sections of planned ERTMS they will provide imperial units displayed.

3. If British railways are not proceeding with ERTMS, can the Office of Rail and Road confirm whether miles, chains and yards are to continue being used on the railways?

It is unlikely that a change to metric units will occur without ERTMS introduction. Potentially this could result in ERTMS operated areas using metric displayed units and conventionally operated areas using imperial displayed units. It is also worth noting that this issue really relates to displayed information (lineside posts and cab displays). Technical drawings and design work tends now to be all done in metric units and has been so for many years. ORR’s concern from a safety point of view is that there is consistent system of measurement used on the railway we do not dictate what the measurement system should be. This is a piece of work that RSSB has been looking at on behalf of the industry as a result of the introduction of ERTMS. Overhead Line Electrification structures are already in metric.

** BWMA remains concerned at the lack of communication by RSSB and their failure to complete their safety research; we will follow up.*

BWMA forces Council U-Turn

From the *Daily Post*, 30 June 2017:

Council chiefs in Flintshire have done a sharp u-turn over plans to scrap imperial units at bridge under which European lorry drivers regularly get stuck. Signs at the Penyffordd bridge had been in both metric and imperial units, but they didn't match up. So European lorry drivers who looked at the metric measurements - which said it has a clearance of 4.1m - thought they could fit under it. But several got stuck, and one Polish HGV driver was even fined over getting his wagon wedged there.

The council had said it was going to get rid of the old imperial signs altogether, and instead have corrected metric-only ones. But concerns were raised by the British Weights and Measures Association that the change would be illegal ... Warwick Cairns, spokesman for the campaign group, said: "They probably think it's the 21st century and everyone is using metric, but they're wrong to use it. Existing imperial-only signs are allowed, but metric must be alongside imperial on new signs. The council have probably misinterpreted the move to metric to mean metric-only. You can have metric as a secondary measurement, but imperial has to be there."

When the *Daily Post* pointed out the Association's concerns, the council revised its position. Steve Jones, Chief Officer Streetscene and Transportation said: "The council has surveyed all of the low bridge signs in the County and will be replacing the dual imperial/metric information with metric only and imperial only signs located side by side. The work will be completed during scheduled maintenance works over the summer period."

The Ephemera Society

Ray Tye received the following letter from the Ephemera Society, dated 6 March 2017: Many thanks for your letter ... As editor of *The Ephemera* I am always delighted to hear that members enjoy the journal. On the subject of imperial vs. metric measurements I am afraid that, while I understand your frustration at the use of a system that is not familiar to you, I will be sticking with metric! Giving both makes captions overly complicated, especially when fractions of an inch are required, and metric measurements are standard in the world of art and design history - even in the United States. However, where a standard imperial size is used, e.g. double crown, I shall endeavour to include this in either the main text or the caption.

Dr Rob Banham BA, PhD

Our colleague Alan Williams writes: For many years, I have blocked out the metric measures on my shopping list with a black marker. I keep asking myself, just who are these people who keep on telling me how I should do things. No one asked me about it, and I didn't vote for it.

Replies from Members of Parliament

From Nigel Mills MP (Con) Amber Valley, 27 April 2017 (to Ivor Johns)

I certainly appreciate your concern about what measurements are used. Having a single consistent set of units of measurement for trade reduces costs for business and enables consumers to make price and quantity comparisons more easily. Metric units of measurements were adopted as the primary system of measurement by the public sector and for the majority of trade used in 1995. Failures to adopt the metric system would have had a negative effect on our international competitiveness. The UK is now substantially metric, with the vast majority of trade taking place in metric units. However, imperial units can continue to be used alongside metric in dual labelling for as long as businesses or the public find them useful. Whether to use imperial units alongside metric ones is a decision for the public sector organisation or business concerned. Imperial units are in the curriculum; however, both the mathematics and science curriculum will continue to teach metric measures as standard. Thank you again, etc.

From Karen Buck MP (Lab) Westminster North, 18 May 2017 (to Patricia Lovelock)

Thank you for your enquiry about the status of imperial measures after the UK has left the European Union. The requirement to sell products in recognisable and verifiable units of measure has been a responsibility that governments have taken seriously since the middle-ages. Given that Britain is and will remain a nation dependent upon international trade I do believe that it is vital that we continue to use units of measure that are recognised and wanted by our international customers. My understanding is that by now virtually every trading partner of Britain (including the Commonwealth nations) uses the Metric system. It would therefore be detrimental to business if Britain were to revert to a system of measure not understood by our trading partners. In a number of cases (pharmaceuticals and engineering spring to mind immediately) it might actually be dangerous for Britain to use measurements that are not understood by others. I also believe that the gradual adoption of metric measures over the last 50 years - leaving in place iconic and popular units such as pints and miles - has been a success and our children now only understand the metric system.

