Some Issues on Statutory Interpretation

Lord Burrows*

This was a talk given on 6 June 2025 to the Statute Law Society Conference 2025 in Portcullis House, London. The theme of the conference was "Legislation and the Constitution: Renton 50 Years On".

1. Introduction

In this talk, I want to discuss three aspects of statutory interpretation. First, modern statutory interpretation and Parliamentary intention. Secondly, the interpretation of tax statutes. Thirdly, the use of external aids, in particular explanatory notes and Law Commission Reports.

Out of an abundance of caution, I should stress at the outset that the views I am here expressing are mine alone and do not reflect the views of the Supreme Court. Furthermore, nothing I say should be taken as any indication of how I would approach these issues if they became relevant in an appeal to the Supreme Court.

2. The modern approach and Parliamentary intention

It is now well-established that the correct judicial approach to interpretation of a statute is to ascertain the meaning of the words used in the light of their context and the purpose of the statutory provision. There is therefore a Holy Trinity in play: words, context and purpose. As Lord Hamblen and I said in *News Corp UK & Ireland Ltd v Commissioners for His Majesty's Revenue and Customs*:[1]

> "…the modern approach to statutory interpretation in English (and UK) law requires the courts to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision: see, eg, [*R on the application of*] *Quintavalle* [*v Secretary of State for Health* [2003] UKHL 13, [2003] 2 AC 687] para 8 (per Lord Bingham); *Uber BV v Aslam* [2021] UKSC 5; [2021] ICR 657, para 70; *Rittson-Thomas v Oxfordshire County Council* [2021] UKSC 13; [2022] AC 129, para 33; *R(O) v Secretary of State for the Home Department* [2022] UKSC 3; [2022] 2 WLR 343, paras 28-29."

Lest it be thought that this formulation is only used in judgments in which I have been involved, you will see exactly the same formulation being adopted in two very recent judgments of the Supreme Court in 2025 in cases in which I was not sitting: *R (N3) v Secretary of State for the Home Department*[2] (dealing with deprivation of citizenship); and *Darwall v Dartmoor National Park Authority* [3] (the case about wild camping on Dartmoor).

That then is the Holy Trinity. But there are some further principles that assist in practice. I here mention four of the most important.

First, a meaning that avoids absurd or irrational or unworkable consequences is to be preferred to one that has those consequences. Hence it is said in *Bennion, Bailey and Norbury on Statutory Interpretation*[4] ("*Bennion*") (footnotes omitted):

---

* I would like to thank my Judicial Assistant, Pete Kerr-Davis, for his help in preparing this talk.

[1] [2023] UKSC 7, [2024] AC 89, at para 27.

[2] [2025] UKSC 6; [2025] 2 WLR 386, para 62

[3] [2025] UKSC 20, at para 15.

[4] 8th edn, 2020, at chapter 13.1.

> "The court seeks to avoid a construction that produces an absurd result … Here, the courts give a very wide meaning to the concept of 'absurdity', using it to include virtually any result which is impossible, unworkable or impracticable, inconvenient, anomalous or illogical, futile or pointless, artificial, or productive of a disproportionate counter-mischief."

Secondly, a meaning that achieves greater coherence with other statutes and the common law is to be preferred to one that produces incoherence. Hence it is said in *Bennion,* citing numerous cases:[5]

> "It is a principle of legal policy that law should be coherent and self-consistent. This principle forms part of the context against which legislation is enacted and, when interpreting legislation, a court should take it into account."

Both those ideas – avoiding absurdity and avoiding incoherence – were stressed by the Supreme Court in *For Women Scotland Ltd v The Scottish Ministers*[6] (on the meaning of woman in the Equality Act 2010).

A third important principle is that a statute is 'always speaking'. As understood in the modern context, what this means is that, in general and subject to the words not permitting this, the words should be interpreted in the light of changes that have occurred since the statute was enacted. Those changes may include, for example, technological developments, changes in scientific understanding, changes in social attitudes and changes in the law.

