

OFFICE OF THE PARLIAMENTARY COUNSEL

CLARITY IN DRAFTING: PRINCIPLES AND TECHNIQUES

INTRODUCTION

1. It is increasingly accepted that legislative texts should be as clear as possible, as well as accurate and effective.¹ A number of drafting offices have produced documents describing ways to improve clarity. They include offices in common-law jurisdictions, notably in Australia and New Zealand.² In the U.K. the Tax Law Rewrite has done the same,³ and so have the Scottish Parliamentary Counsel.⁴ The aim of this paper is to present some of the main principles and techniques in a form adapted to our own Office.

2. There are many general principles of good drafting. The following are some examples.

- Effectiveness: your draft must do the job it is intended to do.
- Clarity: making it as easy as possible for your reader to understand what you are saying.
- Consistency: in any one Act, using the same term where the same thing is meant; and doing the same thing in the same way, both within an Act and, at least for standard provisions, in different Acts.
- Concision and avoidance of redundancy: saying what you want to say in the most economical way, but without so much compression that the result is difficult to understand.

This paper does not cover all of the general principles of good drafting. It covers only one of those mentioned above, clarity. Clarity may overlap with others, and the others may be equally important: but this paper is not about them.

3. Clarity includes the use of plain language, but also includes other things like layout, structure, and typography. Some things which can contribute to clarity are

¹ A useful general book on the subject of plainer legal drafting is Butt & Castle, *Modern Legal Drafting—A Guide to Using Clearer Language* (2nd ed., 2006); see also Asprey, *Plain Language for Lawyers* (3rd ed., 2003).

² See the “Plain English Manual” from the Office of Parliamentary Counsel, Australian Government: (www.opc.gov.au > Plain Language > Documents > Plain English Manual), and see also *Plain English and the Law*, Law Reform Commission of Victoria (1987), Appendix 1—“Guidelines for Drafting in Plain English: A Manual for Legislative Drafters”.

³ (U.K.) Tax Law Rewrite: *The Way Forward: Annex 1—Guidelines for the Rewrite* (www.hmrc.gov.uk/rewrite/wayforward/tlra1.htm).

⁴ *Plain Language and Legislation* (www.Scotland.gov.uk/Publications/2006/02/17093804/0).

not within our control when we are drafting a Bill (e.g. the typeface and line length used). But other things are within our control.

4. The paper draws on material produced elsewhere, in particular the Tax Law Rewrite guidelines and the Australian Office of Parliamentary Counsel's manual. Most of the points in the paper appear to be widely accepted as useful for making drafts easier to understand.

5. The paper is supplemented by recommendations on specific matters by the Drafting Techniques Group.⁵

6. Many of the principles and techniques in this paper may seem obvious. That is because many of them are already used by most drafters as a matter of course.

7. Not all of the techniques mentioned are applicable in every case. Sometimes in a particular case two of them cannot both be applied. Sometimes a technique should not be used. The paper does not set out hard-and-fast rules. The principles and techniques in it are not arranged in order of importance or in any other hierarchy. It represents a general approach to drafting. The approach to be adopted in any particular case is a matter for the drafter. But the techniques outlined in this paper should be among the factors the drafter considers in deciding on the approach.

8. Whether an effort to make a draft easy to understand has been successful is tested by whether the intended readers in fact find the draft easy to understand. The test of success is not whether the approach in this paper has been applied. It is the interests of the reader, not the use of a particular technique, that must guide the drafter.

9. It is therefore important to remember who our readers are. Ultimately, of course, they are the people who will be using the Act as passed. Their requirements may be different depending on who they are. An Act which is about (say) the regulation of the water industry is likely to have a quite different readership from an Act about social security benefits for single parents. But, in addition, we must also bear in mind the requirements of professional advisers and the courts. The Act must be capable of being used effectively from day to day, but it must also produce the right result if tested in court. And a Bill's first readers, before it is even passed, will be Ministers and members of the two Houses of Parliament, as well as lobby groups and other interested parties. What one set of readers finds easy may be quite difficult for another set, or may not be understood by them in the way the writer intended. These competing interests need to be balanced and given due weight in what we write. The weight to be given to different competing interests may be different from Bill to Bill.