From Jeremy Quin MP (Con) Horsham, 27 April 2017 (to Dick Clay-Peters)

Thank you for your letter suggesting that the ban on the use of traditional weights and measures should be reversed when we leave the EU. I would support this view where appropriate but would not wish it to cause problems for British industry for whom exports are important. *Mr Quin supplemented his letter with a handwritten note:* I am one of the in-between generation. I measure in inches and think in miles. I estimate in stones and pounds and measure in both pounds and kilogrammes. I would not wish to make life harder for people for 'jingoistic' reasons, this would be silly. But where imperial measurements are well understood and appropriate, I would not dream of standing against them, and I appreciate their romantic allure.

The February 2002 Court Ruling

Recent *Yardsticks* have re-examined the February 2002 ruling by Lord Justice Laws which upheld the conviction of Steven Thoburn for using imperial units, on the basis that the European Communities Act 1972 (compelling metric) was protected from implied repeal by the Weights and Measures Act 1985 (allowing imperial). Yardstick 60 published Sean Gabb's *Metric Martyrs and the Constitution*; Yardstick 62 contained Vivian Linacre's *Metric Authorities at Loggerheads*; and Yardstick 63 published an account of the July 2002 House of Lords Appeal Committee and an online discussion with Michael Shrimpton from 2006.

Readers will recall that Michael Shrimpton's emails refer to confidential advice given by four Law Officers to the government in 1971 on legislation intended to give effect to Community Law (i.e. what would become the European Communities Act 1972). This 1971 note was released into the public domain in January 2002, after the Appeal to Lord Justice Laws (the hearing itself was in November 2001) but before the House of Lords Appeal Committee in July 2002.

The note revealed that the Law Officers had advised the Government in exactly the same terms that Michael Shrimpton would seek to defend Steven Thoburn thirty years later; that, in the event of a later statute conflicting with the European Communities Act, the later Act *would take precedence in accordance with the doctrine of implied repeal*. The Law Officers also advised that the 1972 Act could not be made safe from implied repeal.

In this *Yardstick*, we reproduce seven pages of the Law Officers' eleven-page 1971 note, underlining salient parts. By way of further introduction, we reproduce this 2009 article by Michael Shrimpton from *New Law Journal*.

“For Good Measure” by Michael Shrimpton, *New Law Journal*, 20 February 2009

Steve Thoburn was the original metric martyr, after being caught and charged for using imperial scales by an undercover trading standards officer. *Thoburn v Sunderland City Council* [2003] QB 151, [2002] All ER (D) 223 arose because the desire to force metrication clashed with the Thatcher government's desire to resist it, which in turn led to the consolidation of weights and measures law. Delays in implementing the Metrication Directive postponed the clash until after 2000 - trading standards backing down when larger retailers defied the law before then. Postponement meant that the first clash between community law and a post-1972 Act of Parliament was over the Merchant Shipping Act 1988 (MSA 1988). A shell company, Factortame Ltd, challenged MSA 1988, and the House of Lords purported to set it aside, making, in my view, with respect, seven main errors:

i) The law lords assumed, without looking at the record, that Parliament had agreed that community law would be supreme, but the European Communities Act 1972 (ECA 1972) was only enacted on the strength of assurances

from the solicitor-general and lord chancellor that Parliament would be free to enact legislation in conflict with community law;¹

ii) they failed to appreciate that the UK is a dualist jurisdiction, where an international treaty does not affect municipal law;

iii) they failed to apply the rule, reflected in Art 46(1) of the Vienna Convention, whereby state parties may be taken to know manifest principles of the constitutions of other parties;

iv) they applied the wrong treaty, i.e. the Treaty of Rome, to which the UK was not a party, instead of the Brussels Treaty - important, since the later treaty over-rode the earlier;

v) they failed to apply the doctrine of implied repeal;

vi) they appear to have assumed that the ECA 1972 was in some way entrenched; and

vii) they overlooked the over-arching *jus cogens* principle of self-determination.

It was correctly conceded in *Thoburn* that *Factortame* was not binding, as implied repeal was not argued. For some years it was thought that the exceptions to *stare decisis* had been stated comprehensively in *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 but the court overlooked the rule in *Warner* (1661) 1 Keb 66, previously applied by the Court of Appeal and the House of Lords. A decision on a point which is not argued is not authority.

The divisional court declined to follow *Factortame (No 2)* and held that the relationship between national and community law must be judged exclusively by reference to municipal law. The divisional court's finding on constitutional statutes [i.e. the “hierarchy of Acts”] relied on authorities not put to counsel, which raises the question of whether or not it is binding. In my opinion it is not, as the “constitutional statute” point was never argued.

Shortly after the decision was handed down, National Archives released a joint opinion by the law officers in 1971, advising what would happen should Parliament subsequently enact, as it did, legislation in breach of our treaty obligation. All four law officers agreed that the later legislation would impliedly repeal ECA 1972. *Thoburn* was appealed to the House of Lords but leave was refused. An application to Strasbourg on commercial free speech and Article 6 was declared inadmissible and at that point Steve Thoburn's heart gave out.

As its name implies and as the law officers advised, ECA 1972 is an ordinary Act of Parliament, no more and no less. As such it is subject to repeal both express and implied in the ordinary way and with great respect *Thoburn* was wrongly decided. As Parliament was repeatedly assured when it debated the European Communities Bill, and as our treaty partners must surely have been aware when they signed the Treaty of Brussels, subsequent compliance with community law was entirely voluntary on Parliament's part. The Parliament of 1972 simply could not bind the Parliament of 1985.

