OFFICE OF THE PARLIAMENTARY COUNSEL

DRAFTING GUIDANCE

Please send comments on the contents and suggestions for additions to the Drafting Techniques Group.

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FOREWORD

Introduction

1 This guidance has been produced by the Drafting Techniques Group of the Office of the Parliamentary Counsel ("OPC").

2 It is designed for members of OPC who are drafting Bills to be considered in Parliament. It is not meant to be a comprehensive guide to legislative drafting; nor is it a guide to statutory interpretation or past drafting practice.

3 Members of the OPC are asked to have regard to the guidance. But everything in the guidance is subject to the fundamental consideration that drafts must be accurate and effective, and it is recognised that drafters will need to take their particular requirements into account. It follows that there will be departures from what is said here.

Overview

4 **Part 1** deals with the general drafting principle of clarity. Drafters will need to think about clarity whenever and whatever they draft. Those new to drafting might like to read this Part in one go (and experienced drafters might like to re-read it occasionally).

5 The remaining Parts contain guidance on particular points which drafters are likely to come across. These Parts are for reference.

6 The need to achieve clarity does of course inform everything that is said in the remaining Parts. But there are other drafting principles which are relevant here too, such as effectiveness, consistency and conciseness.

7 **Part 2** deals with some specific language-related points. In particular, there is material on gender neutrality (a separate drafting principle in its own right).

8 **Part 3** addresses some commonly-used drafting techniques.

9 **Part 4** is about drafting repeals, amendments and modifications of existing enactments.

10 **Part 5** contains material on subordinate legislation.

11 **Part 6** is about how to express periods of time.

12 **Part 7** has some material relating to statutory corporations and other bodies corporate.

13 **Part 8** deals with the final provisions of a Bill.

14 **Part 9** contains supplementary material.

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PART 1 CLARITY

1.1 INTRODUCTION TO CLARITY

Aim of Part 1

1.1.1 Part 1 presents some of the main principles and techniques related to clarity in a form adapted to OPC.

1.1.2 A number of other drafting offices have produced documents describing ways to improve clarity, including offices in common-law jurisdictions, notably Australia and New Zealand. In the UK, the Tax Law Rewrite has done the same, and so have the Scottish Parliamentary Counsel. What is said here draws on material produced elsewhere, in particular the Tax Law Rewrite guidelines and the manual of the Australian Office of Parliamentary Counsel. [1]

1.1.3 Clarity is one principle of good drafting, but there are others, such as—

- effectiveness: fundamentally, your draft must do the job it is intended to do.
- consistency: in any one Act, using the same term where the same thing is meant; and doing the same thing in the same way, both within an Act and, at least for standard provisions, in different Acts.
- conciseness and avoidance of redundancy: saying what you want to say in the most economical way, but without so much compression that the result is difficult to understand.

1.1.4 Part 1 is only about clarity. The conclusions reached on particular points in the remaining Parts are informed in part by the need to achieve clarity, but also by other drafting principles.

The principle of clarity

1.1.5 Clarity is about making it as easy as possible for your readers to understand what you are saying.

1.1.6 A draft may be clear enough to be effective, but it may still be possible to make it easier to understand. But that may take time, and time is often in short supply. So your aim, more precisely, is to make a draft as easy to understand as it is possible to make it in the time available.

1.1.7 Clarity includes the use of plain language, but also includes other things like layout, structure, and typography. Some things which can contribute to clarity are not within our

1.See chapter 9.1 for references and links.

control when we are drafting a Bill (e.g. the typeface and line length used). But other things are within our control.

1.1.8 Many of the principles and techniques relating to clarity may seem obvious. That is because many of them are already used by most drafters as a matter of course.

1.1.9 Not all of the techniques mentioned are applicable in every case. Sometimes in a particular case two of them cannot both be applied. Sometimes a technique should not be used. The approach to be adopted in any particular case is a matter for the drafter. But the techniques outlined in this paper should be among the factors the drafter considers in deciding on the approach.

How clarity is tested

1.1.10 Whether an effort to make a draft easy to understand has been successful is tested by whether the intended readers in fact find the draft easy to understand. The test of success is not whether the approach in Part 1 has been applied. It is the interests of the reader, not the use of a particular technique, that must guide the drafter.

1.1.11 It is therefore important to remember who our readers are. Ultimately, of course, they are the people who will be using the Act as passed. Their requirements may be different depending on who they are. An Act which is about (say) the regulation of the water industry is likely to have a quite different readership from an Act about social security benefits for single parents.

1.1.12 We must also bear in mind the requirements of professional advisers and the courts. The Act must be capable of being used effectively from day to day, but it must also produce the right result if tested in court. And a Bill's first readers, before it is even passed, will be Ministers and members of the two Houses of Parliament, as well as lobby groups and other interested parties. What one set of readers finds easy may be quite difficult for another set, or may not be understood by them in the way the writer intended. These competing interests need to be balanced and given due weight in what we write. The weight to be given to different competing interests may be different from Bill to Bill.

1.2 STRUCTURE AND ORGANISATION

Telling the story

1.2.1 Your reader does not know what your message is until you deliver it. This contrasts with the position of a party to a commercial agreement, who presumably knows, at least in general terms, what the agreement says. So it is especially important to take the reader by the hand and lead him or her in a logical way through the story you have to tell.

1.2.2 Different readers of a Bill (or an Act) may be interested in different aspects of the story: for example, Ministers might be interested in how the Bill fits with a general policy, but advice centre workers might be more interested in the details of the law. This may influence how you tell the story.

1.2.3 Another aspect of telling a story is that a Bill should not draw any more attention to its own structure and mechanics than it needs to. The reader is likely to be interested in how a Bill changes the law; drafting in a way that draws more attention to the structure and mechanics of the Bill itself than to its effect is therefore likely to be unhelpful and irritating[1].

Organisation and headings

1.2.4 The clarity of a text is greatly affected by the way it is organised. The reader can be helped by the way in which you divide your Bill into Parts, Chapters etc and the words you choose for their headings; and also by the words you choose for clause headings.

1.2.5 Most readers will approach the legislation to find the answer to a specific question. Few will read the legislation from beginning to end. So the presentation of the material will need to guide the reader to an answer quickly. In particular, many readers will approach legislation online, normally clicking on section headings in the arrangement to view individual sections.

1.2.6 It helps if your clause headings give as full an indication of the contents of the clause as you can, consistent with keeping the heading reasonably short. But a clause heading may not need to repeat the work done by a Chapter or Part heading. Also try to ensure that a clause heading does not go into a second line.

1.2.7 Headings have a relationship with each other, not just with the clause. Imagine your clause, Chapter and Part headings as set out in the table of contents; and re-read the table of contents regularly to make sure it still hangs together.

1. An example is given in para. 1.3.16.

Schedules

1.2.8 Consider also the division of material into clauses and Schedules. Schedules have an advantage from the point of view of Parliamentary procedure in that they cut down the number of "clause stand part" debates in Committee. But relegating text to the end of the Bill may not help the reader. It may break up the story you are telling; or make the structure of the Bill more complicated than it needs to be. There is even evidence that some unused to legislation may not know where to find the Schedule.

1.2.9 Examples of where a Schedule may be useful include—

- technical provision that is unlikely to be of interest to many readers;
- lengthy material that is at something of a tangent to the main story;
- repeals;
- long series of minor textual amendments;
- large tables and very long lists;
- the text of treaties.

Order of material

1.2.10 It helps the reader if the material in your Bill is set out in a logical order, so that later propositions build upon earlier ones.

Forward references

1.2.11 Reference at any point to material which needs to be understood at that point but which does not appear until later is generally not helpful. This may well be an indication that the material would be better re-ordered. But a signpost to later (or indeed earlier) material which is relevant but which does not necessarily need to be understood now may well be helpful. It can be included in brackets (eg "see section X").

Overview provisions

1.2.12 A clause at the beginning of a Bill, or of a Part or Chapter, explaining what is to follow may help the reader to navigate round a larger Bill where the table of contents is too long to give a clear picture. See further, Chapter 3.5, **Overviews.**

Clause structure

Connection between subsections

1.2.13 A subsection may usually be read in the light of a previous subsection in the same clause: it is usually unnecessary in a subsection to repeat material which has been established earlier in the clause.

EXAMPLE

Instead of the following—

(1) A person may apply to the council for a permit to play music.

(2) An application under subsection (1) must contain the prescribed information.

(3) On receiving an application made by a person under subsection (1), the council may issue a permit to the person.

(4) A permit issued under subsection (3) must be in the prescribed form.

(5) A permit issued under subsection (3) authorises the holder to play music as indicated in the permit.

you might say—

(1) A person may apply to the council for a permit to play music.

(2) An application must contain the prescribed information.

(3) The council may issue a permit to an applicant.

(4) A permit must be in the prescribed form.

(5) A permit authorises the holder to play music as indicated in the permit.

1.2.14 It is helpful if the opening subsection of a clause gives the reader some idea of what the clause is about, especially if the clause introduces a new topic. For example, if the clause produces a particular legal effect if conditions are met, it may be more helpful to state the effect before listing the conditions.

Second sentences

1.2.15 The starting point is that each sentence in a clause should be a separate numbered provision. But there is no absolute rule against having more than one sentence in a numbered provision. The logical connection between subsections is likely to be closer in some cases than others. A second sentence enables the drafter to distinguish two levels of connection between subsections in the same section; or to deal with cases where putting a second thought in a separate provision would place undue emphasis on it.

EXAMPLE (section 108, Housing Grants, Construction and Regeneration Act 1996)

(1) A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section.

For this purpose "dispute" includes any difference.

(2) The contract shall include provision in writing so as to—

(a) enable a party to give notice at any time of his intention to refer a dispute to adjudication;

(b) provide a timetable [etc]."

1.2.16 In this example, there are only two main propositions - the right to refer disputes to adjudication and what the contract must say about referrals. Having two subsections allows the form of the clause to reflect the structure of the thought. The point about the meaning of "dispute" is just an afterthought to the first, and it might be unhelpful to treat it as equal in weight to the other two.

1.2.17 Like anything else, though, this technique can be overdone and should be used with caution.

Clause length

1.2.18 Try to avoid clauses containing more than ten subsections or so (some drafters are stricter than that).

1.2.19 However, this is again a matter of judgment: if you have a self-contained story to tell, it may be more convenient for the reader to have it all in one clause which is a bit longer, rather than in two or more shorter clauses.

1.2.20 It may also help if the division into clauses follows the division of thought. If, for example, you have to make separate provision for three different cases, but one case requires more provision than the other two, it might still be easiest to have only one clause for each case, even if that means that one of the clauses is longer than you would otherwise wish.

1.3 CLARITY OF EXPRESSION

Sentences

Keep propositions short

1.3.1 A large slab of unbroken text is difficult to understand. Many drafters try to avoid subsections or undivided clauses of more than, say, half-a-dozen unbroken lines.

1.3.2 Clarity is helped by the use of short sentences (but not so short that the result is distracting). A long sentence may require the reader to keep too much in the mind—although it can be made easier to understand by paragraphing. But a single complex proposition is sometimes best expressed in a single sentence (with paragraphing, if appropriate) rather than as a series of short sentences in successive subsections, if that avoids making the reader reconstruct the single proposition in order to make sense of it.

1.3.3 All this is sometimes expressed as an exhortation to write, not necessarily short sentences, but short "sense-bites"[1] — that is, information should be presented to the reader in short bites: each of them may be contained in a separate phrase or paragraph which grammatically amount together to a single (longer) sentence.

1.3.4 A single sentence with subordinate clauses is often harder to understand than a series of sentences expressing the same substance. So a single sentence should ideally contain one idea only, or be split into sense bites each containing one idea only. For example, qualifications or conditions can be split off, into separate subsections or even into separate clauses.

Paragraphing

1.3.5 Paragraphing is an obvious way of making a sentence more digestible, by separating out bite-size chunks and making important propositions more visible. However, paragraphing can be overdone. It is distracting to the reader if the paragraphs are too short or break up the flow of the sentence.

1.3.6 Many drafters avoid descending to sub-paragraphs ((i), (ii) etc.), so as to avoid requiring the reader to hold too much in the mind. The point at which sub-paragraphing impedes understanding is very quickly reached.

1.3.7 For more on paragraphs, see chapter 3.6, *Paragraphs*.

Sub-headings in a subsection

1.3.8 An alternative to paragraphs is to use sub-headings within a subsection.

1.For a longer exposition, Butt & Castle, *Modern Legal Drafting* (see chapter 9.1), p.181.

EXAMPLE (section 836(3) of the Income Tax Act 2007)

(3) *But this treatment does not apply in relation to any income within any of the following exceptions.*

Exception A

Income to which neither of the individuals is beneficially entitled.

Exception B

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

Exception C

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

Exception D

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

Exception E

Income consisting of a distribution arising from property consisting of—

(a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or

(b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

"Shares" and "securities" have the same meaning as in section 254 of ICTA.

Exception F

Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as-

(a) the income of the other individual, or

(b) the income of a third party.

Sentence structure

1.3.9 Use sentences that are simply and logically constructed (the classical structure is subject-verb-object). If possible, avoid inserting words between the subject and the main verb.

EXAMPLE

Instead of—

The Secretary of State may, if the required conditions are met, issue a licence to the applicant.

you could say—

The Secretary of State may issue a licence to the applicant if the required conditions are met.

1.3.10 In a sentence which contains a main proposition that depends on a number of conditions, the reader may be better served by putting the main proposition first, rather than putting the conditions first.

EXAMPLE

A notice must be given if—

(a) …

(b) …

(c) …

is probably easier to understand than-

If—

(a) …

(b) …

(c) …

a notice must be given.

The latter is a "sandwich" (for more on which see paras. 3.6.10 - 3.6.12).

1.3.11 Parallel phrases in the same sentence can be hard to understand: that is, phrases which start and finish with the same words but which have no particular relationship with each other. These require the reader to keep what are in effect two or more different possible sentences in mind simultaneously, and can often be impossible to grasp without unpacking the whole idea.

1.3.12 This can happen, for example, with two phrases ending with prepositions but then attaching to the same subsequent text.

EXAMPLE

the provision of services by means of, or in association with the provision (by the same person or another) of, an electronic communications network

This needs to be unravelled—

the provision of services –

(a) by means of an electronic communications network, or

(b) in association with the provision (by the same person or another) of an electronic communications network

Conditions

1.3.13 As mentioned in para. 1.3.4 above, conditions can be split off into separate subsections in order to make a sentence more digestible.

1.3.14 The legislation produced by the Tax Law Rewrite Project contains numerous examples of material where conditions are presented separately from the main proposition, often with each condition in a subsection of its own.

EXAMPLE (section 1044(1) to (5) of the Corporation Tax Act 2009)

(1) A company is entitled to corporation tax relief for an accounting period if it meets each of conditions A to D.

(2) Condition A is that the company is a small or medium-sized enterprise in the period.

(3) Condition B is that the company meets the R&D threshold in the period (see section 1050).

(4) Condition C is that the company carries on a trade in the period.

(5) Condition D is that the company has qualifying Chapter 2 expenditure which is allowable as a deduction in calculating for corporation tax purposes the profits of the trade for the period.

1.3.15 Such an approach may well be useful, especially in cases where each condition is a complex proposition in its own right. When using this approach, consider whether the conditions need to be in separate subsections. For example, would it be neater to use sub-headings within a single subsection (see para. 1.3.8 above)? Doing so would avoid using a mixture of numbers (for subsections) and letters (for conditions), a mixture that some readers might find confusing or at any rate unattractive.

1.3.16 As with other techniques, the listing of things as conditions can be overdone. Bear in mind also that the labelling of a proposition as a "condition" may draw too much attention to its status rather than its effect. Readers may come to the Bill with the question "what are the conditions?". They are unlikely to be asking "what is condition A?".

Positive and negative

1.3.17 The positive is often easier to understand than the negative version of the same thing.

EXAMPLE

Speak after the tone

is easier to understand than—

Do not speak until you hear the tone

1.3.18 But this depends on the nature of the proposition and on the overall effect of what is said: it is not a universal rule. A prohibition may well be best expressed in the negative.

EXAMPLE

Do not walk on the grass

is probably easier to grasp at once than—

Walk only on the pathways

1.3.19 Negatives are often better avoided when expressing a quantity.

EXAMPLE

not less than 25%

might be more clearly expressed as—

at least 25%

or

25% or more.

1.3.20 It is generally agreed that it is best to avoid double negatives. But it may not always be possible to do so.

EXAMPLE

The Secretary of State has not certified that no application was made

does not mean the same as—

The Secretary of State has certified that an application was made

Active and passive

1.3.21 It is usually clearer to use the active voice than the passive voice.

EXAMPLE

The Secretary of State must give a notice

is more quickly grasped than

A notice must be given by the Secretary of State

1.3.22 But the passive may be appropriate if the agent is unimportant, universal or unknown.

EXAMPLE

If a notice is given to the Authority…

might be appropriate if the same rule applies whoever gave the notice.

1.3.23 The passive may also be useful as a technique for gender-neutral drafting (see chapter 2.4 *Gender neutrality*, para. 2.3.25).

Verbs and nouns

1.3.24 A verb form is often easier to understand than the noun form of the same proposition.

EXAMPLE

A person may apply

is crisper and more instantly intelligible than—

A person may make an application

Possessives

1.3.25 The traditional style would be to say "of the", as in "of the taxpayer"; but it is usually easier to understand the shorter form with an apostrophe: "the taxpayer's".

Vocabulary

Introduction

1.3.26 Our first aim is to produce legislation that unambiguously produces the desired legal result. We also want to draft in a manner that is readily comprehensible. Choice of vocabulary is an important element in that.

1.3.27 That means writing in modern, standard English as far as possible, avoiding archaisms and other words or phrases which can give rise to difficulty. However, it is also not our role to be in the vanguard of linguistic development: the language we use should reflect ordinary general usage.

1.3.28 Use language that does not call attention to itself, whether by being fastidiously old-fashioned or self-consciously modern. The reader should be considering your message, not your means of delivering it.

1.3.29 Sir Ernest Gowers proposed three principles as to "how best to convey our meaning without ambiguity and without giving unnecessary trouble to our readers"[2]. In brief—

- use no more words than are necessary;
- use the most familiar words;
- use precise and concrete words rather than vague and abstract words.

