

ITS 25.5 - Judicial decisions and settled practice

In carrying out its function of interpreting a statute a court will be guided, and sometimes bound, by precedent. Where the meaning of a statute has been considered by the lower courts and business or other activities have been ordered on that basis for a significant period of time, the courts may be slow to overturn settled practice and understanding.^{^1}

SYNOPSIS

Judicial Interpretation and Precedent

Settled Practice or Understanding

Judicial Interpretation and Precedent

The court is ultimately responsible for determining the meaning of a statute, a role guided—and sometimes restricted—by precedent. Said as follows:

‘The interpretation of the intention of Parliament as expressed in our statutes is a matter for the courts. Once the meaning of an Act of Parliament has been authoritatively interpreted, at any rate by the House of Lords at a judicial sitting as our highest tribunal, that interpretation is the law, unless and until it is thereafter changed by Parliament ... This does not involve any substitution of the views of the judges on questions of policy or discretion for those of the authority concerned, but merely the interpretation of the will of Parliament as expressed in its enactments. Thereafter any change in the law from its definition by the courts again devolves to Parliament alone.’^{^2}

It is essential, however, not to rely on precedent as a replacement for examining the legislation itself.

¹ Bennion 2020 p 24.20

² R v London Transport Executive, ex p Greater London Council [(1983) QB 484] cited in Bennion 2020 p 772

Settled Practice or Understanding

The extent to which established practice or interpretation can assist in understanding an Act remains uncertain. The court after dismissing the idea of ‘tacit legislation’, examined whether historical practice and interpretation could aid statutory construction, concluded as follows:

‘... settled practice may, in appropriate circumstances, be a legitimate aid to statutory interpretation. Where the statute is ambiguous, but it has been the subject of authoritative interpretation in the lower courts, and where businesses or activities, public or private, have reasonably been ordered on that basis for a significant period without serious problems of injustice, there should be a strong presumption against overturning that settled practice in the higher courts. This should not necessarily depend on the degree or frequency of Parliamentary interventions in the field. As in the *Anglesey* case, the infrequency of Parliamentary intervention in an esoteric area of the law may itself be an added reason for respecting the settled practice. On the other hand it may be relevant to consider whether the accepted interpretation is consistent with the grain of the legislation as it has evolved, and subsequent legislative action or inaction may be relevant to that assessment.’³

While settled practice might support interpretation in ambiguous cases, it cannot override a clear statutory provision to alter its meaning. Courts are especially unlikely to favor arguments based on settled practice when changing it would neither disrupt established arrangements nor lead to significant problems or injustice.

³ R (on the applications of ZH and CN) v London Borough of Newham and London Borough of Lewisham [(2014) UKSC 62] cited in Bennion 2020 p 774