Interpreting Taxing Statutes # 107 – Judicial interpretation of earlier legislation (Barras principle)

Where an Act uses a word or phrase that has been the subject of previous judicial interpretation in the same or a similar context it may be possible to infer that the legislature intended the word or phrase to bear the same meaning as it had in that context. This sometimes known as *Barras* principle. [Ben 24.6]

SYNOPSIS

The legislature is normally presumed to legislate in the knowledge of, and having regard to, relevant judicial decisions. In construing a word or phrase in one statute reliance may therefore be placed on how the word or phrase has been construed in an earlier statute, although previous judicial interpretations should be viewed as no more than a starting point. This principle of construction is often referred to as the Barras principle, after the House of Lords decision in Barras v Aberdeen Steam Trawling and Fishing Co Ltd [(1933) AC 402] in which Viscount Buckmaster explained that:

'It has long been a well established principle to be applied in the consideration of Acts of Parliament that where a word of doubtful meaning has received a clear judicial interpretation, the subsequent statute which incorporates the same word or the same phrase in a similar context, must be construed so that the word or phrase is interpreted according to the meaning that has previously been assigned to it.'

Previous non-binding interpretations

The relevance of previous interpretation 'is not confined to statements of law made by way of binding precedent'. It may be

of assistance even where what has gone before is not a judicial decision but some other event (such as an official report) which bore on the legal meaning of the enactment in question. [R v Chief Constable of the Royal Ulster Constabulary, ex p Begley [1997] 4 All ER 833]

Consolidations

The Barras principle does not apply to consolidation Acts. [MacDonald v Carnbroe Estates Limited [2019] UKSC 57] As Lord Drummond Young said in MacMillan v T Leith Developments Ltd:

'If all that Parliament is doing in a consolidation statute is to reproduce the existing law, with no scope for significant change, it cannot be said that there is any genuine endorsement of any cases interpreting the statutes concerned. There is no power to do so.'

In the case of a consolidation Act, the justification for considering previous judicial interpretations is based on the presumption that a consolidation Act is not intended to change the law, rather than an inference that the legislature intended to adopt a particular meaning by using the same or similar words.

Delegated legislation

The principles discussed above apply to delegated legislation as well as to primary legislation. [Norman v Cheshire Fire & Rescue Service [2011] EWHC 3305]

Criticism

While the authorities leave no doubt that reliance may be placed on the way that a court has construed an earlier statute, the

principle is not without its critics. For example, in Farrell v Alexander [(1977) AC 59] Lord Wilberforce said:

‘To pre-empt a court of construction from performing independently its own constitutional duty of examining the validity of a previous interpretation, the intention of parliament to endorse the previous judicial decision would have to be expressed or clearly implied. Mere repetition of language which has been the subject of previous judicial interpretation is entirely neutral in this respect – or at most implies merely the truism that the language has been the subject of judicial interpretation for whatever (and it may be much or little) that is worth.’

See also the doubts expressed by Denning LJ in Royal Crown Derby Porcelain v Russell [(1949) 2 KB 417] indicating that the courts will not follow an earlier mistaken interpretation simply because the wording has been re-enacted:

‘I do not believe that whenever Parliament re-enacts a provision of a statute it thereby gives statutory authority to every erroneous interpretation which has been put upon it. The true view is that the court will be slow to overrule a previous decision on the interpretation of a statute when it has long been acted on, and it will be more than usually slow to do so when Parliament has, since the decision, re-enacted the statute in the same term. But if a decision is, in fact, shown to be erroneous, there is no rule of law which prevent it being overruled’.