Understanding Legislation

A Practical Guide to Statutory Interpretation

David Lowe and Charlie Potter

With a Foreword by The Rt Hon Lord Neuberger of Abbotsbury,
former President of the UK Supreme Court

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Internal Aids to Interpretation

6.1 This chapter considers what are sometimes called 'internal' or 'intrinsic' aids to interpretation of domestic legislation: that is, those features and parts of an enactment that may be used to help ascertain the meaning of its operative provisions, including certain commonly occurring types of operative provision which can be expected to provide particular interpretive assistance.[1] Within that term we include: (i) all of the ancillary components of the legislation which may influence the interpretation of its operative provisions;[2] (ii) the legislation's punctuation, format and structure; (iii) interpretation provisions (that is, operative components of legislation designed to provide particular assistance in interpreting the remainder of the legislation); (iv) deeming provisions; and (v) provisos and savings.

Interpretive Effect of Ancillary Components

6.2 The interpretation of the operative components of an enactment may be influenced by certain of the enactment's ancillary (ie, non-operative) components.[3] The interpretive relevance of different types of ancillary components is discussed below.

6.3 In general, the courts will take account of all ancillary components that are able to elucidate the operative parts of an Act or statutory instrument (SI). However,

[1] See *R v Secretary of State for the Environment, Transport and the Regions ex p Spath Holme Ltd* [2001] 2 AC 349 (HL) 397C (Lord Nicholls): 'the courts employ … internal aids. Other provisions in the same statute may shed light on the meaning of the words under consideration'. On one reading, this may appear to say no more than that an Act must be construed as a whole. While that is true, it is also trite and unenlightening, and unlikely to have been what was meant. As such, we consider the concept of internal aids to construction is more useful when defined as set out in paragraph 6.1. The use of 'external' or 'extrinsic' aids to construction—ie, those found outside the boundaries of an enactment—is considered in Chapter 7.

[2] As to the meaning of 'operative' and 'ancillary' components, see Chapter 2.12.

[3] As to the meaning of 'operative' and 'ancillary' components, see Chapter 2.12. The particular ancillary components referred to in this part of this chapter are discussed (among others) in Chapter 2.

as discussed further below at paragraph 6.8, a distinction is drawn between the use of ancillary components whose content the legislator can affect[4] and those whose content it cannot.[5] In practical terms this means that, since Parliament cannot amend them, headings in Acts fall to be treated as *external* rather than *internal* aids to construction, with less weight being accorded to them than to amendable ancillary components (other things being equal).[6]

6.4 Subject to this caveat, it is submitted that the following principles can be derived from the cases as a whole regarding the use of ancillary components as internal aids to construction:

6.4.1 The courts will be willing to look at ancillary components as internal aids to determine the context and purpose of an enactment, which they will take into account in construing all its provisions, 'ambiguous' or otherwise.[7]

6.4.2 However, since they are not operative components (that is, they are not intended to create law in themselves), their interpretive import is limited. There are limits on the extent to which contextual and purposive factors can be allowed to interfere with the apparent meaning of the operative statutory wording.[8] Ultimately, while ancillary components may be referred to for context, they 'cannot override the clear provisions of the statute'.[9]

6.4.3 Accordingly, apart from generally illuminating the context and purpose of an enactment, they may be taken into account in determining the meaning of

[4] Such as the preamble, long title and short title of an Act, and all ancillary components of an SI (other than those that simply give dates when matters occurred).

[5] Such as headings or chapter numbers of Acts.

[6] *R v Montila* [2004] UKHL 50, [2004] 1 WLR 3141 [34]–[36] (Lord Hope), as cited at paragraph 6.8 below.

[7] See *Attorney General v Prince Ernest Augustus of Hanover* [1957] AC 436 (HL) 460–61 (Viscount Simonds) and at 463: 'it must often be difficult to say that any terms are clear and unambiguous until they have been studied in their context'. See also at 474 (Lord Somervell): 'The word "unambiguous" must mean unambiguous in their context.' See also the discussion in paragraph 6.15 below, especially at n 14 (in the context of the use of the long title of an Act as an internal aid).

[8] ibid 463 (Viscount Simonds): 'the context of the preamble is not to influence the meaning otherwise ascribable to the enacting part unless there is a compelling reason for it', which will not be the case where the preamble's 'own meaning is in doubt'. See also to similar effect at 467 (Lord Normand), 471 (Lord Morton) and 474–75 (Lord Somervell). On the role of context in interpretation, and the primacy of the text, see Chapter 3.13.

[9] *Matthew v Trinidad and Tobago* [2004] UKPC 33, [2005] 1 AC 433 [46] (Lord Bingham, Lord Nicholls, Lord Steyn and Lord Walker, in a joint dissenting opinion). *Matthew* was overruled generally in *Hunte v Trinidad and Tobago* [2015] UKPC 33 on the basis that the Board had not had jurisdiction in that case to commute a lawfully passed sentence on the grounds of unconstitutionality, but without commenting on this proposition (or the issue to which it related).

operative statutory wording only when (after context and purpose have been duly considered) that wording is unclear, ambiguous or leads to absurdity.[10]

6.4.4 The interpretive weight to be given to an ancillary component as an internal aid will always depend on the context.[11]

Ancillary Components in Acts

6.5 *Long titles*: the long title is a legitimate point of reference when construing a statute. During the passage of a Bill, a long title's function is to define the Bill's scope to place boundaries on parliamentary debates regarding the Bill. As such, long titles are particularly useful for identifying the purpose of an enactment and they are routinely referred to by the courts to this end.[12] Although the Court of Appeal has stated that long titles cannot be used to interpret an Act unless the Act is ambiguous,[13] it is submitted that this cannot have been intended to disallow reference to the long title to help determine an Act's context and purpose, and whether there is an ambiguity in its terms to begin with.[14]

[10] *Prince Ernest Augustus* (n 7) 463 (Viscount Simonds), 474–75 (Lord Somervell). These passages refer only to legislation's being 'clear and unambiguous' as standing in the way of relying upon a preamble in construing a statute, making no reference to absurdity. However, in formulating a general rule it is probably better to refer to lack of clarity, ambiguity *and absurdity* as the courts have in the context of reliance upon external aids to interpretation, since a fortiori the same principle must apply to internal aids: see *Spath Holme* (n 1) 397F–398E (Lord Nicholls), and more generally Chapter 7 on external aids. As for the relevance of ambiguity to the interpretive import of ancillary components, see further the cases cited at nn 13, 14 and 17 below, and the text to those notes.

