# OFFICE OF THE PARLIAMENTARY COUNSEL

# DRAFTING GUIDANCE

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# INTRODUCTION

**Introduction**

This guidance has been produced by the Drafting Techniques Group of the Office of the Parliamentary Counsel.

The guidance is for members of the office. It is meant to help them in their task of making it as easy as possible for readers to understand the Bills that we produce.

It is tailored to our particular needs. So it is not meant to be a comprehensive guide to legislative drafting or to clarity in legal writing. For example, some things which assist clarity such as layout or typography are outside our control and so are not discussed. Nor is this document meant as a guide to statutory interpretation or past drafting practice.

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

If you have any suggestions or comments to make on the guidance, the Drafting Techniques Group will be grateful to receive them.

In this edition of the guidance the following are new or changed:

Parts 2.1 and 2.2 (gender neutrality and sex-specific language);
Part 5 (citation);
Part 6.8 (amending uncommenced material);
Part 9.3.11 (made affirmative procedure);
Part 9.5 (amending subordinate legislation).

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# PART 1 CLARITY

## 1.1 TELLING THE STORY

### Telling the story

1.1.1 Take readers by the hand and lead them through the story you have to tell. Imagine that you are trying to explain something orally to interested listeners. Where would you start? What will they want to know first?

1.1.2 It may help to give readers an overview of the whole story at the outset, so that they can understand each part in the light of the whole. Readers are more likely to understand something if they know why you are telling them.

1.1.3 Sometimes the table of contents can give a suitable overview. Or you could have an overview clause.

1.1.4 Of course, a finished Act will have many different readers with different interests (those who are subject to its provisions, professional advisers, the courts). And the readers of a Bill (as opposed to an Act) will be different again — Ministers, members of the two Houses of Parliament, as well as lobby groups and other interested parties. These competing interests need to be balanced and given due weight in what we write.

### Find a logical order and structure

1.1.5 Finding a clear order in which to tell your story is fundamental. This goes for a story which is spread across a whole Bill or for a story contained in a single clause.

1.1.6 The material in your Bill should be set out in a logical order, so that later propositions build upon earlier ones.

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

1.1.8 Similarly, find a Bill structure which shows how your provisions fit together. Let the divisions in your Bill reflect the divisions of thought.

### Get to the point

1.1.9 Get to the point as quickly as you can. Ideally the opening subsection of a clause will contain the main proposition or at least give the reader some idea of what the clause is about. Don't bury the main proposition away in the middle of the clause if you can possibly avoid it.

1.1.10 So 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.

EXAMPLE

*A notice must be given if... (several conditions)...*

is probably easier to understand than—

*If...(several conditions)... a notice must be given.*

**Keep propositions short**

1.1.11 Clarity is helped by the use of short sentences. A long sentence may require the reader to keep too much in the mind. So on the whole it's best to try to stick to one idea per sentence.

1.1.12 That said, a single complex proposition is sometimes best expressed in a single sentence, rather than as a series of short sentences in successive subsections which then have to be put back together again to make sense.

**The medium is not the message**

1.1.13 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 likely to be unhelpful.

1.1.14 In particular, don't create more artificial structure, such as Chapters and Parts, than you need to.

1.1.15 See also Part 3.8, *Lists of conditions and exceptions,* and Part 3.10, *Cross-references*.

**Tone**

1.1.16 Tell your story in a moderate, level tone. Legislation should speak firmly but not shout.

1.1.17 While brevity may be good, brusqueness is not. Avoid excessive emphasis, which may be distracting (for example, unnecessary use of "But" at the beginning of a sentence).

## 1.2 SYNTAX

### Sentence structure

1.2.1 Sentences should be simply and logically constructed. The classic 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.*

### Positive and negative

1.2.2 The positive is often easier to understand than the negative.

EXAMPLE
*Speak after the tone*
is easier to understand than—
*Do not speak until you hear the tone*

1.2.3 This is of course not a universal rule. A prohibition may be best expressed in the negative ("do not walk on the grass" as opposed to "walk on the path").

1.2.4 Express quantities positively rather than negatively.

EXAMPLE
*25% or more*
rather than
*not less than 25%*

1.2.5 Avoid double negatives wherever it is not impossible to do so.

### Active and passive

1.2.6 The active voice is generally understood more readily than the passive.

EXAMPLE
*The Secretary of State must give a notice*

rather than

*A notice must be given by the Secretary of State*

1.2.7 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.

**Verbs and nouns**

1.2.8 A verb is often easier to understand than a noun.

EXAMPLE

*A person may apply*

is crisper and more instantly intelligible than—

*A person may make an application*

**"Shall"**

1.2.9 Office policy is to avoid the use of the legislative "shall".[1] There may of course be exceptions. One reason for using "shall" might be where the text is being inserted into an Act that already uses it.

1. For reasons for avoiding "shall", see for example Xanthaki H., *Thornton's Legislative Drafting* (Bloomsbury Professional, London, 5th ed., 2013).

## 1.3 VOCABULARY

**Which words to choose?**

1.3.1 Write in modern, standard English using vocabulary which reflects ordinary general usage. So avoid archaisms and other words or phrases which can give rise to difficulty. Equally, it is not our role to be in the vanguard of linguistic development.

1.3.2 Sir Ernest Gowers proposed three principles as to "how best to convey our meaning without ambiguity and without giving unnecessary trouble to our readers".[1]

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

1.3.3 These three principles are hard to beat as a starting-point.[2] They do of course overlap with and support each other.

**Use no more words than necessary**

1.3.4 This principle takes on additional force in legislative drafting for obvious reasons to do with avoiding confusion and ambiguity.

1.3.5 We should prefer the single word to what Gowers describes as the "roundabout phrase". It is easy to slip into saying "for the purpose of" when very often we could just say "to"; or "in accordance with" when we could use "by" or "under".

**Use the most familiar words**

1.3.6 Avoid words that are not found in standard modern writing in English. In the first place, avoid archaisms (for example, "here-" and "there-" words such as "herewith" or "thereby").

1.3.7 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.

1.3.8 We should also avoid jargon, whether legal jargon or policy jargon. It may of course sometimes be necessary to use technical legal expressions.

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

2.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).

1.3.9 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*. You might require *particulars* to be given, but if all you mean is *information,* why not say that?[3]

1.3.10 There is of course a caveat. Only use the more familiar word if it conveys the meaning equally well.

**Use precise and concrete words**

1.3.11 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 if a more precise word can be used, it is more likely to get the actual intention across.

1.3.12 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.

1.3.13 Here are some examples of potentially vague words. Sometimes their breadth of meaning is just what a drafter needs. But if in the context it is possible to be more precise, that may be more helpful to the reader.

- affect (limit, restrict)
- prescribe (specify, set out)
- provide for (specify, make, enable, authorise)
- make provision about (what exactly?)
- in relation to, in respect of (for, about)
- subject to (limited or restricted by)
- without prejudice (does not limit or restrict)

1.3.14 These are considered in more detail in Part 11.1, *Words and phrases*.

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3. There are lists of words and expressions to avoid or use carefully in, for example, the Tax Law Rewrite "Guidelines for the Rewrite"; in Xanthaki, op. cit., Ch.5; and in Michele Asprey *Plain Language for Lawyers* (Federation Press, Sydney, 4th ed., 2010), Ch. 13.

# PART 2 LANGUAGE AND STYLE

## 2.1 GENDER NEUTRALITY

### Government policy

2.1.1 It is government policy that primary legislation should be drafted in a way that avoids reinforcing gender stereotypes.[1] In practice, this means two things—

- avoiding pronouns such as "he" where a reference to men and women is intended;
- avoiding nouns that might appear to assume that only a man, or only a woman, will do a particular job or perform a particular role (eg "chairman").

2.1.2 This does not mean that sex-specific language should never be used and there are times when its use remains appropriate. Part 2.2 discusses how to give effect to the government's policy on that separate issue. The government's policies on both gender neutral drafting and when it is appropriate to use sex-specific language were confirmed by Written Ministerial Statement in the House of Commons on 23 May 2022, HCWS 47.

2.1.3 The need to draft in a gender-neutral way applies not only when drafting free-standing text in a Bill but also when inserting text into older Acts which are not gender-neutral. This is unlikely to cause difficulties. However, in very limited circumstances, exceptions may be made when amending an older Act where it might be confusing to be gender-neutral.

### Drafting techniques to avoid sex-specific pronouns

*Introduction*

2.1.4 There are a number of techniques that may be used. They fall into three principal categories—

- repeat the noun
- change the pronoun
- 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, which recognises that there may be cases where gender-neutral drafting is not practicable. See also the debates in the House of Lords in 2013 and 2018: HL Deb 12 December 2013 cols 1004-1016; HL Deb 25 June 2018 cols 7-9; Written Ministerial Statement, House of Commons, 23 May 2022, HCWS 47.

*Repeat the noun*

2.1.5 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...*

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

2.1.7 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....*

2.1.8 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.

2.1.9 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.*

2.1.10 Using a letter in place of a noun or pronoun does not reflect normal English usage. It requires the reader to go through the mental hoop of substituting the actual noun being referred to and may thereby decrease readability. In a House of Lords debate in 2013 concerns were expressed about the technique.[2]

2.1.11 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.

*Change the pronoun*

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

2.1.13 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] In a House of Lords debate in 2013[4] a number of peers expressed concern about the use of "they" as a singular pronoun.

2.See the debate referred to in footnote 1 at cols. 1013-14.
3.See the examples in the OED and *Fowler's Modern English Usage*, 3rd ed. (Burchfield) 1996.
4.See footnote 1.

2.1.14 It may be that "they" as a singular pronoun seems more natural in some contexts (for example, where the antecedent is "any person" or "a person") than in others.

2.1.15 Many examples can be found of the use of the singular "they" in legislation.

EXAMPLE

*A person commits an offence if they provide false or misleading information to the regulator… (Building Safety Act 2022, section 24)*

2.1.16 **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*

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

2.1.18 **He or she**. Although "he or she" has sometimes been used in legislation to refer to individuals, it is best avoided. The expression can be awkward, particularly if frequently repeated, and it uses words denoting sex or gender in contexts where they are not relevant.

*Rephrase to avoid the need for a pronoun or noun*

2.1.19 **Use the passive.**

EXAMPLE

*explaining why the regulations have not been laid*

rather than

*explaining why he has not laid the regulations.*

2.1.20 Excessive use of the passive detracts from readability (see 1.2.6).

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

EXAMPLES

Instead of

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

perhaps

*A person who... commits an offence*

2.1.22 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.

2.1.23 **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")

**2.1.24 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")

2.1.25 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.

2.1.26 **Omit the pronoun.** Sometimes it is not 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")

2.1.27 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.

2.1.28 **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*

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

**Avoiding sex-specific nouns**

2.1.30 The sex-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.

2.1.31 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). 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. Where that is the case, drafters should prefer the suffixless form.

## 2.2 SEX-SPECIFIC LANGUAGE

### Government policy

2.2.1 It is government policy that the use of sex-specific language is appropriate in some circumstances. This is likely to be relevant where legislation is concerned only or mainly with people of one sex. Examples include legislation relating to pregnancy, childbirth or breast-feeding. The government's policies on this issue were announced by Written Ministerial Statement, House of Commons, 23 May 2022, HCWS 47. A failure to use sex-specific language in this kind of context has been the subject of debate in Parliament.[1]

2.2.2 The guidance below is also likely to be relevant in any circumstances where the policy is for legislation to distinguish between people on the basis of sex. Examples in existing legislation include the old state pension and the provision of toilet facilities.

### Background

2.2.3 Within the United Kingdom the law treats sex as binary, with a person's legal sex generally being determined by what is recorded on their birth certificate.

*Gender Recognition Act 2004*

2.2.4 When using sex-specific language consideration needs to be given to the Gender Recognition Act 2004, which allows people to change their legal sex.

2.2.5 Section 9(1) provides:

> "Where a full gender recognition certificate is issued to a person, the person's gender becomes for all purposes the acquired gender (so that, if the acquired gender is the male gender, the person's sex becomes that of a man and, if it is the female gender, the person's sex becomes that of a woman)."

2.2.6 The effect is that (for example) a reference to a "woman" will generally include someone who is a woman by virtue of a gender recognition certificate but not someone who is a man by virtue of a gender recognition certificate.

*Variations in sex characteristics (or intersex)*

2.2.7 When drafting in certain areas, consideration may need to be given to people who are registered as male or female but who have variations in sex characteristics (or are intersex) and whose physical development is different to that generally expected of a person of the sex in question. Where relevant, policy decisions need to be made about how legislation is to apply to such a person, and drafting then needs to give effect to that policy.

