

LED 029

LEGISLATIVE STRUCTURE



NATIONAL OPEN UNIVERSITY OF NIGERIA

**COURSE
GUIDE**

Course Code:	LED 029
Course Title:	LEGISLATIVE STRUCTURE
Adapted From:	Commonwealth of Learning
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1.0 Introduction

LED: 029, deals with two related topics - how legislative sentences are structured and linked into a single legislative document, and how to set about designing an outline plan for a Bill. The first 5 units are concerned with an important feature in the process of composing the contents of legislation. Unit 6 deals with a stage in the preparation process that should be taken *before* any composition is undertaken - as we saw in the course on Drafting Process. For it concerns the process for deciding what the Bill will look like when it is completed, that is, for providing a blue print to guide the drafter when composing the particular contents.

We have brought them together in this course, as they both relate to forming a complete instrument, which we have not concentrated on in earlier Courses.

2.0 Course Aim

The aim of this course is to expose you to the process of structuring legislation.

3.0 Course Objectives

By the end of this course, you should be able, when drafting legislation to:

- (i) Order and link legislative sentences into a logical structure in a legislative document;
- (ii) Design a legislative plan for drafting a short Bill.

The course contains very different kinds of material. Units 1 to 5 is essentially concerned with techniques for composing legislative provisions and follows upon the work you have done in the last course (LED: 027). It has many Example and Self Assessment Exercises. Although unit 6 also explains techniques, these are of a different nature; they are concerned with the methods for organising the rules and provisions that together make the complete legislative document.

Units 1 to 5 deal with a wide range of practical matters. It will require several study sessions. But you may find unit 6 intellectually more demanding, as it is necessarily more conceptual in its approach. Though relatively short, it calls for concentration. Try to cover the whole course in a single session.

3.0 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 15 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.

4.0 Course Materials

The major components of the course are:

1. Course guide
2. Study units
3. Textbooks
4. Assignment File
5. Presentation schedule

5.0 Study Units

We deal with this Course in 6 study units as follows:

- Unit 1 – General considerations / Drafting Sections
- Unit 2 – Using paragraphs
- Unit 3 – Ordering and linking sentences in a section
- Unit 4 – Linking Sections
- Unit 5 – Dividing Bills
- Unit 6 – How to design a legislative plan

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.

We have included a large number of Example and Self Assessment Exercises (SAEs). These have been selected to bring out features of central importance. You will gain immeasurably by giving ample time to the SAEs, and by comparing your efforts with the relevant Answer Box and then drawing the lessons from the exercise. We do not expect you to come up with answers that are identical with ours. These exercises provide an opportunity to put in practice what has been described in the text and then *evaluating* your performance. This will not only tell you

whether you have fully grasped the particular technique, but it will serve to confirm it. If you are not happy with your effort, ask yourself what was missing; then rework the passage in the text and revise your exercise to take account of the approach demonstrated in the answer.

You may find it helpful to read the text of a unit fairly quickly before working the examples and exercises. This will give you a general overview of the whole topic, which may make it easier to see how individual aspects relate to each other. If you break off study of a Unit before it is completed, in the next study session remind yourself of the matters you have already worked on before you start on anything new, to maintain the continuity of learning.

6.0 Textbooks and References

Certain books have been recommended in the course. Each study unit provides a list of references. You should try to obtain one or two for your general reading.

7.0 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.

8.0 Tutor Marked Assignment (TMA)

There is a Tutor Marked Assignment at the end of each 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.

9.0 Final Examination and Grading

The duration of the final examination for LED 029 – Legislative Structure 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.

10.0 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

11.0 Course Overview and Presentation Schedule

Units	Title of Work	Weeks Activity	Assessment (End of Unit)
	Course Guide	1	
1	General considerations/Drafting sections	2	Assignment 1
2	Using paragraphs	2	Assignment 2
3	Ordering and linking sentences in a section	2	Assignment 3
4	Linking sections	2	Assignment 4
5	Dividing Bills	2	Assignment 5
6	How to design a legislative plan	2	Assignment 6
	Revision	1	
	Examination	1	
	Total	15	

12.0 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.

13.0 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.

14.0 Summary

You have much to cover in this course. You may find that some of the units call for at least a full study session of their own. You may also find that the Self Assessment Exercises require more time, as necessarily the text with which we are now dealing is longer. The course builds upon work you have already done; in a number of places you should be on reasonably familiar territory. For example, you have seen earlier that paragraphs can be very useful in organizing detailed or elaborate provisions into an easily accessible form. This course explores at greater length their use and flaws that you must avoid.

In this subject you may find it helpful to draw up your own Checklist of things to do or not to do when structuring legislation. This should help to confirm what you are learning, but it also becomes a handy reminder and reference point for the future. Once the routines become standard practice for you, you can dispense with the Checklist.

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

MAIN COURSE

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UNIT 1 General Considerations/Drafting sections

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1.0 Introduction

This unit deals with the ways in which legislative sentences are structured and how sections are drafted.

2.0 Objectives

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

- (i) Explain the importance of structuring legislation;
- (ii) Describe the basic characteristics of structuring;
- (iii) Explain the guidelines to follow in structuring legislation;
- (iv) Describe how to draft sections.

3.0 Main Content

3.1 Importance of structuring

Most Bills and subsidiary instruments are composed of units of legislation each dealing with a particular aspect of the subject matter. These units are often referred to as "enactments" (although that term, confusingly, can be used too to describe an entire statute or instrument, cp. **section 37(1)** of the **Interpretation Act**). In this context, we mean a complete legal proposition, put into force by legislation, from which specified legal results follow when the facts to which it relates arise.

Common law jurisdictions adopt the practice of breaking statutes into separate sections, each containing a distinct substantive enactment. When this was first introduced in 1850 (by Lord Brougham's Interpretation of Acts Act), a section had to contain a single sentence. Since each section contained an enactment, it had to hold a *complete* legal proposition. So, all elements of the proposition, including qualifications and exceptions to it, had to be contained in the single section and so expressed as a single sentence.

However, such sentences tended to be lengthy and packed with details that made the text complex and difficult to use. As a result, in the interests of better communication, drafters have adopted structuring techniques designed to make enactments easier and clearer to understand. In particular, current forms of structuring allow shorter sentences to be used and introduce "white space" on the page, both of which make the text more accessible for readers. At the same time, the section remains the basic legislative unit. These techniques include:

- (i) subsectioning with each subsection containing a single sentence only;
- (ii) paragraphing and subparagraphing within sentences to point up distinct parts of the legal proposition;
- (iii) assigning matter of secondary or incidental importance to Schedules;
- (iv) spreading the effects of the legal proposition, or modifications or exceptions to it, over more than one section, especially if they are extensive or complex;
- (v) grouping the sections that contain related features of the legislative scheme into separate parts or divisions;

- (vi) labelling sections (section notes), parts and divisions (headings);
- (vii) adopting numbering systems that enable readers to identify where they are in the text and to refer to particular elements with precision.

Example Box 1

The following provisions illustrate the use of subsections to contain related legal propositions in a single section, of paragraphing to differentiate cases, of the use of more than one section to cover the necessary components of the proposition.

Assaulting, obstructing, etc. police officers.

62.-(1) A person commits an offence who:

- (a) assaults, obstructs or resists, or
- (b) aids or incites another person to assault, obstruct or resist, or
- (c) uses abusive or insulting language to,

a member of the Police Force in execution of his duty or a person acting in aid of such a member of the Police Force.

(2) The magistrate before whom the person is charged must commit that person to stand trial at the High Court if the magistrate is of the opinion that the matter should be tried on indictment.

Penalties.

75. A person convicted of an offence under this Part [*which includes section 62*] is liable to a fine of ₦10, 000.00 or to imprisonment for 3 months or, if convicted on indictment, to a fine of ₦25, 000.00 or to imprisonment for 12 months.

Subsection 62(1) creates several offences (shown by the paragraphing), and so contains several legal propositions in a single sentence. Linked procedure - itself a distinct enactment - is dealt with in its own sentence in subsection 62(2).

Section 75 contains a distinct legal proposition as it deals with consequences of other sections but it completes section 62(1).

Note too that the “white space” makes it much easier to work out how the sentence components relate to each other.

3.2 The basic characteristics of structuring

The basic characteristics of legislative structuring that are found include:

- (i) a section or a subsection (if the section is divided) contains a single sentence only (although some jurisdictions are beginning to divide long subsections in this way);
- (ii) "a unity of purpose" or common theme runs throughout the contents of a section whether it comprises a single or several sentences;
- (iii) the entire contents of a section, then, are linked by the fact that they comprise one or more legal propositions dealing with the same theme or idea;
- (iv) legislative sentences that do not contain the complete legal proposition must be linked in some manner with the sentences that contain its other parts;
- (v) paragraphs are used to point up the grammatical structure of a sentence and how the different elements relate to each other and as a device to reduce repetition and avoid ambiguity;
- (vi) bills that are lengthy, and especially those dealing with a complex and detailed subject are divided into distinct parts in which related sections are grouped together in a logical order.

3.3 Guidelines to follow in structuring legislation

The account we have just considered suggests certain guidelines for structuring legislation:

1. The main focus of composition is the individual legislative units that together make up the full legislative scheme;
2. The principal vehicle for expressing each of these units is the section;
3. The section may comprise a single sentence, or a series of sentences, in which case they are set out as individual subsections;

4. The sentences in a section are linked by a common theme to their contents;
5. Collectively the sentences in a section constitute one or more legal propositions complete in themselves or, exceptionally, when linked with other sections;
6. Sections that are not complete legal propositions are linked with the sections that complete them, either through a common subject-matter or by formal devices;
7. Paragraphs and subparagraphs may be used, within a sentence, to present its contents in a more accessible form or to prevent ambiguity or repetition;
8. Schedules are used to remove secondary or incidental material from the main body of the instrument, particularly if it may obscure the central elements of the legislative scheme;
9. In substantial bills, sections containing related matter are grouped together into separate parts.

3.4 Drafting sections

3.4.1 How to approach individual sections

In analysing instructions, your task is to identify, as far as is possible at that stage, the particular matters that must be made the subject of a legal provision. Your aim should be to treat each of the matters needing its own legal proposition as a candidate for a separate section (or in a Bill often referred to as a "clause"). A legal proposition is a statement of a concept that is necessary to the legislative scheme, much as a single idea is the unifying factor for a paragraph in prose writing.

The actual length of the proposition varies according to its complexity, or to the amount of detail that must be included to make it complete, or to the number of qualifications or exceptions or other modifications required. The main theme of the proposition has to be expanded upon to include all the cases or circumstances to which the proposition applies. This typically calls for several sentences, and therefore several subsections.

Confining a proposition to a single section is often not possible. The longer or more complex the proposition the greater the case for breaking it up into linked sections.

3.4.2 How to tell which matters should be covered by the same section

Each sentence in the section must throw some light upon the common theme of the section. You should be able to describe that theme in five or six words in answer to the question "which feature of the legislative scheme is this section intended to provide for?". In the course, Drafting Process, we recommend that, in analysing the proposed legislative scheme, you describe each matter calling for a separate enactment in the form used for section notes. This represents the common theme. A provision that does not fall within that summary is likely to be unsuitable for inclusion in that section. So, test whether a provision is appropriately included in a particular section by whether you can provide a note for the section that covers the provision. If you cannot do that, the section needs reconsideration.

Example Box 2

Appointment and duties of film censors.

5.-(1) The Minister may appoint such number of film censors as he or she considers expedient.

(2) The film censors are to carry out the duties assigned to them in accordance with such general directions as, from time to time, the Minister may give to them.

(3) A film must not be exhibited unless a certificate of censorship, in force, in respect of it, is granted by a film censor in the manner set out in section 6.

Subsection (3) is an important proposition but it does not fall within the theme of the present section note. Indeed, no simple note, and so no section, can cover both organisational arrangements and a basic substantive rule.

3.4.3 How long should a section be?

A section that contains, say, more than 6 subsections, especially if each is a substantial sentence, should be reconsidered. One test is whether the section, when printed, will take up a large part of the page. Readers find text intimidating if there are no breaks of the kind made by section notes. As a rule of thumb, if there are less than 2 section starts on each page; consider whether you have too many subsections, even though they are linked thematically. Most long sections have a major theme and several sub-themes. It should be possible to divide these between linked sections.

3.4.4 How the section note should be selected

Notes are attached to sections to help users find provisions easily and not to interpret them (See **Section 3(2)** of the **Interpretation Act**). They perform the role of *topic indicators*, i.e. they give the reader a foretaste of what is in the section. We know from research that readers discover the significance of the individual provisions, and their relationship, much more easily if they have an idea of their main thrust before turning to the details. When collated at the beginning of a Bill, section notes provide a useful table of contents and a quick guide to its structure and coverage.

Although you may have made a note as a guide to yourself as to the matter to be dealt with in a particular section, reconsider each case from the standpoint of the user. Good section notes:

- (i) fairly describe the main and common theme of the section;
- (ii) provide guidance to the readers as to the general subject matter of the section;
- (iii) highlight terms that a user may be looking out for, particularly terms for the main concepts used in the Bill;
- (iv) are short and to the point (rarely more than 5 or 6 words), use a note form (i.e. they omit definite and indefinite articles and active verbs) and, as an exception to the strict drafting convention, may use "etc." to save listing similar items or concepts;
- (v) do not contradict the contents of the section.

Example Box 3

Typical section notes	
Interpretation.	License applications.
Regulations.	Issue of permits.
Search warrants.	Forfeiture of instruments used in committing theft.
Powers of police officers.	Magistrate to sit in open court.
Appointment of film censors.	Limitation of actions.
Application of Part II.	Offences.
Restriction on sale of poisons.	Determination of appeals.

Opportunities arise for more imaginative notes. You can form some into questions. This is eye-catching but it is restrictive, since the contents of the section must then contain no matters other than the answer to the question.

Example Box 4

What legislative instruments are to be registered?

13. A legislative instrument must be registered under this Act if:

- (a) it is made on or after 1 January 1994;
- (b) it was made before 1 January 1994 and is in force on that date.

Practice varies as to the position of the section note:

- (a) on the line immediately above the first line of the section, in emboldened type (sometimes referred to as a "shoulder note" or "section heading");
- (b) in the margin, beside the first lines of the section, in a smaller type-face (generally referred to as a "marginal note" or "side note");
- (c) as part of the first line of the section, in emboldened type, immediately after the section number and before the first words subsection.

The first of these is increasingly preferred. As a heading, it takes the most prominent position; it is emphasised by being in bold type; it is less complicated than a marginal note to produce in a word-processing system.

