

CHAPTER 7

LEGISLATIVE FUNCTIONARIES

In this chapter we consider the various bodies and persons who take part in the processes of legislation by Act of Parliament or statutory instrument. These processes can be divided into the formal and the informal. The formal are those laid down by constitutional law as being essential for the making of valid and effectual legislation, such as the passing of a Bill by the National Assembly and the signifying of Presidential assent. The informal processes are those which go on behind the scenes, such as the taking of policy decisions on the content of the new law, and the processes of drafting. Some functionaries take part in both types of process; others in only one. Thus, while the President has a formal part to play in giving his assent to Bills passed by the Assembly and also an informal part in deciding on legislative policy, the part of Parliamentary Counsel and other Civil Servants is played entirely behind the scenes. The manner in which these functions are exercised will be described in the following chapters. Here we are only concerned to name the functionaries, to state their role in law-making, and to explain how they are organized to carry it out.

1. PARLIAMENT

Parliament, as the legislature of Ghana, is the first body we must consider. Its constituent elements are the President and the National Assembly, and the provisions of the Constitution by which they are established and regulated have been described in CHAPTER 3. We need say no more here about the formal legislative functions of the President, although his informal role will be discussed in the next section in connection with the Cabinet. It may however be useful to examine rather more fully the way in which the National Assembly is organized to carry out its **lawmaking role**.

PARLIAMENT HOUSE

The National Assembly meets in Parliament House, which is situated next to the Supreme Court in Accra. The building was erected as a memorial to King George V and was originally used for general purposes. When the Legislative Assembly was set up in 1951 it required new premises, since the Supreme Court accommodation which had been used by the former Legislative Council was too small. For a time the building was shared by the Accra Municipal Council and the Assembly, but this arrangement proved inconvenient and the building was taken over by the Assembly and enlarged.

The Chamber

The Chamber was rearranged and refurbished at the time of the inauguration of the Republic. It is divided into the Officers' Area and the Members' Area. The Officers' Area, at the north end of the Chamber, contains the Chair, which is occupied by the Speaker or other person presiding, and the Table, at which the Clerks sit, and which stands just below the dais supporting the Chair. The Chair was a gift from the House of Commons at the time of Ghana's independence in 1957. The whole of the Officers' Area, which is carpeted in gold, is raised above the level of the blue-carpeted Members' Area. The benches for the Members are arranged in a horseshoe with the Chair and Table at the open end. For the convenience of members a table is placed in the middle of the horseshoe. On this stand the two dispatch boxes from which front-bench members are entitled to address the House. Unlike that in the House of Commons, the seating is extensive enough to accommodate all the members. When the President comes to address the House however the middle portion of the horseshoe is removed to make a passage for his procession. The consequent crowding in the remaining benches heightens the excitement of the occasion. Openings on either side of the Chamber lead to the two division lobbies, the Ayes lobby being on the south-west and the Noes lobby on the south-east. The Chamber is equipped with sufficient microphones for every member to be within reach of one. On all four sides of the Chamber there are galleries for distinguished visitors and the public generally, although strictly these form part of the precincts of the Assembly and not of the Chamber itself.

The Precincts

The precincts of the Assembly are " the offices of the Assembly and the galleries and places provided for the use or accommodation of strangers ", While the Assembly is sitting, and subject to any exceptions made by direction of the Speaker, the precincts include the entire building and also its courtyard and garden.¹ Apart from the Chamber itself, Parliament House contains a number of offices and other rooms. The rooms used by members generally are the library, the reading room (which contains a bar) and the members' common room. There are also a Ministers' common room, a room reserved for the President, and separate offices for the Speaker, the Deputy Speaker, the Parliamentary Secretary, and each of the Clerks.⁸

MEMBERS, OFFICERS AND STRANGERS

We now consider the various persons who have duties in the Assembly or may otherwise be found within its precincts. These persons may be divided into three categories: members, officers and strangers. The only person who does not fit into this classification is the President who, although not a Member of Parliament, has the right under art. 21(4) of the Constitution to attend any sitting of the Assembly, but not to join in debates. He also normally attends to deliver the Sessional Addresses and Sessional Reports required by art. 25, and to open Parliament at the beginning of each session. Under art. 21(1) the Assembly proper consists of the Speaker and not less than 104 Members of Parliament. Officers of the Assembly other than the Speaker are provided for by or under the National Assembly Act, 1961 (Act 86).

The Speaker

The Speaker is held in great respect as the spokesman of the Assembly and the person who presides over its deliberations and maintains order in the Chamber and precincts. In a sense he embodies the dignity and authority of Parliament and for this reason is accorded privileges and immunities not enjoyed by any other officer. Unlike the Speaker of the House of Commons, Ghana's Speaker is not a Member of Parliament. He may be a

¹ National Assembly Act, 1961 (Act 86), s. 46.

² A new block is to be built shortly which will contain a dining room and kitchens as well as a new library, reading room and meeting rooms.

