LED 023
DRAFTING PROCESS

NATIONAL OPEN UNIVERSITY OF NIGERIA

COURSE GUIDE

LED 023
DRAFTING PROCESS

Adapted From:	Commonwealth of Learning
Programme Leader:	Dr. Godwin Ifidon Oyakhiromen National Open University of Nigeria. Victoria Island Lagos.
Course Co-ordinator:	Omotayo Obayemi National Open University of Nigeria. Victoria Island Lagos.
Adapted By:	Mrs. Asikia Ige Faculty of Law University of Lagos Akoka, Lagos.

NATIONAL OPEN UNIVERSITY OF NIGERIA

National Open University of Nigeria
Headquarters
14/16 Ahmadu Bello Way
Victoria Island
Lagos

Abuja Annex
245 Samuel Adesujo Ademulegun Street
Central Business District
Opposite Arewa Suites
Abuja

e-mail: centralinfo@nou.edu.ng
URL: www.nou.edu.ng

National Open University of Nigeria 2006

First Printed 2006

ISBN: 978-058-387-4

All Rights Reserved

Printed by ……………..
For
National Open University of Nigeria

TABLE OF CONTENTS PAGE

Introduction …………………………………………………………. 1
Course Objectives ……………………………………………………… 1
Working Through this Course ………………………………………. 1
Course Materials ……………………………………………………. 1-2
Study Units …………………………………………………………….. 2
Textbooks and References ……………………………………….. 2
Assessment …………………………………………………………….. 3
Tutor Marked Assignments (TMAs) …………………………….. 3
Final Examination and Grading ………………………………….. 3
Course Marking Scheme …………………………………………. 4
Course Overview /Presentation Schedule ………………………... 4
How to get the most from this Course …………………………… 4-5
Tutors and Tutorials ……………………………………………..... 5
Summary ……………………………………………………………. 6

Introduction

This Course deals with the general procedures typically followed in the preparation of legislation and the law-making process, giving particular emphasis to those stages with which Legislative Counsel are likely to be principally concerned. We pay particular attention to one procedure above all others - getting instructions from the client - because of its importance for drafters.

Course Objectives

The aim of this course is to equip and expose you to Legislative Drafting Process. By the end of this Course, you should be able to:

(i) Describe the steps by which legislative proposals are formulated and translated into legal provisions, and the procedure by which those provisions are validated as legislation;

(ii) Explain the respective functions of administrators and Legislative Counsel in the preparation of Bills in Nigeria;

(iii) Give an account of the value and functions of instructions in preparing legislation and the practice in relation to them;

(iv) Undertake an analysis of simple instructions and determine when further instructions may be needed;

(v) Take appropriate action where instructions are inadequate.

Working through this Course

To complete this Course, you are advised to read the study units, read recommended books and other materials provided by NOUN. Each unit contains Self Assessment Exercises, and at points in the course you are required to submit assignments for assessment purposes. At the end of the course, there is a final examination. The course should take you about 17 weeks to complete. You will find all the components of the course listed below. You need to allocate your time to each unit in order to complete the course successfully and on time.

Course Materials

The major components of the course are:

1. Course guide
2. Study units

3. Textbooks
4. Assignment File
5. Presentation schedule

Study Units

We deal with this Course in 2 Modules, each comprising of 5 study units:

MODULE 1

Unit 1	General considerations / Stages in the preparation of legislation
Unit 2	How is drafting undertaken?
Unit 3	Initiating Legislation
Unit 4	Instructing the Drafter
Unit 5	Designing the Plan

MODULE 2

Unit 1	Composing the Text
Unit 2	Scrutinizing the Draft
Unit 3	Validating the Draft
Unit 4	Getting Instructions
Unit 5	Analysing Instructions

Each study unit consists of two weeks' work and includes specific objectives; directions for study, reading material and Self Assessment Exercises (SAEs). Together with Tutor Marked Assignments, these exercises will assist you in achieving the stated learning objectives of the individual units and of the Course.

In contrast with later Courses, these Units contain few Example or Self Assessment Exercises. The topics do not lend themselves to that treatment.

Textbooks and References

Certain books have been recommended in the course. You should read them where you are so directed before attempting the exercises.

Much of this Course describes a model of how legislation is prepared. The model is given so that you discover what you need to know about your system by comparing local practice with it.

Assessment

There are two aspects of the assessment of this course; the Tutor Marked Assignments and a written examination. In doing these assignments, you are expected to apply knowledge acquired during the Course. The assignments must be submitted to your tutor for formal assessment in accordance with the deadlines stated in the presentation schedule and the *Assignment file*. The work that you submit to your tutor for assessment will count for 30% of your total score.

Tutor Marked Assignment (TMA)

There is a Tutor Marked Assignment at the end of every unit. You are required to attempt all the assignments. You will be assessed on all of them but the best 3 performances will be used for assessment. The assignments carry 10% each.

When you have completed each assignment, send it together with a (tutor-marked assignment) form, to your tutor. Make sure that each assignment reaches your tutor on or before the deadline. If for any reason you cannot complete your work on time, contact your tutor before the assignment is due to discuss the possibility of an extension.

Extensions will not be granted after the due date unless under exceptional circumstances.

Final Examination and Grading

The duration of the final examination for LED 023 – Drafting Process is three hours and will carry 70% of the total course grade. The examination will consist of questions, which reflect the kinds of self-assessment exercises and the tutor marked problems you have previously encountered. All aspects of the course will be assessed. You should use the time between completing the last unit, and taking the examination to revise the entire course. You may find it useful to review your self -assessment exercises and tutor marked assignments before the examination.

Course Score Distribution

The following table lays out how the actual course marking is broken down.

Assessment	Marks
Assignments 1-4 (the best three of all the assignments submitted)	Four assignments, marked out of 10% Totaling 30%
Final examination	70% of overall course score
Total	100% of course score

Course Overview and Presentation Schedule

Module 1	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide	1	
Unit 1	General considerations / Stages in the preparation of legislation	1	Assignment 1
2	How is drafting undertaken?	1	Assignment 2
3	Initiating Legislation	1	Assignment 3
4	Instructing the Drafter	2	Assignment 4
5	Designing the Plan	2	Assignment 5
Module 2			
Unit 1	Composing the Text	2	Assignment 6
2	Scrutinizing the Draft	2	Assignment 7
3	Validating the Draft	1	Assignment 8
4	Getting Instructions	1	Assignment 9
5	Validating Instructions	1	Assignment 10
	Revision	1	
	Examination	1	
	Total	17	

How to get the most from this Course

In distance learning, the study units replace the lecturer. The advantage is that you can read and work through the study materials at your pace, and at a time and place that suits you best. Think of it as reading the lecture instead of listening to a lecturer. Just as a lecturer might give you in-class exercise, your study units provide exercises for you to do at appropriate times.

Each of the study units follows the same format. The first item is an introduction to the subject matter of the unit and how a particular unit is integrated with other units and the course as a whole. Next is a set of

learning objectives. These objectives let you know what you should be able to do by the time you have completed the unit. You should use these objectives to guide your study. When you have finished the unit, you should go back and check whether you have achieved the objectives. If you make a habit of doing this, you will significantly improve your chances of passing the course.

Self Assessment Exercises are interspersed throughout the units. Working through these tests will help you to achieve the objectives of the unit and prepare you for the assignments and the examination. You should do each Self Assessment Exercise as you come to it in the study unit. There will be examples given in the study units. Work through these when you have come to them.

Tutors and Tutorials

There are 12 hours of tutorials provided in support of this course. You will be notified of the dates, times and location of these tutorials, together with the name and phone number of your tutor, as soon as you are allocated a tutorial group.

Your tutor will mark and comment on your assignments, keep a close watch on your progress, and on any difficulties you might encounter and provide assistance to you during the course. You must send your Tutor Marked Assignments to your tutor well before the due date. They will be marked by your tutor and returned to you as soon as possible.

Do not hesitate to contact your tutor by telephone or e-mail if you need help. Contact your tutor if:

1. You do not understand any part of the study units or the assigned readings;
2. You have difficulty with the self assessment exercises;
3. You have a question or a problem with an assignment, with your tutor's comments on an assignment or with the grading of an assignment.

You should try your best to attend the tutorials. This is the only chance to have face-to-face contact with your tutor and ask questions which are answered instantly. You can raise any problem encountered in the course of your study. To gain the maximum benefit from course tutorials, prepare a question list before attending them. You will gain a lot from participating actively.

Summary

Few systems have all the features described or operate at all times in the way this Course suggests. You should find value in considering the process from basic principles, as this brings out matters that are of great importance to the achievement of effective and workable legislative schemes. Drafters need to be aware that some failures in legislation are attributable to the defects in the machinery used for its preparation.

We wish you success with the Course and hope that you will find it both interesting and useful.

MAIN COURSE

Course Code	LED 023
Course Title	Drafting Process
Adapted From:	Commonwealth of Learning
Programme Leader:	Dr. Godwin Ifidon Oyakhiromen National Open University of Nigeria. Victoria Island Lagos.
Course Co-ordinator:	Omotayo Obayemi National Open University of Nigeria. Victoria Island Lagos.
Adapted By:	Mrs. Asikia Ige Faculty of Law University of Lagos Akoka, Lagos.

NATIONAL OPEN UNIVERSITY OF NIGERIA

National Open University of Nigeria
Headquarters
14/16 Ahmadu Bello Way
Victoria Island
Lagos

Abuja Annex
245 Samuel Adesujo Ademulegun Street
Central Business District
Opposite Arewa Suites
Abuja

e-mail: centralinfo@nou.edu.ng
URL: www.nou.edu.ng

National Open University of Nigeria 2006

First Printed 2006

ISBN: 978-058-387-4

All Rights Reserved

Printed by ……………..
For
National Open University of Nigeria

TABLE OF CONTENTS PAGE

Module 1 ………………………………………………………… 1

Unit 1 General considerations / Stages in the preparation of legislation ……………………………… 1-5
Unit 2 How is drafting undertaken? ………………………….. 6-16
Unit 3 Initiating Legislation ………………………………….. 17-22
Unit 4 Instructing the Drafter ………………………………… 23-28
Unit 5 Designing the Plan ……………………………………. 29-35

Module 2 ………………………………………………………. 36

Unit 1 Composing the Text …………………………………... 36-40
Unit 2 Scrutinizing the Draft …………………………………. 41-44
Unit 3 Validating the Draft …………………………………… 45-51
Unit 4 Getting Instructions …………………………………… 52-58
Unit 5 Analysing Instructions ………………………………… 59-68

MODULE 1

Unit 1 General considerations / Stages in the preparation of legislation
Unit 2 How is drafting undertaken?
Unit 3 Initiating Legislation
Unit 4 Instructing the Drafter
Unit 5 Designing the Plan

UNIT 1 GENERAL CONSIDERATIONS / STAGES IN THE PREPARATION OF LEGISLATION

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 General Considerations
 3.2 Stages in the preparation of Legislation
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

In this Unit, we examine the process typically followed in preparing and enacting legislation, the role played in it by the drafter and how you, as a drafter, may be expected to respond to the activities carried out at each stage. We are concerned in the main with the preparation of Bills; but similar stages are likely to be followed in the case of Subsidiary Legislation, though with far less formality and over a shorter period.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Describe the steps by which legislative proposals are formulated and translated into legal provisions;

(ii) Explain the respective functions of administrators and Legislative Counsel in the preparation process both in terms of principle and in practice; and

(iii) Give an account of the duties that you may be called on to perform at each of the Stages of the preparation process.

This Unit is less concerned with writing skills than in others. You will be considering institutional arrangements, rather than the form and content of legislative texts and to an extent how to respond to the demands those arrangements make on the drafter.

