

Interpreting Taxing Statutes # 68 – Referential definition and defined by delegation

A definition contained in an Act may be referential in the sense that it attracts a meaning already established in law, whether by statute or otherwise.^{^1}

A term used in an Act is sometimes left to be defined by delegated legislation rather than being defined in the Act itself.^{^2}

SYNOPSIS

Reference to an earlier Act

- Context of the definition
- Construction as one

Defined by delegation

Reference to an earlier Act

It is common for an Act to attract a definition contained in an earlier Act, for example by using wording such as ‘X has the meaning given by ... / has the same meaning as in ...’. This has the potential advantage of ensuring that terminology is uniform across a number of Acts. But questions may arise as to whether future changes to the definition in the earlier Act are intended to flow through into the referential definition. In most cases it is likely to be clear that the referential definition was intended to be ambulatory in the sense of picking up future changes. Moreover, in relation to devolved legislation some of the Interpretation Acts include express provision to the effect that a reference to another

¹ Bennion 2020 s 18.4

² Bennion 2020 s 18.5

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enactment is to that enactment as amended from time to time  
(subject to any contrary intention).<sup>3</sup>

For a contrary view reference may be made to “legislation by incorporation” under GC 8.

**Context of the definition:** Where an Act unambiguously states that the meaning of a term is to be determined by reference to the definition in an earlier Act, the courts are likely to give short shrift to any argument that the term should be given a different meaning from that which it has in the earlier Act simply because of the context in which it is used in the later one.<sup>4</sup>

**Construction as one:** Another drafting device that will attract definitions used in an earlier Act is to make provision to the effect that it is to be construed as one with the earlier Act.<sup>5</sup>

### Defined by delegation

An Act sometimes leaves it to delegated legislation to define a term. One use of this approach is where the definition is likely to require regular updating. Where a power is conferred to define a term, the defined term will invariably influence the scope of the power.<sup>6</sup>

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<sup>3</sup> Bennion 2020 p 579

<sup>4</sup> Bennion 2020 p 579-80

<sup>5</sup> Bennion 2020 p 580

<sup>6</sup> Bennion 2020 p 580