Member when elected as Speaker, but if so his seat thereupon becomes vacant and a by-election must be held. The Speaker is elected by the Members and a candidate for the office may be any person not being of ministerial rank or a public officer. The election must be held before the despatch of any other business at the first sitting of the Assembly after the office has become vacant, and if contested is decided by ballot. As soon as possible after his election the Speaker-elect must come to the Assembly and take the oath of allegiance and the official oath. These are administered by the Clerk of the Assembly, who acts as presiding officer until they have been taken. The Speaker holds office until the first sitting of the Assembly after a dissolution, unless he resigns or dies, or is unfortunate enough to incur a vote of no confidence supported by at least two-thirds of the total number of Members. The Speaker is entitled to a salary and various allowances, the payment of which is charged on the Consolidated Fund.¹ Like the Members, he is entitled to a gratuity after every five years' service.² He wears no special dress in the Assembly, appearing either in *kente* or lounge suit.

The symbol of the Speaker's authority is the Mace.³ This stands upright before the Table during all sittings of the Assembly except during the Consideration Stage of Bills, when it is tilted towards the Chair.⁴ The standing Mace was explained by Mr. Kojo Botsio when Leader of the House as "giving the effect of a traditional Kyiame's stick".⁵

The Deputy Speaker

Since the Speaker cannot be present throughout all the sittings of the Assembly, the National Assembly Act provides for a Deputy Speaker. The Deputy Speaker is elected by the Members in the same way as the Speaker. A candidate for the office must however be a Member himself, not being of ministerial rank, and he retains his seat after election. He holds office only for the session, and a further election must be held at the beginning of a new session. If he is appointed to ministerial rank, or loses his

¹ The present salary is £G2,500; allowances total £G1,740. (The Ghana pound is at parity with sterling.)

² See p. 303, *post*.

³ For a description of the new Mace, see p. 110, *ante*.

⁴ Standing Order 19.

⁵ *Pari. Deb. Official Report*, Vol. 19, col. 228(28th June, 1960).

seat otherwise than by reason of a dissolution, the Deputy Speaker automatically forfeits his office. Apart from resignation or death, he may also lose his office if a vote of no confidence in him is passed by a simple majority.¹

Section 11 of the National Assembly Act requires the Deputy Speaker to exercise all the Speaker's obligatory functions in the case where the office of Speaker is vacant. In other cases the Deputy Speaker may be empowered by the Speaker or by Standing Orders to perform any functions conferred by law on the Speaker—unless of course the law in question forbids this. Most Standing Orders referring to the Speaker apply equally to the Deputy Speaker when he is presiding.² The Member holding the office of Deputy Speaker is entitled to an increased salary and allowances, the payment of which is charged on the Consolidated Fund.³

Members of Parliament

The present membership is 114, of whom all but twelve belong to the Government party, the C.P.P. The remainder belong to the United Party. All except ten of the Members are men representing the one hundred and four electoral districts established by the Electoral Provisions Ordinance, 1953 (No. 33).⁴ The remainder are women elected by a special procedure in 1960.⁵ There is no law reserving the electoral districts to men but in fact women have not been successful in being chosen as candidates—hence the special procedure, which ensured at least some feminine representation.

To be qualified for election as a Member, a person must be a citizen of Ghana who has attained the age of twenty-five and who can speak and read the English language sufficiently well to enable him to take an active part in the proceedings of the Assembly.⁶ The President, the Speaker and all Civil Servants and other public officers are disqualified from membership, as also are persons who are of unsound mind or who have incurred certain

¹ National Assembly Act, 1961 (Act 86), s. 11; Standing Order 3.

² Standing Orders 1, 7 (4).

³ The present salary is £G1,500; allowances total £G1,318.

⁴ The electoral districts are set out in the Schedule to the Ordinance, as amended by L.I. 19.

⁵ See p. 152, *ante*. For the principle of universal adult suffrage laid down by the Constitution see p. 119, *ante*.

⁶ National Assembly Act, 1961 (Act 86), s. 1 (1). Blindness or other physical cause preventing reading does not disqualify.

criminal disabilities.¹ After his election a Member must, before taking part in the proceedings of the Assembly, take the oath of allegiance and the oath of a Member of Parliament.² A Member retains his seat until the Assembly is dissolved and a general election is held, unless the seat for some reason becomes vacant earlier. There are a number of ways in which this can happen. The Member may resign or die, or become subject to one of the factors mentioned above which disqualify a person for election. Or the Member may lose his seat by being expelled for grossly improper conduct or by declaring in the Assembly his intention of boycotting its proceedings or by being absent without leave for twenty consecutive sittings.³ A Member is entitled to a salary and allowances, and, whenever he completes a period of five years' service, to a gratuity.⁴ The first gratuity amounts to one-fifth of his salary and basic allowance during the five-year period. For subsequent gratuities the proportion is reduced to one-tenth. In the case of Ministers, and also the Speaker and Deputy Speaker, the proportion is one-sixth for each gratuity.

Staff of the Assembly

Apart from the Speaker and Deputy Speaker, the Assembly's most important officer is the Clerk of the National Assembly, whose office is created by statute⁵ and who is in charge of the staffing and administration of Parliament House as well as having the heavy burden of dealing with matters of procedure.⁶ The department of the Clerk forms part of the Civil Service. To assist the Clerk there are a Deputy Clerk and two assistant Clerks. While on duty at the Table the Clerk wears a plain black gown except on ceremonial occasions, when he wears a black gown decorated with *edinkra* symbols in gold.

An officer closely connected with the Speaker is the Marshal,

¹ National Assembly Act, 1961 (Act 86) s. 1 (2).

² *Ibid.*, s. 4; Standing Orders 4 and 5. The form of oath is set out in the First Schedule to the Oaths Act, 1960 (C.A. 12). Affirmation is permitted: *ibid.*, s. 8.