⁵ To be found at www.cabinetoffice.gov.uk/parliamentarycounsel.aspx > Drafting Techniques > Drafting Techniques Group recommendations.

GUIDELINES

A. Fundamental considerations

10. All of the principles and techniques in this paper are subject to the following two fundamental considerations.

- A. Our drafts must be *accurate* and *effective*. This is the fundamental requirement of all our drafting. Nothing in what follows qualifies that.
- B. Apart from that, the aim is to make a draft as easy as possible for the reader to understand. A draft may be sufficiently clear to be effective, but it may be possible to make it easier to understand. But drafting in the way which is easiest to understand may take more time. Time is often in short supply. So the aim, more precisely, is to make a draft *as easy to understand as it is possible to make it in the time available*.

B. Points about structure and organisation

Tell the story

11. Your reader does not know what your message is until you deliver it. This contrasts with the position of a party to a commercial agreement, who (presumably) knows, at least in general terms, what the agreement says. So it is especially important to take the reader by the hand and lead him or her in a logical way through the story you have to tell.

12. Different readers of a Bill (or an Act) may be interested in different aspects of the story: for example, Ministers might be interested in how the Bill fits with a general policy, but advice centre workers might be more interested in the details of the law. This may influence how you tell the story.

Organisation and headings

13. The clarity of a text is greatly affected by the way it is organised. The reader can be helped by the way in which you divide your Bill into Parts, Chapters etc., and the words you choose for their headings; and also by the words you choose for clause headings.

14. It helps if your clause headings give as full an indication of the contents of the clause as you can, consistent with keeping the heading reasonably short (many drafters make sure that their headings do not go into a second line). But a clause heading may not need to repeat the work done by a Chapter or Part heading.

15. Headings have a relationship with each other, not just with the clause. Imagine your clause, Chapter and Part headings as set out in the table of contents; and re-read the table of contents regularly to make sure it still hangs together.

—*Order of material*

16. It helps the reader if the material in your Bill is set out in a logical order, so that later propositions build upon earlier ones.

—*Forward references*

17. Reference at any point to material which needs to be understood at that point but which does not appear until later is generally not helpful. This may well be an indication that the material would be better re-ordered. But a signpost to later (or indeed earlier) material which is relevant but which does not necessarily need to be understood now may well be helpful (and can be included in a bracket saying “see section X”, or similar language).

18. Definitions are a special case: see paragraphs 50–58.

—*Overview provisions*

19. A clause at the beginning of a Bill, or of a Part or Chapter, explaining what is to follow may help the reader to navigate round a larger Bill where the table of contents is too long to give a clear picture. An example is s.2 of the Income Tax Act 2007 (c. 3), which says that the Act contains 17 Parts, and then sets out briefly what is covered by each Part. That Act also has a wider overview provision, s.1, which says briefly which Acts make provision about income tax: they include the 2007 Act, but reference is also made to other Acts, including the Interpretation Act 1978 (for the definition of “the Income Tax Acts”).

Clause structure

20. A subsection may usually be read in the light of a previous subsection in the same clause: it is usually unnecessary in a subsection to repeat material which has been established earlier in the clause.

EXAMPLE

Instead of the following—

- (1) *A person may apply to the council for a permit to play music.*
- (2) *An application under subsection (1) must contain the prescribed information.*
- (3) *On receiving an application made by a person under subsection (1), the council may issue a permit to the person.*
- (4) *A permit issued under subsection (3) must be in the prescribed form.*
- (5) *A permit issued under subsection (3) authorises the holder to play music as indicated in the permit.*

you might say—

- (1) *A person may apply to the council for a permit to play music.*
- (2) *An application must contain the prescribed information.*
- (3) *The council may issue a permit to an applicant.*
- (4) *A permit must be in the prescribed form.*
- (5) *A permit authorises the holder to play music as indicated in the permit.*

21. It is helpful if the opening subsection of a clause gives the reader some idea of what the clause is about, especially if the clause introduces a new topic. For example, if the clause produces a particular legal effect if conditions are met, it may be more helpful to state the effect before listing the conditions.