When you are scrutinising your final draft, check:

1. whether any section note needs to be altered as a result of changes you have made to the section in the course of drafting;
2. that any collation of the notes in an Arrangement of Clauses (however called) exactly reproduces the individual section headings. (These can usually be produced automatically by a word-processing package.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

Self Assessment Exercise 1

Note down any shortcomings you find in the following section notes. Suggest alternatives.

Coin suspected to be diminished or counterfeit may be cut by person to whom it is tendered.

1.-(1) A person may cut, break, bend or deface a coin that is tendered as a current gold or silver coin if he or she reasonably suspects it to be diminished, otherwise than by reasonable wearing, or to be counterfeit.

(2) The person who tendered a coin that is cut, broken, bent or defaced under subsection (1) must bear the resulting loss: but the person cutting, breaking, bending or defacing the coin must receive it at the rate it was coined for if it is of due weight and appears to be a lawful coin.

(3) Any dispute as to whether a coin that has been cut, broken, bent or defaced was reasonably suspected to be diminished or counterfeit is to be determined by a magistrate's court.

Punishment of serious offences.

2. A member of the Police Force commits an offence who:

(a) begins, raises, abets, incites or connives in mutiny or causes or joins in a seditious disturbance among members of the Force; or

(b) having knowledge of an actual or intended mutiny, fails to give information of it, without delay, to the Commissioner of Police or the Deputy Commissioner of Police.

3.4.5 How sections and subsections should be numbered

Numbering of provisions is an important element of communication. It underlines the logic in the order of arrangement; it facilitates cross-referring and citation.

A conventional method of numbering sections is:

sections	arabic numerals	25.
----------	-----------------	------------

subsections	arabic numerals in parenthesis	(2)
paragraphs	alphabetic in lower case and parenthesis	(a)
subparagraphs	roman numerals in lower case, in parenthesis	(iv)
sub-subparagraphs	Alphabetic in upper case, in parenthesis	(B)

Different practices are needed when in amending legislation you wish to insert new provisions into an existing sequence.

sections	add a capital letter in alphabetic sequence after the arabic number	25A. 25B.
subsections	add a capital letter in alphabetic sequence after the arabic number	(2A) (2B)
paragraphs	add a lower case letter in alphabetic order to the letter used for the immediately previous paragraph	(aa) (ab) (ac)
subparagraphs	add a lower case letter in alphabetic sequence after the roman number	(iva) (ivb)
sub-subparagraphs	repeat the capital letter, then add a lower case letter in alphabetic order	(BB) (BBa)

A limitation of this approach is that insertions are impossible between, e.g. 25 and 25A. For that reason, some jurisdictions use decimal numbering for the sections, so that 25.1 can be placed between 25 and 26 and 25.01 between 25 and 25.1.

An alternative method is to allocate decimal numbers in sequence throughout:

sections	25
subsections	25.1
paragraphs	25.1.1
subparagraphs	25.1.1.1
sub-subparagraphs	25.1.1.1.1

This is convenient for drafting on a computer, since automatic numbering in this style is widely available on standard word-processing packages. It is less adaptable where provisions are to be inserted, and a string of numbers may be less easy to decipher.

The conventional method has a visual advantage in using different symbols for different textual references. This eases communication and prevents transcription errors (e.g. "25(1) (a) (xi)" is less confusing than "25.1.1.11").

Self Assessment Exercise 2

Note down the system of numbering in Bills in Nigeria.

sections	
subsections	
paragraphs	
subparagraphs	
sub-subparagraphs	

You will have noted that these divisions are only to five levels. As a rule of thumb, reconsider the contents of any section that needs to be divided beyond *four*. Almost certainly, you are trying to do too much in too short a space.

A particular numbering difficulty arises if you wish to use paragraphs in a section or subsection for two sets of different provisions.

Example Box 5

Two different paragraph sequences are used in the following, one concerned with actions and the other with the effect of those actions. The first is numbered in the standard way, but how do we deal with the second so that its different function is obvious?

(1) A person commits an offence who, in a public place or at a public meeting, without lawful authority:

- (a) makes a statement;
- (b) publishes or distributes written matter; or
- (c) behaves, or incites another person to behave in a manner,

that is intended or is likely to incite or induce another person:

- (?) to kill or do physical injury to any person;
- (?) to destroy or damage any property; or
- (?) to deprive any person, by force or fear, of the permanent or temporary possession or use of any property.

In some jurisdictions, all the paragraphs are numbered consecutively in the same alphabetic sequence (in **Example Box 5**, (d) to (f) for the second). But this appears to connect two different sequences. Arguably, different numbering is called for in the second sequence.

There is no standard or wholly satisfactory method, although some drafters recommend doubled letters (e.g. in **Example Box 5** "(aa); (bb); (cc)"), since it confirms a separate sequence but uses the same type of numbering that is used for paragraphs.

Self Assessment Exercise 3

Look in a statute for examples of the case just discussed and note down how the second sequence is typically numbered.

The problem can sometimes be avoided, e.g. by:

- (i) eliminating one set of paragraphs; or
- (ii) transferring one of the sets of paragraphs to another subsection.

3.5 Drafting sentences in sections

3.5.1 How long should a sentence in a section be?

The length of a section is perhaps less important than the length of the sentences in it and its overall structure. The length of the section is dictated by the amount of detailed provision required by the topic being covered. But the length of the individual sentences and the section structure should be dictated by the needs of logical and orderly communication.

Linguistic research offers some considerations to bear in mind in writing individual sentences:

- (i) sentences that are less than 25 words or so in length are particularly easy to use (e.g. three subsections of 25 words each are more effective than one section of 75 words);
- (ii) large blocks of unbroken text are particularly difficult to work with, especially slabs of text more than 5 lines long (the "5 line" rule);

- (iii) if the sentence must exceed 5 lines, paragraphing of some parts of the text into conveniently short components greatly helps reading and comprehension;
- (iv) paragraphing is particularly valuable if the reader needs to retain several separate components in mind in order to understand the overall thrust of the proposition.

Self Assessment Exercise 4

Compare the ease with which you can work with the following alternative presentations of the same text.

12. Where the plaintiff in any action where the damages are ascertained at any time before final judgment proves on oath that he has a good cause of action and that the absence of the defendant from the Island will materially prejudice him in the prosecution of his action or where the defendant after judgment gives notice of appeal, if the plaintiff proves by evidence on oath to the satisfaction of a Judge or magistrate that there is probable cause for believing that the defendant is about to quit the Island unless he be apprehended, the Judge or magistrate, as the case may be, may by order under his hand, order such defendant to be arrested and imprisoned for a period not exceeding six months unless and until he sooner gives security to be approved of by such Judge or magistrate in a sum not exceeding the amount claimed and the probable costs of the action or not exceeding the amount ordered to be paid and the probable cost of the appeal, as the case may be, that he, the defendant will not go out of the Island without the leave of the court.

Detention of civil defendants likely to leave Nigeria.

12.-(1) A Judge or magistrate may order, by a signed order, the defendant in an action to be arrested and imprisoned if:

(a) the plaintiff proves, by evidence on oath, probable cause for believing that the defendant is about to leave Nigeria; and

(b) either:

(i) before final judgment in an action for damages, the plaintiff proves on oath:

(A) a good cause of action; and

(B) that the absence of the defendant from Nigeria will materially prejudice the prosecution of the action; or

(ii) the defendant has given notice of appeal against judgment.

(2) Imprisonment under subsection (1) may not exceed 6 months.

(3) A defendant who gives security not to leave Nigeria without the permission of the court may not be arrested or remain in imprisonment under subsection (1).

(4) The security must be approved by the Judge or magistrate in a sum that does not exceed, as the case may be:

(a) the amount claimed and the probable costs of the action; or

(b) the amount ordered to be paid and the probable costs of the appeal.

3.5.2 What is to be done to keep sentences as short as possible?

Legislative sentences frequently try to do too much at the same time. Long and complex sentences are used in some jurisdictions for tactical reasons. It is easier and quicker to steer a Bill through the legislature and its committees if it comprises a few long clauses rather than many short ones. If the elements of a legal proposition are compressed together and tightly linked in their syntax, opponents have difficulty in formulating amendments to elements of the sentence. The trend is away from these practices, since they lead to continuing problems for the ultimate user.

In writing a section, try to use a separate sentence for each main feature of the legal proposition you are dealing with, at least when the feature runs to a substantial number of words. The following matters, if long or detailed, can be placed in separate sentences:

- (i) the main element of the proposition (e.g. a basic requirement or power);
- (ii) alternative propositions, if there is a series of them;
- (iii) the context in which the main proposition is to operate;
- (iv) the cases to which the proposition applies;
- (v) specific features of the main proposition that require detailed treatment;
- (iv) the procedure to be followed in giving effect to, or consequent upon, the proposition if that is detailed;
- (vii) the exceptions or qualification to the main proposition;
- (viii) consequences following from the main proposition.

Example Box 6

16. A magistrate, on being satisfied upon information on oath that there is good reason to believe that any instruments or appliance for gaming are likely to be found on any person, may by warrant authorise any police officer to arrest such person and to bring him forthwith before a magistrate, who shall thereupon cause such person to be searched in his presence and if any such instrument or appliance be found upon his person, he shall be detained in custody or held to bail until he can be dealt with according to law.

A redrafted version is much easier to follow:

Arrest of persons likely to be found with gaming instruments.

16.-(1) A magistrate may issue a warrant if satisfied on oath that there is good reason to believe that an instrument or appliance for gaming is likely to be found upon a person.

(2) The warrant is to be issued to a police officer authorise the officer to arrest the person and to bring him or her forthwith before a magistrate.

(3) The magistrate before whom that arrested person is brought must cause the person to be searched in the magistrate's presence.

(4) If an instrument or appliance for gaming is found as a result of the search, the person must be detained in custody or held on bail until he or she can be dealt with according to law.

As the **Example Box 6** demonstrates, separating the elements into short sentences makes it easier to write in a direct manner and highlights those distinct features that together make up the legal proposition. But only limited savings in the total number of lines or words are likely. Indeed, the reverse may be true. In the example, the redraft required 8 lines compared with the 6 of the original. You may also need to add words to ensure clear links between the separated sentences (as we see below).

However, do not take this process too far, so as to produce a section made up of a series of very short sentences. This is irritating and difficult to work with, especially if they have to be linked, both in the drafting and in the reading, before their collective sense is clear.

Example Box 7

Subsection (1) in the redraft in the **Example Box 6** could have been written:

(1) A warrant may be issued by a magistrate under this section if the magistrate is satisfied on oath that there is good reason to believe that an appliance or instrument for gaming is likely to be found on any person.

(2) The magistrate may issue the warrant to a police officer.

(3) The warrant must authorise the police officer to arrest the person and to bring him or her forthwith before a magistrate.

The second two elements are in fact so closely inter-related that they must be read together for the basic proposition to be understood. There is no gain in further dividing the subsection in this way.

Try to keep a balance between providing a coherent legal proposition, which requires an unavoidable minimum of information, and the desire for an acceptable length. Considerations of length are less important than *communicating* unambiguously and grammatically what has to be said. In particular, do not obscure the core of a sentence - the subject-predicate – by excessive modification or by a confusing word order. Elaborate context clauses at the beginning of a sentence ("front-loading") make for difficulty in finding the way to the heart of the proposition.

If a long sentence is necessary to state features of a legal proposition that should be kept together, so be it. But ask yourself whether it is organised so that:

- (a) the basic theme of the sentence is prominent;
- (b) the syntactic structure of the sentence is both obvious and uncomplicated;
- (c) the physical appearance of the sentence assists communication and understanding.

4.0 Conclusion

In conclusion, in analyzing instructions, your task is to identify the particular matters that must be made the subject of a legal provision. Section notes are attached to help users find provisions easily and not to interpret them. Also the length of a section is less important than the length of the sentences in it.

5.0 Summary

In this unit, you have learnt how to form sections and subsections. You should now be able to draft sections and sentences in sections.

6.0 Tutor Marked Assignment

What can be done to keep sentences as short as possible? Explain.

7.0 References

Interpretation Act, Cap. 192, Laws of the Federation of Nigeria, 1990.

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

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

Answer to Self Assessment Exercise 1

1. This note is unnecessarily long. Moreover, it does not capture the gist of the contents, which deal with other matters in addition to authorising the recipient of a coin to cut a suspect coin. Alternatives might be:

Coins suspected to be diminished or counterfeit.

Mutilation lawful of coins suspected to be diminished or counterfeit.

2. This note is too general to be helpful. The offences may be serious but they are specific types of offence against the loyalty of the Police Force. Alternatives might be:

Mutiny and seditious disturbance in Police Force.

Inciting mutiny, etc, in Police Force.

The use of "etc", as in the last suggestion, draws attention to the fact that the section has a wider scope, though with similar matter.

UNIT 2 Using Paragraphs

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 How paragraphing can help
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 - 3.3 Factors that should be borne in mind when drafting paragraphs
 - 3.4 What can go wrong with paragraphs?
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- 4.0 Conclusion
- 5.0 Summary
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- 7.0 References

1.0 Introduction

This unit deals with how to use paragraphs to structure legislative sentences.

2.0 Objective

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

- (i) Make effective use of paragraphing in setting out the components of a legislative sentence.

3.0 Main Content

3.1 How paragraphing can help

Paragraphing can make a sentence easier to understand in a number of ways:

- (a) it separates features of the sentence that grammatically are distinct elements;
- (b) because paragraphs are indented on the page their contents and separateness are immediately apparent;
- (c) distinct features in the sentence syntax are physically highlighted, allowing the reader to gain an immediate insight into the sentence structure;

- (d) it indicates certain of the components of the sentence that can be absorbed one at a time as we read; it helps us pace our reading of the sentence;
- (e) it can be used to mark out alternatives or cumulative elements, enabling us to see, at a glance, how these features fit into the structure of the sentence.

Paragraphing offers other benefits too, e.g.:

- (i) by reducing repetition. The same words can be made to apply to all the paragraphs by placing them either as part of the introductory phrase to the paragraphs or immediately after the series.
- (ii) by counteracting ambiguity. For example, you can avoid dangling or squinting modifiers by incorporating the modifier into the paragraph to which it belongs or, if it applies to each of the paragraphs, by placing it with the words introducing or following the series.
- (iii) in encouraging the drafting of an orderly structure.