3.0 MAIN CONTENT

3.1 General Considerations

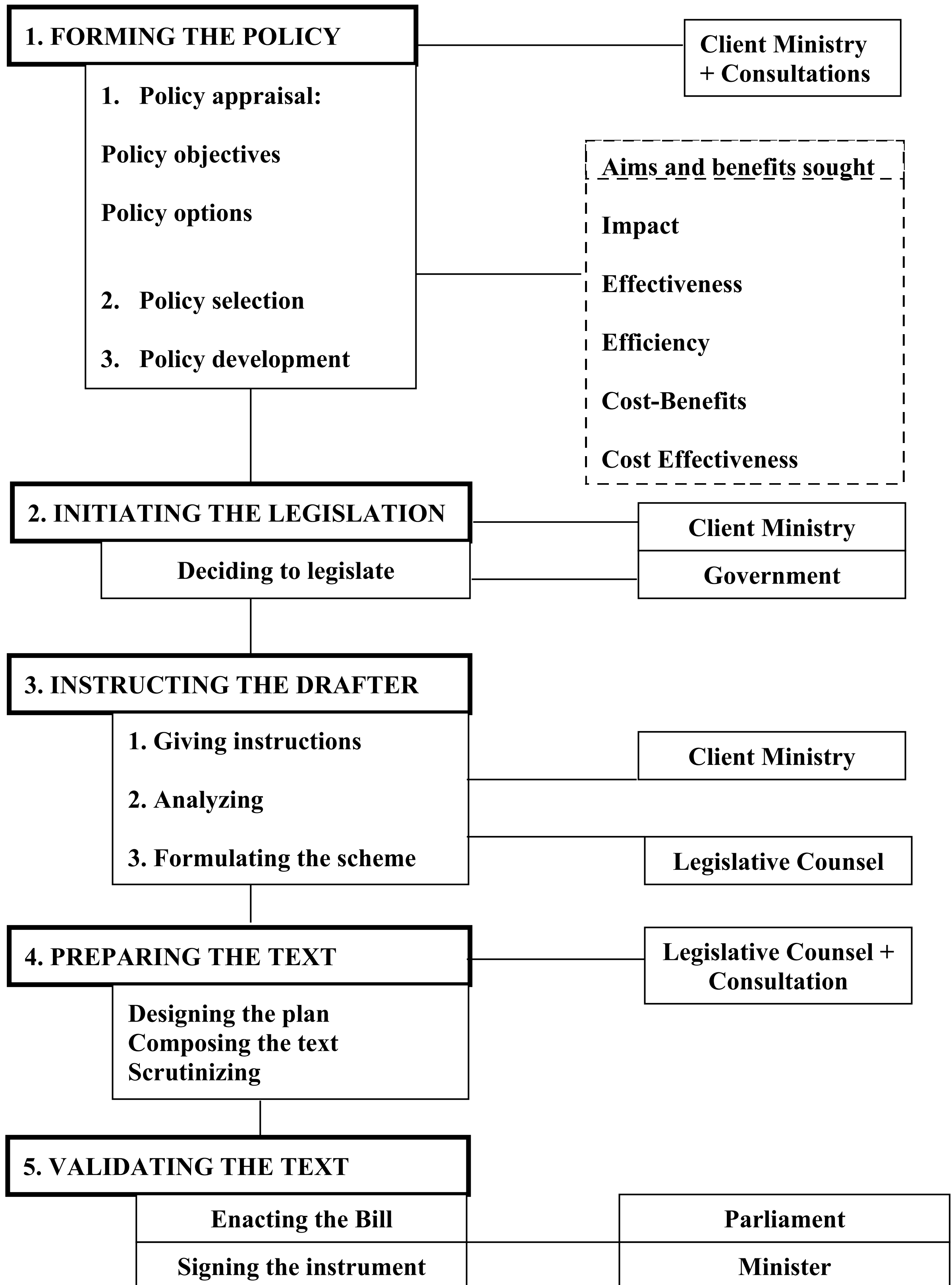
The chart on the next page shows the stages and steps through which the process of preparing legislation typically passes in Nigeria, and the agencies that have the prime responsibility for the particular stages. Preparation typically proceeds in the order shown on the chart, although some steps may overlap. The Units that follow describes these stages in greater detail, in particular highlighting the functions that drafters may be expected to carry out.

The process described relates to Government bills, which are by far the most common form of primary legislation. However, bills may be initiated in the National Assembly (comprising of the Senate and House of representatives) and States' House of Assembly, by individual members or through a committee system. In these cases different preparation procedures apply. In particular the drafting will not be the responsibility of Legislative Counsels, who are Law Officers. Instead, officials in the Legislature or even private sector lawyers are likely to provide drafting services. Legislative Counsel may become involved when Government is working out its response to an initiative and requests an analysis of the Bill. In principle, such legislation should reflect the same quality standards as that produced by Government. Such factors as the cost to the public purse of implementation, the capacity of Government to carry out functions conferred by the legislation and possible economic, social and environmental impacts on the community, as well as the quality of the actual drafting, need to be assessed by the same criteria as may be applied to Government schemes. However, these kinds of analysis call for skills and experience, and access to data that are not often available to the Legislature. Accordingly, procedures are called for that enable Government to evaluate and report back on such draft legislation. Legislative Counsel involved in such exercises would be expected to subject the legislation to the same kinds of scrutiny as are described below.

The actual time and effort required at each of the stages and steps depend on the nature, size and complexity of the legislation in preparation. For example, a simple amending Bill that alters a single feature of an existing Act entails far less at all the stages than a Bill that regulates an activity on which no statute law yet exists.

Bear in mind too that some legislation may not receive the attention that it merits and that procedural corners may be cut, because, for example, Government wishes the legislation to be prepared urgently or the resources needed for the work at a particular stage are limited.

3.2 Stages in the preparation of legislation



4.0 CONCLUSION

In this Unit you have been exposed to General considerations in Legislative Drafting.

5.0 SUMMARY

In this unit you have been able to know the General considerations in Legislative Drafting. We alluded to the importance of the stages in drafting.

6.0 TUTOR MARKED ASSIGNMENT

1. State an overview of the General consideration in Legislative Drafting.

7.0 REFERENCES/FURTHER READINGS

Dick, Robert C. (1972) *Legal Drafting,* Canada: The Creswell Coy. Ltd.

Adubi C.O (1995), *Legal Drafting, Conveyancing and Wills*. Lagos: The Light House Publishing Co. Ltd.

UNIT 2 HOW IS DRAFTING UNDERTAKEN?

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 What is entailed in forming policy?
 3.2 What is entailed in the appraisal of legislative proposals?
 3.3 What impact assessment involves
 3.4 How a policy analysis may be undertaken
 3.5 How the policy option is developed into an operational scheme
 3.6 The importance of consultation
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Legislative drafters in Nigeria are typically brought in to translate the client's policy into legislation after the policy has been formulated. The function of a drafting service is to provide specialist skills on the drafting of the legislation, not to develop policy. The expert knowledge on the subject matter rests with the client. Most drafting services lack the resources to assign drafters to particular subject areas in which they can develop expertise. In any case, there are too many subject areas (on some of which legislation may be needed only rarely) for work to be distributed in this way. An efficient drafting service requires all drafters to be used to their full capacity to meet the current demands of the legislative programme.

In the last analysis, it is for the client to decide what the client wants to achieve by the legal change. Accordingly, the client's policy should be settled before the drafter is called upon. The specialist legal input required for that purpose should be provided by the client. In principle, this approach can be questioned. An understanding of what can or cannot be achieved by legislation or what legislative approach may be most effective can be valuable in deciding what policy should be adopted. This argues for involvement of the drafter at the stage of deciding the policy. Indeed, drafters themselves would gain a quicker and fuller insight into the policy objectives and approach if they could be closely involved in their formation.

Exceptionally, Legislative drafters may be associated with a legislative project from its earliest stages, for example, when working in a law reform commission. In some countries, this has proved feasible for particular projects which will take considerable time to work out, because they are substantial or legally complex, or which will need to be carefully handled, because they are controversial or likely to involve considerable public expenditure. However, most jurisdictions lack the drafting resources to enable drafters to be concerned in this kind of policy development.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) Describe how drafting is undertaken;
(ii) Explain what is entailed in forming a Bill;
(iii) Describe how a Bill analysis is undertaken; and
(iv) Explain the importance of consultation.

3.0 MAIN CONTENT

3.1 What is entailed in forming policy?

Much legislation, especially subsidiary legislation, involves little radical change. It often provides fine tuning, making adjustments, corrections or minor improvements to a scheme that is already in existence or operating under current legislation. The reasons for the changes and the ways in which that law needs to be changed are often known and straight-forward. This requires little sustained policy formulation.

Increasingly, Governments recognise that any major legal change has economic and social consequences. For that reason they require both existing legal schemes and proposals for new ones to be systematically assessed. A variety of techniques have been devised for this purpose. In general terms these are concerned with:

Policy evaluation: assessing a policy that is currently in operation or after it has come to an end;

Policy appraisal: assessing a policy before it is agreed to or before it is put into effect.

These techniques are not confined to matters that are or might be regulated by legislation. They are mainly used for administrative schemes that have been or may be introduced, perhaps under general

executive powers already conferred by legislation, for which no additional legislation is widely recognized.

Similar techniques are used in both evaluation and appraisal of legislation, although the objectives are different.

Evaluation is designed to discover whether existing legislation is achieving its intended objectives and whether any shortcomings, especially economic, have resulted. This may lead to new legislation, totally replacing the existing scheme or altering those features that have impaired its success.

Appraisal of legislative proposals is designed to discover which, from alternative possible approaches, will be best suited to achieving desired objectives, notably within acceptable expenditure limits. This may lead to new legislation to give effect to the preferred alternative.

SELF ASSESSMENT EXERCISE 1

1. In what circumstances, if any, may drafters in Nigeria be associated with a client when a Bill is being initiated?

3.2 What is entailed in the appraisal of legislative proposals?

In broad terms, appraisal requires three steps to be taken:

(i) Establishing the policy objectives;

(ii) Assessing policy options;

(iii) Selecting the preferred option.

(i) Establishing policy objectives

The first step is to ensure that the intended aims of the policy are quite clear: what it is intended ultimately to achieve; who is intended to benefit from it; within what timescale. It should also establish what circumstances or mischief has given rise to the demand for change. This part of the appraisal should provide answers to the question "why is the legislation required"?

(ii) Assessing policy options

The second step involves identifying and assessing the possible options to secure the objectives, in particular the alternative ways of putting the policy into effect. The policy analysis should include consideration of

whether it is worth taking any action at all. Then the competing merits and drawbacks of each of the alternatives are systematically compared. A number of different factors are likely to be assessed:

Impact

What are the probable impacts, financial, social, commercial, etc, of the option? Are any outcomes, good and bad, foreseeable, in addition to those intended?

Effectiveness

How well will the administrative and other operational features of the option contribute to securing all the policy objectives of the policy?

Efficiency

What are the minimum resources that will be needed if the option is to secure the policy objectives? With fewer resources, how far would it be possible to achieve the policy objectives through the option?

Cost-benefit

When quantified into monetary figures, what will the option require in terms of cost, both to the government budget and to the private sector, and what benefits can it be expected to achieve (including those benefits that have no market price)?

Cost-effectiveness

How does the option compares with the other options, especially in terms of costs, when securing similar results (including those which cannot be given a monetary value)?

(iii) Selecting the preferred option

The aim of policy analysis is to enable the policy makers to make judgments between policy options, in particular through identifying, quantifying and valuing the costs, benefits and uncertainties of each option. By comparing the options by reference to these factors, an informed, and thus better, decision as to the best option should be possible. That option should be one that will achieve more of what is desired within the resources that can be made available, at an acceptable cost in terms of public expenditure and with only those adverse effects on the community that are also acceptable.

The decision as to the preferred option may be to do nothing, or to reconsider the policy objectives so that a scaled-down option can be found, or to select one of the appraised options, with or without modifications. That decision will typically be taken by the responsible Minister.

3.3 What Impact Assessment Involves

Some policy initiatives will have major impacts, by their scale or cost, on future government action or in the community. They may carry serious implications for the state budget and for the allocation by Government of financial and human resources at its disposal, or for the economy, e.g. in respect of commercial activity and competitiveness in the private sector, or for the environment or for social relations and behaviour. Such considerations are present during routine policy analysis when, typically, they can be addressed without unduly sophisticated analytical techniques.

However, a growing number of countries are finding it necessary to apply specialist methodologies to examine initiatives that are likely to make substantial economic or fiscal demands or to have wide-ranging environmental or social effects. Since these may call for quantitative methodologies and specialized econometric techniques or require particular expertise, such assessments tend to be applied selectively, and in any case their depth and frequency are dependent upon the availability of appropriately qualified experts. However, such procedures are increasingly used as part of the budgetary process where bids by Ministries for new resources must be accompanied by the results of an impact assessment. They may also be valuable in relation to major legislative initiatives.

3.4 How a Policy Analysis May Be Undertaken

The approach and issues to be considered are indicated in the Checklist in

Example Box 1

Checklist for policy analysis

1. What is the precise problem?

- What harm or other undesirable outcome do we want to prevent?
- Who or what is being harmed?
- How frequent or probable is the occurrence of the problem?
- How many people or situations are affected, and how seriously?

2. What is the 'base case'?

- What is the present state of affairs in reality (as opposed to in law)?

3. What is the government's objective?

- What precise results does the government wish to bring about?

4. What are the options for dealing with the problem?

- What are the alternative courses of action, from doing nothing through to, e.g. a complete prohibition of specific activities?
- What legal, financial and/or informational instruments might be used to secure the objective?
- Can the matter be dealt with without making any legislative instrument?
- Are there any alternatives that do not involve governmental action?

5. What is the likely benefit from each option?

- What is the probable benefit from each option, i.e. how far is it likely to reduce the estimated harm or problem?
- To what extent should this be discounted because the reduction in the harm or problem is likely to be lessened by persons altering their behaviour in response to the option?
- To what extent should this be discounted because of indirect side-effects or other harms or problems likely to flow from an option?

6. What is the monetary value of the expected benefits?

- In monetary terms, what is the value of the benefits that are expected to accrue from each option?
- To what extent is that value likely to be increased by other

benefits in respect of which the monetary value cannot be fully calculated (i.e. because they are not marketed)?
- What gains in terms of effectiveness or efficiency are anticipated?

7. What administrative mechanisms are needed?
- Is the mechanism for implementing each option the most practical and effective?
- In so far as the mechanisms involve public services, is that option an efficient use of public resources, given other claims on them?