[11] *Prince Ernest Augustus* (n 7) 474–75 (Lord Somervell).

[12] See, eg, *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687 [26] (Lord Steyn): 'The long title of the [Human Fertilisation and Embryology Act 1990] makes clear, and it is in any event self-evident, that Parliament intended the protective regulatory system in connection with human embryos to be comprehensive. This protective purpose was plainly not intended to be tied to the particular way in which an embryo might be created'; and [41] (Lord Millett). See also, eg, *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2017] 2 WLR 583 [88] (Joint majority judgment), referring to the long title of the European Communities Act 1972; *Manchester Ship Canal Co Ltd v United Utilities Water plc* [2014] UKSC 40; [2014] 1 WLR 2576 [51]–[52] (Lord Neuberger), regarding the purposes of the Water Industry Act 1991 and a related Act; and *Wilson v First County Trust Ltd (No 2)* [2003] UKHL 40, [2004] 1 AC 816, [99] (Lord Hope), regarding the purpose of the Human Rights Act 1998.

[13] See *R v Galvin* [1987] QB 862 (CA) 869B–C (Lord Lane CJ): 'One can have regard to the title of a statute to help solve an ambiguity in the body of it, but it is not, we consider, open to a court to use the title to restrict what is otherwise the plain meaning of the words of the statute simply because they seem to be unduly wide.' See also *Watkinson v Hollington* [1944] KB 16 (CA) 20 (Scott LJ): 'Where ambiguous language is used in an Act one is entitled to look at the long title'; and *Manuel v Attorney General* [1983] Ch 77 (CA) 108B–C (Slade LJ).

[14] The need to always interpret words in context is made clear in *Prince Ernest Augustus* (n 7) (see the references cited at that note), and there is no difference of principle between referring to preambles and long titles as part of that context. Further, this approach appears to be taken to external aids, so a fortiori it should also apply to internal aids: see the passage in *Spath Holme* (n 1) cited at n 10 above, and see generally Chapter 7 on external aids. This approach is also supported by *Watkinson v Hollington*

6.6 *Short titles*: in principle, short titles can also be considered in interpreting an Act. However, given their brevity, they may be of more limited utility as aids to interpretation.[15]

6.7 *Preambles*: where a statute has a preamble (although these are rare nowadays in public Acts), it may be referred to as an aid to interpretation for understanding the Act's provisions in the light of the Act's purpose and context, and more widely where there is an ambiguity.[16] As a number of distinguished Law Lords have said:

> Of course, the preamble to a statute cannot override the clear provisions of the statute. But it is legitimate to have regard to it when seeking to interpret those provisions … and any interpretation which conflicts with the preamble must be suspect.[17]

6.8 *Headings*: individual statutory provisions, or groups of provisions, are often set out under headings.[18] Headings of all kinds may be referred to as aids to construction.[19] However, they have a lesser status than other ancillary components.

(n 13) 22–23 (Goddard LJ), who referred to the need to construe an Act in context, which he clearly took to include the long title. See also *Black-Clawson International Ltd v Papierwerke Waldhof-Aschaffenb*urg *AG* [1975] AC 591 (HL) 647F (Lord Simon), stating that ambiguity is not needed before referring to a long title, which 'can be amended in both Houses' and 'is the plainest of all the guides to the general objectives of a statute. But it will not always help as to particular provisions'.

[15] Note that both long and short titles can be amended during a Bill's passage through Parliament, and in principle both ought therefore to be relevant as an aid to interpretation. As to the use of short titles in this regard, see *Re Boaler* [1915] 1 KB 21 (CA) 40–41 (Scrutton J): 'the Court should give less importance to the title than to the enacting part, and less to the short title than to the full title, for the short title being a label, accuracy may be sacrificed to brevity; but I do not understand on what principle of construction I am not to look at the words of the Act itself, to help me to understand its scope in order to interpret the words Parliament has used by the circumstances in respect of which they were legislating'. See also, eg, *R v Galvin* (n 13), where the unsuccessful argument that a document or information needed to be of an 'official' sort to come within the Official Secrets Act 1911 appears to have been made on the basis of both the Act's long title and its short title. Although the judgment focuses on the long title, the reasoning applies to both. For an instance where a title in the style of a short title was considered relevant in the context of a statutory instrument, see n 52 below.

[16] See *Prince Ernest Augustus* (n 7) at the references cited there and at nn 8, 10 and 11 above, and the text to those notes. See also *Director of Public Prosecutions v Schildkamp* [1971] AC 1 (HL) 19F (Viscount Dilhorne, dissenting): 'The preamble to a Bill can be amended during the Bill's passage through Parliament. A preamble to an Act can, therefore, be assumed to have had the approval of Parliament.'

[17] *Matthew* (n 9) [46] (Lord Bingham, Lord Nicholls, Lord Steyn and Lord Walker, in a joint dissenting opinion), a decision now overruled as explained in that note. In the text omitted from the quotation, they cite Francis Bennion, *Bennion on Statutory Interpretation*, 4th edn (London, LexisNexis, 2002) section 246. The equivalent reference in Oliver Jones, *Bennion on Statutory Interpretation*, 6th edn (London, LexisNexis, 2013) is in section 246, 682. See also *R (Jackson) v Attorney General* [2005] UKHL 56, [2006] 1 AC 262 [89] (Lord Steyn): 'arguments based on the Preamble cannot possibly prevail against the clear language of the substantive provisions'.

[18] Prior to 2001, there would be side-notes or marginal notes to individual sections, rather than headings: see *Montila* (n 6) [31] (Lord Hope), citing Bennion, *Statutory Interpretation* (2002) (n 17) 636. The equivalent passage in Jones, *Statutory Interpretation* (2013) (n 17) is at section 256, 696–97.

[19] See, eg, *Bulmer v IRC* [1967] Ch 145 (Ch) 165E–F, per Pennycuick J: 'Chapter headings … are admissible upon the construction of a statute'; *Montila* (n 6) [31]–[36] (Lord Hope), permitting reference to 'headings to each group of sections' and section headings (or, in older legislation, equivalent marginal notes or side notes: see n 18 above); *Schildkamp* (n 16) 10 (Lord Reid), making clear that cross-headings and side-notes (now section headings) can be referred to.