22. It is generally accepted that subsections (or undivided clauses) should usually contain one sentence only, but they can sometimes contain a second short sentence starting on a new line (e.g. to indicate the extent or application of the provision, or to add a short extra proposition). This technique is to be used with caution, however. The fact that the two sentences are not separately numbered may also mean that it is not easy to identify where any later amendment is to be made (though this would of course depend on the wording of the two sentences: for example, it would be irrelevant that the subsection had two sentences if the amendment was to omit a word which occurred only once in the subsection).

EXAMPLE

Section 853(6) of the Income Tax Act 2007 (c. 3)

“(6) This subsection applies to a person—

- (a) who is authorised for the purposes of FISMA 2000, and
- (b) whose business consists wholly or mainly of dealing in financial instruments as principal.

For the meaning of “financial instrument”, see section 984.”

Clause length

23. Many drafters try to avoid clauses containing more than 10 or so subsections (and some are stricter than that). However, this is again a matter of judgment: if you have a self-contained story to tell, it may be more convenient for the reader to have it all in one clause which is a bit longer, rather than in two or more shorter clauses.

Paragraphing

24. Paragraphing is an obvious way of making a sentence more digestible, by separating out bite-size chunks. However, paragraphing can be overdone. It is distracting to the reader if the paragraphs are too short or break up the flow of the sentence (this is sometimes referred to as “shredding”).

25. Many drafters avoid descending to sub-paragraphs ((i), (ii) etc.), so as to avoid requiring the reader to hold too much in the mind.

—Cumulative or alternative paragraphs

26. Sometimes a sequence of paragraphs lists cumulative or alternative requirements. If the “and” or the “or” appears only at the end of the penultimate paragraph, the reader has to wait until then to know whether the paragraphs are cumulative or alternative. This is unlikely to be a problem if there are only a few paragraphs in the list.

27. Another reason to avoid “and” or “or” at the end of the penultimate paragraph is that such a sequence of paragraphs can be awkward to amend later. If what was the penultimate paragraph ceases to be in that position, you will have to consider shifting the position of the “and” or the “or” so that it is at the end of the new penultimate paragraph.

28. There are two ways of avoiding this. One is to say “and” or “or” at the end of each paragraph. This can however be cumbersome. Another technique is to make clear in the opening words whether the paragraphs are cumulative or alternative.⁶

EXAMPLE

A person who applies for a licence must send with the application [all] [one] of the following documents—

This opening would make the position clear straight away: if “all” were used, the reader knows that *all* the listed documents must be provided; if “one” were used, the listed documents are alternatives.

⁶ This technique may also help those who, faced with joining two paragraphs the first of which ends with a sub-paragraph, dislike putting the conjunction at the end of the sub-paragraph and in the same line.

29. Sometimes the paragraphs in a series are clearly alternative, or clearly cumulative, without being introduced by special language. In that case nothing is needed in the opening words to spell this out.

EXAMPLE

Section 855(1) of the Companies Act 2006 (c. 46) is an example of a clearly cumulative series.

- “(1) Every annual return must state the date to which it is made up and contain the following information—
- (a) the address of the company’s registered office;
 - (b) the type of company it is and its principal business activities;
 - (c) the prescribed particulars of—
 - (i) the directors of the company, and
 - (ii) in the case of a private company with a secretary or a public company, the secretary or joint secretaries;
 - (d) if the register of members is not kept available for inspection at the company’s registered office, the address of the place where it is kept available for inspection;
 - (e) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept available for inspection at the company’s registered office, the address of the place where it is kept available for inspection.”