The always speaking principle was explored in some depth by the Supreme Court in the *News Corp* case albeit that it was there held that, having regard to the constraints of EU law, the always speaking principle could not be applied so as to interpret "newspapers" as covering digital editions.

Fourthly, there is the principle of legality that, where possible (that is, subject to there being clear words to the contrary), a statute will not be interpreted as taking away fundamental rights. This was most famously laid down by Lord Hoffmann in *R v Secretary of State for the Home Department, Ex p Simms*.[7]

It will be noted that, in describing the modern approach to statutory interpretation, I have so far avoided any reference to Parliamentary intention. As you may know from my Hamlyn Lectures,[8] I am somewhat sceptical about the reliance that is very often placed on Parliamentary intention as the key to statutory interpretation.

I am grateful for this opportunity to clarify exactly where I stand on this debate. I accept that legislation is what has been termed a speech act and that human beings obviously lie behind that speech act. Viewed at a high level of generality I can therefore accept that statutory interpretation may be said to effect the objective intention of Parliament and that, where one has a group of individuals behind a speech act, one can rely on "group theory" – the objective intention of the group – as an explanation for what lies behind the correct interpretation.

---

[5] Chapter 26.8.
[6] [2025] UKSC 16 at paras 13 and 160.
[7] [2000] 2 AC 115, 131.
[8] Available in hard copy form as: A Burrows, *Thinking about Statutes: Interpretation, Interaction, Improvement* (Cambridge University Press, 2018).

But my essential objection remains that reference to Parliamentary intention does not assist at a practical level in resolving the difficult questions of statutory interpretation that come before the courts and may, indeed, act to obfuscate the true reasoning of the courts.

The necessary tools are all there to achieve the proper interpretation without the need to refer to, or any help to be gained from, Parliamentary intention. Reliance on the Holy Trinity – words, context and purpose – means that there is no room for Parliamentary intention: it is a fifth wheel on the coach.

Moreover, reference to Parliamentary intention is not merely unhelpful but has a tendency to obscure the true reasoning being adopted. In other words, without great care, it can become an obstruction to transparent reasoning. Put another way still, Parliamentary intention is often used as if it were a reason for a particular interpretation whereas it is in fact being used as a conclusion for reasoning that is otherwise left unarticulated. Many times since I have been on the Supreme Court I have heard counsel in their submissions say that Parliament must have intended this or Parliament cannot have intended that, as if those statements were reasons themselves for adopting a particular interpretation. But the actual reason lies at a more concrete level and needs to be carefully focussed on. It may be, for example, that one interpretation rather than another leads to unreasonable or absurd consequences. Or it may be that one interpretation rather than another achieves greater coherence with the rest of the law. But those are the good reasons for adopting a particular interpretation and nothing is being added by saying that Parliament cannot have intended those consequences or that incoherence.

Therefore, as I have said before, I regard Justice Kirby, the Australian judge, as having been on the correct lines when he wrote in 2002, "[I]t is unfortunately still common to see reference … to the 'intention of Parliament.' I never use that expression now. It is potentially misleading."[9] Certainly since joining the Supreme Court I have tried to avoid placing any reliance on the language of Parliamentary intention.

It has sometimes been suggested to me that there is no difference between "purpose" and intention so that accepting a purposive interpretation, as I do, inevitably involves accepting the importance of the intention of Parliament. This suggestion seems to me to involve a confusion of levels of reasoning. In so far as Parliamentary intention makes sense it operates at a high level of generality and lies behind the words, context and purpose. One would be missing an important practical step if one instead said that one is looking at words, context and intention. Purpose and intention are not here synonyms. The purpose of a statutory provision is focusing on the policy of that provision, the reason why it has been enacted. As part of that, one very often looks at the mischief that is being addressed. But none of that would be clear – because intention is a wider concept operating at a higher level of generality - if one deleted reference to purpose and said that instead one was looking at words, context and intention.

