

Interpreting taxing statutes # 14C – commencement

“Commencement” refers to the time when an Act or provision comes into force. ^{^1}

Other terms such as ‘coming into force’, taking effect’ or ‘coming into operation’ are also used.

Acts display a wide variety of commencement provisions. It may come into force:

- (i) on the day on which it is passed;
- (ii) on a later day specified or described in the Act;
- (iii) on a day appointed by a Minister by order or regulations.

There are no limits on the ways in which the legislature may choose to fix the time of commencement, although modern Acts tend to avoid unusual methods. Even different provisions may come into force at different times, for different purposes or in different geographical areas.

A date may even be indicated by implication.^{^2}

An Act or provision comes into force on the day on which the Act receives assent unless stated otherwise.^{^3}

An Act is **passed** the moment it receives assent of the President or the Governor. This has been recognised in Sec 5(1) of the General Clause Act 1897, in following terms:

(1) Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent, —

¹ Bennion 2019 Sec 5.1 p 165

² Forbes v Fanshawe (1792) 4 Term Rep 661 quoted in Bennion 2019 p 168

³ Bennion 2019 Sec 5.2 p 167

- ~~~~~
- (a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and
- (b) in the case of an Act of Parliament, of the President.

In case the date of commencement of an Act is specified to be the date of its notification in the official gazette then the date of coming into force of the enactment is the date of publication in the official gazette.⁴ The date of publication in official gazette has also to be printed in square bracket below the title of the Act as a matter of statutory obligation.

The commencement of an Act is usually governed by a section at the start of the Act, generally section 1, that includes the word ‘commencement’ in the heading.

Until a provision comes into force it does not have any meaningful legal effect although it may be that certain powers can be exercised in anticipation of it coming into force. Moreover, prerogative powers may not be exercised by the executive in a way that would frustrate the will of legislature as expressed in an Act.

So, when a man was convicted of an offence under a section of an Act which had not yet been brought into force, then quashing the purported conviction on appeal the court held that the prosecution of the appellant resembled nothing more than the pulling at a bell-handle without there being a bell at the other end.⁵

⁴ UOI v Ganesh Das Bhojraj (2000) 9 SCC 461

⁵ R v Kynaston (1926) 19 Cr App Rep 180 quoted in Bennion 2019 p 166

~~~~~

**An Act that does not come into force on passing may provide for commencement on a later date specified in the Act.<sup>6</sup>**

This deals with cases where the commencement of an Act is postponed and commencement is governed by the Act itself. There are any number of reasons why commencement might be postponed, for example:

- (i) It may be desirable to give people time to obtain copies of an Act and to comply with it;
- (ii) The government itself might need time to prepare for implementation;
- (iii) Where an Act gives effect to an international treaty, it may be necessary to postpone commencement until the ratification of the treaty to which the Act gives effect.

A commencement clause becomes necessary where the Act is to come into force on a later date or on different dates in different States or with respect to different provisions or retrospectively and so on.

**Acts commonly provide for commencement on a day appointed by a minister by order notified in the official gazette.<sup>7</sup>**

This is usually coupled with a power to appoint different days for different provisions or different purposes (or, occasionally, different areas). Commencement powers give the advantages of flexibility. Before a new Act is brought into operation, any necessary regulations or other instruments which need to be made under it can be drafted. Consultations can be carried out. Guidance for officials and the public can be prepared and

---

<sup>6</sup> Bennion 2019 p 167 Sec 5.3

<sup>7</sup> Bennion 2019 p 169 Sec 5.4

~~~~~

absorbed. Further consideration can be given to the wisdom of any doubtful provisions and, if necessary, amendments to the Act can be sought from legislature. The matter is under government control, and the government, taking into account political factors, can choose the most advantageous moment. This is why taking a commencement power is the approach adopted for a large proportion of modern Acts. Using this method does, however, carry the risk that the need for a commencement order will be overlooked by the civil servants responsible for administering the Act or others. And, where there are multiple commencement orders, it can also become very complex. Various expressions are used to allow for differential commencement. The simplest form is to provide for an Act to ‘come into force on such day or days as the Minister may by regulations appoint’. The reference to “day or days” makes it clear that there is power to appoint different days for different provisions. Where the policy is to enable a single provision to be brought into force on different days for different purposes the commencement power will include wording to make this clear, for example by providing that “different days may be appointed for different purposes”. Other variations include power to make different provision for different “cases” or “circumstances”. Different “purposes” is generally considered to be the widest formulation and to cover “cases” or “circumstances”. If a commencement power is intended to enable provisions to be brought into force in some areas within a jurisdiction but not others this is normally dealt with by express reference to “different areas”. An attempt to bring provisions into force at different times in different areas without express power may well be unlawful (on the basis that the power does not extend to this, and accordingly the instrument is ultra vires).