1. E.g. HL Deb, 25 Feb 2021, Vol.801, Col.925.

*Interpretation Act 1978*

2.2.8 Section 6 of the Interpretation Act 1978 provides that, unless the contrary intention appears, "words importing the masculine gender include the feminine" and "words importing the feminine gender include the masculine".

2.2.9 It is sometimes suggested that where sex-specific language is used section 6 can be relied upon to cover people of the opposite sex or people of the opposite sex to whom the legislation is relevant (so that, for example, in legislation about pregnancy a reference to a woman would include a person who is a man by virtue of a gender recognition certificate).

2.2.10 Drafters should not, as a matter of course, rely on section 6 in this way. First, because it is often unclear whether "the contrary intention appears" in this context (especially in Acts drafted since the Gender Recognition Act 2004 and the adoption of gender-neutral drafting). Secondly, because it is not a clear or transparent way to draft.

**Drafting approaches**

2.2.11 Where sex is relevant, a range of different drafting approaches can be used. Different approaches produce different policy results. The drafting options available in any given case will therefore necessarily depend, in the first instance, on the underlying policy.

*Using sex-specific language without more*

2.2.12 Legislation sometimes uses sex-specific language without more.

2.2.13 As mentioned above, the starting point is that (for example) a reference to a woman would include a person who is a woman by virtue of a gender recognition certificate under the Gender Recognition Act 2004 but not a person who is a man by virtue of a gender recognition certificate.

2.2.14 It is possible to envisage contexts where the courts may be prepared to adopt a strained construction so that (for example) in legislation about pregnancy a reference to a woman is read as including a person who is a man by virtue of a gender recognition certificate. But where, in this example, the policy is to include a person who is a man by virtue of a gender recognition certificate, drafters should strive to make that clearer.

2.2.15 That said, the drafting approach in any case will need to take account of the pre-existing legislative context. An amendment of an existing Act that uses sex-neutral nouns might need to do the same; and an amendment of an older Act that uses sex-specific nouns in a way that would be interpreted as covering both sexes might need to adopt the approach of the older Act (especially taking into account section 6 of the Interpretation Act 1978).

*Using sex-specific language with additional wording to deal with other cases*

2.2.16 This approach involves using sex-specific language to deal with the main case in the main proposition (for example "women"), and including a further proposition to achieve the desired policy outcome for the less common case.

EXAMPLE

*Subsection (1) applies in relation to a person who is a man by virtue of a full gender recognition certificate issued under the Gender Recognition Act 2004 as it applies in relation to a woman.*

*Refer to both sexes*

2.2.17 An alternative is to deal with the main case and the less common case on an equal footing (eg "a woman or man"). However, this approach is not appropriate where it gives undue prominence to what is a very rare case.

*Modifying the effect of the Gender Recognition Act 2004*

2.2.18 This approach involves using sex-specific language and including provision to modify the effect of section 9 of the Gender Recognition Act 2004 (as contemplated by section 9(3)).

EXAMPLE (1)

*Section 9(1) of the Gender Recognition Act 2004 is to be disregarded for the purposes of construing subsection (1).*

EXAMPLE (2)

*The reference in subsection (1) to a woman includes a man who would be a woman but for section 9(1) of the Gender Recognition Act 2004.*

2.2.19 Note that these examples would produce different policy outcomes:

(1) Example 1 would ensure that a reference to "a woman" includes a person who is a man by virtue of a gender recognition certificate *but not* a person who is a woman by virtue of a gender recognition certificate.

(2) Example 2 would ensure that a reference to "a woman" includes a person who is a man by virtue of a gender recognition certificate *as well as* a person who is a woman by virtue of a gender recognition certificate.

*Anatomical terms*

2.2.20 It is natural in some contexts to draft using anatomical terms, possibly with a defined expression to indicate that the provision is mainly concerned with people of one sex.

EXAMPLE (from section 136 of the Health and Care Act 2022)

*(1) It is an offence under the law of England and Wales for a person to carry out virginity testing.*

*(2) "Virginity testing" means the examination of female genitalia, with or without consent, for the purpose (or purported purpose) of determining virginity.*

*...*

*(5) In subsection (2), "female genitalia" means a vagina or vulva.*

2.2.21 In this example the definition in subsection (5) would include the vagina or vulva of a a person who is a man by virtue of a gender recognition certificate.

*Nouns that are not sex-specific*

2.2.22 Even in contexts in which sex is relevant, a noun that is not sex-specific may still be appropriate. For example, it is natural to refer to someone undergoing a medical procedure as a "patient" or to refer to someone who is employed by another as an "employee".

*Omitting the noun*

2.2.23 It is sometimes possible to structure the draft in a way that does not use the sex-specific noun. This is fine so long as the draft does not become contrived.

> EXAMPLE
>
> *In this Chapter references to a child include a child stillborn after twenty-four weeks of pregnancy.*

## 2.3 NUMBERS AND DATES

### Numbers

2.3.1 Generally, for references to the quantity of something—

- use words where the number is between 1 and 10 inclusive

  EXAMPLES

  *The Commission is to consist of six members.*

  *...the period of two months...*

- use figures where the number is greater than 10

  EXAMPLES

  *The Commission is to consist of 20 members.*

  *...the period of 12 months...*

2.3.2 But for sums of money, ages, measurements and terms of imprisonment, use figures.

2.3.3 For references to a number as an abstract quantity (ie as a noun), use figures.

EXAMPLE

*If the emissions figure is not a multiple of 5, round it down to the nearest multiple of 5.*

2.3.4 Zero is a special case. It is usually best to say "zero" or "nil" rather than "0".

2.3.5 Avoid mixing figures and words in the same context.

EXAMPLE (to avoid)

*The Commission is to have at least three members and no more than 12 members*

In that case it would be better to use either "3" and "12" or "three" and "twelve".

2.3.6 For ordinal numbers, use "first", "second" etc up to and including "tenth" and figures after that (11th, 12th etc). This does not apply to dates (see below).

### Dates

2.3.7 Use figures but without the endings -st, -nd, -rd, -th.

EXAMPLE

*This Act comes into force on 1 January 2020.*[1]

### Percentages

2.3.8 Use "%" rather than "per cent".

1.The date of Royal Assent which appears immediately after the long title is inserted by the House of Lords Public Office, who have their own rules.

# PART 3 STRUCTURE

## 3.1 HEADINGS

### Choice of headings

3.1.1 Headings help people to find what they are looking for.

3.1.2 It helps if your clause headings give as full an indication of the contents of the clause as reasonably possible, 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.

3.1.3 The ideal is to draft headings in such a way that the reader can see the overall story from the arrangement of clauses. Re-read the contents page regularly to ensure it still all hangs together.

3.1.4 Try to ensure that a clause heading does not go into a second line.

## 3.2 OVERVIEWS

**What is an overview?**

3.2.1 An "overview" is a brief summary of an Act, Part, Chapter, group of sections or Schedule. Its purpose is to help the reader to navigate through the legislation.

3.2.2 An overview is not usually intended to have any operative effect of its own. It may be contrasted with a purpose clause intended to affect the interpretation of other provisions.

3.2.3 The fact that an overview is included for one part of an Act does not mean that one has to be included for every other part. Use your judgment to decide what is likely to be helpful.

**Advantages**

3.2.4 The contents pages at the beginning of an Act or headings are often enough to give the reader an overview of what is to come. An overview that merely repeats the headings is unlikely to be helpful.

3.2.5 Overviews can, however, be helpful when used appropriately.

- In a large Act the contents can be long (running to tens of pages). An overview may be a good way to provide a pithy summary.
- An overview can be more descriptive and can draw out themes and relationships between provisions. See, for example, section 1 of the Corporation Tax Act 2009.
- An overview can explain how the new legislation fits into the legislative landscape, for instance by including signposts to other relevant provisions. See, for example, section 35 of the Corporation Tax Act 2010.

**Risks to watch out for**

3.2.6 The main risk of an overview is that it will be given some unintended effect by the courts. Risks may be minimised by ensuring the overview is accurate and drafting in a way that makes it clear that it is intended merely as a signpost.

3.2.7 An overview will often have a clause to itself. If it is included alongside substantive provision, make sure that the section heading is not misleading.

3.2.8 When amending legislation that contains an overview, consider whether the overview also requires amendment.

## 3.3 CLAUSES

### Clause length

3.3.1 Try to avoid clauses containing more than ten subsections or so.

3.3.2 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.

3.3.3 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.

## 3.4 SUBSECTIONS

### Second sentences in a subsection

3.4.1 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

*(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 must 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]."*

3.4.2 In this example, there are only two main propositions – the right to refer disputes to adjudication and what the contract must say about referrals. 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. This is an example of form following function.

### Alternatives to subsections

3.4.3 Part 3.5 considers some alternatives to a traditional sentence-by-sentence narrative: formulae, method statements and tables.

## 3.5 FORMULAE, METHOD STATEMENTS, TABLES

3.5.1 There are alternatives to a subsection-by-subsection, sentence-by-sentence narrative.

**Formulae**

*When to use a formula*

3.5.2 A formula may be the neatest way to express a relationship between various quantities.

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.*

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

3.5.4 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.

3.5.5 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*

3.5.6 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 (to avoid)

*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 (see the "minus" in the description of A).

3.5.7 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. Those mathematically inclined might also start off on the wrong foot assuming that "RRA" means R x R x A.

3.5.8 An exception might be made for well-known abbreviations (eg "RPI").

**Method statements**

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

EXAMPLE (Pensions Act 2014, Schedule 1, para. 2)

A person's amount for pre-commencement qualifying years is calculated as follows.

*Step 1 - calculate the person's pension under the old system*

Calculate the weekly rate based on the old state pension and graduated retirement benefit (see paragraph 3 for more about this).

*Step 2 - calculate a pension based on the new system*

Calculate the weekly rate based on the new state pension (see paragraph 4 for more about this).

*Step 3 - take whichever rate is higher (the foundation amount)*
Take whichever of the rates found under Steps 1 and 2 is higher.

*Step 4 - revalue to date when the person reached pensionable age.*
Revalue the amount of that rate in accordance with paragraph 6.

The amount for the person's pre-commencement qualifying years is the amount as revalued under Step 4.

**Tables**

3.5.10 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. Beware of creating a table when you could express the idea just as well in a couple of sentences.

## 3.6 PARAGRAPHS

### Use of paragraphs

3.6.1 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.

3.6.2 Paragraphs are a way to break material up and can help to make it clear how the ideas in the paragraphs are linked to one another.

3.6.3 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. So 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.

3.6.4 An alternative to paragraphs is to split off exceptions and conditions into free-standing propositions. See Part 3.8, *Lists of conditions and exceptions*.

3.6.5 Sub-paragraphs (numbered (i), (ii) etc.) may add complexity and make things harder to follow.

### Two sets of paragraphs

3.6.6 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.*

3.6.7 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).

3.6.8 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"**

3.6.9 The following structure is a sandwich—

*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.*

3.6.10 This structure does not always help the reader, especially if the main proposition is at the end.

3.6.11 To avoid a sandwich, try moving the proposition in the words at the end so that it appears in the opening words. So 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.*

3.6.12 That said, in some cases a "sandwich" may be helpful, especially in the case of relatively short propositions where no more than two or three paragraphs separate the opening words from the final words.

**Punctuation**

3.6.13 Paragraphs which are linked by a conjunction should end with commas.

EXAMPLE

*This Act applies to—*

*(a) cats,*

*(b) dogs, and*

*(c) rabbits.*

3.6.14 Paragraphs which are not linked by a conjunction should end with semicolons.

EXAMPLE

*The authority may require the applicant to supply any or all of the following—*

*(a) a driving licence;*

*(b) a passport;*

*(c) a birth certificate.*

**Unnumbered paragraphs**

3.6.15 Paragraphs need not have numbers or letters, especially in a case where the list is short and so are the individual entries.

EXAMPLE

*In this section "award for bravery" means—*

*the Victoria Cross;*

*the George Cross;*

*the Albert Medal.*

## 3.7 CONJUNCTIONS BETWEEN PARAGRAPHS

**"And" and "or"**

3.7.1 Ensure that it is clear whether paragraphs are intended to operate cumulatively or instead as alternatives.

3.7.2 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.

3.7.3 However, this makes the reader wait until then to know whether the paragraphs are cumulative or alternative and may be unhelpful with a long list of paragraphs.

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

3.7.5 Do not mix conjunctions, ie put different conjunctions at the ends of different paragraphs in the same provision.

**"Or"**

3.7.6 "Or" can have an inclusive and an exclusive sense: so "A or B" can mean "A or B or both" or "A or B but not both". Dickerson[1] 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

*The regulator may require the employer to –*

*(a) produce any relevant document, or*

*(b) provide any relevant information.*

3.7.7 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.