Put another way, we would I think all accept that there has been a modern move to purposive interpretation and away from a more literal approach. But one cannot capture that movement if one treats purpose and intention as synonymous. Hence, as far as I am aware, no-one has sought to describe that modern movement by saying that there has been a movement from a more literal to an intention—based approach.

---

[9] Justice Michael Kirby, 'Towards a Grand Theory of Interpretation: The Case of Statutes and Contracts' (2002) Statute Law Review 95, at p.98.

I add one final word on this debate. I accept that one possible advantage of referring to Parliamentary intention is that, in shorthand form, it makes clear that the courts are merely interpreting what Parliament has laid down and are not themselves creating the policy enacted in the legislation. In other words, it may help to make clear that Parliament is sovereign. But in my view there are far more straightforward and illuminating ways of making that clear – not least by referring directly to Parliamentary sovereignty and the separation of powers – rather than relying on the language of Parliamentary intention.

3. Tax statutes

The essential point I here want to make – and it may be that this is now well-accepted – is that there are no special rules for interpreting tax statutes. Given the importance of words, context and purpose in respect of statutory interpretation, there is now no significant difference between the interpretation of tax statutes and any other statutes.

This was certainly not the accepted position until relatively recently.

Over the course of the late twentieth century, as purposive interpretation of statutes generally gained sway over literalist interpretation, tax legislation was, as Lord Steyn memorably put it in *Inland Revenue Commissioners v McGuckian*, initially "left behind as some island of literal interpretation."[10] The principled basis for this was, broadly speaking, that taxpayers must be able to rely on the literal statutory wording in structuring their tax affairs. Allied to this was that, where there was a series of transactions, judges felt bound to apply tax statutes separately to each distinct transaction. This was so even where multi-step or composite tax avoidance schemes included elements with no business or commercial purpose and were inserted simply to remove the overall scheme from the scope of a tax charge. Unsurprisingly, nimble tax advisors were well-able to design schemes that exploited this mechanistic literalist approach to reduce their clients' tax burdens. As a result – and contrary to the clear purpose of significant portions of tax legislation – sophisticated tax avoidance schemes flourished.

This distinctive approach persisted until the early 1980s, when both of those supposed interpretative requirements were swept away by the House of Lords in the landmark case of *WT Ramsay Ltd v Inland Revenue Comrs*.[11] Lord Wilberforce confirmed that, in interpreting tax statutes: "[t]here may, indeed should, be considered the context and scheme of the relevant Act as a whole, and its purpose may, indeed should, be regarded."[12] An unrealistic and overly structured approach gave way to a more purposive mode of interpretation. As courts began to apply *Ramsay*, sophisticated and composite tax avoidance schemes were found increasingly to fall within the net of the tax regime.[13] And that has been further enhanced by the introduction of a General Anti-Abuse Rule ("GAAR") in the Finance Act 2013, Part 5.

---

[10] *Inland Revenue Commissioners v McGuckian* [1997] 1 WLR 991, 999. For examples of the literalist approach to tax statutes, see, *Duke of Westminster's case* [1936] AC 1 and *Inland Revenue Commissioners v. Plummer* [1980] AC 896.

[11] [1982] AC 300, see in particular, Lord Wilberforce at pp 323-326.

[12] At p.323C-D.

[13] Courts began to conclude that steps or elements with no business or commercial purpose inserted into a transaction did not prevent that composite transaction from falling within a provision charging (or indeed exempting) a taxpayer from a tax charge. See, for example, *Inland Revenue v Burmah Oil Co Ltd* [1982] SC (HL) 114; *Furniss v Dawson* [1984] AC 474; *Carreras Group Ltd v Stamp Commissioner* [2004] STC 1377; and *IRC v Scottish Provident Institution* [2004] UKHL 52, [2004] WLR 3172.