The last point is particularly important. A drafter experienced in using paragraphs thinks about composing the sentence in that way *from the start*. If you can break the material into distinct components as part of your thinking about the contents, you will automatically set them down in paragraphs when actually composing. Paragraphing becomes a tool for effective analysis, as well as a device for clearer presentation. Try to think in paragraphs.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

Self Assessment Exercise 1

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1. Mark the places where paragraphs could be useful in the following sentence, in each case by circling the words you would include in the paragraph. You need not write out the sentence again for this purpose.

Where an animal has been taken in execution by direction of an execution creditor or has been distrained on by direction of a landlord, and the title of the execution debtor or tenant, as the case may be, to the animal is questioned, and the animal is afterwards given up, by order of the court or with the consent of the execution creditor or landlord, to any claimant other than the execution debtor or tenant, the execution creditor or the landlord, as the case may be, must pay all reasonable expenses incurred by the district auctioneer for all necessary food and water supplied to the animal, not exceeding, in the case of horses or mules, ₦400.00 a day for each animal, in the case of asses or cattle, ₦200.00 a day for each animal and in the case of hogs, sheep or goats, ₦100.00 a day for each animal.

2. Note down the benefits you think will be achieved by restructuring this section, in particular by using paragraphs.

3.2 When paragraphing might be used

Paragraphing is a flexible device. It can be used in several different ways, and especially for:

- (i) tabulating or enumerating
- (ii) stating a sequence of events in an orderly manner
- (iii) reducing repetition
- (iv) avoiding ambiguity.

(i) **Tabulating or enumerating**

Paragraphs may be used to tabulate (or enumerate) a series of alternatives or a list of cases or a number of requirements or a set of conditions (which may be cumulative or alternatives).

Example Box 1

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1. In this Act, "disciplined force" means:
 - (a) a naval, military or air force; or
 - (b) the Police Force; or
 - (c) the Prisons Service; or
 - (d) the Fire Service.

2. An order under this section may provide for:
 - (a) the supply and distribution of food, water, fuel, light and other necessities;
 - (b) maintaining the means of transportation by land, air or water and the control of transport of persons or things;
 - (c) the taking of possession or control of any property or undertaking;
 - (d) the payment of compensation and remuneration to persons affected by the order.

3. At every inquest, the coroner must:
 - (a) enquire as to the place, time and manner of the death of the deceased person; and
 - (b) determine whether any person is criminally concerned in the cause of death.

4. A person in possession of an offensive weapon is not to be treated as acting in pursuance of lawful authority unless:
 - (a) if the weapon is a gun, he or she is acting in the capacity as a member of a disciplined force;
 - (b) if the weapon is not a gun, he or she is acting in the capacity as a member of the Police Force or of the Fire Service.

(ii) **Stating a sequence of events in an orderly manner**

Paragraphing may be used to set out a sequence of events or circumstances, e.g. in the order in which they are likely to occur. This makes it easier to follow the theme of the section. It is particularly useful in a context clause to describe the circumstances in the order in which they are likely to occur before the rule applies, or to prescribe the series of actions in the order that the subject must or may follow in specified circumstances.

Example Box 2

When:

- (a) the court has made a maintenance order against a person; and
- (b) it is proved to the court that the person is resident in a country outside Nigeria,

the court must send a certified copy of the order to the Minister for transmission to the Registration Office in that country.

If the Minister considers that the question of removal of an officer ought to be investigated, then:

- (a) the Minister must appoint a tribunal under section 7; and
- (b) the tribunal must enquire into the matter and report on the facts to the Minister.

(iii) Reducing repetition

Provisions that deal with related matters may be brought together into a single sentence. You can avoid some repetition by attaching to the paragraph that contains the individual items the element common to them all.

Example Box 3

Paragraphing allows the following provisions to be brought together (although some rewording is needed to produce the common element):

(1) A Minister ceases to hold office if he or she ceases to be a member of the Assembly for any reason other than its dissolution.

(2) If, at the first sitting of the Assembly after a general election of members, a Minister is not a member of the Assembly, he or she must vacate the office of Minister.

A Minister ceases to hold office:

(a) if he or she ceases to be a member of the Assembly for any reason other than its dissolution; or

(b) if, at the first sitting of the Assembly after a general election of members, he or she is not a member of the Assembly.

(iv) Avoiding ambiguity

We have already seen in the last course (in Module 4), that thoughtful paragraphing is one way of overcoming ambiguities in syntax such as dangling modifiers.

Example Box 4

This section applies to a member of the Senate and a member of the House of Representatives *who is appointed to public office*.

This ambiguous modifier (does it apply to both classes of member?) can be avoided as follows:

1. This section applies to:

- (a) a member of the Senate; and
 (b) a member of the House of Representatives *who is appointed to public office*.

2. This section applies to:

- (a) a member of the Senate *who is appointed to public office*; and
 (b) a member of the House of Representatives *who is appointed to public office*.

3. This section applies to:

- (a) a member of the Senate; and
 (b) a member of the House of Representatives,
who is appointed to public office.

3.3 Factors that should be borne in mind when drafting paragraphs

Respect the conventions of syntax and grammar when using paragraphs. They are only a way of *presenting* some components of the sentence in a more convenient way. As Driedger advises (*Composition of Legislation*, p.73):

All words when read from the beginning to the end without regard to the paragraph designations must be a *complete and correct* sentence.

The following considerations then are important:

- **ensure that each paragraph has exactly same relationship with the rest of the sentence in its grammar, function and type of matter covered.**

Example Box 5

The seat of an appointed member of the Council becomes vacant:

- (a) if, in writing addressed to the Minister, the member resigns the seat;
 (b) but the Minister, before accepting the resignation, may request the member to reconsider it.

In this example paragraphing should not be used. Paragraph (a) contains a condition attached to the principal predicate; (b) contains a consequential provision.

- **link each paragraph with the words introducing them (the "umbrella words") both in substance and grammatically.**

Each paragraph when read with the umbrella words must produce a correct grammatical statement. So, all the paragraphs must have the same grammatical construction.

Example Box 6

The following is defective for this reason.

Nothing in this section authorises the President to delegate:

(a) any power to issue warrants of appointment;

(b) to make proclamations;

(c) any function the delegation of which is expressly forbidden by law.

Paragraph (b) does not make grammatical sense if read with the umbrella words.

- **if the sentence continues after the series of paragraphs, link the words that follow with each of the paragraphs in substance and grammatically.**

Again, the test is: can each of the paragraphs be read with the words that follow to produce a correct grammatical proposition?

Example Box 7

The following is defective for this reason:

When:

(a) a day on which a notice of dishonour of an unpaid promissory note is to be given; or

(b) a bill of exchange is to be presented for acceptance;

is a public holiday, the notice is to be given and the bill of exchange presented on the day next following the public holiday.

Paragraph (b) does not make grammatical sense when read with the words that follow.

- **include in each paragraph all the words necessary to link it with the umbrella words.**

Make sure that you have not included words in the umbrella words that properly belong to the paragraphs. In particular, do not split words that grammatically should be phrased together in a paragraph, merely in order to avoid repetition.

Example Box 8

The following are defective for this reason:

1. Except as provided in this Part, the provisions of this Part that relate to:
 - (a) public officers apply to police officers; and
 - (b) police officers apply to prison officers.

If you read out loud the full sentence leaving out the paragraph numbers, it does not make sense. The paragraphing fails to recognise that there are two sentence subjects (“the provisions of this Part that relate to public officers” and “the provisions of this Part that relate to police officers”).

2. A person must not keep on any premises a quantity of explosives exceeding:
 - (a) 10 Kilograms, within 50 metres of any building; or
 - (b) 100 Kilograms, within 250 metres of any building.

Again, read the sentence aloud without the numbers, Again the paragraphing has broken the grammatical continuity. The paragraphs contain words (as to distances) that are intended to modify the verb in the umbrella words ("keep"). But they are linked by "exceeding", which can only connect with the stated amounts.

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

Self Assessment Exercise 2

Rewrite the sentences in each of **Example Boxes 6, 7 and 8**, so as to eliminate the defects in paragraphing.

- **if you are using paragraphs to tabulate elements of the sentence, provide them for all the elements that perform the same function in the sentence.**

Example Box 9

The following is defective for this reason:

If a person is the holder of a license and:

- (a) the license is due to expire within 3 months; and
- (b) the person wishes to renew the license;

the person may make an application for renewal of the license at any time within the 3 months.

The introductory words are not umbrella words introducing the paragraphs; they perform the same function as the elements in the paragraphs, i.e. stating a condition. A better alternative is:

If:

- (a) a person is the holder of a license; and
- (b) the license is due to expire within 3 months; and
- (c) the person wishes to renew the license,

the person may make an application for renewal of the license at any time within the 3 months.

But in this instance the sentence can be simplified and shortened if the paragraphs are dispensed with altogether:

The holder of a license may apply for its renewal at any time within the 3 months before it is due to expire.

- **link the paragraphs by the correct conjunction ("and" or "or") when it is necessary to show that they are cumulative or alternative.**

A conjunction must be provided when you need to show whether all the components are to be fulfilled ("and") or only one or some of them ("or"). (If you are uncertain as to which is the correct conjunction, remind yourself from the last course, in Module 3).

Example Box 10

A person is entitled to be registered as a voter in a council area if:

- (a) a citizen of Nigeria; *and*
- (b) aged 18 years or over; *and*
- (c) resident in that council area.

An accused person on arraignment for an offence may plead that:

- (a) he or she has been previously convicted or acquitted, as the case may be, of the same offence; or
- (b) he or she has obtained a pardon for the offence.

In the first case, the elements in each of the paragraphs must be fulfilled. In the second, the elements are true alternatives. Only one can be invoked at any one time.

However, no conjunction is needed if the paragraphs comprise a simple list that is added into a sentence that is otherwise grammatically complete.

Example Box 11

The Minister may make regulations for all or any of the following:

- (a) prescribing anything that under this Act is to be or may be prescribed;
- (b) fixing the fees that may be charged under this Act;
- (c) prescribing the forms for the purposes of this Act;
- (d) generally carrying this Act into effect.

This tabulation merely lists matters that may be selected. A conjunction adds nothing.

Under the drafting conventions in many countries, the conjunction is placed at the end of the penultimate item alone. However, there is a growing practice of repeating it after each of the previous paragraphs, on the argument that many users are unfamiliar with the convention.

Remember not to use both types of conjunctions as links in the same series of paragraphs.

- **format the paragraphing correctly, according to local conventions.**

In particular, pay special attention to the mode of indenting, punctuation and numbering.

- **indentation**

Paragraphs are printed as indented text to distinguish them from the rest of the sentence (which should then not be indented). Sub-paragraphing within a paragraph requires further indentation.

- **punctuation**

Typically, a punctuation mark is used at the end of the umbrella words as an introducer. This may be a colon or a dash. (It should not be both). Some drafters advocate that no mark is needed unless it is used in ordinary writing (e.g. before a simple list). But others object that this leaves a naked space. Follow the house-style here as elsewhere.

Typically too, each paragraph except the last ends with a semi-colon; the last concludes with a comma unless it is the end of the sentence. Some drafters finish every paragraph *including* the last with a semi-colon, to emphasize where each paragraph ends.

However, commas can be used at the end of all the paragraphs if paragraphing has been used to facilitate the reading of a continuous piece of text (as in the first set of paragraphs in Self Assessment Exercise 3), rather than creating a list of items. This is said to emphasize the continuity in the sentence.

- paragraph numbers and initial letters

Each paragraph or subparagraph must have its distinctive numbering according to the sequence to which it belongs (see above). The first word after the number typically does not begin with a capital letter (unless that is required by the particular word), as paragraph contents are internal elements of the sentence.

Self Assessment Exercise 3

Compare the indentation, punctuation, numbers and initial letters in the following with practice in Nigeria, noting any significant differences.

31.-(1) If:

(a) a person is committed by a magistrate for trial before the High Court, and

(b) it appears to the magistrate that the attendance of a witness at the trial is unnecessary by reason of the formal nature of the evidence given,

the magistrate:

(aa) may bind the witness over to appear at the trial conditionally on notice given to him or her; and

(bb) must transmit to the High Court:

(i) a statement in writing of the name and address of the witness; and

(ii) a transcript of the evidence given before the magistrate.

3.4 What can go wrong with paragraphs?

Paragraphing ceases to be a useful device if it is misused. We have already seen in earlier Example Boxes cases in which you need to take particular care. Here are some other cases where paragraphing is incorrect or inappropriate:

- (i) “sandwich” clauses
- (ii) running on
- (iii) including matter in paragraphs that is not part of the paragraphing sequence
- (iv) including words in paragraphs that repeat or belong to the umbrella words
- (v) slicing phrases or expressions
- (vi) uncertainty as to whether words are intended to apply to all paragraphs
- (vii) obscuring the principal subject-predicate
- (viii) too many short paragraphs.

(i) **“sandwich” clauses**

A sandwich clause is one in which a series of paragraphs is preceded and followed by other text. Non-lawyers in particular are unfamiliar with this practice, although it is a common drafting device. It is easy to overlook the fact that words before and after the paragraph series have to be read together to ascertain the complete clause. The problems are accentuated when the concluding words of the clause, as well as the umbrella words, have to be read as belonging to *each* of the paragraphs.

This practice can usually be overcome by restructuring the clause to eliminate one slice of the sandwich loaf, typically the piece that follows the paragraph series.

Example Box 12

A person who procures:

- (a) his or her name to be registered on the roll of persons qualified to practise law; or
- (b) a copy of certificate of Call to Bar of any person on that register,

by willfully making or producing, either orally or in writing, a declaration or representation that he or she knows to be false or fraudulent commits an offence.

This can be readily restructured to position all the linking elements as part of the umbrella words.

A person commits an offence who procures, by willfully making or producing, either orally or in writing, a declaration or representation that he or she knows to be false or fraudulent:

- (a) his or her name to be registered on the register of persons qualified to practise law; or
- (b) a certificate of the registration of any person on that register.

(ii) **running on**

Text that belongs to another part of the sentence must not be incorporated into a paragraph. Printers may run the words that follow the final paragraph into that paragraph. (It is for that reason some drafters prefer to end the final paragraph with a semi-colon).

Example Box 13

The following is taken from the Constitution:

If in respect of a financial year it is found:

(a) that the amount appropriated by the Appropriation Act for any purpose is insufficient;

or

(b) that a need has arisen for expenditure for a purpose for which no amount has been appropriated by the Act, *a supplementary estimate showing the sums required shall be laid before each House of the National Assembly and the heads of any such expenditure shall be included in a Supplementary Appropriation Bill.*

The highlighted clause does not belong to the paragraph series.