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.*

Here, 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.

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1.F. Reed Dickerson *Fundamentals of Legal Drafting* (Aspen Publishers, 1965), p.77.

3.7.8 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".

3.7.9 Sometimes it will be desirable to spell out that both of two alternatives are a permissible option. For example, in a provision allowing for the imposition of a fine or a term of imprisonment it is probably best to make it clear that the imposition of both is permitted (for example, by adding "or both").

**"And"**

3.7.10 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.

**Neither "and" nor "or"**

3.7.11 It is 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.*

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

3.7.13 When setting out what can be done by subordinate legislation, the conjunction is often omitted. It is also common practice not to expand the opening words so as to say "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.

## 3.8 LISTS OF CONDITIONS AND EXCEPTIONS

### Separate lists of conditions and exceptions

3.8.1 A list of conditions or exceptions can make a sentence long and unwieldy. It is often possible to break it up by using paragraphs. As an alternative, conditions and exceptions can be split off into separate propositions, either as separate subsections or in a single subsection with sub-headings. This kind of approach may be especially useful where each condition or exception is a complex proposition in its own right. This approach may, of course, be used in relation to conditions whether they are cumulative or alternative.

EXAMPLE (using separate subsections)

*(1) The FCA may, in writing, cancel the registration of a registered society if any of conditions A to E is met.*

*(2) Condition A is that –*

*(a) the society has requested the cancellation of its registration,*

*(b) the request is evidenced in such way as the FCA from time to time directs, and*

*(c) the FCA considers it appropriate to cancel the registration.*

*(3) Condition B is that...*

EXAMPLE (using a single subsection with sub-headings)

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

*Exception A*

*Income to which neither of the individuals is beneficially entitled.*

*Exception B*

*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 C*

*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.*

3.8.2 Consider whether the conditions or exceptions need to be in separate subsections. Having a single subsection with headings, as in the second example, means avoiding using a mixture of numbers (for subsections) and letters (for conditions), a mixture that some readers might find confusing or at any rate unattractive.

3.8.3 Where ordinal numbers are used for a list of conditions (first, second, third etc) it is not obvious what to call a new condition that needs to be inserted into the middle of the list in future. The use of cardinal numbers (1, 2, 3 etc) or letters (A, B, C etc) is preferable. Future conditions can then be added as 1A, 2A, 3A or AA, BA, CA etc.

3.8.4 As with other techniques, the listing of things as conditions or exceptions 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?".

## 3.9 SCHEDULES

**When to use Schedules**

3.9.1 Schedules can assist clarity by providing a home for material that would otherwise interrupt and distract from the main story you are trying to tell.

3.9.2 Examples where a Schedule might 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.

3.9.3 Bear in mind that relegating text to the end of the Bill may not always 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. So don't dispatch material to Schedules without good reason.

**How to introduce Schedules**

3.9.4 Some Schedules consist of lists which directly continue a proposition in a clause. So, for example, a clause might say that it is an offence to kill the animals listed in Schedule 1, and Schedule 1 will then list the animals. This kind of Schedule needs no further introduction.

3.9.5 However, other Schedules consist of free-standing propositions (for example, a Schedule of consequential amendments to other Acts). This kind of Schedule still needs to be "introduced" in the body of the Bill so that readers know it is there and what it does.

3.9.6 There are many different ways to do this.[1]

EXAMPLES

*Schedule 1 makes further provision about....*

*Schedule 1 contains amendments of the [title of Act].*

*Schedule 1 amends the [title of Act] to provide for....*

*For further provision about..., see Schedule 1.*

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

3.9.8 The "introductory words" should be in the clause to which the Schedule most closely relates or, if it doesn't relate to any particular clause, in a separate one.

1.One drafting technique sometimes used in the past was to say that the Schedule "has effect". But it was never necessary to do that, since a Schedule has effect whether the Act says so or not. On that basis the Office no longer uses that particular technique.

3.9.9 If your Schedule consists of free-standing provision, the section or subsection of the Act which introduces it will need to come into force at the same time as the Schedule. And if different parts of the Schedule come into force at different times, the section or subsection introducing it should come into force, so far as relating to any particular provision of the Schedule, at the same time as that provision.

3.9.10 Where a Bill is divided into Parts, a Schedule will be regarded as being in the same Part as the section which introduces it. So, where two or more sections refer to a Schedule, it is important to be clear which section is the one which introduces it. Clarity on this point is also important when it comes to commencement.

## 3.10 CROSS-REFERENCES

**No cross-reference needed**

3.10.1 A legislative proposition must be read in context. Where the connection between different propositions is clear, no cross-reference is needed.

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.*

**Refer to the idea, not the provision**

3.10.2 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.*

**Forward references**

3.10.3 Forward references (referring to something you haven't yet introduced) may well be a sign that the order isn't quite right. That said, it can be helpful to give a signpost to later material which is relevant but which does not necessarily need to be understood now (eg "For more about fines, see section x").

**Parenthetical descriptions**

3.10.4 If you refer to a provision of another Act, it is generally helpful to give a description of it in brackets. And it is sometimes helpful to give such a description when you are referring to a provision of the same Act. But consider the usefulness of the descriptive words against the disadvantage of interrupting the flow of text.

3.10.5 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.

3.10.6 When including a parenthetical description that names the provision and the Act, the parenthesis should generally appear after the reference to the Act.

EXAMPLE

*section 2 of the Limitation Act 1980 (time limit for actions founded on tort)*

rather than

*section 2 (time limit for actions founded on tort) of the Limitation Act 1980*

3.10.7 For parenthetical descriptions in textual amendments, see Part 6.10.1, *Minor points of amendment style*.

**"Above" and "below"**

3.10.8 On the whole, do not use "above" and "below".

3.10.9 However, it may sometimes be appropriate to do so for the purposes of achieving certainty: for example, if you are referring in one breath to a provision of the Bill and a provision of another Act.

3.10.10 If inserting material into an existing Act which uses "above" and "below" you do not necessarily have to follow suit, particularly in the case of substantial insertions of new text.

**"of this Act" etc**

3.10.11 As a general rule, expressions such as "of this Act" and "of this section" should also be avoided.

3.10.12 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 a Part of the Schedule or a 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.

**Arabic and Roman numerals in pre-2001 Acts**

3.10.13 Since 2001 Acts switched from Roman to Arabic numerals for Parts and Chapters of Acts and for Parts of Schedules.

3.10.14 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.

3.10.15 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.

3.10.16 But if you are quoting text in which Roman numerals appear (for example, for the purposes of amending it), quote the text as it is.

# PART 4 DEFINITIONS

## 4.1 DEFINITIONS

### Different kinds of definition and their function

4.1.1 There are two main kinds of definition—

(1) Exhaustive definitions that *replace* the meaning that the defined term would otherwise have. It is usual to use "means" for this kind of definition.

(2) Inclusive/exclusive definitions that *adapt* the meaning that the defined term would otherwise have by clarifying potential doubt or expanding or limiting the meaning. It is usual to use "includes/does not include" for this sort of definition.

4.1.2 Exhaustive definitions are sometimes used as drafting devices to break material up or make it easier to follow. A complex concept can be given a short label or "tag" that can be referred to instead. The potential benefits of using a definition in this way need to be weighed against the additional complexity that can be caused by the reader having to piece the story back together again. This is especially likely to be an issue if the meaning of the defined term is not particularly intuitive.

### Choosing labels

4.1.3 The natural meaning of a defined term may influence the way that the definition is interpreted so it is important to ensure that an appropriate label is used.

4.1.4 Avoid labels that are misleading.

EXAMPLE (to avoid)

*In this Act, "child" means a young person in care.*

4.1.5 Where possible avoid bland terms such as "the relevant person" or "the principal Act". Try instead to use a label that gives the reader some clue as to what it means (but be careful not to use a tag that might colour the meaning in unwanted ways).

4.1.6 Think carefully before using acronyms or other initials unless you are confident that they are commonly understood or commonly understood in the particular context (for example, RPI for the retail prices index). Initials may be shorter but this often comes at a cost to the reader who has to decode what they stand for.

4.1.7 Using the same label to denote different things in the same Bill may be confusing.

**Don't make a definition do too much**

4.1.8 It is usually best to avoid using a definition to make operative provision since one would not usually expect to find operative provision in a definition.

EXAMPLE (to avoid)

*"information notice" means a notice, issued by the Regulator to a registered person, requiring the registered person to send, within the period of 30 days beginning with the day on which the notice is issued, a return to the Regulator containing such information as is specified in the notice.*

4.1.9 In this example the definition ought to be restructured as a series of operative provisions: (1) conferring power on the Regulator to require a person to provide information, and (2) imposing a duty on a recipient to comply within 30 days. An "information notice" could then be defined as a notice issued by the regulator under (1).

**Referential definitions**

4.1.10 Where a term in a Bill is intended to have the same meaning as in an earlier Act consider whether it is most helpful to set it out again or attract the earlier definition.

4.1.11 One reason for attracting an earlier definition is to pick up case law on its meaning. Another reason is to attract future changes to the definition. However, it is important to note that neither of these results follow automatically. It will ultimately be a question of construction. Much depends on context.

4.1.12 Try to help the reader by being specific about where the earlier definition is.

4.1.13 A simple way to attract an earlier definition is—

*In this Act, "health care" has the meaning given by section 98 of the Health Act 2006.*

4.1.14 In this kind of context it makes no difference whether "given in" or "given by" is used.

4.1.15 An alternative approach that may be particularly useful where a word or phrase has to be constructed from a number of different provisions of an Act is—

*In this Act, "health care" has the same meaning as in the Health Act 2006 [(see sections 98, 102 and 105 of that Act)].*

**Identifying the purposes for which a definition applies**

4.1.16 Be clear about the purposes for which a definition applies.

4.1.17 Use "in this Act", "in this section" and so on unless there is no reasonable doubt. Where a definition is in the form ""X" means/includes/does not include" this is usually preferable to "for the purposes of this Act/section/etc", if only because it is shorter.

4.1.18 Defining terms "unless the context otherwise requires" is generally unhelpful. If there are circumstances where the context otherwise requires it is far better to identify them rather than leaving the reader guessing. The same result is, in any event, likely to be achieved by leaving out the words "unless the context otherwise requires": see *Meux v Jacobs* (1875) LR 7 HL 481 at 493.

**Where to put definitions**

4.1.19 There are no hard and fast rules when it comes to deciding where to put a definition: what will work best for the reader is necessarily a matter of judgement.

4.1.20 A definition that is key to understanding a provision will often be best up front, either where it is first used or in introductory material.

4.1.21 A definition that is merely clarificatory will often be left to the end so that the reader can get on with reading the main story before getting bogged down in the definitional detail (for example, "bank holiday").

4.1.22 Definitions that are used in more than one provision and defined in the first of them should generally be signposted by including a reference to them in a general definition section (eg "[In this Act]... X has the meaning given in section 1") or in an index of defined terms. An index of defined terms is a provision that simply lists terms defined elsewhere, and indicates where the definitions can be found.

4.1.23 Avoid prospective definitions in the form: "In this section and the next section, x means y", which are easily missed by the reader of the next section. Alternatives include putting the definition in both sections or including a cross-reference in the second section.

**Ordering of definitions**

4.1.24 In most cases definitions should be listed alphabetically, with numbers coming first. When determining the alphabetical order ignore "the" (eg in "the regulator").

4.1.25 It some cases, however, it may make sense to list the definitions in conceptual order (for example, where each definition builds on a previous one).

4.1.26 In a list of definitions, each entry should end with a semicolon. There should be no conjunction.

# PART 5 CITATION

## 5.1 CITATION OF DOMESTIC LEGISLATION

### Need for citation

5.1.1 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 it.