8. What are the estimated costs of each option?
- Overall, what are the costs (recurring and non-recurring) to the government budget of implementing each option?
- What is the cost of providing the administrative mechanisms (in personnel and non--personnel expenditure) necessary for each option?
- What are the likely direct costs (recurring and non-recurring) to the private sector in complying with each option?
- What are the likely indirect costs to the private sector in complying with each option, e.g. in terms of reduced competitiveness?
- What costs, direct or indirect, are likely to flow as consequences, desired or undesired, of each option?

9. How cost-effective is each option?
- How do the costs of each option compare with the expected benefits? Are they proportionate?
- How efficient are the administrative mechanisms necessary for each option, in terms of costs measured against the likely reduction in the harm or problem?
- Which option is the most cost-effective?

10. What issues of distributive fairness and public perception are relevant?
- Are the costs and benefits fairly distributed between different groups in the society?
- What are the public perceptions about the extent of the harm or problem and the need to eliminate or resolve it?

During the course of the policy-formation, attention should be given to whether legislation is needed or whether other, non-legislative, solutions should be adopted (Item 4, above). In Nigeria, legal advice is required to

be sought from the Government's principal legal adviser, e.g. the Attorney General. Before that advice is tendered, advice on the need and the form of the legislation is likely to be sought from the First Legislative Counsel.

SELF ASSESSMENT EXERCISE 2

1. Find out, and note, whether Legislative drafters may be asked to advise as to whether legislation is required or not.

3.5 How the Policy Option Is Developed Into an Operational Scheme

The selected policy option provides the basis for further work by the Ministry to convert the option into an operational scheme and planning its implementation. This step puts flesh on the bones of the selected option. Fuller consideration is given to the mechanics of implementation and the procedures that will ensure the most practicable and workable arrangements for putting the policy into operation. It may call for further study in the Ministry, especially of the practicalities, incidental policy issues and likely problem areas.

This part of the process may entail:

(i) Consultations with other interested departments or agencies of Government;

(ii) Informal consultation with outside bodies that may be affected or with interest groups that have knowledgeable views on the matter;

(iii) More formal public consultation, e.g. through consultative documents such as "Green Papers" (which ask for public reactions to the Ministry's preliminary ideas).

3.6 The Importance of Consultation

In Nigeria, consultation by the Bill team with interested Ministries is commonplace. Not only does this ensure that practical inputs are obtained from other Ministries that will be concerned with or affected by the implementation of the new legislation, but it reduces the possibility of Ministerial objections to a Bill on the grounds that issues within their responsibilities have not been taken into account. Consultations of this kind are likely to be conducted at the stages of policy formation, in developing the legislative scheme and in testing the legislative text.

Consultation with people and bodies outside Government is typically less well organized. Resistance to the practice is sometimes based on the confidentiality of Government plans or the consequent additional expense and time required for preparing the law, which is seen as delaying the process. Formal consultations may be instituted by means of memoranda, which invite public comments to the proposals as published in the paper. But these tend to be used for issues of general public concern. e.g. The proposed amendments to the 1999 Constitution.

SELF ASSESSMENT EXERCISE 3

1. Find out whether any guidelines have been issued as to the use of consultation in legislative preparation. If so obtain a copy for your collection of documents.

2. Are external consultations used in Nigeria as it relates to law preparation - the process, forms and intervals?

Countries that regularly use external consultations have found that the benefits outweigh the expense and extra time that results. Bodies or persons outside Government who are likely to be affected directly by changes in the law usually have specific experience and insights about the existing law and the problems associated with its implementation. They bring a very different, often very practical and cost-concerned, perspective to what can be achieved through legal means. They look at proposed changes from a different standpoint from Government, and one which it is difficult for civil servants to replicate. Accordingly, a well-conducted consultation may:

(i) Result in a broader range of policy alternatives available to Government;

(ii) Enable Government to collect data which facilitates impact assessment and to verify its results;

(iii) Provide a better understanding of the activities to be regulated and the problems to be solved by the legislation;

(iv) Lead to better informed choices as to the most appropriate legal mechanisms for giving effect to the preferred policy option;

(v) Result in legal solutions that are more likely to secure compliance from those directly affected;

(vi) If the consultation relates to the legal draft, lead to improvements in the text that ensure clearer communication of its requirements;

(vii) Accordingly, make governmental processes more responsive to the needs and interests of those affected by the new legislation, as well as making the law-making process, and the reasons for policy choices, more publicly transparent.

However, to be effective for the purpose of policy-making, consultation should be:

(i) specifically aimed to produce useful information, rather than a device for arriving at a consensus with affected parties (although greater acceptability may follow);

(ii) instituted at the time when it can be most helpful to the policy-forming - typically, in the policy analysis and development stages (although it can also be used with advantage to obtain reactions to a more fully worked out scheme or even to draft instruments);

(iv) designed to enable those consulted to contribute special knowledge and relevant data derived from their experience;

(v) in a form that is suited to the particular case. Consultation may take a variety of forms:

  (a) where the policy will have wide-ranging consequences affecting substantial sections of the population, by a general invitation to the public;

  (b) with standing advisory, or ad hoc focus, groups of experienced or expert persons who can be engaged in the discussion of options and impacts;

  (c) with umbrella bodies representing affected interests or a representative selection of entities that are particularly concerned with the subject area (e.g. small businesses or non-governmental organisations);

  (d) through face-to-face meetings with officials or with concerns likely to be particularly affected by new legislation.

However, consultation comes at a price. Properly conducted it should provide valuable results, but the analysis of the information and data and the integration of the findings into the policy development process place

additional demands upon the policy-formers. Inevitably, the time-scale for completion of the project will be extended, as time must be allowed for devising the consultation, carrying it out and collating and analysing the results. Accordingly, a decision to employ consultation must be taken in the context of planning the legislative project, when proper consideration can be given to its timing and the length of time required.

4.0 CONCLUSION

This Unit is important to the rudiments of legislative drafting; in subsequent units these concepts will be clearer to you.

5.0 SUMMARY

In this unit, we learnt how drafting is undertaken, the process of forming a Bill, how a Bill can be analyzed and the importance of consultation in legislative drafting.

6.0 TUTOR MARKED ASSIGNMENT

1. Discuss the process of how drafting is undertaken in Nigeria.

7.0 REFERENCES/FURTHER READINGS

Jimoh, Akintola A. (1999) *Law Practice and Procedure of Legislature,* Lagos: Learned Publishers Ltd.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 3 INITIATING LEGISLATION

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 What is the importance of allocating a place in the legislative programme?
 3.2 Are there any drawbacks?
 3.3 How government approval is given to the policy of the a Bill
 3.4 What is the effect of the decision to approve the policy submission?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Government approval of the legislative proposal is required before the preparation of the Bill can be proceeded with. This may be given on the recommendation of the National Assembly (e.g. a Committee of the House). It is not usually enough that the responsible Minister is convinced that a Bill on the matter is called for. A decision of the Government is required because:

(i) It indicates that Government collectively agrees with the policy to be implemented by the Bill and that the time is right for its enactment;

(ii) Space has to be provided for the Bill in the Government's legislative programme for forthcoming meetings of the Legislature.

Approval in both respects usually constitutes the authority for Legislative Counsel to be assigned, and to embark upon, the drafting of the Bill. Without it, drafting cannot proceed. Governments may issue formal guidelines for obtaining this approval.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Describe the process of initiating legislation
(ii) Explain the importance of legislative programme
(iii) Identify any drawbacks
(iv) Explain how government approval is given to a Bill
(v) Identify the effect of decision to approve a Bill.

3.0 MAIN CONTENT

3.1 What Is The Importance Of Allocating A Place In The Legislative Programme?

Governments adopt an annual legislative programme for a number of reasons:

(i) To ensure that Government legislative priorities are ascertained and implemented;

(ii) To ensure that there will be adequate time in the Legislature to deal with all the legislation introduced in that session;

(iii) To prevent less important legislation impeding the progress of essential legislation;

(iv) To permit the stages of preparation of the legislation to be properly time-tabled.

The practice carries several benefits for Legislative Counsel:

(i) since allocation to the programme constitutes the authority to undertake drafting, it ensures that drafting services are provided only for Bills that are to go to the Legislature, so making for an efficient use of Legislative Counsel;

(ii) it requires time estimates for the preparation of legislation, resulting in a timetable for drafting particular Bills;

(iii) it facilitates the planning of the work programme in the Office of Legislative Counsel so that its resources are effectively deployed to deliver the Bills on time.

3.2 Are There Any Drawbacks?

In Nigeria, the time-scale for settling the legislative programme is very short. The closer the decisions to allocate Bills to a legislative programme are taken to the beginning of the legislative session, the greater the pressures on both the client Ministry and the drafter to complete the preparation. If this is a few months or, worse, a few weeks, the preparation process becomes routinely rushed, reducing the opportunities for consultation and considered decision-making. In some countries, a longer time-scale may be adopted. Bills that should receive lengthy preparation, e.g. because they involve complex issues, may be allocated to the next-but-one legislative programme.

Problems may also arise in countries where the enacting process has to be completed in the same session as the Bill is introduced. If the Bill is not completed, it must be brought back and pass through the full enacting process in a later session. But first it must compete with new Bills for introduction. Some Parliaments have taken authority to carry the Bill over for completion in the following session. This makes far fewer demands than starting afresh.

However, the most serious problems are experienced in countries where there is no procedure for settling a legislative programme well in advance. Decisions are taken as to the matters to be considered by the Legislature very close to the next session, without reference to any long-term programme. The consequences may not be too serious if the Bills are short and uncomplicated, and can be quickly prepared. But such an approach is inappropriate for substantial Bills and for those that will benefit from appraisal, planning and consultation. A legislative proposal that is inadequately planned may be followed by a Bill that is hastily drafted. The criticisms about poor quality of drafting sometimes should be directed to the absence of systematic arrangements for legislative preparation, in particular the want of long-term planning of the legislative programme.

SELF ASSESSMENT EXERCISE 1

1. Find out the procedure for deciding on the legislative programme of the Legislature for the coming legislative year?

2. Which body or bodies are responsible for settling the programme or otherwise deciding on the Bills that are to go to the next session of the Legislature?

3. How long, before the start of a legislative session are decisions taken that a Bill is to be introduced or sent to the Legislature?
4. Must the enactment of Bills be completed in the same session that they are introduced or can Parliament authorise Bills to be carried over to the next session?

Note down where the authority is granted (e.g. Rules of Business).

3.3 How Government Approval Is Given To the Policy of the Bill

The decision to give a place to a Bill in the legislative programme typically does not carry with it endorsement of the policy that the Bill is to embody. This generally requires separate consideration and decision.

Approval of policy, typically, must be sought by the client Ministry through a formal submission to the executive, usually only after the Bill has been allocated to the legislative programme. However, for more complex matters that require a good deal of preparation or to which Government intends to give priority (e.g. because it was part of party manifesto), Executive approval may be sought before the allocation. In either case, the submission is made only when the basic policy lines are clear to the responsible Ministry and the implications of the Bill (especially the political implications) can be assessed. Since other Ministers are to be asked to express their support, it must be possible for them to reach an informed opinion on what is proposed.

In many countries, the form and content of Cabinet submission are formally stipulated by Government (to apply to all submissions whether in connection with legislation or not). This ensures that a standard way of presenting the information is followed and that information is provided on the crucial issues.

It is unusual for Legislative Counsel to be concerned with the preparation of the Cabinet submission, though in some places First Legislative Counsel may be asked formally to confirm that legislation is essential to enable the proposed policy to be given effect in the way proposed, and in particular:

(i) Whether a new Bill is required or whether subsidiary legislation under an existing Act will suffice, or indeed whether legislation is needed at all;

(ii) Whether major changes to existing legislation may be needed;

(iii) Whether the policy should be implemented by amending existing legislation or by enacting a new Bill or one that replaces existing legislation.

SELF ASSESSMENT EXERCISE 2

1. Is it standard practice for a drafter to be concerned with the preparation of the submission seeking Government approval for the policy to be given effect by a proposed Bill?

2. If so, is the drafter responsible for this, the First Legislative Counsel or the drafter who will be assigned to draft the Bill?

3. If a drafter is involved, what matters will the drafter be expected to deal with?

3.4 What Is The Effect Of The Decision To Approve The Policy Submission?

The Executive's decision to approve the policy submission constitutes the authority to proceed to the next stage of preparation, and for Legislative Counsel to become fully involved. If a drafter has not been assigned when the Bill was allocated to the legislative programme, one (or more) must be assigned now.

The decision also sets the limits to the policy, and confirms the central principles and mechanisms, that the Bill is to contain.

Example Box 2

A typical Cabinet decision might take this form:

Representation of the People (Amendment) Bill
The Cabinet AGREED:
the Representation of the People Act, Cap 12, be amended:
(1) to replace two-member constituencies by single member constituencies;
(2) to increase the total number of constituencies from 40 to 80;
(3) to require the Boundaries Commission to submit a report recommending the alterations to constituency boundaries not later than
3 months after the commencement of the Amendment Act;
(4) to enable the new constituencies to be effective immediately on the dissolution of the present National Assembly.

Legislative Counsel:

(i) should not proceed with the first steps in drafting a Bill until an Executive Minute has been received containing the decision to approve the policy;

(ii) should not deviate from the essentials of the Executive decision as to the limits of the policy (mainly set out in the submission itself) unless the Executive has had the opportunity to reconsider the matter and to approve the deviation.

