

Interpreting taxing Statutes # 60A – Transitional provisions

Transitional provision spells out detailed aspects of how the transition from the old law to the new is intended to work.

An Act will often contain transitional provision or confer power to make transitional provision by delegated legislation. Transitional provision spells out detailed aspects of how the transition from the old law to the new is intended to work. Transitional provision plays an important role in making it clear precisely how legislation is to operate. Lord Bridge described the purpose of a transitional provision as to facilitate the change from one statutory regime to another, citing Thornton's statement that 'The function of a transitional provision is to make special provision for the application of legislation to the circumstances which exist at the time when that legislation comes into force'.¹ One feature of a transitional provision is that 'its operation is expected to be temporary, in that it becomes spent when all the past circumstances with which it is designed to deal have been dealt with'.² Transitional issues are often left to be dealt with by delegated legislation so that they can be addressed once it is known when the provisions of the Act will be brought into force and in what order. Even if they appear in the Act they are often tucked away, on the basis that they are only likely to be of temporary relevance. They therefore represent a significant trap for users of legislation, who may be unaware of the existence of a transitional provision that modifies the way in which the legislation operates in a particular case.³

¹ Bennion 2019 p 176-177

² Bennion 2019 p 177

³ Bennion 2019 p 177

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**In the absence of express transitional provision, the court is required to draw such inferences as to the intended transitional arrangements in the light of the principles of interpretation.**

In the absence of express transitional provision, the court is required to draw such inferences as to the intended transitional arrangements as it can, in the light of the principles of interpretation.<sup>4</sup> In the absence of transitional provision it would often be unclear how new legislation is intended to apply to old cases. Failure to include adequate transitional provision can cause difficulties, in which case the courts simply have to fall back on usual interpretative criteria. Sometimes unforeseen factual scenarios expose the need for additional transitional provision.<sup>5</sup>

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<sup>4</sup> Bennion 2019 p 176 Sec 5.9

<sup>5</sup> Bennion 2019 p 177

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