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## **General Clauses Act 1897 s 8 - Construction of references to repealed enactments**

**(1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.**

**(2) Where before the fifteenth day of August, 1947, any Act of Parliament of the United Kingdom repealed and re-enacted, with or without modification, any provision of a former enactment, then reference in any Central Act or in any Regulation or instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.**

### SYNOPSIS

GC 8(1): Reference to re-enacted enactments

- Reference to the corresponding provision of the new Act
- Reference to corresponding definition under the new Act
- Referred instrument

Legislation by incorporation

- Repeal of referred enactment
- Amendment in referred enactment
- Example of Companies Act 1956

### **GC 8(1): Reference to re-enacted enactments**

Where any Central Act repeals and re-enacts any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall be construed as references to the provision so re-enacted.

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Reference to the corresponding provision of the new Act:

It was, therefore, held the reference to section 108 of the Government of India Act 1915, in clauses 15 of the Letters Patent (Bombay) should be construed as reference to the corresponding provisions in the Government of India Act 1935 and the Constitution.

Reference to corresponding definition under the new Act:

Similarly, after repeal and replacement of the Mines Act 1923 by the Mines Act 1952, reference to the definition of coal mine as defined in the Mines Act 1923, in sections 2(e) of the Coal Mines Provident Fund Acts 1948 was construed as referring to the definition of coal mine as contained in the Mines Act 1952.

Referred instrument: The principle of construction enacted under section 8 applies also for construing an “instrument” in which reference is made to some enactment which is later repealed and re-enacted. In the context of the General Clauses Act, the word “instrument” has to be understood as including reference to a formal legal writing like an order made under a statute or subordinate legislation or any document of a formal character made under constitutional or statutory authority. It was, therefore, held that reference to “the Defence of India Ordinance 1962 or any rule or order made there under” in the President’s Order issued under Articles 359(1) of the Constitution should be understood after repeal and re-enactment of the Ordinance as reference to the Defence of India Act 1962 or any rule or order made thereunder. ^{^1}

Legislation by incorporation

¹ Mohan Chowdhary v Chief Commr, Tripura AIR 1964 SC 173 cited in Singh 2021 p 819

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When a statute incorporates by reference the provisions of an earlier statute, a repeal or amendment of the earlier statute does not affect the later statute or provisions incorporated therein.<sup>2</sup>

**Repeal of referred enactment:** Where the provisions of an Act are incorporated by reference in another Act, for the sake of brevity and economy of words, the repeal of the earlier Act has, in general, no effect upon the construction or effect of the Act in which the provisions have been incorporated; so the repeal of the Punjab Alienation of Land Act of 1900 has no effect on the continued operation of the Pre-emption Act 1913 and the expression 'agricultural land' in the later Act has to be read as if the definition in the Alienation of Land Act had been bodily transposed into it.<sup>3</sup>

**Amendment in referred enactment:** Subsequent deletion or amendment in provisions of the Act referred to are not automatically assimilated.<sup>4</sup> This was summed up in *Mahindra and Mahindra Ltd. v UOI* SCC 1979 (2) 529 as:

“Legislation by incorporation is a common legislative device employed by the legislature, where the legislature for convenience of drafting incorporates provisions from an existing statute by reference to that statute instead of setting out for itself at length the provisions which it desires to adopt. Once the incorporation is made, the provision incorporated becomes an integral part of the statute in which it is transposed and thereafter there is no need to refer to the statute from which the incorporation is made and any subsequent amendment made in it has no effect on the incorporating statute.”

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<sup>2</sup> Singh 2021 p 819

<sup>3</sup> Ram Sarup vs. Munshi AIR 1963 SC 553

<sup>4</sup> Secretary of State v Hindustan Cooperative Insurance Society Ltd. AIR 1931 PC 149

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However, where the reference is to the general principles contained in the repealed or amended Act then such references shall stand repealed or amended.⁵

Example of Companies Act 1956

So, in case of Companies Act 1956 which was repealed and re-enacted as Companies Act 2013 has three aspects namely:-

- (1) the older provisions which were re-enacted, with or without modification, and any reference in any other Act will now refer to the re-enacted provisions by dint of section 8(1) of the General Clauses Act 1897;
- (2) the new provisions added in the Companies Act 2013 will have its effect on its own; and
- (3) the older provisions which were not re-enacted but were referred to in another Act will stand good by dint of precedents discussed above.

⁵ PC Agrawala v Payment of Wages Inspector (2005) 8 SCC 104