— *Sub-headings*

30. Sometimes information may be more accessible to the reader if it is set out under a series of sub-headings (even in the same subsection). An example is s.836(3) of the Income Tax Act 2007 (c. 3): see Appendix A.

— *Sandwiches*

31. The following structure is a sandwich—

If an inspector reasonably believes that—

- (a) *premises falling within this Part are unfit for human occupation,*
- (b) *they are nevertheless occupied, and*
- (c) *the life or health of the occupants is at risk,*

the inspector may serve a notice under this section.

It has full-out words at the beginning and the end. This structure can impede understanding. It is often possible to move the proposition in the full-out words at the end so that it appears in the opening words, and usually the result is easier to understand.

EXAMPLE

Instead of the text above, you could say this—

An inspector may serve a notice under this section if the inspector reasonably believes that—

- (a) *premises falling within this Part are unfit for human occupation,*
- (b) *they are nevertheless occupied, and*
- (c) *the life or health of the occupants is at risk.*

–*Lists*

32. A list is often displayed as a series of paragraphs. The paragraphs are often a visual aid to the reader. But sometimes this can be distracting: especially if the list contains very few entries. In that case, it may be better to have continuous text, and not to separate out the items in the list.

33. Sometimes a list may be displayed as a series of paragraphs which are not numbered or lettered.

EXAMPLE

Section 638(2) of the Income Tax (Earnings and Pensions) Act 2003 (c. 1)

“(2) In this section “award for bravery” means –

the Victoria Cross,
the George Cross,
the Albert Medal,
the Edward Medal,
[...].”

This may be a good idea if the list is likely to be amended later, as it avoids the possibility of ending up with inconsistent paragraph lettering (for example, s.178(2) of the Finance Act 1989 (c. 26) has two paragraphs (q) and three paragraphs (r)). With devolution there is an increased risk of this if the list may be amended by more than one person or body. An example of that is s.153(1) of the Environmental Protection Act 1990 (c. 43), which contains several identically numbered paragraphs (with different extents).

34. Two series of paragraphs in the same sentence (e.g. in the same subsection) should be avoided. Split the proposition into two so that there is one series in each.

Tables

35. A table is often a neat and clear way of setting out a number of cases with the rule that applies to each of them: see, for example, Schedule 1C to the Charities Act 1993 (c. 10), inserted by Schedule 4 to the Charities Act 2006 (c. 50) (partly reproduced in Appendix B).

C. Points about language

General

36. It is generally agreed that it is most helpful to write in modern, standard English as far as possible, avoiding archaisms and other words or phrases which can give rise to difficulty.⁷ However, it is not our role either to be in the vanguard of linguistic development: the language we use should reflect ordinary general usage.

37. But it may sometimes be necessary or most economical to use a technical legal expression (for example, “hereditament” in connection with rating, or “fee simple” in connection with property).

38. Drafters who are faced with amending an Act have different views about how hard they should try in their amendments to adopt the linguistic register of the Act being amended. The older the Act being amended, the more likely it is that this question will arise. Some drafters do not make the attempt at all; others do so to a greater or lesser extent. Either way, clarity need not be sacrificed for the sake of an invisible join between the old and the new text; and the approach to adopt may be influenced by the need to avoid ambiguity.

Sentences

39. A large slab of unbroken text is difficult to understand. It is hard to provide quantified advice, but many drafters try to avoid subsections or undivided clauses of more than, say, half-a-dozen unbroken lines.

40. There is widespread agreement that clarity is helped by the use of short sentences (but not so short that the result is distracting). A long sentence may require the reader to keep too much in the mind—although it can be made easier to understand by paragraphing. But a single complex proposition is sometimes best expressed in a single sentence (with paragraphing, if appropriate) rather than as a series of short sentences in successive subsections, if that avoids making the reader reconstruct the single proposition in order to make sense of it.

