

Preface

This book introduces, and puts into context, the principles which apply to the drafting of both legislation (whether primary or subordinate) and regulations made by a whole host of institutions such as professional bodies, trade associations, sporting organisations and universities.

As well as being useful to those who are coming to legislative or regulatory drafting for the first time, it provides a convenient source of reminders for those who undertake such work only occasionally. It may also interest anyone engaged in policy-making processes which result in the drafting of legislative and regulatory instruments, anyone who instructs drafters and anyone who wishes to develop their understanding of why legislative and regulatory instruments take the form they do.

The fact that I have been writing for two readerships has given me a significant problem of terminology. I have solved this difficulty by the simple expedient of referring to all legislative and regulatory documents as *instruments* and their contents as *provisions*—except, of course, where it seems to me that the context otherwise requires. Although this usage will no doubt upset some purists, the resulting ease of reading seems to me to outweigh the reduction in technical accuracy.

The fact of two readerships has also given me a problem of content. More particularly, by no means all regulatory instruments are drafted by lawyers, so I have had to be particularly careful in the assumptions I have made about my readers' pre-existing knowledge. However, my experience leads me to believe that for every reader who feels patronised by being told something he or she already knows, there are many more who are grateful for being told about (or reminded of) precisely the same thing. In any case, I am confident that regulatory drafters who are not lawyers will have no difficulty in translating into their own practical terminology those matters which they find conceptually relevant, even if I have expressed them legalistically.

Also, but less problematically, I have generally used the term *drafting* (and its variants) to apply to both legislative and regulatory contexts, thus avoiding the need for constant qualification. However, I most certainly do not intend the absence of qualification to suggest that the principles discussed in this book necessarily apply to drafting in other contexts, such as the preparation of conveyancing and commercial documents.

The real statutory provisions I have cited are all taken from Westminster legislation, and I have indicated their reality by providing their dates. Where I have found it convenient to make up a named example in order to illustrate a point as clearly and briefly as possible, I have used an obviously false date such as 20XX.

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The whole of this book must be read as being based on the drafting practices developed within the unified jurisdiction of England and Wales (except, of course, where the context otherwise requires). However, I am confident that readers in other common law jurisdictions will be able to apply much of what I have written without any modification, and even more with only minor modifications. More particularly, my experience of being the main lecturer on the Intensive Course for Commonwealth Legislative Drafters in London University's Institute of Advanced Studies for a number of years, has given me a particular insight into the needs of under-resourced drafting offices in developing countries. Therefore, where it has seemed to me to be appropriate to do so, I have commented on the distinctive difficulties that members of such offices face.

I am grateful to Sir Edward Caldwell, formerly First Parliamentary Counsel, and Dr David Murray, Professor Emeritus of Government in the Open University, both of whom very generously read this book in draft. Their comments were invaluable but neither of them saw the final text and neither of them must be assumed to agree with everything I have said.

I am, as always, grateful to my wife, Jacqui, for her editorial assistance and her patience.

Finally, I have failed to resist the temptation to quote the following comment, even though it comes from a legal theorist rather than a drafter:

I will venture to affirm, that what is called the *technical* part of legislation is incomparably more difficult than what may be styled as the *ethical*. In other words, it is far easier to conceive justly what would be useful law, than so construct that same law that it may accomplish the design of the law giver. (original emphasis)

John Austin, *Jurisprudence*, Vol 2, 4th edn, 1873, 1136.

Ian McLeod
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UPDATE ON THE WEBSITE OF THE OFFICE
OF THE PARLIAMENTARY COUNSEL

Readers who wish to pursue the recommendations of the Drafting Technique Group of the Office of the Parliamentary Counsel should note that, between the date of this Preface and the date of this Update, the Office's web address became www.cabinetoffice.gov.uk/parliamentarycounsel.aspx/ (References to the old address appear on pages 67, 69, 79, 92, 94, 107 and 134.) The recommendations of the Drafting Technique Group are still accessed through the *drafting techniques* tab, but the scope of those recommendations has been substantially developed.

Ian McLeod
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