¹ Examples of assurances were cited by Vivian Linacre in *Yardstick 63*.

14 June 1971: "Legislation to give effect to Community Law – Confidential Note by Law Officers", FCO 30/1049²

1. We have been asked to advise upon the wording of the legislation that will be needed, if the United Kingdom joins the European Communities, in order that Community Law may be made effective within the United Kingdom.

2. Much detailed legislation will be necessary in order to bring existing United Kingdom statute law into line with the European treaties and all their consequences. The questions for our consideration are, however, more fundamental and far-reaching. For accession to the Communities will require the United Kingdom to reconcile part of what the European Court has described as "a new legal order in international law" (*Van Gend en Loos v. Nederlandse Tarifcommissie* (1963) C.M.L.R. at p.129). It will, as Judge Pescatore of that Court has put it, "require a fundamental revision of some deep-rooted habits of political and legal thinking in Great Britain" (Brussels; February 1970).

3. No doubt it is such thinking which has prompted the suggestion that the necessary United Kingdom legislation will need to contain "a generalised formula", on the form of which we are now asked to advise. We are, however, of the opinion that the search for a "generalised formula" might conceal the particular objectives that need to be achieved. There is, of course, no doubt that the framing of such legislation is of such constitutional and political importance that the Law Officers will need to be consulted at each stage of its preparation. The point is that our advice requires to be precisely focused on the several distinct issues that arise.

The problems defined:

4. The effectiveness and acceptability of the legislation requires consideration from several (potentially conflicting) points of view, as follows:

(a) Constitutional and political acceptability at Westminster;

(b) Legal and political acceptability within the Communities;

(c) Legal and practical effectiveness in the United Kingdom and European courts, in the context of particular cases as they arise.

We have little doubt that the last of these three points of view will prove to be the most important. For if the legislation can be justified, during its

passage through Parliament and in practice thereafter, in the context of particular cases, then it is most likely to pass the test of constitutional and political acceptability.

5. In this setting the principal objectives to be achieved are as follows:

(a) Certain provisions of Community Law and certain decisions of Community institutions in accordance therewith are intended to, and do, have direct internal effect within each member-State. This direct effectiveness of Community Law will need to be secured within the United Kingdom;

(b) Directly applicable Community Law is required to "prevail" or take precedence over any "incompatible" United Kingdom law;

(c) Community Law that is to "have direct internal effect" or "prevail" in the way described is developing and being extended by the Community institutions. Such "future" unidentified Community Law will have to be as effective within, and in relation to, the United Kingdom as the Community Law which already exists;

(d) Community Law will have to be made effective in the way described, in a manner that is consistent with our constitutional doctrine that the Queen in Parliament is the only source of statute law within the United Kingdom;

(e) Clear provision will have to be made for resolving any potential conflict between Community Law and the common law of England and Wales or the common law in Scotland, as that is upheld and interpreted by the courts of the United Kingdom.

Supremacy of Community Law:

6. The most crucial question that emerges from the foregoing list of objectives is whether any way can or should be found to provide for Community Law to prevail over laws made by, or under the authority of, Parliament. Is it, in other words, possible, or even desirable or necessary, to provide directly for the "supremacy" of Community Law?

7. This problem cannot present any difficulty for the European Court. For that Court will, by definition, proceed upon the basis that Community Law is supreme. No doubt, if the European Court were to rule that any United Kingdom Statute or other aspect of our municipal Law (either presently existing or to be enacted in the future) were inconsistent with the Treaties, then steps would have to be taken to bring United Kingdom law into line. This problem is unlikely to arise at an early stage, for the initial legislation will seek to bring UK municipal law into line with the Treaties. It will thus seek to provide for the direct internal effect of Community Law. All this would have the effect of overriding municipal law

² Not to be confused with FCO 30/1048, "Sovereignty and the European Communities", 30 April 1971, reported on by Christopher Booker in the *Daily Telegraph* on 28 April 2012.

that was in force when the initial legislation came into operation and would accord with the principle *lex posterior derogat priori*.

8. The problem of supremacy would, however, arise in acute form for any United Kingdom court which was required to consider an Act of Parliament which was enacted later than the initial treaty legislation, and which contained a provision that was inconsistent with Community Law.

9. No doubt a United Kingdom court in these circumstances, applying the ordinary canons of construction relating to statutes for the implementation of treaties, would lean strongly against imputing to Parliament the intention to legislate in breach of international obligations. But once a United Kingdom court had reached the conclusion that the intention of Parliament, as set out in the later statute, was to override Community Law, as derived from the initial legislation, then the United Kingdom court would, in our opinion, give effect to the later Act.

10. The question is whether this conclusion can be avoided by the inclusion of an appropriate "formula" in the initial legislation. Two forms of formula are suggested: either that Community Law should prevail over any inconsistent municipal law or that there should be a general enactment of the Treaties and all the consequences flowing from them.