1.3.30 These three principles are hard to beat as a starting-point[3]. They do of course overlap with and support each other.

2.Gowers *The Complete Plain Words* ed. Greenbaum and Whitcut (3rd ed. 1987) p48.

3.They might be regarded as covering the same ground as the five proposed by Fowler (prefer the familiar word to the far-fetched; the concrete word to the abstract; the single word to the circumlocution; the short word to the long; the Saxon word to the Romance (Fowler H.W., *Modern English Usage,* Oxford University Press, 2nd ed. revised Gowers, 1968).

Use no more words than necessary

1.3.31 "*Use no more words than are necessary to express your meaning, for if you use more you are likely to obscure it and to tire your reader. In particular do not use superfluous adjectives and adverbs and do not use roundabout phrases where single words would serve.*"[4]

1.3.32 This principle takes on additional force in legislative drafting for obvious reasons to do with avoiding confusion and ambiguity. We also value brevity for its own sake.

1.3.33 Drafters do not need to be reminded of the need to avoid superfluity. But it might be worth highlighting the suggestion that we should prefer the single word to the "roundabout phrase". It is easy to slip into saying *for the purpose of* when *to* might do as well; or *in accordance with* when we could use *by* or *under.*

1.3.34 This principle might also suggest that we should prefer short words to long ones.

Use the most familiar words

1.3.35 "*Use the most familiar words rather than the far-fetched, if they express your meaning equally well; for the familiar are likely to be more readily understood.*"[5]

1.3.36 For legislative drafting, this principle can in the first place be stated negatively. We should not, so far as possible, be using words that are not found in standard modern writing in English. So we should, for example, avoid archaisms. That is a familiar refrain. But the novel and modish can be as "far-fetched" and unfamiliar as the archaic. We should try not to use language that calls attention to itself.

1.3.37 We should also avoid jargon. Legal jargon is one obvious pitfall, policy jargon another.

1.3.38 It may of course sometimes be necessary or most precise to use a technical legal expression (for example, "hereditament" in connection with rating, or "fee simple" in connection with property).

1.3.39 This principle, though, does not merely filter out archaisms, neologisms and jargon. There are degrees of familiarity. You may have two words neither of which is "far-fetched" or incomprehensible but one of which may be more familiar or everyday than the other. In that case, it is worth considering using it. For example, *confer* is a perfectly unobjectionable word, but this principle might suggest giving thought to the more familiar *give*.

1.3.40 It is worth emphasising the caveat. We should prefer the familiar word *if it conveys the meaning equally well*. If it doesn't, that is a good reason for preferring the less familiar word.

1.3.41 We should also consider our audience. Some terminology that is less familiar to the public will be very familiar to those implementing or operating the legislation, or the courts, or perhaps a regulated industry.

4.Gowers, op.cit, p.48.
5.Ibid. p.48

Use precise and concrete words

1.3.42 "*Use words with a precise meaning rather than those that are vague, for they will obviously serve better to make your meaning clear; and in particular prefer concrete words to abstract, for they are more likely to have a precise meaning.*"[6]

1.3.43 Drafters are used to drawing on words with a broad range of meanings such as "affect" or "in relation to". These can be very useful, if a broad range of meaning is intended, as it often is. But use of an *unnecessarily* vague word would tend to go against this principle. If a more precise word can be used, it is more likely to get the actual intention across.

1.3.44 One difficulty with vague and abstract words is that they tend to lack colour. It isn't that they can't be understood; rather that they may not be taken in at all. Text with a lot of opaque words may cause readers' eyes to glaze over. While it is not our job to spice things up, we are failing our readers if we produce text that is impenetrable or unnecessarily turgid.

1.3.45 See also chapter 2.1, *Words and phrases*[7].

Tone and emphasis

1.3.46 Adopt a moderate, level tone. Brevity is good but brusqueness is not. Clarity is not served by giving the reader a jolt.

1.3.47 In particular, speak firmly but don't shout. Excessive emphasis may be distracting.

EXAMPLE

An applicant must provide all of the following information—

is not an obvious improvement on

An applicant must provide the following information –

1.3.48 See also **and, but, any** in chapter 2.1, *Words and phrases*.

Adaptation to style of amended Act

1.3.49 Drafters who are faced with amending an Act have different views about how hard they should try in their amendments to adopt the linguistic register of the Act being amended. The older the Act being amended, the more likely it is that this question will arise.

1.3.50 Some drafters do not make the attempt at all; others do so to a greater or lesser extent. Either way, clarity need not be sacrificed for the sake of an invisible join between the old and the new text; and the approach to adopt may be influenced by the need to avoid ambiguity.

Tables

1.3.51 A table is often a neat and clear way of setting out a number of cases with the rule that applies to each of them. As with anything else, they can be overdone.

6.Ibid. p. 48

7.Also, the Tax Law Rewrite *Guidelines for the Rewrite* (see chapter 9.1) contains two useful tables, one of archaic words at para. 58, and another of potentially difficult words or phrases at para. 66. But, as always, the "translations" given should not be adopted slavishly, as sometimes the original and the translation may have slightly different shades of meaning.

Method statements

1.3.52 A "method statement" may be the neatest way to set out the various steps in a process.

EXAMPLE (section 91 of the Income Tax Act 2007)

How relief works

This section explains how the deductions are to be made.

The amount of the relievable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

Step 1

Deduct the relievable loss from the profits of the trade of the final tax year.

Step 2

Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

Step 3

Deduct any part of the relievable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

Step 4

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

Other claims

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter [etc].

PART 2 POINTS ABOUT LANGUAGE

2.1 WORDS AND PHRASES

2.1.1 This Chapter considers some specific words and phrases of particular interest to drafters.

2.1.2 Some are included as words and phrases that drafters may often find themselves using but for which there may be on occasion be shorter, more natural or more direct alternatives [1]. The alternatives suggested are not recommendations, just suggestions to prompt thought. They may be appropriate in some circumstances, but will not be appropriate in all. In particular, they are not necessarily synonyms for the listed words.

affect

2.1.3 The breadth of meaning of *affect* can be an advantage. The "nothing in provision A affects provision B" formula is useful if you do not know all the effects that A might have or be thought to have on B, or where those effects would be too numerous to mention.

2.1.4 But do not use it merely to avoid thought. If you can identify what effect it is you have in mind, that may help the reader.

and

2.1.5 This relates to the use of "and" at the beginning of a legislative sentence.

2.1.6 There is no reason in principle to rule out the use of "and" at the start of a legislative proposition. However, it should not so be used unless there is a real need for it - and it is hard to think of examples where there is a real need. Unnecessary use of "and" is at best clutter and it may distract the reader by excessive emphasis (see the section on *Tone and emphasis* in chapter 1.3).

2.1.7 If two propositions are so closely connected to each other as to need an "and", there may be a case for putting them in the same numbered provision (perhaps in two sentences).

any

2.1.8 Beware of a proliferation of "any"s. In many cases "a" or "an" is just as good.

1.This is of course merely a selection. There are lists of words and expressions to avoid or use carefully in, for example, the Tax Law Rewrite "Guidelines for the Rewrite"; in *Thornton's Legislative Drafting* (Xanthaki, 5th ed. 2013) Ch.5; and in Michele Asprey *Plain Language for Lawyers* (3rd edition 2003), Ch. 13.

2.1.9 "Any" can be ambiguous.

EXAMPLE

The Minister must consult any organisation appearing to be representative of substantial numbers of mushroom growers.[2]

Is this any one organisation or all organisations?

2.1.10 "Any" may be useful—

- to emphasise that something is of universal application or without qualification (but only where it is really necessary to do so);
- to refer to both a singular noun and an uncountable one (eg "any document or information").

apart from

2.1.11 For *apart from*, in the phrase *apart from this section*, consider *but for* or *leaving aside*.

2.1.12 The awkwardness here is not so much the words themselves as the task they impose on the reader - that of working out what the situation would be without the provision in question. It might be more helpful to expand on the thought and say what you have in mind.

being

2.1.13 The "being" formula to define something is cumbersome and archaic. It can often be avoided by the use of a different construction.

EXAMPLE

Instead of—

A person who is served with a notice, being a person who has a right over the property, may serve a counter-notice.

you could say—

A person who is served with a notice and has a right over the property may serve a counter-notice.

but

2.1.14 There is no rule against putting "But" at the beginning of a sentence, and it can on occasion be helpful.

2.1.15 But it should not be overused. Unnecessary or over-emphatic words distract the reader (and see *Tone and emphasis* in chapter 1.3).

2.1.16 An initial "but" is unnecessary if it is in any event obvious that the second statement qualifies the first. For example, a proposition to the effect that "Nothing in this section applies" or "Subsection (x) does not apply" does not need an initial "but".

2.The example is taken from *Thornton's Legislative Drafting* (see chapter 9.1), p. 108.

certain

2.1.17 In some contexts, the more familiar *some* may be as good. Or you may not need to say anything ("use no more words than are necessary").

EXAMPLE

The enactments specified in Schedule x (which includes certain spent enactments) are repealed.

Here one could say "some" spent enactments.

But "which includes spent enactments" might do as well (there is no implication that the Schedule repeals every single spent enactment).

2.1.18 In other cases *certain* may be hard to avoid.

EXAMPLE

Section x treats certain amounts as being, or not being, post-cessation receipts

Here "some" might not work as well; and "amounts" on its own might give the wrong impression. *Particular* would be possible, but not obviously better.

commencement

2.1.19 When referring to the time at which a provision begins to have legal effect, use "coming into force" or "comes into force" (or "came into force") rather than "commencement".

EXAMPLES

Rather than

...the period of one year beginning with the commencement of this section...

....applications made after the commencement of this section.

....this section does not apply to offences committed before its commencement...

try

...the period of one year beginning when this section comes into force...

....applications made after this section comes into force (or *"on or after the day on which this section comes into force..."*)

...this section does not apply to offences committed before its coming into force..

.

NOT

2.1.20 This does not prevent the use of convenient labels such as "the commencement day".

2.1.21 Also, for conformity with long-standing practice, "commencement" should also be used as the heading for the section of an Act which deals with its coming into force (as to which, see Chapter 8.4).

description

2.1.22 This can seem rather vague and abstract. Drafters might like to consider *kind*, *class* or *category* (or even *sort*?).

2.1.23 In the context of a regulation-making power *description* may emphasise that it is for the regulations to create the class in question. This may be a particular help when the thing in question already comes in obvious "kinds" or "classes" but it is desired in the regulations to categorise the thing in a different way.

deemed to be

2.1.24 *Treated as* or perhaps *regarded as*, or even *taken to be*, might be more familiar.

disregarded

2.1.25 Possible alternatives for *is to be disregarded* include *does not matter, does not count* and *is not to be taken into account*. *Ignored* is also possible, though it can sound a little startling.

2.1.26 It is not obvious that any of these are automatically to be preferred on the grounds of familiarity. The main problem with *disregarded*, though, is that it requires the reader to construct a counter-factual scenario (the world as it would be without the thing being disregarded). Sometimes it is obvious what is meant, but it can be confusing. The same is true of *ignored.*

to the extent that

2.1.27 Consider also *as far as* (or *so far as*).

2.1.28 In some cases *if* or *when* may suffice. But those do not of course capture the idea that something might apply to a degree, which is often why *to the extent that* is preferred.

forthwith

2.1.29 This is unlikely to be the best word. If you really mean it, try the more familiar *at once*, *immediately, straightaway*. W*ithout delay* perhaps gives a little room for manoeuvre.

furnish

2.1.30 Often the more familiar *give*, *provide* or *supply* will serve as well.

here- words

2.1.31 "Hereby" should not be used unless there is a particular reason for concluding that the inclusion of the idea conveyed by "hereby" would or might serve a useful purpose. Even then, if you really need to emphasise that something is being done by virtue of your legislative proposition, consider using words such as "by this subsection" instead.

2.1.32Other "here-" words should not be used.

known as

2.1.33 Consider *called* or *named.*

EXAMPLE

A body known as....

would perhaps be better as

A body called.....

manner

2.1.34 Try *way*.

notify

2.1.35 If you just mean that someone should know something, consider *tell* or *inform. Notify* may be more apt if a formal notice with further legal consequences is intended. It also lends itself to the creation of a noun - *notification* - and may be attractive for that reason.

notwithstanding

2.1.36 Consider *despite* or *in spite of*. For *notwithstanding that* you may find that *even though* or *even if* serves the same purpose.

only

2.1.37 Avoid placing "only" where it will produce ambiguity.

or

2.1.38 "Or" can have an inclusive sense (A and/or B) as well as an exclusive one (either A or B but not both), especially in a provision which gives permission or confers a power.

EXAMPLE

The regulator may require the employer to –

(a) produce any relevant document, or

(b) provide any relevant information.

2.1.39 In that example, it seems very unlikely that the powers are intended to be mutually exclusive. But in other cases it may be less clear, as perhaps the following example illustrates.

EXAMPLE

The regulator may require the employer to –

(a) pay a fine, or

(b) take action of a description specified by the regulator.

2.1.40 So a degree of caution is in order. It may in particular be possible to make the intention clear by the introductory words. See also para. 3.6.20**.**

particulars

2.1.41 Try *information*

EXAMPLE

For the purposes of section x, the required particulars of a director are.....

could be better expressed as

For the purposes of section x, the required information about a director is....

prescribe

2.1.42 *Prescribe* is often used in the context of subordinate legislation: "regulations may prescribe...". It avoids the need to say exactly how the subordinate legislation will proceed, and as such is extremely useful for drafters. But a more precise word may make more impact: *give, fix, set, set out, state* all carry more of a punch. If possible, say what exactly the regulations will do.

EXAMPLE

Regulations under section x may prescribe the fees that may be charged

This could perhaps be

Regulations under section x may set the fees that may be charged

2.1.43 This will of course only work if you do not need the width of "prescribe". So the suggestion in the examples above will only be appropriate if the regulations will merely specify an amount (as opposed, for example, to setting out criteria by which the amount is determined).

2.1.44 *Prescribe* is sometimes defined to mean "prescribe in regulations". This can be a useful device to avoid lots of references to regulations. It can even be extended: section 24 of the Welfare Reform Act 2007 defines "prescribed" as "specified in, or determined in accordance with, regulations", which avoids constant repetition of a lengthy phrase. But it is an artificial definition and consider whether it is really justified in any given case.

2.1.45 *Prescribe* does of course lend itself to the formation of an adjective (for example, "the prescribed" fee). But there is clear evidence that many users of legislation find expressions like "person of a prescribed description" bewildering. Consider if there is a more direct way of drafting that can conveniently be used.

EXAMPLE

In this section, "qualifying young person" means a person of a prescribed description

This could perhaps be

The Secretary of State may make regulations setting out what "qualifying young person" means in this section

provide

2.1.46 Where legislation *provides* for a state of affairs it effects or gives rise to that state of affairs in law. It is very useful because it does not require that the legislation should create the state of affairs in any particular way.

EXAMPLE

This section applies to a pension scheme which provides for a benefit to be payable to a member where....

Here it does not matter, for the purposes of the section, how the pension scheme creates the benefit. It is enough that, somehow or other, the pension scheme gives rise to the benefit. Neither "permits" nor "requires" might have been right on their own (it may be that a pension scheme should be caught whether it permits or requires the payment of the benefit). One could of course have both. A possible alternative might have been "a pension scheme under which a benefit is payable...."

EXAMPLE

(1) *A person is not entitled to the benefit if the person is not in Great Britain.*

(2) Regulations may provide for exceptions to subsection (1).

This doesn't imply anything about *how* the regulations will be drafted, whereas *specify* might have given rise to an expectation that the regulations would just be a list, making more detailed provision questionable. But "create" or "make" might be possible.

2.1.47 Sometimes *make* or *create* will allow for the same flexibility.

2.1.48 However, consider in any given case whether it is possible to be more precise. Will the legislation *enable, authorise, require, set out, stipulate* a particular result? A more immediate word may also be less legalistic.

provided that

2.1.49 Provisos or exclusions beginning "Provided that" do have a distinctly old-fashioned feel and Thornton enjoins that they "should never be used" [3]. Certainly in any case where such a proviso is contemplated you should consider beginning an entirely new sentence.

2.1.50 But *provided that* as a genuine conjunction meaning *if* or *so long as* is perfectly acceptable. In such cases *if* may be a better alternative. Still, *if* suggests a real condition that may or may not be met, while *provided that* may be more apt for a condition that is barely worth mentioning but is included just to be on the safe side.

provision

2.1.51 *Provision* is also a useful generic phrase for what legislation does, but can be legalistic and off-putting. It may be worth thinking about what the legislation actually does in the case you are concerned about: does it regulate, authorise, require?

2.1.52 If conferring power to *make provision about* or *for* something, consider how the power might be exercised.

EXAMPLES

Regulations making transitional provision may, in particular—

(a) make provision for persons not to be treated as having any authorisation or permission;

(b) make provision enabling the Authority to require persons to re-apply for permission;

(c) make provision for the continuation as rules of such provisions as may be designated, including provision for the modification by the Authority of provisions designated;

(d) make provision as regards the Authority's obligation to maintain a record.

It might be possible, depending on the circumstances, to be more direct—

Regulations making transitional provision may, in particular—

(a) <u>treat</u> persons as not having any authorisation or permission;

(b) <u>allow</u> the Authority to require persons to re-apply for permission;

(c) <u>enable</u> the continuation of such rules as may be designated (and <u>allow</u> the Authority to modify them);

(d) <u>disapply</u> the Authority's obligation to maintain a record.

2.1.53 It may be possible to avoid *provision* completely.

EXAMPLES

3.Op cit p. 105.

This Part of this Schedule makes further provision about....
might be
This Part of this Schedule contains more about....

Regulations may make provision about when an assessment period is to start.
might be
Regulations may be made about when an assessment period is to start.