(iii) **including matter in paragraphs that is not part of the paragraphing sequence**

Do not interpolate matter which does not fit with the grammatical structure of the paragraph sequence as a whole.

Example Box 14

The following is an abbreviated version of a section from an Act.

Disqualification of voters.

62. No person who:

(a) has been sentenced by a court to imprisonment for more than 2 months;

Provided that if 3 years or more have elapsed since the end of the imprisonment, the person convicted shall not be disqualified from registration as a voter by reason only of such conviction; or

(b) is adjudged to be of unsound mind; or

(c) is disqualified from registering as a voter or from voting under another Act;
shall be registered as a voter or, being registered, shall be entitled to vote for the election of a member.

Read the sentence aloud without a break. This shows immediately that the proviso is misplaced.

(iv) **including words in paragraphs that repeat or belong to the umbrella words**

The umbrella words are intended to be read as part of each of the paragraphs. Take care not to repeat words that perform the same function in both the umbrella words and the paragraphs: this is ungrammatical.

Example Box 15

This again is a section from a published Act (abbreviated).

(2) *A magistrate* conducting an inquiry under this section *shall*:

(a) read over and explain to the accused person the charge and *shall* explain that the accused person will have an opportunity to make a statement, if he so desires, later in the inquiry;

(b) *the magistrate shall* then require the prosecutor to tender to the court the written statement of any witness which it is intended to call at the trial of the accused person and *shall* read every such statement to the accused person.

The subject of the sentence (*the magistrate*) and the auxiliary verb (*shall*) appear in the umbrella words and are repeated in the paragraphs.

(v) **slicing phrases or expressions**

Because a word is repeated at the beginning of each paragraph does not automatically make it a candidate for inclusion in the umbrella words. Words that are part of a phrase or constitute an expression should not be broken up by paragraphing. So an adjective shared by all the nouns (e.g. "any") starting the paragraphs should be repeated with each noun in the paragraph.

Example Box 16

The court has the following powers to:

(a) reduce or alter, but not increase, a sentence;

- (b) set aside or modify an order;
- (c) set aside a conviction;
- (d) order a new trial;
- (e) order further evidence to be taken.

Each paragraph starts with an infinitive (e.g. "to reduce") that grammatically is a complete verb form. It should not be split.

(vi) **uncertainty as to whether words are intended to apply to all paragraphs**

Words in one paragraph cannot be treated as part of any other paragraph. If they apply to all, they must be included in the umbrella words or the following words or repeated in each paragraph.

Example Box 17

- A licensed dealer shall display:
- (a) *in a conspicuous place at the entrance to the dealer's premises*, a copy of the dealer's license; and
 - (b) a sign-board in the prescribed form.

The place for display is clearly intended to apply to both cases. The phrase must be added to the umbrella words or as the concluding expression after the paragraphs.

(vii) **Obscuring the Principal Subject-Predicate**

Paragraphing is an aid to understanding. Try to make it easy to find the heart of the sentence (the principal subject-predicate). Knowing that, the reader can better understand how the paragraphs fit with it. Try not to separate the sentence subject from its predicate by a long series of paragraphs.

Example Box 18

- A member of a council who:*
- (a) has a pecuniary interest, direct or indirect, in the contract or other matter; and
 - (b) is present at a meeting of the council at which the contract or other matter is to be considered,

must:

- (aa) when the matter comes under consideration by the meeting; or

(bb) at such earlier time, as the presiding officer directs,
disclose that interest and withdraw from the meeting.

The subject and the predicate are widely distributed between three separate places. This can be redrafted in a much more accessible form.

A member of a council must:

(a) disclose a pecuniary interest, direct or indirect, that he or she has
in a contract or other matter that is to be considered at a meeting of the
council:

- (i) when the matter comes under consideration by the meeting; or
 - (ii) at such earlier time, as the presiding officer directs, and
- (b) withdraw from the meeting.

(viii) **too many short paragraphs**

Except in the case of paragraphs making a simple list of items, a series of very short paragraphs can confuse, especially if it involves a series of shortly expressed alternative and cumulative actions or circumstances. Consider combining or abandoning some of the paragraphs.

Example Box 19

This sentence is unnecessarily fragmented (and an extravagant use of the page):

A person, having the care of a child under the age of 15, who:

(a) wilfully:

- (i) assaults the child; or
- (ii) ill-treats the child; or
- (iii) neglects the child; or
- (iv) abandons the child; or
- (v) exposes the child to unnecessary suffering or injury to health
(including injury to, or loss of, sight or hearing, or a limb or
organ of the body, or any mental illness); or

(b) causes or procures the child:

- (i) to be assaulted; or
- (ii) ill-treated; or
- (iii) neglected; or
- (iv) abandoned; or
- (v) exposed in such a manner,
commits an offence.

3.5 How to find flaws in paragraphing

Keep in mind Driedger's excellent words of advice (p.76):

Read the provision aloud without referring to the paragraphing or subparagraphing. If it does not make sense without speaking words that are not there, or if the provisions cannot be read without stumbling and hesitating or without going back and re-reading portions of it, *there is something wrong with it.*

4.0 Conclusion

To conclude, paragraphing is an aid to understanding. It is a flexible device and can be used in several ways. Do not misuse paragraphing technique. Respect the conventions of syntax and grammar.

5.0 Summary

In this unit, you have learnt how to use paragraphs. You should now be able to make effective use of paragraphing when drafting.

6.0 Tutor Marked Assignment

Rewrite the sentences in each of **Example Boxes 14 and 19**, so as to eliminate the defects in paragraphing.

7.0 References

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

Answer to Self Assessment Exercise 1

1. The sentence as originally drafted might look like this if paragraphing is used:

Where an animal has been taken in execution by direction of an execution creditor or has been distrained on by direction of a landlord, and
(a) the title of the execution debtor or tenant, as the case may be, to the animal is questioned; and

(b) the animal is afterwards given up, by order of the court or with the consent of the execution creditor or landlord, to any claimant other than the execution debtor or tenant, the execution creditor or the landlord, as the case may be, must pay all reasonable expenses incurred by the district auctioneer for all necessary food and water supplied to the animal, not exceeding, for each animal:

- (i) in the case of horses or mules, ₦400.00 a day;
- (ii) in the case of asses or cattle, ₦200.00 a day;
- (iii) in the case of hogs, sheep or goats, ₦100.00 a day.

2. This sentence structure reveals more obviously than the original:

1) that there are three prerequisites that must be present before this rule can be invoked, though the first of these is set out as the opening words since it is the principal precondition;

2) that these are not alternatives; all must be met (the "and" is prominent at the end of each of the first set of paragraphs);

3) what constitutes the principal subject-predicate (now in the unformatted text following the paragraphs);

4) that there are the three sets of fees (now tabulated alternatives in the second sequence).

Some repetition of words can be avoided. By using "for each animal" in the introductory words to the second set of paragraphs, the phrase is made to apply to each of them.

3. The section can be further restructured as follows:

(1) An execution creditor or a landlord must pay all reasonable expenses incurred by the district auctioneer for all necessary food and water supplied to an animal taken, as the case may be, in execution by direction of the execution creditor or has been distrained on by direction of the landlord if:

(a) the title of the execution debtor or tenant to the animal is questioned; and

(b) the animal is afterwards given up, by order of the court or with the consent of the execution creditor or landlord, to a claimant other than the execution debtor or tenant.

(2) But expenses paid under subsection (1) may not exceed, for each animal:

- (a) in the case of horses or mules, ₦400.00 a day;
- (b) in the case of asses or cattle, ₦200.00 a day;
- (c) in the case of hogs, sheep or goats, ₦100.00 a day.

Answer to Self Assessment Exercise 2

Example Box 6

Nothing in this section authorises the President to delegate:

- (a) any power to issue warrants of appointment or to make proclamations;
- (b) any function the delegation of which is expressly forbidden by law.

Alternatively the defective second paragraph of the original can be expanded by adding the same words that begin paragraph (a). That seems unnecessarily repetitious.

Example Box 7

When a public holiday falls on a day:

- (a) on which a notice of dishonour of an unpaid promissory note is to be given; or
 - (b) on which a bill of exchange is to be presented,
- the notice must be given, and the bill of exchange presented, on the day next following the public holiday.

Alternatively, the defective paragraph (b) of the original can be expanded by adding the words "a day on which" at the beginning. The suggested version highlights the principal subject/predicate rather better.

Example Box 8.1

Except as provided in this Part:

- (a) the provisions of this Part that relate to public officers apply to police officers; and
- (b) the provisions of this Part that relate to police officers apply to prison officers.

There are two distinct legal propositions. Each paragraph needs a complete grammatical subject, with its own modifier in each case.

Example Box 8.2

4. A person must not keep on any premises a quantity of explosives:
- (a) if it exceeds 10 kilograms, within 50 metres of any building;
 - (b) if it exceeds 100 kilograms., within 250 metres of any building.

By transferring "exceeding" to each paragraph, the paragraphs are governed by different umbrella words from the original. As a result, they become separate conditions to the sentence predicate that now constitutes the umbrella words.

UNIT 3 Ordering and linking sentences in a section

CONTENTS

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- 3.0 Main Content
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 - 3.5 Can we dispense with linking words between sentences?
- 4.0 Conclusion
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1.0 Introduction

This unit deals with the ways in which legislative sentences are structured and linked in a section to make coherent legislation.

2.0 Objective

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

- (i) Order and link legislative sentences into a rational structure in a section.

3.0 Main Content

3.1 How sentences should be ordered within a section

The first sentence should contain the most important feature of the proposition. If there are variations or conditions, qualifications or exceptions to the proposition that you intend to deal with in several subsections, try to cover the essential idea in the first subsection. If

readers have the basic idea clear, then modifications or elaborations of it fall into place more readily. Indeed, it is easier too to draft the later provisions, since the foundations are set by the first sentence.

In drafting the subsequent subsections, keep the following considerations in mind:

- (i) sentences containing modifications and elaborations should follow as closely as possible the provision on which they depend;
- (ii) sentences containing qualifications and exceptions should follow, as closely as possible, the provision they affect;
- (iii) if the section deals with a series of actions (e.g. procedural steps), the sentences prescribing the actions should follow the chronological order of the events;
- (iv) sentences dealing with minor and consequential details (e.g. particulars of administration) should follow the substantive provisions they expand;
- (v) procedural requirements that apply in every case should be set out before those that will be used only occasionally;
- (vi) procedures that will be more regularly used should come before those that will be rarely needed;
- (vii) definitions or interpretation provisions (limited to the section) should come at the beginning of the section, if central to its understanding, or as the final subsection.

Similar considerations apply to paragraphs. If the paragraph contains tabulation, set the matters out in order of importance; lists of items can often be dealt with alphabetically according to the first letter of each item.

Complete Self Assessment Exercise 1. Compare your Answer with that provided at the end of this unit.

Self Assessment Exercise 1

The following clauses are randomly set out (alphabetically according to first letter of each sentence) and are not necessarily in the order in which they should be set out in a Bill. (The internal cross-reference has to be altered accordingly.) Decide in what order they should be

arranged and note down, in the space provided, the present subsection numbers in the order you decide on.

Warrants to the Security Service.

(1) A warrant may not be issued under this section except:

(a) if signed by the Minister; or

(b) in an urgent case, if signed by an official in the Ministry of National Security acting under the express written authority of the Minister.

(2) If at any time before the day on which a warrant would cease to have effect, the Minister considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, the Minister may renew it, by an order signed by him, for 6 months beginning on that day.

(3) In this section "working day" means any day other than a Saturday or Sunday or a day that is a public holiday under the Public Holidays Act.

(4) No entry or interference with property is unlawful if it is authorised by a warrant issued by the Minister under this section.

(5) The Minister, on an application made by the Security Service, may issue a warrant under this section in respect of property specified in the warrant if the Minister:

(a) thinks its necessary for the action to be taken to obtain information which:

(i) is likely to be of substantial value in assisting the Security Service to perform its functions under this Act; and

(ii) cannot be reasonably obtained by other means; and

(b) is satisfied that the information obtained under the warrant will be subject to arrangements in force under section 2(2) with respect to the disclosure of information.

(6) The Minister must cancel a warrant if satisfied that the action authorised by it is no longer necessary.

(7) Unless renewed under subsection (2), a warrant ceases to have effect:

(a) if signed by the Minister, at the end of 6 months beginning on the day on which it was issued;

(b) in any other case, at the end of the second working day following the day that it was issued.

3.2 How sentences in a section should be linked

Each enactment is a self-contained proposition of law. So, its relationship with other enactments must be clear from the legislation. If an enactment deals with a matter that is also to be affected by another enactment, it must be made evident that both are concerned with the same matter. The precise relationship of those enactments should be apparent from the legislation itself. If these features are not obvious from the substantive content, provide some form of linking.

These considerations usually require closer attention when the related enactments are contained in different parts of the Bill. (We look at this below). However, in the past, drafters made frequent use of devices to link sentences in the same section. But today good practice makes far less use of linking devices for this purpose, as:

- (i) the contents of a single section are to be treated as parts of the same proposition;
- (ii) the sentences in the section can often be placed in an order that indicates their intended relationship.

Example Box 1

This section taken from earlier legislation illustrates past practice:

Gun licenses.

(1) *Subject to subsection (5)*, no person shall possess a gun unless he holds a license issued by the Commissioner of Police *under this section* for the purpose.

(2) The Commissioner of Police may issue *such* a license to *any such person* on application in the prescribed form and on the payment of the prescribed fee.

(3) No license shall be issued *under this section* unless the Commissioner of Police is satisfied that person *referred to in subsection (2)* is a fit person to hold *such* a license, and so certifies.

(4) *Such* a license is not transferable.

(5) This section does not apply to a member of the Armed Forces having, using or carrying a gun in the performance of his duties.

Links of the kind in **Example Box 1** were included to remove any doubt that each sentence is concerned with the same matters dealt with elsewhere in the section and not with matters in another section. In practice, it is evident that they are all concerned with the same enactment, and are unnecessary. Drafters today use a more narrative style

that makes clear that the same matters are referred to, precluding the need to use back-references to bond the subsections together.

Example Box 2

The section in the **Example Box 1** can be rewritten to avoid almost all back-references:

Gun licenses.

(1) No person shall possess a gun unless he or she holds a gun license issued by the Commissioner of Police for the purpose.

(2) The Commissioner of Police may issue a gun license to a person on application in the prescribed form and on the payment of the prescribed fee.

(3) However, the Commissioner of Police must not issue a gun license unless the Commissioner is satisfied that the applicant is a fit person to hold it, and so certifies.