Looking back from the present day, it seems clear that *Ramsay* simply aligned the approach to interpreting tax statutes with the general modern purposive approach to construing legislation. As the House of Lords later commented, however, "the novelty for tax lawyers of this exposure to ordinary principles of statutory construction produced a tendency to regard *Ramsay* as establishing a new jurisprudence governed by special rules of its own."[14] The "island of literal interpretation" was perceived (by some practitioners) not to have been subsumed by the application of general interpretative principles, but to have been repopulated with the "*Ramsay* principle" or "*Ramsay* doctrine". That principle was taken to represent some special form of purposive interpretation that was enhanced, relative to the approach taken to all other legislation. In other words, the rules for tax statutes were still regarded as different.

However, a clear line of cases in our highest court has now comprehensively corrected this erroneous view of *Ramsay*.[15] These cases culminated in 2021 with the decision in *Rossendale Borough Council v Hurstwood*.[16] In their joint judgment, Lord Briggs and Lord Leggatt confirmed that the "*Ramsay* principle" was no more than an application of the general principles of purposive statutory interpretation in a particular context. Though often referred to in the tax context, *Ramsay* was not uniquely applicable to it. The interpretation of tax legislation is no more, and no less, guided by the Holy Trinity of interpretation – words, context and purpose – than is any other part of our statute law.

4. External aids to interpretation

Here I want to offer the simple thesis that, putting to one side extracts from Hansard where the law is clear that special rules apply,[17] relevant external aids such as explanatory notes and Law Commission Reports should always be admissible in relation to statutory interpretation. There should be no special rules restricting their admissibility. In other words, how useful the external aids are should turn on their cogency and relevance, that is on their weight, and there should be no restrictive threshold rules governing their admissibility. Moreover, external aids should be admissible at any stage of applying the Holy Trinity, and should not be confined just to working out the purpose of, or mischief addressed by, the statutory provision.

I want to illustrate what I have in mind by reference, first to explanatory notes and, secondly, to Law Commission Reports.

Before I do, I want to mention one argument that I have heard put against the use of any external aids. It is sometimes said that a citizen must be able to look at the words of a statute and to understand their meaning without resort to external aids. But we know that that ideal is unattainable in practice. Given that the questions of interpretation that are in dispute before the courts are likely to be difficult, it is unrealistic and counterproductive to suggest that the courts should put themselves in the position of the ordinary citizen and should resolve the dispute by looking only at the words of the statute and ignoring useful secondary material.

---

[14] *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2004] UKHL 51, [2005] 1 AC 684, at para 34 per Lord Nicholls of Birkenhead. See, more broadly, Lord Nicholls at paras 26-35.
[15] *Inland Revenue Commissioners v McGuckian* [1997] 1 WLR 991, at 999; *Barclays Mercantile Business Finance Ltd v Mawson (Inspector of Taxes)* [2004] UKHL 51, [2005] 1 AC 684; *UBS AG v Revenue and Customs Comrs* [2016] 1 WLR 1005 at paras 61-63; *Rossendale Borough Council v Hurstwood Properties (A) Ltd and others* [2021] UKSC 16, [2022] AC 690, paras 9, 12-13, 16 and 56.
[16] *Rossendale Borough Council v Hurstwood Properties (A) Ltd and others* [2021] UKSC 16, [2022] AC 690, at paras 12-13.
[17] *Pepper v Hart* [1993] AC 593.

(i) Explanatory notes

Sometimes there has been a debate with counsel in cases I have been sitting on, which speaking personally I regard as an entirely arid debate, as to whether the explanatory notes relied on by counsel were accompanying the Bill as it went through Parliament or whether they are explanatory notes that were produced after the passing of the Act. Sometimes counsel has gone back to hunt out previous versions of the explanatory notes. The implication is that some types of explanatory notes (those drawn up after the passing of the Act) are inadmissible as aids to interpretation.

In my view, drawing any hard distinction between the admissibility of different categories of explanatory notes is misconceived for several reasons.

First, there is no question of Parliament approving or authorising any explanatory notes.[18] That applies both to explanatory notes accompanying the Bill and the explanatory notes accompanying the Act. Neither type of explanatory notes is authorised by Parliament.