2.1.54 Wherever possible, prefer *provide for* to *make provision for.*

2.1.55 *Provisions* is often used in the sense of the contents of legislation ("the provisions of this Act"). It has a great advantage in that it is not confined to any particular unit of text - a provision can be an Act, a section, a small unit of text or may not be an articulated bit of text at all. So to say that the provisions of the Act come into force by regulations might allow more latitude than to say that the sections come into force by regulations (would that allow subsections to be commenced separately?). But consider whether you can in any given context be more specific.

2.1.56 It may be that you do not need *provision* in this sense at all. In particular, the phrase *the provisions of* is often superfluous.

EXAMPLE

Subject to the provisions of any regulations under this section.....

would mean the same without "the provisions of".

Of course "subject to" is itself to be avoided if possible (see below).

pursuant to, in pursuance of

2.1.57 Where one thing follows directly from another, with no intervening cause or condition, *pursuant to* can often be rendered as *under.*

EXAMPLE

A person who has been detained continuously pursuant to two or more sentences....

The report must include information which has been provided to the Secretary of State pursuant to regulations made under section x.

...any services provided by another person pursuant to arrangements....

In all these cases "pursuant to" could perhaps have been "under".

2.1.58 *In accordance with* is also possible (eg in the last two examples). Or say what you mean: *as required/ authorised by.....*

2.1.59 In other cases *because of* would work.

EXAMPLE

If the qualification is subject to a requirement of accreditation pursuant to a determination made under section x.....

Here "because of" would seem to work. Or better yet turn the whole thing round—

If a determination under section x means that the qualification needs to be accredited....".

2.1.60 Sometimes something with more colour is possible.

EXAMPLE

Such a person is guilty of an offence if, pursuant to a request for information, he makes a statement which he knows to be false.

Here "in response to" might be better.

2.1.61 *Pursuant to* is often used to express an indirect relationship between two things, where something happens between A and B (so A is a necessary but not a sufficient condition of B).

EXAMPLE

Any transfer of land pursuant to sub-paragraph (3) is to take place on the conversion date.

Here the point is that the sub-paragraph (3) requires the transfer of land but the transfer is actually effected by a later instrument. Here "by" or "under" would be wrong.

2.1.62 In cases like this it may be best to describe in more detail what is going on. In the example just given "any transfer or land *required by* sub-paragraph (3)" might have worked.

2.1.63 Failing that, "further to" will generally be a possible substitute. In some cases, "following" or "as a result of" or "because of" may be possible, or maybe just "after", if the causal connection is clear.

EXAMPLE

An Order in Council made pursuant to a recommendation....

Here *following* might be better. Or perhaps *An Order in Council to give effect to a recommendation...*

in relation to, in respect of, with respect to, as respects

2.1.64 These phrases are all extremely useful, and sometimes essential, in that they do not require one to specify any particular relationship. *In respect of* has been said to have "the widest possible meaning of any expression intended to convey some connection or relation" (*Albon v Naza Motor Trading* [2007] EWHC 9 (Ch) at 27).

2.1.65 It is though tempting to use them in circumstances where a more precise relationship could be specified. In some circumstances *in the case of*, *for, about, to* or *as to* will do as well.

EXAMPLES

The election has effect in relation to films which commence photography in that accounting period

The election has effect for films which....

A transfer scheme may not make provision in relation to land

A transfer scheme may not make provision about land

2.1.66 In a devolution context, the breadth of "in relation to" or "as regards" is often preferred.

satisfied

2.1.67 For conditions or requirements, try *met* as shorter and perhaps more familiar.

shall

2.1.68 OPC policy is to minimise the use of the legislative "shall".

2.1.69 There are various alternatives to "shall" which can be used, depending on context—

- "must" in the context of obligations (although "is to be" and "it is the duty of" may also be appropriate alternatives in certain contexts);
- use of the present tense in provisions about application, effect, extent or commencement;
- "is amended as follows" in provisions introducing a series of amendments;
- "is repealed" in the context of free-standing repeals;
- "is to be" in the context of provisions relating to statutory instruments (and, if appropriate, "may not" as an alternative to "shall not").

2.1.70 A reason for using "shall" might be where the text is being inserted into an Act that already uses "shall".

subject to

2.1.71 "Subject to" isn't a very precise way of describing a relationship between two propositions.

EXAMPLE

This section is subject to section x

What exactly does section x do in relation to "this section"?

Section x sets out conditions....

Section x sets out different rules for [a particular case]

There are exceptions to this rule in section x

This section does not apply to [a particular case] (see section x)

2.1.72 If you can't conveniently describe the relationship, "subject to" can sometimes be avoided. A throwaway "(but see section x)" might serve to alert the reader to the fact that there are qualifications without sounding as legalistic.

2.1.73 The relationship between the provisions may be particularly hard to follow if "subject to" is at the beginning of the sentence. It may be better to start with the main proposition and then indicate that there is a qualification, perhaps in a second sentence.

2.1.74 "Subject to" is also not necessarily helpful if you cannot identify the provisions you are talking about. "Subject to what follows" should be avoided unless it is abundantly obvious from the context exactly which of the following provisions are being referred to. Where there is any doubt, specify exactly which provisions you mean (or express the relationship in some other way).

2.1.75 Global cross-references such as "Subject to the provisions of the Corporation Tax Acts" are sometimes unavoidable but may not be entirely meaningful to non-expert readers. If the reference cannot be avoided, try to include a list of where the relevant other provision is made.

2.1.76 It may be possible to dispense with "subject to" altogether, especially if the qualifying proposition is close to the proposition it qualifies — in which case the reader may be expected to grasp the relationship between the two without extra help.

2.1.77 See also chapter 3.2 *Cross-references* — and in particular the injunction to draft by reference to substance rather than by reference to the statutory provisions in which it is contained (para. 3.2.2).

such

2.1.78 Avoid "such" where possible. Often "the" or "a" will do just as well.

EXAMPLE

Instead of

on such day as the Minister may specify

you might say

on a day specified by the Minister.

supplemental / supplementary

2.1.79 There is no obvious difference in meaning between "supplementary" and "supplemental". Prefer "supplementary", as perhaps the more usual formulation.

there- words

2.1.80 "Therefrom" and "therewith" are archaic and should not be used.

2.1.81 Other "there-" words should only be used where the advantages of doing so outweigh their old-fashioned ring, there is no obvious more modern alternative and the meaning of the reference back is clear.

by virtue of

2.1.82 Where a relationship is direct, there may be alternatives to the rather archaic *by virtue of*.

2.1.83 Sometimes *by* on its own is enough. Where one thing authorises or requires another, *under* may be possible. Where one things causes another, or makes it possible, try *as a result of* or *because of.*

2.1.84 That said, *by virtue of* can be particularly useful for indirect relationships. For example, where regulations authorise A to authorise B, it might be misleading to say that B is authorised *under* the regulations. Something else has to happen first.

where / if

2.1.85 "Where" is useful for stating a case or a set of circumstances in which a later proposition applies. "If" is used for stating a contingency.

2.1.86 So "where" may be better for cases which inevitably will occur, "if" for conditions which may or may not be satisfied.

2.1.87 There is of course no clear-cut distinction. In some cases, it may depend on the perspective from which you are looking at the situation.

EXAMPLE

Suppose a regulator has power to serve notices on defaulters—

Where the regulator serves a notice on a person, the regulator must...

(here we are speaking of the regulator, who will frequently serve notices)

but

If the regulator serves a notice on a person, the person must...

(here we are speaking of the person, for whom the notice is not at all inevitable).

within the meaning of

2.1.88 This well-worn phrase is not a very natural or familiar one. If you mean "as defined by [a given provision]", say that. If you mean that a word has the same meaning as it has in another Act, perhaps say so.

2.1.89 *Within the meaning of* may be useful where the word or phrase is not defined directly by another provision.

without prejudice

2.1.90 Consider what the "prejudice" might be and focus on that.

EXAMPLES

Without prejudice to the generality of section 1

If the fear is that the new provision might limit what section 1 says, perhaps say

Without limiting section 1

Without prejudice to the making of new regulations

could be

Without preventing the making of new regulations

2.1.91 If the fear is that the new provision might *affect* or *change* the way another provision operates, perhaps say that (but see *affect* above).

2.1.92 A phrase beginning without "without prejudice to..." can often be recast so as to start with the main proposition and then say how it relates to the other thing.

EXAMPLE

Without prejudice to the generality of subsection (2), the Secretary of State may issue directions under that subsection for the purposes of....

can be recast as two propositions

The Secretary of State may issue directions under subsection (2) for the purpose of...

This does not restrict what may otherwise be done under subsection (2).

2.1.93 Another way of avoiding *without prejudice* is by *in particular*.

EXAMPLE

The Secretary of State may in particular issue directions under subsection (2) for the purpose of...

2.2 NUMBERS AND DATES

Cardinal numbers

2.2.1 Figures should normally be used for all numbers above 10.

2.2.2 Figures should also normally be used for numbers up to and including 10 that relate to sums of money, ages, dates, units of measurement or in quasi-mathematical contexts.

2.2.3 In other contexts, whether numbers up to and including 10 are spelt out or expressed as figures depends on what seems more natural or appropriate in the contexts concerned.

2.2.4 A number that begins a sentence should normally be spelt out (but it is probably best to avoid beginning a sentence with a number in any event).

2.2.5 Mixing words and figures referring, in a single context, to things of the same kind should be avoided.

Ordinal numbers

2.2.6 Ordinal numbers above 10th should not be spelt out.

2.2.7 Whether ordinal numbers from 1st to 10th are spelt out should be decided in the light of what seems more natural or appropriate in the contexts concerned. But see below for dates.

Percentages

2.2.8 "%" should be used rather than "per cent".

Dates

2.2.9 Numbers should be used.

2.2.10 The endings -st, -nd, -rd, -th should not be used in the body of a Bill (Royal Assent dates are inserted by the House of Lords Public Bill Office).

2.3 GENDER NEUTRALITY

Office practice

2.3.1 The office has been asked by ministers to draft primary legislation in a gender-neutral way, so far as is practicable to do so and without incurring unreasonable costs in terms of brevity or intelligibility[1].

What does gender-neutral drafting require?

2.3.2 In practice, gender-neutral drafting means two things—

- avoiding gender-specific pronouns (such as "he") for a person who may be either male or female;
- avoiding nouns that might appear to assume that a man rather than a woman will do a particular job or perform a particular role (eg "chairman").

2.3.3 The principle of gender neutrality applies only where the person or persons referred to could be either male or female. Where a provision can apply only to persons of a particular gender, it is appropriate to use nouns and pronouns specific to that gender.

2.3.4 Similarly, if a Bill for some reason needs to refer to a specific individual, gender neutrality does not require his or her gender to be concealed.

2.3.5 In practice a flexible approach is needed. One obvious case where an exception may need to be made is in amendments of existing Acts[2]. Where an existing Act refers to a person as "he", it might well be confusing to do something different (and impracticable to rewrite the provision from scratch).

Avoiding gender-specific pronouns:

Introduction

2.3.6 It is not always easy to avoid gender-specific pronouns. Techniques for doing so could be regarded as falling into three principal categories—

- change the pronoun
- repeat the noun
- rephrase to avoid the need for a pronoun or noun

1.See the statement of the Leader of the House of Commons HC Deb 8 March 2007, c146 WS. More recently there was a debate in the House of Lords on gender-neutral drafting of primary and secondary legislation: HL Deb 12 December 2013 cols 1004-1016.

2.The possibility that an exception might be needed for amendments of existing Acts is mentioned in the statement referred to in footnote 1.

2.3.7 What you do in any given case will depend on what sounds most natural.

Change the pronoun

2.3.8 **He or she.** For individuals you can of course say "he or she". In many ways this is a natural solution.

2.3.9 However, while "he" was sometimes used to include legal persons other than individuals, "he or she" cannot safely be used in this way. It tends to suggest more strongly than "he" alone that only individuals are envisaged.

2.3.10 Frequent repetition of "he or she" (or, worse, "himself or herself") can of course be awkward.

2.3.11 There is no objection to using "he or she" as a pronoun for "the Secretary of State". Under Schedule 1 to the Interpretation Act 1978 "Secretary of State" means "one of Her Majesty's Principal Secretaries of State". Any one of Her Majesty's Principal Secretaries of State will be either male or female.

2.3.12 **He, she or it**. Where a non-natural person needs to be referred to as well as an individual, this is possible. It is likely to be cumbersome unless used very sparingly.

2.3.13 **They (singular).** In common parlance, "they" is often used in relation to a singular noun which could refer to a person of either sex.

2.3.14 Whether this popular usage is correct or not is perhaps a matter of dispute. *OED* (2nd ed, 1989) records the usage without comment; *SOED* (5th ed, 2002) notes "considered erron. by some". It is certainly well-precedented in respectable literature over several centuries [3].

2.3.15 Nevertheless, it was clear from the debate on gender-neutral drafting in the 2013 House of Lords debate[4] that to use "they" in legislation to refer to a singular subject is controversial. On that basis it is best avoided.

2.3.16 **They (plural)**. It may be possible to turn the noun into a plural noun and then to use "they" (relying on section 6(c) of the Interpretation Act 1978).

EXAMPLE

Participants may only carry on [particular activities]... if they hold a permit

2.3.17 Take care to ensure that the plural does not create an ambiguity that would be avoided if the singular were used.

Repeat the noun

2.3.18 At a basic level, you can repeat the noun each time rather than using a pronoun.

EXAMPLE

...earnings, in relation to a person, means sums payable to the person in connection with the person's employment...

3.See the examples in the OED and *Fowler's Modern English Usage*, 3rd ed. (Burchfield) 1996.
4.See footnote 1.

2.3.19 Constant repetition of a noun or phrase in a way which would not occur in speech can jar and might detract from readability.

2.3.20 Sometimes, rather than repeating a long compound noun, it might be possible to use a defined term.

EXAMPLE

... may give a youth conditional caution to a child or young person ("the offender") if the offender.....

2.3.21 A defined term reduces, but does not entirely eliminate, the awkwardness of a repeated noun, and requires the reader to substitute the actual wording intended for the defined term. It may only be worthwhile if the actual wording is long and would have to be repeated a lot.

2.3.22 A variant technique is to replace the noun with a letter.

EXAMPLE

If a person ("P") who is registered in respect of a regulated activity carries on that activity while P's registration is suspended, P is guilty of an offence

2.3.23 Using a letter in place of a noun or pronoun does not reflect how people normally speak or write. It requires the reader to go through the mental hoop of substituting the actual noun being referred to and may thereby decrease readability. Use of a letter was also frowned upon in the House of Lords in 2013.[5]

2.3.24 The technique of using a letter in place of nouns and pronouns is seldom, if ever, likely to be appropriate solely for the purposes of securing gender neutrality. It is, however, sometimes useful for other reasons, such as to distinguish between two or more people (A and B and so on). Even in that context, though, the technique should be used judiciously.

Rephrase to avoid the need for a pronoun or noun

2.3.25 **Use the passive.** This has its attractions.

EXAMPLE

explaining why the regulations have not been laid

rather than

explaining why he has not laid the regulations.

2.3.26 Excessive use of the passive detracts from readability (see para. 1.3.21).

2.3.27 **Use "who" instead of "if he"**

EXAMPLES

Instead of

A person commits an offence if he.....

perhaps

A person who.....commits an offence

2.3.28 One danger of the approach in the example is that it postpones the operative words to the end. That can detract from readability, especially if the relative clause is long.

5.See the debate referred to in footnote 1 at cols 1013-14.

2.3.29 **Impersonal constructions.** Other impersonal constructions are possible. Again, care needs to be taken not to produce an unnatural dislocation between the person and the thing or event being spoken of.

EXAMPLE (1)

It is an offence for a person to...

as opposed to

A person commits an offence if he....

EXAMPLE (2)

A member may...be removed from office on any of the following grounds –

(a) failure to discharge the functions of membership;

(b) failure to comply with the terms of appointment;

(c) conviction of a criminal offence.

as opposed to

A member may be removed from office if he –

(a) fails to discharge the functions of membership;

(b) fails to comply with the terms of appointment;

(c) is convicted of a criminal offence.

EXAMPLE (3)

Dropping litter is an offence (rather than "A person commits an offence if he drops litter")

Before giving guidance.....(rather than "Before he gives guidance")

2.3.30 **Substitute "the" or "that"**

EXAMPLES

*the reasonableness or otherwise of that belief (*not "his belief")

The Secretary of State may remove a member from office if satisfied that the member.... has failed to discharge the functions of the office (not "his office")

2.3.31 This approach on occasion may risk losing the link between the noun and the person being spoken of and thereby lose clarity, or at least may give the reader an unexpected jolt.

2.3.32 **Omit the pronoun.** Sometimes it is not always necessary to use a pronoun at all.

EXAMPLES

*circumstances which justify doing so (*not "circumstances which justify him doing so")

immediately before death (rather than "immediately before his death")

2.3.33 This technique relies on the reader using the context to supply the word omitted. Care is needed to ensure that resulting proposition does not become uncertain.

2.3.34 **Omit the phrase with the pronoun.** It might be worth asking whether the phrase requiring the personal pronoun is really worth having.

EXAMPLE

the Secretary of State may

rather than

the Secretary of State may, if he thinks fit

2.3.35 This of course involves taking a view as to the redundancy of the words omitted.

Avoiding gender-specific nouns

2.3.36 The gender-specific noun most likely to be encountered is "chairman". "Chair" is now widely used in primary legislation as a substitute. It may also be possible to use a different word entirely, such as "convenor" or "president", but these might perhaps have different connotations.

2.3.37 Some English words denoting a particular occupation, role or activity exist in a form with a feminine suffix, the obvious example being *-ess* (manager/manageress, actor/actress, author/authoress). In many cases the feminine form has fallen or is falling out of use and the suffixless form is or can be used for a woman as well as for a man ("she is a marvellous actor"). Where that is the case, drafters should prefer the suffixless form.

PART 3 DRAFTING TECHNIQUES

3.1 CITATION

Domestic legislation

Need for citation

3.1.1 References in a Bill to a public general or local Act of Parliament should not normally be accompanied by the chapter number of the Act, unless there is in the context a particular need for the chapter number.

3.1.2 Chapter numbers should though be given for references to Acts in repeals Schedules and other Schedules where Acts are listed chronologically within a year.

