



DRAFTING A BILL

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WHAT IS A BILL?

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- A Bill is a formal legislative proposal presented in Parliament on an area identified for legislation
- A Bill generally seeks to either introduce a new legislation, amend or repeal existing law
- The structure of a Bill in our Kenyan system is as follows:
 - i. Preliminary provisions → the introductory provisions
 - ii. Principal provisions → perhaps the most significant part of a Bill because they identify the substantive and administrative parts of a Bill. These provisions (i.e. the substantive and administrative provisions) are what bring out the objects of a Bill
 - iii. Miscellaneous provisions → e.g. if there are offences under a Bill, you will find them here. You will also find the applicable penalties here

iv) Final provisions → this contains technical aspects of the Bill, including repeal, savings and transitional provisions. Schedules are also identified under final provisions

- The above structure is used for every Bill. The structure must be followed as it provides the Bill with a logical sequence
- A Bill may also be divided into parts depending on its length, and the parts may be divided into sections, and the sections are further divided into sub-sections, and the sub-sections are divided into paragraphs and the paragraphs are divided into sub-paragraphs

BROAD FRAMEWORK OF A BILL

- **Preliminary provisions**

- Arrangement of sections
- Long Title
- Preamble
- Enacting formula
- Short Title
- *Commencement
- *interpretation provisions
- *Application

- In some jurisdictions the asterisked provisions come at the end of the Act.

BROAD FRAMEWORK OF A BILL

- **Principal provisions**

- Substantive provisions
- Administrative provisions

- **Miscellaneous provisions**

- Miscellaneous and supplementary provisions include financial matters, offences, power to make regulations, search, seizure and arrest.

- **Final provisions**

- Savings
- Transitional provisions
- Repeals and consequential amendments
- Schedules

PRELIMINARY PROVISIONS

- **ARRANGEMENT OF CLAUSES**

- It gives an indication of the arrangement of the parts, sections and subsections of the Bill
- The working is the same as that used for the head notes or marginal notes in the Act.
- They do not form part of the Act but are a useful index for the Bill
- It is not subject for debate in parliament
- It is on a separate page immediately before the substantive part of the Bill

PRELIMINARY PROVISIONS

- **HEAD NOTES OR MARGINAL NOTES**

- Each section is given a head note or marginal note and this provides a guide to the contents of the section. It must be short and accurate
- Marginal Notes are usually found on the righthand side of the section, rule or regulation
- They offer the user of a legislative instrument a concise indication of the content of the section
- They enable the reader to direct their attention quickly to the portion of the Act which they are looking for
- Must be accurate and not contradict the content of the section or the Regulation they refer to
- The marginal note should be confined to the clause/section (and not to the subsection)

PRELIMINARY PROVISIONS

- **LONG TITLE**

- This is the starting point of the Act and indicates the general purpose and intention of the legislation. This is done in a very general way, e.g. *“ A Bill for AN ACT of Parliament to establish a criminal justice system for children suspected or accused of committing offences; to protect the rights of children as recognized in international instruments; to increase the minimum age of criminal culpability and for connected purposes”*
- This title is to be found at the beginning of the Bill
- When a Bill receives Presidential assent, it becomes an Act. The words “A Bill for” are dropped from the long title and substituted with an “An Act of Parliament”
- Always make sure to include the words “and for connected purposes” because the legislative drafter must capture all that they can and project into the future. This allows for the inclusion of miscellaneous related matters that are incorporated into that Bill
- This applies to both County Bills and Bills originating from the National Parliament

PRELIMINARY PROVISIONS

- **SHORT TITLE**
- The name used to refer to a particular Bill or Act of Parliament.
- This is a convenient means of identifying and citing a Bill or an Act. It should be informative and, brief. The year of enactment is added to the short title , e.g. The Child Justice Act, 2022 (the year of enactment must be added to the short title but is not included in the long title)
- The short title is Clause 1 of the Bill, which then becomes Section 1 of the Act when it is passed
- The word 'Bill' is changed to 'Act' once the Bill receives the President's or Governor's consent
- A drafter should ensure that the name selected for the Bill is as informative as possible and does not necessarily cause confusion to the legislative body or to any other users of legislation

PRELIMINARY PROVISIONS

PREAMBLE

- It is a recital wherein the objective, intent and purpose of the Act/Bill are given
- It represents the spirit and principles behind the law
- They are seldom used nowadays and are limited to Acts dealing with constitutional matters or the application of International Conventions

DEFINITIONS/INTERPRETATION

- A Bill often contains an interpretation section which sets out definitions of various words and expressions used on more than one occasion in the Bill.
- The interpretation section has traditionally been incorporated as 'Clause 2' of any Bill ('Section 2' when the Bill becomes an Act)