³ National Assembly Act, 1961 (Act 86), s. 2.

⁴ *Ibid.*, ss. 5-8. At present the salary for members who do not hold ministerial office is £G1,200; allowances total £G600. Members also receive certain free travel, postal and telephone facilities.

⁵ National Assembly Act, 1961 (Act 86) s. 13.

⁶ The Clerk also has duties in connection with Ghana's membership of the Inter-Parliamentary Union and the Commonwealth Parliamentary Association.

formerly known by the title of his British equivalent, the Serjeant at Arms. The Marshal is appointed by the Speaker and has the duty of bearing the Mace before the Speaker when he enters and leaves the Chamber, and of attending upon the Speaker during the proceedings of the Assembly. If serious disorder arises it is the Marshal's duty to carry out the Speaker's directions for dealing with it. There is an Assistant Marshal, also appointed by the Speaker.¹

A staff of fifteen is employed to take a complete verbatim record of all the proceedings of the Assembly and to prepare this for publication in the Official Report, or *Hansard*, as it is familiarly known. Other staff include eight ushers for attending on members and other employees. About a dozen policemen under a superintendent are on duty at Parliament House when the Assembly is sitting. All the staff, including the police on duty, are under the orders of the Speaker and come within the definition of officers of the Assembly.²

Strangers

All persons other than the President, the Speaker, the Members and officers are strangers to the Assembly and can only enter the precincts by authority of the Speaker (which may be exercised through the Clerk). Admission tickets bearing the signature of the Clerk are normally issued without question to strangers wishing to enter the public galleries. The House can of course order strangers to withdraw whenever it pleases, and the Speaker has a similar discretion. Strangers are forbidden, without express permission from the Speaker, to take briefcases or cameras into the Chamber, or to draw or write in the Chamber. While the Assembly is sitting no Member may take a stranger into those parts of Parliament House which are reserved for Members.³

PARLIAMENTS, SESSIONS, MEETINGS AND SITTINGS

Parliamentary time is divided up into Parliaments, sessions, meetings and sittings. A Parliament extends approximately from one general election to the next—normally about five years. A session usually lasts just under a year and consists of four meetings. A sitting almost invariably begins and ends on the same day, although

¹ Standing Order 20.

² National Assembly Act, 1961 (Act 86), s. 46.

³ Standing Order 99.

the Assembly is said to be " sitting " or " in session " from the beginning to the end of a meeting. Between meetings the Assembly stands adjourned. Between one session and the next the Assembly is in recess. The Parliamentary quinquennium is illustrated by the diagram on p. 306, which shows the normal position although, since the only things fixed by law are the maximum life of a Parliament and the fact that there must be a new session in every year, the details may vary from time to time.

Parliaments

A Parliament begins when the President by proclamation first summons the Assembly to meet after a general election and performs the ceremony of opening Parliament.¹ It ends when the President by proclamation dissolves the Assembly.² The Assembly must be dissolved not more than five years after its first sitting following the previous general election.³ Within two months after dissolution a general election must be held.⁴

Sessions

A session begins when the President by proclamation summons the Assembly to meet and performs the ceremony of opening Parliament. It ends when the President by proclamation prorogues the Assembly or dissolves the Assembly without having first prorogued it.⁵ Article 22(1) of the Constitution requires there to be a new session once at least in every calendar year, and that twelve months shall not elapse between the end of one session and the beginning of the next. The effect of prorogation, or of course dissolution, is to terminate all pending proceedings in Parliament. Unfinished business, such as Bills in progress or the proceedings of select committees, is automatically quashed, and must be begun all over again (if desired) in the next session. The system of sessions thus gives the Assembly a fresh start every year and avoids the perpetuation of stale business. Normally a session runs from early in July to late in the following June.

¹ As to the beginning of the first Parliament of the Republic, see p. 154, *ante*.

² Constitution, art. 23 (1).

³ *Ibid.*, art. 23 (2). For the power to recall a dissolved Assembly during an emergency see p. 154, *ante*.

⁴ National Assembly Act, 1961 (Act 86), s. 3 (1).

⁵ *Ibid.*, s. 46.

THE PARLIAMENTARY QUINQUENNIUM

	Opening of New Parliament —	B	First Meeting	
First Session			Second Meeting	December 31 si
			Third Meeting	
			f Fourth Meeting	
	Prorogation -	»-)		Late June
Second Session	Opening of Parliament ■*	M	First Meeting	Early July
			Second Meeting	
			Third Meeting	
			f Fourth Meeting	
	Prorogation —■	mm m		Late June
Third Session	Opening of Parliament —	■	First Meeting	Early July
			Second Meeting	
			Third Meeting	
			f Fourth Meeting	
	Prorogation -*	—		Late June
Fourth Session	Opening of Parliament —	* m m M	First Meeting	Early July
			Second Meeting	
			Third Meeting	
			f Fourth Meeting	
	Prorogation ■—	-		Late June
Fifth Session	Opening of Parliament --	H	First Meeting	Early July
		••	Second Meeting	
			Third Meeting	
			f Fourth Meeting	
	Dissolution — General Election -.	— :::		

In Session
Adjourned
In Recess

Meetings

A meeting begins when the Assembly meets at the beginning of a session or after a break during which it has stood adjourned *sine die*, that is without having fixed a date for its next sitting. In the latter case the Speaker fixes the date for the beginning of the new meeting, after consulting the Government.¹ Normally there are four meetings in a year, each lasting from four to six weeks. The last meeting of the session falls into two parts, the members being recalled a week before the end of the session to receive and debate the President's sessional report.