3.1.3 Chapter and reference numbers should be given for other enactments and instruments.

Usual forms of citation

3.1.4 The following tables set out the forms used in citing domestic legislation. An underscored space in the tables signals a non-breaking space.

Westminster

Public general acts Armed Forces Act 2006 Fisheries Act 1955	 (c._6) (3_&_4_Eliz._2 c._7)
The second form given above, which includes the regnal year, is now used only in relation to Acts which are passed in the same calendar year and have the same chapter number (a situation which can only arise with pre-1963 Acts). But references to an Act should not be accompanied by the chapter number or regnal year unless there is a particular need for it (see above).	
Local acts Newcastle-upon-Tyne Corporation Act 1960 *Regnal years are not given for local Acts.*	(c._xli)
Personal acts Arundel Estate Act 1957 *Regnal years are not given for personal Acts. The number is italicised.*	(c._*1*)

Westminster

Church Assembly (before 1970) and General Synod measures	
Church Commissioners Measure 1964	(No._8)
Cathedrals Measure 1999	(No._1)
Statutory rules and orders (from 1894)	
Ministry of Works (Transfer of Powers) (No. 1) Order 1945	(S.R._&_O._1945/991)
Statutory instruments (from 1948)	
Secretary of State for Energy and Climate Change Order 2009	(S.I._2009/229)

Scotland

Scots acts (to 1707)	
Fisheries Act 1705	(c._48 (S.))
Acts of the Scottish Parliament (from 1999)	
Adoption and Children (Scotland) Act 2007	(asp_4)
Glasgow Airport Rail Link Act 2007	(asp_1)
The numbering of asps does not distinguish between public and private.	
Scottish statutory instruments	
Police Grant (Variation) (Scotland) Order 2009	(S.S.I._2009/41)
These are instruments made since 1999 under powers granted by the Scotland Act 1998. For numbering, see regulation 4 of the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195).	

Wales

Measures of the National Assembly for Wales (2008-2011)	
NHS Redress (Wales) Measure 2008	(nawm_1)
In Welsh this measure is Mesur Gwneud Iawn am Gamweddau'r GIG (Cymru) 2008 (mccc_1).	
Statutory instruments (from 1948)	(S.I._2009/108 (W.21))
School Milk (Wales) (Amendment) Regulations 2009	
Welsh statutory instruments are statutory instruments relating specifically to Wales. They are in the same numbering sequence as other UK statutory instruments but are distinguished by a subsidiary number in brackets after the S.I. number (for example "(W. 21)"). They may be made under authority contained either in Acts of the UK Parliament or in measures of the National Assembly for Wales. The Welsh equivalent is "(S.I._2009/108 (Cy.21))".	

Northern Ireland

Acts of the Northern Ireland Parliament Interpretation Act (Northern Ireland) 1954 *An Act of the Northern Ireland Assembly would use the form "*(c._33)*".*	(c._33 (N.I.))
Acts of the Northern Ireland Parliament (private bill) Northern Bank Act (Northern Ireland) 1970	(c._ii (N.I.))
Measures of the Northern Ireland Assembly Financial Provisions Measure (Northern Ireland) 1974	(c._2 (N.I.))
Acts of the Northern Ireland Assembly (from 2000) Charities Act (Northern Ireland) 2008 *An Act of the Northern Ireland Assembly would use the form "*(c._12)*". So far, no private bill has been enacted.*	(c._12 (N.I.))
Statutory rules and orders (Northern Ireland) European Communities (Agriculture) Order (Northern Ireland) 1972	(S.R._&_O. (N.I.) 1972 No._351)
Statutory rules of Northern Ireland Energy (Amendment) Order (Northern Ireland) 2009 *An Act of the Northern Ireland Assembly would use the form "*S.R._2009 No._35*"*	(S.R._(N.I.) 2009 No._35)
Northern Ireland Orders in Council Criminal Evidence (Northern Ireland) Order 1999 *Orders in Council made under section 1(3) of the Northern Ireland (Temporary Provisions) Act 1972, paragraph 1 of Schedule 1 to the Northern Ireland Act 1974, or section 85 of the Northern Ireland Act 1998 use the same form. Orders in Council are in the same numbering sequence as other UK statutory instruments. They are distinguished by a subsidiary number in brackets after the S.I. number (for example "(N.I._8)").*	(S.I._1999/2789 (N.I._8))

European legislation

Titles of EU instruments

3.1.5 The full title of an EU instrument will normally include the following elements: institution making the instrument; type of instrument; year; number; date; subject-matter; and the relevant Community or, post-Lisbon (ie after 1 December 2009), a reference to the EU.

3.1.6 Up to and including 1999, the year was written with two digits (eg "99"); for the year 2000 and following years four digits are used (eg "2002").

3.1.7 Since 1967, the full title of a Regulation has been like this—

> Council Regulation (EEC) No 1462/86 of 13 May 1986 fixing the minimum price of soya beans for the 1986/87 marketing year

Commission Regulation (EU) No 495/2010 of 7 June 2010 establishing the standard import values for determining the entry price of certain fruit and vegetables

or, for joint regulations—

Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office.

3.1.8 The full title of a Directive is like this—

Council Directive 86/609/EC of 24 November 1986 on the approximation of laws, regulations and administrative provisions of the Member States on the protection of animals used for experimental and other scientific purposes

Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures

or, for joint Directives—

Directive 2010/13/EU of the European Union and of the Council of 10 March 2010 on the co-ordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

3.1.9 The title of a Decision is like this—

Council Decision of 10 May 2010 on the European Capital of Culture Event for the year 2014 (2010/299/EU).

3.1.10 In this case the number in brackets is not formally part of the title but is generally used in citations.

Usual forms of citation

3.1.11 At the first mention of a European instrument in primary legislation, the date and subject-matter may be omitted if the subject-matter is apparent from the context. If the date and subject-matter are included in the first reference, they certainly do not need to be included in subsequent references.

3.1.12 So, standard practice would be to use the following forms in cases where the date and subject-matter are omitted (using the examples above)—

Council Regulation (EEC) No 1462/86

Commission Regulation (EU) No 495/2010

Regulation (EU) No 439/2010 of the European Parliament and of the Council

Council Directive 86/609/EEC

Council Directive 2010/24/EU

Directive 2010/13/EU of the European Union and of the Council

Council Decision 2010/299/EU.

3.2 CROSS-REFERENCES

Use of cross-references

3.2.1 Cross-references can prove particularly hard work for the reader, so it is helpful to minimise their use. This can sometimes be done by re-ordering the material.

3.2.2 Generally, it is helpful to refer to a substantive rule or proposition, rather than the statutory provision containing it (in which readers are unlikely to be interested).

EXAMPLE

Suppose subsection (1) says—

(1) A company must pass a resolution before [doing something].

You want to make an exception for small companies.

You could say—

(2) Subsection (1) does not apply in the case of a small company.

But rather than telling readers about "subsection (1)", it might be more helpful to say—

(2) No resolution is required in the case of a small company.

3.2.3 If a cross-reference is absolutely necessary, it may be possible to make it more user-friendly by adding words describing the effect of the provision referred to.

Parenthetical descriptions

3.2.4 It will generally be helpful to provide a parenthetical description of a provision referred to. But the drafter will need to consider the usefulness of the descriptive words against the disadvantage of interrupting the flow of text. There is in particular usually less need to give a parenthetical description of a cross-reference to a provision of the same Bill. (For parenthetical descriptions in textual amendments, see para. 4.2.24.)

3.2.5 The parenthetical description is a description, not a quotation. It will often be the heading of the section or Schedule referred to, but it does not have to be. For example, the heading may have been devised in the context of other headings in the Act in question, but may not be particularly helpful taken in isolation.

3.2.6 It should be made clear whether the parenthetical description relates to a particular subsection or other portion of text, or whether it relates to the section generally. In the latter case, it may be helpful to use a formulation along the following lines:

EXAMPLE

In section 1 (description of section 1), in subsection (1)...

instead of

In section 1(1) (description of section 1).....

"Above" and "below"

3.2.7 Do not use "above" and "below" unless it is appropriate to do so for the purpose of achieving internal consistency or certainty. "Above" or "below" it may help to produce certainty, or at least clarity, if you are referring in one breath to a provision of the Bill and a provision of another Act.

3.2.8 The convention that amendments should follow the style of the Act amended does not need to be followed in connection with the use of "above" and "below", particularly in the case of substantial insertions of new text.

"of this Act", "of this section", "of this Schedule" etc

3.2.9 As a general rule, these expressions should be avoided.

3.2.10 They may serve a useful purpose in some cases—

- in contexts where "above" or "below" might otherwise be used (see above): there may be reasons of symmetry or emphasis that mean that, for example, "of this Act" is to be preferred to "above" or "below";
- in a Schedule divided into Parts in a Bill which is also divided into Parts, it may help to make it clear whether you are referring to Part of the Schedule or Part of the Bill;
- where there is a reference to a Chapter of the Part in which the reference occurs and another Part of the Bill is also divided into Chapters: it may be desirable to add "of this Part" to the reference in the interests of clarity.

"to this Act"

3.2.11 The recommendations relating to the use of "above" and "below" apply equally to references to a Schedule "to this Act".

Arabic and Roman numerals in pre-2001 Acts

3.2.12 Since 2001 Acts have used Arabic numerals for Parts and Chapters of Acts and for Parts of Schedules. Before then Roman numerals were used.

3.2.13 Arabic numbers should be used when referring to Parts and Chapters of pre-2001 Acts and Parts of Schedules to such Acts, even though the original Act will have used Roman numerals.

3.2.14 When inserting or substituting text in a pre-2001 Act use Arabic numerals even if that leads to a mixture of Arabic and Roman in the text of the Act.

3.2.15 If Roman numbers currently appear in text which needs to be identified for the purposes of amendment, refer to the text as it stands.

3.3 DEFINITIONS

Kinds of definition

3.3.1 Definitions are broadly of four kinds—

(1) Definitions of major concepts without which the reader cannot understand what follows.

EXAMPLE

In the Animal Welfare Act 2006, what is meant by "animal" (section 1) and "protected animal" (section 2).

(2) Definitions adopted for the sake of drafting convenience.

EXAMPLE

In this Act, "the 2002 Act" means the Enterprise Act 2002.

Definitions of this kind should be kept to a minimum. They are likely to be less convenient to the reader than to the drafter.

(3) Definitions of words or expressions which will be understood in general terms, but where a degree of certainty or clarification is needed.

EXAMPLES

In this Act, "child" means a person under the age of 18.

In this Act, "enactment" includes an enactment comprised in subordinate legislation.

(4) Definitions making, for convenience, a minor adjustment of what a word or phrase would otherwise mean.

EXAMPLE

In this Act, "employment" includes self-employment.

This kind of definition should also be used sparingly.

Where to put definitions

3.3.2 Where the defined term is used only once, the definition should appear in the same provision (eg the same section).

3.3.3 Where the defined term is used more than once—

- a definition of the first and second kind referred to above should normally be defined up front, as the reader will not understand what is being said. So it should appear either in the first place where the defined term appears or, if more convenient, in an introductory definitions provision.
- a definition of the third kind referred to above can usually be left to the end;
- a definition of the fourth kind referred to above can also usually be left to the end, unless there is a danger of the reader being seriously misled.

3.3.4 Definitions which are given up front should be indexed so that the reader can see in one place whether the term is defined or not. This does not apply if the defined term is used only once.

3.3.5 A traditional interpretation section therefore includes—

- index entries for definitions that have already been given (eg "In this Part, x has the meaning given in section 1"), and
- minor definitions of the third and fourth kinds referred to above.

3.3.6 Avoid prospective definition: "In this section and the next section, x means y". The reader of the next section may not see the definition. If necessary, repeat the definition.

Choice of label

3.3.7 Avoid labels which are misleading (and, conversely, do not give defined terms a meaning the reader would not expect).

EXAMPLE (to avoid)

In this Act, references to fingerprints include footprints.

3.3.8 A defined term should ideally in itself give the reader some clue as to what it means.

EXAMPLE

"PACE" or "*the 1984 Act*" would be a better label for the Police and Criminal Evidence Act 1984 than *"the principal Act"*

3.3.9 Equally, colourless terms such as "the relevant person" should where possible be replaced with something more helpful (but avoid language that calls attention to itself or defined terms which might colour the meaning in unwanted ways).

3.3.10 Similarly, for letters denoting persons or concepts, it may be best to choose a letter relating to the thing denoted: so, for "the defendant" perhaps "D" rather than "X".

3.3.11 Using the same label to denote different things in the same Bill may confuse (and contravenes the drafting principle of consistency).

Operative provision in definitions

3.3.12 It is considered bad practice to include operative material in a definition. For example, it may be permissible to say that "regulations" means regulations made by the Secretary of State, but it would be going too far to include the Parliamentary procedure in the definition.

Definitions involving cross-references

3.3.13 If a Bill is to use a term which has already been defined in the way desired in another Act, it may be useful to borrow the definition from that other Act.

3.3.14 There are at least two ways of doing this—

> *In this Act, "health care" has the same meaning as in the Health Act 2006 (see section 98).*
> *In this Act, "health care" has the meaning given by section 98 of the Health Act 2006.*

3.3.15 The first approach may be the only possible one where the meaning of the word or phrase in the earlier Act is not given in a single place but has to be constructed from a number of different provisions. This approach may also be better if the definition has been elaborated on by case law which you want to attract.

3.3.16 In other cases, the second formulation may be better as more concise. But consider then whether it would not be even better just to copy the definition out.

Lists of definitions

3.3.17 In some cases it may make sense to list definitions in conceptual order (eg where each definition builds on the previous one).

3.3.18 In most cases, though, definitions should be listed alphabetically. Definitions involving numbers (eg ""the 2002 Act" means the Enterprise Act 2002") should appear first.

3.3.19 In a list of definitions, each entry should end with a semi-colon. There should be no conjunction.

Other technical points

3.3.20 "Unless the context otherwise requires" is not particularly helpful. Do not use it at all if there is no case where the context does otherwise require - and in such a case, it may be better to say what is meant in that context.

3.3.21 Some writers deplore the use of a definition for a term which is used only in another definition, unless that is the only way to make the other definition manageable.

3.3.22 It should be clear to which portion of the resulting Act the definition will apply: so use "in this Act", "in this section" and so on unless there is no possible doubt.

3.3.23 In most cases it is not obvious that "*for the purposes of this Act*, x means y" has any particular advantage over "*In this Act*, x means y".

Indexes

3.3.24 Many Acts now contain an index of defined expressions. These can be helpful if the Act contains a large number of them.

3.4 FORMULAE

When to use a formula

3.4.1 Drafters should not hesitate to use a formula where appropriate. It may be the neatest way to express a relationship between various quantities; spelling the same thing out in words may be the very worst way of expressing it.

EXAMPLE

In this Part, "scheme transfer factor" means the amount of any sums transferred on the scheme transfer reduced by the relevant relievable amount and then divided by the standard lifetime allowance at the time when the scheme transfer took place.

This might be better expressed as a formula.

In this Part, "scheme transfer factor" means –

$$\frac{T - R}{S}$$

where –

T is the amount of any sums transferred on the scheme transfer,
R is the relevant relievable amount, and
S is the standard lifetime allowance at the time when the scheme transfer took place.

3.4.2 However, sometimes a sequence of written instructions may be more accessible than a formula: see, for example, the "method statement" (see para. 1.3.52).

3.4.3 If the proposition is very simple (for example, the sum of two quantities) using a formula may make it look more complicated than saying the same thing in words.

3.4.4 A formula may be more accessible to, say, an actuary or accountant than to a general reader. So be guided by the expected readership.

How to express a formula

3.4.5 It is generally preferable for everything to be dealt with in the formula itself, so that each element represents a single thing, rather than, say, the sum or product of two things.

EXAMPLE

In this Part, "scheme transfer factor" means –

$$\frac{A}{B}$$

where –

A is the amount of any sums transferred on the scheme transfer minus the relevant relievable amount, and

B is the standard lifetime allowance at the time when the scheme transfer took place.

In this example the complete story has to be stitched together from the formula and the narrative.

3.4.6 Use a single letter for each element, rather than a cluster of letters.

EXAMPLE (to avoid)

In this Part, "scheme transfer factor" means –

$$\frac{ST - RRA}{SLA}$$

where –

ST is the amount of any sums transferred on the scheme transfer,

RRA is the relevant relievable amount, and

SLA is the standard lifetime allowance at the time when the scheme transfer took place.

In this example, although the compound abbreviations more obviously suggest the terms for which they stand, they make the formula look more complicated than necessary (compare the example in para. 3.4.1). Those mathematically inclined might also start off on the wrong foot assuming that "RRA" means R x R x A.

3.4.7 Acronyms should also be avoided unless they are very well-known (eg "RPI" for retail price index).

3.5 OVERVIEWS

Introductory

3.5.1 An "overview" is, typically, a brief summary of the content of an Act, Part, Chapter, group of sections or Schedule. It may also contain signposts to other relevant provisions. Its purpose is to assist the reader in navigating legislative material.

3.5.2 An overview will generally have no operative effect of its own. It may be contrasted with a purpose clause intended to affect the interpretation of other provision.

3.5.3 Overviews have been widely used in Tax Law Rewrite legislation. Their use in other legislation is starting to become a little more common.[1]

Overviews of whole Acts

3.5.4 Section 1 of the Corporation Tax Act 2009 is an example of an overview for a whole Act.

3.5.5 It may be asked what an overview like this adds to the arrangement. There are perhaps three main arguments in its favour.

- In a large Act the arrangement by itself can run to many pages (for example, 63 pages in the Corporation Tax Act 2009). This can make it difficult for a reader to get a clear idea of the overall contents of the Act. An overview can offer the reader a snapshot of the Act more briefly (just over a page of text in the Corporation Tax Act 2009).
- The arrangement can do no more than create a list of the headings to Parts, Chapters, cross-headings and clause titles. An overview of the Act can go further, by drawing out the principal themes behind a group of Parts and the relationship between those Parts.[2]
- An overview can if necessary explain how the new legislation fits into the legislative landscape (for instance, by including signposts to other relevant provision).