Since (unlike long and short titles and any preamble) they are 'included in the Bill not for debate but for ease of reference … less weight can be attached to them than to the parts of the Act that are open for consideration and debate in Parliament'.[20] Accordingly, they fall to be treated in the same way as external aids to construction such as Explanatory Notes, as 'there is no logical reason why they should be treated differently'.[21]

6.9 Further, the courts have indicated that caution must be exercised in referring to headings, since they can only ever give a broad guide to what follows them and because amendments to provisions may have rendered their phrasing less apt.[22]

Ancillary Components in Statutory Instruments

6.10 *Titles*: as with an Act, a title may be referred to as an aid to interpretation, for such assistance as it may give.[23]

6.11 *Preambles*: reference may be had to the preamble of an SI as an aid to its interpretation. In particular, 'the narrative accompanying the identification of any specified enabling power may provide an indication as to the aims of the statutory instrument, and the preamble may thus have effect in the sense of being a legitimate aid to interpretation'.[24]

6.12 *Headings*: headings of various kinds may be taken into account in interpreting SIs.[25] With Acts, a lesser interpretive status is given to headings since these

[20] *Montila* (n 6) [34] (Lord Hope), continuing: 'But it is another matter to be required by a rule of law to disregard them altogether. One cannot ignore the fact that the headings and sidenotes are included on the face of the Bill throughout its passage through the legislature. They are there for guidance. They provide the context for an examination of those parts of the Bill that are open for debate. Subject, of course, to the fact that they are unamendable, they ought to be open to consideration as part of the enactment when it reaches the statute book.' It is clear from the passage at [31]–[37] that this statement was made in the context of both section headings and headings to groups of sections, and was intended to apply to all forms of headings. See to similar effect *Schildkamp* (n 16) 20E–G (Viscount Dilhorne, dissenting).

[21] *Montila* (n 6) [36] (Lord Hope). This seems right as a matter of principle: in a statutory construction exercise, although both are relevant, the words that the legislator may have influenced ought to be given more weight than words that may have influenced the legislator.

[22] See *Schildkamp* (n 16) 10E–F (Lord Reid), applied, eg, in *R v Okedare (No 2)* [2014] EWCA Crim 1173, [2014] 1 WLR 4088 [21]–[23] (Jeremy Baker J).

[23] See, eg, *McDonald v National Grid Electricity Transmission plc* [2014] UKSC 53, [2015] AC 1128 [143] and [158] (Lord Reed, dissenting), referring to the Asbestos Industry Regulations 1931, SR & O 1931/1140, stating: 'That title suggests that the Regulations are concerned with something identifiable as the asbestos industry, rather than with the use of the products of that industry in the work of other industries.'

[24] *Vibixa Ltd v Komori UK Ltd* [2006] EWCA Civ 536, [2006] 1 WLR 2472 [26] (Arden LJ).

[25] *Brown v Innovatorone* [2009] EWHC 1376 (Comm), [2010] 2 All ER (Comm) 80 [17] (Andrew Smith J): 'headings are relevant when interpreting delegated legislation'.

cannot be debated. However, the same reasoning does not apply to SIs, and so it may not be appropriate to give headings any lesser status than other ancillary components used as internal aids.[26]

Structure, Format and Punctuation

6.13 It is also relevant to consider legislation's structure, format and punctuation as internal aids to construction, albeit that it is inapt to speak of these as 'components' in themselves: structure and format relate to how other components are set out, while punctuation forms an integral part of an Act or SI's other components. Although these elements cannot (in the case of an Act) be amended by Parliament (or at least are not amended in practice),[27] they still carry some weight when interpreting Acts and SIs, as discussed below.

6.14 *Structure and format*: as Lord Hope has stated, 'the format or layout is part of an Act',[28] and it can therefore be taken into account as part of the interpretive exercise. An Act's operative provisions 'need to be understood in the context of the structure of the Act as a whole'.[29] The structure and format of legislation are discussed further in Chapter 2.

6.15 *Use of punctuation*: 'Punctuation can be of some assistance in construction',[30] and it is unrealistic to ignore it.[31] While it may not form a strong basis on which to base a particular construction of statutory provisions, courts are nevertheless astute to recognise that the placing of commas

[26] ibid [17] (Andrew Smith J), noting this distinction and its potential import, but not deciding the point. See also *Cawley v Secretary of State for the Environment* (1990) 60 P&CR 492 (QB) 495 (Lionel Read QC sitting as a deputy High Court judge), recognising the difference between headings in Acts and SIs: 'A heading in a statutory instrument must necessarily have a somewhat different status because the instrument is not enacted by Parliament. It is made by the Minister … Hence in that sense the heading is part of the language used by the maker of the Order, although it does not run grammatically with the text.'

[27] See *Schildkamp* (n 16) 10B–C (Lord Reid).

[28] *Montila* (n 6) [33] (Lord Hope), citing Bennion, *Statutory Interpretation* (2002) (n 17) 638. The equivalent passage in Jones, *Statutory Interpretation* (2013) (n 17) is at section 257, 697.

[29] *Rowstock Ltd v Jessemey* [2014] EWCA Civ 185, [2014] 1 WLR 3615 [12] (Underhill LJ). See also, eg, *Director of the Serious Fraud Office v O'Brien* [2014] UKSC 18, [2014] AC 1246 [18] (Lord Toulson): 'for a proper understanding of its purpose and construction it is necessary to see how the section fits into the structure of the Act'.

[30] *Schildkamp* (n 16) 10E (Lord Reid).

[31] *Hanlon v Law Society* [1981] AC 124 (HL) 198B–C (Lord Lowry): 'I consider that not to take account of punctuation disregards the reality that literate people, such as Parliamentary draftsmen, punctuate what they write, if not identically, at least in accordance with grammatical principles. Why should not other literate people, such as judges, look at the punctuation in order to interpret the meaning of the legislation as accepted by Parliament?'

(and other punctuation marks) in a statute is not 'accidental' or something that one can simply 'ignore'.[32]

Interpretation Provisions

6.16 When seeking to ascertain the meaning or scope of a statutory provision, the issue may well turn on the signification of a particular word or phrase. Enactments often contain *interpretation provisions*, which are intended to control the meaning of the terms (whether words or phrases) defined within them to the extent stated.[33] These are one of the first things that should be considered when construing any legislation.

Scope and Location of Interpretation Provisions

6.17 The scope of interpretation provisions varies, and their location within legislation normally depends on their intended scope:

6.17.1 Where an interpretation provision seeks to define terms for the whole of an enactment,[34] it will usually be found at the beginning or end of that enactment.

6.17.2 Where an interpretation provision seeks only to define terms for part of an enactment (such as a Chapter or Part),[35] it will likely be found towards the beginning or end of that part.