(4) A gun license is not transferable.

(5) The section does not apply to a member of the Armed Forces having, using or carrying a gun in the performance of the member's duties.

As **Example Box 2** illustrates, drafters today:

- (i) use a definite article ("*the*") to refer back to an earlier noun;
- (ii) avoid "*such*" (or "*the same*") in making back reference to particular items;
- (iii) omit "*subject to subsection(*)*", when the later subsection make clear its effect as qualifying or excepting from the section;
- (iv) omit "*under this section*" if the item is an item already mentioned in the section;
- (v) use pronouns (e.g. "*it*") or an adjectival "*that*" (e.g. "*that person*");
- (vi) (more controversially) point up a qualification made by a sentence by beginning it with "*However*".

You do not lose precision by this approach. Further, the style has more in common with general writing usage. But that said, do add linking words if there is any possibility of doubt that a reference back is intended or that one sentence is intended to take priority over another in given circumstances.

Example Box 3

(1) The Minister, by order, may deprive a person who is a citizen by registration of his or her citizenship if satisfied that the registration was obtained by fraud.

(2) The Minister may not deprive a citizen of citizenship *under this section* if it appears to the Minister that as a consequence the person would become stateless.

No linking is needed between the sentences. Subsection (2) is clearly an exception to subsection (1). However, the highlighted words are necessary to prevent the rule applying to any other case in which the Minister has power to deprive persons of citizenship.

The following are useful linking words for referring back when that is necessary.

[a person] " <i>referred to</i> in subsection (1)"	when subsection(1) incidentally directs attention to the person
[a person] " <i>mentioned</i> in subsection (2)"	when subsection (2) makes provision with respect to the person
[a person] " <i>specified</i> in subsection (3)"	when subsection (3) expressly designates or lists persons
[a person] " <i>described</i> in subsection (4)"	when subsection (4) lays down characteristics of a person that are relevant in the section making the back reference.

The following are conventionally used (typically at the beginning of the sentence) to indicate priority between subsections:

" <i>subject to</i> subsection (2)"	when subsection (2) is to take priority over the sentence containing the back reference
" <i>despite</i> " (or, in older forms, " <i>notwithstanding</i> ") subsection (3)"	when subsection(3) is to give way to the subsection using the phrase
" <i>without prejudice</i> to subsection (4)"	when the sentence containing the phrase is not to diminish the effect of subsection (4)
" <i>except as provided</i> in subsection (5)"	when subsection (5) creates an exception to the sentence containing the phrase
" <i>subsection (6) does not apply if</i> [or	when the sentence containing the

to]"	phrase states circumstances in which the effect of subsection (6) is to be diminished.
------	-------------------------------------------------------------------------------------------

(We look at these devices more fully below in respect of linking sections where they are more often needed.)

Some drafters are now using forms of linking sentences within a section that are more in keeping with general usage. The following can be used at the beginning of a subsection to bring out its relationship with the previous subsection:

"But"	when the subsection makes an exception to the preceding subsection
"However,"	when the subsection qualifies the effects of the preceding subsection
"Nevertheless,"	when the subsection operates despite the preceding provisions
"In addition," or "Moreover,"	when the subsection adds a further requirement to those in the preceding provisions
"Alternatively,"	when the subsection may be resorted to rather than the preceding one
"Instead,"	e.g. when the subsection contains a positive requirement that is to have effect after a negative requirement found in the preceding subsection.

Example Box 4

<p style="text-align: center;">Disposal, etc, of public roads.</p> <p>1.-(1) The Minister may not sell, lease or otherwise dispose of a public road under the Land Use Act until it has been closed under section 12.</p> <p style="padding-left: 40px;">(2) <i>However</i>, the Minister may grant easements, licenses or permits over or in respect of any public road.</p> <p style="text-align: center;">Regulations.</p> <p>2.-(1) The Minister may make regulations prescribing all matters required or permitted by this Act to be prescribed.</p>

(2) *But* the Minister may not make regulations prescribing any fee unless the Minister of Finance is consulted.

These devices are only needed if the relationship between subsections could be misunderstood. In most cases, you make that relationship clear by the words you use in the later subsections and by the order in which you place the subsections.

Complete Self Assessment Exercise 2. Compare your Answer with that provided at the end of this unit.

Self Assessment Exercise 2

The following section contains a number of back references. Note down whether, in each case, it is needed or could be omitted or replaced by more suitable words.

Food stores to be kept clean.

7.-(1) The occupant of a place in which any article of food intended for human consumption is stored or kept or is exposed or offered for sale must make and keep the place clean and wholesome.

(2) A food inspector may:

(a) enter *any such place* at any time to inspect any article *described in subsection (1)*, and

(b) if *the aforesaid article* appears to be unfit for human consumption, seize *the said article* and order *the same* to be destroyed or so treated as to prevent the exposure for sale or the use for food of *the same*.

(3) Both the occupant of *such place* and the person or persons responsible for exposing or offering for sale *the aforesaid article* commit an offence and are liable to a fine of ₦50,000.00.

3.3 Should we use a proviso as a linking device?

From as far back as Coode, drafters have been advised to avoid provisos. Yet they are still used and remain a source of uncertainty as to the intended relationship with the sentence to which they are attached. The legislative use of the proviso is unique to the law - and totally unnecessary. You can achieve the same results with more certainty by following the practices we have just discussed.

Conventionally, the proviso is used in two different ways:

- 1. to create a particularised exception to the proposition in the sentence to which it is attached.**

Example Box 5

1. Every legal practitioner must pay an annual fee according to the scale set out in the Schedule:

Provided that this section does not apply with respect to a legal practitioner who is not in actual practice.

2.-(2) A resolution under this section remains in force for such period not exceeding 6 months as may be specified in it:

Provided that the resolution may be extended from time to time by a further resolution under this section.

- 2. to elaborate the proposition in the sentence to which it is attached.**

Example Box 6

3. An order under this section is binding on all persons on whom notice of the order is served:

Provided that a person may appeal to the High Court against the order at any time within one month after being served with a notice of the order.

The "true proviso" is said to be first of these - to exclude a particular case from the general operation of a rule. The courts therefore tend to treat the proviso as qualifying the provisions to which it is attached, and not as an additional enactment (i.e. as an elaboration). Accordingly, interpretation of the proviso is dictated by the terms of the sentence that it qualifies and the meaning of the principal provision may be affected by the terms of the proviso. An elaborating provision is treated as a legal proposition in its own right.

Neither of these uses is the way that the expression "*provided that*" is used in common usage, when it expresses a condition (an emphasised form of "if"):

"I will give you first option to buy my car *provided that* you exercise that option within a month."

Driedger (pp.93-95) suggests that the legal usage derives from a contraction of enacting words once used in the English statutes "and it is further provided that". He concludes that the proviso "is an all-purpose conjunction invented by lawyers but not known to or understood by grammarians". Accordingly, avoid provisos altogether.

3.4 What alternatives to the proviso should be used?

Provisos link sentences in the same subsection. Once you are clear about the intended relationship, use one of the approaches we have just considered. The order of the sentences and the way you express the particular matter may be enough to show how the qualification fits with the earlier sentence.

(a) Exceptions or qualifications

An exception or a qualification to a previous (more general) proposition can be stated in a few words only, making it part of the sentence it qualifies:

- (i) in the case of a true exception, beginning with the expression "*except that*";
- (ii) in the case of a qualification, in a separate clause at the end of the sentence, beginning with "*nevertheless*" or "*but*";

Example Box 7

The second example in **Example Box 5** can be redrafted as:

2.-(2) A resolution under this section remains in force for such period not exceeding 6 months as may be specified in it; *but* the resolution may be extended from time to time by a resolution under this section.

- (iii) add the qualification to the sentence, as a modifier, if it can be converted easily into that form.

Example Box 8

The first example in **Example Box 9** can be redrafted as:

1. Every legal practitioner must pay an annual fee according to the scale set out in the Schedule, *unless he or she is not in actual practice.*

But if the exception is lengthy, place it into a separate subsection immediately after the subsection it qualifies, if necessary beginning with appropriate linking words in one or other of the subsections (or exceptionally both) to indicate their relationship.

Example Box 9

Sexual intercourse between collaterals.

125.- (1) A person commits an offence who has sexual intercourse with any collateral either by blood or adoption up to and including the second degree of cousinship.

(2) *Subsection (1) does not apply if the sexual intercourse is between persons who are lawfully married to each other.*

(b) **Elaboration**

If the additional matter develops or adds to the general proposition in some way, consider the following:

- (i) if you can express the matter shortly, add it at the end of proposition, linking it with appropriate words such as "*and*" or, if it makes a contrast, "*but*".
- (ii) if it is rather long, place it in a separate subsection later in the section, with suitable linking words where needed.

Example Box 10

The example in **Example Box 6** can be redrafted in more than one way:

3.-(1) *Subject to subsection (2), an order under this section is binding on all persons on whom notice of the order is served.*

(2) A person may appeal to the High Court against the order at any time within one month after being served with a notice of the order.

3.-(1) An order under this section is binding on all persons on whom notice of the order is served.

(2) *However,* a person may appeal to the High Court against the order at any time within one month after being served with a notice of the order.

But the following is preferable to both:

3. An order under this section is binding on all persons on whom notice of the order is served; *but* any person may appeal to the High Court against the order at any time within one month after being served with a notice of the order.

3.5 Can we dispense with linking words between sentences?

Linking words must perform a useful function, e.g. by connecting sentences that might not otherwise be treated as linked. Typically the connection is obvious from the fact that the sentences appear in the same section. The continuity of the contents of the sentences that follow each other may well be enough.

Always question whether linking words are needed at all within a section.

Example Box 11

(1) The President may delegate to any Minister any function that is vested in the President by a written law.

(2) *Nothing in subsection (1)* authorises the President to delegate a power to make proclamations.

(3) *Notwithstanding subsection (2)*, a power that is expressed, under a written law, to be signified by proclamation may be delegated; but upon the delegation, the signification must be by notice in the *Gazette*.

The words in subsection (2) are necessary, and some link between subsections (2) and (3) is sensible. But would not "However," in subsection (3) instead of the linking words used there be equally effective and more natural?

4.0 Conclusion

To conclude, the first sentence should contain the most important feature of the proposition. Each enactment is a self-contained proposition of law. So its relationship with other enactments must be clear from the legislation.

5.0 Summary

In this unit, you have learnt how to order and link sentences in a section. You should now be able to arrange and link legislative sentences to make a logical section.

6.0 Tutor Marked Assignment

How should sentences in a section be linked?

7.0 References

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

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

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

Answer to Self Assessment Exercise 1

The clause might be reorganised as follows (new numbers first):

- (1) = (4): the basic legal proposition authorising interference by warrant.
- (2) = (5): the circumstances when the warrant may be issued (elaborating the basic proposition).
- (3) = (1): restrictive conditions relating to the issue of the warrant (qualifying the rules on issue stated in (1) & (2)).
- (4) = (7): the term of the warrant (stating a consequence).
- (5) = (2): renewal of the warrant (not a standard event).
- (6) = (6): cancellation of the warrant (also unlikely to be commonly used).
- (7) = (3): definition of a minor term.

The clause now reads as follows:

Warrants to the Security Service.

(1) No entry or interference with property is unlawful if it is authorised by a warrant issued by the Minister under this section.

(2) The Minister, on an application made by the Security Service, may issue a warrant under this section in respect of property specified in the warrant if the Minister:

(a) thinks its necessary for the action to be taken to obtain information which:

- (i) is likely to be of substantial value in assisting the Security Service to perform its functions under this Act; and
- (ii) cannot be reasonably obtained by other means; and

<p>(b) is satisfied that the information obtained under the warrant will be subject to arrangements in force under section 2(2) with respect to the disclosure of information.</p> <p>(3) A warrant may not be issued under this section except:</p> <p>(a) if signed by the Minister; or</p> <p>(b) in an urgent case, if signed by an official in the Ministry of National Security acting under the express written authority of the Minister.</p> <p>(4) Unless renewed under subsection (5), a warrant ceases to have effect:</p> <p>(a) if signed by the Minister, at the end of 6 months beginning on the day on which it was issued;</p> <p>(b) in any other case, at the end of the second working day following the day that it was issued.</p> <p>(5) If at any time before the day on which a warrant would cease to have effect, the Minister considers it necessary for the warrant to continue to have effect for the purpose for which it was issued, the Minister may renew it, by an order signed by him, for 6 months beginning on that day.</p> <p>(6) The Minister must cancel a warrant if satisfied that the action authorised by it is no longer necessary.</p> <p>(7) In this section "working day" means any day other than a Saturday or Sunday or a day that is a public holiday under the Public Holidays Act.</p>

Answer to Self Assessment Exercise 2

<p>The section could be rewritten as follows:</p> <p>Food stores to be kept clean.</p> <p>7.-(1) The occupant of a place in which any article of food intended for human consumption is stored or kept or is exposed or offered for sale must make and keep the place clean and wholesome.</p> <p>(2) A food inspector may:</p> <p>(a) enter <i>the</i>¹ place at any time to inspect any article <i>described in subsection (1)</i>², and</p> <p>(b) if <i>the</i>¹ article appears to be unfit for human consumption, seize <i>it</i>³ and order <i>it</i>^{*3} to be destroyed or so treated as to prevent <i>its</i>³ exposure for sale or use for food.</p> <p>(3) Both the occupant⁴, and the person or persons responsible for exposing <i>the article</i>⁴ or offering <i>it</i>³ for sale, commit an offence and are liable to a fine of ₦50,000.00</p> <p>Almost all the references can be replaced with either a definite article (¹) or a pronoun (³). None is needed in the case of (⁴). But a back reference is needed at (²); otherwise the inspector would be empowered to inspect any kinds of article at all. As there is no particular article to refer back to, "the article" cannot be used in this case.</p>

UNIT 4 Linking sections

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 - 3.1.1 How sections can be linked
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1.0 Introduction

This unit deals with how sections in a legislative document can be linked to make a coherent legislation. It also deals with how provisions in other legislation may be linked or incorporated with a Bill to provide consistency in the general body of law.

2.0 Objectives

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

- (i) Order and link sections in a bill;

- (ii) Determine when provisions in other legislation should be linked with a Bill or incorporated into it.

3.0 Main Content

3.1 The difference when linking sections

The contents of a section are bound by their unity of purpose. A careful ordering of the sentences and a narrative style is usually enough to provide legal continuity. Similarly, with respect to the links between sections, you may be able to rely upon the fact that the statute must be read as a whole. The meaning given to particular provisions is influenced by their statutory surroundings. So, in short and uncomplicated legislation you may need little linking or cross-referencing between sections.