3.5.6 An overview of an entire Act is most likely to be of use in very large Acts where the reader is unable to gain an easy grasp of the scope of the Act from the arrangement or the long title. But there is no reason in principle why such sections cannot be used in an Act of any size if the drafter considers that it would be helpful. But an overview that merely repeats the arrangement in a different format is unlikely to be of any great assistance.

1.For example, the Banking Act 2009.

2.For example, section 1(6) of the Corporation Tax Act 2009 tells readers that Parts 15 to 18 all contain special rules for particular cases, a point that may not be readily apparent from the listing of Parts in the arrangement.

Overviews of Parts, Chapters and Schedules

3.5.7 In Tax Law Rewrite Acts, overviews are also commonly used in relation to Parts and Chapters. A typical overview of a Part that is divided into Chapters contains a brief description of those Chapters. If other provision outside the Part is relevant to the operation of the Part, the overview may also contain a signpost to that other provision in order to alert the reader of its relevance.[3]

3.5.8 It is for the drafter to determine how useful an overview is likely to be. If the Part or Chapter is short and contains only a few clauses then an overview is unlikely to be of much assistance: the clause headings will suffice. However, an overview may still be of assistance - even for a very short Chapter - if it alerts the reader to the existence of other relevant legislation before the operative provisions of the Chapter.[4]

3.5.9 To use an overview for one Part does not mean that all other Parts of the Act have to have one.[5] There is no point in having an overview where there is no benefit to the reader.

3.5.10 An overview may be useful for a long Schedule.[6]

Clauses containing overviews

3.5.11 Often an "overview" will have a clause to itself[7]. However, sometimes it may be convenient to include interpretative provision, or a provision as to the application of a Part or Chapter, alongside the overview.[8]

3.5.12 But be careful not to mislead readers. If a combination of operative and inoperative material is desired, "overview" may not be the most helpful section heading ("introduction", for example, might be better).

Operative and inoperative effect

3.5.13 The fact that an overview may not be intended by the drafter to have any operative effect does not mean to say that a court would take no account of it in construing the legislation that the overview relates to. So it needs to be drafted with care to ensure that it is an accurate summary of those provisions and could not have an unintended consequence.

3.5.14 Some overviews go beyond merely outlining the contents of a set of provisions and instead describe or explain the provisions how operate[9]. This kind of descriptive or explanatory material may on occasion be useful. But particular care is required, as it carries a greater risk of unintended consequences than a more standard type of overview containing a mere outline of subject-matter.

3.For example, section 35 of the Corporation Tax Act 2010. Subsections (1) and (2) contain descriptions of the Chapters; and subsections (3) and (4) highlight other relevant provision.
4.For example, section 976 of the Corporation Tax Act 2009.
5.For example, in the Finance Act 2004, Part 4 has an overview but no other Part does.
6.See para. 3 of Schedule 19 to the Finance Act 2011, where the Schedule runs to over 50 pages.
7.For example, section 33 of the Income Tax Act 2007; section 98 of the Corporation Tax Act 2010.
8.For example, section 615 of the Income Tax Act 2007.
9.For example, section 1(2) to (5) of the Banking Act 2009.

Amending overviews

3.5.15 If a provision amends an enactment that is in a Chapter or Part of an Act that includes an overview, then consideration should be given as to whether the overview should be amended to ensure that it continues to be an accurate description of the Chapter or Part.

3.6 PARAGRAPHS

Introduction

3.6.1 An obvious way of making a sentence more digestible is to separate the text out into numbered paragraphs (as described in chapter 1.3 *Clear language*, para. 1.3.5). This can also make important propositions stand out more than they would in continuous text.

3.6.2 Drafters should though be careful not to overdo paragraphing. Just because text can be turned into paragraphs doesn't mean it has to be. In some cases it may be better to have continuous text with appropriate punctuation, and not to separate out the items at all.

3.6.3 This chapter gives technical guidance about paragraphs[1].

Two sets of paragraphs

3.6.4 The use of a structure which involves two or more sets of paragraphs in the same sentence (eg in the same subsection) has for some time been discouraged.

EXAMPLE

If the minister considers that –

(a) the authority is not likely to achieve the target, or

(b) the authority is not likely to achieve the target in a reasonable time,

the minister may after consulting the authority –

(i) revise the target, or

(ii) require the authority to explain.

3.6.5 In general, it remains the case that such a structure is best avoided. Instead, split the proposition into two so that there is one set of paragraphs in each part (assuming the paragraphing is preserved).

3.6.6 That is not to say that the above layout cannot be used where it is thought to be a clear and logical way of presenting material (and one might argue that those criteria are satisfied in the above example). If using such a layout, make sure to use a different lettering system in the second set of paragraphs (eg (i), (ii), as above), rather than using the same lettering system in both sets. Otherwise it will be difficult to distinguish between the two sets of paragraphs when referring to one or the other.

"Sandwiches"

3.6.7 The following structure is a sandwich—

1.Generally on paragraphs, see *Thornton's Legislative Drafting* (see chapter 9.1), pages 66 - 71 and D. Greenberg, *Craies on Legislation* (see chapter 9.1) paras 8.2.11 and 13. Some of the material contained in this chapter reflects material to be found in some of those passages.

If an inspector reasonably believes that-

(a) premises falling within this Part are unfit for human occupation,

(b) the premises are nevertheless occupied, and

(c) the life or health of the occupants is at risk,

the inspector may serve a notice under this section.

3.6.8 This structure can impede understanding, especially if the main proposition is relegated to the end (as in the example above). It is often possible to move the proposition in the full-out words at the end so that it appears in the opening words, and usually the result is easier to understand. Instead of the text above, you could say this—

An inspector may serve a notice under this section if the inspector reasonably believes that-

(a) premises falling within this Part are unfit for human occupation,

(b) the premises are nevertheless occupied, and

(c) the life or health of the occupants is at risk.

3.6.9 That said, in some cases a "sandwich" structure may be a helpful way of presenting material. Bear in mind that this technique is likely to be more suited to relatively short propositions, where no more than two or three paragraphs separate the opening words from the full-out words, than to cases where the opening words are too far removed from the full-out words for the reader to be able readily to assimilate the effect of the proposition.

Conjunctions

Introduction

3.6.10 Ensure that it is clear whether the paragraphs are intended to operate cumulatively or instead as alternatives (and see *or* in chapter 2.1, Words and phrases).

3.6.11 Do not mix conjunctions, i.e. put different conjunctions at the ends of different paragraphs in the same provision.

Cumulative or alternative paragraphs

3.6.12 Where a provision is paragraphed, the intention may be that the paragraphs are to operate cumulatively, or instead it may be that they are to operate as alternatives. In either case, it is up to the drafter to ensure that the intention is readily apparent to the reader.

3.6.13 So far as "or" is concerned, the drafter is confronted with the linguistic problem that "or" can have both an inclusive sense (ie a reference to A or B means A or B or both) and an exclusive one (ie a reference to A or B means A or B but not both). Dickerson[2] suggests that: "Observation of legal usage suggests that in most cases "or" is used in the inclusive rather than the exclusive sense". This construction may be bolstered, or alternatively excluded, by the context.

EXAMPLE

Where an animal is taken into possession, a magistrates' court may order—

(a) that specified treatment be administered to the animal, or

(b) that the animal be sold or destroyed.

2.F. Reed Dickerson *Fundamentals of Legal Drafting* (see chapter 9.1) p.77.

It seems unlikely the court should have to choose between (a) and (b). So the "or" at the end of (a) should probably be read in an inclusive sense.

On the other hand, in (b), it would make no sense for the court to order both sale and destruction, so "or" should no doubt be read in an exclusive sense.

3.6.14 It may be tempting to omit "or" from provisions in order to avoid any suggestion of exclusivity and perhaps to make it clear from the opening words what is intended. But where it is obvious from the context that the provisions would be read in an inclusive sense, it may be better from the point of view of clarity or consistency across the statute book to follow normal English and use "or".

3.6.15 Sometimes it will be desirable to spell out that both of two alternatives are a permissible option. For example, a provision allowing the imposition merely of a "fine or a term of imprisonment" might be construed in favour of a defendant so as to exclude the imposition of both. So if both may be wanted, it is probably best to say so.

3.6.16 Similar issues can arise with "and". If, in the example above, the court were given power to order that treatment be given to the animal *and* that it be sold or destroyed, would it have to do both? Again, though, the context will probably supply the answer.

Use of single conjunction

3.6.17 Often it will be sufficient to put the appropriate conjunction at the end of the penultimate paragraph and rely on the implication (in the absence of a contrary indication) that each of the preceding paragraphs is separated by the same conjunction.

3.6.18 However, if the "and" or "or" appears only at the end of the penultimate paragraph, the reader has to wait until then to know whether the paragraphs are cumulative or alternative. This is may be unhelpful with a long list of paragraphs.

3.6.19 It is of course possible to say "and" or "or" at the end of each paragraph. That can however be cumbersome.

No conjunction

3.6.20 It is also possible to avoid a single conjunction by making it clear in the opening words whether the paragraphs are cumulative or alternative.

EXAMPLE

A person who applies for a licence must send with the application a copy of [all] [at least one] of the following documents –

(a) the person's birth certificate;

(b) the person's passport;

(c) the person's driving licence.

3.6.21 This can be heavy-handed in simple propositions, when "and" or "or" may be better.

3.6.22 For specific heads of *vires*, the conjunction is often omitted. It is also common practice not to expand the chapeau so as to "any or all of the following", but instead to rely on the context to supply the right answer.

EXAMPLE

The Secretary of State may by regulations make provision about –

(a) the form of an application;

(b) the procedure for making an application;

(c) the fee to be paid by an applicant.

In this example, it seems sufficiently clear that the Secretary of State may make provision about any or all of the things mentioned.

Punctuation

3.6.23 For a simple list of paragraphs linked by a conjunction, commas or semi-colons may be used.

3.6.24 If the paragraphs are followed by full-out text that is effectively a continuation of the proposition contained in the text preceding the paragraphs, commas should be used, not semi-colons (see the example of a "sandwich" above).

3.6.25 Semi-colons may be more appropriate than commas where there is no conjunction (ie where the paragraphs are in effect a list setting out matters that have no particular affinity with each other — see the examples above).

Repeals and amendments

3.6.26 If you are repealing a paragraph which ends with a conjunction, it needs to be clear whether or not you are repealing the conjunction.

3.6.27 In cases where the conjunction's fate would not otherwise be sufficiently clear, clarify the position by adding words such as "(together with the "and" following it)" or "(but not the "or" following it)".

Unnumbered paragraphs (lists)

3.6.28 Paragraphs need not have numbers or letters, especially in case where the list is not too long and the entries are relatively short. This may also be a good idea if the list is likely to be amended frequently.

EXAMPLE [3]

In this section "award for bravery" means –

the Victoria Cross,

the George Cross,

the Albert Medal,

the Edward Medal,

etc

3.Income Tax (Earnings and Pensions) Act 2003, section 638(2).

3.7 WORDS INTRODUCING SCHEDULES

Need for introductory words

3.7.1 This chapter is about the wording used to introduce a Schedule which consists of free-standing legislative propositions (for example, a Schedule of amendments to other Acts).

3.7.2 This chapter is therefore not concerned with—

- cases where the Schedule is a continuation of a legislative proposition in the body of the Bill, such as a list or table (an obvious example is a repeals Schedule, which is just a list of enactments referred to in the section giving effect to the repeals); or
- cases where the Schedule is not part of a legislative proposition at all and is merely there for information (eg an index or the text of a treaty).

3.7.3 Where a Bill contains a free-standing Schedule, it is the invariable practice to introduce it in one of the clauses of the Bill (either the clause to which it most closely relates or, if it does not relate to any other clause, in a new one).

3.7.4 The function of the words introducing a free-standing Schedule is to provide a signpost to the existence of the Schedule and an indication of its contents.

Possible formulations

3.7.5 A commonly-used formula to introduce a Schedule is to say something along the following lines—

Schedule 3 ([brief description of Schedule contents]) has effect.

3.7.6 This formula certainly fulfils the functions referred to above. It is not though strictly necessary to say that the Schedule "has effect". It has effect whether you say so or not.

3.7.7 There are other ways of introducing a Schedule which equally perform the functions referred to above.

EXAMPLES

Schedule 1 makes further provision about the Senior President of Tribunals....[1]

Schedule 1 contains amendments of Schedule 16 to the 1999 Act (the London free travel scheme)[2]

Schedule 5 amends the Environmental Protection Act 1990 to provide for the making of waste reduction schemes[3].

3.7.8 Another recently used technique, which very clearly expresses the function of inducing words as a signpost, is to adopt a "see" formula.

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1. Tribunals, Courts and Enforcement Act 2007, section 2(2).
2. Concessionary Bus Travel Act 2007, section 5(7).
3. Climate Change Act 2008, section 7(1).

EXAMPLE

For provision about alterations in the Assembly electoral regions and in the allocation of seats to those regions see Schedule 1 (section 2(5) of the Government of Wales Act 2006)

3.7.9 All of these techniques, and other forms of words which fulfil the functions mentioned above, are acceptable.

3.7.10 It is important to ensure that the description of the Schedule is accurate and covers everything in the Schedule.

PART 4 REPEALS AND AMENDMENTS

4.1 REPEALS

Introduction

4.1.1 This Chapter relates to the following—

- double entry repeals;
- the position of repeals;
- how repeals should be effected;
- words introducing repeal Schedules;
- the form of repeal Schedules.

4.1.2 Repeals may be categorised as—

Substantive repeals: repeals of provisions, not obsolete or spent, which are not replaced by positive (ie substantive) provisions of the Act.

Consequential repeals: repeals of provisions superseded, and thus impliedly repealed, by the positive provisions of the Act.

"SLR repeals": repeals of obsolete or spent enactments.

Double entry repeals

4.1.3 For some time the Office had a practice of "double entry" repeals. This requires a little explanation.

4.1.4 *Substantive* repeals traditionally appeared in the body of the Bill as they make a substantive change in the law and need to be brought to Parliament's attention.

4.1.5 *Consequential repeals* traditionally appeared only in a repeal Schedule. As they are consequential on something else they do not need to be brought separately to the reader's attention. It is enough that the substantive provision is in the body of the Bill. Sometimes, though, where consequential repeals are part of a story of consequential amendments more generally, drafters have found it convenient to include them alongside those amendments.

4.1.6 *SLR repeals* traditionally were included only in a repeal Schedule, with some acknowledgment in the provision introducing the Schedule that the Schedule included repeals of provisions which are spent and/or provisions which are no longer of practical utility. This acknowledgement indicated that the Schedule included repeals that had not been paved for in the body of the Bill.

4.1.7 Under the approach of "double entry" repeals, the repeal Schedule[1] would include *all* the repeals effected by the Bill, including those already expressly provided for. So the latter would appear twice in the Bill - hence "double entry".

4.1.8 The practice of double entry repeals was examined in *Commissioner of Police of the Metropolis v Simeon*[2], where it was held that there is no substantive significance in the presence or absence of double repeal on any particular occasion. The court declined to read the second repeal (in a repeal Schedule) of a particular provision as having any further effect than the substantive repeal of the provision in the body of the Act. So, in the case of double entry repeal, the repeal Schedule entry does not add anything to, but is just as effective as, the repeal in the body of the Bill.

4.1.9 The Office has decided to depart from the practice of "double entry" repeals. All repeals should appear either in the body of a Bill or in a repeal Schedule, but not both. Any given repeal should only appear once.

Position of repeals

4.1.10 Repeals should appear wherever clarity and the interests of proper debate dictate they should appear.

4.1.11 In particular, it follows from no longer having "double entry" repeals that—

- a repeal Schedule should appear in a Bill only if there are repeals that would not be better dealt with elsewhere;
- a Bill may contain more than one repeal Schedule;
- a repeal Schedule need not appear at the end of a Bill;
- repeals may be dealt with differently in different parts of a Bill;
- it is for the drafter to decide in any individual case how repeals should most conveniently be dealt with.

4.1.12 The following are guidelines only.

4.1.13 *Substantive repeals* will normally appear in the body of a Bill rather than in a repeal Schedule, so that the repeal is clearly brought to the attention of Parliament (and subsequent readers). Including a repeal in the body of a Bill also has the advantage of allowing the use of parenthetical words to describe the provision being repealed.

4.1.14 It is important, not least to facilitate proper consideration of a Bill by Parliament, that it should be obvious which repeals are substantive repeals and that they are given appropriate prominence. This does not mean that substantive repeals need be identified as such, but may point to a substantive repeal being separated from its associated consequential repeals.

4.1.15 *Consequential repeals* may appear with other textual amendments. This is likely to be appropriate particularly where they form part of the story set out by the textual amendments.

4.1.16 Where consequential amendments which merely tidy up the statute book by repealing amendments that are no longer required ("tidying up amendments") appear together with

1.A Bill would not necessarily have to have a repeal Schedule. For example, section 16(2) of the Prevention of Terrorism Act 2005 repeals a number of enactments but does not contain a repeal Schedule. But where a Bill did contain a repeal Schedule, that Schedule would list all the repeals made by the Bill.

2.[1982] 2 All ER 813 HL.

other amendments, it would normally be helpful to signal them as such by the words which introduce them[3].

4.1.17 It might be more convenient for some or all of the consequential repeals to appear in the form of a table contained in, for example—

- a single repeal Schedule,
- one of a series of repeal Schedules (say, one for each part of the Bill), or
- another type of Schedule (such as one containing consequential amendments).

4.1.18 Keeping consequential repeals that relate to particular provisions of a Bill together (and separate from other consequential repeals) could make commencement easier. There would be no need for commencement regulations (or the commencement provisions of the Bill) to pick out particular entries in a general repeal Schedule for commencement at particular times or in particular ways.

4.1.19 *SLR repeals* will sometimes be related to substantive provisions of the Bill, which points to placing them alongside those other provisions (or with related consequential amendments or repeals). Other SLR repeals might be candidates for a general repeal Schedule, if there is one.

4.1.20 Where SLR repeals are being effected, it will normally be helpful to the reader to make that clear. In particular, if the SLR repeals will be included in a repeal Schedule, the words introducing the repeal Schedule can make it clear that it includes (or consists of) SLR repeals.