Sittings

A sitting is a period during which the Assembly sits continuously without adjournment. Unless the Assembly for some special reason decides otherwise, sittings begin at 4 p.m. and go on until shortly after 8 p.m. During a meeting the House sits on all days of the week except Saturdays and Sundays, although it sometimes takes a break when business is insufficient to keep it occupied.² Unless it otherwise orders, the Assembly automatically adjourns at the conclusion of business until 4 p.m. on the next sitting day.³

ARRANGEMENT OF BUSINESS

To secure the smooth and orderly despatch of the Assembly's business, various rules of practice and procedure have been adopted by analogy with those worked out over the course of centuries by the House of Commons. Much of the remainder of this discussion of the way in which the Assembly is organized for law-making will consist of a description of these rules, which also apply of course to the Assembly's other functions of debating matters of national and international importance, criticizing the activities of Government and authorising expenditure. Before considering how business is conducted, we must examine the way in which items of business are chosen and arranged.

The Business Committee

Standing Order 96 requires a select committee of members, known as the Business Committee, to be set up at the beginning

¹ Standing Order 8 (2). In cases of urgency the President may fix the date (Standing Order 12 (3)).

² A new system has now been introduced of continuous sittings for the first month of every quarter, and it is hoped to avoid such breaks in future.

³ Standing Order 9.

of the session with the function of determining the business of each day and the order in which it shall be taken. The committee consists of the Leader of the House as chairman, two other Ministers, the Parliamentary Secretary, a Deputy Minister and three back-bench Members. It enjoys the unique privilege of deciding matters for itself, and does not, like other select committees, merely make recommendations to the Assembly. Nevertheless the determinations of the Business Committee are subject to certain limitations. They must give way to the Speaker's ruling as to what matters may properly be introduced into the Assembly. They must conform to Standing Order 22(1), which gives Government business precedence over private Members' business on all days except Fridays. They must whenever possible conform to the order of items laid down by Standing Order 21, which is described below. On each Friday the chairman of the Business Committee is required to make a statement in the House of the business arranged for the succeeding week.¹

Order of Business

The normal order of business, as laid down by Standing Order 21, is as follows. The line marks the commencement of public business, and divides formal matters from those on which debate may arise.

Taking of oaths by new Members.
 Presidential addresses and messages.
 Speaker's announcements. Election of
 Deputy Speaker. Presentation of
 papers and petitions. Questions to
 Ministers. Statements by Ministers.
 Complaints of contempt of
 Parliament. Personal statements.
 Presentation of Government Bills.

Motions for the introduction of Bills.
 Motions on definite matters of urgent public importance.
 Bills and substantive motions.
 Half Hour motions.

It will be obvious that not all of these items occur on any one day;

¹ Standing Order 23.

indeed some of them occur only very rarely. Most of the important items are discussed in detail elsewhere in this book: we will say a word about the remainder here.

Papers.—Statutory instruments, annual reports of statutory bodies, and other documents of a similar nature are sometimes required by law to be laid before the Assembly. In addition to these, other papers may be presented to the Assembly by the Speaker, a Minister or the chairman of a select committee. Normally copies must be distributed to Members, and the person presenting a paper is entitled to make a short explanatory statement.¹

Petitions.—Anyone who can persuade a Member to act for him is entitled to present a petition to the Assembly praying for the redress of grievances or otherwise. The petition must be in a certain form and must not offend against the privileges of the Assembly. The Member presenting the petition is entitled to move that it be read, printed or referred to a select committee, and may make a short speech in doing so. Further debate is not allowed.²

Questions.—As in the House of Commons, question time is an important and lively feature of the Parliamentary day. Any Member may question a Minister about public affairs with which the Minister is officially connected, or proceedings pending in the Assembly, or any matter of administration for which the Minister is responsible. Questions relating to matters under the control of a statutory body must be restricted to those matters for which a Minister is made responsible by law or which affect the general policy of the body. Questions on the day-to-day administration of a statutory body may only be asked if the Speaker considers them to be of sufficient public importance.³ Five days' notice of intention to ask a question must be given, and if he requires an oral answer the Member must indicate this by marking his question with an asterisk. Not more than four questions requiring oral answer may be asked by a Member at any one sitting, and numerous restrictions are imposed on the form and content of questions in order to prevent abuse of this valuable facility.⁴

¹ Standing Order 27, As to the laying of statutory instruments see p. 388; *post*.

² Standing Order 27.

³ Standing Order 28.

⁴ Standing Orders 29-31.

Immediate debate on the answer given to a question is not allowed, although supplementary questions are permissible.¹ A Member who is dissatisfied with the answer to a question may give notice that he intends to raise the matter on a Half Hour motion.²

Urgent motions.—At the time appointed under Standing Order 21 any Member may move that leave be given to make a motion on a definite matter of urgent public importance. The Member must have informed the Speaker of his intention to move before the commencement of the sitting, and the Member can move only if the Speaker is satisfied that the matter is urgent, of public importance, and in order. If the Member is allowed to move, and the House grants leave, the main debate on the matter in question stands over until the remaining business for that day has been disposed of.³

Half Hour motions.—Private Members are entitled to ballot for the privilege of moving a motion, on any subject they choose for which the Government are responsible, during the last half hour of the sitting. At the conclusion of the debate the question is put without a division and the House then rises for the day.* Until the changes in 1960, the debate arose on the motion for the adjournment of the Assembly, following House of Commons practice. Now a substantive motion, beginning with such words as "That this House notes . . .", is debated, it having been felt to be somewhat artificial to debate substantive matters on procedural motions.⁵

Order Paper, Minutes, etc.