[32] See, eg, *Kennedy v Information Commissioner* [2011] EWCA Civ 367, [2012] 1 WLR 3524 [20] (Ward LJ): 'Punctuation may be used as a guide to interpretation but the presence of a comma may often be a slender thread on which to hang the answer to a disputed point of construction', but considering that in that case a difference in punctuation between two subsections 'cannot be assumed to be accidental'. In affirming the Court of Appeal's decision on appeal, the Supreme Court likewise analysed the significance of the punctuation in these subsections: [2014] UKSC 20, [2015] AC 455 [28] (Lord Mance). See also *Dingmar v Dingmar* [2006] EWCA Civ 942, [2007] Ch 109 [88] (Ward LJ): 'Punctuation may not be the strongest tool for statutory interpretation but in a troublesome section … it cannot be ignored', going on to note that commas in a particular section had the significant effect of putting a phrase in parenthesis.

[33] See *Wyre Forest District Council v Secretary of State for the Environment* [1990] 2 AC 357 (HL) 365E–F (Lord Lowry): 'if Parliament in a statutory enactment defines its terms (whether by enlarging or by restricting the ordinary meaning of a word or expression), it must intend that, in the absence of a clear indication to the contrary, those terms as defined shall govern what is proposed, authorised or done under or by reference to that enactment'.

[34] See, eg, Freedom of Information Act 2000, s 84: 'In this Act, unless the context otherwise requires– …', followed by various definitions.

[35] See, eg, Communications Act 2003, s 151, headed: 'Interpretation of Chapter 1'; see also, eg, Antarctic Act 2013, s 13, contained in Part 1 of that Act (not yet in force), which gives interpretive guidance for certain words 'In *this Part*', but also in certain cases 'For the purposes of *this Act*' (emphasis added).

6.17.3 Where an interpretation provision is intended only to govern an individual section, it will often be found within that section.[36]

6.18 *Limitations on scope*: certain interpretation provisions may deploy a form of words (often at their outset), such as '*except where*' or '*unless the context otherwise requires*', to indicate that they will not apply to define a term if in certain instances the surrounding context requires that the words of that term should be read differently.[37] Words of this kind should alert the interpreter to the possibility that different contexts may give rise to different constructions of statutory wording.[38] At the same time, such words may well have been included on a purely precautionary basis and do not necessarily signify that the relevant term does have different meanings in different parts of the relevant enactment.[39]

Language and Effect of Interpretation Provisions

6.19 Various forms of wording may be used in interpretation provisions to define terms depending on the effect intended to be achieved by the relevant provision. For example, an interpretation provision may be intended to:

6.19.1 *fix* the meaning of a term by providing an exhaustive and comprehensive definition for it;[40]

6.19.2 *include* a particular meaning within the scope of a term, which may have the effect of *enlarging* or *expanding* the meaning a term would otherwise have,[41] or simply *clarifying* its meaning, for the avoidance of doubt;[42]

[36] See, eg, Defamation Act 2013, s 10(2).

[37] See, eg, Limitation Act 1980, s 38(1), using the latter phrase.

[38] See, eg, *Wathan v Neath and Port Talbot County Borough Council* [2002] EWHC 1634 (Admin) [13]–[16] (Sir Edwin Jowitt), finding that the context required that a definition should not apply to a term in a particular section.

[39] See *M v Secretary of State for Work and Pensions* [2004] EWCA Civ 1343, [2006] QB 380 [84] (Sedley LJ): 'The saving for context in a definition section is a standard device to spare the drafter the embarrassment of having overlooked a differential usage somewhere in his text.' This decision was overturned on appeal, but without commenting on this point: [2006] UKHL 11, [2006] 2 AC 91.

[40] See, eg, *Coltman v Bibby Tankers Ltd* [1988] AC 276 (HL) 298F–G (Lord Oliver), finding that in relation to the terms '"employee" and "fault" … the Act makes it clear that there is to be a single exclusive meaning for the purposes of the Act'.

[41] See, eg, *Thomas v Marshall (Inspector of Taxes)* [1953] AC 543 (HL) 556 (Lord Morton), finding that the object of an interpretation provision which stated '"settlement" includes any disposition, trust, covenant, agreement, arrangement or transfer of assets' was 'to make it plain that in section 21 the word "settlement" is to be enlarged to include other transactions which would not be regarded as "settlements" within the meaning which that word ordinarily bears'. See also, eg, *Phillips v News Group Newspapers* [2012] UKSC 28, [2013] 1 AC 1 [19]–[20] (Lord Walker).

[42] See, eg, *Coltman* (n 40) 298G–H and 299E (Lord Oliver), considering whether a ship fell within the meaning of the word 'equipment', where an interpretation provision stated: '"equipment" includes any plant and machinery, vehicle, aircraft and clothing'. He found that it did, rejecting an argument that ships had been deliberately omitted from the definition (unlike vehicles and aircraft) and that the word

6.19.3 *exclude* a particular meaning from the scope of a term, which may have the effect of *narrowing* or *restricting* the meaning a term would otherwise have, or of *clarifying* its meaning, for the avoidance of doubt;[43]

6.19.4 *incorporate* the meaning given to a term in another enactment into the enactment in which the interpretation provision appears.[44]

6.20 The following wording is commonly employed to achieve these effects:

6.20.1 '*Means*': if a definition states that a term '*means*' something in particular, the definition is usually intended exhaustively to fix the meaning of a term, to the exclusion of matters not mentioned,[45] although very rarely it may operate only to include a particular matter without thereby excluding others.[46] However, where the definition of what a term 'means' is in the form of a list, and the final item of the list refers to the term itself (for example, W means X, Y, Z or any other type of W), then this usually means that the provision is intended to act as an *inclusive* definition. That is, the legislator is specifying (whether by way of expansion or clarification of the ordinary meaning of W) that X, Y and Z are included in—but are not exhaustive of—the meaning of W. At the same time, the definition should be read as a whole, and the meaning of W 'may be of assistance in determining' the intended meaning of X, Y and Z in that context.[47]

'equipment' must therefore be read narrowly as excluding them. He considered that the interpretation provision was a 'clarifying and not an enlarging one', included 'for clarification and the avoidance of doubt', to make plain that a wide definition of the word 'equipment' was meant. See also *IRC v Parker* [1966] AC 141 (HL) 161E (Viscount Dilhorne): 'It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they did or not', cited in *Trustees of the Sema Group Pension Scheme v IRC* [2002] EWCA Civ 1857, [2003] Pens LR 29 [86] (Jonathan Parker LJ).