11. We are in no doubt, as a matter of strict law, that even if such a provision were to be enacted with the intention of providing for the supremacy of Community Law, the United Kingdom courts would not regard it as effective to prevent or invalidate subsequent United Kingdom legislation that was inconsistent with it. Lord Sankey (in the British Coal Corporation case (1935) A. C. 500, 520) expressed the same view about the effectiveness of the statute of Westminster, although he explained, in that context, that the possible repeal of the Statute was "a matter of theory with no relation to realities".

12. It has, however, been suggested that, although it is beyond question that the doctrines of Parliamentary sovereignty require that Parliament can expressly repeal earlier legislation purporting to be unrepealable, implied repeals can be prevented by a statute expressly rejecting such a possibility. We cannot accept this view. In our opinion the statements in *Ellen Street Estates Ltd., v. Minister of Health* (1934) 1 K.B. on this matter correctly state the doctrines of our law. Any provision of either of the kinds suggested to effect that Community Law should prevail over municipal law are therefore most unlikely to have the effect of preventing either express or implied repeals, at least in the immediately foreseeable future.

13. More for the sake of completeness than because we regard it as a possibly acceptable proposal, we take note of the suggestion that the supremacy of Community Law could be secured (notwithstanding the "difficulties" arising from the doctrine of parliamentary sovereignty) if the initial treaty legislation was "entrenched" by the imposition of some new and specially devised procedural requirements for its amendment or repeal. Although we can see some force in the (so far) academic arguments that have been advanced to suggest that such procedural entrenching is possible, it is in our opinion far from clear that the Courts would strike down as "invalid" a conflicting subsequent Act of Parliament that had not been passed in accordance with the procedural requirements.

...

The "generalised formula":

30. The view which we have just expressed about the need for securing the pervasive effect of the Treaties bring us back, in effect, to reconsider the question of whether either of the generalised formula suggested (see paragraph 10 above) is in fact required in the initial legislation.

31. It has been suggested that such a formula might be desirable for three reasons: first, in order to "import" the whole Community legal system; secondly, to lay the foundation upon which the United Kingdom courts may develop new jurisprudence under which Community Law may "prevail" over inconsistent municipal law; and thirdly in order to demonstrate to the Communities that the United Kingdom was accepting the European jurisprudence.

32. It can be argued that Parliament, in passing legislation for joining the Community, would have accepted the Treaties and their consequences (including the rule, well established in Community jurisprudence, that Community Law has supremacy). It can, on this basis, be suggested that it would be appropriate for the initial legislation to include provisions which reflect Parliament's intention to ensure this consequence.

33. We have explained our plain opinion that such a provision could, as a matter of strict law, be rendered ineffective at any time by a later Act of Parliament. Even so, it might be argued that the legislation ought to contain such a provision, which would reflect the major constitutional nature of the change that was taking place. It might further be suggested that such a provision could be justified in the same way as Dicey justified the "unrepealable" provisions of the Treaty of Union with Scotland, as amounting to a warning that the Act "cannot be changed without grave danger to the constitution of the country". The Statute of Westminster and the

Government of Ireland Act could no doubt be justified in similar terms.

34. Insofar as such a provision, in either of the forms suggested, sought in terms to confer supremacy on Community Law, we do not consider that it could be justified to Parliament. It would necessarily have to be acknowledged that it was ineffective. And it would raise in a most acute form, and to no purpose, the delicate question of surrender of sovereignty. Nor could it be justified (as could, for example, the Statute of Westminster) as representing something which commanded universal assent, and which ought, therefore, to be embodied in our "constitution". On the contrary, it would probably serve only to highlight what Lord President Cooper described (in *MacCormick v. Lord Advocate* (1953) Session Cases 396, 412) as "the conflict between academic logic and political reality".

...

41. With all these considerations in mind, we have reached the conclusion that nothing in the way of any generalised formula, is needed, or indeed desirable, from the point of view of United Kingdom on municipal law. The important consideration, in our opinion, is that the initial legislation should deal, as it would have to do, with the particular practical provisions for giving effect to the Treaties. Thus it would need, for example:

(a) To give direct internal effect to Community Law, in the way that we have described;

(b) To define the relationship between United Kingdom Courts and the European Court, for the purposes of Article 177 of the European Economic Community Treaty (which enables the European Court to give rulings on questions referred by municipal courts as to the interpretation of the Treaty or the validity or interpretation of acts of Community institutions);

(c) To incorporate the Treaties (and consequent Community legislation) in United Kingdom municipal law, in the way that we have described.

42. Consideration would also have to be given by the draftsman to the need for some interpretative provision that would strengthen the presumption against a conflict between United Kingdom and Community Law in fields where they might overlap. We can recognise that there may be several practical limits to the extent to which it may be possible to proceed in this way.

43. Indeed, it remains the case, after all our consideration of these important issues, that, as has previously been envisaged, the principal effective means of securing the "supremacy" of Community Law will be the continuing avoidance of conflict between Community Law and our own national statutes.

