

## Interpreting Taxing Statutes # 14F - Amendment

**An amendment is anything that directly or indirectly alters the legal meaning of an Act.**

Changes to the law made by Acts of legislature often take the form of amendments to other Acts. In its most general sense, an **amendment** is anything that directly or indirectly alters the legal meaning of an Act. An Act can only be amended by another Act, by subordinate legislation made under an Act or by devolved legislation. An Act may also lay down rules which mean that other kinds of instrument are capable of indirectly altering the meaning of that or later Acts.<sup>1</sup> An amendment may be ‘textual’, ‘non-textual’ or implied. A **textual amendment** adds, removes or replaces words in a way that is intended to make it possible to produce a version of the text as amended. **Non-textual amendments** expressly alter the meaning of legislation without changing the text. **Implied amendments** come about where two Acts are inconsistent: a later Act by implication amends the earlier so far as necessary to resolve any inconsistency between them.<sup>2</sup> An Act may be amended in the session of Parliament in which it is passed: This severses the rule that applied before 1850, which was that an Act could not repeal or amend an Act in the same session. The rule originated from a time when all statutes passed in session were treated as receiving royal assent at the beginning of the session.<sup>3</sup> An Act may even be amended by an earlier Act passed in the same session. This usually arises amendments are needed to one Bill in consequence of another and it is not possible to predict which will be passed first.<sup>4</sup>

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<sup>1</sup> Bennion 2019 p 193

<sup>2</sup> Bennion 2019 p 193

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<sup>4</sup> Bennion 2019 p 194

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There is nothing to prevent an Act from amending itself. This is rare but is a technique occasionally used (for example, where it is not clear whether an amendment is needed because it depends on the timing of commencement).<sup>5</sup> References to an amended enactment are generally taken to refer to it as amended to date.<sup>6</sup>

**A textual amendment adds, removes or replaces words in a way that is intended to make it possible to produce a version of the text as amended.**

A textual amendment adds, removes or replaces words in a way that is intended to make it possible to produce a version of the text as amended.<sup>7</sup> Where a substitution or omission is expressed as running ‘from’ or ‘to’ specified words or provisions, the specified words or provisions are themselves left out of the Act as amended. Textual amendment is now the most common form of amendment in the United Kingdom. The aim is to end up with a single coherent text when the Act is published as amended. This has the great advantage that anyone using the revised Act can read the law in one place. A potential drawback of textual amendment is that someone looking at the amendments before they have been stitched into the earlier Act can find it hard to understand what they do.<sup>8</sup> No significance should be attached to variations in the words used to make an amendment. It is now fairly standard to use ‘insert’, ‘omit’ and ‘substitute’ Older formulations include ‘There shall be inserted/omitted/substituted’.<sup>9</sup> An amendment may take the form of, or include, a repeal. For example, an amendment to omit

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<sup>5</sup> Bennion 2019 p 194

<sup>6</sup> Bennion 2019 p 194

<sup>7</sup> Bennion 2019 p 194 Sec 6.2

<sup>8</sup> Bennion 2019 p 194

<sup>9</sup> Bennion 2019 p 195

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words from a section may be described as an amendment or repeal. The section is ‘amended’, while the words are ‘omitted’ or ‘repealed’. It is common for Acts to use the word amendment to cover omissions. A substitution is also indistinguishable in substance from a repeal and an insertion.<sup>10</sup> For example, an amendment to omit the words from ‘moon’ to ‘body’ has the effect of omitting the words moon and body as well as the words in between. By the same token, an amendment to omit ‘sections 2 to 4’ leaves out ss 2 and 4 as well as s 3.<sup>11</sup>

**Non-textual amendments expressly alter the meaning of legislation without changing the actual text.**

Non-textual amendments expressly alter the meaning of legislation without changing the actual text. <sup>12</sup> The technique of non-textual amendment now tends to be reserved for amendments that are temporary or clarificatory or that deal with unusual cases. Non-textual amendment may be used for this kind of case so as to avoid cluttering up the main text with material that is soon likely to be spent or that goes without saying or that is unlikely to be of interest to the vast majority of readers.<sup>13</sup> A non-textual amendment will typically use words such as ‘has effect as if’, ‘is to be treated as if’ or ‘is to be read as if’.<sup>14</sup> In the past non-textual amendment was the normal method of amendment in the United Kingdom, but it has now been largely replaced by textual amendment. Amendments tended to be drafted in a narrative form, giving the reader a clear idea of what the amendment was doing. The disadvantage of non-textual