41. All this is sometimes expressed as an exhortation to write, not necessarily short *sentences*, but short “*sense-bites*”⁸—that is, information should be presented to

⁷ The Tax Law Rewrite “Guidelines for the Rewrite” (see footnote 3) contains two useful tables, one of archaic words at paragraph 58, and another of potentially difficult words or phrases at paragraph 66. But, as always, the “translations” given should not be adopted slavishly, as sometimes the original and the translation may have slightly different shades of meaning.

⁸ See for a longer exposition Butt & Castle, *Modern Legal Drafting—A Guide to Using Clearer Language* (2nd ed., 2006), p.181.

the reader in short bites: each of them may be contained in a separate phrase or paragraph which grammatically amount together to a single (longer) sentence.

42. A single sentence should ideally contain one idea only, or be split into sense bites each containing one idea only.

43. Using sentences that are simply and logically constructed also improves clarity (the classical structure is subject-verb-object). If possible, avoid inserting words between the subject and the main verb.

EXAMPLE

Instead of—

The Secretary of State may, if the required conditions are met, issue a licence to the applicant.

you could say—

The Secretary of State may issue a licence to the applicant if the required conditions are met.

44. A single sentence with subordinate clauses is often harder to understand than a series of sentences expressing the same substance.

45. Two phrases ending with prepositions (or other types of word), but then attaching to the same subsequent text, are often hard to understand. An example may make this clearer.

EXAMPLE

Section 369(1)(c)(i) of the Communications Act 2003 (c. 21): the relevant phrases are italicised—

“(c) the provision or making available of services or facilities which are provided or made available—

(i) *by means of, or in association with the provision (by the same person or another) of, an electronic communications network or electronic communications service; ...”.*

Some tips for clearer expression

46. Clarity can sometimes be furthered by the following techniques.
- Qualifications or conditions can be split off into a separate subsection or clause.
 - The positive is often easier to understand than the negative version of the same thing.

EXAMPLE

Speak after the tone
is easier to understand than—
Do not speak until you hear the tone

But this depends on the nature of the proposition and on the overall effect of what is said: it is not a universal rule. A prohibition may well be best expressed in the negative.

EXAMPLE

Do not walk on the grass
is probably easier to grasp at once than—
Walk only on the pathways

- Negatives are often better avoided when expressing a quantity.

EXAMPLE

not less than 25%
would often be more clearly expressed as—
at least 25%
or—
25% or more.

- It is generally agreed that it is best to avoid double negatives: but note that it may not always be possible.

EXAMPLE

The Secretary of State has not certified that no application was made
does not mean the same as—
The Secretary of State has certified that an application was made.

- It is also generally agreed that it is usually clearer to use the active voice than the passive voice.

EXAMPLE

*The Secretary of State must give a notice
is more quickly grasped than—
A notice must be given by the Secretary of State.*

But the passive may be appropriate if the agent is unimportant, universal or unknown.

EXAMPLE

*If a notice is given to the Authority...
might be appropriate if it did not matter who gave the notice.*

The passive may also be useful as a technique for gender-neutral drafting.

- In a sentence which contains a main proposition that depends on a number of conditions, the reader may be better served by putting the main proposition first, rather than putting the conditions first (see also paragraph 21).

EXAMPLE

*A notice must be given if—
(a) ...
(b) ...
(c) ...*

is probably easier to understand than—

*If—
(a) ...
(b) ...
(c) ...
a notice must be given.*

The latter also offends against the “avoid sandwiches” principle (see paragraph 31).

- A verb form is often easier to understand than the noun form of the same proposition.

EXAMPLE

A person may apply
is crisper and more instantly intelligible than—
A person may make an application.

Formulae

47. These are perfectly acceptable when used appropriately. A formula may be the neatest way to express a relationship between various quantities; spelling the same thing out in words may be the very worst way of expressing it.

EXAMPLE

An example of a formula is in section 998(3) of the Income Tax Act 2007 (c. 3) (meaning of “grossing up”)—

“(3) The grossed up amount may also be expressed as—

$$GA = NA + \left(NA \times \frac{R}{100 - R} \right)$$

where—

GA is the grossed up amount,
NA is the net amount, and
R is the percentage rate of tax by reference to which the net amount is to be grossed up.”