Words used to effect repeals

4.1.21 To repeal a whole Act, use the formula—

"The [Act] is repealed"

4.1.22 For repeals of less than an whole Act, use "omit"—

In section 10(2) of the [Act], omit the words from "except" to "below";

In section 10 of the [Act], omit subsection (3);

In the [Act], omit section 10

In the [Act], omit Part 2.

4.1.23 Another expression sometimes used is—

- *x ceases to have effect*

4.1.24 "Ceases to have effect", where used to remove another provision, has the same substantive effect as "is repealed". Either secures that the affected provision is no longer part of the law[4]. Nor is there any difference for the purposes of section 16(1) of the Interpretation Act 1978.[5] [6]

3.For example, section 59(4) of the Finance Act 2010.

4.See for example *Craies on Legislation, 9th ed, 14.4.2.*

5.*Commissioner of Police of the Metropolis v Simeon* [1982] 2 All ER 813.

6."Ceases to have effect" can also be used in the context of the expiry of a temporary law. Section 16 of the Interpretation Act 1978 appears to distinguish between a repeal and an expiry (though seems to apply to both in the same way).

4.1.25 However, "ceases to have effect" does not in terms purport to remove the text in question from the statute book. If removal of the text is the desired result, it is probably better to stick to "repeal".

Introductory words for repeal Schedules

4.1.26 There is no single recommended form of words. However, a fairly standard way of giving effect to repeals in a repeal Schedule is—

> "( ) The provisions/enactments specified/mentioned in Schedule X are repealed [or revoked] to the extent specified/shown."

4.1.27 A reference to "or revoked" is needed, of course, where a repeal Schedule includes revocations of subordinate legislation. In such a case "provisions" might be better than "enactments".

4.1.28 Where a repeal Schedule is not a comprehensive list of all repeals effected by a Bill, drafters will want to consider whether to signal this fact to the reader - for example by a heading such as "Repeals relating to Part X", "Other repeals" or "Additional repeals".

Form of repeal Schedules (and other tables of repeals)

4.1.29 The format of a repeal Schedule is now fairly standard. Any repeal Schedule, or any other table of repeals, should be in that standard form.

4.1.30 Within each part of a Schedule or other table of repeals, the provisions affected should continue to be arranged chronologically (with chapter numbers).

4.1.31 Repeals and revocations may be dealt with together or in separate parts of a repeal Schedule.

4.2 TEXTUAL AMENDMENTS

Operative words

Insertions and substitutions

4.2.1 Use the imperative form—

after x insert y
for x substitute y

4.2.2 Where a series of amendments is introduced by a provision specifying the enactment to be amended, the first provision should be in the declaratory form, with the remaining propositions in the imperative—

(1) The [Act] is amended as follows...
(2) In section 1, after subsection (1) insert....

Omissions

4.2.3 For words to use to effect an omission or repeal, see para. 4.1.22.

Describing where the amendment is to go

Replacing, or adding to, words in the first place where they occur

4.2.4 The following (amongst others) are possible—

after "x", in the first place it occurs, insert "y"
after "x", where first occurring [or appearing], insert "y",

Replacing, or adding to, words in all places where they appear

4.2.5 The following (amongst others) are possible—

after "x", in each place, insert "y"
after "x", wherever it occurs/appears, insert "y"
for "x" (twice) substitute "y".

4.2.6 In principle, a single amendment could be used to change a term used throughout an Act. In practice, there are probably relatively few cases where this approach will be appropriate. Obviously, a global amendment should only be used if the drafter is certain that it achieves the right result in each place.

4.2.7 It is relatively common practice to put brackets around the words identifying where in the provision the amendment is to be made—

after "x" (in each place) insert "y"

after "x" (in the first place) insert "y".

4.2.8 Presumably, the wording in question will only be used where it would not otherwise be clear whether one amendment, or more than one, is intended. So, strictly speaking, brackets ought not to be used (on the basis that brackets are generally reserved for material that is included to assist the reader but does not have substantive legal effect). However, drafters may find that, in some cases, the use of brackets makes the provision easier to read.

Inserting at the beginning of a provision

4.2.9 The usual form is to say—

at the beginning insert x

rather than to say that x is inserted "before" particular words.

Inserting text at the end of a provision

4.2.10 For text inserted at the end of a provision, the convention in House amendments to Bills is to say "at end". But amendments to Acts are drafted in full sentences. So we need "at the end".

4.2.11 Sometimes drafters say "add" instead of "insert" for text which is to appear at the end of an existing provision. But it is not wrong to use "insert" in this context and it may be simpler to use the same word whether the new text is to appear in the middle or at the end of the existing provision.

Parts of a subsection

4.2.12 In the case of a subsection which includes paragraphs, the words before the paragraphs may be identified as "the opening words" or "the words before paragraph (a)".

4.2.13 The words after the paragraphs (sometimes referred to by drafters as "full-out" words) may be identified as "the closing words" or "the words after paragraph ( )".

4.2.14 Of course, it is not always necessary to specify exactly where in a subsection the words in question appear (for example, if the words appear only once).

Lists

4.2.15 Where an amendment is made to insert an entry into a list, such as a list of definitions or statutory bodies, it is sometimes framed as an amendment to insert the text "at the appropriate place" (instead of "after" something). This is appropriate where, for example, a list runs in alphabetical order.

Location of a new section

4.2.16 It is usual to specify that a new section is to be located "after" another one.

4.2.17 However, "before" can be useful where the new section is to be inserted at the beginning of a Part, Chapter or group of sections (where a reference to "after" the preceding section would tend to suggest that the intention was that the new section should appear at the end of the preceding Part etc).

Unnumbered provisions

4.2.18 To add a subsection or sub-paragraph to a section or paragraph which is not already subdivided, the recommended form is—

to say first that

In [section] [paragraph] N the existing provision becomes [subsection] [sub-paragraph] (1)

then to insert the new material as subsection or sub-paragraph (2).

How much text to substitute

4.2.19 The starting point when drafting a substitution is that the minimum amount of text should be replaced. In most cases, this will make it easier for the reader of the Bill to identify the substantive change that is being made. It also avoids suggesting that changes are being made to text which is not in fact changing.

4.2.20 However, in some cases it will be helpful to the reader of the Bill, or the reader of the Act being amended, to substitute more text than is strictly necessary. For example—

- where a number of related changes are being made to a single provision,
- where the end result of a group of amendments would be to alter the whole basis of an existing provision or to leave very little of the previous text,
- where the passage to be amended has previously been amended non-textually (so that there may be some doubt about which words remain to be textually amended),
- where it is otherwise helpful to the reader to substitute a few extra words, and
- if doing so would enable the drafter to repeal an amending provision.

4.2.21 The risks of substituting more text than is strictly necessary include—

- the risk of missing a cross-reference, non-textual modification or an old saving, and
- the risk that it will be more difficult for a reader to work out what substantive changes are being made.

4.2.22 In some cases a parenthetical description may help instead.

Parenthetical description

4.2.23 Generally, see the discussion of parenthetical descriptions in para. 3.2.4**.** In this section, only aspects relevant to textual amendments are discussed.

4.2.24 It has become fairly standard practice to give a brief description of the section or Schedule that is being amended, to give the context of the amendment and perhaps its significance. The parenthetical description will often be the heading of the section or Schedule, but it does not have to be — it may be better, for readers of the Bill, to describe the section in a different way.

4.2.25 There may be less utility in maintaining this practice in, say, Schedules of consequential amendments, where there is no important substantive effect to be described (and fewer readers to describe it to). For example, if you are simply changing the name of a body in all existing legislation, there may be little point in describing every provision where you are making the change.

4.2.26 It is also unlikely to be worthwhile to give the description of a section *after* which a new section is inserted, unless there is a very close connection between the two.

4.2.27 To describe the section or Schedule which is being amended may help to explain the significance and context of the amendment, but is unlikely of itself to tell the reader exactly what the amendment does. To tell the whole story you probably need to describe the particular portion of text which is being amended, whether a subsection or a smaller subdivision. But it will not be practical, or necessary, to do that in every case.

4.2.28 For an important substantive amendment, it may be worth taking the reader by the hand and explaining the entire context, so that the meaning of the textual amendment is then readily apparent. But it is difficult to sustain this on a consistent basis in a Bill of any length. There is certainly no point in giving a description of a subsection unless it actually helps the reader to understand the amendment. And there seems little point in descending to this level of detail in long Schedules of minor or consequential amendments.

4.2.29 Explanatory notes may help instead.

Schedules of amendments

4.2.30 This relates to the format to be used in Schedules where amendments to an Act are arranged under an italic cross-heading giving the name of the Act.

4.2.31 The recommended style is—

> "*Counter-Terrorism Act 2008 (c. 28)*
>
> 1. In the Counter-Terrorism Act 2008, after section N..."

4.2.32 Note in particular—

- the short title of the Act needs to be given in the text of the amendment as well as in the heading;
- the chapter number should be given in the heading but does not need to be repeated in the text of the amendment.

Amendment of section headings etc

4.2.33 It is acceptable to amend the heading to a provision.

4.2.34 In particular, it may be helpful to do so if the provision is falsified by a textual amendment.

4.2.35 There is no need to amend a heading merely because the existing heading is not quite what you would have chosen for the amended text. Also, the fact that the amended heading has Parliamentary authority might lead the courts to attach more weight to it than they would have attached to the original heading.

4.2.36 There are also examples of cases where a heading needs to be changed without there being a change to the text under the heading. One example is where a parallel set of provisions is added after existing provisions and there need to be headings that distinguish and connect the neighbouring sets of provisions.

Terminology

4.2.37 Section headings. Since 2001 the practice has been to give a description of the contents of a section in a heading. In Acts passed before 2001, the equivalent description was given in a marginal note. (Some internet resources now show pre-2001 sidenotes as new-style headings.)

4.2.38 OPC practice is to use "heading" or "title" for sections of Acts passed in 2001 or later years.

4.2.39 In the case of a pre-2001 Act, a reference to a "sidenote" will usually be accurate. But a section inserted into a pre-2001 Act by a later Act will have a "heading" or "title", as the new word-processing formats do not allow for marginal notes.

4.2.40 Italic headings. Italic headings, whether within the main body of an Act or in a Schedule, are variously referred to as "italic headings", "italic cross-headings" or just "headings". A reference to "italic" may help to distinguish this kind of heading from a section heading.

Punctuation

4.2.41 Where inserted or substituted words end with a full stop before the closing quotes, there should be no further full stop after the closing quotes.

Numbering conventions

Re-using numbers

4.2.42 When substituting a complete sub-division of text (e.g. a subsection), the numbering of the old provision should generally not be used for the new provision unless (as will frequently be the case) the subject matter of the new provision corresponds to that of the old provision.

4.2.43 When inserting a complete sub-division of text (e.g. a subsection) in a place where a corresponding sub-division has been repealed, the numbering of the repealed provision should generally not be used for the new provision.

4.2.44 Occasionally the drafter may decide that there is good reason to depart from the above approaches (e.g. where a repealed provision was repealed many years ago).

Adding provisions at the beginning of a series

4.2.45 The following applies when inserting a provision at the beginning of an existing series of provisions (e.g. a subsection at the beginning of a section or a Schedule before the first

Schedule).

- New sections inserted before the first section of an Act are preceded by a letter, starting with "A".
- The same approach is taken in relation to all other divisions of text (other than lettered paragraphs).

  Thus the Insolvency Act 2000 inserted a Schedule A1 before Schedule 1 to the Insolvency Act 1986, and the Enterprise Act 2002 inserted a new Schedule B1 after Schedule A1.
- A provision inserted before "A1" (or "ai") is "ZA1" or ("zai").
- In the case of lettered paragraphs, new paragraphs inserted before paragraph (a) are (za), (zb) etc.
- And paragraphs inserted before (za) are (zza), (zzb) etc.

Adding provisions at the end of a series

4.2.46 Where adding a provision at the end of an existing series of provisions of the same kind (e.g. a subsection at the end of a section or a Schedule at the end of the Schedules), the numbering should continue in sequence.

Inserting whole provisions between existing provisions

4.2.47 The following applies when inserting whole provisions between existing provisions.

- New provisions inserted between 1 and 2 are 1A, 1B, 1C etc.
- New provisions inserted between 1A and 1B are 1AA, 1AB, 1AC etc.
- New provisions inserted between 1 and 1A are 1ZA, 1ZB, 1ZC etc. (and not 1AA etc.)
- New provisions inserted between 1A and 1AA are 1AZA, 1AZB, 1AZC etc.

4.2.48 Do not generate a lower level identifier unless you have to.

- A new provision between 1AA and 1B is 1AB not 1AAA.
- But a new provision between 1AA and 1AB is 1AAA.

4.2.49 The above recommendations apply equally to sub-paragraphs with roman numerals and lettered paragraphs.

- New sub-paragraphs between sub-paragraphs (i) and (ii) are (ia), (ib), (ic) etc.
- New paragraphs between paragraphs (a) and (b) are (aa), (ab), (ac) etc.
- New paragraphs between paragraphs (a) and (aa) are (aza), (azb), (azc) etc.

Insertions resulting in a series of more than 26 new sections into an Act

4.2.50 This relates to the rare occasions when the insertion of new sections into an Act would result in a series of more than 26 new sections.

- *After Z use Z1, Z2, Z3 etc.*

  So in the Capital Allowances Act 2001 section 360Z is followed by sections 360Z1 to 360Z4.

Insertions resulting in series of more than 26 lettered paragraphs

4.2.51 This relates to the rare occasions when the insertion of new paragraphs into a section would result in a series of more than 26 lettered paragraphs.

- After paragraph (z) insert paragraphs (z1), (z2), (z3) etc.

4.3 NON-TEXTUAL MODIFICATIONS

Non-textual modifications and textual amendments

4.3.1 This chapter is about how to distinguish a non-textual modification from a textual amendment.

4.3.2 By "non-textual modification" is meant a modification of an enactment that is not intended to result in a change to the text of the modified enactment when the enactment is next printed (in contrast to a textual amendment, which is).

4.3.3 There have been occasions where it has not been clear to departments, or to those who produce and edit statutory text, whether something is a textual amendment or a non-textual modification. Sometimes non-textual amendments have even been printed as textual amendments.

4.3.4 It is therefore important to be make it clear what is intended.

Need to avoid formulations used in textual amendments

4.3.5 Sometimes non-textual modifications are drafted in essentially the same form as a textual amendment, the only difference being in the opening wording—

EXAMPLE (to avoid)

(1) Section 3 applies to fine defaulters as to offenders but with the following modifications—

(a) in subsection (1) for "offence" substitute "default"; and

(b) in subsection (2) for "6 months" substitute "3 months".

4.3.6 This might readily be mistaken for a textual amendment. The opening words give a clue that something other than a textual amendment is intended, but the rest is exactly the same as a textual amendment. It would be particularly easy to lose sight of the opening words if the list of substitutions and other changes were very long.

4.3.7 It would be clearer, in the first place, if the subjunctive mood were used to indicate that there is no intention actually to substitute the text—

EXAMPLE

(1) Section 3 applies to fine defaulters as to offenders but as if—

(a) in subsection (1) for "offence" there were substituted "default", and

(b) in subsection (2) for "6 months" there were substituted "3 months".

4.3.8 Better yet, though, would be to avoid the reference to substitution altogether—

EXAMPLE—

(1) Section 3 applies to fine defaulters as to offenders but as if—

(a) in subsection (1) the reference to an offence were to a default; and

(b) in subsection (2) the reference to 6 months were to 3 months.

"Modification"

4.3.9 Incidentally, the use of the word "modification" does not of itself exclude the possibility that what is intended is a textual amendment. The word is sometimes used (rightly) to describe a textual amendment — see for example section 517(6) of the Education Act 1996 and section 26(2) of the Criminal Justice and Court Services Act 2000.

4.4 AMENDMENT OF UNCOMMENCED PROVISIONS ETC

Amendment of a provision not in force

4.4.1 A Bill should not ignore relevant enacted material merely because that material is not yet in force. It is prudent to keep uncommenced legislation in a state where it could be brought into force. So if the policy behind a Bill require changes to a provision, or would require changes to it were it in force, the provision should normally be amended accordingly.

4.4.2 There are sometimes questions about whether an amendment is to be commenced by the commencement powers in the amending Act or those in the amended Act.

4.4.3 The starting point is that commencement of a provision of an Act depends upon the provision for commencement made in that Act. This includes a provision that amends an uncommenced provision in an earlier Act. Conversely, an Act's commencement provisions apply to the provisions of the Act and are not intended, at the time of enactment, to apply to all text that happens to be added by amendment by later Acts.

4.4.4 In some cases the drafter can and should rely simply on the commencement provision in the amending Act. For example, if the policy is that the uncommenced provision in an earlier Act should come into force and operate for a while without the amendment made by the amending Act, the later commencement of the amendment can only depend on the provision in the amending Act.

4.4.5 Or again, an amendment may consist of the insertion of free-standing provision that is capable of having effect without reference to neighbouring uncommenced provisions of the Act. Such added provision could be brought fully into force by or under the amending Act, without any reliance on the amended Act's commencement provisions.

4.4.6 There may be cases where a drafter would want the text added by a Bill to be subject to the commencement provisions of the Act being amended. The drafter might, for example, want the Act's power to make transitional provision in connection with commencement to apply to provision as amended by the Bill. That is perhaps particularly likely where the amendment has no meaning on its own.

4.4.7 In some cases it may be obvious that the amendment made by the Bill itself impliedly modifies the Act's commencement provisions so that they apply to the amended text as they would have applied to the unamended text. This approach seems most reasonable where the text added by the amendment cannot operate independently of the provision amended.

4.4.8 But if in any given case it is not obvious that this is the intention of the amending Act, then specific provision will be needed to apply the commencement provisions of the amended Act.

4.4.9 For repeals of uncommenced provisions, see Chapter 4.5 (repeal of amending enactments).

Amendment of a provision subject to an uncommenced repeal

4.4.10 Similarly, a Bill should not ignore relevant enacted material merely because it is subject to an uncommenced repeal. So a provision in an Act subject to an uncommenced repeal should be amended by a Bill if the policy of the Bill demands the change while the provision remains unrepealed.