PRELIMINARY PROVISIONS

- This section assists in conveying to the reader the intended purpose of the legislation in as simple, unambiguous and consistent a manner as possible and also to avoid needless repetition.
- The drafter will find it better to leave the detailed drafting of this section until the draft of the Bill has been completed. Make a note of any words and expressions which are used on several occasions in the Bill and include them in the interpretation section as the drafting progresses.
- Words must also be arranged and defined in an alphabetical manner
- Do not define a word in one sense and then use it in the text with a different meaning

PRELIMINARY PROVISIONS

ENACTING FORMULA

- A statement indicating the Bill/Act jurisdictional identity and constitutional authenticity.
- It is a statement in the active voice that indicates that parliament or the County Assembly of County X is exercising its constitutional legislative powers, e.g. *'Enacted by Parliament of Kenya as follows –*

COMMENCEMENT PROVISIONS

- Commencement is the day the Act comes into force and is to be distinguished from the date of passage of a Bill by Parliament

ACT NUMBERS

- Each Act is given an Act Number which is made up of the year in which it is given assent and a number based on the order in which the Bills were assented to in that particular year, e.g., the 11th Bill assented to in 2022 would be Act No. 11 of 2022

PRINCIPAL PROVISIONS

SUBSTANTIVE PROVISIONS

- These sections set out the basic objects and main principles of the Bill
- They are the crux of the Bill
- It establishes the body, offers the body corporate statutes and related matters
- It provides who is involved in the regulation of the matter at hand (determining their powers, duties and functions)
- • Involves conferral of rights or duties or regulation of the way citizens may pursue their legitimate interests

PRINCIPAL PROVISIONS

- **ADMINISTRATIVE PROVISIONS**

- They provide the framework on which the Act is expected to function. It sets out the administrative and practical mechanisms to implement the Act

- **MISCELLANEOUS PROVISIONS**

- Although referred to as miscellaneous, it provides for equally significant matters
- It covers matters arising out of the main objects of the Act such as the power to make Rules or Regulations (known as subsidiary legislation), penal provisions or other information regarding the enforcement of the law
- These include financial matters, offences and penalties and enabling section for subsidiary legislation

FINAL PROVISIONS

• TRANSITIONAL PROVISIONS

- A law changes the existing legal position, hence specific provisions are necessary to regulate the transition
- Transitional provisions direct how to apply the new law to situations already in existence
- **Examples:**
 - The provisions retain the validity of an existing appointment or license by providing that it shall be given the same effect as if it was made or issued under the new Act
 - A person already practicing under a trade or profession has to be registered under a new Act within a specific time
 - A new body corporate is to take the place of an existing body and provisions are needed to vest the assets and liabilities of the existing body in the new body, to retain staff and to continue pending actions

FINAL PROVISIONS

SAVINGS PROVISIONS

- They preserve the existing rights that would otherwise be lost when the law is operationalised
- Where an Act is repealed, subsidiary legislation made under that Act ceases to have effect and it may be necessary to insert a savings provision in order to preserve subsidiary legislation until it can be repealed by subsidiary legislation made under the new Act

E.g. the fact that titles under the repealed LTA, RLA, GLA, etc. are still valid and in effect due to the savings provision under the LRA 2012

- The clause that is inserted whenever its necessary to provide for the temporary continuation of rights, powers and duties is referred to as a savings clause

FINAL PROVISIONS

SCHEDULES

- A Schedule is a convenient way of dealing with matters of detail which will otherwise unnecessarily encumber the main body of an Act. Matters of administrative detail not desirable to be the subject matter of Regulations may be provided for in a Schedule. The Schedule also frees the main body of an Act from a possible charge of untidiness. Schedules deal with matters of detail or procedure to make an Act readable and simplify interpretation
- The general principle is that substantive matters are to remain in the sections of the statute while lesser, procedural matters of machinery or details be arranged in the schedules
- This ensures that the main sections of a statute are not cluttered by materials of secondary or incidental importance
- Where part of the schedule contradicts a provision of the main body of the Act, the provision of the main body prevails

FINAL PROVISIONS

- There should be consistency between an Act and its schedule, and reference should be to 'First Schedule, Second Schedule' and not 'Schedule 1, Schedule 2', etc.
- Common things found in schedules: scientific and arithmetic formulas; applicable forms; rates of tax/manners in which to calculate tax, if you have created a body and there is a Board, the number of meetings and the quorum of meetings will be detailed in schedules, etc.

•QUESTIONS???