48. However, sometimes a sequence of written instructions may be more accessible than a formula: see, for example, the “method statement” in Appendix C. And if the proposition is very simple (for example, the sum of two quantities) using a formula may make it look more complicated than saying the same thing in words.

49. Sometimes which is more accessible will depend on the reader: an accountant or an actuary dealing with actual figures may find a formula more useful, while a reader who needs only a description of what is happening may find words more useful. The expected readership may influence which approach is adopted.

Definitions etc.

—Keep them intuitive

50. It is considered unhelpful to define a term so as to give it a meaning beyond what the reader would expect (e.g. to define “fingerprint” so as to include footprint).

51. The use of intuitive definitions or acronyms also promotes clarity, as they convey in themselves a suggestion of the thing defined or referred to. So, for example, if you were referring to the Police and Criminal Evidence Act 1984, instead of defining that colourlessly as “the principal Act” you might use “the 1984 Act” or “PACE”. Equally, colourless terms such as “the prescribed quantity” or “the relevant person” can sometimes be replaced by terms which convey more immediately a suggestion of what the terms mean.

52. The same principle applies to letters used to denote persons or concepts. For example, if you were using a letter to denote the respondent, you might use “R” instead of another letter. A defendant might be referred to as “D”. In a formula, if you had a concept (say) of “net annual value”, you might denote it by “NAV” instead of “A” or “B” or “X” (see also the formula cited at paragraph 47).

—Where to put them

53. If a defined term is used only once, it is most helpful to keep the definition near to where the defined term is used (rather than putting it in an interpretation clause at, say, the end of the Part).

54. Even if a defined term is used more than once, it may be helpful to define it for the purposes of the Chapter, Part or Act in the clause in which it first appears, or—if the term is particularly important or prominent—at the beginning of the Act or of the relevant Chapter or Part. The general interpretation section or any index of defined terms can then refer back to that section. For example, s.1(1) of the Animal Welfare Act 2006 (c. 45) defines “animal” for the purposes of the Act; s.62(1) then says that in the Act “animal” has the meaning given by s.1(1). For an example using an index, see s.70 of the Commonhold and Leasehold Reform Act 2002 (c. 15), in which two entries refer to s.1, which explains references to “a commonhold” and “commonhold land”.

—Other points about definitions

55. Some writers deplore using a definition to refer to a term which is used only in another definition,⁹ unless that is the only way to make the other definition manageable.

56. It is considered bad practice to include operative material in a definition. It might be acceptable to (for example) define “regulations” to mean regulations made

⁹ “This incestuous device eases the drafter’s task, but at the cost of irritating the reader”: Butt & Castle (see footnote 1), p.156.

by the Secretary of State, but it would go too far to include the Parliamentary procedure (negative or affirmative resolution) in the definition. That ought to go in its own provision.

57. It is unhelpful to the reader to define a term in a certain way “unless the context requires otherwise” (or similar formulæ). This leaves the reader to work out where the drafter intended the term to mean something different. If you can, help the reader by telling him or her where you do not intend your defined term to have the meaning given—and if you can, do that in those places, rather than in the definition.

58. Using the same label to denote different things in the same Act may confuse the reader.

—*Indices*

59. Many Acts now contain an index of defined expressions. These can be helpful if the Act contains a large number of defined expressions.¹⁰

Method statements

60. A “method statement” may be the neatest way to set out the various steps in a process. An example is s.91 of the Income Tax Act 2007 (c. 3): see Appendix C.

Cross-references

61. Cross-references can prove particularly hard work for the reader, so it is helpful to minimise their use. This can sometimes be done by re-ordering the material. If a cross-reference is absolutely necessary, it may be possible to make it more user-friendly by (for example) adding words describing the effect of the provision referred to.