Secondly, in practice and subject to very rare exceptions, the explanatory notes produced after the Act more or less replicate the explanatory notes that accompanied the Bill subject, of course, to amendments that were made during the passage of the Bill.

Thirdly, the explanatory notes accompanying the Act have been precisely drawn up to explain to the public what the Act means. They are notes normally drawn up by those civil servants who have been intimately connected with the passing of the Act and have been concerned with the formulation of the relevant policy and the instructing of Parliamentary counsel.[19] It would seem very odd to cast aside as inadmissible such expertise designed to assist in understanding the Act. But even more odd would be to differentiate the explanatory notes accompanying the Bill and the explanatory notes accompanying the Act as they are drawn up by the same civil servants. As I understand it, these days the explanatory notes, whether accompanying the Bill or the Act, are not scrutinised by Parliamentary Counsel.

Fourthly, any idea that explanatory notes accompanying the Act have not been taken into account by Parliament and therefore should be afforded no weight draws a needless binary distinction given that, as I have said, the content of the explanatory notes before and after the passing of the Act is more or less identical subject to amendments to the Bill. It may be that this is an example of the theory of Parliamentary intention gone mad. While there may perhaps be some very marginal greater importance to be attached to explanatory notes that were in play prior to the passing of the Act, that should be of marginal importance at most. It certainly should not represent the line between admissibility and non-admissibility.

Finally, even if it were thought appropriate to place greater weight on one type of explanatory note rather than another, there is a strong argument that the greater weight ought to be placed on the explanatory notes accompanying the Act. That is precisely because they are concerned to explain the Act in its final form.

---

[18] Cf *R (on the application of O) v Sec of State for the Home Department* [2022] UKSC 3, [2022] 2 WLR 343, at para 30.

[19] *Bennion,* Chapter 24.14.

(ii) Law Commission Reports

As I understand it, the conventional view is that Law Commission Reports are admissible to assist in ascertaining the purpose of an Act, including the mischief addressed, but not otherwise. In particular, the conventional view appears to be that they are not admissible in seeking to ascertain the meaning of the words in their context. This again strikes me as misconceived.

The dispute over the use of Law Commission reports is not new. The battle lines were drawn 50 years ago by a split panel of the House of Lords in *Black-Clawson International Ltd v Papierwerke Waldholf-Aschaffenburg*.[20] The case concerned the proper interpretation of the Foreign Judgments (Reciprocal Enforcement) Act 1933. Each of the Law Lords agreed that they could have regard to a Law Commission report and accompanying draft Bill which was substantially adopted in that Act. However, Lord Reid, Lord Wilberforce, and Lord Diplock held that this was so only insofar as those materials identified the mischief to which the legislation was directed. Those Law Commission materials were not permissible aids in construing the meaning of the legislative words designed to remedy that mischief.

Viscount Dilhorne, however, thought this distinction was artificial and served no useful purpose. Instead, the weight given to elements of a Law Commission's report and draft Bill should vary with their proximity to the final form of the Act. Lord Simon of Glaisdale took a similarly realistic view:

> "Where Parliament is legislating in the light of a public report I can see no reason why a court of construction should deny itself any part of that light and insist on groping for a meaning in darkness or half-light."

He continued:

> "To refuse to consider such a commentary, when Parliament has legislated on the basis and faith of it, is for the interpreter to fail to put himself in the real position of the promulgator of the instrument before essaying its interpretation. It is refusing to follow what is perhaps the most important clue to meaning. It is perversely neglecting the reality, while chasing shadows. As Aneurin Bevan said: 'Why read the crystal when you can read the book?' Here the book is already open: it is merely a matter of reading on. Certainly, a court of construction cannot be precluded from saying that what the committee thought as to the meaning of its draft was incorrect. But that is one thing: to dismiss, out of hand and for all purposes, an authoritative opinion in the light of which Parliament has legislated is quite another."