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

5.1.3 Reference numbers should be given for other enactments and instruments.

### Usual forms of citation

5.1.4 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**<br>Armed Forces Act 2006 | (c._6) |
| *Note though that references to an Act should not be accompanied by the chapter number unless there is a particular need for it (see above).* | |
| Fisheries Act 1955 | (3_&_4_Eliz._2 c._7) |
| *This form, including the regnal year, is now used only for Acts which are passed in the same calendar year and which have the same chapter number – a situation which can only arise with pre-1963 Acts.* | |
| **Local acts**<br>Newcastle-upon-Tyne Corporation Act 1960 | (c._xli) |
| **Personal acts**<br>Arundel Estate Act 1957<br>*Note that the number is in italics* | (c._*1*) |

## Westminster

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

## Scotland

| | |
|---|---|
| **Acts of the Scottish Parliament** (from 1999)<br>Adoption and Children (Scotland) Act 2007<br>Glasgow Airport Rail Link Act 2007<br>*The numbering of asps does not distinguish between public and private.* | <br>(asp_4)<br>(asp_1) |
| **Scottish statutory instruments** (from 1999)<br>Police Grant (Variation) (Scotland) Order 2009<br>*For numbering, see regulation 4 of the Scottish Statutory Instruments Regulations 2011 (S.S.I. 2011/195).* | <br>(S.S.I._2009/41) |
| **Scots acts prior to 1707**<br>Fisheries Act 1705 | <br>(c._48 (S.)) |

## Wales

| | |
|---|---|
| **Acts of Senedd Cymru**<br>Wild Animals and Circuses (Wales) Act 2020 | <br>(asc_2) |
| **Acts of the National Assembly for Wales (pre-name-change)**<br>Control of Horses (Wales) Act 2014 | <br>(anaw_3) |
| **Measures of Senedd Cymru** (2008-2011)<br>NHS Redress (Wales) Measure 2008 | <br>(nawm_1) |
| **Statutory instruments (from 1948)**<br>School Milk (Wales) (Amendment) Regulations 2009<br>*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 Acts of Senedd Cymru. The Welsh equivalent is "(S.I._2009/108 (Cy.21))".* | <br>(S.I._2009/108 (W.21)) |

## Northern Ireland

| | |
|---|---|
| **Acts of the Northern Ireland Parliament**<br>Interpretation Act (Northern Ireland) 1954<br>*In an Act of the Northern Ireland Assembly, this would just be "(c. 33)".* | (c._33 (N.I.)) |
| **Acts of the Northern Ireland Parliament (private bill)**<br>Northern Bank Act (Northern Ireland) 1970 | (c._ii (N.I.)) |
| **Measures of the Northern Ireland Assembly**<br>Financial Provisions Measure (Northern Ireland) 1974 | (c._2 (N.I.)) |
| **Acts of the Northern Ireland Assembly (from 2000)**<br>Charities Act (Northern Ireland) 2008 | (c._12 (N.I.)) |
| **Statutory rules and orders (Northern Ireland)**<br>European Communities (Agriculture) Order (Northern Ireland) 1972 | (S.R._&_O. (N.I.) 1972 No._351) |
| **Statutory rules of Northern Ireland**<br>Energy (Amendment) Order (Northern Ireland) 2009<br>*In an Act of the Northern Ireland Assembly this would just be "(*S.R._2009 No._35*)".* | (S.R._(N.I.) 2009 No._35) |
| **Northern Ireland Orders in Council**<br>Criminal Evidence (Northern Ireland) Order 1999<br>*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)) |

## 5.2 CITATION OF RETAINED DIRECT EU LEGISLATION ETC

### Introduction

5.2.1 When drafting a Bill that needs to refer to retained direct EU legislation it is generally sufficient to cite the instrument in the form described below, without more.[1] Section 20(3) of the Interpretation Act 1978 will ensure that it is read as a reference to the instrument as it forms part of domestic law by virtue of section 3 of European Union (Withdrawal) Act 2018.[2]

5.2.2 Where (unusually) a Bill needs to refer to an instrument as it has effect in EU law, that will normally need to be spelt out expressly. One approach is to refer to the instrument "as it has effect [from time to time] in EU law". The words in square brackets should be included only if the policy is to cover future amendments.

### Instruments made between 1968 and 2014

5.2.3 Regulations and directives. The title of a regulation or directive made between 1968 and 2014 will look like this—

Council Regulation (EEC) No 1462/86 of [date] [subject]

Commission Regulation (EU) No 495/2010 of [date] [subject]

Regulation (EU) No 439/2010 of the European Parliament and of the Council [date] [subject]

Council Directive 86/609/EEC of [date] [subject]

Council Directive 2010/24/EU of [date] [subject]

Directive 2010/13/EU of the European Parliament and of the Council of [date] [subject]

5.2.4 Note that up to and including 1998, the year was written with two digits (eg "98"); for 1999-2014 four digits are used (eg "2002").

5.2.5 When referring to a 1968 - 2014 regulation or directive for the first time, use the full title. For subsequent references, the date and subject-matter may be omitted.

5.2.6 Decisions. The title of a Decision made between 1968 and 2014 will be "Council Decision [date] [subject]". This is then followed by a number such as "(2010/299/EU)", but the number is not formally part of the title. Use the full title, including the number in brackets, for the first reference. For second and subsequent references, use the form "Council Decision 2010/299/EU".

1. For discussion of the construction of references in legislation passed before 11 pm on 31 December 2020 (IP completion day), see *Bennion, Bailey and Norbury on Statutory Interpretation* (8th edn, 2020), section 28.12. Note that as from the end of 2023 retained direct EU legislation is renamed assimilated direct legislation: see section 5 of the Retained EU Law (Revocation and Reform) Act 2023.

2. Where relevant separation agreement law is in view the position is more complex and consideration needs to be given to section 20(2A) of the Interpretation Act 1978.

**Instruments made from 2015 onwards**

5.2.7 As from 1 January 2015 the numbering system of EU instruments changed. The title of an instrument made on or after that date will look like this—

Commission Regulation (EU) 2015/140 of [date] [subject]
Directive (EU) 2015/2 of the European Parliament and of the Council of [date] [subject]
Council Decision (EU) 2015/3 of [date] [subject]
Commission Delegated Regulation (EU) 2015/5 of [date] [subject]
Commission Implementing Directive (EU) 2015/6 of [date] [subject]
Decision (EU) 2015/7 of the European Parliament of [date] [subject]
Decision (EU, Euratom) 2015/8 of the European Parliament of [date] [subject]

5.2.8 Again, for the first reference use the full title including the date and subject-matter. For subsequent references, the date and subject-matter may be omitted.

# PART 6 AMENDMENTS

## 6.1 REPEALS

### Operative words

6.1.1 To repeal a whole Act, use the formula—

*"The [Act] is repealed"*

6.1.2 For repeals of less than a 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.*

6.1.3 For a repeal Schedule, or any other list of enactments to be repealed, there is no single recommended form of words, but a fairly standard form of words is—

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

6.1.4 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".

### Where repeals should go

6.1.5 The office no longer does "double entry" repeals (considered in *Commissioner of Police of the Metropolis v Simeon* [1982] 2 All ER 813 HL). Accordingly, a repeal should appear either in the body of a Bill or in a repeal Schedule, as clarity dictates, but not both.

### Repeal of amendments

6.1.6 Where amendment is completely superseded. Where the amending provision is *completely superseded* (for example by repeal or complete substitution of the provision amended), it is good practice to repeal it.

6.1.7 Where amendment is not completely superseded. Do not repeal amendments which are not completely superseded.

6.1.8 Textual amendments, so far as Westminster legislation is concerned, are sometimes said to be "always speaking". So the first enactment is regarded as having effect subject to a continuing amendment by the second.[1] This view differs from that 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.

6.1.9 Where the repeal of an amendment that is in force is not accompanied by a repeal of the amended enactment, questions may arise as to the intended effect. *Bennion, Bailey and Norbury on Statutory Interpretation* states that in this case "one might ordinarily expect the repeal to be intended to do no more than tidy up the statute book by stripping away the machinery by which the amendment was made. Absent other considerations, it would be surprising if a substantive change to the law were intended to be made by such indirect means."[2]

6.1.10 Nevertheless, the safest and most convenient approach is to leave the amendments alone.

**Repeal of uncommenced amendments**

6.1.11 See paragraphs 6.8.10 to 6.8.13.

**Repeal of repeals**

6.1.12 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.

6.1.13 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).

**Repeal of paragraphs with conjunctions**

6.1.14 If you are repealing a paragraph which ends with a conjunction, make it clear whether or not you are repealing the conjunction. You might do that, for example, by adding words such as "(together with the final "and")" or "(but not the final "or")".

1. See Greenberg. D., *Craies on Legislation* (Sweet and Maxwell, London, 11th edition), para. 14.3.5.
2. *Bennion, Bailey and Norbury on Statutory Interpretation* (2020, 8th ed), section 8.10.

## 6.2 SUBSTITUTIONS

### Operative words

6.2.1 The recommended form is—

*for x substitute y*

### How much text to substitute

6.2.2 The starting point is that the minimum amount of text should be replaced. This will usually make it easier for the reader of the Bill to identify the bit that is actually changing. It also avoids the risk of missing a cross-reference, non-textual modification or old saving.

6.2.3 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),
- where it is otherwise helpful to the reader to substitute a few extra words, and
- where doing so enables the text substituted to be identified more readily.

### Substitutions include words quoted

6.2.4 Section 20(1) of the Interpretation Act 1978 states:

> "Where an Act describes or cites a portion of an enactment by referring to words, sections or other parts from or to which (or from and to which) the portion extends, the portion described includes the words, sections or other parts referred to unless the contrary intention appears."

6.2.5 Note that this is the opposite of the practice with House amendments.

### Substitution or insertion?

6.2.6 If you have new text that is in substance a replacement for the existing text, then put it by way of substitution, re-using the number of the existing text.

6.2.7 But if you want to repeal text and, at the same time, have new text to put in at the same place, where the new text is not a direct replacement for the existing text, it is better not to substitute. Instead, repeal the old text and insert the new text, without re-using the number. That way it is clearer that you are doing two separate things (so let form follow function).

## 6.3 INSERTIONS

### Operative words

6.3.1 Use the imperative form—

*after x insert y*

### After or before

6.3.2 It is usual to specify that a new provision is to be inserted "after" another one.

6.3.3 If you are inserting something as the very first section or Schedule, you will of course need to insert it "before section 1" or "before Schedule 1".

6.3.4 "Before" can also be useful in other circumstances 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.

### At the beginning

6.3.5 The usual form is to say—

*at the beginning insert x*

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

### At the end

6.3.6 The usual form is to say—

*at the end insert x*

6.3.7 This is in contrast to House amendments to Bills, which just say "at end".

6.3.8 Say "insert" rather than "add".

### In a list

6.3.9 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.

**Next to an unnumbered provision**

6.3.10 To add a subsection or sub-paragraph to a section or paragraph which is not already subdivided, proceed as follows—

- renumber the existing text—
  *In [section] [paragraph] N the existing text becomes [subsection] [sub-paragraph] (1).*
- make any amendments to the existing text—
  *In that [subsection] [sub-paragraph], after "x" insert...*
- insert the new subsection or sub-paragraph—
  *After that [subsection] [sub-paragraph] insert—*
  *"(2) [Text of new provision]".*

## 6.4 NUMBERING OF INSERTED PROVISIONS

**At the beginning of a series**

6.4.1 Number as follows when inserting a new whole provision at the beginning of an existing series of provisions (eg 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" (A1, B1, C1 and so on).
- 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.

**At the end of a series**

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

**Between existing provisions**

6.4.3 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.

6.4.4 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.

6.4.5 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.

**Series of more than 26**

6.4.6 After Z use Z1, Z2, Z3 etc. For example, after section 360Z insert sections 360Z1, 360Z2 and so on; after paragraph (z) insert paragraphs (z1), (z2), (z3).

**Re-using numbers**

6.4.7 If you are inserting new text at a place where there has previously been a repeal, do not re-use the number.

## 6.5 IDENTIFYING TEXT

### Opening or closing words of a subsection with paragraphs

6.5.1 A subsection with paragraphs will have words before the paragraphs, and may have words after the paragraphs.

EXAMPLE

*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.*

6.5.2 The words before the paragraphs start should be referred to as "The words before paragraph (a)" (or whatever the first paragraph is).

6.5.3 The words after the paragraphs should be referred to as the words "after paragraph (c)" or whatever the last paragraph is.

6.5.4 If you are amending words that only appear once there is no need to specify whether they appear before or after the paragraphs, but it is sometimes helpful to do so (for example, if the provision is particularly long).

### Words which occur more than once

6.5.5 Where words occur more than once in a provision, and you want to identify one instance of them, the recommended form is as follows—

*for "x", in the first place it occurs, substitute "y"*

*after "x", in the second place it occurs, insert "y"*

*omit "x" in the third place it occurs.*

6.5.6 In some cases it may be simpler to replace a slightly bigger chunk of text so as to avoid having to refer to the "first" or "second" instance of the word or phrase.

6.5.7 Where words occur twice and you want to catch both instances the recommended form is—

*for "x", in both places it occurs, substitute "y"*

*after "x", in both places it occurs, insert "y"*

*omit "x" in both places.*

6.5.8 Where words occur three or more times and you want to catch all instances, the recommended form is —

*for "x", in each place it occurs, substitute "y"*

*after "x", in each place it occurs, insert "y"*
*omit "x" in each place.*

6.5.9 Note that it is unnecessary to refer to "the words" x or y; or to use brackets.

6.5.10 If an amendment is intended to be made in a heading as well as in the body of a provision it is worth making this clear by adding "(including the heading)".