One of the duties of the Clerk of the Assembly is to supervise the preparation of Agendas, Order Papers and Minutes. At least two weeks before the commencement of a meeting, the Clerk is required to send to each member the Agenda for the meeting, which lists the items of business received but does not show when they will be taken. Whenever necessary a supplementary Agenda is to be circulated.⁶ Before each sitting commences the

¹ Standing Order 32.

² This notice may be given orally: Standing Order 36 (6).

³ Standing Order 10.

⁴ Standing Order 9.

⁶ For the same reason a corresponding change was made in relation to urgent motions.

⁹ Standing Order 13.

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Clerk must circulate the Order Paper, which sets out the order of business to be taken at the sitting, as arranged by the Business Committee. At the same time a provisional Order Paper, showing the business which has been arranged for the following sitting, is sent out.¹ On the day following a sitting the Minutes for that sitting are circulated. These show the names of the Members who attend and specify the decisions taken at the sitting.² The Clerk also keeps the Order Book, in which he enters all matters intended for discussion in the Assembly.³ All records and other documents of the Assembly are in the custody of the Clerk, and are open to inspection by Members.⁴

PROCEEDINGS IN THE ASSEMBLY

Standing Orders

Proceedings in the Assembly are regulated in detail by Standing Orders made under s. 14 of the National Assembly Act. This section empowers the Assembly to make Standing Orders " for the regulation and orderly conduct of proceedings and the despatch of business ". Any Standing Order may be suspended with the consent of the Speaker and the majority of Members present.⁵ In cases of doubt Standing Orders are to be interpreted by the Speaker as he thinks fit, and where any matter is not provided for by Standing Orders the Speaker has power to determine it.⁶

Standing Order 97 requires a sessional select committee known as the Standing Orders Committee to be constituted under the chairmanship of the Speaker with the function of reporting to the Assembly on any proposal for the amendment of Standing Orders which may be referred to it. By Standing Order 41, when a motion for the amendment of Standing Orders has been proposed and seconded in the House it stands referred to the Standing Orders Committee and further proceedings on it in the House are suspended until the Committee has reported.

Commencement of Sitting

At the time appointed for the commencement of a sitting,

¹ Standing Order 14.

² Standing Order 17. Copies of the Official Report are also circulated under Standing Order 18.

³ Standing Order 15.

⁴ Standing Order 16.

⁵ Standing Order **100**.

⁶ Standing Orders 101 and 102.

normally 4 p.m., the Speaker's procession enters the Chamber. This consists of the Assistant Marshal, then the Marshal bearing the Mace, and finally the Speaker himself. After the Speaker has taken his seat and the Mace has been placed in its standing position before the Table, prayers are read by the Clerk. The prayers, which were specially composed for the Republican Parliament, run as follows:

" Almighty God, we humbly beseech Thee to look with favour upon this Parliament of the Republic of Ghana. Grant that it may perform its high duty as in Thy sight. Give Divine guidance to the President of the Republic; endow Members of Parliament with discernment and vision, integrity and courage, and that through the labours of government this land and people may be well and truly served, and Thy good purposes for the common human life be realised in our midst. Amen."

" O God, grant us a vision of our country, fair as it might be: a country of righteousness, where none shall wrong his neighbour; a country of plenty, where evil and poverty shall be done away; a country of brotherhood, where all success shall be founded on service, and honour shall be given to the deserving; a country of peace, where government shall rest on the will of the people and the love for the common good. Bless the efforts of those who struggle to make this vision a living reality. Inspire and strengthen our people that they may give time, thought and sacrifice to speed the day of the coming beauty of Ghana and the total liberation of Africa. Amen."

The Speaker (or his Deputy) remain in the Chair throughout the proceedings of the Assembly, the practice of having a Committee of the whole House presided over by the Deputy Chairman for certain types of proceedings having been abandoned in 1960. As the Leader of the House, Mr. Kojo Botsio, pointed out in announcing this change, the practice of the House resolving itself into Committee was a device of the House of Commons originally used to get rid of the Speaker who in the seventeenth century was regarded as a King's man and therefore mistrusted.¹

Quorum

The Assembly cannot proceed to business unless the Speaker is satisfied that a quorum is present, and no business except that of adjournment may be transacted at any time if objection is taken by a Member that a quorum is not present. The quorum is twenty-five.² The Assembly follows the House of Commons

¹*Parl. Deb. Official Report*, Vol. 19, col. 229. ² National Assembly Act, 1961 (No. 86), s. 16,

practice whereby, if objection is taken to the insufficiency of members, the Speaker orders a "count". If after ten minutes sufficient members have not entered the Chamber to form a quorum the Speaker must adjourn.¹ Where objection is not made to the lack of a quorum the proceedings, once having started, must continue. This arrangement, though perhaps illogical, is convenient since it allows Members to be elsewhere in the Assembly precincts without incurring the risk of an undesired adjournment.