Again in *Pepper v Hart*,[21] Lord Browne-Wilkinson argued that there could be "no logical distinction" between using Law Commission materials to identify the mischief and using them to construe words remedying that mischief. To do so was "highly artificial", "technical and inappropriate".[22]

---

[20] [1975] A.C. 591. See, in particular, p 614F (per Lord Reid), p 629 (per Lord Wilberforce), p 638 (per Lord Diplock), pp 622-623 (per Viscount Dilhorne) and pp 646F, 651-652 (per Lord Simon of Glaisdale).
[21] [1993] AC 593, at p 635.
[22] See also *Yaxley v Gotts* [2000] 1 All ER 711, at p.734 per Beldam LJ: it "is unrealistic to divorce the defect in the law from the policy adopted to correct it."

I agree but it is not clear that the courts generally have accepted this. [23]

I would argue that Law Commission reports should be admissible and the only criteria that the courts should be applying, in deciding whether to rely on the report, are cogency and relevance. This is not to say Law Commission reports will always be useful or relevant. To the extent that a Law Commission report is of no assistance in construing the words used in the Act in light of their context and purpose, then reliance should not be placed on it.

While no particular attention was drawn to this, the approach I am suggesting was recently reflected in the Supreme Court's decision in *The Secretary of State for the Department for Environment, Food and Rural Affairs v Public and Commercial Services Union*.[24] The Supreme Court unanimously found that a trade union had the right to enforce a check-off term in certain employment contracts, under section 1 of the Contracts (Rights of Third Parties) Act 1999. I should make a dual declaration of interest. Not only did I hear and write a concurring judgment in this case, but I was the Law Commissioner with primary responsibility for the Law Commission report and draft Bill on which the Act was based.[25]

It might be unsurprising, therefore, that I considered the Law Commission materials useful in discerning the meaning of the words used in the Act.[26] But that view was also shared by the parties arguing the case and by my colleagues on the panel. Importantly, in their leading judgment, Lord Sales and Lady Rose did not embark on any discussion as to the admissibility of the Law Commission materials. Admissibility was simply assumed: Lord Sales and Lady Rose merely noted that section 1 of the Act closely followed clause 1 of the Law Commission's draft Bill,[27] and they looked at both that Bill and the report that accompanied it. [28]

(iii) Conclusion

As regards external aids, I am therefore suggesting that the law should be simplified by accepting that explanatory notes and Law Commission Reports should all be admissible in interpreting a statute; and that there should be no restriction as to the use to which the explanatory notes and Law Commission Reports can be put. No-one would suggest that analysis by a text-book writer or annotations to a statute in eg *Current Law* are inadmissible so why should any special restrictions apply to what might be considered more central material? In my view, all this material should be admissible although the weight attached to it will depend on its relevance and cogency.

---

[23] See, for example, *Ridgeway Motors (Isleworth) Ltd v ALTS Ltd* [2005] EWCA Civ 92, [2005] 2 All ER 304, at para 15 per Mummery LJ: "In interpreting s 24(1) the court is not entitled to take into account the [Law Reform] Committee's recommendations acted on by Parliament in the subsequent legislation, but it is entitled to have regard to the statements contained in the report of the mischief aimed at and of the state of the law as it was then understood to be by the Committee." Cf *R (on the application of O) v Sec of State for the Home Department* [2022] UKSC 3, [2022] 2 WLR 343, at para 30.

[24] [2024] UKSC 41, [2024] 3 WLR 1059.

[25] *Privity of Contract: Contracts for the Benefit of Third Parties* (1996) (Law Com No 242) (Cmnd 3329).

[26] See my concurring judgment at [2024] UKSC 41, [2024] 3 WLR 1059, at para 132.

[27] [2024] UKSC 41, [2024] 3 WLR 1059, at para 36.

[28] See the joint judgment of Lord Sales and Lady Rose (with which Lord Reed and Lady Simler agreed) in [2024] UKSC 41, [2024] 3 WLR 1059, referring to the Law Commission report at, for example, paras 30-35, 69, 97 and 125.