

CHAPTER V LEGISLATIVE DRAFTING

VARIOUS STAGES OF DRAFTING LEGISLATION

There are five (5) stages of drafting and they are:

- i. Receiving and Understanding
- ii. Analysis of the instruction
- iii. Designing the Draft
- iv. Composition
- v. Scrutiny or revision

i. UNDERSTANDING THE INSTRUCTION

It is essential that the drafter understands fully, the instruction received in respect of the law he is going to draft. He can consult with the instructing office at an early stage after receipt of the preliminary drafting instructions. It is helpful if the following are borne in mind and are contained in the drafting instruction:

- a. Sufficient background information of the reason for the legislation.
- b. The principal objects of the legislation must be clearly stated.
- c. The means whereby the principal objects are to be achieved should be stated.
- d. All known implications, difficulties whether legal, social or administrative associated or contemplated by the proposals should be stated.

ii. ANALYSIS OF THE INSTRUCTION

Legislative proposals should be carefully analysed in relation to the following

- a. Existing Law - The Law should not by implication amend or repeal an existing law and should not be a re-enactment of an existing law.
- b. Special Responsibility Area; - It should be legal and in consonance with public policy, Constitutional, it should be within the legislative competence of the enacting body, not derogate from the fundamental human rights of citizens, not conflict with Chapters II and IV of the Constitution of the

Federal Republic of Nigeria, 1999, not retroactive, takes cognisance of the federalism of Nigeria, must note electoral promises of party in Government, etc

- c. Practicality- this goes to enforcement legislation.

iii. DESIGN

This is the outline or framework prepared by the drafter to assist him in visualizing the shape or broad content of the enactment. He then prepares the following;

- a. A precise outline of the objectives and principles to be contained in the legislation.
- b. A statement of the principal means of attaining the objectives and principles.
- c. Design the structure of the draft statute, e.g. the substantive provisions and the administrative provisions of the bill.

This is seen in the arrangement of sections of an Act.

iv. COMPOSITION

The drafter will, invariably, rely on some aids to compose. These aids include precedents, statutes on similar subjects or related subjects, both local and from other jurisdiction. Use of precedents saves time and using precedents from the same jurisdiction may contribute in no small way to consistency of approach, which in turn, will contribute to statute law, becoming a coherent body rather than a patch work.

v. SCRUTINY

This is the last stage of drafting: One expects the draftsman to have checked and rechecked the drafts in previous stages, and must have had series of conferences and meetings, both formal and informal with those sponsoring the statute. At this stage however, one should ask an independent eye, preferably a legal practitioner, to have another critical look at the draft, for someone who has been involved as the drafter may not spot drafting and other clerical errors.

FORMALITIES AND ARRANGEMENTS

i. Arrangement in parts

Parts are desirable in legislation. They are the arrangement of clauses into groups of related ideas. Particularly needed in large or complicated legislation such as; the Constitution, CAMA, Criminal Code, Evidence Act etc. Legislation is divided into parts as a book is broken into chapters to improve its readability. Parts of a legislation are numbered in Arabic Numerals e.g. Part 1, Part 2, Part 3 etc. The criteria to be used to determine if any legislation should be divided into parts or not are:

- a. Length of the legislation
- b. Sub-themes.

The basic divisions or order of arrangement we find in legislation are: preliminary Provisions, principal provisions, miscellaneous provisions and final provisions. The matters we expect to find under each of these are:

A printed descriptive heading usually in bold capitals is placed beneath or adjacent to the number of each part.

Advantages of dividing any legislation into parts are

- a. Clarity of presentation
- b. Ease of reference

ii. Legislation are divided into the following segments:

Preliminary provisions. (is made up of the; long title, preamble, Enacting Clause, Short title, etc)

Principal Provisions, (substantive and administrative provisions)

Final Provisions. (Saving, transitional provisions, repeals, consequential amendments and schedule)

A FEW CONCEPTS IN LEGISLATIVE DRAFTING

- Arrangement of Sections
- Long title
- Preamble
- Short title
- Commencement
- Enacting formula
- application
- Interpretation
- Marginal notes

- Establishment
- Application
- schedule

1. Long title:

The long title forms part of the enactment. It comes at the beginning of the enactment. It indicates the general purpose of the legislation; contains the essence of the enactment. It can be used in the interpretation of the legislation and ascertaining the scope of the Legislation. See *Vecher & Sons Ltd v. London Society of Compositors* (1913) A.C. 107 at 128; *Osawaru v. Ezeiruka* (1978) 6 & 7 S.C. 135 at 149. See also *Wykes* (1961) Ch 229 at 242.

The long title should be drafted in terms wide enough to embrace the whole of the contents of a bill.

It is drafted in bold large letters (take a look at examples from the Laws of the Federation).

Note the inclusion of the phrase “and for connected purpose” or words having the same effect. See *Ibrahim v Judicial Service Commission* (1998) 12 SCNJ Where the law is to amend or repeal earlier legislation, the long title must reflect that

2. Preamble:

The function of the preamble is to explain the object of the law or the reasons why the legislation is desirable. It may be used in the construction of the legislation where the operative parts are ambiguous. See Vol. 36 Halsbury's Laws of England 3rd Edition, page 370-1 and Craines on Statute 7th edition page 203. Note that it is hardly used in modern legislations except in certain circumstances. See *A.G. v. Ernest Augustus of Hanover* (1957) A.C. 436 at 463; *The Norwhale* (1975) 2 ALL E.R. 501; *Ogbonna v. A.G. Imo State* (1992) 2 SCNJ (Pt 1) 26; *Chief Onabanjo v. Concord Press* (1981) 2 NCLR 399 @ 406; *Opeola v. opadiran* (1994) 5 NWLR (Pt 344) 368.