62. If something is expressed as being “subject to” something else, the relationship between them may not be immediately easy to grasp. In particular, this may be true if “subject to” occurs at the beginning of the sentence. Another arrangement would often be better, for example adding a proposition at the end, such as “but this is subject to section X”. There may be a case for a second sentence in a subsection containing such a proposition (see paragraph 22).

63. It may also be possible to use another expression: for example, “but see section X” may be sufficient, or it may be possible to state briefly the case to which a different rule applies by saying (for example) “except” or “unless” (as in “*Unless the person concerned is under 30,*”).

¹⁰ See the Drafting Techniques Group’s recommendations about where in the Bill to place any index.

64. Alternatively, it may be possible to dispense with “subject to” altogether, especially if the qualifying proposition is close to the proposition it qualifies—in which case the reader may be expected to grasp the relationship between the two without extra help.

65. Global cross-references such as “Subject to the provisions of the Corporation Tax Acts” (s.7(2) ICTA 1988 (c. 1)) are meaningless to all but the most expert reader. In such cases, if the reference cannot be avoided, try to include a list of where the relevant other provision is made.

66. Another case in which it may be possible to clarify the relationship between two provisions (or two sets of provisions) is where one sets out a rule, and the other sets out an exception. Here it may be possible to phrase the exception in terms of its *substance* rather than in terms of the provisions which set out the rules. For example, suppose subsection (1) imposes a requirement on a company to pass a resolution before it can do something, and subsection (2) makes an exception for small companies. Subsection (2) *could* say—

“(2) Subsection (1) does not apply in the case of a small company.”

But it would be more illuminating for the reader if subsection (2) said—

“(2) No resolution is required in the case of a small company.”

This technique may also be capable of being adapted to cases other than that of a rule with an exception.

Words and phrases

67. Any. Beware of a proliferation of “any”s. In many cases “a” or “an” is just as good. But “any” may be useful to emphasise that something is of universal application or without qualification,¹¹ or to refer to both a singular noun and an uncountable one (for example, “any information or document”).

68. “Any” can be ambiguous. Here is an example based on one given by Thornton¹²—

EXAMPLE

The Minister must consult any organisation appearing to him to be representative of substantial numbers of mushroom growers.

This is ambiguous because it is not clear whether “any” means all such organisations, or any one of them.

¹¹ Thornton, *Legislative Drafting* (2nd ed., 1979), p.82.

¹² *Ibid*, p.83.

69. Being. The “being” formula to define something is cumbersome, and also archaic. It can often be avoided by the use of a different construction.

EXAMPLE

Instead of—

A person who is served with a notice, being a person who has a right over the property, may serve a counter-notice.

you could say—

A person who is served with a notice and has a right over the property may serve a counter-notice.

or—

A person (“P”) who is served with a notice may serve a counter-notice if P has a right over the property.

70. Possessives. The traditional style would say “of the”, as in “of the taxpayer”; but it is usually easier to understand the shorter form with an apostrophe: “the taxpayer’s”.

71. Such. If you use “such” to refer back to something, make sure that it is clear how much you intend to pick up from earlier propositions. For example, if you say “such period” do you pick up (say) just a period of 12 months mentioned earlier, or that period plus one or more of the qualifications built into the earlier provision that make the period shorter or longer in particular circumstances?

72. In some cases it may be possible to dispense with “such” altogether. For example, instead of “on such day as the Minister may specify” you might say “on a day specified by the Minister”.

73. Where. Consider whether “if” would be appropriate instead of “where”. Sometimes “where” is clearly preferable to “if”, and sometimes “if” is clearly preferable to “where”, but sometimes either could be used. “Where” is useful for stating a case (or a set of circumstances) in which a later proposition applies. “If” is useful for stating a contingency. But the two overlap, as a case may also be a contingency: in those circumstances “if” is often more instantly comprehensible (and is crisper).

EXAMPLE

Instead of—

Where a person is served with a notice, [then something follows],

you could say—

If a person is served with a notice, [then something follows].