Motions

Proceedings in the public business are conducted by means of motions, and after the commencement of public business there must always be some motion before the House or the proceedings will be out of order. Except in certain cases, mostly of a formal character, 24 hours' notice must be given of Government motions and 48 hours' notice of motions by private Members.² All notices are submitted to the Speaker, who may direct the wording to be amended before the motion is printed in the Order Paper. Where the Speaker considers that a motion is so out of order that it cannot be cured by amendment he may direct it to be returned to the member who submitted it.³ A motion may fall into this category where a private Member seeks to encroach upon the financial initiative of the Government,⁴ or where the motion infringes Standing Order 74. This requires the President's consent to be signified to any Bill or motion by a private Member which seeks to alter the conditions of service of public officers. It also prohibits the Assembly from proceeding on any Bill or motion which, in the opinion of the Speaker, relates to or affects any matter the responsibility for which is vested in the Attorney-General by art. 47 of the Constitution.

A motion moved by a private Member must normally be seconded by another Member before it can be debated. Government motions need not be seconded.⁵ When a motion has been moved, and if necessary seconded, the Speaker throws it open for debate by *proposing the question*. Special rules are laid down by Standing Orders for the form of proposing the question in the

¹ Standing Order 11.

² Standing Orders 35, 37.

³ Standing Order 36.

⁴ See p. 38, *ante*.

⁶ Standing Order 38.

complicated cases that may arise when amendments are moved to a motion or even, it may be, where a Member seeks to amend an amendment.¹ A Member who has proposed a motion may withdraw it, but if the motion has been seconded he may do so only by leave of the majority of members present.²

Rules of Order and Debate

Standing Orders put the Speaker firmly in charge of proceedings in the Assembly and make him responsible for the observance of order and of the rules of debate. His decision on any point of order is not open to appeal and cannot be reviewed by the Assembly except on a substantive motion made after due notice.³ When the Speaker rises to address the House any Member then standing must immediately resume his seat, and silence must be observed.⁴

All proceedings are conducted in English.⁶ In debate, members must address the Speaker and not each other.⁶ Nor must one Member refer to another by name, but by such words as "The honourable Minister for Finance", "the honourable Member for Accra Central" or "the honourable Lady who has just spoken".⁷ These latter rules help to avoid personal abuse and invective, and to keep down the temperature of debates. A Member shows that he wishes to speak by rising in his place; he should not begin his speech until the Speaker calls on him by name.⁸ The speech must be relevant to the question before the House and must not contain offensive, blasphemous or unbecoming words, or impute improper motives to other Members, or make personal allusions. Prejudicial references must not be made to any matter on which a judicial decision is pending. Except on a substantive motion for that purpose, no matter already decided in the current session may be reopened and no criticism of the conduct of the Speaker, other Members or any judge may be made.⁹ Consideration of a Bill which has been introduced may not be anticipated by debate

¹ Standing Order 40.

² Standing Order 39.

³ Standing Order 50.

⁴ Standing Order 49.

⁶ Standing Order 6.

⁶ Standing Order 42 (1).

⁷ Standing Order 42 (3)-(5). The style *honourable* is used only in the Assembly except in the case of the Speaker and Ministers, of whom it is used generally.

⁸ Standing Order 42 (1), (2).

⁹ Standing Orders 44, 45.

on the subject with which the Bill is concerned.¹ A Member may not read his speech, although he is permitted to refresh his memory by reference to notes.² Except on the Consideration stage of Bills, a Member is not normally entitled to make more than one speech on the same question.³

With two exceptions, a Member who is in the course of a speech must not be interrupted by other Members.⁴ The first exception arises when, as frequently happens, the Member speaking makes some remark which one of his hearers does not understand or which he pretends not to understand. An interruption for the purpose of elucidation is then permitted if two conditions are satisfied. The first is that the Member making the speech chooses to give way and resumes his seat, and the second is that the Speaker calls upon the Member wishing to interrupt, who will have risen to his feet to indicate his intention. The other exceptional case is where the Member who is speaking has, in the opinion of another Member, transgressed the rules of order. If the other Member rises to his feet and says " Mr. Speaker, on a point of order . . .", the Member who is speaking must give way and resume his seat while the point of order is put and dealt with by the Speaker. Since an interruption on a point of order compels the person who is speaking to give way it is tempting to make such interruptions where in fact no point of order exists, and this is often done. Although considerable latitude is allowed, such tactics, if carried too far, constitute an abuse of procedure and in the long run are unfair to other Members. Although interruptions are strictly out of order except in these two cases, it must not be supposed that they do not occur. Debates are usually punctuated by cheers, counter-cheers and exclamations from Members. Provided these do not seriously interfere with the ability of a Member to continue his speech, the Speaker does not normally intervene. Indeed, such manifestations of feeling are part of the atmosphere of debate.

The Speaker, and indeed the Assembly itself, possesses wide powers to deal with disturbance and disorder. In the case of general disturbance the only remedy, if the Speaker's requests for order are not heeded, is to adjourn the proceedings. The

¹ Standing Order 47.

² Standing Order 42 (10).

³ Standing Order 42 (6), (7).

⁴ Standing Order 43. A third exception, which does not arise in practice, is on a claim to apply the closure; see p. 317, *post*.