SELF ASSESSMENT EXERCISE 3

1. Does Executive approval of the policy constitute the authority for Legislative Counsel to become fully involved?

2. If the Executive does not approve the policy, by who is it given and how are Legislative drafters given authority to become involved?

4.0 CONCLUSION

You have learnt the process of initiating legislation; we focus on the executive mode. There is little or no difference with private initiative.

5.0 SUMMARY

In this Unit, we discussed the form it takes to initiate legislation. The key features are: legislative programme, the process of government approval of a Bill and the effect of policy submission.

6.0 TUTOR MARKED ASSIGNMENT

Discuss the detailed process of initiating legislation in Nigeria.

7.0 REFERENCES/FURTHER READINGS

Jimoh Akintola A. (1999) *Law Practice and Procedure of Legislature,* Lagos: Learned Publishers Ltd.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 4 INSTRUCTING THE DRAFTER

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
    3.1 What roles are instructions intended to play?
    3.2 How instructions affect the drafter's functions
    3.3 The relationship between drafter and client on policy matters
    3.4 Could not the drafter be brought into policy-making earlier?
    3.5 How the drafter should respond to instructions
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Legislative drafters are usually not involved in formulating policy or working out the scheme to give effect to it, those matters must be communicated to them by the client Ministry. Legislative drafters must have terms of reference within which to work. Providing these is the main function of instructions.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Explain how a drafter receives and responds to instructions;
(ii) Describe the relationship between drafter and client on policy matters

3.0 MAIN CONTENT

3.1 What Roles Are Instructions Intended To Play?

In Nigeria, as we have seen, development of the policy of a Bill is separated from its drafting. The client has the responsibility for initiating and working out policy proposals; the function of the drafter is generally seen as to translate those proposals into a workable legislative form. So, it is rare for drafters to be concerned with formulating policy in the

initial stages, as happens in many other countries. The process proceeds on the assumption that drafters are not expert in the subject matter of the Bill or in the law relating to it. That expertise rests with or is provided through the client Ministry. It must be communicated to the drafter.

Until Legislative Counsel receive the instructions, they will have little awareness of what the Bill is expected to achieve. We have seen that in some systems extensive policy planning will have been undertaken by the client Ministry. The required legislative scheme may have been worked out there in some detail by administrators who have the necessary executive and legal expertise. That too must be fully communicated to the drafter.

In some countries, Ministries have a limited capacity to develop detailed proposals for what is needed. More may be expected of Legislative Counsel in providing for these matters. But that cannot be undertaken unless Legislative Counsel is made aware of the nature of the problem and the objectives to be secured and of the client's thinking on how the matter should be tackled. This too must be communicated.

Instructions then should provide the drafter with the essential information about what it is proposed to achieve, why the legislation is needed and how the objectives are to be secured.

3.2 How Instructions Affect the Drafter's Functions

Even the best of instructions do not give the drafter all the answers needed to draft the Bill. Legislative Counsel have to understand thoroughly what the instructions are aiming at, to analyze them in order to decide what is required to produce the complete Bill and, as necessary, to ask for clarification or elaboration in order to obtain a complete picture. These functions are the same whether the instructions are ample or superficial. Those factors dictate, to an extent, the effort required of Legislative drafters. But the more complex the project, the more demanding these activities will be.

In the process of analysing and clarifying, Legislative Counsel cannot avoid becoming concerned with policy issues. As Professor Crabbe writes (pp.20-21):

> But how does one translate policy without understanding that policy? Herein lies the inevitability of Parliamentary Counsel getting involved in policy considerations. The training given to Parliamentary Counsel, their vast knowledge of the existing law, their experience of the probable consequences of a piece of legislation, all these matters place them on a pedestal from which they have to be consulted on policy issues and from which they need to advise and warn.

In the course of considering instructions, drafters commonly see approaches or improvements to the policy proposals in them. Their function then is to bring these to the attention of the client for consideration. The drafter's task is not to dictate policy conclusions, but to assist in the shaping and refining of the policy by drawing upon their specialist drafting experience.

3.3 The Relationship between Drafter and Client on Policy Matters

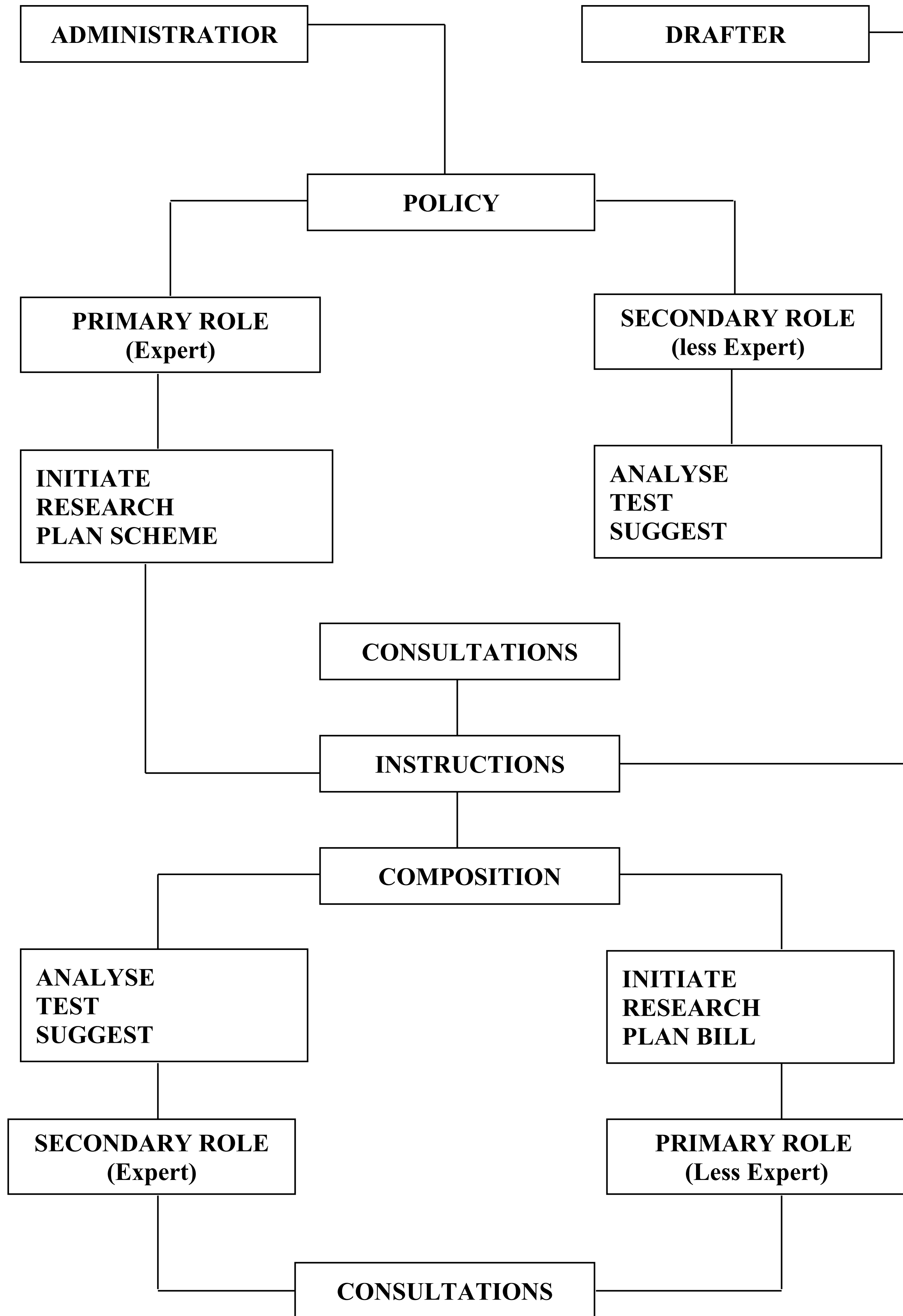
The accompanying Chart illustrates the relationship between the client (Government/National Assembly) and the drafter on policy matters.

When policy is still being settled the initiative lies with the client, the drafter coming into the picture on receiving the instructions. Although less expert in the particular policy, the drafter is able to test the proposed scheme by analysing it from a legislative standpoint and to make suggestions for its improvement through consultations with the client. This may lead to refinement of the original policy and of the proposed means of putting it into effect. The final decisions on such matters lie with the client and are incorporated into the instructions which drafters use when preparing the text.

When the instructions are sufficient to allow drafting to proceed, the initiative passes to the drafter whose technical expertise on legislation now becomes pre-eminent. At this stage, the drafter takes some decisions on the form or content of the draft that may have policy implications. The client, now playing a secondary, less expert role, is brought in, through consultations, to consider and confirm those decisions.

In some countries, drafters and instructing officers work rather closer together than the model discussed above suggests. Greater emphasis is placed on a continuing process of dialogue, the drafters and officials working collegially in the preparation of the text. This may be driven by the need to meet tight time schedules and the fact that the policy may not be fully developed when the drafting has to start.

Policy and drafting



3.4 Could Not The Drafter Be Brought Into Policy-Making Earlier?

In principle, the drafter's experience could be valuable when the policy is being formulated. The drafter's awareness of legislative practicalities, of how similar problems have been approached in comparable fields and of the kinds of matters that require legal provision could contribute to policy-making and reduce the need to refine the policy after the instructions has been analyzed. Rethinking important policy matters at that point may invalidate some of the client's planning and have serious effects upon the timetable for preparation.

However, it is rare in that drafters have this opportunity to make a meaningful input to the policy. Given the demand for the services of drafters on their primary task of preparing the text, Legislative drafters usually cannot be made available, especially if the Bill has no guarantee of taking a place in the legislative programme. In some jurisdictions where arrangements do exist, Legislative Counsel are reluctant to take part in planning meetings, because administrators/ministers in the client Ministry have only broad conceptions of how the policy they wish to implement would work and Legislative Counsel are expected, as "legal experts", to offer solutions for what are in reality policy, rather than legal issues.

The best that may be hoped for is that Legislative Counsel will be able to meet the instructing officer from the client Ministry to discuss the form and contents of the instructions before they are completed. This may encourage the client to look at some of the matters in the way that the drafter suggests.

SELF ASSESSMENT EXERCISE 1

Find out if drafters are given an opportunity to discuss the contents of instructions before they are prepared.

3.5 How the Drafter Should Respond To Instructions

Instructions rarely provide drafters with everything they need to know. Even instructions that are well-prepared approach the matter from the policy maker's standpoint, rather than the drafter's. So the drafter’s function is to analyze them with a view to determining what is to go into legislation. This involves two aspects:

(i) First clarifying the instructions and asking for further instructions where fuller information is needed;

(ii) Then working out from the complete instructions precisely what needs to be put into the legislation.

These tasks are so central to the work of Legislative Counsel that we look at them in detail later on.

4.0 CONCLUSION

This is a very important Unit; it deals with the conduct of a drafter and his client. We should note that professionalism is the hallmark of this will and a good drafter must be abreast of what is expected of him.

5.0 SUMMARY

In this unit we discussed how a drafter receives instructions. The role instructions tended to play, how instructions affect the drafter, the relationship between the drafter and his client; the importance of the drafter to be involved with the Bill from inception and how the drafter responds to instructions.

6.0 TUTOR MARKED ASSIGNMENT

1. Comment on the communication that is expected between the drafter and his client.

7.0 REFERENCES/FURTHER READINGS

Crabbe, VRAC (1993) *Legislative Drafting*, London: Cavendish Publishing.

Jimoh Akintola A. (1999) *Law Practice and Procedure of Legislature,* Lagos: Learned Publishers Ltd.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 5 DESIGNING THE PLAN

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 Should there be a time-table for a draft?
 3.2 What are the main steps at the drafting stage?
 3.3 Forming the legislative scheme
 3.4 The function of a legislative plan
 3.5 The benefits of a legislative plan
 3.6 Should a legislative plan be the subject of consultations?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Once the instructions have been analyzed and the main areas of uncertainty clarified, the responsibility for preparing the Bill (including the obligation to initiate any necessary action) passes fully to Legislative Counsel. The instructing officer and the other members of the Ministry Bill team are expected to be available for consultation and to advise and assist Legislative Counsel in the implementation of the proposals, by clarifying particular issues, working out solutions as problems arise and confirming the lines of approach taken by Legislative Counsel. But it is for Legislative Counsel to initiate those consultations as and when they appear to be needed. At each step of this stage, consultations are likely to be needed with the client and, as necessary, with interested or affected Government departments or agencies.

2.0 OBJECTIVES

By the end of this unit, you should be able to:

(i) Explain the importance of a time table for a draft;
(ii) Describe the main steps at the drafting stage;
(iii) Describe how legislative scheme is formed;
(iv) Explain the function of a legislative plan;
(v) Explain the benefits of a legislative plan;
(vi) Explain whether a legislative plan should be the subject of consultations.

3.0 MAIN CONTENT

3.1 Should There Be A Time-Table For A Draft?

Few drafters find themselves working on a single Bill at any one time. This would be an inefficient use of resources. For when drafts are being processed or printed or are under consideration by the client, the drafter has nothing to do on the Bill. During those periods drafters typically work on other Bills assigned to them. But for this to be done efficiently, some time-tabling of the drafter's schedule is called for. The responsibility typically rests with First Legislative Counsel, in consultation with the drafter concerned.