**English and Welsh language text**

6.5.11 It is possible, if unusual, for a Bill to amend an Act of Senedd Cymru or an instrument made by the Welsh Ministers. Such an Act or instrument will exist in both English and Welsh. If amending both versions, refer to the "English language text" and the "Welsh language text" as opposed to the "English text" and "Welsh text" (so as not to suggest that one part of the law is "English" or "Welsh" in terms of nationality).

## 6.6 AMENDMENT OF HEADINGS

### When to amend headings

6.6.1 It is acceptable to amend the heading to a provision, and it may be helpful to do so - for example, if the provision is falsified by a textual amendment you are making.

6.6.2 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.

### How to amend headings

6.6.3 The wording used to amend a heading should be the same as the wording used to make other amendments (so, for these purposes, do not treat headings as different from other statutory text).

6.6.4 The recommended practice is not to mimic typography when amending or substituting a heading (ie do not use bold or italic font or small capitals).

6.6.5 However, use the appropriate typography when inserting a completely new heading (for example, a new italic heading before an existing group of sections).

### What to call headings

6.6.6 Parts and Chapters. A heading of a Part or Chapter in the body of an Act should be referred to as the "Chapter heading" or "Part heading" or "the heading of Chapter/Part X".

6.6.7 Groups of sections. An italic cross-heading which precedes a group of sections in the body of an Act should be called the "italic heading before section x".

6.6.8 Sections. A section heading should be referred to simply as the "heading" of the section. This applies to pre-2001 Acts as well as later Acts, even though the headings for pre-2001 Acts took the form of marginal sidenotes.

6.6.9 Schedules. The heading of a Schedule should be referred to as such.

6.6.10 The heading of a Part of a Schedule should be referred to as the "Part heading" or "the heading of Part X".

6.6.11 An italic heading within a Schedule should be called "the italic heading before paragraph x".

6.6.12 As a matter of house style a heading is a heading "of" something, not "to" something.

## 6.7 SCHEDULES AND OTHER SERIES OF AMENDMENTS

### Series of amendments

6.7.1 Although individual amendments are drafted as instructions ("insert"), series of amendments should start with "is amended"—

*(1) The Kangaroos Act is amended [as follows] [as specified in subsections...].*

*(2) After section 1 insert....*

*(3) Omit section 2.*

6.7.2 If you say Act X is amended "as follows", what follows shouldn't include an amendment to Act Y.

### Format of amendment Schedules

6.7.3 Where amendments to an Act are arranged under an italic heading giving the name of the Act, the recommended style is—

"*Counter-Terrorism Act 2008 (c. 28)*

1. In the Counter-Terrorism Act 2008, after section N...."

6.7.4 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.

### Format of repeal Schedules

6.7.5 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.

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

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

## 6.8 UNCOMMENCED MATERIAL

6.8.1 Uncommenced legislation should be kept in a state in which it can be brought into force. So it needs to be catered for when legislating to implement new policy.

6.8.2 The discussion below deals with the following topics—

- amending uncommenced provisions;
- repealing uncommenced amendments;
- amending provisions subject to uncommenced repeals;
- drafting provisions that need to work with existing and prospective provisions.

**Amending uncommenced provision**

*Amending uncommenced free-standing provisions*

6.8.3 An amendment can be made to an uncommenced free-standing provision in an earlier Act in the usual way. For considerations relating to commencement, see below.

*Amending an Act that is the subject of earlier uncommenced amendments*

6.8.4 In the interests of simplicity, where a Bill amends an Act that is already the subject of earlier uncommenced amendments, it should operate directly on that Act (not on the intervening amending Act).

EXAMPLE

- Act 1 is in force.
- Act 2 inserts a new section 7A and the insertion is not yet in force.
- A Bill needs to insert a new subsection (1A) into section 7A.

The amendment in the Bill should be expressed as an amendment to section 7A of Act 1 (not as an amendment to the provision of Act 2 which inserts it).

6.8.5 It may be helpful to include a signpost to indicate where the provision came from—

EXAMPLE

*In section 7A of Act 1 (as inserted by section 2 of Act 2) after subsection (1) insert...*

6.8.6 If a provision is subject to an uncommenced substitution, it may be necessary to amend the provision both in its original and in its substituted form.

EXAMPLE

*In Act 1—*

*(a) in section 1 (before its substitution by section 2 of Act 2), after "or dogs" insert "or cats";*

*(b) in section 1 (as substituted by section 2 of Act 2), after "or dogs" insert "or cats".*

*Commencement issues*

6.8.7 To avoid confusion, amendments should not be brought into force before the provision they amend.

6.8.8 The recommended approach when drafting an Act that amends earlier uncommenced provision is to—

(a) confer a fresh power, in the amending Act, to govern the amendments made by it (rather than expanding any power in the amended Act so that it can be used to commence the amendments), or

(b) if the policy is that the amended Act should never be in force without the amendments, provide for linked commencement (eg "X comes into force at the same time as Y").

6.8.9 The approach in paragraph 6.8.8(a) allows flexibility as the amendments can be brought into force at the same time as or later than the provisions that they amend.

**Repealing uncommenced amendments**

*Repeal of part of uncommenced amendment*

6.8.10 Where a Bill repeals part only of an uncommenced amendment to an earlier Act, it should operate directly on that Act (not on the intervening amending Act). This is the same as the approach discussed above for amending uncommenced amendments.

EXAMPLE

- Act 1 is in force.
- Act 2 inserts a new section 7A and the insertion is not yet in force.
- The policy underlying a Bill is to repeal subsections (3) to (6) of section 7A.

The repeal should be expressed as a repeal of subsections (3) to (6) of section 7A of Act 1 (not as a partial repeal to the provision of Act 2 which inserts it).

6.8.11 The commencement of the repeal should be governed by the commencement provision made by the Bill; and the repeal should not be brought into force before the provision of Act 2 which inserts section 7A into Act 1.

*Repeal of whole of uncommenced amendment*

6.8.12 The position is different where the policy is to repeal an uncommenced amendment in its entirety and without it ever having been brought into force. Then the repeal should operate on the Act making the uncommenced amendment (rather than the amended Act).

EXAMPLE

- Act 1 is in force.
- Act 2 inserts a new section 7A and the insertion is not yet in force.
- The policy underlying a Bill is to repeal section 7A.

The repeal in the Bill should be expressed as a repeal of the uncommenced provision in Act 2 that inserted the new section 1A into Act 1.

6.8.13 The reason for adopting this approach is that the aim is to stop section 7A from operating at all, rather than altering the way in which it operates. Expressing the proposition as a repeal of section 7A of Act 1 would necessitate commencing the amendment (so that there is something to repeal) and then repealing it immediately afterwards, which is unnecessary and potentially misleading.

**Amending provisions subject to an uncommenced repeal**

6.8.14 A provision in an Act subject to an uncommenced repeal may need to be amended if the policy of the Bill demands a change before the repeal is to be commenced. In that case, consideration needs to be given to what will happen to the amendment.

6.8.15 In some cases it will be obvious that the amendment is not intended to have any effect following the commencement of the repeal (for example, where the amendment inserts a single word). An express repeal is nonetheless helpful to tidy things up.

6.8.16 In other cases, the intended effect may be less clear. For example, if a new section is inserted into a Part of an Act that is subject to an uncommenced repeal and the section is capable of operating in its own right, it might not always be clear to the reader that the section is intended to be repealed at the same time as the Part into which it is inserted. An express repeal of the amendment should be made to put the point beyond doubt.

6.8.17 An alternative approach that can sometimes be used to tackle these issues is to make transitory provision that has effect only until the repeal is commenced.

EXAMPLE

*"Until section 2 of Act 2 (which repeals section 1 of Act 1) is brought into force, section 1 of Act 1 has effect as if, after "dogs" there were inserted "and cats".*

6.8.18 This is likely to be of particular use in cases where the commencement of the repeal is imminent.

**Drafting a provision that needs to work with existing and prospective provisions**

6.8.19 Below are examples of techniques that may be useful when drafting a provision that needs to take account of prospective amendments as well as working with the existing law.

6.8.20 The examples assume that—

- Act 1 is in force
- Act 2 inserts a new section 1A and is not yet in force.
- A Bill is inserting a new section 3A into Act 1, referring to an Authority's functions under sections 1 and 1A.

EXAMPLE 1

*(1) After section 3 of Act 1 insert –*

*"3A The Authority must publish an annual report on the exercise of its functions under section 1."*

*(2) In section 3A of Act 1 (as inserted by subsection (1)), for "section 1" substitute "sections 1 and 1A".*

EXAMPLE 2

*(1) After section 3 of Act 1 insert –*

*"3A The Authority must publish an annual report on the exercise of its functions under sections 1 and 1A."*

*(2) Until section X of Act 2 comes [fully] into force, section 3A of Act 1 (as inserted by subsection (1)) has effect as if the reference to section 1A of Act 1 were omitted.*

EXAMPLE 3

*After section 3 of Act 1 insert –*

*"3A (1) The Authority must publish an annual report on the exercise of its functions under sections 1 and 1A.*

*(2) Until section X of Act 2 comes [fully] into force, subsection (1) has effect as has effect as if the reference to section 1A were omitted."*

6.8.21 When considering the approaches in Examples 2 and 3 consideration should be given to the trade-off between the advantages of bringing the reader's attention to the transitional provision and the disadvantages of cluttering up the statute book in the long term.

## 6.9 NON-TEXTUAL MODIFICATIONS

**Distinguishing between textual amendments and non-textual modifications**

6.9.1 A "non-textual modification" is 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).

6.9.2 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 modifications have even been printed as textual amendments.

6.9.3 The potential for confusion arises because the word "modification" is sometimes used simply to refer to a change, whether textual or non-textual. It is therefore important to make it clear what is intended.

6.9.4 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".*

6.9.5 This might readily be mistaken for a textual amendment. The opening words indicate 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.

6.9.6 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 (in a simple case involving few modifications)

*(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".*

EXAMPLE (in a complex case involving more modifications)

*(1) Section 3 applies to fine defaulters as to offenders but as if it were modified as follows.*

*(2) In subsection (1) for "offence" substitute "default".*

*(3) In subsection (2) for "6 months" substitute "3 months".*

*(4) ...*

6.9.7 Another approach which is clear is 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.*

## 6.10 AMENDMENTS: OTHER MINOR POINTS

### Parenthetical description of provision amended

6.10.1 It is common practice to give a brief description in brackets of the provision that is being amended, to give the context of the amendment and perhaps its significance. It may be particularly helpful to do so in the case of an important substantive amendment. Sometimes parenthetical descriptions may enable a reader to see exactly what an amendment is doing, though it is hard to achieve this consistently in a Bill of any length.

6.10.2 Include a parenthetical description only if it is useful. It may not be useful in a Schedule 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.

6.10.3 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.

6.10.4 The parenthetical description will often match the heading of the section or Schedule to which it relates, but it does not have to do so. It may be better, for readers of the Bill, to describe the section in a different way.

6.10.5 Be careful about whether you are describing a whole section or a particular provision in it. The heading of a section may be unhelpful as a description of an individual subsection. For example, if section 1 is called "cases to which Part 1 applies", and specifies those cases, but subsection (3) sets out some exceptions, it would be misleading to say "In section 1(3) (cases to which Part 1 applies)...."

6.10.6 For the location of parenthetical references, see paragraph 3.10.6.

### Punctuation

6.10.7 Where inserted or substituted words end with a full stop before the closing quotes, do not add a further full stop after the closing quotes.

### No need to amend spent provisions

6.10.8 There is no need for amendments to update a provision that is spent, whether or not subject to an uncommenced repeal. But be sure that the provision is spent — the fact that a repeal has not been commenced might indicate that the repealed provision is not (or not yet) spent.

# PART 7 STATUTORY CORPORATIONS

## 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, use the form of words "[Name] is established" in preference to alternatives such as "there is to 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.

## 7.2 SENEDD CYMRU

**Renaming of Welsh legislature**

7.2.1 The Senedd and Elections (Wales) Act 2020 ("SEWA") changed the name of the Welsh legislature (originally called the "National Assembly for Wales").

7.2.2 Section 1 of the Government of Wales Act 2006 ("GOWA"), as amended by SEWA, provides that "There is to be a parliament for Wales to be known as Senedd Cymru or the Welsh Parliament (referred to in this Act as "the Senedd")".

7.2.3 Office practice for Westminster legislation is to refer to the body by its Welsh name only. This is consistent with the practice for legislation passed in Wales.