Speaker has power to adjourn without question put if he thinks it necessary to do so.¹ In the case of disorder by an individual Member a number of courses are open, depending on the degree of gravity of the offence. These may be summarized as follows:

1. A Member who deviates from Standing Orders may be immediately called to order by the Speaker, or by another Member rising to a point of order.²
2. If a Member persists in irrelevance, or tedious repetition either of his own arguments or of those previously advanced during the debate, the Speaker, having called the attention of the House to his conduct, may direct him to discontinue his speech.³
3. If a Member uses objectionable words, and on being called to order fails to retract or explain the words and offer an apology to the Speaker's satisfaction, any other Member may, with the consent of the Speaker, move that he be no longer heard. The question on the motion is put forthwith, without amendment or debate.⁴
4. If the conduct of a Member is grossly disorderly the Speaker may order him to withdraw immediately from the Assembly for the remainder of the sitting. He must thereupon leave the precincts—if necessary being ejected by the Marshal.⁶
5. Where the case is more serious still the Speaker may "name" the Member. The senior Minister present must then move an immediate motion to the effect that the Member is guilty of contempt of Parliament. If the motion, which cannot be debated or amended, is carried the Member is immediately suspended and must leave the precincts.⁶ He may also be subjected to any of the other penalties laid down for contempt of Parliament.⁷

Apart from these five ways of dealing with a disorderly Member, the Assembly has an inherent power to control its own proceedings

¹ Standing Order 51 (11).

² Standing Order 51 (1).

³ Standing Order 51 (2).

⁴ Standing Order 46.

⁵ Standing Order 51 (3). (10); National Assembly Act, 1961 (Act 86), s. 36.

⁶ Standing Order 51 (3)-(6). For the period of suspension see p. 330, *post*.

⁷ See pp. 330 *et seq.*, *post*.

within the limitations imposed by law. It can thus, if it chooses, proceed against a Member who offends against Standing Orders, or in some other way, in whatever manner it thinks fit.¹

Termination of Debate

To guard against filibustering, Standing Orders enable a debate to be brought to an end before all the Members who wish to take part have delivered their speeches. This procedure, known as the closure, is brought into effect when a Member (who would normally be the Parliamentary Secretary) interrupts the proceedings by claiming to move that " the question be now put ". The Speaker must allow the motion unless he thinks it is " an abuse of the rules of the Assembly or an infringement of the rights of the minority ". Where the motion is allowed no debate or amendment is permissible, and the Assembly must decide forthwith whether to apply the closure. If the matter is pressed to a division, the closure is not applied unless at least fifty members have voted for it.²

When all the Members who wish to address the House on the question before it have finished their speeches, or when the closure has been applied, the Speaker *puts the question*. He does this by saying: " The question is that ... As many as are in favour say *aye* [a pause for the voices of the Ayes], as many as are not say *no*. The Speaker assesses the relative strengths of the voices and then, if it seems that the motion is carried, says " I think the Ayes have it; the Ayes have it ". If the motion appears lost the Speaker says " I think the Noes have it; the Noes have it ". Except in certain special cases, questions in the Assembly are decided by simple majority.³ The Speaker himself has no vote, but if the Deputy Speaker or any other Member is in the Chair he is entitled to an original vote but not a casting vote.⁴ Where votes are equal the motion is lost.⁵

If any Member desires to do so, he may challenge the Speaker's declaration that the Ayes (or Noes) have it, and claim a division. The following events then ensue, unless the Speaker considers the claim for a division to be merely frivolous.⁶

¹ Standing Order 51 (8).

² Standing Order 48. As yet the procedure has not been used.

³ National Assembly Act, 1961 (No. 86), s. 17. Larger majorities are required for the removal from office of judges, etc.; see p. 174, *ante*.

⁴ National Assembly Act, 1961 (Act 86), s. 16 (2).

⁵ Standing Order 54 (9).

⁶ Standing Orders 53, 54.

1. The Speaker calls out " Clear the lobbies! " and the ushers make sure that no one is within either of the division lobbies.

2. The division bells ring for one minute to warn Members who are within the precincts to come into the Chamber.

3. The Speaker puts the question and declares the result in the same manner as before. Only if he is again challenged does he order a division to be held, thus giving an opportunity for the division to be called off if Members have had second thoughts about it.¹

4. Where he orders a division to be held the Speaker at the same time names two Members from among the Ayes and two from among the Noes to act as tellers. The tellers are allowed to vote.

5. Members who wish to vote for the motion file in through the entrance door of the Ayes lobby, while those opposing enter the Noes lobby. A Member is not obliged to vote, but if he does so must vote according to his voice.

6. As Members leave the lobbies their names are recorded by the division clerks and they are counted by the tellers. The entrance doors are locked five minutes after the division has been ordered.

7. The tellers come to the Table and give the voting figures to the Clerk. The Clerk writes down the figures and reports them to the Speaker, who then announces the result of the division.

Effect of irregularities in procedure

The rules of procedure are designed to enable the Assembly to carry out its business speedily and efficiently. Breaches of the rules are the concern of the Assembly alone, and cannot be relied on to support an argument by outside persons that its proceedings have been thereby invalidated. Nor does the fact that by-elections are pending, or even that a stranger has taken part in the proceedings, affect the validity of anything done by the Assembly.²

¹ If the Speaker considers that a division is unnecessary he may, instead of putting the question again, call upon Members to rise to their feet and be counted: Standing Order 54 (6).

² National Assembly Act, 1961 (Act 86), s. 19.

