

Interpreting Taxing Statutes # 111 – Reports leading up to Bill and draft Bill

Legislation is often preceded by a government report or a report by a parliamentary committee, the Law Commission or some other official body. Report of this nature form part of the enacting history and may be referred to in construing the legislation. [Ben 24.9]

SYNOPSIS

Where legislation is introduced to give effect to an official report containing proposals for reform, the report is likely to be a rich source of contextual information. Any doubts that the courts might once have expressed about looking at this kind of material have long since given way to general acceptance that it may be relied upon, at least for the purpose of determining the context or the mischief at which legislation is aimed. *Fothergill v Monarch Airlines Ltd*: [(1981) AC 251]

‘Where the Act has been preceded by a report of some official commission or committee that has been laid before Parliament and the legislation is introduced in consequence of that report, the report itself may be looked at by the court for the limited purpose of identifying the “mischief” that the Act was intended to remedy, and for such assistance as is derivable from this knowledge in giving the right purposive construction to the Act.’

The insistence that reports could be used only to ascertain the mischief has in some quarters given way to a more relaxed view that reports may be used as evidence as to the meaning of a doubtful word or phrase.

A report should not, however, be relied on to alter the clear meaning of a provision. Resort to a report in those circumstances would undermine legal certainty.

A further use sometime made of reports is as an indication of what the law was or at least what the legislature or others may have thought it was.

Law Commission reports

The frequency with which the courts refer to Law Commission reports is perhaps unsurprising given the careful and detailed treatment of subjects in those reports. In *Cooke v United Bristol Health Care* [(2003) EWCA Civ 1370] Carnwath LJ said:

‘Where a Bill is based wholly or partly on a Law Commission recommendation, it is appropriate to take account of the report to find the mischief to which the provision was directed’.

Consultation papers

The fact that a report is a consultation paper does not affect its admissibility, at least for the purposes of ascertaining the contextual setting of the legislation or the mischief at which it is aimed.

A consultation which merely invites views on a subject without proposing a solution is unlikely to carry much weight.

Draft Bills

As may be seen from the above discussion, when considering an Act that is based on a draft Bill reference may be made to the commentary that accompanied that Bill. A related point is that in appropriate case inferences may be drawn from differences between the text of an Act and a draft Bill on which it is based, especially when those differences are considered in light of other factors. This potential use of draft Bills was mentioned by Bean J in *Cooke v MGN Ltd*: [(2014) EWHC 2831]

‘I also consider that the Parliamentary history, and in particular any respect in which the Act differs from the original draft Bill, may be highly illuminating.’

Weight

When relying on a report care must be taken to examine indications as to whether the legislature followed the report or adopted the draft. The will influence the weight to be given to the report. There is always a possibility that the legislature changed its mind, or for some other reason departed from any recommendations made. Similarly, when referring to a draft Bill consideration should be given to whether alterations were made before enactment.