The need for time-tabling is brought out by the chart below, based on one drawn up by Professor Driedger (***The Composition of Legislation***, p. xviii), showing the time spent, in relation to a short Bill, on the various drafting tasks after the instructions have been analyzed.

Example Box 1

Time-tabling a bill

In the period of 38½ days needed to turn the instructions into a printed Bill, the distribution of time between drafter and the client was as follows:

	Drafter	**clients**
Conference between drafter and instructing officer	1 day	1 day
Preparation of preliminary draft	1 day	
Consideration of preliminary draft by department	4 days	
Further conference between drafter and instructing officer	½ day	½ day
Preparation of second draft	½ day	
Consideration of second draft by department officials	12 days	
Further conference between drafter and instructing officer	1 day	1 day
Preparation of third draft	1 day	
Consideration of third draft by departmental officials	10 days	
Preparation of final draft for printer	2 days	
Submission to printer and printing of draft	3 days	
Totals:	**7 days**	**31½ days**

Driedger goes on to add (p. xix):

> Draftsmen must be practical and for each Bill find a place somewhere between the two extremes of the slipshod and the perfect, but there is for each bill an irreducible period for preparation. Suppose, for example, that it would take one month to prepare a particular Bill in the normal course. This period

> could be reduced, without sacrificing quality, by according the Bill top priority and by working at it evenings and weekends, which might bring the preparation period down to, say, three weeks. But the time cannot then be further reduced without sacrificing quality; as the time is cut down, the quality deteriorates, so that ultimately the point is reached where no Bill fit for introduction can be produced.

3.2 What Are The Main Steps At The Drafting Stage?

There are four main steps that are usually followed at this stage of the drafting process:

1. Devising the legislative scheme;
2. Producing an overall design or plan for the Bill;
3. Composing the text;
4. Scrutinizing the instrument.

These steps are connected and may overlap. Each drafter evolves his or her own approach to this task and personal preferences as to how best to complete a Bill. But that approach should encompass each of these steps and, because it is a logical process, largely in that order. For a demanding project it may be necessary to rethink some of what was done at an earlier stage in the light of what develops at a later one. The process of analysis is not confined to the instructions; it is a continuous one and underlies the work when taking these three steps. New thoughts or ideas, better solutions and approaches emerge as the drafting proceeds. The act of composition itself results in a clearer picture of what is needed. The good drafter must always be prepared to reconsider earlier work on the draft as adding detail gradually produces that picture, so far as the time constraints allow.

Thornton (p.128) neatly illustrates this by analogy with the children's game of snakes and ladders:

> The aim is the same of proceeding uninterruptedly from start to finish, preferably with bursts of acceleration. In both cases that aim is rarely realised. The player lands on a snake and slithers down to a position that she hoped she had passed for good. The drafter encounters problems - perhaps gains a clearer understanding of instructions or realises the draft just will not work – and must slither back to an earlier stage, perhaps to begin again. Too often the instructing officer pulls the ladder away by varying the instructions and deposits the unfortunate climber at its foot in an irritated heap. One must not press the analogy too far. Snakes and ladders is a game of chance. Drafting legislation is a game of skill.

3.3 Forming the Legislative Scheme

A study of the instructions and connected materials should enable the drafter to formulate an outline scheme for how the legislation is to deal

with the subject matter. Drafters need to be assured that the approach and coverage of the Bill will be coherent and complete, before proceeding to composing the text. In particular, the drafter of a Bill will wish to settle such matters as:

(i) the legal approach to be taken by the law and the proposed relationship with the existing law on the subject;

(ii) the administrative mechanisms to be deployed for implementing and enforcing the legislation;

(iii) the principal topics that are to be dealt with in the Bill.

Good instructions can go a long way in providing solutions to the drafter's questions in this regard. At the same time, this process provides an opportunity for Legislative drafters to confirm for themselves:

(i) that the policy objectives cannot be secured by any other means (e.g. by subsidiary legislation or executive action under an existing Act, or by administrative directives or by agreements or contracts or through a public information programme);

(ii) whether an amendment Bill or a new principal Bill is appropriate;

(iii) the extent to which existing law is to be altered;

(iv) that a workable scheme can be put in place through legislation;

(v) that the means of implementation and enforcement are proportionate, practicable, efficient and affordable, and can be given effect in ways that ensure fairness and transparency.

The aim of this stage should be to establish the matters that call for legislative provisions (including whether they should be contained in the Bill or in secondary instruments to be made under it). With experience, it becomes easier to differentiate those matters that, though intrinsic to the scheme, do not need to be dealt with specifically by statutory rules.

At the completion of this stage, the drafters may find it valuable to produce a written précis of the items that, as a result of their own analysis, appear to require attention in the Bill. In any case, an outline of the scheme that the Bill is to contain can be cleared with the client Ministry, and provides drafters with a clearer picture of the task ahead.

3.4 Function of a Legislative Plan

Once the contents have been worked out in principle, the drafter is in a position to decide how best to proceed with the legislation itself. It is sound practice at this point to work out a coherent and logical arrangement of the contents of the Bill. This helps ensure that the drafter has a clear understanding, before beginning to compose the individual provisions, not only of what must be covered in the Bill, but of the way in which the different elements of the legislation are to relate to each other.

When the individual provisions of a Bill come to be drafted, it is great help to have thought out already the overall structure of the Bill and a logical arrangement of its clauses. It is possible then to focus on the content of the particular provisions, having settled their relationship one with another. So, time spent on working out an overall design first permits the composition of the particular rules to proceed apace.

A design for this purpose is often referred to as a "legislative plan". Devising one provides a bridge between analysis and composition. Therefore, the most appropriate time to undertake it is when the instructions from the client Ministry have been fully mastered and, where necessary, clarified, and a précis of the items to be covered by the Bill has been prepared.

For many drafters, their completed legislative plan resembles the "Arrangement of Clauses", which precedes many Bills. It lists and summarises each of the main propositions that appear to be needed and it organises them into a logical sequence.

3.5 The Benefits from a Legislative Plan

The plan creates the framework within which the detailed rules are to be organised. It establishes the overall structure of the Bill, as well as itemising the principal matters that must be covered and settling their ordering and relationship. It therefore provides a logical blueprint for the whole instrument and is a constant reference point for Legislative Counsel when actually writing the individual provisions.

Time spent on this planning is likely to be compensated for by the time saved at later stages of composing. Writing a series of individual provisions flows more easily if a logical sequence for them has already been thought out. Moreover, the process of working out how individual matters are to be ordered provides another opportunity to clarify the thinking about the scheme. It may well throw up further matters that have been overlooked by the client Ministry, upon which further instructions are needed. It also reduces the likelihood that a first draft has to be reworked because of structural defects.

In any case for the reader a logical arrangement of a statute makes its underlying themes evident. It helps the user to understand how the scheme is made legally operative and, in the event that some provision needs to be interpreted, to find out the statutory context in which it is intended to have effect. Nothing is more disconcerting for a user than having to jump around a statute in order to bring together from different places provisions that in actual operation are closely related. The looser the arrangement, the more Legislative Counsel may find it necessary to provide express linking of scattered provisions, for example by some form of cross-referencing. A good design helps reduce that particular source of distraction. The legislative plan is an important step in ensuring that the Bill communicates to users what is required of them.

Note that for short Bills, this step will be short and easily completed. This is usually the case too for amending Bills in which textual amendments typically follow the arrangement of the original Act. But for substantial instruments, especially those covering a range of related but distinct topics, a degree of skill and judgment is called for. Here, as elsewhere, experience is a valuable guide, but some basic guidelines may be of help to beginners.

3.6 Should A Legislative Plan Be The Subject Of Consultations?

Especially where the legislation is controversial or complex, the reactions of the client Ministry to the legislative plan may suggest improvements to the structuring making it less likely that the client will ask for a major redraft when the draft Bill is under consideration.

The considerations that determine the ordering of a Bill are not limited to technical drafting issues. Although the design is inevitably dictated by the nature of the contents of the particular legislation, it may also need to take account of the requirements of those most likely to use it. Importantly, meeting Governmental priorities, e.g. in facilitating the passage of the legislation through the Legislature, may also demand special treatment.

Bennion (***Statute Law***, 2nd ed, p.129) records a criticism that Part 1 of the Consumer Credit Act 1974 (U.K.) dealt with the creation of the new office of Director General of Fair Trading, leaving very important matters of substantive law that affected the commercial community to later Parts. Mere matters of administration, it was argued, should not be at the beginning as they are not the first, or perhaps of any concern to the typical user. To this Bennion replies:

> This happens not to be true, since the fact that the Act is administered by the Office of Fair Trading closely concerns almost everyone involved with it. Even if it were true, it is irrelevant. This is because the question of who was to administer the Act was of great interest to MPs. It was about the only issue which divided the Labour Party from the Conservative Party.

Matters such as these emerge as a result of consultations. Government's priorities may displace more desirable practices, as for example, designing the plan with the interests of the ultimate users in mind.

4.0 CONCLUSION

This unit is very important in that we discussed designing the plan. Failure to be abreast with design will be fatal to a Legislative Bill.

5.0 SUMMARY

In this unit, we learnt how a Drafter designs a Legislative Bill. We discussed the importance of Time-Table, how legislative scheme is formed. We also examined the functions of legislative plan and its benefits. Finally, we examined the need for consultation in legislative plan.

6.0 TUTOR MARKED ASSIGNMENT

1 (a) Discuss the main steps at the Drafting stage.

(b) What are the benefits of a Legislative Plan?

7.0 REFERENCES/FURTHER READINGS

Driedger E.A, (1976) *The Composition of Legislation,* Ottawa: Dept of Justice.

Bennion, FAR (1990) *Statute Law*, 2nd ed. London: Longman.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

MODULE 2

Unit 1 Composing the Text
Unit 2 Scrutinizing the Draft
Unit 3 Validating the Draft
Unit 4 Getting Instructions
Unit 5 Analysing Instructions

UNIT 1 COMPOSING THE TEXT

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 What goes into the first draft?
 3.2 What goes into subsequent drafts?
 3.3 Should precedents be used to aid composition?
 3.4 When should consultation be held in relation to drafts?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

At this point, Legislative Counsel settle to the task of translating into individual provisions the policy and the list of particular matters identified during the analysis, according to the agreed legislative plan. Composition, then, should provide the necessary legal rules to regulate all the circumstances that are reasonably likely to occur in practice.

With the exception of short or minor legislation, a series of drafts will be required before the drafter is satisfied with the product. How many will depend in part upon how much time the legislative time-table permits. For difficult legislation, it is important that sufficient drafting time is allocated for the preparation of several drafts.

The process of composition tends to be very individual. Each drafter develops a personal approach (as well as stylistic preferences). Some are systematic, e.g. in completing a detailed first draft of the provisions in the order in which they appear in the plan; others prefer to start by providing a skeleton draft to which they attach the flesh of detail later.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Constitute a complete body of rules for the subject matter in question;
(ii) Write without ambiguity and in ways that provide certainty for those whose affairs or interests are affected.

3.0 MAIN CONTENT

3.1 What goes into the First Draft?

Typically, a first draft needs to concentrate on the fundamentals of:

(i) selecting suitable language to express recurring concepts;

(ii) drafting the central provisions that give effect to the new policy;

(iii) ensuring that all the main propositions are in place, and are relatively complete and consistent in their essentials.

It is rare for anything like a finished version to appear in the first draft, unless its subject matter is very straight-forward. For example, it is usual to postpone work on the provisions that integrate the new law with existing law (amendments, repeals, saving and transitional clauses) until the contents of the new legal arrangements are settled. Ancillary matters, such as those that may be contained in a Schedule, may similarly be left to a subsequent draft. In any case, the first draft usually needs refinement to eliminate, for example, weaknesses in syntax and expression, to secure consistency in style and between the individual provisions and to eliminate ambiguities.

3.2 What Goes Into Subsequent Drafts?

Typically, second and subsequent versions refine the first, as well as including the additional and ancillary provisions that were left out of the first draft. This stage offers an opportunity to look more closely at the structure of the individual sentences, their relationship with those with which they are legally linked, and the overall style, and particularly whether the text is as simply and directly expressed as possible. A considerable amount of re-writing of the detail of particular provisions may be called for. But second thoughts on elements of the structure and sequencing are common.

Careful scrutiny of each draft is necessary to ensure that consequential modifications are carried out following alteration of substantive provisions. For example, special attention is given to checking the numbering and cross-references that may be affected by textual re-arrangement.

Note:
When you are working by yourself, it is good practice in relation to your first complete draft to:

- **build in time to enable the draft to be put on one side for a short while and come back to reconsider and revise it before you pass it forward.**

In this way, you bring a fresh eye and mind. Every draft is capable of improvement. You will be surprised at what you notice on further scrutiny.

- **invite another Legislative Counsel to comment upon the draft and to give serious consideration to those comments.**

Don't feel too proud to take advice and suggestions. It is more important that shortcomings are removed from the draft before it leaves your office than that they are brought to your attention by the client or in the Legislature, or even worse in the courts.

3.3 Should Precedents Be Used To Aid Composition?

Composing is an act of personal creativity, but drafters gain useful assistance from legislative precedents both from their own jurisdiction and elsewhere.