4.4.11 If a provision in an Act is subject to an amendment that operates by way of substitution - that is, a repeal plus the insertion of new text - the policy of the Bill may make it necessary to amend the provision in its original and in its substituted form. In such a case, a Bill should make it clear which version of the Act's provision is being amended.

4.4.12 In the case of an amendment of provision subject to an uncommenced repeal, there may be a question about whether the repeal, when commenced, would apply to the provision as afterwards amended. An analysis similar to that applying to amendments of uncommenced provisions applies here: the repeal, when enacted, could only have been addressed to provisions that then existed. It could similarly be argued that a Bill's amendment of a provision impliedly modifies the uncommenced repeal of that provision, so that the repeal applies to the provision as modified.

4.4.13 One possible solution is for the Bill to make transitory provision that has effect only until the repeal is commenced.

4.4.14 The prudent course for a drafter operating on provision subject to an uncommenced repeal is to check the provisions that relate to the repeal and its commencement in the Act containing the uncommenced repeal.

4.4.15 If provision is spent, it can be ignored rather than amended - and this would be true even if the provision is subject to an uncommenced repeal. But be sure that the provision is spent - the fact that the repeal has not been commenced might suggest a decision to keep the provision in force.

4.5 REPEAL OF AMENDMENTS

Repeal of amendment on repeal of base provision

4.5.1 This relates to a case where enactment A has been amended by enactment B; and A is then repealed by enactment C.

4.5.2 Once C has come into force, B is obsolete and office practice would be to repeal it.

Repeal of amendment on amendment of base provision

Introduction

4.5.3 Textual amendments, so far as Westminster legislation is concerned, are sometimes said to be "always speaking". (That view differs from the view taken in a number of other jurisdictions, where textual amendments are considered to have a "once-and-for-all" effect, and are therefore regarded as spent as soon as they have done their job.) So, where one enactment (A) is amended by another (B), A is regarded as having effect in its original form but subject to a continuing amendment by B.[1]

4.5.4 What happens if B is repealed? *Halsbury's Laws of England* states that where an amending provision is repealed "it is unlikely that an intention to cancel the effect of the amendment would be found unless there was a corresponding repeal of the earlier Act. In such a case the context of the repeal usually indicates that the repealing Act is intended to do no more than remove the machinery by which words have come to be inserted in another enactment, but is not intended to affect the continuance in force of these words."[2]

4.5.5 As a matter of drafting practice, however, the safest and perhaps most convenient approach is to leave the intervening amendment alone (unless it is intended to reverse its effect), rather than putting the user to the trouble of having to decide whether the repeal was intended to reverse its effect or not.

Amending enactments on which subsequent amendments depend

4.5.6 The discussion above is particularly relevant where one enactment (A), which has been amended by another enactment (B), is further amended by a subsequent enactment (C): can B be repealed in connection with the making of the further amendment to A?

4.5.7 If C depends on B, then B should be left in place.

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1. See *Craies on Legislation* (9th edition), para 14.3.5.
2. Vol 44(1), 4th edition reissue, paragraph 1313.

4.5.8 For example, suppose that—

- A says that "An application under this section must be made to the licensing authority";
- B says "in A, for "licensing" substitute "registration"";
- C says "in A, for "registration authority" substitute "authorisation body"

4.5.9 In this case the amendment made by C would depend on B for the continued presence of the word "registration". So it would not seem right to repeal B. It may be that in a given context it will be obvious that repeal of B is not intended to remove its effect. But equally is not obvious that anything very much is gained by repealing B.

4.5.10 There is in particular no necessity for a drafter to hunt out intervening amendments with a view to repealing them.

Amending enactments on which subsequent amendments do not depend

4.5.11 Using the example given in para. 4.5.8, say that C provided instead in relation to A that "for the words following "made" substitute "in accordance with section X"". Here B could and ideally should be repealed, as there is nothing in the amendment made by B on which the amendment made by C depends. In effect, the words after "made" are being repealed, and the case is analogous to that in paras. 4.5.1 and 4.5.2 above.

Repeal of uncommenced amendments

4.5.12 This relates to the case where—

- one enactment (B) provides for text to be inserted in another (A),
- B has not been commenced, and
- the wish in Act C is to remove the (uncommenced) inserted provision because, for whatever reason, it is not intended to bring it into force.

4.5.13 The approach often used for removing the inserted provision from A is simply to repeal B. But it may be more convenient to remove the prospectively inserted provision by operating directly on A (as well as repealing B). Which approach is adopted will depend on what makes most sense in the context. The approach taken may be influenced by political or presentational considerations.

Repeal of repeals

4.5.14 We do not routinely repeal earlier repealing enactments. But where the earlier repeal is part of an Act the whole of the rest of which is repealed, it will usually be tidier, and less confusing to the reader, to remove the whole Act rather than to carve around the repeal provision. If savings were made on the earlier repeal, consideration needs to be given to the effect of the later repeal on those savings.

4.5.15 The repeal of a repeal does not of course revive the enactment originally repealed. See section 15 of the Interpretation Act 1978 (which is subject to the savings in section 16).[3]

3. For more on this see *Craies on Legislation* (9th edition), paras 14.4.9 to 14.4.11.

PART 5 SUBORDINATE LEGISLATION

5.1 FORMS OF SUBORDINATE LEGISLATION

Regulations, not orders

5.1.1 In Bills for the 2014-15 session and subsequent sessions, powers to make subordinate legislation by statutory instrument should generally take the form of a power to make regulations rather than an order.

5.1.2 This applies to powers to commence an Act as well as to other powers.

5.1.3 This recommendation does not alter the current practice of using—

- rules (for provision determining the procedure of a body or process),
- Orders in Council, or
- orders subject to special procedure under the Statutory Orders (Special Procedure) Act 1945.

5.1.4 There are some cases where it may still be appropriate to create a new order-making power, for example when amending an old Act that contains order-making powers or when creating a new power that needs to be exercised with existing order-making powers.

5.1.5 In these transitional cases drafters should at least consider the following options—

- expressing the new power as a power to make an order;
- expressing the new power as a power to make an order or regulations;
- including a provision equivalent to section 1292 of the Companies Act 2006 (allowing provision made by order to be made by regulations and vice versa).

5.2 POWERS TO MAKE SUBORDINATE LEGISLATION

Different provision for different cases

5.2.1 There are many examples on the statute book of provisions authorising delegated powers to be exercised differently for "different cases", "different purposes" and "different circumstances".

5.2.2 First, consider whether this kind of provision is actually needed. To exercise a power so as to make different provision for cases that are materially different would not, on the whole, be surprising (one would expect like cases to be treated alike and different cases differently). So a starting point would be to consider whether, if the power were exercised to make different provision for different cases, would that be at all unexpected or unusual.

5.2.3 If something further is needed, a choice then has to be made as to what exactly should be said: "cases", "purposes", "circumstances" or something else?

5.2.4 "Different purposes" is probably wider and more flexible than "different cases" ("different purposes" is usually considered to include "different cases", but not vice versa). So perhaps that is the first port of call. But "different cases" is of course possible. Try to avoid both "purposes" and "cases". "Circumstances" will rarely add anything.

5.2.5 That said, it might be possible to be more specific about how the power will be used, in which case that is likely to be more helpful. For example, if there is a power to regulate football stadiums, which might need to be exercised to make different provision for different stadiums, it might be more helpful to say just that than resort to the more abstract "different cases" or "different purposes".

5.2.6 "Different descriptions of case" will rarely add anything to "different cases". In the unlikely eventuality that the subordinate legislation may need to make provision about a single case, then it would be best to make that as clear as possible rather than relying on a distinction between "different cases" and "different descriptions of case".

5.2.7 For "different provision for different purposes" in the context of a commencement power, see Chapter 8.4.

Different provision for different areas

5.2.8 One would expect the law to treat people in the same way unless there is a relevant difference between them. It is not obvious that where people happen to live is, in itself, a relevant difference. So if the policy is for a power to be exercised differently in different areas within a single jurisdiction, or differently in different jurisdictions of the UK, in relation to a reserved matter, express words should be used to make that clear.

5.2.9 On the whole, we do not assume that a power to make different provision for different purposes includes a power to make different provision for different areas. Forms of words

which imply that differential exercise by area is just an aspect of making different provision for different areas should be avoided.

EXAMPLE

Regulations under section 1 may make –

(a) different provision for different purposes, and

(b) different provision for different areas.

NOT

Regulations under section 1 may make different provision for different purposes (including different provision for different areas).

Non-exercise of powers

5.2.10 Some provisions about powers to make subordinate legislation expressly provide that it is possible for the power not to be exercised in certain cases. For example, the legislation may say that the power may be exercised "generally or only for specified cases" or "to make the full provision to which the power extends or any less provision".

5.2.11 Whether this kind of provision is necessary will depend on the context. In many cases it will not be necessary. For example, if what is conferred is a power that need not be exercised at all ("The Secretary of State may make regulations...") it may follow that, if it is exercised, it need not be exercised in all cases. On the other hand there may be cases where the context suggests that the power must be exercised for all cases or not at all. Equally, where a person has a *duty* to make subordinate legislation, it may seem to follow, without express wording to the contrary, that the person needs to make legislation covering the full range of possible cases.

5.2.12 So do not include this kind of provision as a matter of course. If something is needed, it may be that power to make different provision for different purposes or cases will be sufficient: if different provision may be made for different cases, it may well follow that no provision need be made for some cases.

5.3 SUBORDINATE LEGISLATION: PROCEDURAL PROVISION

Attracting section 1 of the Statutory Instruments Act 1946

5.3.1 Section 1 of the Statutory Instruments Act 1946 states—

> "Where by.... any Act passed after the commencement of this Act power to make, confirm or approve orders, rules, regulations or other subordinate legislation is conferred on His Majesty in Council or on any Minister of the Crown then, if the power is expressed—
>
> (a) in the case of a power conferred on His Majesty, to be exercisable by Order in Council;
>
> (b) in the case of a power conferred on a Minister of the Crown, to be exercisable by statutory instrument,
>
> any document by which that power is exercised shall be known as a "statutory instrument" and the provisions of this Act shall apply thereto accordingly."

5.3.2 To attract section 1 of the 1946 Act it is sufficient to say—

> *Regulations [or An order] [made by the relevant Minister] under this section are to be made by statutory instrument.*

5.3.3 It may sometimes be neater to roll up the attraction of section 1 with the power itself.

EXAMPLE

The Secretary of State may by regulations made by statutory instrument provide...

5.3.4 This may in particular be neater where you have a simple power and everything can be dealt with in a single subsection. This technique is often used, for example, for commencement powers ("on such day as the Secretary of State may by regulations made by statutory instrument appoint").

5.3.5 If you have a number of powers to be exercised by statutory instrument, it may be best to have a single provision at the end, rather than saying the same thing several times over in different places. This is technical provision which is unlikely to be of interest to most readers.

Negative resolution procedure

5.3.6 To be consistent with section 5 of the 1946 Act, the statutory instrument containing regulations — rather than the regulations themselves — should be expressed to be subject to annulment.

EXAMPLE

A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

5.3.7 Note that "in pursuance of" is also recommended here for the sake of conformity with section 5(1) of the Statutory Instruments Act 1946.

Affirmative resolution procedure

5.3.8 To be consistent with the recommended approach for negative instruments (above) — and with the wording of section 6 of the 1946 Act - the required approval should relate to a draft of the statutory instrument containing regulations, rather than a draft of the regulations themselves.

EXAMPLE

A statutory instrument containing regulations under this Act may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

5.3.9 Note that this recommended formulation uses "each House of Parliament" (to follow, so far as possible, the formula for negative resolution procedure).

Combined instruments

5.3.10 If the intention is expressly to authorise the making of instruments containing provisions subject to negative and affirmative procedure, it may be helpful to use the formulation suggested above for affirmative procedure with the addition of "(whether alone or with other provision)".

EXAMPLE

A statutory instrument containing provision under section X (whether alone or with other provision) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

Location of procedural provision

5.3.11 In some Acts, each provision which confers a power to make subordinate legislation applies any necessary parliamentary procedure.

5.3.12 But, where an Act confers a number of powers to make subordinate legislation, these matters are more often dealt with in general provisions situated at the back of the Act.

5.3.13 A "hybrid" approach is adopted in some Acts. The provision conferring the power says that it is subject to the "negative resolution procedure" or the "affirmative resolution procedure". Then, at the end of the Act, there is a definition of "negative resolution procedure" or "affirmative resolution procedure" (or both).

EXAMPLE (from the Companies Act 2006)

Regulations under this section are subject to affirmative resolution procedure. (Section 54(3))

Regulations under this section are subject to negative resolution procedure. (Section 66(5))

Where regulations or orders under this Act are subject to "negative resolution procedure" the statutory instrument containing the regulations is subject to annulment in pursuance of a resolution of either House of Parliament. (Section 1289)

Where regulations or orders under this Act are subject to "affirmative resolution procedure" the regulations or order must not be made unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of each House of Parliament. (Section 1290)

5.3.14 During the parliamentary stages of a Bill, the appropriate procedure is often debated together with the contents of a power and it may, therefore, be convenient if the two are

located together. But readers of the final Act may find multiple references to the parliamentary procedure intrusive. Matters of procedure are technical matters, and once the Bill is enacted are only likely to be of interest to those making the subordinate legislation and those in Parliament administering the procedures.

5.3.15 On that basis, it may be best on the whole to deal with Parliamentary procedure at the back of the Bill. There may of course cases where it is appropriate to depart from this recommendation (for example, if the Bill contains only a small number of powers to make subordinate legislation).

5.4 LAYING DOCUMENTS BEFORE PARLIAMENT

Laying documents before Parliament

5.4.1 Section 1(1) of the Laying of Documents before Parliament (Interpretation) Act 1948 provides that references to the laying of instruments and other documents "before Parliament" are to be construed as references to their laying before each House of Parliament unless the contrary intention appears.

5.4.2 Section 1(1) should normally be relied on whenever it will produce the correct result. That is, normally you should say that the instrument or other document should be laid "before Parliament" rather than "before each House of Parliament".

5.4.3 This does not apply to statutory instruments subject to the affirmative resolution procedure — see para. 5.3.8.

PART 6 PERIODS OF TIME

6.1 PERIODS OF TIME

Introductory

6.1.1 This chapter considers some aspects of expressing periods of time. It assumes that in deciding how to describe a particular period the drafter's objectives are:

- to ensure that it is certain when the period begins and ends;
- to ensure that the reader has the greatest chance possible of telling from the words used when the period begins and ends, rather than having to refer to case law;
- to express the period as simply as possible.

Start of period: fractions of days

6.1.2 An Act often needs to describe a period by reference to some event. An example is a period of 14 days during which an appeal may be made, where the "event" is the decision to which the appeal would relate.

6.1.3 In this example, it might be supposed that the appeal period should run from the decision. But this would cause problems, because the decision will have been made part-way through a day, and if the appeal period is to be expressed in whole days (or weeks, months or years) it has to begin at the beginning of a day. The question is, which day? Instructions are not always clear on this point.

6.1.4 It may well be wrong in policy terms for the period to start running from the beginning of the day *after* the day of the decision, because that would disallow an appeal made on the day of the decision.

6.1.5 If the period starts with the beginning of the day of the decision, it will technically include the part of that day that precedes the decision (during which an appeal will of course be impossible). This may not in practice cause any problems. But if the appeal period is short (for example, 7 days), it may be worth considering whether as a matter of policy the number of days should be increased by one, to take account of the fact that the period starts to run on the day of the decision and not the next day.

6.1.6 Appeal periods are of course not the only periods that give rise to this kind of question. It may not always produce the right result to begin a period at the beginning of the day on which a particular event occurs: each case needs to be considered on its own merits. And it will be obvious when some periods should start (for example, a year beginning with 1 April), so fractions of a day are not always an issue.

"Beginning with", "from", "after"

6.1.7 A clear way of expressing a period of, for example, 14 days so that it starts at the beginning of a particular day is to describe the period as "14 days beginning with" the day in question.

6.1.8 Alternative methods are to refer to a period of 14 days "from" or "after" a particular event.

6.1.9 The proper construction of "14 days from [the event]" will depend on the context. As a general rule, this wording will be taken to *exclude* the day on which the event takes place. This is something of which the user of the Act may very well be unaware.

6.1.10 "14 days after [the event]" will also generally be taken to exclude the day of the event (*Dodds v Walker* [1981] 2 All ER 609) but this will also depend on the context.

6.1.11 It is suggested that "14 days *beginning with*" the day of an event (or any other day or date) is often the least ambiguous short way of ensuring that the period starts to run from the beginning of that day. The formula "X months beginning with the day on which" an Act is passed has long been the preferred way of framing a period of months for which commencement is postponed (see para. *8.4.6*).

6.1.12 References to a period "ending with" a particular day or date are equally unambiguous.

6.1.13 A reference to a period "beginning *on*" or "ending *on*" a particular date or day would not give the same certainty, because it would leave open the question of the time at which (on the day in question) the period begins or ends.

6.1.14 A reference to "14 days from" a point that is bound to occur at midnight (for instance, the end of a year) makes clear exactly when the 14 days are to begin and end: in such a case "from" is as unambiguous as "beginning with".

"The period of"

6.1.15 Acts have often referred to (for example) a 14 day period as "the period of 14 days". In many cases the words "the period of" do not add anything and could be omitted - the reference could simply be to "14 days". If a reference back is needed, it may be possible to refer to "those 14 days" instead of to "that period".

"Within", "before the end of"

6.1.16 Statute often requires something to be done "within" a particular period or "before the end of" a particular period.

6.1.17 A requirement to take an action "before the end of 3 weeks beginning with [a particular date]" would apparently allow the action to be taken at any time up to the end of those 3 weeks, including at any time before the 3 weeks began. A requirement to take the action "within" those 3 weeks would limit the time in which the action may be taken to those 3 weeks.

6.1.18 In some cases, the effect of either wording will in practice be the same. An example would be where a copy of a document is required to be given within/before the end of 3

weeks beginning with the date when the document comes into existence. But in other cases, the different wordings may produce materially different results.

6.1.19 A requirement to do something "by the end of" a period would seem to amount to the same thing as a requirement to do it "before the end of" the period.