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<sup>10</sup> Bennion 2019 p 195

<sup>11</sup> Bennion 2019 p 195

<sup>12</sup> Bennion 2019 p 195 Sec 6.3

<sup>13</sup> Bennion 2019 p 196

<sup>14</sup> Bennion 2019 p 196

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amendment is that it produces the need to conflate two (or more) texts to arrive at their combined legal meaning. <sup>15</sup> Non-textual amendments are sometimes described as referential amendments. The words ‘non-textual modification’, ‘modification’ or ‘gloss’ are also sometimes used to distinguish them from textual amendments, although describing something as a ‘modification’ does not of itself exclude the possibility that something is a textual amendment as the word ‘modification’ is sometimes used to describe amendments generally (including textual amendments). <sup>16</sup> It can sometimes be hard to distinguish between textual and non-textual amendments, particularly in old Acts. For example, the introductory words may provide for a section to apply ‘with the following modifications’ and then include a series of modifications in the form ‘for “X” substitute “Y”’ <sup>17</sup>

**When a later Act is inconsistent with an earlier Act, the later by implication amends the earlier so far as is necessary to remove the inconsistency between them.**

When a later Act is inconsistent with an earlier Act, the later by implication amends the earlier so far as is necessary to remove the inconsistency between them. <sup>18</sup> If Parliament enacts legislation that is inconsistent with an earlier Act, it must be taken to have intended to amend the earlier Act (even if it has not said so expressly). This is a necessary consequence of the doctrine of Parliamentary sovereignty and the notion that Parliament is unable to bind its successors. Where two Acts or provisions are so inconsistent the two cannot stand together the

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<sup>15</sup> Bennion 2019 p 196

<sup>16</sup> Bennion 2019 p 196

<sup>17</sup> Bennion 2019 p 196

<sup>18</sup> Bennion 2019 p 197 Sec 6.4

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 effect of the later one may be to impliedly repeal the earlier one.<sup>19</sup> Where the legal meaning of an Act is unclear and a later Act is drafted on the basis of a particular interpretation of the earlier Act, this is sometimes described as a statutory exposition of it. Whether statutory exposition is equivalent to implied amendment depends on whether the later Act indicates an intention to clarify the meaning of the earlier one (thus serving as a *declaratory* enactment), or merely refers to it. In the latter case, it is of persuasive authority only.<sup>20</sup>

**An Act may make amendments to other Acts in consequence of substantive provisions contained in it.**

An Act may make amendments to other Acts in consequence of substantive provisions contained in it. <sup>21</sup> These are called consequential amendments or simply ‘consequential’. Apart from the occasional declaratory, consolidating or codifying Act, the sole purpose of an Act of Parliament is to change the law. If the existing law did what was required, a new Act would not be needed. The main provisions of an Act will therefore usually result in a need to make consequential changes to existing Acts.<sup>22</sup> Consequential amendments may be made by the Act itself or they may be left to delegated legislation. They are often left to delegated legislation where it is not yet clear what is needed or there is insufficient time to draft the amendments before a Bill is introduced. Even if an Act includes consequential amendments, it is common to find a power to mop up any that have been missed. <sup>23</sup> There is not a clear dividing line between

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<sup>19</sup> Bennion 2019 p 197

<sup>20</sup> Bennion 2019 p 197

<sup>21</sup> Bennion 2019 p 198 Sec 6.5

<sup>22</sup> Bennion 2019 p 198

<sup>23</sup> Bennion 2019 p 198

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consequential and other amendments and for most purposes the distinction (and certainly the label) is unimportant. The key point is that if it is clear that Parliament does not intend to make a fundamental change to the substantive law but is making a change that is merely consequential this will have a bearing on interpretation.<sup>^24</sup> In modern Acts consequential usually take the form of express textual amendments. In the past (before the availability of computer searches) non-textual amendments were more common. Sometimes both methods of amendment are used.<sup>^25</sup> When Parliament abolishes or alters a rule of law it is taken to intend that corresponding alterations shall be treated as made elsewhere in the law where these are consequential on the change in question. An alteration in one area of law often has repercussions in others. Drafters aim to spell out what these are, but sometimes fail to do so comprehensively. This may be because a drafter is not aware of all the possible ramifications. In such a case an amendment may be implied.<sup>^26</sup> It is presumed that Parliament, in making amendments to an Act dealing with one subject matter which are purely consequential on the passing of an Act dealing with a quite different subject matter, did not intend (as it were by a side wind) to make any fundamental change in the former Act.<sup>^27</sup>