Precedents may help in the actual drafting of individual provisions:

(i) they may provide ideas for modes of expression and neat ways of formulating a concept or dealing with a drafting difficulty;

(ii) they may suggest points of detail that require attention but the drafter may have overlooked;

(iii) if from the local jurisdiction, they may suggest expressions or approaches that lead to consistency in the legislative treatment of similar issues;

(iv) if from other jurisdictions, they may suggest simpler or more effective ways of expressing matters than has been the case in the local jurisdiction in the past;

(v) if they are in point, there is no reason for inventing a new solution for something that has been effectively used elsewhere;

(vi) they may save time, provided that the texts are readily accessible.

But use of legislative precedents must always be sensible and calls for judgment. Unconsidered copying, especially from the legislation of another place, can damage the health of a text. A number of dangers must be recognised:

(i) the style of drafting may not be consistent with that which is acceptable in the local jurisdiction; the text may need alteration before it is consistent;

(ii) if copied directly into the text the precedent may produce ambiguity or inconsistency in effect;

(iii) the choice of language in the original may have been influenced by circumstances in another place or time, e.g. deliberately fuzzy words may have been selected to achieve some political compromise;

(iv) the original may not be working satisfactorily in its place of origin, or may have been amended in some significant way or affected adversely by judicial interpretation; for many jurisdictions it is difficult to obtain this kind of information;

(v) legislation has to be understood in the context of the system of which it is part; the way it is composed may reflect considerations that do not exist locally;

(vi) the terms used in the precedent may have been dictated by factors such as the Interpretation Act or the Constitution of the particular jurisdiction, without this being immediately apparent.

3.4 When Should Consultation Be Held In Relation To Drafts?

Once Legislative Counsel is satisfied with a draft, it is usual to submit it to the client Ministry and other interested parties for consideration. Consultation may be in the form of exchanges of memoranda or conferences, depending on the nature and extent of the comments. Directions on the procedure are often given in Government Guidelines.

In the light of the comments, Legislative Counsel makes appropriate revisions and continues to submit revised drafts for similar consultations until a final version is settled upon. The number of drafts will depend on the complexity or size of the enterprise, but also on the amount of time available before the Bill has to be ready for introduction.

4.0 CONCLUSION

Composing the text is the hallmark of Legislative Drafting. It is at this stage that all the previous units will be tested. Drafters should not lose sight of the fact that Government wishes to have the legislation enacted with the minimum of controversy in the Legislature. In consequence, in the interests of managing the Bill through the Legislature, Legislative Counsel may be asked to choose language that stills likely controversy or eases passage through the legislating process.

5.0 SUMMARY

Under this Unit, you learnt the rudiments of composing a Legislative Bill. You learnt all it entails in composing text, what goes into the first draft and subsequent drafts, whether precedents should be relied upon and the need for consultation after composing.

6.0 TUTOR MARKED ASSIGNMENT

The process of composition tends to be very individual. Discuss.

7.0 REFERENCES/FURTHER READINGS

Driedger E.A, (1976) *The Composition of Legislation,* Ottawa: Dept of Justice.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 2 SCRUTINIZING THE DRAFT

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 What should we be looking for when scrutinizing a draft?
 3.2 Checklist on Substantial scrutiny
 3.3 Checklist on textual scrutiny
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Checking the text of drafts, particularly when alterations are made, is a constant process. It is very easy for errors in cross-references or in typing or processing to creep in and be overlooked. Although helpful, spelling and grammar checks of computer-generated text should not be treated as fully reliable. (A miss-spelt word may constitute a word with different meaning; grammar checks do not readily accommodate legislative formatting). The final responsibility for scrutiny is always that of Legislative Counsel.

Changes in the text of a draft may cause spin-off effects in other places. Some will be immediately apparent and can be corrected at once, but others, particularly those having indirect effects, will only be picked up by careful and deliberate consideration of the text. The more changes made to a text, the easier it becomes to overlook impacts on other provisions, especially if not spotted when the change is made. We all have a capacity to see what we want to see, rather than what is actually there.

For these reasons sound drafting does not see scrutiny as incidental to composition. It should be treated as a distinct task.

2.0 OBJECTIVES

By the end of this Unit you should be able to:

(i) Explain what to look for in scrutinizing a draft;
(ii) List the checklist on substantive scrutiny;
(iii) List the checklist on textual scrutiny.

3.0 MAIN CONTENT

3.1 What Should We Be Looking For When Scrutinising A Draft?

Scrutiny should be concerned both with substance and form. Therefore, the entire text needs to be read through at least twice, initially for the sole purpose of being reassured that the Bill fulfils the instructions in securing the stated policy objectives in the most coherent and effective way. It needs to be read through *again* for the sole purpose of eliminating typographical errors, ambiguity of expression, inconsistency of language and content and incorrect references.

3.2 Checklist on Substantive Scrutiny

Checks for legal compliance

- Compatibility with the Constitution, especially Basic Rights and Freedoms.
- Compatibility with existing or pending treaties.
- Compatibility with existing law, especially at a higher level in the hierarchy of laws, and inclusion of provisions for repeal and amendment of displaced provisions of existing law.
- Removal of provisions that are legally unnecessary or repetitious or can be dealt with by non-legislative means.
- Consistency of concepts and of legal approach with existing law.
- Inclusion of transitional provisions to ensure legal continuity.

Checks as to operational features

- Inclusion of all provisions necessary to make the scheme operative and enforceable.
- Effectiveness, fairness, consistency and transparency of administrative, enforcement and adjudication procedures.
- Modes of expression that diminish the likelihood of disputes and aid settlement and adjudication.
- Easy to use legislative provisions.

Checks as to secondary legislation

- Provisions enabling the making of secondary legislation to the extent needed to supplement the law
- Appropriate limits upon the making of such legislation

The second stage of the scrutiny is concerned more with identifying and removing textual errors.

3.3 Checklist on textual scrutiny

Checks as to form, clarity and comprehensibility

- Compliance with the standard requirements as to format, presentation and style.
- Compliance with relevant requirements (especially definitions) of the Interpretation legislation.
- Compliance with best practice as to legislative expression and composition.
- Provisions that can be expressed more simply or directly and generally improvements in wording, style, readability and intelligibility;
- Logical and accessible organisation of the provisions.

Particular textual checks

- correct references to constitutional and public and statutory authorities.
- consistency of the long title, short title or any purpose clause with the contents of the Bill.
- correct use of definitions.
- correct use of paragraphs.
- accurate headings and sections notes.
- correct numbering of divisions, section and subsections.
- correct cross-references to other provisions in the Bill or in other legislation.
- correct spelling, use of capital letters and punctuation, and generally absence of typographical errors.
- replacement of ambiguous or misleading expressions.

These forms of scrutiny are necessary for every draft before it is passed for consultation and especially in respect of the final draft before it is submitted for approval. Here too there are benefits from putting the draft in a drawer overnight and returning freshly to it later, and from asking a colleague to bring a fresh eye to the text.

4.0 CONCLUSION

Scrutiny is a major step in legislative drafting. No draft will be complete without passing through scrutiny following the entire necessary checklist.

5.0 SUMMARY

In this Unit, we discussed the importance of scrutiny. We also listed what it entails to scrutinize a draft.

6.0 TUTOR MARKED ASSIGNMENT

1. Scrutiny should be concerned both with substance and form. Discuss.

7.0 REFERENCES/FURTHER READINGS

Driedger E.A, (1976) *The Composition of Legislation,* Ottawa: Dept of Justice.

Thornton, G.C. (1996) *Legislative Drafting* 4th ed., London: Butterworths.

Soetan, Olusiji A. (1997) *Elements of Legal Drafting*, Lagos: Dredew Publishers.

UNIT 3 VALIDATING THE DRAFT

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
  3.1 How the draft is made valid legislation
  3.2 What is the role of the drafter during the legislative process?
  3.3 How does the preparation of Subsidiary legislation differ?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

Completion of the text is followed by a series of steps that lead to its validation as legislation, i.e. steps that give the text authority as written law. Legislative Drafter is not substantially engaged in most of these steps.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Familiarize with the steps in validating the draft in legislative drafting;
(ii) Explain the way subsidiary legislation differs.

3.0 MAIN CONTENT

3.1 How The Draft Is Made Valid Legislation

As noted in **1.0** above, typically, these steps are:

1. Executive approval of the Bill
2. National Assembly approval after general circulation of the Bill
3. Decisions concerning introduction in the Legislature
4. Introduction in the Legislature
5. Passage through the required legislative stages
6. Assent

As Legislative Counsel is not substantially engaged in most of these steps, they can be described shortly.

1) Approval of the draft legislation

The draft Bill, prepared by Legislative Counsel in consultation with the Government, Ministry and National Assembly Bill team, must be approved by the Executive. The Bill then goes for printing by the Government Printer, with an explanatory memorandum prepared by Legislative Counsel. In other jurisdictions, the final text is reproduced less formally from the version prepared by the drafter. The drafter's responsibilities typically include proof-reading the instrument to ensure that it is typographically correct.

2) Circulation and approval by Government

The completed Bill must be submitted by the client Minister for Government approval. This may be preceded by its circulation to all Ministries and the Attorney General (as Government's principal legal adviser). This is partly to apprise Ministers of what is coming up for consideration by the Executive, but also to give an opportunity for Ministries that have not been immediately involved in the preparation to draw attention to issues on which they have a particular position. Conflicts of interests can be resolved before executive consideration.

SELF ASSESSMENT EXERCISE 1

Note the practice with respect to Government approval of Bills.

3) Decision to introduce in the Legislature

On approval by the Executive, the Bill must be allocated an exact place in the programme for the coming or current session of the House and a date set for the introduction. In a Bicameral legislature such as ours in the Federal (Senate and Federal House of Representatives), a decision must be made as to which should be the place for introduction. This too is often decided by the Rules and Business Committee.

SELF ASSESSMENT EXERCISE 2

Note the practice with respect to entry into the legislative programme.

4) Introduction in the Legislature

Typically, the Bill, as approved, is then sent to the Clerk of the House concerned, who will arrange for it to be passed to the Government Printer for printing of the required number of copies.

Legislative Counsel may have responsibility too for monitoring publication in the *Official Gazette*. Responsibility for distribution to the members of the Legislature is that of the Clerk.

Introduction may take the form of tabling the Bill or even by a formal first reading (when merely the title of the Bill is read out). Here, as in other respects, the procedure in the legislature differs from one jurisdiction to another.

SELF ASSESSMENT EXERCISE 3

Note the practice with respect to introduction of Bills into the Legislature.

5) Passage through the Legislature

The procedures for enactment and consideration of Bills are as follows:

(a) **First reading** - formal introduction and notification to Parliament;

(b) **Second reading** - debate on policy and general principles;

(c) **Committee stage** (select committee or committee of the Whole House) - clause by clause consideration of details and of proposed amendments;

(d) **Report stage** - report of the committee amendments to the House, providing an opportunity for further debate and amendment usually by Government;

(e) **Third reading** - debate on final text as amended, usually on general principles.

The Bill as amended at the earlier stages is usually printed again or reproduced for each stage. It may fall to Legislative Counsel to proof-read the text to ensure that the changes have been correctly incorporated and printed.

During the passage of the Bill through the Legislature, the original drafter usually retains a watching brief over its treatment. Drafters attached to the Legislature may function this way.

6) Assent

On completion of the legislative stages, typically the bill is reprinted, proof-read and then certified as correct. This task may be carried out by officers of the Legislature, or sometimes by Legislative drafters.

The Clerk of the National Assembly is typically required to certify that the Bill is appropriate for assent in accordance with the Acts Authentication Act. The Bill as certified is delivered to the President for his assent. Several copies (which may be required to be "on best quality" paper) are supplied. At least two will be signed by the President, one kept by him, the other by the National Assembly.

The President can either signify his assent to the Bill or withhold his assent (i.e. exercises his power of veto). See Section 58 of the 1999 Constitution of Nigeria.

As soon as possible after the formal certification of assent, the Act will be printed and published, initially in the *Official Gazette*. A certificate under the hand of the Attorney-General may be required as authority for publication here, as at other stages where the legislation is printed. Legislative Counsel may be needed to check and proof-read the text, liaising with the Government Printer.

3.2 What Is The Role Of The Drafter During The Legislative Process?

The process of debate is conducted through the medium of proposals for amendment. Many amendments will be designed by the opposition to raise issues of policy on which there is political disagreement. These will be strenuously opposed by Government, as their acceptance would fundamentally damage the Bill. Drafting of such amendments is designed to bring out the policy dispute rather than with any expectation of altering the Bill. Other amendments, however, may be concerned with the detail of the Bill, and aimed to deal with a matter which the proponent feels should be included or excluded, e.g. in the interests of a particular section of the community.

Legislative Counsel, as Government lawyers, are rarely concerned with the preparation of either of these types of amendment. That drafting may be undertaken by the proponent personally or with the assistance of Parliamentary staff. But Legislative drafters are usually required to monitor and advise on them, particularly as to their effects on the original scheme. Such amendments are often poorly drafted or inconsistent in some way with other provisions of the Bill, even if the substantive content is acceptable. In cases of this kind, Legislative

Counsel can suggest an alternative and acceptable format or that the original amendment be withdrawn on the assurance that an amendment, drafted by them, be brought forward at a later stage. Alternatively, Government may be advised that the amendment be opposed as unnecessary or because it deviates from the intended legislative scheme.