But more may be needed in lengthy or complicated legislation. For you must make sure, e.g. that a matter referred to in one context is the same matter as is referred to in another if that is the intention.

A complex statute may impose the same or different obligations on the same or different persons or regulate a series of similar matters in different ways. Your draft must leave no doubt as to which of the provisions apply to which of the persons or matters. In cases of this kind you may need to cross-refer specifically to the principal provision that identifies a particular person or case intended.

Example Box 1

1. A person who holds a second-hand dealer's license *issued under section 12* or a metal dealer's license *issued under section 14* must register his business name with the Registrar of Business Names.

2. On conviction of an offence *under section 16*, the court may cancel a certificate of registration.

3. The registrar must enter in the register details of all information given to him *as required by sections 17 to 25 of this Act and by section 14 of the Companies and Allied Matters Act.*

One case that calls for linking is where two different sections are capable of applying to a particular case if certain circumstances occur, e.g. if a broad provision applies to a wide range of cases and another narrower one applies to one of those cases. Can both be relied upon when those circumstances happen? If not, which is to have priority in the case of such an overlap? Linking provides the answer.

Example Box 2

The following sections are widely separated in the legislation.

Tenure of Police Commission members.

106. A member of the Police Service Commission ceases to hold office:

- (a) at the end of 3 years beginning on the date of appointment; or
- (b) if circumstances arise that, if the person were not a member of the Commission, would cause him to be disqualified for appointment to that office.

Removal from office.

124. A person holding office:

- (a) as director of a statutory corporation;
- (b) as a member of any Service Commission; or
- (c) as a member of the Electoral Commission;

may be removed from office for inability to discharge the functions of the office or for misbehaviour.

Clearly s.106 is not a complete statement of when membership of the PSC ends, since it may be terminated under s.124. A cautionary phrase added to s.106 will draw attention to the fact that s.106 is supplemented by s.124. Conventionally such words are: "*Subject to section 124,*".

3.1.1 How sections can be linked**(a) Use a labelling definition**

Consider using a labelling definition for a term that appears in several sections. This ensures that each use of the term refers to the same case without saying so each time.

Example Box 3

In this Act, "gun license" means a gun license *issued under section 5.*

This definition not only permits the shortened defined term to be used; it also removes the need to refer to the section from which the concept is derived.

(b) Linking phrases

Drafters conventionally use the linking phrases referred to earlier in relation to subsections, in particular:

" <i>subject to</i> section 12"	when section 12 is to take priority in an overlap with the section containing the phrase
" <i>despite</i> " (or, in older forms, " <i>notwithstanding</i> ") section 15"	when the section containing the phrase is to have effect even though overlapping with section 15
" <i>without prejudice</i> to section 20"	when both the sentence containing the phrase and section 20 may be relied upon in circumstances when they overlap

Some drafters also use: "*subject to this Act*", to indicate that the particular section is not self-contained, but is subordinate to several other sections. This practice may technically serve this purpose but it provides little guidance and, typically, states the obvious, since the section must be read in its statutory context. However, don't use the phrase as a way of escaping from one of your principal responsibilities. As part of the planning of your Bill and of scrutinising the various drafts, pay particular attention to the question of overlapping provisions to ensure that they do not contradict each other. Be aware of possible contradictions of these kinds, so that you can add the specific linking phrases, as necessary.

Linking phrases are useful, then, as safeguarding expressions:

- (i) to draw attention to an earlier or later section which overlaps the matters covered in the present section, especially when they are widely separated in the Bill;
- (ii) in the case of inconsistency in the application of two or more sections, to establish which takes priority;

- (iii) where two or more sections can be relied upon or selected from in the same circumstances, to indicate which or whether both or either may be invoked.

Example Box 4

12. *Subject to section 17*, a person who satisfies the Registration Committee that he holds a qualification as a medical practitioner in a country listed in the Schedule is entitled to be registered under this Act as a medical practitioner in Utopia.

17. A person must not be registered under this Act if:

(a) he or she has been convicted at any time in any place of an offence for which he or she was punished by imprisonment for 2 years or more; or

(b) in the opinion of the Registration Committee, he or she is otherwise not of good reputation or character.

Without the safeguarding words, the two provisions are contradictory. The phrase draws attention to the existence in section 17 of a qualification to section 12 that confers an apparently unqualified right.

Similar considerations apply rather more strongly where the overlap is with a section in another statute altogether. Bear this possibility in mind when researching the existing statute law as it applies to the subject matter of your Bill.

3.1.2 How cross-references should be drafted

Make your cross-references as precise as possible, setting out the number of the section or subsection (and the citation of the statute, if the reference is to another Act). Current practices enable you to express these references shortly.

Example Box 5

Preferred style:

Subject to *section 12(2)(a)*,

rather than:

Subject to paragraph (a) of subsection (2) of section 12

Subject to the provisions of section 12(2)(a)

Do not use the following or similar forms:

"in the foregoing/preceding/following section";

"as hereinbefore/hereinafter referred to".

Both are archaic and imprecise. They may also become inaccurate if additional sections are added before or after the section in which they are used.

Cross-references to paragraphs give rise to different considerations. Typically, paragraphs contain only one component of a sentence. Most cross-references need to include other parts of the sentence to make the reference complete. It is only if the reference is to an item as described fully in the paragraph that you should refer to the paragraph number alone.

Example Box 6

Possession of dangerous things in public places prohibited.

12. No person in a public place shall carry or have in his possession:

- (a) a firearm;
- (b) an article made or adapted for use for causing injury;
- (c) any noxious fluid.

Arrest of persons contravening section 12.

14. A police officer may arrest, without a warrant, a person contravening *section 12(a)*.

The cross-reference in section 14 is incomplete. An improved version of section 14 might read:

14. A police officer may arrest a person who is contravening section 12 in respect of the item in paragraph (a).

But a better version disposes of the paragraph reference altogether:

14. A police officer may arrest a person who is carrying or in possession of a firearm in contravention of section 12.

3.2 Incorporation by reference

3.2.1 When can we incorporate provisions by reference from one part of a Bill to another?

In a Bill of some size, you may find that two classes of cases require to be treated in essentially the same way in one or more of their features, but because, in other respects, the two matters are distinct, they are best dealt with in separate parts of the Bill. Should the common ground be covered by repeating the same provisions in each case? The alternative is to provide for the common matters in respect of one of the cases and then rely upon a cross reference to them in the other place. This device of *incorporation by reference* (or referential legislation) should have a place in your drafting kit.

Example Box 7

165. Part V (which relates to the winding-up of companies formed and registered under this Act) applies with respect to the winding-up of an unregistered company.

Several benefits may follow:

- (i) since precisely the same rules apply to the two cases, both will be dealt with in the same way, securing uniformity of administration;
- (ii) lengthy repetition is avoided;
- (iii) obviously it saves preparation time and reduces the length of the Bill and the amount of printing;
- (iv) it eliminates unnecessary duplication in the work for the Legislature;
- (v) there is no possibility that, in preparation or in the Legislature, unintended changes will be made to one set of provisions but not the other.

But this device must be used with care. The same provisions can be applied to a second case only if they are to operate *in exactly the same way*, and if they are capable of operating in the same way in both

contexts. If the two legal settings are not, in fact, the same, the provisions may need modification in order to produce an equivalent effect in the second case or to take account of different features of that case.

Before provisions are incorporated by reference, test them in the second context to make sure that they can be applied without any modification. If they cannot, add to the incorporation clause the precise modifications that are to be made in respect of the provisions. It is rarely sufficient to give a general instruction of the kind in Example **Box 8**.

Example Box 8

165. Part V (which relates to the winding-up of companies formed and registered under this Act) applies, *with the necessary adaptations and modifications*, with respect to the winding-up of an unregistered company.

The traditional phrase *mutatis mutandis* is replaced by the italicised expression.

The highlighted phrase in **Example Box 8** leaves it to the reader (or, in a dispute, the courts) to work out the necessary modifications. Such a formula as this should only be used for changes in formal references (as to names, or titles, or designations), and not for difference of substantive law. If the latter are necessary, provide for them expressly.

If a large number of modifications are needed, it may be better, after all, to restate the original rules in their modified form, rather than to ask readers to compare different pages of the statute and to work out how specified modifications affect the original provisions. The savings made by the referential incorporation are not justified if they lead to uncertainty or poor communication.

When you use the device, make sure, as with all referential provisions, that the cross references are precise and complete and incorporate only those provisions that are required.

3.2.2 When can we incorporate by reference provisions from another Act?

In principle, similar justifications can be made for incorporating provisions from existing law into a new Bill. You may receive instructions that a case in your Bill is to be dealt with in the same way as

another under an existing Act. In those circumstances, incorporation by reference is the most straightforward way of giving effect to the policy.

There are cases where Government does not wish a matter that is already well settled by existing legislation to be re-opened for debate; this may occur if the same provisions are repeated in a new Bill. Referential legislation then can be a deliberate technique for ensuring common policy in the treatment of related matters. It is a particularly valuable way of applying tried and tested legal requirements or procedures to new matters or similar circumstances (e.g. procedural rules for tribunals; standard court processes).

Example Box 9

25. Sections 5 to 9 of the Employment Act (which relates to the provision of written contracts of service to persons employed in Utopia) apply with respect to contracts of service of persons employed on board ships registered in Utopia.

104. For the purposes of paying contributions and to receiving pensions under the Pensions Act, a member of the staff of the National Assembly is to be treated as if the member were a public officer within the meaning of that Act.

Both these extend an existing policy to a new, but similar, category of case.

Referential incorporation is also useful for linking two pieces of legislation which, in some particular respect, are concerned with the same subject matter. This may be achieved by an appropriate definition cross-referring to a concept in another Act. But there is no point in incorporating a definition by reference to a definition in another Act unless it brings with it the application of provisions of that Act to the defined term (as in **Example Box 10**). In other cases, include a complete definition in your Bill using the same terms as the original.

Example Box 10

2. In this Act, "registered firearm" has the meaning given to the expression by the Firearms Act.

This usefully ensures that a concept (as it is regulated in the earlier legislation) will operate in the new Bill.

But using referential legislation calls for caution:

- (i) two separate Acts must be consulted to understand the effects of the incorporation;
- (ii) there must be common ground or equivalence between separate statutes; yet the underlying policy and circumstances regulated may actually be different in the two cases;
- (iii) the incorporated provisions become part of the new legislation as they stood at the time of incorporation; amendments made subsequently to the original provisions do not take effect automatically;
- (iv) repeal of the original legislation does not affect the incorporated provisions;
- (v) accordingly, if the original provisions are amended or repealed, the Act into which they are incorporated must be amended too if the same changes are to apply in that context (and it is easy to overlook the existence of incorporated provisions).

So care is needed in deciding whether incorporation by reference is desirable and feasible. The possibility should be considered at the research and planning stage and discussed with the instructing officer, when the advantages and disadvantages can be weighed.

But consider too whether the same result can be achieved by amending the original Act to extend to the new case. Most drafters favour repeating provisions, rather than incorporating them by reference, unless there is a sound reason for linking the two statutes. The more provisions that are needed to modify the original provisions for the new circumstances, the weaker the case for incorporation.

In drafting these incorporation provisions, take the following actions:

- (i) check the terms of the original provisions (including any amendments) as they will operate in the new context, in order to ensure their consistency with both that context and the language of the Bill;
- (ii) if you find inconsistencies, provide express modifications that state how inappropriate terms in the original are to be treated in the new context;

- (iii) include a full citation of all the provisions to be incorporated (and the correct citation of the Act);
- (iv) provide a short note, in parenthesis, after the reference, to guide readers as to the contents of the incorporated provisions (as in **Example Box 8**);
- (v) if the incorporated provisions rely upon definitions in the original Act, include those definitions among the provisions you incorporate;
- (vi) when scrutinising your draft, compare and check the texts of the original and of the new Bill, especially the incorporating provisions, to ensure that the two can be easily read together and the effects understood;
- (vii) confirm that the incorporation does achieve the intended aims in using the device;
- (viii) check that the original provisions, when placed in the Bill, are consistent in law and language.

3.2.3 Can provisions be incorporated from the legislation of another jurisdiction?

Many Commonwealth countries still rely upon United Kingdom legislation that has been incorporated as part of their law by general or specific reference. Some incorporating provisions are "ambulatory", i.e. authorise continuing incorporation to take account of changes in the UK legislation. No independent State should adopt reliance on UK law as a drafting practice:

- (i) it relies upon the law of another country, which does not legislate with other countries in mind;
- (ii) it is fraught with legal uncertainty as the legislation is rarely completely compatible with local circumstances;
- (iii) in so far as it is ambulatory, it may be unconstitutional since it recognises the authority of an external body to make local law, which is the prerogative of the Legislature established by the Constitution.

If you believe, after careful research, that a precedent from an external jurisdiction suits your needs, use its contents as a precedent for drafting your Bill. It is only in exceptional circumstances that incorporation of

external legislation by reference can be justified, especially if it is to have ambulatory effect.

Different considerations may apply for dependent territories where consistency with the metropolitan legislation is required for a subject matter that has transnational effect (e.g. shipping, communications) and for which the metropolitan country has international responsibility.

Different considerations may also be found for jurisdictions within a federal system, like Nigeria. It is open e.g. to states deliberately to incorporate federal legislation that applies only in federal territory so that it applies to circumstances in the state territories (or vice versa) if this does not breach the division of legislative competence. This secures uniformity or harmonization. But again incorporation may give rise to constitutional issues if the effect is to delegate to another jurisdiction to legislate for it on matters that are beyond its constitutional competence.

In most cases, it is preferable merely to repeat the contents of the federal legislation.

4.0 Conclusion

In conclusion, the contents of a section are bound by their unity of purpose. One case that calls for linking is where two different sections are capable of applying to a particular case. Sections can be linked by using linking phrases or a labeling definition.

5.0 Summary

In this unit, you have learnt about linking of sections and incorporating provisions by reference. You should now be able to:

- (i) order and link legislative sentences into a rational structure in a legislative document; and
- (ii) determine when provisions in other legislation should be linked with a Bill or incorporated into it.

6.0 Tutor Marked Assignment

What is the difference when linking sections?

7.0 References

Driedger E.A, (1976) *The Composition of Legislation; Legislative Forms & Precedents*, Ottawa: Dept of Justice.