[43] See, eg, s 81(5) of the Regulation of Investigatory Powers Act 2000, which provides: 'For the purposes of this Act detecting crime shall be taken to include [certain matters]; and any reference in this Act to preventing or detecting serious crime shall be construed accordingly, *except that, in Chapter I of Part I, it shall not include a reference to gathering evidence for use in any legal proceedings*' (emphasis added). As for specifying matters for the avoidance of doubt, see the previous note.

[44] See, eg, s 105(1) of the Children Act 1989, which provides that '"care home" has the same meaning as in the Care Standards Act 2000'. See also, eg, Defamation Act 2013, s 10(2).

[45] *R (Sisangia) v Director of Legal Aid Casework* [2016] EWCA Civ 24, [2016] 1 WLR 1373 [22] (Lewison LJ): 'There are well recognised techniques of drafting definition clauses. Thus a clause might say that "X means Y" in which case the definition is likely to be an exclusive one. Or it might say "X includes Y" in which case things within the natural meaning of X will be included in the definition.' These were contrasted with an 'exclusionary definition' in the form '"X does not constitute Y" unless two conditions are satisfied'. See also the cases cited in n 50 below.

[46] See, eg, the divergent views taken of the definition of the phrase 'personal care' in the Registered Homes Act 1984 in *Joy Margaret Harrison v Cornwall County Council* (1991) 90 LGR 81 (CA), where the definition provided that the phrase 'means care which includes assistance with bodily functions where such assistance is required'. Dillon and McCowan LJJ considered the definition to be inclusive, while Nolan LJ agreed with Kennedy J at first instance that it was 'an exhaustive definition'.

[47] *Phillips* (n 41) [19]–[21] (Lord Walker), finding that: 'for present purposes the essential point is that the definition in section 72(5) [of the Senior Courts Act 1981] contains the words "technical or commercial information". Parliament has made plain that information within that description is, for

6.20.2 '*Includes*': if a definition states that a term '*includes*' subsequently stated matters, this usually means it is 'what may be termed an inclusive definition' and 'is normally intended to widen the ordinary natural meaning of the word defined or at least to remove doubts as to the extent of that meaning', rather than to restrict or limit the meaning of the term defined.[48] However, depending on the context, it can also be used to *restrict*[49] or even exhaustively *fix* the meaning of a term.[50]

6.20.3 '*Any*': likewise, the use of the word '*any*' in relation to a category or type of thing may (especially if used in conjunction with 'includes') indicate a generally

the purposes of section 72, to be regarded as intellectual property, whether or not it would otherwise be so regarded'.

[48] *Whitsbury Farm and Stud Ltd v Hemens (Valuation Officer)* [1988] AC 601 (HL) 613G (Lord Keith). See also *Sisangia* (n 45), in the passage cited in that note; *St John's College School Cambridge v Secretary of State for Social Security* [2001] ELR 103 (QB) [32]–[33] (Munby J), noting that that draftsman had tellingly chosen not to use the word 'means' instead of 'includes'; and similarly *Coltman* (n 40) 298F–G (Lord Oliver), contrasting inclusively drafted definitions within the relevant Act with those 'where the Act makes it clear that there is to be a single exhaustive meaning for the purposes of the Act'. See also, eg, *R v Wheatley* [1979] 1 WLR 144 (CA) 147B–D (Bridge LJ), considering a provision which stated: 'the expression "explosive substance" shall be deemed to include any materials for making an explosive substance' (and other matters which appeared to go beyond the obvious meaning of that phrase). He described this as 'an expansive definition. Whatever an explosive substance means, that definition extends the meaning to materials which would otherwise not be within the primary connotation of the phrase'. In view of the nature of this interpretation provision, he commented that it (by contrast with another interpretation provision also being considered) 'provides no indication of the primary meaning of what is meant by an "explosive substance"'.

[49] See, eg, *Whitsbury* (n 48) 614A–B (Lord Keith): 'I think there can be no doubt that in some cases the language of an "inclusive" definition, considered with the general context, can have the effect that the ordinary natural meaning of a word or expression is to some extent cut down.' Compare *Parker* (n 42) 161E (Viscount Dilhorne), where the context indicated that words had been included for the avoidance of doubt: 'Nor do I think that it is right to seek to interpret the general words in the light of the particular instances given in the section. It is a familiar device of the draftsman to state expressly that certain matters are to be treated as coming within a definition to avoid argument on whether they did or not.'

[50] See, eg, *Secretary of State for Defence v Guardian Newspapers Ltd* [1985] AC 339 (HL) 348E (Lord Diplock): 'Although … this definition is introduced by the words "includes" rather than "means", the context in which it appears … makes it clear that it is intended as a complete and comprehensive definition of the term.' See also, eg, *National Dock Labour Board v John Bland & Co Ltd* [1972] AC 222 (HL) 232F–233B (Viscount Dilhorne), citing the speech of Lord Watson in *Dilworth v Commissioner of Stamps* [1899] AC 99 (PC) at 105–106 in support of his conclusion that the word 'include' had in that instance been 'intended to … exhaustively define the areas … covered by the Scheme'. In *Dilworth*, Lord Watson opined that the word 'include' could have two meanings: 'The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases', but 'where the context of the Act is sufficient to shew' such an intention, it can also 'be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning' of a relevant term 'for the purposes of the Act'. Lord Watson's dictum was also cited with approval in, eg, *Whitsbury* (n 48) 613G–H (Lord Keith) and *St John's College School* (n 48) [32] (Munby J) (in the former, a restrictive but not exhaustive, meaning was found to have been intended in the particular context; in the latter, it was held (at [33]) that the 'normal meaning of the word "includes"' should apply, as the context did not indicate that a restrictive meaning was intended). See also *Coltman* (n 40) 298E–F (Lord Oliver): 'there may be circumstances in which an inclusive definition of this sort can have a restrictive effect'.

wide or enlarged breadth of scope, in accordance with 'its colloquial, and also dictionary, sense of "no matter which, or what"'.[51]

6.20.4 '*Does not include*': a definition may state that a term does *not* include a particular matter. The extent to which any inference can be drawn from such an exclusion as to the ordinary meaning of the relevant term may well be limited, particularly since, as with an inclusive definition, a matter may have been excluded only for the avoidance of doubt.[52]

6.20.5 '*Except*': interpretation provisions may also contain explicitly stated 'exceptions' which may either serve to enlarge (for example, '… except that X includes …')[53] or narrow (for example, '… except X does *not* include …')[54] the effect of the preceding words of definition in the provisions. (See further the discussion of 'provisos' and 'savings' at paragraphs 6.29–6.35 below).