In some jurisdictions, Governments themselves are obliged to propose substantial amendments of their own, as a result of further work on the Bill or because issues have been raised in Parliament or by the public which call for rethinking of some of its features. Drafting of these will be the responsibility of the original Legislative Counsel, in consultation with the Ministry Bill team. Circumstances can arise that require reconsideration of the policy underlying certain of the legislative provisions. In such a case, the approval for the change may have to be obtained from both the sponsoring Ministries and the Executive. This may give rise to changes in the Legislative time-tabling.

Legislative Counsel may be required to be in attendance when a Bill is being debated, especially at the Committee and Report stages, in order to tender advice on amendments or issues raised.

3.3 How Does The Preparation Of Subsidiary Legislation Differ?

Much subsidiary legislation is of a detailed nature, designed to provide particularized rules for administrative requirements implementing the statutory scheme created by an Act. Necessarily, it concerns matters that are within the specialist purview of the Ministry administering the Act. For this reason, the full preparation process, including the drafting, is undertaken within that Ministry by the Ministry lawyers. In such cases, there is a much less formal division of tasks, especially since new policy is usually not involved and internal communications simplify the process of getting instructions.

The actual drafting is undertaken, on Ministry instructions, by one of the Legislative Counsel, usually because the Ministries do not have their own legal staff. Responsibility for the drafting of whole body of written law is given to the Government drafting service. In these cases, the overall pattern of the preparation process is similar to that used for Bills, since two authorities, the Ministry and Legislative Counsel are involved. But it rarely calls for the same intensity as in the case of Bills.

The function of the drafter in these systems is essentially the same. The tasks of analysing, designing, composing and scrutinising are constants, although for many instruments they may be less demanding. The major difference lies in the process of validation. Typically, a subsidiary

instrument becomes law when it is signed by the Minister/Government functionary to whom the legislative power is delegated. It comes into force when it is published in the *Official Gazette*. Its validity does not depend upon Parliamentary action.

In principle, as the Legislature is the supreme law-maker, it might be expected to exercise close control over law-making by its delegates. But if all subsidiary legislation had to be approved in the Legislature, many of the advantages which accrue from using this type of legislation - for example, the relative speed with which it can be made - would be lost. At the same time, there is much in the view that the exercise of these powers should be subject to Parliamentary scrutiny.

The sole authority capable of reviewing those cases is the court; but judges may interfere only where they find the instrument in question to have been made outside the particular area of competence granted by the Legislature. However, it is the practice of the Legislature to attach to the delegated power conditions which require the instruments to be brought to the attention of the Legislature (i.e. to be laid or tabled before the Legislature):

(i) for information; or

(ii) with a requirement that the instrument must be approved by the Legislature within a prescribed period before the instrument can come into force or if, having come into force, it is to continue in force (**affirmative procedure**); or

(iii) with a power in the Parliament to nullify the instrument within a prescribed period (**negative procedure**).

Opportunities for such Parliamentary action are usually carefully controlled, especially if Government has the major say in the organisation of Parliamentary business. Positive action on instruments is in fact quite rare.

4.0 CONCLUSION

Validating the draft is the last step in Bill drafting. Efforts should be made towards a final good job on the Bill.

5.0 SUMMARY

In this Unit, you have learnt the processes of validating the draft which are: approval of the draft legislation, circulation and approval by Government, decisions to introduce in the legislature, introduction and

passage in the legislature, and assent. You also learnt the role of the drafter during legislative process and how subsidiary legislation differs.

6.0 TUTOR MARKED ASSIGNMENT

Critically examine the steps needed in validating legislation.

7.0 REFERENCES/FURTHER READINGS

Acts Authentication Act Cap. 4 Laws of the Federation of Nigeria 1990 or Cap. A2 Vol. 1, Laws of the Federation of Nigeria 2004.

1999 Constitution of the Federal Republic of Nigeria

Jimoh Akintola A. (1999) *Law Practice and Procedure of Legislature,* Lagos: Learned Publishers Ltd.

UNIT 4 GETTING INSTRUCTIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 In what form should instructions be given?
 3.2 Why instructions should not take the form of a Bill
 3.3 Why instructions might be incomplete
 3.4 What questions should instructions answer?
 3.5 What should be done if instructions are incomplete?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

The practice of using formal instructions to communicate the policy makers' requirements is central to our system of legislative preparation, since the functions of policy development and of drafting by Legislative Counsel are typically kept distinct. In this Unit, you consider how instructions are made available to drafters, how they are intended to assist the work of the drafter and ideally what they should contain. More practically, you examine how the drafter should respond to instructions and what you might do if the instructions provided do not contain what you need.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Give an account of the value and functions of instructions in preparing legislation and the practice in relation to them; and
(ii) Take appropriate action where instructions are inadequate.

3.0 MAIN CONTENT

3.1 In What Form Should Instructions Be Given?

Drafters must work with the instructions they receive, however useful or limited they may prove to be. Practice varies between jurisdictions. In developed countries, formal guidelines to be followed by instructing officers are issued by Government to Ministries (in a Handbook or

notice) as to the form and contents of instructions. These are designed to enable instructions to be prepared that meet the needs of Legislative Counsel. As they contain directions as to the minimum standards to be observed and the responsibilities of the administrators, they give Legislative Counsel authority to insist on their observance by those who prepare instructions for a particular Bill.

The aim of the guidelines is to ensure that drafters receive instructions that cover the essentials of the policy and a clear view of the objectives, the preferred solution and the basic principles of the proposed scheme. This information is easier to digest if it is set out in the systematic way required by the guidelines. Because instructions are the principal mode of communication between the policy-maker and the drafter, clarity in contents and presentation is as important as in the case of the legislation itself.

The principles underlying these practices are designed to encourage instructions that:

(i) are written, rather than oral, since oral communication is likely to be imprecise and capable of being misunderstood (oral instructions may be unavoidable in an emergency that calls for rapid action);

(ii) are written in a narrative form rather than in the form of a Bill;

(iii) use plain and, as far as the subject-matter allows, non-technical language and are in a structured form that makes them easy to understand and work with.

3.2 Why Instructions Should Not Take the Form of a Bill

Client Ministries produce a draft of the Bill, rather than narrative instructions, since this is thought to be the most efficient way to show what the client wants, as well as easing the task of the drafter. However, for many drafters this approach does not meet their needs. Several considerations argue against this practice:

(i) A legislative instrument rarely describes the policy objectives that underlie it or the mischief that it is designed to remedy. These are typically implicit. In consequence, a drafter receiving a draft Bill must elicit these matters from its provisions, and then try to work out whether the provisions are in fact the best to secure those objectives. This is a difficult and a time-consuming mental exercise.

(ii) A draft Bill contains legislative solutions that the client has decided upon. Drafters cannot know what factors have led to this choice and it is difficult to assess whether alternatives, that the drafter might prefer, were considered. Drafters may feel under some pressure to accept the solutions selected.

(iii) It is difficult to analyze problems from first principles when presented with a preconceived solution. A finished draft tends to create a mind-set that it is not easy to escape.

(iv) The practice encourages the view that the drafter's task is merely to vet the details of the draft for shortcomings in expression, form or consistency and so on, rather than as the creative role conventionally practiced. This approach makes inadequate use of drafters' specialist skills and legislative experience.

(v) If the drafter considers that the draft Bill is fatally flawed, is it to be sent back to the client for replacement or does the drafter produce a different version? Either course may lead to delay and possible friction between the drafter and client (whose pride of authorship may be thought to be challenged). In preparing a new version, the drafter has the difficult task of inducing the instructions from the flawed Bill.

(vi) Draft Bills are often based upon statutory precedents acquired by the client. Even if these are appropriate to the new circumstances, they usually need skilled adjustment to suit the local circumstances and statute book. It is not easy for drafters to ascertain whether the client has undertaken this task satisfactorily.

Thornton's comment (p.130) merits repeating:

> An instructing officer needs the discipline and the stimulus occasioned by the task of writing out in a straight-forward way what the legislation is proposed to achieve, why and how.

Exceptionally, a draft Bill may be offered, though only with the agreement of First Legislative Counsel. It may be sensible for a short Bill or one making simple amendments or for a Bill or subsidiary instruments of a routine nature for which ample satisfactory local precedents can be found. The drafter then needs do little more than ensure that a simple task has been properly carried out.

Similarly, a Bill prepared by a law reform commission, e.g. appended to its report, is unlikely to need very much further action, unless the commission's recommendations are to be modified. These are usually

drafted by an experienced drafter attached to the commission. There may also be cases where First Legislative Counsel is satisfied that a Bill has been prepared by a competent drafter outside Government and is likely to be of good quality.

3.3 Why Instructions Might Be Incomplete

Legislative Counsel may be provided with instructions that fall short of some of the requirements in the model guidelines. This may occur because the client Ministry is unfamiliar or inexperienced in the task or because they do not have administrators with the necessary knowledge or expertise on the particular subject matter. Good instructions for a substantial Bill call for input from a team in the client Ministry that includes persons with competence in the subject matter and in the law on that matter. In some countries, Ministries may not have, e.g. legally trained administrators. In those cases, the team may experience problems when dealing with legal issues in the instructions.

Incomplete instructions may also result if the time-scale allowed for the preparation of the Bill is too short. If work on the Bill only starts when a decision is made to allocate it to a legislative session shortly to take place, the time available to the client Ministry for planning and preparing the instructions can be severely restricted. The guidelines suggest that preliminary instructions should already have been written and have been the subject of interdepartmental consultation when the executive is asked to agree to legislate. If no procedure exists for settling the legislative programme, there may be no room for these steps.

3.4 What Questions Should Instructions Answer?

Legislative Counsel needs certain kinds of information that well-prepared instructions usually contain, whether they are actually provided or not. So, drafters must remedy instructions that are incomplete by finding that information or at least seeking it from others. Clear policy guidance to the drafter is particularly important if the issues involved are likely to be publicly sensitive or politically controversial. Instructions are incomplete if they fail to fulfill their purpose:

(i) to provide the drafter with directions as to how policy issues are to be dealt with, in particular the objectives to be achieved, the basic approach to be adopted, the basic principles to be implemented and the fundamentals of the scheme to be put in place.

Example Box 1

Questions that instructions might need to answer

What are the policy objectives?

- what is the harm or problem that the legislation is intended to deal with?
- what are the precise results that the government wishes to achieve?

What legislative scheme is proposed to achieve these objectives?

- are the new arrangements to replace or modify an existing scheme?
- what legislative approach is to be adopted?
- is the scheme to be dealt with by amending existing legislation or in a self- contained Bill?
- is any new body to be established? If so, how is it to be composed and with what functions?
- how is the scheme intended to operate? What steps in the scheme, from initiation of action to completion, need to be regulated by law?
- what new rights, powers and duties are needed for public and private bodies and individuals to make the scheme operative?
- are any transitional arrangements required?

What implementation mechanisms are to be used?

- what agencies, government or private sector, are to be involved?
- what functions are these bodies to perform?
- how will compliance with the scheme be secured?
- what are the consequences of non-compliance?
- for what matters are delegated powers, notably to make subsidiary legislation, required?

How is the legislative scheme to be administered and enforced?

- which bodies are to be responsible for administering, supervising or regulating the scheme?
- are additional enforcement powers to be conferred upon any such body?
- for regulatory schemes, what kinds of sanctions are required?
- to what extent is provision to be made for recourse to the courts?

How is the legislative scheme to be financed?

- is the scheme to be funded from the public purse or by other means?
- for what matters are financial provisions needed?
- are special financial controls required?

Are any legal difficulties to be dealt with in the bill?

- do any matters require special attention in order to comply with the Constitution (including the Fundamental Rights provisions) or a treaty?
- what consequential amendments to other legislation appear likely to be needed?

The drafter should have as full a picture of these issues as possible before beginning to compose the text. If a policy analysis has been carried out by the Ministry (as explained earlier on), answers to some of the questions should be available from the reports that were prepared for that purpose.

3.5 What Is To Be Done If Instructions Are Incomplete?

If full guidance is not to be found in the instructions, take whatever steps are appropriate, in the time available to you, to obtain further instructions. This can be done in several ways:

(i) Ask the client Ministry specific questions by memorandum or minute and request the specific types of information that you need;

(ii) Form your own conclusions on the important questions and seek confirmation or otherwise from the client by consultation through meetings or memoranda;

(iii) On the basis of your own analysis and research, reach your own conclusions on the uncertain issues, incorporate them into the Bill and specifically ask for confirmation of the matters when the client is consulted with respect to the first draft.

What you actually need in any particular case may only become apparent in the course of analysing the instructions.

4.0 CONCLUSION

Drafters must work with the instructions they receive. Where they are inadequate, further instructions should be obtained from the client so as to have a good draft that reflects the client's intentions.

5.0 SUMMARY

Your work in this Unit should have made you aware of the value of good instructions. You should also have a better idea of how these might be and are prepared by client Ministries. You have been introduced also to the difficulties which drafters face when the instructions do not provide all that they require, and to ways in which this handicap may be dealt with.