~~~~~  
Absent any relevant difference, one would expect the law to apply to all people equally.

The commencement clause under Sec 1(3) of CGST Act 2017 by reads as follows:

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

**There is no general duty to exercise commencement power.<sup>8</sup>**

There is no general duty on a minister to exercise a power to appoint a day for an Act or provision to come into force. But a minister must keep under review the question of whether to bring the Act or provision into force. Can a government lawfully decide, as a matter of policy, not to bring an Act (or part of an Act) into force? The reality is that governments do as a matter of fact often decide not to bring legislation into force. Yet a decision not to commence will apply only until reversed, and this might always be done by a successor government. The position was described by Lord Elwyn-Jones LC in answer to a parliamentary question on the failure to bring a provision into force: ‘If the Act states that it shall come into force on a date to be fixed by order made by the Minister, and provides no more than that, it is within the discretion of the Minister as to when he brings the Act into force. Parliament may of course bring pressure to bear on him and require him to justify any inactivity. But short of another Act, there is no way in which the Minister

---

<sup>8</sup> Bennion 2019 Sec 5.5 p 171

~~~~~

can be compelled by Parliament to bring that Act into operation.’

The exercise of a commencement power and decisions about whether to exercise it are, however, subject to ordinary principles of administrative law. Decisions concerning the exercise of a power may therefore be challenged on an application to the High court for judicial review. A minister must keep under consideration the question of whether to exercise a power to bring legislation into force: it will be unlawful to decide that the legislation will never be brought into force. There are some rare examples where an Act imposes an express duty on a Minister to bring legislation into force. A date may be specified or it may be left open. If it is left open the implication is that the duty must be performed within a reasonable time. Any other reading would enable a minister to frustrate the clear intention of Parliament.

Notifying section come into force immediately the Act is passed. ^{^9}

One point which deserves notice in this connection is whether, when an Act is to be brought into force on a future date by notification, it is necessary that the section under which the notification is to be issued should be expressed to come into force at once. It was conceded that that section came into force immediately the Act was passed, for otherwise it could not postpone the commencement of the Act.^{^10} It is therefore not necessary to provide that the section authorizing the Government to bring the Act into force later shall itself come into force immediately on the passing of the Act. Certain powers to be

⁹ Bennion 2019 p 173 Sec 5.6

¹⁰ Musaliar v Potti AIR 1956 SC 259 – the question was, ‘How could a section providing for the coming into force of an Act by notification to be issued subsequently by the Government operate to postpone the commencement of the Act unless that section itself was in force?’

exercised after an Act has been passed but before the powers have been brought into force.

An ordinance which is an emergency measure, has to come into effect immediately on its promulgation.

An ordinance which is an emergency measure, has to come into effect immediately on its promulgation and it is therefore customary for the Indian draftsman to say in respect of an Ordinance that it shall come into force at once.

An enactment takes effect at the beginning of the day on which it comes into force. ^{^11}

The general rule is that an Act or provision takes effect at the beginning of the day on which it comes into force. Very occasionally express provision is made for an Act or provision to come into force at some other time of day. This rule is recognised in Sec 5(3) of the General Clause Act 1897 which states that an Act will be presumed to come into operation on the start of the day of its commencement, in following terms:

(3) Unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

Court must not pre-empt commencement. ^{^12}

The courts must apply the law as it stands: they must not pre-empt the commencement of legislation. The proposition that courts (and, for that matter, public authorities and others) cannot lawfully treat legislation as in force when it is not in force almost goes without saying.

¹¹ Bennion 2019 p 174 Sec 5.7

¹² Bennion 2019 p 175 Sec 5.8

~~~~~