7.2.4 The starting point then is that the body should be referred to as "Senedd Cymru".

7.2.5 Where you are referring to the body a number of times you might choose to use the form "the Senedd", and then define that to mean "Senedd Cymru". If you do that, there is no need to elaborate further (so do not explain that "Senedd Cymru" means Welsh Parliament).

**Renaming of Welsh Acts**

7.2.6 Section 107 of GOWA provides for laws made by the Senedd to be called, in English, "Acts of Senedd Cymru" (*not* "Acts of the Welsh Parliament").

7.2.7 Accordingly, refer to those Acts as "Acts of Senedd Cymru" (or "Acts of the Senedd" with "the Senedd" then being defined as described above).

**Transitional matters**

7.2.8 Follow the practice described above in new text inserted into Westminster Acts which otherwise use the old names, even if this means a mixture of the old and the new names.

7.2.9 It is important to note that the body hasn't changed. It just has a new name.

7.2.10 It is therefore possible to use the new name when referring to things done by the Welsh legislature when it had its old name.

7.2.11 In particular, if you are referring to Welsh legislation, and want to include Acts and Measures passed before the change of name, just refer to an Act or Measure of "Senedd Cymru" (or the Senedd). An Act passed by the body when it was called "the National Assembly for Wales" is still an Act of "Senedd Cymru".

# PART 8 PERIODS OF TIME

## 8.1 PERIODS OF TIME

### Introductory

8.1.1 This Part is about how to express a period of time where you need to know exactly when the period begins or ends.[1]

### Beginnings

8.1.2 An unambiguous formulation is to describe the period as beginning "with" a particular day. This makes it clear that the day itself is counted within the period.[2]

EXAMPLE

The taxpayer must be resident in the United Kingdom throughout the period of two years *beginning with* the day on which the asset is acquired.

8.1.3 Avoid referring to a period beginning "on" a particular day. This may leave open the question of the exact time on the day in question when the period begins — and, accordingly, if the period is a whole number of days, months or years, exactly when it ends.[3]

8.1.4 Also avoid referring to a period running "from" or "after" a particular event. This will usually be taken to exclude the day on which the event takes place.[4] But that is not invariably the case — it will depend on the context. So you will not necessarily get a certain result.

### Endings

8.1.5 Periods determined by reference to their end should be expressed to end "with" a particular day as opposed to "on" it, for the reasons given above.

EXAMPLE

*The taxpayer must have been resident in the United Kingdom throughout the period of two years ending with the day on which the asset was disposed of.*

---

1.Be aware that the rules applicable to periods, dates and time limits referred to in EU Directives are quite different: see Regulation (EEC, Euratom) No. 1182/71 of the Council of 3 June 1971.

2. *R (Zaporozhchenko) v City of Westminster Magistrates' Court* [2011] EWHC 34, [2011] 1 WLR 994 at [14] to [17], applying *Trow v Ind Coope (West Midlands) Ltd* [1967] 2 QB 899.

3. This may not matter where the period necessarily begins at the beginning of the day — there is no ambiguity in a reference to a disposal made within the tax year beginning *on* 6 April 2017.

4. *Dodds v Walker* [1981] 2 All ER 609.

**Within**

8.1.6 A requirement to do something *within* a period is not necessarily the same as a requirement to do it *before the end of* the period.

EXAMPLES

***1.*** *An appeal may be brought at any time within the period of 14 days beginning with the day after that on which the decision was made.*

***2.*** *An appeal may be brought at any time before the end of the period of 14 days beginning with the day after that on which the decision was made.*

8.1.7 If "within" is used (example **1**), an appeal may not be brought on the day of the decision, because that is not *within* the period beginning the following day.

8.1.8 But "before the end of" (example **2**) appears to leave open the possibility of action being taken on the day of the decision, because that is, literally, before the period ends. However, there is a possibility that such a proposition might be interpreted by the courts as preventing action from being taken before the day by reference to which the period is calculated (and so "before the end of" might then come to the same thing as "within").[5]

**Periods triggered by events**

8.1.9 If an event triggers a period for something to happen — such as a decision after which there is a period for an appeal — it is a question of policy whether the day of the event should be included or not.

8.1.10 If you do *not* want to include the day of the event, it is probably best to start the period with the day after the event, and say that the action must take place *within* the period (as in example **1** in paragraph 8.1.6).

8.1.11 If you *do* want to include the day of the event, while following example **2** might work, it carries the risk referred to in paragraph 8.1.8. So a safer way of doing it is like this—

EXAMPLE

*An appeal may be brought at any time within the period of 14 days beginning with the day on which the decision was made.*

8.1.12 Note that, taken literally, this includes the earlier part of the day of the event**.** That may or may not matter in practice. In the case of an appeal, it is obviously impossible for the appeal to be made before the decision. If it is important to exclude earlier times, you will need to be very clear that only the remainder of the day of the event is included.

8.1.13 If the period starts with the day of an event and is short, 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 in practice the whole of the first day may not be available.

**"Before" preferable to "by" a particular day**

8.1.14 Saying that something has to be done "before" a particular day is unambiguous. Saying that it has to be done "by" a particular day may leave room for argument about whether the thing can be done on the day itself.

5.See *R (on the application of Hillingdon LBC) v Secretary of State for Transport* [2017] EWHC 121 (Admin); [2017] 1 WLR 2166.

**Working days**

8.1.15 Weekends and bank holidays will not be treated differently from other days unless you make express provision to that effect. So, if your period is expressed in days, and is very short, the policy might be only to count working days.

8.1.16 Here are examples of definitions of "working day", producing different policy results.

EXAMPLE (1)

*In this section, "working day" means any day other than –*

*(a) Saturday or Sunday,*

*(b) Christmas Day or Good Friday, or*

*(c) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.*

EXAMPLE (2)

*In this section, "working day", in relation to part of the United Kingdom, means a day other than –*

*(a) Saturday or Sunday, or*

*(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in that or any other part of the United Kingdom.*

8.1.17 Note that under the Banking and Financial Dealings Act 1971, Christmas Day and Good Friday are "bank holidays" in Scotland but not elsewhere in the United Kingdom.

**Months**

8.1.18 Months are a particular problem because of their varying lengths.

8.1.19 A period expressed in months beginning with a day will expire "on the eve of" (ie immediately before) the date corresponding to that with which the period begins.[6] For example, a period of one month beginning with 6 April will expire "on the eve of" 6 May - that is, the end of 5 May.[7]

8.1.20 So, where a period is expressed in months, the number of days in it will vary according to which day of which month the period begins on. A period of "1 month" beginning with 6 April (and therefore ending at the end of 5 May) will be shorter than a period of "1 month" beginning with 6 May (because April is shorter than May).

8.1.21 If variation of length in different cases is not desirable, it may be worth considering whether it would be better to express the period in weeks or days. But equality of length comes at the price of difficulty of calculation: it's easy to see that the end of the period of 3 months beginning with 6 April ends with 5 July, but harder to determine when the period of 90 days beginning with 6 April ends.

6.See the cases mentioned in footnote 2. This rule is not the same as the "corresponding date rule" which applies only where (as is not recommended) a period is expressed as beginning *after* a particular event: see *Dodds v Walker* [1981] 2 All ER 609.

7.What happens if there is no corresponding date? That might happen if the period begins with 31st of a month and the final month has 30 days; or if the period begins on 29th, 30th or 31st of a month and the final month is February. Common sense suggests that the period will end with the final day of the final month, which appears to be confirmed in *University of Cambridge v Murray* [1993] ICR 460 at 462 (Employment Appeal Tribunal).

# PART 9 SUBORDINATE LEGISLATION

## 9.1 FORM OF SUBORDINATE LEGISLATION

**Generally: regulations, not orders**

9.1.1 Powers to make subordinate legislation by statutory instrument should generally take the form of powers to make regulations rather than orders.[1]

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

9.1.3 It does not alter the 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.

9.1.4 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. There is of course section 105 of the Deregulation Act 2015 (which, among other things, allows provision which may be made by order to be made by regulations).

**Commencement powers conferred on Northern Ireland departments**

9.1.5 Where a commencement power conferred on a Northern Ireland department is exercisable by statutory rule, it should take the form of an order-making power (rather than a regulation-making power) for consistency with the practice in Northern Ireland.

1.This practice started in the 2014-15 session and was announced in a Written Ministerial Statement in both Houses of Parliament on 20 March 2014: Col 63 WS (Commons); Col. WS 15 (Lords).

## 9.2 ENABLING POWERS

### Different provision for different cases

9.2.1 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".

9.2.2 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.

9.2.3 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?

9.2.4 "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.

9.2.5 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".

9.2.6 "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".

9.2.7 For "different provision for different purposes" in the context of a commencement power, see Part 10.6.10 - 10.6.19.

### Different provision for different areas

9.2.8 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.

9.2.9 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 purposes 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**

9.2.10 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".

9.2.11 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.

9.2.12 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.

## 9.3 PROCEDURE

### Subordinate legislation made by a Minister of the Crown

*Making an instrument a statutory instrument*

9.3.1 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."

9.3.2 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.*

9.3.3 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...*

9.3.4 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").

9.3.5 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 of the Act, 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*

9.3.6 Use the following formula—

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

9.3.7 Note that it is the statutory instrument, rather than the regulations, which is said to be subject to annulment. This is to be consistent with section 5 of the 1946 Act. "In pursuance of" is recommended for the same reason.

*Affirmative resolution procedure*

9.3.8 Use the following formula—

> *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.*

9.3.9 The formula refers to a draft of the statutory instrument containing regulations, rather than a draft of the regulations themselves, for consistency with the wording of section 6 of the 1946 Act.

9.3.10 If you need to secure that a statutory instrument subject to affirmative procedure may also contain provision that would otherwise be subject to negative procedure, make that very clear. One way in which that is sometimes done is by using the formulation in 9.3.8 with the addition of the words "(whether alone or with other provision)" after "containing".

*Made affirmative procedure*

9.3.11 Use the following form of words as a starting point—

> *(1) A statutory instrument containing regulations under section [x] must be laid before Parliament after being made.*
>
> *(2) Regulations contained in a statutory instrument laid before Parliament under subsection (1) cease to have effect at the end of the period of [28 days] beginning with the day on which the instrument is made unless, during that period, the instrument is approved by a resolution of each House of Parliament.*
>
> *(3) In calculating the period of [28 days], no account is to be taken of any whole days that fall within a period during which—*
>
> *(a) Parliament is dissolved or prorogued, or*
>
> *(b) either House of Parliament is adjourned for more than four days.*
>
> *(4) If regulations cease to have effect as a result of subsection (2), that does not—*
>
> *(a) affect the validity of anything previously done under the regulations, or*
>
> *(b) prevent the making of new regulations.*

**Wales**

9.3.12 The position in relation to subordinate legislation made by the Welsh Ministers is similar to the position in relation to subordinate legislation made by a Minister of the Crown—

- section 1(1A) of the Statutory Instruments Act 1946 provides that where a power is conferred on the Welsh Ministers to make subordinate legislation and it is expressed to be exercisable by statutory instrument, the 1946 Act applies;
- section 11A of the 1946 Act modifies the Act so as to ensure that the procedural provisions work in relation to Senedd Cymru.

9.3.13 So use the following formulations—

*The Welsh Ministers may by regulations made by statutory instrument provide...*

*Regulations made by the Welsh Ministers under this Act are to be made by statutory instrument.*

*A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of Senedd Cymru.*

*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 Senedd Cymru.*

**Scotland**

*Making an instrument a Scottish statutory instrument*

9.3.14 A power of the Scottish Ministers to make an order, regulations or rules under an enactment is generally exercisable by Scottish statutory instrument: see section 27(1) and (2)(a) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). "Enactment" is defined to include Westminster Acts (see Schedule 1).

9.3.15 Where section 27(2)(a) of the 2010 Act applies it is unnecessary to provide separately in the enabling Act that the power is exercisable by Scottish statutory instrument; the established practice is to rely on section 27. This applies to powers conferred by free-standing provision or inserted into an existing Act (as does the guidance below on attracting affirmative and negative procedures).

9.3.16 Section 27(3) contains exceptions for cases involving a Minister of the Crown as well as the Scottish Ministers. If you are dealing with such a case you need to look at the exceptions.

*Negative and affirmative resolution procedures for Scottish SIs*

9.3.17 The affirmative and negative resolution procedures for Scottish statutory instruments are set out in sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

9.3.18 The procedures can be attracted by simply providing that the relevant regulations etc are subject to the negative/affirmative procedure.

EXAMPLE

*Regulations made by the Scottish Ministers under this Act are subject to the [affirmative/ negative] procedure.*

9.3.19 Note that the regulations (rather than the Scottish statutory instrument) are expressed to be subject to the relevant procedure. This is in contrast to the guidance in relation to statutory instruments under the Statutory Instruments Act 1946 and reflects the different wording of the 1946 and 2010 Acts.