6.21 *Lists*: sometimes a provision stating what a term includes, excludes or means will take the form of a list. One form of list sometimes used was discussed in paragraph 6.20.1 above. Another form of list which may be used is one phrased such that the final item is more general than the preceding words (for example, 'hats, scarves, gloves or other clothes', or 'cows, pigs, goats, or any other type of animal'). In these cases, the meaning of the final term may be restricted by the preceding, more specific, items in the list if those items are all of the same kind. This is an example of a principle of construction of general application

[51] *Jackson* (n 17) [29] (Lord Bingham), continuing: '"Any" is an expression used to indicate that the user does not intend to discriminate, or does not intend to discriminate save to such extent as is indicated.' See also *Coltman* (n 40) 299A–B (Lord Oliver); and *Whitsbury* (n 48) 614C–D (Lord Keith).

[52] See (by analogy) *Ealing London Borough Council v Race Relations Board* [1972] AC 342 (HL) 363E (Lord Simon), in relation to the construction of a general statutory provision by reference to a saving clause: 'considerable caution is needed in construing a general statutory provision by reference to its statutory exceptions. "Saving clauses" are often included by way of reassurance, for avoidance of doubt or from abundance of caution' (as to saving provisions, see paragraphs 6.33–6.35 below). See also (though in a contractual context and not in relation to interpreting a definition) the doubts expressed about inferring inclusion from an expression of exclusion in *Thorn v The Mayor and Commonalty of London* (1876) 1 App Cas 120 (HL) 131–32 (Lord Chelmsford); and similarly *Prestcold (Central) Ltd v Minister of Labour* [1969] 1 WLR 89 (CA) 98H (Lord Diplock): 'This is to stand the rule on its head: "exclusio unius inclusio alterius", and even statisticians do not do that' (although again this was not in the context of construing a definition clause, and Lord Diplock accepted that where an exclusion was included in one provision, an inference could be drawn from the absence of such an exclusion in another). However, in some cases it may be legitimate to draw an inference of inclusion from the specific exclusion of certain matters from the scope of a term: see, eg, *Jackson* (n 17) [138] (Lord Rodger), as cited in Chapter 3, n 93. For an example of an 'exclusionary definition' in a different form, see *Sisangia* (n 45), in the passage cited in that note.

[53] See, eg, Public Health (Control of Disease) Act 1984, s 74: '"vessel" has the same meaning as in the Merchant Shipping Act 1894 *except that it includes* a hovercraft within the meaning of the Hovercraft Act 1968' (emphasis added).

[54] See, eg, Charities Act 2011, s 248(2): '"Benefit" means a direct or indirect benefit of any nature, *except that it does not include* any remuneration (within the meaning of section 185) whose receipt may be authorised under that section' (emphasis added).

sometimes known as the '*ejusdem generis*' principle, which is discussed further at Chapter 3.36–3.39.

6.22 Overall, particular weight should be given to the words of an interpretation provision, since it can be expected to have been drafted with care for its intended purpose. The courts have accordingly expressed reluctance at attempts to cut down 'general and unambiguous words' in a definition by reference to a provision's intended purpose[55] and have been resistant to attempts at restricting a term's defined meaning by reference to its ordinary meaning.[56] However, like any other provision (and as many of the examples cited show), an interpretation provision must always be considered in its context.[57]

6.23 Further, as Lord Hoffmann has said, the fact that a term is defined 'does not mean that the choice of words adopted by Parliament must be wholly ignored. If the terms of the definition are ambiguous, the choice of term to be defined may throw some light on what they mean'.[58]

6.24 However, other judicial statements (including by Lord Hoffmann) have not referred to the need for there to be ambiguity before the choice of term can be taken into account in construing a definition.[59] It may be that the true principle

[55] See *Parker* (n 42) 161D–E (Viscount Dilhorne): 'I do not think that one should restrict the general and unambiguous words of the definition in the statute by regard to the mischief which it is thought that the section is aimed at.' Note, however, that the context in that case also demanded a wide interpretation of the relevant provision, as later cases held: see the discussion in *Sema Group* (n 42) [84]–[89] (Jonathan Parker LJ).

[56] See *Yates v Starkey* [1951] Ch 465 (CA) 476 (Jenkins LJ), who stated he must apply statutory definitions according to 'their true construction, however remote from the ordinary conceptions of [the defined term] the content of the definitions may in any given instance appear to be' (cited with approval in *Thomas* (n 41) 555 (Lord Morton), and see generally at 555–56 on the purpose and effect of the interpretation provision in question). See also *Phillips* (n 41) [19]–[21] (Lord Walker), although he accepted that in principle the choice of the term being defined 'may be of assistance' in construing part of its definition.

[57] See, eg, *Bulmer* (n 19), in which Pennycuick J distinguished *Thomas* (n 41), discussed in that note, in finding that the same definition imported an implied restriction that it did not extend to bona fide commercial transactions, stating (at 165D–E): 'there is no doubt that, where the context so requires, the court may imply some restriction upon the scope of general words in a statute'. See also, eg, the passage in *Whitsbury* (n 48) cited at n 49 above, and *Phillips* (n 41) as cited at n 56 above; and see generally n 59 below.

[58] *MacDonald v Dextra Accessories Ltd* [2005] UKHL 47, [2005] 4 All ER 107 [18]. This passage was cited in *Aspinalls Club Ltd v Revenue and Customs Commissioners* [2013] EWCA Civ 1464, [2015] Ch 79 [10]–[11] (Moses LJ), emphasising the need for ambiguity. Of course, in some cases, the chosen term may itself provide little assistance: see, eg, *Phillips* (n 41) [19]–[20] (Lord Walker). See further the discussion in *Sisangia* (n 45) [11]–[21] (Lewison LJ), citing *MacDonald* and other cases, and finding that 'the judge's error was to ignore what it was that was being defined'.

[59] See *Birmingham City Council v Walker* [2007] UKHL 22, [2007] 2 AC 262 [11] (Lord Hoffmann): 'Although successor is a defined expression, the ordinary meaning of the word is part of the material which can be used to construe the definition.' And to similar effect, see *Oxfordshire County Council v Oxford City Council* [2006] UKHL 25, [2006] 2 AC 674 [38] (Lord Hoffmann): 'in construing a definition, one does not ignore the ordinary meaning of the word which Parliament has chosen to define.

is that the courts will always construe words used in definitions in their context, which includes Parliament's choice of words regarding the term being defined, but where the meaning of a definition, viewed in that context, is clear, they will be very slow to depart from it, even where it is not in keeping with the ordinary meaning of the term being defined.[60]

Deeming Provisions

6.25 What are commonly termed 'deeming provisions' are legislative provisions that lay down a hypothesis on the basis of which those applying the legislation, and those to whom it applies, must proceed. These hypothetical stipulations may or may not reflect reality, and they are therefore sometimes referred to as 'statutory fictions'.

