

## **Interpreting Taxing Statutes # 55 - Components of a subordinate legislation**

**As with Acts, when interpreting delegated legislation the significance to be attached to each component should be determined according to its function.<sup>1</sup>**

### SYNOPSIS

Functions of components

Title

Preamble

Structure

Headings

Punctuations

Regulations, articles, rules and Schedules

### **Functions of components**

As with Acts, when interpreting delegated legislation, the significance to be attached to each component should be determined according to its function.

#### **Title**

The title of delegated legislation may be used as an aid to interpretation although it is unlikely to carry much weight. The function of the title is to indicate the main subject matter of the delegated legislation and provide a brief label by which it may be cited. It also distinguishes the instrument from other instruments made under the same power.

#### **Preamble**

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<sup>1</sup> Bennion 2020 s 16.10

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The preamble to a statutory instrument usually recites the power under which the instrument is made and any preconditions for the making of the instrument (for example, relating to consultation or parliamentary approval).

The preamble does not normally set out the purpose of background of the instrument. Its use as an interpretive aid is therefore limited but it may be relevant to questions of interpretation.

First, unless the contrary is shown, the court will proceed on the basis that the preamble to delegated legislation sets out all of the enabling powers under which it is made.

Secondly, said as follows:

‘the narrative accompanying the identification of any specified enabling power may provide an indication as to the aims of the SI, and the preamble may thus have effect in the sense of being a legitimate aid to interpretation. There may also be other occasions when, and purposes for which, the preamble has legal effect’.<sup>2</sup>

## Structure

The format or layout of delegated legislation may be used may be used for the purpose of interpretation in the same way as the format or layout of an Act

## Headings

Headings may be referred to in interpreting delegated legislation. Said as follows:

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<sup>2</sup> Vibixa V Komori UK Ltd (2006) EWCA Civ 536 cited in Bennion 2020 p 549

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‘It is permissible to have regard to such headings in a statutory instrument.’<sup>3</sup>

Headings are relevant when interpreting delegated legislation but it is important to bear in mind that the function of a heading is merely to serve as a brief guide to the material to which it relates and may not be comprehensive. There is also the risk that a heading may have been falsified by later amendments.<sup>4</sup>

## **Punctuation**

The way in which delegated legislation is punctuated may inform its interpretation and the same considerations apply as when considering the function of punctuation when interpreting an Act.<sup>5</sup>

## **Regulations, articles, rules and Schedules**

The division of material in Acts between sections and Schedules applies equally to the division of materials between regulations, articles or rules and Schedules.<sup>6</sup>

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<sup>3</sup> R (Toth) v Solicitors Disciplinary Tribunal [2001] EWHC Admin 240 cited in Bennion 2020 p 548

<sup>4</sup> Brown v Innovatorone plc [2009] EWHC 1376 cited in Bennion 2020 p 549

<sup>5</sup> Bennion 2020 p 549

<sup>6</sup> Bennion 2020 p 549