Conclusions:

44. In the light of the conclusions we have reached, we advise on the questions submitted to us as follows:

(1) The initial legislation should make express provision to secure the direct internal effectiveness of directly applicable Community Law;

(4) No express provision should be made to the effect that a directly applicable rule of Community Law should prevail over any conflicting United Kingdom statutory provision;

(5) and (6) No attempt should be made, by way of express provision, to secure the supremacy of Community Law;

(2) and (3) The Treaties (and consequent Community legislation) should be embodied in United Kingdom municipal law, either by being scheduled to the initial legislation or in such a way as to secure the same result.

(7) and (8) We set out in paragraphs 41 and 42 of our Opinion the kind of provision that will need to be made in order to eliminate avoidable conflict between Community and United Kingdom municipal law.

P.R. [Attorney-General Sir Peter Rawlinson QC]

N.W. [Lord Advocate Lord Wylie]

G.H. [Solicitor-General Sir Geoffrey Howe QC]

D.B. [Solicitor-General for Scotland Sir David Brand QC]

BWMA comment: during the November 2001 court appeal, Lord Justice Laws told Michael Shrimpton, sarcastically, that they were "... *not in year one of law school*"; in the July 2002 House of Lords Appeal Committee hearing, Shrimpton was told that he was not making "... *points capable of reasonable argument*". **The 1971 note vindicates Michael Shrimpton.**

Yet, in spite of its clarity, Paragraph 12 includes the ambiguous phrase, "... *at least in the immediately foreseeable future*". It is as though the law officers were anticipating which way the political winds were blowing, and that ministers and judges would later betray Britain's constitution.

It is inconceivable, in retrospect, that the House of Lords Appeal Committee in July 2002 was unaware of the 1971 note, which was declassified six months prior to the hearing; why were they not guided by it when hearing Michael Shrimpton's submissions on implied repeal?

In his comment of 9 August 2006 (see Yardstick 63), Shrimpton states, "Of course, the Law Officers [in 1971] 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".

Metrication Mania by Christopher Booker

First published in *The Spectator*, 27 June 1970³

If you were told that during the past five years, the Labour government was devising a scheme which would probably have as much direct effect on the people of this country as any social reform of the century — and, moreover, that when its consequences at last become fully appreciated, they are likely to be so unpopular as to make the furores over Concorde, Stansted and the decimal coinage pale into insignificance — moreover that the whole scheme is likely, on a reliable estimate, to cost the nation at least £5,000 million (or ten times this year's trade surplus) for very little good reason — would you believe it?

Would you be any more disposed to believe it, if you were told that furthermore the ousted Labour government was able to make a virtual *fait accompli* of this scheme, scarcely referring it to Parliament, or without the public at large being anything more than dimly aware of it?

Would you be still more disposed to believe it, if you were told that, despite all this, during the election campaign this matter was barely mentioned — and that, indeed, the Labour party was allowed by the Conservatives and Liberals to get away with the whole thing without so much as a cheep of official opposition?

One may have become accustomed to believing almost anything that happens these days, particularly when it involved the activities of Mr Wedgwood Benn — but even so, it must be confessed that the more one looks into the story of the plan to convert this country's traditional system of weights and measures to the metric system — involving, by 1975, the complete official extinction of inches, feet, yards, furlongs, miles, acres, ounces, pounds, stones, tons, pints, quarts and gallons (to name but a few) — the more does it seem one of the most curious episodes in our recent national life.

Here, after all, is a cultural change of the first magnitude, which will affect and bedevil us all in more ways than, until it happens, we can imagine. How on earth was the Labour government able to sneak this vast (and hugely expensive) scheme into a position of official acceptance, virtually without it being questioned in any way? Even the introduction of decimal coinage, the impact and psychological repercussions of which will be tiny when compared

with those of metrication (although the two are still confused in many people's minds), required, an Act of Parliament and a full parliamentary discussion. Yet, in vain does one look for any Act of Parliament introducing the change to the metric system, or even a White Paper — let alone anything approaching a full-scale Commons debate.

In fact, one of the most important and far-reaching reforms of the century was introduced to the nation by nothing more public or formal than a written reply by the President of the Board of Trade to a written question put down by a Labour backbencher, on 22 May 1965, announcing that, in its best wisdom, the Government had decided to go ahead with the idea. It is hardly surprising that, when they were questioned on the matter only a few weeks ago, some of our leading political correspondents proved to have still almost no knowledge of the metrication scheme whatever. What is the explanation for this strangely undemocratic story? After all, in the only other official statement ever made to the Commons on the subject, the day before the summer recess in 1968, Mr Wedgwood Benn stated quite clearly, and with no appearance of deliberate guile, that 'the adoption of the metric system must be gradual, through democratic procedures, based on the widest possible consultation'. What democratic procedures, one may ask, could he have possibly been referring to? Who has been consulted, if not Parliament itself? Who, if anyone, ever called for Britain to 'go metric' in the first place?