6.26 Deeming provisions take a variety of forms and have a variety functions. For example, they may: (i) appear in the interpretation sections of a statute to modify a definition;[61] (ii) relate to the legal, jurisdictional or geographical status of particular persons;[62] (iii) be used to regulate contractual terms;[63] (iv) be used to affect the basis for the calculation of payments such as tax[64] or compensation;[65] or (v) stipulate when something has been done,[66] or regulate whether it has been done in time.[67]

It is all part of the material available for use in the interpretative process', though in that case (for reasons set out at [39]) he declined to allow the ordinary meaning to restrict the relevant definition. Lord Scott dissented on this point, emphasising at [81]–[83] the importance in the interpretation exercise of the ordinary meaning of the defined word.

[60] See n 7 above on the need to consider terms in their context in order to assess whether or not they are ambiguous.

[61] See, eg, s 38(2) of the Limitation Act 1980, which provides that: 'For the purposes of this Act a person shall be treated as under a disability' when certain circumstances apply.

[62] See, eg, s 11(1) of the Immigration Act 1971, which for the purposes of the Act deems persons not to have entered the UK in certain circumstances despite their physical presence in the country. This section was considered in, eg, *R (ST) v Secretary of State for the Home Department* [2012] UKSC 12, [2012] 2 AC 135.

[63] See, eg, Equality Act 2010, s 66(1): 'If the terms of A's work do not (by whatever means) include a sex equality clause, *they are to be treated as* including one' (emphasis added). The following subsection then defines the term 'sex equality clause'.

[64] See, eg, s 80 of the Taxation of Chargeable Gains Act 1992, which provides that certain persons ceasing to be resident in the UK shall be deemed to have sold and reacquired certain assets at the time of ceasing to be resident, at their market value at that time.

[65] See, eg, s 5(4) of the Banking (Special Provisions) Act 2008, setting out assumptions on the basis of which compensation had to be calculated for the transfer of securities under the Act. This section was considered, in the context of the Northern Rock plc Compensation Scheme Order 2008, SI 2008/718, by the Court of Appeal in *R (SRM Global Master Fund LP) v Commissioners of HM Treasury* [2009] EWCA Civ 788, [2010] BCC 558.

[66] See, eg, CPR 6.26 on when documents will be deemed to have been served.

[67] See, eg, Taxes Management Act 1970, s 118(2).

6.27 The Supreme Court has given guidance as to how courts should approach the construction of deeming provisions (endorsing a number of earlier cases), which can be summarised as follows:[68]

(1) One should start by ascertaining, so far as possible, the purpose of a deeming provision's enactment, and specifically 'for what purposes and between what persons the statutory fiction is to be resorted to'.
(2) The words of deeming provisions should then generally be given 'their ordinary and natural meaning, consistent as far as possible with the policy of the Act and the purposes of the provisions so far as such policy and purposes can be ascertained'.
(3) However, where applying this approach leads to 'an unjust, anomalous or absurd result', then 'the application of the statutory fiction should be limited to the extent needed to avoid such injustice or absurdity, unless such application would clearly be within the purposes of the fiction'.
(4) In deciding how far it is permissible to depart from the ordinary meaning of the words of a deeming provision, one must 'take into account the fact that one is construing a deeming provision'. This is not to disapply normal rules of construction (which would be contrary to principle), but rather to accept that it is unrealistic to expect the legislature precisely to delimit when and how far 'artificial assumptions' should be made.
(5) In applying deeming provisions, one must also 'treat as real the consequences and incidents inevitably flowing from or accompanying that deemed state of affairs, unless prohibited from doing so'.

6.28 The Supreme Court also endorsed the frequently cited principle that one should not take a deeming provision's 'hypothesis further than [is] warranted'.[69] In this regard, it is important to note that the Court of Appeal has stated that the principle that '[t]he hypothetical must not be allowed to oust the real further than obedience to the statute compels'[70] should not be treated as laying down a 'special rule which requires a statutory hypothesis to be narrowly and literally construed'. Rather, each deeming provision must be construed on its own terms applying the usual rules of construction. 'A statutory hypothesis, no doubt, must not be carried further than the legislative purpose requires, but the extent to which it must be

[68] See *DCC Holdings (UK) Ltd v Revenue and Customs Commissioners* [2010] UKSC 58, [2011] 1 WLR 44 [36]–[40] (Lord Walker), and the cases there cited.
[69] ibid [40].
[70] *Polydor Ltd v Harlequin Record Shops Ltd* [1980] 1 CMLR 669 (Ch) [11] (Sir Robert Megarry V-C). Although the case was overturned on appeal ([1980] 2 CMLR 413), this statement has subsequently been cited with approval in *Shanks v Unilever plc* [2010] EWCA Civ 1283, [2011] RPC 12 [33] (Jacob LJ), who also cited other cases to similar effect.

carried depends upon ascertaining what the purpose is.'[71] Thus, working out the legislative purpose will often be the central element in the interpretation of deeming provisions (in accordance with the Supreme Court's guidance in this area, as discussed in the previous paragraph).

Provisos and Savings

6.29 Legislation may contain 'provisos' or 'savings', whose purpose is to qualify the effect of all or part of the legislation. The term 'proviso' is usually applied to wording designed to limit the scope or effect of the particular provision in which it is contained, whereas 'saving' is used to describe wording (often in its own separate section) designed to enact a more far-reaching restriction on the scope or effect of the entire piece of legislation or certain of its provisions. In some cases, provisos and savings can be used to assist in the interpretation of the provision, or piece of legislation, in which they appear.

6.30 *Provisos* are generally drafted in a form commencing with words such as 'provided that'[72] or 'unless'.[73] The function of a proviso—at least in the case of a 'true proviso'[74]—'as the word implies' is 'to qualify, override, cut down or derogate from that which goes before'.[75] Consequently, a true proviso will normally appear at the end of the provision which it qualifies and can be expected to 'be limited in its operation to the ambit' of that provision.[76]

6.31 Interpreters must be alive to the possibility that what appears from its form to be a proviso is not in fact 'a true proviso limiting or qualifying what preceded it'. In every case 'it is the substance and content of the enactment, not its form, which has to be considered, and that which is expressed to be a proviso may itself add to

[71] See *Bricom Holdings Ltd v Commissioners of Inland Revenue* [1997] STC 1179 (CA), where Millet LJ considered the dictum of Sir Robert Megarry V-C in *Polydor* (n 70) cited in the text to that note.