9.3.20 Section 30 of the 2010 Act provides that if neither the negative nor affirmative procedure applies to devolved subordinate legislation the Scottish statutory instrument containing it must be laid before the Scottish Parliament. If this bare laying requirement is to be disapplied, the relevant enabling power must be added to the list in section 30(4).

*Signposting*

9.3.21 Where relevant, it may be worth signposting the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10). A reader who has not come across "negative procedure" or "affirmative procedure" before could be puzzled and may benefit from a signpost. Taking the example in 9.3.16, one possibility would be to add "(see Part 2 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10))".

**Northern Ireland**

*Making an instrument a statutory rule*

9.3.22 A power of a Northern Ireland Department to make an order, regulations, rules or other subordinate legislation is generally exercisable by "statutory rule": see the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)). The 1979 Order provides for the registration and numbering of statutory rules.

9.3.23 Article 4 of the 1979 Order provides:

> "4. In this Order "statutory rules" means-
>
> (a) all orders, rules, regulations or byelaws having effect in Northern Ireland made after 31st December 1958 by a rule-making authority in exercise of any power of a legislative character conferred by—
>
> ...
>
> (iv) any Act of the Parliament of the United Kingdom passed after 1st January 1974, if the power is expressed to be exercisable by statutory rule for the purposes of the Statutory Rules Act (Northern Ireland) 1958 or this Order."

9.3.24 The 1979 Order can be attracted by providing that the power of the relevant Northern Ireland department to make regulations is exercisable by statutory rule for the purposes of the Order.

EXAMPLE

*A power of [the Northern Ireland Department] to make regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).*

9.3.25 Note that the power is expressed to be exercisable by statutory rule, which contrasts with the approach taken in relation to England or Wales where the usual approach is to provide for the regulations to be made by statutory instrument etc.

*Negative and affirmative procedures for statutory rules*

9.3.26 For negative instruments, the usual approach in relation to Northern Ireland is to attract the definition of "subject to negative resolution" in section 41 of the Interpretation Act (Northern Ireland) 1954. The definition does not, without more, apply in relation to Westminster Acts and it extends to Northern Ireland only. To attract the definition you therefore need to refer to it expressly.

EXAMPLE

> *Regulations made by [the Northern Ireland Department] under this Act are subject to negative resolution within the meaning given by section 41(6) of the Interpretation Act (Northern Ireland) 1954.*

9.3.27 For the affirmative procedure the usual approach is to adopt wording along the following lines.

> EXAMPLE
>
> *Regulations may not be made by [the Northern Ireland Department] under this Act unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.*

9.3.28 Although section 41 of the Interpretation Act (Northern Ireland) 1954 defines "subject to affirmative resolution", the procedure referred to is an unusual form of affirmative procedure, so it is rare to rely on that definition.

9.3.29 Note that in both cases, negative and affirmative, the regulations (rather than the statutory rules) are expressed to be subject to the relevant procedure. This is in contrast to the guidance in relation to statutory instruments under the Statutory Instruments Act 1946 and reflects the different wording of the Northern Ireland legislation.

**Location of procedural provision**

9.3.30 In some Bills, each provision which confers a power to make subordinate legislation applies any necessary parliamentary procedure. This may be helpful to readers of the Bill in Parliament, so they can see immediately what level of scrutiny is proposed.

9.3.31 But, where a Bill confers a number of powers to make subordinate legislation, it may be more helpful to readers of the eventual Act if these matters are dealt with in general provisions situated at the back of the Act (since for most readers of the Act this is rather technical material which is unlikely to be of interest). See also paragraph 10.6.23 (separation of commencement powers from other powers).

9.3.32 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).

## 9.4 LAYING DOCUMENTS BEFORE PARLIAMENT

### Laying documents before Parliament

9.4.1 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.

9.4.2 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".

9.4.3 This does not apply to statutory instruments subject to the affirmative resolution procedure because they also have to be approved by a resolution of each House — see 9.3.8.

## 9.5 AMENDING SUBORDINATE LEGISLATION

### Amending subordinate legislation

9.5.1 A Bill is occasionally used to amend subordinate legislation.

9.5.2 The question arises whether a saving is needed to allow the enabling power under which the subordinate legislation is made to be re-exercised in future to amend material inserted by the Bill. A saving should not be included as a matter of course and should be included only in the rare case where, as a matter of statutory interpretation, there is something about the context of the amendments which might cast doubt on the future exercise of the power.

9.5.3 If proposed amendments need to go beyond the scope of the enabling power this will normally indicate that the legislative result should be achieved by some other means (for example, by free-standing provision in the Bill).

# PART 10 FINAL PROVISIONS

## 10.1 INTRODUCTION

10.1.1 This Part is about provisions of a general nature that appear towards the end of a Bill.

10.1.2 The Appendix contains example clauses that illustrate many of the recommendations in this Part. The example clauses will not produce the right result in every case so careful thought needs to be given about how far to follow them.

## 10.2 ORDER OF FINAL PROVISIONS

### Running order

10.2.1 Use this order as a starting point—

Power to make consequential provision
Regulations (including parliamentary procedure)
Interpretation
Extent
Commencement and transitional provision
Short title

10.2.2 In a very short Bill where there is no need to include a power to make transitional provision in the commencement clause it may make sense to deal with extent, commencement and short title in a single clause.

10.2.3 Provision may also be needed for—

General provisions about offences (bodies corporate, unincorporated associations)
Directions
Notices/service of documents
Financial provisions
Crown application
Devolution
Application to Scillies/Isle of Man/Channel Islands
Index

### Heading

10.2.4 If a single italic heading or Part heading is used to cover all the final provisions of a general nature, it should be "General" (rather than, for example, "Supplementary" or "Miscellaneous").

## 10.3 FINANCIAL PROVISION

### Introduction

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

### Clause heading

10.3.2 The heading for clauses dealing with effects on public expenditure should be "Financial provision[s]", whatever the precise nature of the effects.

### Form of provision

10.3.3 It is recommended that provision dealing with such effects should refer to—

*There is to be paid out of money provided by Parliament—*

*(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 His 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.*

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

## 10.4 EXTENT

### What is extent?

10.4.1 A proposition about the "extent" of a statutory provision is a proposition about the jurisdictions whose law is being changed by the provision.

10.4.2 The relevant jurisdictions within the United Kingdom are—

- England and Wales (note that this is a single jurisdiction);
- Scotland;
- Northern Ireland.

10.4.3 "Extent" should be distinguished from "application", which concerns the persons and matters to which the provision relates. For example, a legal proposition may "extend" to England and Wales - that is, form part of the law of England and Wales - even though it only applies to persons in England.

### State extent positively

10.4.4 There is a strong judicial presumption that, in the absence of provision to the contrary, Acts of the Westminster Parliament extend to each part of the UK but not beyond it (even though Parliament may legislate, in particular, for the Channel Islands, the Isle of Man and the British overseas territories).[1]

10.4.5 However, the recommended approach is not to rely on that presumption but to spell out the extent of all the provisions of the Bill (including the final provisions).

10.4.6 So, for an Act or a provision of an Act which extends to the whole of the UK, but not beyond, spell its extent out positively.

EXAMPLE

*This Act extends to England and Wales, Scotland and Northern Ireland.*

10.4.7 Where a provision extends to all three jurisdictions within the UK, it is better to refer to each of them than to "the United Kingdom" as such.

10.4.8 Equally, for an Act which extends to one or two jurisdictions within the UK, spell that out positively.

EXAMPLES

*This Act extends to England and Wales.*

*This Act extends to England and Wales and Scotland.*

---

1.*R v Jameson* [1896] 2 QB 425, 430, QBD; *Attorney General for Alberta v Huggard Assets Ltd* [1953] AC 420, 441.

10.4.9 There may of course be cases where it is not convenient, or not helpful, to state extent expressly, even if the Act is thought to extend only to the UK: for example, where an Act simply amends an existing Act which itself has no specific extent provision.

10.4.10 A different approach will also be needed for an Act which extends, or might extend, beyond the UK.

10.4.11 Remember to consider the extent of amendments where providing expressly for the extent of general provisions. Normally general provisions should extend at least as far as each jurisdiction to which any provision of the Bill (including an amendment) extends.

**Amendments with the same extent as the amended Act**

10.4.12 Where an Act contains a number of textual amendments, and the intention is that they have the same extent as the enactments amended, it is often convenient to say just that.

EXAMPLES

*Any amendment or repeal made by this Act has the same extent as the provision amended or repealed.*

*Any amendment, repeal or revocation made by this Act has the same extent as the provision amended, repealed or revoked.*

10.4.13 But watch out for cases where the catch-all wording does not produce a clear result. For example, the catch-all wording is unclear where you are inserting a new section between two sections with different extents: what is the extent of the provision amended?

10.4.14 There are also other cases where it may be more useful for the reader to be told what the extent of each amendment is, rather than just to be told that the amendment has the same extent as something else.

10.4.15 Whatever approach is adopted, make sure that you know the extent of the existing provision in each case. It is possible that an existing enactment may have been extended to another jurisdiction by another enactment.

10.4.16 Where you are amending an Act which also extends to the Channel Islands or the Isle of Man (whether it does so on its face or by virtue of a power to extend it there), the general kind of wording will need to be limited to the United Kingdom, so as to avoid the amendments extending to the Islands directly by operation of the Bill.

EXAMPLE

*Any amendment made by this Act has the same extent <u>within the United Kingdom</u> as the provision amended.*

**Amendments with different extent from the amended Act**

10.4.17 Try to avoid making amendments that have a more limited extent than the provision amended (for example, an amendment to a UK Act where the amendment is limited to England and Wales). Otherwise you will create parallel texts in different parts of the UK, which is confusing and a potential trap.

10.4.18 One way of doing this may be to limit the application of your proposition rather than its extent (see paragraph 10.4.3).

**Amendment of extent provisions**

10.4.19 Draft on the basis that the extent of an amendment is governed by the extent provision of the *amending* Act. On that basis, there is no need to amend the extent provision of the Act amended, even if the amendment has a different extent from other provisions in that Act; and doing so should be avoided.

**Complex propositions about extent**

10.4.20 An Act may well 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.

10.4.21 You will want to produce a provision which is itself as simple as possible. You will also want 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.

10.4.22 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.

10.4.23 So, 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 extends to England and Wales, Scotland and Northern Ireland, subject as follows.*

*(2) Section 77 and Schedule 6 extend to England and Wales and Northern Ireland only.*

*(3) Section 79 and Schedule 8 extend to England and Wales and Scotland only.*

10.4.24 Conversely, if the bulk of the Act has a narrow extent (say, England and Wales only), it may be best to start off with that and then build up.

EXAMPLE

*(1) This Act extends to England and Wales only, subject as follows.*

*(2) Section 61 extends to England and Wales and Scotland.*

*(3) Part 5 and this Part extend to England and Wales, Scotland and Northern Ireland.*

10.4.25 Do not make readers search through all the provisions of the extent clause to find out the extent of the particular provision in which they are interested.

EXAMPLE (to avoid)

*(1) This Act extends to England and Wales only, subject as follows.*

*(2) Sections 12 to 15 extend also to Scotland.*

*(3) Sections 16 to 22 extend to Scotland only.*

*(4) Sections 11 to 14 extend also to Northern Ireland.*

*(5) Sections 31 and 78 extend to Northern Ireland only.*

10.4.26 The problem in that example is that to find 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 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 may cause error.

10.4.27 The reader is likely to want to know the jurisdictions to which any given provision extends. So 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.*

*(2) Part 8 extends to England and Wales and Scotland.*

*(3) Part 9 extends to England and Wales and Northern Ireland.*

*(4) This Part extends to England and Wales, Scotland and Northern Ireland.*

## 10.5 Powers to extend to Channel Islands and Isle of Man

### Introduction

10.5.1 This is about what to say where provision in a Bill is, by means of a power conferred on His Majesty by Order in Council, to extend to the Channel Islands and/or the Isle of Man ("the Islands").

10.5.2 A power to extend provision to the Islands should not be subject to any Parliamentary procedure.

### Free-standing provision

10.5.3 For a power to extend free-standing provision to the Islands, the recommended form of words is—

> *His 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.*

10.5.4 If the provision to be extended is the repeal of an Act, the recommended form of words is—

> *His Majesty may by Order in Council provide for the repeal of [Act x] in [section y] to extend to any of the Channel Islands or to the Isle of Man.*

### Textual amendment of Act which extends to Islands on its face

10.5.5 For a power to extend amendments to the Islands, in a case where the Act amended extends on its face to the Islands, the recommended form of words is—

> *His Majesty may by Order in Council provide for any of the amendments made by [or under] this Act of any part of [the Act being amended] to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.*

10.5.6 If you are also taking a power to extend free-standing provision (see Part 10.5.3), make express reference to both the free-standing provision and the textual amendments.