The answer to all these questions is so incredible that one hardly dares attribute it to men not only still technically in possession of their faculties, but until last week actually holding high and responsible office on our behalf. The answer, it appears, is that never seems to have struck anyone in the Labour government that the conversion of Britain to the metric system was anything other than a question of mere technical adjustment to be undertaken for purely economic reasons, and fit therefore to be made chiefly the responsibility of no one other than the Minister of Technology. The decision to undertake the whole of this vast change, which would affect our shopping our driving, our cooking, our education, our gardening, our sports, our visits to the pub, the way we look at our literature and our nursery rhymes, the whole of the way in which we relate naturally and unconsciously to the world — was taken purely because it was asked for by a pressure group representing British industry. It simply never seemed to strike ministers that there was anyone else who needed to be consulted. And since then, the whole operation has been conducted on a 'consultative' basis only in the sense that various other interest groups (such as specific industries, the retail trades and so forth) have been

³ [http://archive.spectator.co.uk/article/27th-june-1970/9/personal-columnMetrication mania](http://archive.spectator.co.uk/article/27th-june-1970/9/personal-columnMetrication%20mania)

'consulted' as to the most efficient way of putting this fait accompli into practice.

Of course, it is fair to point out that the difficulty of reconciling all this with at least a show of democratic expression evidently dawned later on the Minister of Technology and his department. They thus resorted to the curious stratagem of insisting, whenever they could, that Britain's adoption of the metric system, although supported by the full weight of the Government, was to be entirely voluntary! 'No compulsory powers will be sought', said Mr Benn in 1968. 'The Metrication Board,' says its chairman, Lord Ritchie-Calder, 'cannot compel, only guide'. 'No one,' emphasises a spokesman for the board, 'is going to be forced to go metric against his wishes.'

The speciousness of this argument it is hardly necessary to underline — by pointing out, for instance, that since last year it has already been actually illegal (by statutory order) to dispense medicines and drugs other than by metric measure, or that by 1972, all 'O' and 'A' level exams were to be metric (as already taught in all state schools), or that from 1973, all speed limits were to be in kilometres (involving a change in the law), or that 'sometime before the end of 1971' enabling legislation was to be introduced to amend a whole body of existing Acts, including those which will compel a wide range of retail goods to be sold only in metric quantities.

But perhaps the most curious of all aspects of this business comes when one looks at the arguments actually put forward for Britain going metric in the first place. The one claim made for the scheme by its supporters which was to override all others, and which may still in the strange climate of our times seem to many people indisputable, was that it would help to make British industry more efficient, help with exports, and save the country money. On this, at least, the representatives of industry back in 1965 seemed to be unanimous.

And yet today, with every month that passes, these very arguments themselves look increasingly thin. It is true that many industries are still happily committed to the change. But more and more of them seem to be expressing doubts, particularly those which help to make America, the country which has managed to land on the moon and achieve the technological leadership of the world on the old imperial system, our largest export market. The technical director of Thorn Electrical was recently quoted as saying, 'Since the Americans are not changing over ... the cost and upheaval caused by the change is not justified'. At home, too, an increasing number of industries seem to be almost wholly dubious, such as the milk distributing trade, which recently announced that the difficulties of going over to litre

measures were so insurmountable, that it would continue for the foreseeable future to deliver in pints; or the brewing industry, which is to be involved in the expenditure of £100 million for no gain in efficiency or productivity.

Not only is there in fact no evidence that our failure to convert to metrics has been a major factor in holding back British exports in recent years, there is now beginning to be evidence that in some directions our conversion will actually hinder the export trade. While, last but not least, there is the great question which the Labour government steadfastly refused to answer — how much would it all cost? The Government said it could not begin to answer this question since, as with the Common Market, it is impossible to allow for the 'economic benefits which may accrue'. But even if one accepts that there may be any economic benefits, two independent assessments of the probable direct cost to the nation (including one by the Business Equipment Trade Association) have arrived at a figure between £3,000 and £5,000 million.

It seems a heavy price to pay, even for one of the follies of Mr Wedgwood Benn — let alone for losing one of the cultural foundations of our English way of life. One can only hope that, even at this late stage, a sufficient outcry may develop to ensure that, whatever the Ministry of Technology may decide to do in its own sphere of responsibility, the rest of us may not be forced willy-nilly and in the name of 'voluntary co-operation' to follow suit.

The following month, 17 July 1970, *The Spectator* printed the following reply from Gordon Bowen Director, Metrication Board.

Sir: May I offer some comments on Christopher Booker's article 'Metrication Mania', in which he alleges that there has been a plot to impose on Britain by stealth a new and expensive system of weights and measures which will be damaging to our trading position, notably in America.

The facts, all of which are readily available, are otherwise. The metric system has existed since the end of the eighteenth century. The proposition that we in this country should adopt this system of measurement has been the subject of public and private debate from the time it was adopted in France. When in 1897 the Weights and Measures (Metric System) Act which made the use of metric legal in this country for most purposes was passed, there had over the years been Parliamentary petitions and debates, questions and answers in both Houses, Royal Commissions, reports, Bills, Acts and other manifestations of the democratic process. Since 1900 there have been further Bills and debates.