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

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

UNIT 5 Dividing Bills

CONTENTS

- 1.0 Introduction
- 2.0 Objectives
- 3.0 Main Content
 - 3.1 Dividing the Bill into formal groupings of sections
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 - 3.6 How division headings should be expressed
- 4.0 Conclusion
- 5.0 Summary
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- 7.0 References

1.0 Introduction

This unit deals with the ways in which Bills may be formally divided.

2.0 Objectives

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

- (i) Decide when a Bill needs to be formally divided; and
- (ii) Explain how those parts should be organized.

3.0 Main Content

3.1 Dividing the Bill into formal groupings of sections

Short statutes rarely need to be separated into formal divisions. A Bill with a small number of short sections is easy to use. Its coverage and structure are unlikely to be complicated; readers should be able to gain an overview from a quick glance at the section notes.

But as the number and length of sections increase, consider ways of assisting users to find out how the Bill is organised, what range of matters it deals with and where in the Bill they can be found. One way is to provide *topic indicators* at frequent intervals throughout a Bill. They enable readers to grasp much more quickly the nature of the items that identified by the indicator and the relationship between the principal topics covered by the Bill. Headings perform this function well. The more headings you can introduce, the more readily that users will see the overall picture.

This means that provisions must be grouped together when they have subject matter in common. The groups can then be placed into Parts or Divisions or other subdivisions to each of which you can have an informative heading. It is a matter of judgment, in each case, whether to divide in this way. Ask yourself whether dividing will contribute to easing access to the content and structure of the legislation. Obviously, the longer the statute, the more likely that your answer will be positive. **Unit 6** looks at how these matters may be worked on when developing a legislative plan.

3.2 Divisions that are conventionally used

The following is a typical hierarchy of divisions:

Part:

to describe separate groups of sections, each group comprising a distinctive segment of the legislative scheme, and numbered appropriately.

Division:

to describe separate groups of sections *within* a Part, comprising a distinctive component of that Part, and numbered appropriately.

Chapter:

used as an alternative to a Division.

Subdivision (sometimes called "fascicule"):

to describe a group of sections *within* a Division or Chapter, each dealing with one or more of its features; or

alternatively in a shorter statute to describe groups of sections when more formal divisions are not suitable. These are not numbered.

The headings for each of these divisions are printed in ways that are distinctive, although the forms vary from one jurisdiction to another. But there is now a steady trend away from using roman numbering (e.g. "IV" or "IX") in favour of more familiar arabic forms (e.g. "4" or "9").

Example Box 1

Form and numbering of designation	Form and font attributes of heading
PART I (Capital letters, large, bold, roman numerals)	PRELIMINARY (Capital letters, large, bold)
<i>Division 2</i> (Lower case, bold, italics, arabic numerals)	<i>Effects of registration</i> (Lower case, bold, italics)
CHAPTER 3 (Capital letters, bold, arabic numerals)	WINDING UP BY THE COURT (Capital letters, bold)
[fascicule] (No designation or numbering)	<i>Grounds for winding up</i> (Lower case, italics)

Self Assessment Exercise 1

Refer to a substantial Act (preferably recently printed) that has formal divisions. (e.g. the Companies and Allied Matters Act, the Merchant Shipping Act or the Companies Income Tax Act). Using the entries in **Example Box 1** as a guide, complete the following:

Type of division	Form and numbering of designation	Form and font attributes of heading
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First level (e.g. Part)

Second level (e.g.

Division or Chapter)

**Third level
(e.g. fascicule)**

3.3 When divisions might be of particular value

Legislation has to be debated following a formal procedure. The Ministerial introduction and the debates and committee examination can be easier to structure if the distinctive segments of the Bill can be considered separately. Divisions may secure your clients' interests in processing the Bill through the Legislature as easily as possible.

But formal divisions may also be helpful in dealing with drafting problems. When an Act is formally divided into Parts and Divisions, courts assume that this is a deliberate decision by the drafter to treat the various items within them separately and exclusively from others. In consequence, they assume that a section in one division is not intended to be read into another division, though it may appear to deal with a similar matter. They will do this only if driven to conclude that the section has been misplaced. (Informal divisions are not seen as creating exclusive divisions; they are merely topic indicators.) Dividing into Parts then is a valuable device if you wish to ensure that groups of sections intended to be exclusive of others will be treated in that way.

Example Box 2

The Companies and Allied Matters Act, which includes general rules for setting up, operating and winding up companies, commonly contains separate parts for other categories of corporate bodies that are to be subject to regulation, e.g.:

Corporations set up under different legislation
Overseas or external companies
Non-profit companies

So consider using separate parts for groups of sections for matters that:

- (i) deal with a particular stage in an administrative scheme;
- (ii) regulate the activities of a particular group of persons affected by the scheme;

- (iii) create a new legal entity and confer its functions;
- (iv) determine the membership and rights and duties of the membership of a new body;
- (v) deal with part of an administrative scheme that is to come into effect at a later stage than the rest of the statute;
- (vi) apply to special cases only;
- (vii) apply to limited categories of persons or places.

One useful approach is to separate any group of provisions all of which are to be subject to a general direction in the Bill, as to its application or operation that does not apply to other groups.

Example Box 3

This Part applies with respect only to companies that are registered in a country outside Utopia.

This Part applies with respect to Scotland only.

This section applies for the interpretation of this Part.

This Part comes into force on a date to be fixed by the Minister by notice in the *Gazette*.

3.4 When should the decision be made about dividing the Bill?

Decisions on dividing should be carefully considered.

(a) Formal divisions

Whether or not to make formal divisions should be part of the designing of your initial legislative plan. (We consider this in the next unit). You are likely to see a need to make them as a result of your analysis, because, e.g.:

- (i) the Bill will be of some length;
- (ii) there are features of the scheme which appear to fall into distinct segments;

- (iii) alternatively, the Bills deals with a number of separate subjects that are largely unrelated and should therefore be kept apart.

(b) **Informal divisions**

Whether or not, or where, to introduce informal divisions generally emerges in the later stages of composing the Bill, when your systematic ordering of the clauses is well advanced. Assigning an informal heading can help break up a Part that covers many pages. It is a useful reminder to you to group together provisions that are concerned with aspects of the Part that are closely related in their substance.

3.5 What to bear in mind in making divisions

The contents of formal divisions are treated as exclusive of others. So take care not to include in one group a provision that properly belongs to another. It may be construed as confined to the context in which it is placed, and not as applying more broadly. However, if a section in one Division or a Part is to have effect in the context of another Part, link them by appropriate cross-referencing.

Example Box 4

Part XV (which relate to winding up of companies) apply in relation to the winding up of a company registered under this Part.

Alternatively, move the section to another Part that contains general provisions that are to apply to the entire Act, unless the section is integrally linked with others in the original Part. Parts and Divisions are devices for providing a rational and orderly structure for the content of the legislation that is likely to accord with users' expectations and needs. They must be planned with that as a prime objective. Provisions should be grouped, as far as possible, with others with the same subject theme. It is there that the reader will look.

3.6 How division headings should be expressed

Give both formal and informal divisions a helpful heading that indicates the gist of the provisions they cover. Remember that they are intended to be topic indicators.

In drafting them:

- (i) choose a short set of words (a part or a whole of one line is, typically sufficient; never more than 2 lines);
- (ii) describe the contents by a general expression, yet one that provides an accurate guide (it can never be comprehensive);
- (iii) unlike section notes, include the relevant definite and indefinite articles;
- (iv) place the heading in the centre of the page.

Accuracy is an important consideration. In many jurisdictions headings can be taken account of for the purposes of interpretation (See Section 3(2) of the Interpretation Act (Federal) cap. 192 LFN 1990 cp. with section 13(1) of the model Interpretation Act 1992).

If a heading appears not to cover all sections, it is possible that there is insufficient common ground to join them in the same grouping. Consider:

- (i) whether any section should be placed in a different division;
- (ii) whether the division should be confined to some only of the present group of sections;
- (iii) whether a different heading can be devised that will cover all sections.

Headings tend to be added and altered as the drafting proceeds. But check them all again as the final stage in completing the final draft. Changes in the contents of divisions commonly require some modification to the heading.

Self Assessment Exercise 2

Look through the table of contents of the Companies and Allied Matters Act 1990. Note the structure of the Act and the way it uses various divisions and headings for them.

4.0 Conclusion

To conclude, short statutes rarely need to be separated into formal divisions. A Bill with a small number of short sections is easy to use.

Formal divisions may be helpful in dealing with drafting problems. The contents of formal divisions are treated as exclusive of others. So take care not to include in one group a provision that belongs to another.

5.0 Summary

In this unit, you have learnt how and when to introduce formal divisions into Bills. You should now be able to decide when a Bill needs to be formally divided and how the parts should be organized.

6.0 Tutor Marked Assignment

When should you divide a Bill into formal grouping of sections?

7.0 References

Interpretation Act, Cap. 192, Laws of the Federation of Nigeria 1990.

Companies and Allied Matters Act 1990.

UNIT 6 How to design a legislative plan

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1.0 Introduction

In this unit, we explore in greater detail one of the stages in preparing a Bill that should precede composition - designing a legislative plan. We saw in the course, Drafting process (Instructions) that this should be taken as the bridge between analysis of the legislative proposals and the composition of the legislative rules.

You may be tempted to pass over this stage when drafting legislation - most drafters do. But if properly undertaken it can greatly ease your task of composing the individual rules, as you will have a much clearer view of where you are going, what you need to provide and how those rules are to relate to each other. In short, it prepares the ground for structuring the provisions in the ways you worked with in units 1 to 5.

2.0 Objective

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

- (i) Design a legislative plan for drafting a short Bill.

This unit is short, and the matters discussed in 3.1 are not difficult to grasp. However, 3.2, which sets out guidelines for drawing up a plan, calls for close attention. In our experience, trainees may have initial problems with the basic principles of classification which underlie this part. Look closely at the Example Boxes; these are designed to illustrate the theoretical points by practical examples. You may need to go over the ground more than once before you are confident about the approaches recommended.

3.0 Main Content

3.1 General considerations

Few authors set out to write a book before they have worked out an overall structure and a general scheme of arrangement for its contents. No architect starts to produce detailed drawings of the parts of a new building without first working out an overall design for the building. In a similar way, when drafting legislation drafters should devise a legislative plan before composing the individual provisions.

A Bill of any size contains numerous, often detailed, rules, some basic to the statutory policy, others merely dealing with secondary matters; some concerned with rules of substantive law, others with their administration or operation. This mass of information needs to be organised. Whatever

we are reading, we find it easier if there is some pattern underlying the text and if we can quickly discern what that pattern is.

Users of legislation typically need to find, absorb and understand particular (and often detailed) provisions. That is much easier if they first understand the statutory context in which the provisions operate and the relationship of those provisions with the basic themes. So we should try to organise our legislative material in a coherent and logical form so that the themes are readily communicated to users and its particular contents can be easily mastered.

3.1.1 Why design the plan *before* composing the detailed provisions?

Is it not just as easy to compose the individual rules first and then to arrange them in the most effective order, rather than to devise the plan first? This is sometimes the way that experienced drafters work with short Bills or ones that are simple in their objectives and requirements. But to adopt this course for Bills of any size or complexity brings problems at the composition stage.

We read a document assuming that it contains a coherent flow. What we read at this moment is influenced by what we have read earlier and will influence what we shall read later. In writing, we must take account of that expectation. We also need to remember that few users of legislation read the statute in its entirety. They are usually only concerned with certain related elements at any one time. But they still expect to find a coherent exposition of those elements, preferably together in the same place in the legislation.

In composing legislation, then, we should be consciously laying foundations before building on them; we should be creating or identifying the central concepts before we put them to use; we should determine what is comprised in new legal relationships before we deal with what happens when they break down. Each legislative provision is a link in the statutory chain, but the form of each link is likely to be influenced by the shape of the one that went before. We need to know about the preceding link before we start making the next.

Our thought processes are not usually as orderly as this. When we are trying to work out a new scheme and to decide how it is to operate, we tend to jump around as new thoughts strike us or as later insights cause us to rethink or add to some earlier feature. However rational our thoughts, for most of us the process of thinking is not very systematic. Were we to write in the way we think, our text is unlikely to be as coherent as readers need it to be.

We need to plan to decide which provisions are to be treated together, and we need to plan *first* because the thematic structure of the Bill inevitably influences the way the individual provisions are drafted. Not to do so may complicate and lengthen the composition, as we find it necessary to alter drafted provisions to take account of these features.

The legislative plan, then, is a preliminary exercise, for working out, in outline, how best to communicate to users the *results* of our thinking. We should strive to put them in a position to discover how the questions they have to answer relate to the scheme in the Act and where to look for their answers.

3.1.2 The advantages a legislative plan provide

We have already suggested that a legislative plan can lead to a better structured Bill and to speeding the process of composing. But there are other advantages too:

- (i) it allows you to concentrate attention on the basics of the scheme and to request instructors to settle essential policy issues at this stage;
- (ii) it encourages you to decide on the basic concepts and terminology to be used when you come to compose;
- (iii) it is a useful tool for testing whether the instructions will have been fully dealt with when the plan has been put into effect;
- (iv) it reduces the likelihood that you will have to make major restructuring changes during the composition, or even to jettison the draft because fundamental structural flaws have appeared;
- (v) it provides a checklist of matters that require legislative provisions, enabling you when you are drafting to keep an eye on your progress and to make any necessary timetable adjustments.

3.1.3 How final is a legislative plan?

A plan is not an inflexible straight-jacket. It indicates a line of approach that is acceptable for the time being. You must expect to make adjustments to it as the drafting proceeds. No matter how much preliminary thought you give, writing the provisions inevitably throws

up new considerations, or may suggest an improved way of dealing with an aspect of the Bill, that have to be accommodated.

Be prepared to alter the plan from time to time as these developments occur. But if you do, you must consider whether it affects any provisions that you have already completed.

But if you take care over your initial plan, you should not have to alter it in its fundamentals, unless the client decides to make major changes to the basic policy.

3.2 Drawing up a legislative plan

Each Bill presents its own problems and its plan needs to take account of the specific contents. But the general aim is the same in each case - to group together individual provisions that are related to each other and to order them in a logical sequence. For that purpose, some general guidelines can be suggested. We shall look at these under 4 heads:

1. What do we need to start?
2. How to arrive at suitable groupings
3. How to allocate individual items to their appropriate group
4. How to order the items in the groups, and the groups themselves, in a logical sequence

3.2.1 What do we need to start?

As we saw in the course, Introduction to legislative Drafting, as part of the process of analysing the instructions, it is valuable to produce a précis of the matters that appear to you to require legal provision. The most useful form:

- (i) comprises every significant item or topic for which you will need to compose an individual clause;
- (ii) sets these out in a list with the gist of each item shortly described, e.g. in the form used for section notes.

