

Interpreting Taxing Statutes # 70 – Application of definition

Acts sometimes provide expressly that a definition applies 'unless the context otherwise requires' or 'unless the contrary intention appears'. This wording is unnecessary as the same result is achieved whether or not it is included. [Ben 18.8]

Where a term is used without definition in one Act, but is defined in another Act which is *in pari materia* with the first Act, the definition may be treated as applicable to the use of the term in the first Act. [Ben 18.9]

Expressions used in instruments made under or for the purpose of an Act will usually be given the same meaning as in the Act. [Ben 18.10]

SYNOPSIS

Definitions apply unless the context otherwise requires

Application of definition to other Acts

Application of definitions to instruments made under Act

Definitions apply unless the context otherwise requires

It used to be common for definitions in an Act to be expressed to apply 'unless the context otherwise requires' or 'unless the contrary intention appears'. This has been described as 'a standard device to spare the drafter the embarrassment of having overlooked a differential usage somewhere in his text. The practice is usually unhelpful and has almost fallen into disuse. If there are circumstances 'where the context otherwise requires' it is far better to identify them to leave the reader guessing. Words should not be included by drafters simply to spare their blushes in the event that something has been overlooked.

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A statutory definition does not apply if the contrary intention appears, regardless of whether the definition includes express provision to that effect.<sup>1</sup>

A contrary legislative intention displacing a statutory rule of construction relating to a particular term may be manifested by the enactment which uses the term spelling out, in a way different to the statutory rule, how the term is to be construed. A contrary intention may apply to a part only of a definition.<sup>2</sup>

### Application of definition to other Acts

An Act often defines a term for the purposes of that act only. Where the same term is used in a later Act that is in *pari materia* and no definition is included, the meaning of the term in the first Act may shed light on its meaning in the later Act. Said as follows:

‘In the absence of any context indicating a contrary intention, it may be presumed that the Legislature intended to attach the same meaning to the words when used in a subsequent statute in a similar connection’<sup>3</sup>

Similarly, in case of delegated legislation,

‘Definition in delegated legislation dealing with similar issue held to apply to later delegated legislation under the same power on the basis that they were in *pari materia*.’<sup>4</sup>

The courts have declined to follow this approach in a case where Acts are not in *pari materia*.<sup>5</sup>

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<sup>1</sup> Meux v Jacobs (1875) LR 7 HL 481 cited in Bennion 2020 p 584-585

<sup>2</sup> Bennion 2020 p 585

<sup>3</sup> Lennon v Gibson & Howes Ltd [1919] AC 709 cited in Bennion 2020 p 585-586

<sup>4</sup> R (Mahamed) v Secretary of State for the Home Department [2008] EWHC 1312 (Admin) following Bickerdike v Lucy [1920] 1 KB 707 cited in Bennion 2020 p 586

<sup>5</sup> Macbeth & Co v Chislett [1910] AC 220 cited in Bennion 2020 p 586

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So, whether it is appropriate to adopt a definition in one Act for the purposes of a later Act that is in *pari materia* will, however, ultimately depend on the context having regard to other interpretative criteria.⁶

Application of definitions to instruments made under Act

The principle that terms used in instruments made under or for the purposes of an Act will usually be given the same meaning as in the Act is no more than a starting point and like so many aspects of interpretation is really no more than the application of common sense.⁷

⁶ Bennion 2020 p 585

⁷ Bennion 2020 p 586