6.0 TUTOR MARKED ASSIGNMENT

You have just received a set of instructions which contain no background information about the legislative proposal. List the types of materials that you might consider asking the client Ministry to supply.

7.0 REFERENCES/FURTHER READINGS

Thornton, G.C. (1996) Legislative Drafting 4th ed., London: Butterworths.

Soetan, Olusiji A. (1997) Elements of Legal Drafting, Lagos: Dredew Publishers.

UNIT 5 ANALYSING INSTRUCTIONS

CONTENTS

1.0 Introduction
2.0 Objectives
3.0 Main Content
 3.1 What should we be looking for when analyzing instructions?
 3.2 Questions we might ask ourselves so as to understand instructions
 3.3 What should answers to such questions provide?
 3.4 Questions we might ask ourselves so as to ascertain the elements
 3.5 What should answers to such questions provide?
 3.6 How we might approach the task of analysis
 3.7 Other analytical aids we can use
 3.8 Should the analysis be followed by consultation with the client Ministry?
4.0 Conclusion
5.0 Summary
6.0 Tutor Marked Assignment (TMA)
7.0 References/Further Readings

1.0 INTRODUCTION

This Unit is concerned with the way in which you should put instructions to use. It indicates approaches that you should develop that will be equally helpful in analysing good instructions. This is a topic to which you should give close attention. Consider keeping a checklist of the questions in the text, to ask yourself in order to understand instructions and to work out the elements of the legislative proposals. You can add other questions as they occur to you during your drafting work.

2.0 OBJECTIVES

By the end of this Unit, you should be able to:

(i) Undertake an analysis of simple instructions and to determine when further instructions may be needed.

3.0 MAIN CONTENT

3.1 What Should We Be Looking For When Analysing Instructions?

You should have three principal objectives in analysing instructions:

(i) To gain a full understanding of what the proposals are intended to achieve, why they are needed and how the policy objectives are to be secured;

(ii) To work out a list of the elements of the proposals on which statutory provisions are needed;

(iii) Working out the particular items on which statutory provisions are needed.

No matter how full the instructions, drafters should work out for themselves a comprehensive picture of what needs to be dealt in the legislation. A Bill should be concerned with only those topics that require statutory regulation. The overriding question to answer when analysing the instructions is:

What matters must I make the subject of legal rules?

3.2 Questions We Might Ask Ourselves So As To Understand Instructions

In analysing instructions to gain an understanding of the legislative proposals, consider the following kinds of questions:

Example Box 1

Questions to aid understanding

What improvements or benefits are intended to result?

What activities or circumstances will need to be regulated to diminish the perceived harm or resolve the problem?

What defects or weaknesses in present arrangements are to be removed?

What are the principal ways in which the present arrangements are to be changed in order to produce the intended benefits?

Which persons are to be benefited and whose activities or behaviour is to be regulated?

Which agencies are to be responsible for putting the new arrangements into effect?

Are the administrative arrangements designed with the maximum transparency and fairness to those likely to be affected by their operations?

Are there foreseeable problems or operational difficulties that may flow from the proposed arrangements?

Are there foreseeable conflicts or incompatibilities with other legislation?

Do any features of the proposed arrangements appear to be impracticable or less effective or efficient than alternatives?

Are there matters on which fuller information than is contained in the instructions is needed to obtain a complete picture?

On some matters you may need to ask the client Ministry for clarification or further instructions or even to give further thought or carry out your own research. As we have seen, the Ministry is expected to appraise policy options and select the one that is most workable and that, within the resources and administrative capacity made available, is capable of producing the desired results in a reasonably efficient and cost-effective way. But it is within your function to draw attention to elements of the scheme which appear to be inconsistent with the objectives. You may wish to draw attention, e.g. to features of the proposal that make greater intrusions on individuals' activities than are necessary to achieve what is intended or that may have undesirable side effects or adverse economic consequences or to query whether the system of administration may prove to be too bureaucratic or expensive.

The drafter in practice is likely to be the most independently minded Government officer to scrutinize legislative proposals, and is in an especially good position to offer critical advice on them. Ministers and

administrators often equate more law with better law. In fact, proposed new laws, if put into effect, may be the cause of annoyance and frustration in members of the public affected by them (e.g. they may require time to be spent, often over several days at Government offices, queuing for forms, completing them and queuing again to pay fees and to receive permits). Yet there may be no significant administrative gains to compensate for that.

3.3 What Should Answers To Such Questions Provide?

The answers from this analysis should enable you to be clear on such matters as:

(i) the principal statutory mechanisms to be used (e.g. extension of Government's powers, changes in the criminal law or other areas of substantive law; creation of a new body with appropriate functions; alteration of tax laws; extension of court powers; provision of licensing or registration procedures, etc);

(ii) how the statutory arrangements are intended to operate and be implemented;

(iii) the principal authorities that are to have responsibilities under the Bill;

(iv) the categories of persons to benefit or to be given protection or whose functions are to be regulated.

3.4 Questions We Might Ask Ourselves So as To Ascertain the Elements

Two preliminary questions must first be answered:

(i) whether the proposed legislation is actually required at all (which may not be the case if the matter is already covered by existing law, or could be dealt with under existing statutory powers or by non-legislative means);

(ii) what type of legislation is needed (a substantive Bill or an amending Bill, or a money Bill, or merely subsidiary legislation).

Your conclusion that a Bill is not needed must be taken up as soon as possible with the client; the Minister concerned must be asked to make the final decision.

In analysing instructions to work out the required elements of a Bill, consider the following kinds of questions:

Example Box 2

Questions to help work out statutory elements

Which features of the scheme must be dealt with by legal rules? Are there any that can be dealt with through administrative directions?

What are the principal means by which the administering authority will carry out its functions?

What, and whose, are the principal rights, powers and duties that are to be provided in order to make a coherent and workable scheme?

What are the principal procedural steps at particular stages of the scheme?

What time factors need to be provided for (e.g. in relation to procedural steps, as well as the commencement of the Bill or its parts, the phasing in of the arrangements)?

What powers are the courts to be given to support enforcement or to provide remedies for aggrieved parties?

What new criminal offences and police powers are to be included?

What matters arising in any transition towards the new arrangements need attention?

How are items already covered, or touched on, by existing law to be integrated?

Do any items give rise to issues affected by the Constitution, especially the Human Rights provisions (e.g. personal or property rights of individuals)?

Are any items to be given retroactive or retrospective effect?

Are there any matters on which the State is to be put under binding obligations?

Are there any matters that must be given extraterritorial effect?

Are there any rights or liabilities already in existence that will be affected by the new arrangements and must be safeguarded?

3.5 What Should Answers To Such Questions Provide?

This kind of analysis should provide you with:

(i) A detailed list of the matters on which you will have to provide legislative rules;

(ii) An indication of those items on which there is existing law, which may need to be amended or replaced;

(iii) A note of the items on which special care or attention must be exercised because of their constitutional or legal implications;

(iv) A list of the matters on which some form of application provision must be provided;

(v) A first indication of matters for which transitional and savings clauses may be needed.

The purpose of this exercise is, as far as possible, to identify the matters or propositions on which legal rules are required; it is not to decide the detailed contents of particular legislative sentences (that is for the composition stage). As many drafters do:

- work through the instructions systematically, listing, as you go, the items that you consider need legislative provision;

- note them down, describing the gist of each intended provision (although it may need several sentences when composed), much in the form in which section notes are written.

3.6 How We Might Approach the Task of Analysis

Good instructions may do some of this work for you. Your task then is to confirm to your own satisfaction that the instructions should be followed in the way proposed. For example, administrators sometimes suggest the provision of specific powers when these are already implicit in other broader ones, or ask for general powers when specific ones are

enough. Powers may be sought when none is needed as the matter is one that can be dealt with in the course of internal Ministry administration.

Generally, however, analysis involves imagination and logical and systematic thought. To that end:

(i) Try to visualize what actually is expected to happen and the series of steps or actions that are needed to bring that about;

(ii) Follow the subject through, literally in the mind's eye and pinpoint those matters that require legal provisions to ensure that persons involved can or will act, or desist from acting, to produce the desired results;

(iii) If the subject matter is appropriate, run the scenario of likely events through your mind as if you are watching a video. Treat the matter as if you were dealing with living people and actual events, not as legal concepts:

(iv) In particular, apply the Six Serving Men approach: ***Why, Who, What, How, Where, When***.

(v) Add two other Serving Men:

What if? To help you envisage cases where a proposed requirement is not complied with or a statutory power is not exercised or a specified event does not occur as intended;

What then? - i.e. "If this happens, what should happen next?" "If this does not happen, what should happen then?" It is particularly useful when you are faced with a series of events or the need for a procedure.

Do not spurn an opportunity to ask or read about or even see for yourself the present arrangements or physical setting that are the subject of your Bill. First-hand knowledge may help visualize what is needed.

In part, identifying the matters that need statutory treatment becomes easier as your experience grows. Particular types of legislation give rise to similar requirements with which experienced drafters are familiar.

3.7 Other analytical aids we can use

The following devices can help the analysis process.

- **Diagrams, flow charts and algorithms**

To answer the questions “What if” and "What then .....?", some drafters use diagrams, flow charts or algorithms to work out, the stages and the order of events that are to be regulated. (An algorithm is a step-by-step method of solving a problem, in our case, shown diagrammatically).

This Course contains a number of examples of charts which show how a chain of activities, and those responsible at each stage, can be worked out. Making a diagram of the course or flow of events on a paper helps to relate the answer to "what if” to the standard process and so to identify the various alternative cases that have to be covered. The value of these devices is evident from the fact that in some jurisdictions they are reproduced in statutes.

- **Check-lists**

It is very useful to develop and use check-lists of questions to consider for particular types of legislation. These will direct you to matters that should be considered for inclusion.

If you have access to Thornton's text, make copies, for your personal collection of documents, of the excellent check-lists printed there:

- Statutory corporations and bodies (pages 250-253)
- Licensing and registration (pages 274-277)
- Taxation and levies (pages 294-295)
- Tribunals (pages.318-319).

Yet, remember that a Bill has its own, often unique, requirements. A check-list can never be exhaustive or may include matters that are not relevant to your Bill. However, they can point up standard features that should not be overlooked.

Example Box 3

In dealing with a Bill for licensing, the following matters must be identified:

- the body issuing licenses;
- who may apply and any qualifications to be held;
- the manner and form of the application;
- the criteria for the issue of licenses, and whether it is to be discretionary;
- the issue and form of the license;
- conditions that may be attached;
- fees payable;
- duration and renewal arrangements;

- criteria for refusal to renew, and notification of decision;
- a right of appeal against refusal to issue or renew;
- powers to suspend or revoke.

Thornton provides a fuller check-list (pp.274-277) of items to be considered for inclusion in a licensing statute.

- **Precedents**

Statutory precedents on a similar topic from your own jurisdiction or on the same topic from elsewhere can be helpful in suggesting items that you should consider for inclusion The insights of others can lead to a considerable saving of your time. For the purposes of analysis, they may indicate both the kinds of issues that may need attention in your Bill and a possible way in which your matters can be handled. Precedents from long established drafting services (in, e.g. Australia, Canada, New Zealand and the United Kingdom) may be particularly useful.

But use them with care and judgment. They have been conceived for different circumstances and in the context of a different body of law; their objectives too may not be completely the same. Precedents from the older Commonwealth jurisdictions may include far more than is needed for the law of less complex or sophisticated legal systems or where there are different philosophies on, e.g. economic regulation.

3.8 Should The Analysis Be Followed By Consultation With The Client Ministry?

Your analysis of instructions should be as independent as possible. Take nothing for granted. You need to be confident that you understand what is proposed as a result of your own examination, including, as necessary, your own research into the facts and the law. As we have seen, this may throw up issues on which you need clarification or further instructions or about which you are unhappy.

Typically, these matters are dealt with by the drafter initiating consultations with the client Ministry through their instructing officer. They may be satisfactorily resolved by written exchanges. Formal meetings may be needed if the issues are significant or difficult and will benefit from discussion with the full Bill team from the client Ministry or if the knowledge or opinions of other departments need to be drawn upon. Again, these are typically arranged by the instructing officer at the behest of Legislative Counsel. They are often best held at the drafter's office where the documentation will now have been gathered.

4.0CONCLUSION

Instructions need to be properly analyzed to gain understanding of the legislative proposal. You therefore have to ask the relevant questions where the instructions are inadequate.

5.0 SUMMARY

In this Unit, you have examined the techniques for analysing instructions; these are central to the drafting function. You should now be able to undertake an analysis of simple instructions and to determine when further instructions may be needed; and take appropriate action where instructions are inadequate.

Particularly important in this Unit are the questions which you may ask yourself in analysing the instructions and in working out the elements of the legislative proposals. Do not expect to retain all these in your mind (in any case, they are not exclusive lists). But be sure that you understand *why* questions of this kind need to be asked. That makes it easier to work out the questions to be asked on a particular occasion. If you are unsure of these matters, re-work the relevant parts of this Unit.

6.0 TUTOR MARKED ASSIGNMENT

Why is it important to analyze instructions?

7.0 REFERENCES/FURTHER READINGS

Thornton, G.C. (1996) Legislative Drafting 4th ed., London: Butterworths.

Driedger E.A, (1976) *The Composition of Legislation,* Ottawa: Dept of Justice.