

Case law

Case Details

National ID: 2002 EWHC (QB)195

Member State: United Kingdom

Common Name: Thoburn v Sunderland City Council

Decision type: Other

Decision date: 18/02/2002

Court: High Court Queen's Bench Division

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Consumer Sales and Guarantees Directive, [Article 1, 1](#). Price Indication Directive, [Article 1](#) Unfair Contract Terms Directive, [Article 1, 1](#). Package Travel Directive, [Article 1](#) Timeshare Directive, [Article 1](#) Distance Selling Directive, [Article 1](#) Doorstep Selling Directive, [Article 1, 1](#). Injunctions Directive, [Article 1, 1](#). Injunctions Directive, [Annex I](#)

Headnote

1. A constitutional statute (one which conditions the legal relationship between citizen and state in some general, overarching manner or enlarges or diminishes the scope of what are regarded as fundamental constitutional rights) such as the European Communities Act 1972 cannot be impliedly repealed by way of later legislation.

Facts

Council Directive 80/181 (as amended by Directive 89/617) prohibits the use of imperial measures for trade in goods loose in bulk after December 31, 1999. Prior to the amendment (incorporated in the UK by several subordinate measures) the Weights and Measures Act 1985 permitted the continued use of imperial and metric measures.

Four appeals were in issue before the court: in three of the cases the appellants had been convicted for selling produce in imperial measurements, while the fourth appellant had the condition that only metric measurements could be used in the sale of goods imposed on the renewal of his street trading licence.

The various questions referred to the High Court for resolution primarily asserted the unlawfulness or invalidity of one or several of four subordinate measures: (1) the Weights and Measures Act 1985 (Metrication) (Amendment) Order 1994 ("the 1994 Amendment Order"); (2) The Units of Measurement Regulations 1994; (3) the Weights and Measures (Metrication Amendments) Regulations 1994; (4) The Price Marking Order 1999. The arguments essentially related to the doctrine of implied repeal, particularly whether the European Communities Act 1972, or any part of it, is capable of being impliedly repealed by way of later legislation.

Held: The European Communities Act 1972 is a constitutional statute; therefore the Weights and Measures Act 1985 did not by implication partially repeal section 2(2) of the 1972 Act. Accordingly, the various Orders and regulations validly amended the 1985 Act and the appeals were dismissed.

Legal issue

Decision

A constitutional statute is a statute which conditions the legal relationship between citizen and state in some general, overarching manner or enlarges or diminishes the scope of what are regarded as fundamental constitutional rights. While the UK government retains the sovereign legal power to repeal such legislation expressly, it cannot do so impliedly.

To determine whether the repeal of such a statute has been effected by statute the court will ask whether it had been shown that the legislature's actual intention was to effect the repeal or abrogation. That test can only be met by express words in a later statute or by words so specific that the inference of an actual determination to effect the result is irresistible. The ordinary rule of implied repeal does not satisfy this test and therefore has no application to constitutional statutes.

The correct analysis of the relationship between EU law and domestic law requires four propositions: (1) All the specific rights and obligations which EU law creates are by the European Communities Act 1972 incorporated into our domestic law and rank supreme: anything in our substantive law inconsistent with any of these rights and obligations is abrogated or must be modified to avoid the inconsistency. (2) The 1972 Act is a constitutional statute and therefore cannot be impliedly repealed. (3) The truth of (2) is derived not from EU law, but purely from the law of England (which recognises a category of constitutional statutes). (4) The fundamental legal basis of the United Kingdom's relationship with the EU rests with the domestic, not the European legal powers.

These four propositions give full weight both to the proper supremacy of substantive Community law and to the proper supremacy of the legal foundation within which those substantive provisions enjoy their primacy of the United Kingdom Parliament.

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