> EXAMPLE
>
> *His Majesty may by Order in Council provide for—*
>
> *(a) [sections x to y of this Act], and*
>
> *(b) any of the amendments made by [or under] this Act of any part of [the Act being amended],*
>
> *to extend, with or without modifications, to any of the Channel Islands or to the Isle of Man.*

10.5.7 By the way, make sure that a general proposition to the effect that amendments have the same extent as the enactments amended does not inadvertently extend the amendments to the Islands directly: see Part 10.4.16.

**Textual amendment of Act containing power to extend to Islands**

10.5.8 What happens where you want a power to extend amendments to the Islands, in a case where the Act amended can be or has been extended to the Islands under a power contained in that Act?

10.5.9 The recommended approach is expressly to apply the existing power to your amendments, using the following form of words—

> *The power under section x of [the Act being amended] may be exercised so as to extend to any of the Channel Islands or the Isle of Man any amendment or repeal made by [or under] this Act of any part of that Act (with or without modifications).*

10.5.10 This is recommended in preference to conferring a completely new power in the Bill to extend your amendments to the Islands; or to making the amendments and relying on silence to achieve the result that the existing power in the Act applies to that Act as amended.

10.5.11 If you also have free-standing provision which is to be extended to the Islands by means of a new power, deal with that separately.

10.5.12 Again, make sure that a general proposition to the effect that amendments have the same extent as the enactments amended does not extend the amendments to the Islands directly: see Part 10.4.16.

**Preservation of powers of extension**

10.5.13 This section is for a case where (a) you are repealing for the UK an Act which has been extended to the Islands by means of a power contained in that Act and (b) the Act needs to stay alive in the Islands after the UK repeal (whether indefinitely or until a power to extend the repeal is exercised).

10.5.14 You should make it clear that the UK repeal does not affect the continuing operation of the original power of extension so far as the Islands are concerned. So say something to the effect that the repeal within the UK "*does not affect any power by Order in Council to make provision extending to any of the Channel Islands*".

## 10.6 COMMENCEMENT AND TRANSITIONALS

### "Commencement" and "coming into force"

10.6.1 Normally, 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".

EXAMPLE

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 it comes into force.*

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

10.6.3 For the sake of conformity with long-standing practice, "commencement" should also be used in the heading for the section of an Act which deals with its coming into force.

### Commencement on Royal Assent

10.6.4 Provisions that are to come into force on Royal Assent should be identified expressly.

10.6.5 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 (where provision is made for an enactment to come into force on a particular day, it comes into force at the beginning of the day).

EXAMPLE

*Sections X and Y and Schedule Z come into force on the day on which this Act is passed.*

10.6.6 Very exceptionally the desired policy may involve specifying a particular time of day.

### Commencement at end of fixed period

10.6.7 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**

10.6.8 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.

10.6.9 An "appointed day" provision should take the form of a positive statement.

EXAMPLE

This Act comes into force on such day as X may by regulations appoint.

*not*

This Act does not come into force until such day as X may by regulations appoint.

**Differential commencement**

10.6.10 Sometimes where there is a power to commence it is not desired that everything should be brought into force all at once.

10.6.11 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".*

10.6.12 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.

10.6.13 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 purposes.

10.6.14 If that is done, you do not need "day *or days".*

10.6.15 Note that "different purposes" should not be used to cover "different areas" (see 9.2.8 - 9.2.9).

**Power to make transitional or saving provision**

10.6.16 A power to make transitional or saving provision in connection with commencement may be necessary where a Bill provides for commencement by regulations or at the end of a fixed period (eg 2 months after Royal Assent).

10.6.17 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.

10.6.18 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.

10.6.19 A free-standing power to make transitional or saving provision should normally be included, rather than providing that transitional and saving provision may be included in commencement regulations. This ensures that the power covers transitional provision in connection with the commencement of provisions for which the a date is fixed by the Bill (eg 2 months after Royal Assent).

10.6.20 There are examples of powers to make transitory provision in connection with commencement. 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.

10.6.21 Transitory provision is often transitional in nature, in which case there is no need to mention it expressly since it is covered by the power to make transitional provision. The mere fact that the regulations make provision for a limited period does not require express cover. An express power to make transitory provision is therefore usually unnecessary.

**Structure**

10.6.22 It can sometimes be unclear how powers conferred generally in relation to regulations under the Bill will work in relation to commencement powers and powers to make transitional and saving provision in connection with commencement.

10.6.23 So it is usually best to exclude the powers relating to commencement from any general provision about what may be included in regulations and deal with everything relating to commencement separately.

10.6.24 This means that the commencement clause will often include—

- a free-standing power to make transitional or saving provision;
- provision authorising commencement regulations to make differential provision;
- provision for regulations under the clause to be made by statutory instrument.

## 10.7 EXPIRY AND SUNSET

### How to express temporary effect

10.7.1 To secure that legislative provision has limited duration, do one of the following—

(1) say that the enactment **has effect for a certain period** only

*This Act has effect for a period of 10 years beginning with [date]*

or

(2) say that the enactment **expires** at a certain time

*This Act expires at the end of a period of 10 years beginning with [date]*

10.7.2 The difference between these two is merely presentational: (1) focuses on the duration of the temporary law while (2) focuses on its expiry. Which is more appropriate in any given case will depend on the emphasis you want to give.

10.7.3 If you use method (2), avoid saying that a provision expires "on" a particular day, as it may not be clear whether it expires at the beginning or end of the day (or at any other time on the day).

10.7.4 Other methods have sometimes been used: for example saying that an enactment "ceases to have effect" at a certain time, or that it is "repealed" at a certain time.

10.7.5 However, to say that an enactment "ceases to have effect" at a certain time is perhaps less clear than either methods (1) or (2).

10.7.6 To say that an enactment is "repealed" at a certain time has no obvious advantage over methods (1) and (2) and gives rise to a possible difficulty if the enactment consists of the repeal of another enactment. Section 15 of the Interpretation Act 1978 has the effect that the repeal of a repealing enactment does not revive the repealed enactment. That is unlikely to be the result wanted. In contrast, if the repealing enactment were said to expire, the repealed provision would revive.

10.7.7 So for those reasons, and in the interests of consistency, methods (1) and (2) are recommended.

### Duration to be separately expressed

10.7.8 The House of Commons Standing Orders make specific provision about temporary laws. SO No. 81 (temporary laws) requires: "The precise duration of every temporary law or enactment shall be expressed in a distinct clause or subsection of the bill."

**Effect of expiry**

10.7.9 Consider whether it is clear from the text and the circumstances what the effects of expiry will be.

10.7.10 If a temporary enactment confers power to make subordinate legislation, any legislation made under it will cease to have effect from the time of the expiry of the enactment (but of course with the savings provided for in section 16 of the Interpretation Act 1978). So some transitional or saving provision may be needed.[1]

10.7.11 Obviously, if it is appropriate to make specific savings relating to the period after the expiry of a temporary enactment or other provision about the consequences of expiry, those specific savings or other provisions should not be caught by the provision for expiry.

1.See for example section 12 of the Public Bodies Act 2011.

## 10.8 SHORT TITLES

### Form for conferring short title

10.8.1 For consistency, always use the following formulation—

*"This Act may be cited as...."*.

# PART 11 WORDS AND PHRASES

## 11.1 WORDS AND PHRASES

**affect**

11.1.1 The "nothing in provision A affects provision B" formula is useful if you do not know all the effects that A might have on B, or where those effects would be too numerous to mention. But if you can identify what effect it is you have in mind, that may help the reader (so, for example, "A does not limit B").

**any**

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

11.1.3 "Any" can be ambiguous.

EXAMPLE

*The Minister must consult any organisation appearing to be representative of substantial numbers of mushroom growers.*[1]

Is this any one organisation or all organisations?

11.1.4 "Any" may be of course be useful to emphasise that something is of universal application or without qualification (but consider whether emphasis is really needed).

**apart from**

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

11.1.6 However, 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.

**description**

11.1.7 This can seem rather vague and abstract ("animals of a description specified in regulations"). Drafters might like to consider *kind*, *class* or *category* (or even *sort*?).

1.The example is taken from *Thornton's Legislative Drafting* (op. cit), p. 108.

11.1.8 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.

**function**

11.1.9 Draft on the basis that the natural meaning of "function" covers powers and duties. (In *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 A.C. 1. Lord Templeman said that the word "functions" in section 111 of the Local Government Act 1972 embraced: "all the duties and powers of a local authority; the sum total of the activities Parliament has entrusted to it.")

11.1.10 A definition to the effect that "functions" includes powers and duties is generally unnecessary and unhelpful. If something further is needed, consider whether it is possible to get the point across more clearly.

**prescribe**

11.1.11 *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 can be extremely useful. But a more precise word may make more impact: *give, fix, set, set out, state* all carry more of a punch and 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*

11.1.12 *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. There is clear evidence that many users of legislation find expressions like "person of a prescribed description" bewildering

EXAMPLE
*In this section, "qualifying young person" means a person of a prescribed description*
This could perhaps be
*In this section "qualifying young person" means a person of a description specified in regulations made by the Secretary of State.*

**provide**

11.1.13 Where legislation *provides* for something it effects or gives rise to that thing in law. It is very useful because it does not require that the legislation should create it 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.

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

11.1.15 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.

**provision**

11.1.16 *Provision* is 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?

11.1.17 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.*

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

EXAMPLE*S*
*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.*

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

11.1.20 *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.

11.1.21 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
*This does not affect the provisions of any regulations under this section....*
would mean the same without "the provisions of".

**pursuant to, in pursuance of**

11.1.22 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".

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

11.1.24 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....".*

11.1.25 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.

11.1.26 *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.

11.1.27 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.

11.1.28 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.**

11.1.29 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).

11.1.30 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*

**satisfy**

11.1.31It is enough to "meet" a condition; you don't also need to satisfy it.

**subject to**

11.1.32 "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)*

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

11.1.34 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.

11.1.35 "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).

11.1.36 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.

11.1.37 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.

11.1.38 See also Part 3.10, *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.

**such**

11.1.39 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 the Minister specifies*.

**supplemental / supplementary**

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

**by virtue of**

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

11.1.42 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*.

11.1.43 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**

11.1.44 "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.

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

11.1.46 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).

**without prejudice**

11.1.47 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*

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

11.1.49 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 one.

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).*

11.1.50 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...*

# APPENDIX EXAMPLE END PROVISIONS (BASED ON PARTS 9 AND 10)

## General

### 10 Power to make consequential provision

(1) The Secretary of State may by regulations make provision that is consequential on this Act.

(2) Regulations under this section may amend, repeal or revoke provision made by or under an Act passed—

(a) before this Act, or

(b) later in the same session of Parliament as this Act.[1]

### 11 Regulations[2]

(1) A power to make regulations under any provision of this Act includes power to make—

(a) consequential, supplementary, incidental, transitional or saving provision;

(b) different provision for different purposes [or areas].

(2) Regulations under this Act are to be made by statutory instrument.

(3) A statutory instrument containing any of the following [(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—

(a) regulations under section [X];

(b) regulations under section [Y] that amend or repeal provision made by an Act.

(4) Any other statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament.

(5) This section does not apply to regulations under section 13.

### 12 Extent

(1) Part 1 extends to England and Wales only, subject to subsection (2).

(2) An [amendment or repeal] [OR] [amendment, repeal or revocation] made by Part 1 has the same extent as the provision [amended or repealed] [OR] [amended, repealed or revoked].

1. The wording here will allow the amendment of future subordinate legislation made under an Act passed before this Act or in the same session. Whether this is appropriate and what (if any) other instruments need to be capable of amendment will differ from case to case.
2. This example does not deal with devolved subordinate legislation, as to which see Part 9.

(3) This Part extends to England and Wales, Scotland and Northern Ireland.

**13 Commencement**

(1) Section 1 comes into force at the end of the period of two months beginning with the day on which this Act is passed.

(2) The other provisions of Part 1 come into force on such day [or days] as the Secretary of State may by regulations appoint.

[(3) Different days may be appointed for different purposes [or areas].][3]

(4) This Part comes into force on the day on which this Act is passed.

(5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.

(6) The power to make regulations under subsection (5) includes power to make different provision for different purposes [or areas].

(7) Regulations under this section are to be made by statutory instrument.

**14 Short title**

This Act may be cited as the End Provisions (Example) Act 2017.

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3. If this is included then you don't need the words in square brackets in subsection (2).