In 1950, after two years of consultation with private individuals, professional and trade associations, not least those representing women's interests, public bodies and others, the Hodgson Committee on Weights and Measures Legislation submitted its comprehensive report, which was published in 1951. The main conclusion was that the Government should take steps, in concert with the Commonwealth and the US, to abolish the imperial system of measurement in favour of the complete adoption of the metric system over a period of twenty years. The report gives a full and convincing account of the merits of the metric system, justifying its main conclusion. In 1963, the process of legislative change was carried a step further when the Weights and Measures Act defined the yard and the pound in terms of the kilogramme and metre. A survey at that time showed a majority in favour of making the change to the metric system. In 1965 the then President of the Board of Trade stated in the House of Commons that the Government was so impressed with the case put to it by the Federation of British Industries that, by a large majority, its members had concluded that the metric system should be adopted as the primary, and ultimately the only, method of measurement used in Britain.

Since 1965 there have been in the House of Commons three major statements of government policy on metrication, some twenty oral and forty-five written questions and answers. The House of Lords has from time to time considered the issues, and in debate in 1969 Lord St Oswald said: 'The official Opposition, for which I am now speaking, takes the view that we shall go metric. The decision is inevitable. Speaking personally, I say not only is the process inevitable, but the sooner the better. To me it is a happy inevitability. If ever there were a non-party issue, this is it.'

Going metric is certainly an important and far-reaching change. It cannot be achieved without some costs. There is however no soundly established basis for any of the assessments of the direct cost to the nation which I have heard bandied around from time to time. The figures have a dream-like quality remote from accountancy. I find no signs that the guessers have tried to quantify the benefits nor to assess the costs of staying with the imperial system. Whether we welcome the change for the opportunities it brings, or resent it because we are content to cling to the antique, the arguments in favour of the change are inescapable.

Gordon Bowen, Director, Metrication Board, 22 Kingsway, London WC2

Rather than let Mr Bowen have the last word, we recently asked Christopher Booker to comment.

Until BWMA sent this to me, I had no recollection of writing for *The Spectator* just after Edward Heath won the 1970 election, let alone the weaselly response from Gordon Bowen of the Metrication Board. What I do recall is that just before that election, I contributed a major feature for the then-*Telegraph* magazine, which so enraged one reader that she put a pointed question in an election meeting to her Tory candidate, John Page. He admitted to knowing nothing about the government's metrication plans, but promised that, if elected, he would ensure it was debated in Parliament.

He was as good as his word and, a few months later, I attended the first and only Commons debate on metrication. Other Tory backbenchers were so disturbed by what they heard that they formed a group to campaign on it, and this led in 1978 to a formal Tory Party pledge that, on their return to power, one of their first moves would be to scrap the Metrication Board.

Scarcely was Mrs Thatcher in Number 10 than this was done. But in 1980 the European Community issued its Directive 80/181, making exclusive use of the metric system compulsory. The Thatcher government's response was in 1985 to pass a new Weights and Measures Act, deliberately legitimising the continued use of imperial measures.

But Brussels responded in turn by issuing a new directive, 89/617, making a handful of cosmetic concessions, such as temporarily allowing Britain to retain the pint (but only for milk and beer), and miles and yards (but only for road signs). But otherwise their use must be banned. This was why in the mid-1990s we saw that deluge of statutory instruments, meekly nodded through Parliament under the 1972 European Communities Act, designed not just to complete Britain's metrication by 2000, but to criminalise any further use of feet, inches, pounds, ounces, acres and all the rest.

All this finally hit the headlines in 2000, when the Sunderland greengrocer Steve Thoburn was found guilty of the criminal offence of selling a "pound" of bananas. He and his fellow-Metric Martyrs took their case to the second highest court in the land, relying on the sacred Parliamentary principle that an Act passed in 1972 could not be used to overrule an Act passed in 1985. But Lord Justice Laws devised an unprecedented legal sleight of hand, by ruling that certain Acts, including the European Communities Act, must rank above all others as "constitutional statutes", with the power to negate anything passed later.

One of the most extraordinary features of the way Britain was metricated was that, at every single step along the way, it was engineered only by sleight of hand, deception and downright lies, of which Mr Bowen's pitifully dishonest response to me in 1970 exemplified only a few. If one wants a perfect case study to illustrate how Britain ceased to become a truly democratic country, this shameful story is it.



1 lb INC. WRAPS
439 g e 15.5 oz net

e321g net
331g inc wraps

BEST BEFORE:
SEE FRONT OR BACK OF CARTON
STORE IN A COOL DRY PLACE

Further to our report on shrinking Roses in *Yardstick 61*, Roses boxes have since changed shape; a new box, weighing 331g, appeared on shop shelves in 2016. The photograph opposite shows the new box to the right, alongside an old 1 lb box, undated but likely from between 1990 and 1995.

The new box is bigger, conveying the impression that it contains more, while in fact containing less. The new box has a 3½-inch wide base, height (to the centre) 8 inches, top width 5 inches. The base width of the old style box is 2¾ inches, height 7 inches, top width 4 inches.

The 1990s box still has a price sticker attached: £1.79. Roses today are priced around £4.

It takes a moment to grasp the multiple tricks being played on public perception: the currency has been debased by around 50% in 25-30 years; the Roses box has increased in dimensions by about a fifth; but the content has been reduced by 27%.