**An Act may confer power for the amendment of itself or another Act by delegated legislation.**

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<sup>24</sup> Bennion 2019 p 198

<sup>25</sup> Bennion 2019 p 198

<sup>26</sup> Bennion 2019 p 198

<sup>27</sup> Bennion 2019 p 199

<sup>28</sup> Bennion 2019 p 200 Sec 6.6

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of such a power is as effective as if made directly by an Act. An amendment made by delegated legislation has the same effect as one made directly by an Act, assuming that the exercise of the power is within vires.<sup>29</sup> The practice of including amending powers in Act began in the second half of the nineteenth century, and has been applied in many Acts since. The view that it is somehow constitutionally improper for delegated legislation to amend Act of Parliament is persistent, though it may be thought acceptable, in appropriate cases, to confer an appropriately confined power to amend primary legislation, subject to procedural requirements that ensure effective parliamentary oversight.<sup>30</sup> Power to amend an Act by delegated legislation is usually restricted to less important or consequential provision but this is by no means always the case.<sup>31</sup>

**Where an Act makes textual amendments to an earlier Act the intention is usually to produce a revised text that may be construed as a whole for the future.**

Where an Act makes textual amendments to an earlier Act the intention is usually to produce a revised text that may be construed as a whole. <sup>32</sup> The original wording may, however, be used as an aid to interpreting the meaning of words that are unaltered. The fact that Parliament has chosen to legislate by making textual amendments to another Act is a strong indication that the revised text of the amended Act is intended to be construed as a whole for the future. So, for example, repealed provisions are treated as never having been there, so far as

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<sup>29</sup> Bennion 2019 p 200

<sup>30</sup> Bennion 2019 p 200

<sup>31</sup> Bennion 2019 p 200

<sup>32</sup> Bennion 2019 p 201 Sec 6.7

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concerns the application of the amended Act for the future.<sup>^33</sup>

The principal function of the amending Act is to serve as in instrument for altering the text of the earlier Act. Unless the contrary intention appears, the other provisions of the amending Act should not affect the construction of words inserted by it into the earlier Act. <sup>^34</sup> ‘In general terms, it is undoubtedly correct that the effects of an amendment to a statute should be ascertained by construing the amended statute. Thus, what is to be looked at is the amended statute itself as if it were a free-standing piece of legislation and its meaning and effect ascertained by an examination of the language of that statute. However in certain circumstances it may be necessary to look at the amending statute as well . . . The expression of the relevant parliamentary intention is the *amending* Act. It is the amending Act which is the operative provision and which alters the law from that which it had been before.’ <sup>^35</sup> Simply because an amendment has been made textually does not mean that it is to be treated as having been present since the Act was originally passed when it comes to considering whether the amendment applies retrospectively. <sup>^36</sup> Questions sometimes arise as to the effect of an amendment on words that have not been amended. There is a line of authorities to the effect that the amendment of part of an Act does not affect the construction of the remainder, unless the contrary intention appears. This is sometimes referred to as the rule in *A-G v Lamplough* after the case by that name although to describe it as a ‘rule’ is to overstate the position. The question in any given case is to determine whether the legislative intention was for the amending Act to alter the meaning of the

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<sup>33</sup> Bennion 2019 p 201

<sup>34</sup> Bennion 2019 p 201

<sup>35</sup> Bennion 2019 p 201

<sup>36</sup> Bennion 2019 p 201



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 remainder of the Act. The authorities on this issue may be viewed simply as examples of the courts carrying out that exercise and, in doing so, considering the Act as originally enacted.<sup>37</sup> When construing an amended Act the effective date of an amendment must be borne in mind, along with any transitional provisions<sup>38</sup> Unless there are express words in the amending statute to the effect that the amendment shall apply to pending proceedings also, it cannot affect such proceedings.<sup>39</sup>

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<sup>37</sup> Bennion 2019 p 202

<sup>38</sup> Bennion 2019 p 202

<sup>39</sup> Akki v Municipal Borough AIR 1955 SC 314