Units of time

6.1.20 Periods of time are commonly expressed in days, weeks, months or years. Which unit of time to use will depend sometimes on the policy and sometimes on the drafter's decision. Obviously, the longer the period, the less helpful it will be to use short units of time. For example, it is suggested that all readers will know that 30 days is about a month, but that a period expressed as (for example) 150 days would be much less readily understandable.

6.1.21 Months are a particular problem because of their varying length. (Schedule 1 to the Interpretation Act 1978 defines a "month" as a calendar month, but this appears to do no more than prevent it from being interpreted as a lunar month.) When a period of "one month" begins other than at the beginning of a month, when does it end?

6.1.22 According to the rule in *Dodds v Walker* ([1981] 2 All ER 609), where an application had to be made "not more than 4 months after" the giving of a notice on 30 September 1978, the last date for making the application was 30 January 1979. The date of 30 January 1979 is arrived at by treating the 4-month period as:

- beginning at midnight between 30 September and 1 October 1978 (that is, excluding the rest of the day on which the notice was given, according to the rule mentioned in para. 6.1.10 above), and
- expiring at the end of the day in January 1979 corresponding to the day in September 1978 at whose end the period began - that is, day 30. (If the period had been expressed to be "4 months beginning with" the date when the notice was given, the last date for making the application would have been 29 January.)

6.1.23 The rule in *Dodds v Walker* is known as "the corresponding date rule". Under it, the length of a period of "1 month" varies according to when the period begins. For example, a period of "1 month" beginning at midnight on 4/5 April, which will end at midnight on 4/5 May, will be shorter than a period of "1 month" beginning at midnight on 4/5 May (because April is shorter than May).

6.1.24 The corresponding date rule obviously cannot apply unmodified in all cases, because the months of the year do not all have the same number of days. *Dodds v Walker* confirmed that where (for example) a period of 1 month starts at the end of 30 January, it ends at the end of 28 February, or in a leap year 29 February.

6.1.25 Because the corresponding date rule can be a trap for the user, in some cases it may be worth considering whether a period of (for example) 3 months would be better expressed as 12 weeks or 90 days. The periods expressed in these ways will not be identical, but whether this matters will depend on the context.

Non-working days

6.1.26 Some Acts exclude certain days (for example, Saturdays, Sundays and bank holidays) from specified periods. Others make no distinction between holidays and working days. If a specified period is very short, it may be worth remembering that weekends and bank

holidays will not be treated differently from other days unless express provision to this effect is included.

6.1.27 If any non-working days are to be excluded from a period, consideration needs to be given to exactly which days these should be. It should be remembered that bank holidays are not the same in different parts of the United Kingdom, also that some days which are popularly thought of as bank holidays are not in fact so (for example, Good Friday, and Christmas day except in Scotland).

6.1.28 Schedule 1 to the Banking and Financial Dealings Act 1971 lists some bank holidays, but not all. Bank holidays may be created by royal proclamation - the early May bank holiday is an example.

PART 7 BODIES CORPORATE

7.1 BODIES CORPORATE

Form of words to establish statutory corporation

7.1.1 When drafting a proposition that itself creates a statutory corporation or office, the form of words "[X] is established" should be used in preference to alternatives such as "there is to be" or "there shall be".

7.1.2 This does not prevent drafters from using "there continues to be" when consolidating or re-enacting a provision that sets up a statutory corporation or office or when turning an existing non-statutory body into a statutory one.

Singular or plural?

7.1.3 Statutory corporations and other bodies corporate should be treated as singular nouns.

EXAMPLE

If the authority is satisfied that the conditions are met, it may....

7.1.4 When textually amending an Act that uses the plural, it may be necessary to follow suit in order to avoid confusion.

PART 8 FINAL PROVISIONS

8.1 ORDER OF FINAL PROVISIONS

Running order

8.1.1 For the final provisions of a Bill, the following running order should be used as a starting point—

General provisions about offences (bodies corporate, unincorporated associations)
Regulations (including parliamentary procedure)
Directions
Notices/service of documents
Interpretation
Amendments, transitional provisions and savings, repeals
Financial provisions
Crown application
Devolution
Application to Scillies/Isle of Man/Channel Islands
Extent
Commencement
Index
Short title

8.1.2 Of course it may be necessary to depart from this in some circumstances.

8.1.3 The assumptions that underlie the recommended running order are—

- matters of substance, such as offences by bodies corporate, should come before procedural matters;
- there is an affinity between provisions relating to subordinate legislation and those relating to other documents;
- similarly there is an affinity between provisions relating to the application of provisions of the Bill and those relating to extent;
- the essentially procedural nature of provisions dealing with financial matters means that they can appear relatively low in the running order;
- commencement should be dealt with as late as possible in the Bill and so should normally be dealt with immediately before the short title clause;
- following practice in Tax Law Rewrite Bills, an index should appear in a Schedule at the very end of the Bill and the clause introducing it immediately before the short title clause
- the short title clause should be the last one.

8.1.4 Where there is to be a single clause introducing Schedules containing minor and consequential amendments, transitional provisions and savings, and repeals, the clause should deal with those topics in that order.

8.1.5 Although this running order deals with extent, commencement and the short title separately, in a very short Bill it may make sense to deal with all three in a single clause.

Cross-heading

8.1.6 If a single cross-heading is used to cover all the final provisions of a general nature, it should be "General" (rather than, for example, "Supplementary").

8.2 FINANCIAL PROVISION

8.2.1 This relates to provisions of Bills (starting in the House of Commons) which deal with effects on public expenditure.

Clause heading

8.2.2 The heading for clauses dealing with effects on public expenditure should be "Financial provisions", whatever the precise nature of the effects.

Form of provision

8.2.3 It is recommended that the usual provision dealing with such effects should refer to—

the payment out of money provided by Parliament of—

(a) any expenditure incurred under or by virtue of the Act by [the Secretary of State], [a Minister of the Crown], [a person holding office under Her Majesty] [or by a government department], and

(b) any increase attributable to the Act in the sums payable under any other Act out of money so provided.

8.2.4 This wording can then be reflected in the associated money resolution.

8.3 EXTENT

Introductory

8.3.1 A proposition about the "extent" of a statutory provision is a proposition about the jurisdictions whose law is being changed by the provision. It should be distinguished from "application", which concerns the persons and matters to which the provision relates.

Positive statements of extent

8.3.2 There is a strong presumption that, in the absence of provision to the contrary, Acts of the Westminster Parliament extend to each part of the United Kingdom but do not extend beyond it (even though Parliament may legislate in particular for the Channel Islands, the Isle of Man and the British overseas territories)[1].

8.3.3 However, in the case of an Act or a provision of an Act which is not intended to extend beyond the United Kingdom, the recommended approach is to state extent positively — that is, to spell out its extent — rather than to rely on what the courts would in any event presume to be the case.

EXAMPLE

This Act extends to England and Wales, Scotland and Northern Ireland.

8.3.4 For an Act or a provision of an Act which extends to only one or two jurisdictions within the United Kingdom, it may be clearer to state extent positively rather than negatively.

EXAMPLE

This Act extends to England and Wales and Scotland.

may be clearer than

This Act does not extend to Northern Ireland.

8.3.5 Of course, there may be cases where it may not be convenient or even helpful to state extent expressly, even if the Act is thought to extend only to the United Kingdom. That may be the case where an Act simply amends an existing Act which itself has no specific extent provision.[2]

8.3.6 None of this should be taken to affect drafting of extent provisions in cases where Acts are not limited to the United Kingdom or where there is some doubt as to whether they are so limited.

1.*R v Jamieson* [1896] 2 QB 425, 430, QBD, DC; *Attorney General for Alberta v Huggard Assets Ltd* [1953] AC 420, 441, PC.

2.For example, the Channel Tunnel Rail Link (Supplementary Provisions) Act 2008

Jurisdictions within the United Kingdom

8.3.7 The relevant jurisdictions within the United Kingdom are "England and Wales", "Scotland" and "Northern Ireland".

8.3.8 Where a provision is intended to extend to the separate jurisdictions of England and Wales, Scotland and Northern Ireland, it is probably better to say that than to refer to the United Kingdom as such.[3]

Complex propositions about extent

8.3.9 It is more likely than not that an Act will contain provisions having different extent within the UK. In such cases the extent provision is likely to be complicated. It is difficult to give any guidance in advance about the best way of designing an extent provision here. Everything depends on the particular circumstances.

8.3.10 It is of course desirable to produce a provision which is itself as simple as possible. It is also desirable to produce a provision which allows a reader to find the extent of any given provision as easily as possible. These two aims may sometimes conflict.

8.3.11 If the great majority of the Act has a particular extent, with only limited exceptions, it probably helps to start with the main case and then set out the exceptions.

8.3.12 If the exceptions have a narrower extent than the majority of the Act, it is possible to set out the wider expression of extent and then reduce it.

EXAMPLE

(1) This Act, apart from the provisions listed below, extends to the whole of the United Kingdom.

(2) The following provisions of this Act extend to England and Wales only...

(3) Section 77 and Schedule 6...extend to England and Wales and Northern Ireland only.

(4) Section 79 and Schedule 8 extend to England and Wales and Scotland only.[4]

8.3.13 If the bulk of the Act has a narrow extent (say, England and Wales only), and only a minority or provisions extend to other jurisdictions within the UK, it may be best to start off with the most limited extent and then build up.

EXAMPLE

(1) Subject as follows, this Act extends to England and Wales only.

(2) Sections 87 to 91 extend to England and Wales and Scotland.

(3) The following provisions extend to England and Wales, Scotland and Northern Ireland.[5]

8.3.14 It is undesirable if the reader has to search through all the provisions of the extent clause to find out the extent of the particular provision in which they are interested.

EXAMPLE

(1) Subject to the following provisions, this Act extends to England and Wales only.

(2) The following extend also to Scotland...

(3) The following extend to Scotland only....

3.For example, section 17(4) of the Banking (Special Provisions) Act 2008, section 75 of the Regulatory Enforcement and Sanctions Act 2008 and section 30 of the Dormant Bank and Building Society Accounts Act 2008.

4.Section 99 of the Climate Change Act 2008.

5.Section 172 of the Education and Skills Act 2008.

(4) The following extend also to Northern Ireland....

(5) The following extend to Northern Ireland only....

8.3.15 This produces a neat overall provision. The cost, though, is that to know the extent of any particular provision the reader needs first to read subsection (1) and then to look at subsection (2) to see whether it also extends to Scotland and then to look at subsection (4) to see whether it also extends to Northern Ireland (and check subsections (3) and (5) to make sure it is not a provision extending only to Scotland or Northern Ireland). This takes time and the reader may miss things.

8.3.16 What the reader is likely to want to know is where any given provision extends. On that basis, rather than setting out a general provision which is then qualified, it might be better to set out what the extent of each provision of the Act is, even if it results in a longer extent provision.

EXAMPLE

(1) Parts 1 to 7 extend to England and Wales only, except [some amendments extending to Scotland and Northern Ireland].

(2) Part 8 extends to England and Wales and Scotland.

(3) This Part extends to England and Wales, Scotland and Northern Ireland.

Extent of amendments and repeals

8.3.17 Where an Act contains a number of textual amendments or repeals, it is often convenient, at least to the drafter, to say that the extent of the amendments or repeals is the same as that of the enactment amended or repealed.

EXAMPLES

Any amendment, repeal or revocation made by this Act...has the same extent as the provision to which it relates.

Any amendment or repeal by this Act has the same extent as the enactment to which it relates.

An amendment or repeal effected by this Act has the same extent as the enactment to which it relates.

8.3.18 All of those examples are acceptable as a matter of drafting.

8.3.19 However, drafters should ensure that they know what the extent is in each case. It is possible that an existing enactment may be been extended to another jurisdiction by another enactment.

8.3.20 Care should be also taken where the provisions of the Act being amended have different extents - in particular in the case of an insertion it may not be obvious what the enactment being amended is.

8.3.21 Further, this kind of formulation is not necessarily helpful to the reader. It may be more useful for the reader, in the end, to be told what the extent of each amendment is. So a degree of caution may be in order in using this kind of formulation.

Channel Islands and Isle of Man

8.3.22 There are formulations to be used in provisions providing for an Act to extend to the Channel Islands or the Isle of Man. These have been agreed between HMG in the United Kingdom and the island authorities.

8.3.23 In the case of a power to extend the Act to the Islands, the agreed formulation is—

> *Her Majesty may by Order in Council provide for any of the provisions of this Act to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.*

8.3.24 In the more unusual case where the Act is to extend to the Islands but is to be capable of being modified so far as it so extends, the agreed formulation is—

> *This Act extends to [the Channel Islands], subject to such modifications as Her Majesty may by Order in Council provide.*

8.4 COMMENCEMENT

Commencement sections

8.4.1 The section of the Act which deals with commencement should have "commencement" as its heading (or, if it also deals with other matters, as part of its heading).

8.4.2 That apart, use "comes into force" or "coming into force" rather than "commencement" (see " commencement" in Chapter 2.1).

Commencement on Royal Assent

8.4.3 Provisions that are to come into force on Royal Assent should be identified expressly.

8.4.4 The form of words used to bring such provisions into force should normally be designed to attract section 4(a) of the Interpretation Act 1978.

EXAMPLE

Sections X and Y come into force on the day on which this Act is passed.

8.4.5 Very exceptionally the desired policy may involve specifying a particular time of day at which immediate commencement is to occur.

Commencement at end of fixed period

8.4.6 The recommended form of words is—

[This Act] comes into force at the end of the period of [two months] beginning with the day on which it is passed.

Commencement by regulations

8.4.7 In general it is clearer to say that provision is to come into force *on a day appointed* by regulations by a particular person, than to say that it comes into force "in accordance with" provision made by regulations. In the latter case it may not be clear whether any further power —for example, a power to make transitional provision — is also being conferred. If further power is wanted, it should be conferred expressly — see below.

8.4.8 An "appointed day" provision should take the form of a positive statement along the lines that provisions "are to come into force on such day as X may by regulation appoint" (rather than that they do *not* come into force *until* such day as X may by regulations appoint).

Separation of commencement powers from other powers

8.4.9 Where there is a power to commence, it is usually better to deal with everything relating to commencement in a separate set of provisions, rather than in a general clause relating to other powers under the Bill. That is especially in the context of a long Act with a number of powers, or where commencement is likely to be complicated. It may not be clear how powers conferred generally in relation to regulations under the Bill will work in relation to the specific case of commencement.

8.4.10 So, for example, the separate provision would expressly provide as necessary for—

- differential commencement;
- the making of transitional, transitory or saving provision in relation to commencement;
- the making of supplementary, incidental or consequential provision in relation to commencement.

8.4.11 The power to commence would then need to be excluded from any general supplementary provision along these lines attaching to other powers to make subordinate legislation.

8.4.12 It may also be necessary to make transitional provision in connection with the commencement of provisions on a date fixed by the Bill (e.g. 2 months after Royal Assent) as well as in connection with the commencement of provision by regulations. In such a case there would seem to be a strong argument for having a single express power to make transitional provision in connection with commencement, whether by regulations or on a fixed date.

Differential commencement

8.4.13 This is about cases where there is power to bring provisions of an Act into force by regulations, but it is not desired that everything should be brought into force all at once.

8.4.14 Where different provisions of an Act will need to be brought into force (fully) on different days, but nothing more complicated is envisaged, it will normally be sufficient to provide that the provisions of the Act

"come into force on such day or days as [the Secretary of State] may by regulations appoint.

8.4.15 Note that although under section 6(c) of the Interpretation Act 1978 the singular includes the plural, "day or days" is recommended to make it absolutely clear that differential commencement is envisaged.

8.4.16 Where the policy is to allow one or more provisions of the Act to come into force for some purposes but not others, the commencement power will need to include wording enabling "different provision for different cases".

"Transitional", "transitory" and "saving" provision

8.4.17 A "transitional" provision manages the transition from one regime to another.

EXAMPLE

A provision that spells out how the Bill works in relation to events or matters that span the end of the old regime and the start of the new regime.

8.4.18 A "transitory" provision has a limited shelf-life, such as a provision that will expire on a particular day.

EXAMPLE

A provision that references to dogs in the Dogs Act 1990 include cats until the coming into force of the Cats Act 2010.

8.4.19 Depending upon the circumstances, a transitory provision may also be a transitional provision but need not be so.

8.4.20 A "saving" provision saves the operation of an existing piece of legislation or rule of law. It can do this for a temporary period or for ever, and for transitional purposes or for other purposes. It might therefore be a transitional or transitory provision but need not be so.

8.5 SHORT TITLE

Form for conferring short title

8.5.1 For consistency, use the following formulation in all cases—
"This Act may be cited as....".

PART 9 SUPPLEMENTARY

9.1 REFERENCES AND FURTHER READING

9.1.1 Listed here are the works referred to in this Guidance together with a small selection of other useful material.

Published material

Asprey M., *Plain Language for Lawyers* (Federation Press, Sydney, 4th ed., 2010)

Butt P. & Castle R., *Modern Legal Drafting - A Guide to Using Clearer Language* (Cambridge University Press, 2nd ed., 2006)

Dickerson F. Reed, *Fundamentals of Legal Drafting* (Aspen Publishers, 1965)

Greenberg D., *Craies on Legislation* (Sweet and Maxwell, London, 9th ed., 2008)

McLeod I., Principles of Legislative and Regulatory Drafting (Hart, Oxford and Portland Oregon, 2009)

Xanthaki H., *Thornton's Legislative Drafting (*Bloomsbury Professional, London, 5th ed., 2013)

Material from other drafting offices etc

Australia

Office of Parliamentary Counsel, Australian Government, *Plain English Manual,* available at www.opc.gov.au/plain/docs.htm

Law Reform Commission of Victoria, *Plain English and the Law*, 1987, Appendix 1 — "Guidelines for Drafting in Plain English: A Manual for Legislative Drafters"

United Kingdom

Tax Law Rewrite: The Way Forward: Annex 1 - Guidelines for the Rewrite (www.hmrc.gov.uk/rewrite/wayforward/menu.htm)

Plain Language and Legislation (Scottish Government)
(www.scotland.gov.uk/Publications/2006/02/17093804/0)