

Lambarth, Michael. A Really Basic Introduction to English Law and the English Legal System

Chapter 4 – Legislation

As this is an introduction to English law, we ought to consider where law originates or comes from. The most important type of law that we find in the English legal system is called legislation. Sometimes it is referred to as a “source of law” (and we’ll look at some other sources of law in later chapters). A piece of legislation is also referred to as an act of Parliament or a statute. These terms all have the same meaning. This also gives a clue as to where they come from – that’s right, they are produced, made or “enacted” in Parliament. Parliament in this sense consists of the House of Commons and the House of Lords, together with a final approval from the Crown called Royal Assent. The most important role is played by the House of Commons, which is what you would expect, given that the House of Commons consists of democratically elected Members of Parliament. This means, at least in theory, that we as the voting public have some say in the laws which are made in our legal system, albeit only once every five years or so at a general election.

Legislation is generally introduced to Parliament by the elected government of the day. In this way the government can legislate (produce laws) to implement its policies and in that sense law and politics are closely related. Whether the proposed legislation actually becomes law depends to some extent on whether the government has a majority of the seats in the House of Commons. A government with a large majority will be confident that its proposals will be voted through and become law. A government with a narrow majority should be able to secure the success of most of its proposals (assuming they do not upset their own Members of Parliament too much), and a government with no majority will probably need the support of members of other political parties to vote the proposals through into law.

As well as implementing its political ideals, the government may also introduce laws in response to national emergencies or particular crises (think about the 9/11 terrorist attacks on New York for example), or in response to publicity campaigns by interested groups, or simply to reform the existing law to keep it up to date.

An individual Member of Parliament can also introduce their own proposal for legislation, called a Private Members’ Bill. However, these are usually done with the aim of highlighting a particular issue and a relatively low percentage of such proposals actually become law when compared to ordinary Acts of Parliament.

The first step in the life of most Acts of Parliament involves an element of consultation with experts and interested parties. This may include the production of what is known as a Green Paper, outlining the proposals and requesting the consultation. A White Paper is then produced which sets out the proposal in more detail and this is used to introduce the proposed law to Parliament. Parliamentary draftsmen then draft the proposed law, which is known as a Bill until it actually becomes law. The Bill then goes through several stages within both the House of Commons and the House of Lords, which gives Members of both Houses the chance to comment on the Bill and suggest amendments. If approved, the Bill will receive Royal Assent and become law from a certain date. Royal Assent is the approval of the Crown, but is largely a formality.

Enacting legislation in this way is a thorough but long-winded affair. The number of statutes which receive Royal Assent in a year tends to be in the region of dozens rather than hundreds. In actual fact many statutes leave the detailed provisions to be sorted out later. They provide for some other person to make the detailed regulations on particular matters. This person is often the relevant Secretary of State, and the laws made in this way are referred to as secondary or delegated legislation. The main piece of legislation is called the parent or enabling act and sets out the general scope and purpose of the secondary legislation. This secondary legislation does not then need to go through the full Parliamentary approval regime for new legislation. One of the main advantages of this type of legislation is that it can be created by people who have more expertise in the particular field than “ordinary” Members of Parliament. The regulation of financial services is an example of an area of law which utilises a vast amount of delegated legislation. Hundreds if not thousands of pieces of secondary or delegated legislation are passed into law each year, which is evidence of its wide use and importance in English law.

So now we know a little about where legislation comes from and how it is made, let’s consider what it actually is. A piece of legislation is really just a list of rules, set out in numbered sections.

Most commonly, those sections are numbered 1, 2, 3, 4 and so on with subsections being numbered (1), (2), (3), then (a), (b), (c) and then (i), (ii), (iii). So we might refer to section 1(3)(b)(iii) of a particular piece of legislation for example. Each piece of legislation has a name and also a year, designating the year in which it received Royal Assent. This is not always the same as the year in which it came into force as some Acts of Parliament do not have immediate effect.

The Theft Act 1968 is an example of a piece of legislation. It covers many types of theft including burglary, robbery and blackmail. The various sections set out the rules relating to these offences and what must be proven in a court of law before a person can be convicted of those crimes. Lawyers working at the Crown Prosecution Service will consider the provisions carefully as part of their decision as to whether to prosecute a person who has been arrested by the police.

Another example of a piece of legislation is the Companies Act 2006. This regulates many aspects of how companies are created and operate, including financial matters. Lawyers advising companies will need to have a good working knowledge of this piece of legislation.

And so it goes on. There are thousands of pieces of legislation in English law and together they form a large chunk of the law. Lawyers and judges use these rules to decide what the law is and how it applies to a given situation. Legislation is easy to access and can generally be found online quite easily, although as it is amended by Parliament it can become more difficult to track the current version of a particular statute. Many law firms subscribe to specialist electronic databases which ensure they have access to the current law at all times.

In this chapter we have had a brief look at legislation, which makes up a significant part of English law. We have looked at where it comes from and how it is created. We have also looked at a couple of examples of statutes. It is worth noting, however, that legislation is just one of a number of “sources” of English law. Another important source is case law which is established by the courts, and that is where we will turn to in the next chapter.