[72] See, eg, Maritime Conventions Act 1911, ss 1(1), 2 and 3(1) (now repealed), considered in *Owners of the Ship 'Anangel Horizon' v Owners of the Ship 'Forest Duke'* (CA, 2 July 1997).

[73] See, eg, Highways Act 1980, s 31(1), considered in *R (Godmanchester Town Council) v Secretary of State for the Environment, Food and Rural Affairs* [2007] UKHL 28, [2008] 1 AC 221.

[74] See further paragraph 6.31 below.

[75] *Anangel Horizon* (n 72) (Staughton LJ), adopting the description of a proviso in *Goulandris Bros Ltd v B Goldman & Sons Ltd* [1958] 1 QB 74 (QB) 93 (Pearson J).

[76] *Lloyds and Scottish Finance Ltd v Modern Cars and Caravans (Kingston) Ltd* [1966] 1 QB 764 (QB) 780G (Edmund Davies J). See also *Re Memco Engineering Ltd* [1986] Ch 86 (Ch) 98D (Mervyn Davies J): 'a proviso is usually construed as operating to qualify that which precedes it'; and *Thompson v Dibdin* [1912] AC 533 (HL) 541 (Earl Loreburn LC): 'the proviso must be limited to the subject-matter of the enacting clause'.

and not merely limit or qualify that which precedes it'.[77] Thus, in some cases the words 'provided that' are effectively to be read as 'and' or 'in which case'.[78]

6.32 As with other provisions, provisos ('true' or otherwise) are to be interpreted as part of the legislation as a whole.[79] But true provisos, given their purpose, will have particular import for the construction of the provision in which they are contained,[80] and vice versa.[81] That said, a degree of caution needs to be exercised in construing a section by reference to a proviso that qualifies it, as '[p]rovisos are often inserted ex abundanti cautela' (that is, out of an abundance of caution).[82]

6.33 *Savings* often appear in a self-contained provision with a dedicated heading in a statute.[83] There is no universal drafting form, but they commonly begin with the words: 'nothing in this Act'. Whereas provisos are generally framed as qualifications of particular provisions, savings are often framed by reference to what is intended to remain undisturbed by the legislation in question, such as an existing area of law,[84] the law applicable to certain past events or transactions[85] or the validity of things that have been done under previously existing law.[86]

[77] *Commissioner of Stamp Duties v Atwill* [1973] AC 558 (PC) 561G–H (Viscount Dilhorne), and see generally at 561G–563G.

[78] ibid 563C–G.

[79] *Jennings v Kelly* [1940] AC 206 (HL) 229 (Lord Wright): 'The proper course is to apply the broad general rule of construction, which is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest. I do not think that there is any other rule even in the case of a proviso in the strictest or narrowest sense.' This passage was cited with approval in *Atwill* (n 77) 563A–C (Viscount Dilhorne).

[80] See, eg, *McDonald* (n 23), where the Supreme Court derived assistance from a proviso in the preamble to the Asbestos Injury Regulations 1931 (n 23) in interpreting the opening words of the preamble. See especially in the judgment of Lord Kerr at [11]–[12]: 'Although this proviso cut down the scope of the Regulations, it gives some insight into the width of their intended ambit', and at [42], with Lord Clarke agreeing at [113].

[81] See, eg, *Godmanchester Town Council* (n 73) [34] (Lord Hoffmann), construing the proviso in s 31(1) of the Highways Act 1980 in the context of the section as a whole. See also *Thompson* (n 76) 544 (Lord Ashbourne), referring to 'the settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso … The words are dependent on the principal enacting words, to which they are tacked as a proviso. They cannot be read as divorced from their context'.

[82] *Taylor v Provan* [1975] AC 194 (HL) 219F (Lord Simon, dissenting). See also, eg, *Mohammed v Ministry of Defence* [2017] UKSC 1, [2017] 2 WLR 287 [41] (Lady Hale), discussing the effect of the proviso in section 2(1) of the Crown Proceedings Act 1947, but stating: 'It may be that the proviso was unnecessary.' And see, by parity of reasoning, the statements in relation to savings in *Ealing London Borough Council* (n 52), as cited in that note.

[83] See, eg, Misrepresentation Act 1967, s 5, headed 'Saving for past transactions'.

[84] See, eg, Trade Marks Act 1994, s 2(2): 'No proceedings lie to prevent or recover damages for the infringement of an unregistered trade mark as such; but nothing in this Act affects the law relating to passing off', considered in *Inter Lotto (UK) Ltd v Camelot Group plc* [2003] EWCA Civ 1132, [2003] 4 All ER 575 [34]–[38] (Carnwath LJ).

[85] See, eg, Misrepresentation Act 1967, s 5: 'Nothing in this Act shall apply in relation to any misrepresentation or contract of sale which is made before the commencement of this Act.'

[86] See, eg, the raft of 'General savings' enacted by s 16(1) of the Interpretation Act 1978, stating various effects that repeals are intended not to have ('unless the contrary intention appears').

6.34 Given their ordinary function of preserving the status quo in some way, what is in substance a saving provision should not be treated as expanding existing law[87] or as codifying it and limiting its further development.[88]

6.35 As with provisos, savings are to be construed as part of the legislation as a whole, and in appropriate cases may inform the meaning and effect of other parts of that legislation.[89] Again, though, as with provisos, caution must be exercised in using savings to interpret other parts of an Act, as they 'are often included by way of reassurance, for avoidance of doubt or from abundance of caution'.[90]

[87] *Arnold v The Mayor, Aldermen and Burgesses of the Borough of Gravesend* (1856) 2 Kay & J 574, 590–91; 69 ER 911, 918 (Sir William Page Wood V-C): 'But I ask, when the statute only "saves" rights, why should we say it "gives" them? … I should have thought it impossible successfully to contend that a saving would give any further right than the party already had.'

[88] *Attorney General v Times Newspapers Ltd* [1992] 1 AC 191 (HL) 215E–F (Lord Ackner).

[89] See the citation from *Jennings* (n 79) in that note, which is expressed in general terms, and by parity of reasoning must apply to savings in the same way as to provisos. For a specific example, see *Inter Lotto* (n 84) [34]–[38] (Carnwath LJ), where an argument that the Trade Marks Act 1994 conferred exclusive rights, including to the exclusion of rights under the law of passing off, was rejected as being inconsistent with the broad saving in section 2(2) (set out at n 84 above).

[90] *Ealing London Borough Council* (n 52) 363E (Lord Simon), and see the more extensive citation in that note.