APPENDIX A

AN EXAMPLE OF USE OF SUB-HEADINGS

Section 836(3) of the Income Tax Act 2007 (c. 3)

836 Jointly held property

[(1), (2)]

- (3) But this treatment does not apply in relation to any income within any of the following exceptions.

Exception A

Income to which neither of the individuals is beneficially entitled.

Exception B

Income in relation to which a declaration by the individuals under section 837 has effect (unequal beneficial interests).

Exception C

Income to which Part 9 of ITTOIA 2005 applies (partnerships).

Exception D

Income arising from a UK property business which consists of, or so far as it includes, the commercial letting of furnished holiday accommodation (within the meaning of Chapter 6 of Part 3 of ITTOIA 2005).

Exception E

Income consisting of a distribution arising from property consisting of—

- (a) shares in or securities of a close company to which one of the individuals is beneficially entitled to the exclusion of the other, or
- (b) such shares or securities to which the individuals are beneficially entitled in equal or unequal shares.

“Shares” and “securities” have the same meaning as in section 254 of ICTA.

Exception F

Income to which one of the individuals is beneficially entitled so far as it is treated as a result of any other provision of the Income Tax Acts as—

- (a) the income of the other individual, or
- (b) the income of a third party.

APPENDIX B

AN EXAMPLE OF A TABLE

Schedule 1C to the Charities Act 1993 (c. 10), inserted by Schedule 4 to the Charities Act 2006 (c. 50) (extract)

SCHEDULE 1C

Section 2A(4)

APPEALS AND APPLICATIONS TO CHARITY TRIBUNAL

Appeals: general

- 1 (1) Except in the case of a reviewable matter (see paragraph 3) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of the Table.
- (2) Such an appeal may be brought by –
- (a) the Attorney General, or
 - (b) any person specified in the corresponding entry in column 2 of the Table.
- [(3), (4)]*
- (5) The Tribunal may –
- (a) dismiss the appeal, or
 - (b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of the Table.

[2-5]

TABLE

<i>1</i>	<i>2</i>	<i>3</i>
Decision of the Commission under section 3 or 3A of this Act – (a) to enter or not to enter an institution in the register of charities, or (b) to remove or not to remove an institution from the register.	The persons are – (a) the persons who are or claim to be the charity trustees of the institution, (b) (if a body corporate) the institution itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) – (a) remit the matter to the Commission, (b) direct the Commission to rectify the register.
Decision of the Commission not to make a determination under section 3(9) of this Act in relation to particular information contained in the register.	The persons are – (a) the charity trustees of the charity to which the information relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the decision.	Power to quash the decision and (if appropriate) remit the matter to the Commission.
Direction given by the Commission under section 6 of this Act requiring the name of a charity to be changed.	The persons are – (a) the charity trustees of the charity to which the direction relates, (b) (if a body corporate) the charity itself, and (c) any other person who is or may be affected by the direction.	Power to – (a) quash the direction and (if appropriate) remit the matter to the Commission, (b) substitute for the direction any other direction which could have been given by the Commission.
<i>[...]</i>	<i>[...]</i>	<i>[...]</i>

APPENDIX C

AN EXAMPLE OF A METHOD STATEMENT

Section 91 of the Income Tax Act 2007 (c. 3)

91 How relief works

This section explains how the deductions are to be made.

The amount of the relievable loss to be deducted at any step is limited in accordance with section 25(4) and (5).

Step 1

Deduct the relievable loss from the profits of the trade of the final tax year.

Step 2

Deduct any part of the relievable loss not deducted at Step 1 from the profits of the trade of the previous tax year.

Step 3

Deduct any part of the relievable loss not deducted at Step 1 or 2 from the profits of the trade of the tax year before the previous one.

Step 4

Deduct any part of the relievable loss not deducted at Step 1, 2 or 3 from the profits of the trade of the tax year before that one.

Other claims

If the relievable loss has not been deducted in full at Steps 1 to 4, the person may use the part not so deducted in giving effect to any other relief under this Chapter (depending on the terms of the relief).