For example see Preamble to the Land use Act 1978.

It is generally used in recent legislation where:

1. the subject matter of the legislation is of constitutional or international importance;
2. the legislation is of a formal or ceremonial character or intended to mark a noteworthy event such as an anniversary, state visit or historic occasion.

Commencement:

The commencement of an Act is not the same thing as the passing of the Act. An Act commences when it comes into force. An Act is passed when it is assented to by the President. It then technically becomes part of the country's body of laws. See *Kotoye v. Saraki* (1994) 7- 8 SCNJ (Pt III) 524; see *Obimami Brick & Stone (Nig) Ltd v. A.C.B* (1992) 3 SCNJ 1 at 53. Note the various ways the commencement date can be determined. See *Yabugbe v. Police* (1992) 4 SCNJ 116 at 130.

There are 4 possibilities:

- The legislation may make no specific provision; in which case, it will commence on the day it is assented to by the president or the day it is published.
- It may specify a date for the commencement; it could be drafted thus: Commencement [23rd November, 2015] or This Act comes into force on 23 November 2015.
- It may empower some named person or persons to specify the commencement date; This Act comes into force on such day as the Minister appoints by notice in the Gazette.
- It may provide for the Act to commence upon the occurrence of a stipulated event. This Act comes into force on the day the Supreme Court declares a governor invalidly elected.

Enacting formula:

There is usually an authority which gives efficacy to the statute being made into law.

The method of drafting this authority therefore differs from jurisdiction to jurisdiction.

Nigerian Example:

- i. ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:

- ii. In a State's Legislation: ENACTED by the House of Assembly of Lagos State as follows:
- iii. Under the Military Regimes we used to have ~~THE~~ FEDERAL MILITARY GOVERNMENT hereby decrees as follows:-
- iv. THE STATE MILITARY GOVERNMENT OF OYO STATE hereby makes the following edict:-

Establishment:

This establishes statutory bodies and confers their powers and duties. An establishment clause is drafted where the legislation sets up a statutory body. See *Acme Builders v. KSWB* (1999) 2 NWLR (Pt 590) 288 at 313. It may be found in any of the segments of legislation. —“Here is established a body to be known as the”

Short Title (Citation):

The purpose of a short title is to identify, describe and cite the law; *Vacher & Sons Ltd v. London Society of Compositors* (1913) A.C. 107 at 128 described short title as “a statutory nickname” to obviate the necessity of always referring to the Act under its full and descriptive title.

Application:

The application of a law could be all embracing. It could be territorial and it could be limited to specific things or persons.

Application provisions may relate to;

- (i) The circumstances prevailing when the legislation comes into force;
- (ii) A territorial area;
- (iii) To specific persons or thing e.g. National Youth Service Corps Act Cap 285 LFN 1990 applies only to Youth Corps members.
S.I Property and Conveyancing Law 1959 restricted to conveyancing of land.
- (iv) To the State or the Government

Duration:

In the absence of special provisions to the contrary, legislation, until repealed, spent or otherwise amended, is of perpetual duration. See *Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR (pt 498) 124.

This Act shall continue in force until the 31st day of July 1970, and shall then expire, unless parliament, by affirmative resolutions by both Houses, otherwise determines,”

Marginal Notes:

Also referred to as statutory signpost; they indicate what to find in the section to which they are annexed. They are contained in the margin of each section. See *A. G. Federation v. ANPP (2003) 15 NWLR (Pt 844) 600*. In some jurisdictions Marginal Notes are referred to as Section notes, in some, Head notes or shoulder headings. They correspond to the arrangement of sections of the legislation

Savings:

This is used to preserve or save a law, a right or a privilege which would otherwise be repealed or cease to have effect.

Repeals:

Legislation is repealed when its operation is brought to an end by the legislature. The repeal of a law may be express or by implication. See *Releigh Industries (Nigeria) Ltd v. Nwaiwu (1994) 4 NWLR (Pt 342) 760*. Note the effect of the repeal of a law. Section 6 Interpretation Act, 1964 See *Sossa v. Fokpo (2000) FWLR (Pt 22) 1111*.

Explanatory Notes:

Does not form part of a law. See *Udoh v. National Orthopaedic Hospital Management Board (1973) 7 SCNJ 432; (1973) 7 NWLR (Pt 304) 139 at 148; A.G. Abia State v. A.G. Federation (2003) 4 NWLR (Pt 809) 124*

Interpretation/ Definition:

Used to avoid ambiguity; clarifies intended meaning

Prevents tedious repetition thereby shortens legislation

To abbreviate group of words e.g. UNESCO

It aids understanding of the Act

When stipulating a meaning use “MEANS”

When extending meaning use “includes”

When narrowing meaning use “means” or “does not include”

The meaning of words and phrases provided in an Act is limited to the text of the Act in which they are defined and may not be used in inferring meaning to the same words in a different statute. Where a word is defined in the Interpretation Act, 1964 and the same word is defined by a statute the meaning provided in the statute with respect to that statute shall prevail.

Schedule:

A schedule is a device in a law by which matters of technical and detailed nature that naturally belong to an enacting section are arranged away in the schedule to avoid clumsiness and distraction when reading the law. They also ease comprehension of such provision. A schedule forms part of the law where they are referred to in the enacting section. This is called incorporation by reference. They also refer to the section which enacts them. This is cross referencing. See *A.G. v Lamplough* (1878) EXD 214 229; *Egolum v Obasanjo* (1999) 5 SCNJ 71 at 129.