Decimal Watch: “Students took equivalent of 300 cups of coffee in botched experiment”, *The Independent*, 25 January 2017

Sports science students Alex Rossetto and Luke Parkin had volunteered to take part in the test at Northumbria University, which aimed to measure the effect of caffeine on exercise. But after a calculation error, the second year students were given 100 times the correct dosage, causing violent side-effects and them being admitted to hospital with “life-threatening reactions” in March 2015. Prosecutor Adam Farrer told Newcastle Crown Court the overdose “could easily have been fatal”. The volunteers should have been given 0.3g of caffeine, but were in fact given 30g, he said – the equivalent of 300 cups of coffee in one dose ... Mr Rossetto and Mr Parkin were both admitted to an intensive care unit to receive emergency dialysis ... The court was told about a catalogue of errors that led to the overdose, which included the calculation being done on a mobile phone, the decimal point being put in the wrong place, and there being no risk assessment for the test ... Both men have since made a full physical recovery.

Radio 4 “Tweet of the day”

Our colleague S Sinclair writes: Listening to the wireless yesterday, I heard “Tweet of the day” featuring the Golden Eagle. According to the BBC, the bird swoops on its prey at a speed of two hundred and forty kilometres per hour. I wonder if the bird knows that it dives in metric measurements?

USA: Bring back the [sporting] Mile

The following is the introduction from the website www.bringbackthemile.com, which campaigns to restore the mile to American sports fields:

No running distance, or field event for that matter, has the history, the appeal, the “magic” of the Mile. **The Mile**, like the 100 meters and the marathon, is a running event that most Americans know something about or have a general feeling for, and thus, there is a built-in awareness of and audience for the Mile.

In America, the Mile – lower and upper case – is deeply embedded in our culture and history. We are one of the few countries in the world that still uses the mile as a distance measurement, and thus, as a centuries old result, Americans think, speak and relate in miles not kilometers.

In short, Americans “get” the Mile, not the 1500 meters. *Because the 1500 meters, or worse, the misfit 1600 meters at the high school level, do not have the same historical significance and cultural, media and promotional value as the Mile.* There is no 1500 meter equivalent to Roger Bannister’s historic and still revered first sub-4 minute Mile; put simply, the Mile is iconic, classic and timeless. In addition, per recent studies, the Mile is the ideal fitness distance for everybody, regardless of age or ability. America also understands the mystique of the Mile, particularly the sub-4 minute Mile, and the Mile is as American as baseball, apple pie and the 4th of July! It is time we **Bring Back the Mile**, America’s distance! Join the Movement. Go Mile!

From the Archives: *The Late Lord Kelvin,* from BWMA's Report and Journal, January 1908

On December 17th there passed away, at his home in Scotland, the great scientist Lord Kelvin, full of years and honours. In his death, science has lost one of its great leaders, and the pro-meterists one of their strong advocates. He seemed never to weary of singing the praises of the metre, and yet, in what must have been very nearly his last, if not his very last, public communication on the subject - we refer to his letter, sent in December, 1906, to the Society of Arts on the occasion of Sir Charles Watson's paper "Against the Metric System" - he said "the centesimal division of the quadrant was an unwise and unfortunate proposal. If the French men of science had only thought of the enormous inconvenience of calling the angle of an equilateral triangle $66\frac{2}{3}$ degrees, instead of 60 degrees, as they had it of old; and if they had only continued, as of old, to divide the degree into 60 minutes, we should now have our present nautical mile, and its thousandth part, the fathom, as the foundation of the metric system. Our nautical mile is too convenient for use at sea and for all geographical measurements on land, to allow it to be abandoned."

In the problems of navigation Lord Kelvin was an undoubted expert, he thoroughly understood his subject, his practical works in that direction enabled him to appreciate its difficulties such as no amount of theorising would have done, and, knowing these difficulties of practical application - he opposes the metric system for navigation and condemns the proposals of the French Savants as "unwise and unfortunate."

In "The Tribune" of December 19th we get a view of this great scientist from another point. An old pupil of his supplies an interesting memoir, in the course of which he says, "The professor's inability to do the easiest sum in multiplication was a source of never-failing delight to the students. In the midst of a scientific discourse he would suddenly attempt a simple calculation on the blackboard, and almost certainly go wrong. There would be a shout from the class, an appealing look from the professor to the assistant, who would approach, duster in hand, deftly obliterate his chief's figures, and substitute his own immaculate calculation. Kelvin probably lisped in logarithms, for the logarithms came, but he was never a match for the multiplication table. He took his revenge in spirited and picturesque denunciations of the British system of enumeration. 'Maddening' was about the mildest term he applied to it, and he waxed eloquent on the beauties of the metric system. But he would never call it 'metric' - he would protest against the absurdity of calling one system of measurements 'metric' when all were metric, and would urge his hearers to stand firm on this point, and call it the 'decimal' system only."

To take only these two sides of Lord Kelvin's many-sided nature, we have a strong confirmation of the old saying that human nature is pretty much alike in all ages and in all countries. In the one case, a practical acquaintance with his subject enabled Lord Kelvin to see the folly of proposals based only on theory; in the other, a singular lack of practical knowledge induced him to follow the lead of theory. If so great a man does this, we must make allowances for lesser lights.

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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