



AMENDING LEGISLATION

LINDA ALUVALE
LINDAALUVALE@KSL.AC.KE

INTRODUCTION

- + Principal and amending legislation must always be construed to form one coherent whole.
- + Effecting amendments requires the drafter to take care to acquaint themselves comprehensively with the law to be amended and other related laws.
- + There are three major considerations which must be taken into account in the drafting of amending legislation —
 1. The language and style of the amending Act must be consistent with that of the principal Act and other statutes in material respects;

INTRODUCTION

2. The effect on other legislation of the instructed amendments must be studied and all necessary consequential amendments made; and
3. The amending provisions must where necessary be related to circumstances as they exist when those provisions come into force by specific commencement, application or transitional provisions.

HOW ARE AMENDMENTS EFFECTED?

- + There are two techniques —
- + (a) Direct and textual- insertion, substitution or deletion of words, paragraphs, sections or subsections in or from the principal Act; and
- + (b) Indirect, referential and cumulative- a narrative statement is made in the amending law stating the effect of the amendment. It stands on its own and amends the text by implication. This method is not commonly used in Commonwealth jurisdictions.

DIRECT METHOD

+ The direct method is preferred since it —

- (a) produces law which is much simpler and easier to understand, particularly if reprints or revisions are produced frequently;
- (b) reduces the proliferation of statutes;
- (c) to some extent, makes consolidation a running exercise thus facilitating the production of consolidated reprints or revisions without the need for specific legislation;
- (d) by encouraging the integration of new and modified provisions with the old, develops a view of the law on a particular subject as a whole rather than as a series of interwoven but separate parts; and
- (e) facilitates annotation.

DIRECT METHOD

- + The Direct Method may take three forms
- + (a) substitute 'a' for 'b' where one word is being replaced;
- + (b) redraft the whole provision stating that where 'a' appears put "b";
- + (c) reproduce the whole Act where several amendments are to be made
- + The following may be done in an amending Bill
- + (a) delete
- + (b) substitute
- + (c) repeal
- + (d) revoke
- + (e) insert
- + (f) add

DIRECT METHOD

- + “Delete” and “repeal” have similar meanings but the term “repeal” is used with reference to the whole Act.
- + The word “revoke” is used in subsidiary legislation.
- + Where a section is being extensively amended or where a number of previous amendments have been made to it, the drafter should consider whether the meaning of the section can be clarified by the repeal and re-enactment of the whole section. In taking a decision on this point, the drafter must not forget that the reengagement of the section may invite further debate in Parliament on a matter that may be controversial and politically undesirable.

DRAFTING DIRECT AMENDMENTS

+ (i) Reference to the section amended:

- + Each amending section should begin by referring to the section which is to be amended. For example:
- + Section 50 of the principal Act is amended by repealing the words, “ and the commissioner,”
- + Section 8 of the principal Act is amended in subsection (3) by repealing paragraph (b).
- + “The principal Act is amended by inserting after section 17 the following new section-”
- + Section 19 of the Land Act, 2012 (in this Act referred to as the principal Act) is amended by...

DRAFTING DIRECT AMENDMENTS

+ (ii) Extent of amending section:

+ As a general rule, it is preferable that one amending section should not amend more than one section of the principal Act, but there is no objection to including in one section a series of amendments to one section. The ordinary devices of paragraphing may be used in such cases. For example —

+ Section 76 of the Principal Act is amended —

(a) by repealing subsection (2);

(b) in subsection (3), —

(i) by repealing paragraph (k); and

(ii) by inserting in paragraph (l) the word “only” immediately after the word “shilling”.

+ “Sections 9 to 11 of the principal Act are repealed and the following sections are substituted” —

DRAFTING DIRECT AMENDMENTS

- + While amending a word or expression which occurs more than once in the sentence and the amendment is to apply to all occurrences of the word or expression, the phrase “wherever it occurs or appears” is suitable. For example —
- + Section 23 of the principal Act is amended by repealing the words “or a child” wherever they occur.

DRAFTING DIRECT AMENDMENTS

- + If the amendment does not apply to all occurrences, phrases such as “where it first occurs” or “where it last occurs” or “at the beginning” may be used. For example —
- + Section 23 of the principal Act is amended by repealing the words “or a child” where they first occur; or
- + Section 23 of the principal Act is amended by repealing the words “or a child” where they occur after the word “mother”; —
- + Section 24 of the principal Act is amended by inserting at the beginning the words “or a child”

DRAFTING DIRECT AMENDMENTS

+ (iii) Numbering:

- + Where a paragraph, subsection or section is inserted or repealed, subsequent paragraphs, subsections or sections should not generally be renumbered, since it may lead to misunderstanding, especially in relation to existing cross-references. Sections are usually numbered after the sections they follow but alphabetical letters are added to the numbers. For example —
- + New parts of an Act inserted in between Parts such as between Part V and Part VI should be numbered VA, VB etc.;
- + Sections inserted between sections 6 and 7 should be numbered 6A, 6B, 6C etc.;
- + Subsections inserted between subsections (1) and (2) should be numbered (1A), (1B), (1C) etc.;

DRAFTING DIRECT AMENDMENTS

- + Paragraphs inserted between paragraphs (c) and (d) should be lettered (ca), (cb), (cc) etc.; and
- + Sub-paragraphs inserted between sub-paragraphs (ii) and (iii) may be lettered (iia), (iib), (iic) etc.
- + In cases where the existing section does not consist of subsections and is to be amended by the addition of a subsection, the existing section may be numbered subsection 1, while the new subsection is numbered as (2). For example —
- + Section 10 of the principal Act is amended by numbering the existing section as subsection (1) and inserting the following new subsection —
- + “(2)...”.
- + Section 10 of the principal Act is amended by inserting the following subsection, the existing section thereby becoming subsection (1), -

AMENDMENTS IN SCHEDULE FORM

- + Minor and consequential amendments contained in legislation of a substantive nature may, where the number justifies it, be arranged in the form of a schedule.
- + In legislation which is directly amending in nature, a schedule is not normally used but may be of use to dispose of a large number of amendments that are similar in character.
- + For instance The Statute Law Miscellaneous Act, 2018 which includes amendment of different provisions of different existing laws is amended in schedule form. For example —

AMENDMENTS IN SCHEDULE FORM

+ The principal Act is amended as set out in the Schedule —

FIRST SCHEDULE

AMENDMENTS RELATING TO CURRENCY

Provision Amended	Repeal	Insert
Section 15 (5)	Two Thousand Shillings	Twenty Pounds
Section 16 (1)	Ten Thousand Shillings	Ten Pounds
Section 41	One Hundred Shillings	One Pound



+QUESTIONS????????????