

## Interpreting Taxing Statutes # 14D - Duration

### Absence of duration clause indicates that the Act is permanent.

Legislation may be permanent, in which case it remains in force until it is repealed, or temporary, in which case it comes to an end in accordance with its own provisions (unless repealed, renewed or made permanent before then).<sup>1</sup> Nowadays most legislation is permanent. Temporary legislation tends to be reserved for legislation that is experimental or controversial or that is expected to have served its purpose within a short period of time. Even permanent legislation may be expressed so that it is limited to things occurring within a particular time period. An example is income tax, which is imposed by an annual Act using the formula ‘income tax is charged for the year [2015-16].’ The tax relates to income in the tax year in question but the legislation is permanent in the sense that it does not expire at any predetermined time. <sup>2</sup> A provision dealing with expiry is often referred to as a ‘sunset clause’. The whole of an Act may be temporary or only part of it may be temporary. A common approach is to provide that an Act or provision ‘expires at the end of the period of [X] years’ beginning with the day on which it comes into force. But it is equally possible to tie expiry to a particular date or the happening of an event. <sup>3</sup> A ministerial power is sometimes included to extend the duration of temporary legislation or make it permanent. Alternatively, temporary legislation may be extended or put on a permanent basis by a later Act.<sup>4</sup> Foreign Exchange Regulation Act 1947 contained a duration clause thus: “It shall remain in force up to the 31st day of December 1957.” To make permanent an Act which is limited in point of duration the practice followed in India is to have the duration clause omitted through the Legislature.

---

<sup>1</sup> Bennion 2019 p 178 Sec 5.10

<sup>2</sup> Bennion 2019 p 178

<sup>3</sup> Bennion 2019 p 178

<sup>4</sup> Bennion 2019 p 178

~~~~~

**Act remains in force until it is repealed or expires: it will not lapse through disuse (desuetude).**

An Act or provision that has come into force remains in force until it is repealed or expires: it will not lapse through disuse or passage of time (other than expiry), even if it is disobeyed or not enforced.<sup>5</sup> Some legal systems recognise the doctrine of desuetude (disuse), which is a legal process by which, through disobedience and lack of enforcement over a long period, a statute may lose its force without express or implied repeal or expiry.<sup>6</sup> Although there is no doctrine of **desuetude** in English law, an Act may in practice be a dead letter because it is spent. This commonly happens where the state of affairs that the legislation was intended to govern no longer exists (consider, for example, an Act providing for pensions for people born before a particular year, all of whom have since died).<sup>7</sup> An Act considered for centuries to be a dead letter may suddenly acquire a new lease of practical existence. It is there to be applied, if anyone is bold enough to do it.<sup>8</sup>

---

<sup>5</sup> Bennion 2019 p 180 Sec 5.11

<sup>6</sup> Bennion 2019 p 180

<sup>7</sup> Bennion 2019 p 180

<sup>8</sup> Bennion 2019 p 180