

Summary of Judgements¹
Queens Bench Division, Divisional Court
Thoburn v Sunderland City Council [2002] EWHC 195 (Admin), [2003] QB 151

Monday, 18th February 2002
Before Lord Justice Laws and Mr Justice Crane

The European Communities Act 1972 was, by force of the common law, a constitutional statute, and could not be subject to implied repeal. Accordingly s 1 of the Weights and Measures Act 1985 did not by implication partially repeal s 2(2) of the 1972 Act, and so the power to amend primary legislation contained in s 2(2) of the 1972 Act when read with s 2(4) of that Act enabled the executive lawfully and validly to make the Weights and Measures Act 1985 (Metrification) (Amendment) Order 1994, the Unit of Measurement Regulations 1994, the Weights and Measures (Metrification Amendments) Regulations 1994, and the Price Marking Order 1999 and thereby to amend the terms of the 1985 Act.

The Divisional Court of the Queen's Bench Division so held in a reserved judgment, dismissing appeals by way of case stated by Steven Thoburn against the decision of District Judge Morgan in Sunderland Magistrates' Court on 9 April 2001 to convict him of two offences under s 11(2)(3) of the Weights and Measures Act 1985; by Colin Hunt against the decision of District Judge Baldwin in Thames Magistrates' Court on 20 June 2001 to convict him of ten offences under art 5 of the Price Marking Order 1999 and s 4 of the Prices Act 1974; by Julian Harman and John Dove against the decision of the Bodmin justices on 17 August 2001 to convict them of two offences each contrary to the 1999 Order and the Prices Act 1974, and two offences each contrary to s 8(1)(a)(4) of the 1985 Act; and by Peter Collins against the decision of the Sutton justices on 13 July 2001 to dismiss his appeal under s 30(1)(a) of the London Government Act 1990 against conditions imposed upon the renewal of his street trading licence.

LA WS LJ said that the defendants had submitted that s 1 of the 1985 Act, as enacted, impliedly repealed s 2(2) of the 1972 Act to the extent that the latter had empowered the making of any provision by way of subordinate legislation, whether so as to amend primary legislation or otherwise, which would be inconsistent with that section; that it was consequently forbidden to amend the 1985 Act by means of the power contained in s 2(2) of the 1972 Act; and that a prohibition, introduced by subordinate legislation pursuant to that power, on the continued use of imperial and metric measures for purposes of trade without preference of one over the other was unlawful. In his Lordship's judgment there was no inconsistency between s 1 of the 1985 Act and s 2(2) of the 1972 Act, and so the argument that s2(2) had been by implication partially repealed by the 1985 Act failed on that short ground. Generally there was no inconsistency between a provision conferring a power to amend future legislation and the terms of any such future legislation.

In case he was wrong on that question his Lordship dealt with other points on the issue of implied repeal which raised issues of great importance. The councils had submitted that the EC Treaty had created a new and so far unique legal order, supreme above the legal systems of the member states, so that upon accession to the community by force of the 1972 Act, the United Kingdom had bowed its head to that supremacy, with the consequence that while Parliament retained the power to repeal the 1972 Act by express legislation, it could not do so impliedly. His Lordship said that the correct analysis of the relationship between EU and domestic law involved and required the following propositions: all the specific lights and obligations which EU law created were by the 1972 Act incorporated into our domestic law and ranked supreme; the 1972 Act was a constitutional statute and could not be impliedly repealed; the fact that the 1972 Act was a constitutional statute was derived from the common law of England which recognised a category of constitutional statutes; and the fundamental legal basis of the United Kingdom's relationship with the EU rested with the domestic, not the European, legal powers. The balance struck by those four propositions gave full weight both to the proper supremacy of Community law and to the proper supremacy of the United Kingdom.

CRANE J agreed.

¹ Source: www.lawreports.co.uk