This list usually emerges rather haphazardly. As one item is noted down, it may well suggest another matter that may not be closely connected with it. Since the aim at this stage is to arrive at a complete list of topics, they should be noted as they are thought about regardless of their links with others. But in consequence the order of analysis is not necessarily the most effective way of arranging the elements of the scheme.

3.2.2 How to arrive at suitable groupings

There is a temptation to move straight to the process of grouping by looking for common elements or links between different items. This may work sometimes, but it may fail because there is no unifying purpose behind the individual decisions. You must decide first how to judge whether or not items have common elements or links. Whenever we set out to give order to a collection of items, we should provide ourselves with some kind of yardstick to *determine what is common*. Sometimes we may not give this much prior thought because we know instinctively what we are trying to achieve in grouping. But we should rely on reasoned thought, not instinct.

Example Box 1 indicates that the same set of items can be grouped in several different ways. Different aims lead to different criteria, i.e. a different yardstick, for deciding what is common.

Example Box 1

You have been given 1000 books, which you now have to put into some rational order. This requires you to group together books that have similar characteristics. But which characteristics are to be treated as similar must depend upon the way you intend to use the books in future.

1. If the books are specialist law books that you are to keep in your office for reference, they are likely to be most useful if grouped on the basis of having a common or similar subject matter. The aim is to keep together all the books dealing with the same area of law, arranged according to the frequency with which you work in a particular area.
2. If the books are works of fiction, your concern may be to find a particular work as quickly as possible. This suggests that books should be grouped together by author, and arranged alphabetically.
3. If you have been asked to store the books, your concern may be to use the storage space most efficiently. In that case, they should be grouped according to size so that those of the same size are together and can be arranged to make best use of the space.
4. If you have acquired the books merely for their decorative appeal when shelved in your house, you may decide to group them according to the similarity of the type or colour of their covers or bindings and to arrange them so as to produce a desired visual effect.

In each case in the **Example Box**, the decision as to the common element (i.e. the yardstick we applied) was dictated by the *result* we wished to achieve. Different aims cause us to put emphasis on different characteristics. So, the needs of the user dictate what matters should be grouped together. In effect in this example we were asking ourselves:

1. Whose interests is the ordering intended to serve?
2. How do they intend to use the collection of items?
3. What form of grouping will best suit their needs?

Similar considerations apply with regard to a list of legislative items. Here we should ask:

1. Who appear likely to be the principal users of the legislation?
2. For what purposes will they typically refer to the legislation?
3. What form of grouping will best serve those purposes?

We should be designing the Bill for those most interested in it and producing it in the form that they will find most useful. The interests of administrators of legislation are likely to differ from those of persons required by the Bill to alter their behaviour or activities. A form of grouping that serves one set of interests may not satisfy another set. We must select a *single* yardstick that will produce *a series of groups*. That form of grouping must serve the interests of those most likely to use the Bill. By applying the yardstick to all the items, we can decide to which group a particular item should be allocated.

Example Box 2

In relation to a Partnership Bill:

1. The principal users are those considering entering or in partnerships, and those who deal with them.
2. They will refer to the legislation to find out about the rights, duties, powers and liabilities of partners at the different stages of partnerships: at the beginning, during and at the end.
3. The form of grouping best serving their interests is one that enables these legal relationships to be ascertained at the different stages of a partnership.

So, we should adopt as our yardstick the requirement to group items by the stage of the partnership at which they occur.

The aim, then, is to produce a series of groups, each of which has a common element; this is directed by the yardstick we have chosen. What the yardstick should be, and so what groups emerge, and how many there are, depends on the subject matter and the legislative items to be covered.

But the result must be that each group contains the items that deal with a particular aspect of the legislative scheme. If the grouping works, you should be in a position to summarise that aspect in a tentative heading for the group. As you compose the contents, consider whether the groups are to be designated as individual Parts or whether some should be subdivisions of a single Part.

3.2.3 How to allocate individual items to their appropriate group

Your objective here is to bring together items that are so closely connected in their content that they need to be dealt with as a group. In that way you demonstrate their interconnection. A common theme should run through the items. So sharing a theme should indicate to which group in the series of groups the item belongs. The yardstick indicates the various common themes that the individual groups in the series must have, as we saw in **Example Box 2**.

Your aim in allocating to groups is to provide the user with all the related items on each major feature of the Bill. Your yardstick enables you to determine the major features.

Some items may have more than one link and could be associated with more than one group. You have to decide as to which, when viewed from the standpoint of the user, is the closer of the links. Keep open the possibility, when composing the provisions, of introducing a cross reference in the linked group to the actual group in which you placed the provision.

Example Box 3

In a Partnership Bill, an item concerning the rights of partners between themselves on dissolution of the partnership could be grouped with:

- other items dealing with the relations of partners with each other; or

- other items dealing with dissolution and its consequences.

Users are more likely to look for the item in the second group, as the need to do so mainly arises when dissolution occurs or is contemplated.

Run through the complete list of items applying the yardstick requirements. Some of the groups will emerge only as you work through the list; others you will have in mind as you start. Some items may not obviously belong to any other coherent group. These can usually be allocated to one of the residual groups conventionally titled:

Preliminary; General; Miscellaneous; Final.

But if these become overloaded, consider whether some additional group can be formed or whether your basic method of arriving at the groups, i.e. your yardstick, was flawed.

3.2.4 How to order the items in the groups, and the groups themselves

Deciding which items are to be grouped together does not indicate the order in which they are to be set out in the group, nor the order in which the groups themselves are to be arranged. Decisions on these matters too need to have some logic behind them. Again, they are to be arranged in a sequence that makes sense to users.

The most obvious form of logical order is first to lay foundations setting out basic principles or concepts and then to build their application upon them. In terms of legislative sequencing, this suggests that:

- (i) the universal should come before the specific;
- (ii) the general should come before the particular;
- (iii) the important should come before the secondary;
- (iv) the basics should come before the detailed development;
- (v) the standard case should come before any exceptions to it;
- (vi) items should be set out in descending order of importance.

In deciding on the order, then, set out first those items that provide a platform for others, i.e. those that contain the basic ideas that is necessary to understand in order to use detailed applications. These are

often very obvious. But the test again is that which the user is likely to regard as basic or most important.

More specific guidelines on these lines can be applied to particular legislative contexts:

- (i) items concerned with the creation of a new body or new legal machinery should come before those concerned with the performance of its functions and its procedures and administration;
- (ii) items creating rights, duties, powers or liabilities (i.e. rules of substantive law) should come before those which state how they are to be used or protected (i.e. rules of administration or procedure);
- (iii) items intended to be permanent should come before those that will have a limited life (e.g. transitional matters);
- (iv) items that will be frequently referred to should come before those that will be used only once or occasionally.

A different form of logical ordering is often used for items that describe procedural steps or a series of connected rules. These should be set out in the chronological order in which the steps have to, or can be, taken or in which the rules typically take effect.

Example Box 4

A modern Partnership Act is likely to order the groups of items in the following sequence:

Formation of partnerships
Relationship of partners with each other
Relationship of partners to third parties
Dissolution of partnerships
Consequences of partnership dissolution.

This follows the order in which the circumstances being regulated typically occur.

Which of these guidelines is most appropriate is a matter of judgment in each case. Different ones may be needed for different groups. That selected for the order of the groups themselves may be different again.

You will help the user if the logic behind your selection is in keeping with their likely expectations and is quickly apparent from your contents.

These guidelines are reflected in the conventional arrangement of clauses in a Bill:

- (i) a purpose clause comes before the provisions that it explains;
- (ii) application provisions come before the substantive provisions they govern;
- (iii) provisions establishing a statutory body and prescribing its objects and functions come before the provisions relating to the performance of its functions;
- (iv) consequential amendments come after the substantive law which necessitates the amendments;
- (v) offence provisions for the enforcement of substantive duties follow the statement of duties;
- (vi) transitional and savings provisions come after the substantive provisions they temporarily qualify.

3.2.5 What should the legislative plan look like when it is completed

The most useful type of plan is one that contains an arrangement of clauses of the kind printed at the beginning of a long Bill. But the exact words used to describe the contents of the individual items need only be a rough indication of the subject matter. Provide precise section notes as part of the composition.

The plan should also mark off the separate groups. You may wish to indicate your first thoughts as to whether these will be distinct Parts or divisions within a Part or merely informal divisions. These matters too become clearer as the composition proceeds.

Your immediate aim is to provide yourself with an outline of the entire Bill in a form that you can use as a comprehensive list of the matters on which you have to draft provisions. It is a useful way for keeping a check on your progress. But it should help the actual drafting because it is a reminder of the relationship between provisions that you have already worked out.

Drafters develop their own approach to implementing the plan. Most start on the first major area of substantive provisions, giving less attention at this stage to preliminary matters, as the content of those, and so their drafting, will be affected by the way the substantive provisions are drafted. One advantage of starting in this way is that you are likely to find out early whether you need to modify the plan in respect of matters that could affect the entire instrument.

3.3 Influencing factors

3.3.1 Factors that may influence the form the legislative plan is to take

All jurisdictions operate conventions as to the general arrangement of statutes or the way in which particular types of legislation are to be organised. Your plan should reflect those followed in Nigeria as far as they are relevant to the Bill. They include:

1. The position in the instrument of formal and technical provisions
2. Methods of dividing instruments
3. The use of subsidiary legislation
4. Special treatment for amending statutes
5. The way distinct subject matters should be dealt with.

1. Position of formal and technical provisions

These provisions typically are concerned with the short title, interpretation, objectives, application, duration, consequential amendments, repeals and saving and transitional matters. Practice varies on the position in a Bill to be given to these provisions. In some places, certain of these appear among the preliminary provisions; elsewhere they may be included in the final provisions. Some provisions may be dealt with in Schedules rather than in the body of the Bill.

2. Methods of dividing statutes

Bills that contain a substantial number of provisions are typically divided into formal Parts. If the individual Parts are themselves substantial further subdivisions may be used. Again, practice varies as to the extent to which these practices are followed, and as to the designations used for the different levels of division.

Some systems make greater use than others of Schedules to contain provisions of little significance to the main users of the instrument. For example, they may be the standard place for setting out consequential

amendments, or repeals, if there are many, or transitional or savings provisions, if they too are long.

3. Use of subsidiary legislation

Many jurisdictions limit the size of Bill by authorising executive bodies to deal with matters of little policy content by means of subsidiary legislation. There is a trend in some to confine the Bill to providing the core features of the scheme and to allow the operational features to be covered by instruments.

4. Special treatment for amending statutes

Most jurisdictions deal with changes in existing statute law by direct textual amendments, rather than supplementary Bills. The provisions of existing Acts are altered as necessary, and new provisions added (including, for substantial changes, new Parts) to give effect to the new policy. Exceptionally, the existing Act may be repealed and replaced by a new statute that consolidates the existing provisions with past and new amendments and additional provisions.

When these options are adopted, the arrangement of the new Bill is necessarily influenced by that of the existing legislation. Most of the planning concentrates upon deciding where new provisions fit into the legislative arrangement used by the original drafter. Textual amendments typically follow the order in which they affect the original.

5. The way distinct subject matters should be dealt with

Bills may deal with a wide range of issues that have no other connection with each other than that they fall within the jurisdiction of the same Ministry. Because legislative time is limited, the Ministry instructs that the Bill must include a range of different matters that are awaiting legislation. (In other places, however, drafters may be directed that distinct matters are to be dealt with in separate Bills.)

These Bills are sometimes referred to as "portmanteau" or "omnibus" Bills because all immediate requirements are bundled into the same container (e.g. the annual Finance Bill deals with a range of revenue matters covered by different statutes; a Local Government Bill may make miscellaneous changes to a variety of matters that happen to be within the competence of local authorities).

Such a Bill calls for a legislative plan that makes absolutely clear that its Parts deal with distinct matters that have no relation one with another. Each Part in effect needs its own legislative plan.

Exceptionally, this type of Bill may be used to make amendments to a range of statutes even though they lack a common theme. Typical cases are:

- (i) Bills that make miscellaneous minor amendments (often of a technical nature) for the purposes of law revision;
- (ii) Bills that make miscellaneous repeals of legislation that has had its effect or is obsolete.

In these cases, the nature of the exercise dictates the legislative plan. The provisions are ordered systematically to follow the chronological order in which the original provisions were published or if the legislation is contained in a set of consolidated laws, according to the alphabetic order of the legislation amended.

4.0 Conclusion

To conclude, users of legislation typically need to find, absorb and understand particular (and often detailed) provisions. They first have to understand the statutory context in which the provisions operate and the relationship of those provisions with the basic themes. So you should try to organise your legislative material in a coherent and logical form so that the themes are readily communicated to users and its particular contents easily mastered.

However a legislative plan is not an inflexible straight-jacket. It indicates a line of approach that is acceptable for the time being. Deciding which items to group together does not indicate the order in which they are to be set out in the group or arranged.

5.0 Summary

In this unit, you have learnt how to design a legislative plan. You should now have a clear understanding of the value of planning a Bill, particularly one of any length, before starting on its composition. You should also have acquired a working knowledge of the way to go about designing the plan. You should now be able to design a legislative plan for drafting a short Bill.

6.0 Tutor Marked Assignment

1. Assume that a new Fire Services Bill is in preparation and that the listed matters are to be dealt with in the individual clauses.

2. Working only with these items, prepare a legislative plan for the Bill, arranging the items in the order in which they should appear in the Bill.
3. The only new material you are to provide is (1) the headings for any formal divisions you choose to adopt and (2) the new numbers for the clauses.

FIRE SERVICES BILL

1. Functions of Chief Fire Officer
2. Chief Fire Officer to investigate causes of fires
3. Functions of Fire Service
4. Obstructing member of Service
5. Investigation report to be forwarded to District Magistrate
6. Minister's power to make regulations
7. Establishment of National Fire Service
8. Repeals and savings
9. Divisions of Service
10. Impersonating member of Service
11. Power of Service to enter premises
12. Penalty for false alarm
13. Powers for prevention of fire
14. Refusing to aid member of Service
15. General penalty
16. Control of traffic in vicinity of fire
17. Staff of Service
18. Use of water by Service
19. Removal of combustibles from premises
20. Enquiries by District Magistrate
21. Enquiry report to be forwarded to Minister
22. Findings of District Magistrate
23. Evidence on enquiry on oath
24. Attendance at enquiry of interested parties
25. Short title
26. Interpretation

7.0 References

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