SELECT COMMITTEES

Almost all important Parliamentary business is carried on at sittings of the full Assembly. Provision is made however for particular matters to be referred to small committees of Members, known as select committees. There are no standing committees, such as exist at Westminster for examining the details of Bills. Select committees are of two types, sessional and *ad hoc*.

Sessional select committees

Standing Orders require the Speaker, at the beginning of each session of Parliament, to nominate the numbers of the five permanent committees known as sessional select committees. These are the Committee of Privileges, the House Committee, the Public Accounts Committee, the Business Committee and the Standing Orders Committee. Two of these have already been discussed.¹ A third, the House Committee, which is meant to advise the Speaker on "all matters connected with the comfort and convenience of Members"² in fact never meets. In an Assembly as intimate as that of Ghana, Members are able to express their views on the amenities provided for them in less formal ways than through a select committee.

Committee of Privileges.—This consists of the Leader of the House as chairman, one other Minister, the Parliamentary Secretary and seven back-benchers. Its duty is to enquire into any complaint of contempt of Parliament or any matter of privilege which may be referred to it.³ Only one such reference has been made.⁴

Public Accounts Committee.—This and the Business Committee are the most active of sessional select committees. The Committee meets frequently and issues two reports a year. It consists entirely of back-benchers and elects its own chairman, normally a member of the minority party. The duty of the Committee is to examine the accounts which show how money granted by the Assembly to meet national expenditure has been spent, and also to examine any accounts of a statutory corporation which have

¹ The Business Committee (p. 307, *ante*) and the Standing Orders Committee (p. 311, *ante*).

² Standing Order 94.

³ Standing Order 93.

⁴ *The Adama Case* in 1958, which is described at p. 327, *post*.

been laid before the Assembly.¹ The Auditor-General or one of his senior staff is always in attendance at meetings of the Committee. Where accounts reveal matters which require looking into, the Committee, which has power to send for persons, papers and records and to examine witnesses on oath, carries out the necessary investigation either itself or by appointing a subcommittee.² The reports of the Committee, which are presented to the Assembly and published, are brief and to the point. As an example of the subjects dealt with, we may take the first report for 1960-61. This described investigations, and contained recommendations, relating to the purchase of stationery by the Cocoa Marketing Board, an alleged over-payment of compensation for the Achiasi-Kotoku railway, maintenance allowances to the staff of the Ghana Library Board, disposal of deteriorated foodstuffs by the Ghana Agricultural Development Corporation and the handling by the Corporation of a loan scheme for farmers, valuation of assets of the Cocoa Marketing Board, methods of increasing railway passenger traffic, excessive railway overtime working, and the method of purchase of locomotives and rolling stock.³

Ad hoc select committees

If the Assembly considers it necessary to do so, it may at any time set up an *ad hoc* select committee to examine and report on whatever matter is entrusted to it by the Assembly. The committee is appointed on a motion made after notice. It consists of such number of Members as the Assembly may determine, and has power to elect its own chairman.⁴ *Ad hoc* select committees are very rare. One which has already been mentioned is the committee set up in 1955 to examine the question of a federal system of Government and a second chamber.⁶

Procedure of select committees

Standing Orders lay down rules of procedure which apply to all select committees, whether sessional or *ad hoc*. The members of the committee must be drawn from the various parties in accordance with their relative strengths in the House, and no person

¹ Standing Order 95.

² Standing Orders 83 and 84.

³ *First Report from the Public Accounts Committee of the National Assembly for the year 1960-61*, Accra, 1961.

⁴ Standing Order 77.

⁵ See p. 52, *ante*.

other than a member of the committee or an officer having duties in connection with the committee may attend its meetings unless the committee has decided to sit in public. With the exception of the House Committee and the Standing Orders Committee, every select committee has power to send for persons, papers and records, and to examine witnesses on oath. The Speaker may issue a warrant for the arrest of a witness who fails to attend.¹ The draft report of the committee is considered formally paragraph by paragraph; amendments may be moved and the committee may divide. The report is presented to the Assembly by the chairman of the committee and the Assembly may accept or reject it as it thinks fit.²

PARLIAMENTARY PRIVILEGE

To enable it to function effectively the National Assembly enjoys certain privileges conferred upon it by the Constitution and the National Assembly Act. Such privileges are common to most legislative bodies, and in relation to the two Houses of the British Parliament are explained by Erskine May as follows:

The privileges of Parliament are rights which are absolutely necessary for the due execution of its powers. They are enjoyed by individual Members, because the House cannot perform its functions without unimpeded use of the services of its Members; and by each House for the protection of its Members and the vindication of its own authority and dignity. . . . The Commons, in their reasons offered at a conference with the Lords in the controversy arising from the case of *Shirley v. Fagg*, in asserting that privilege of Parliament belongs to every Member of the House of Commons, declared " that the reason of that Privilege is, that the Members of the House of Commons may freely attend the public affairs of that House, without disturbance or interruption ". The earliest occasion on which this reason was given was in the Commons Petition to Henry IV in 1404.³

In Ghana certain privileges are conferred on the Assembly generally; others on individual Members or officers. All are

¹ Standing Order 52; National Assembly Act, 1961 (Act 86), s. 14 (2).

² The procedure of select committees is dealt with by Standing Orders 75-92.

³ *The Law, Privileges, Proceedings and Usage of Parliament* (15th Edn.), pp. 40[^]2.

designed to ensure that Members come to and from the proceedings of the Assembly without hindrance, that those proceedings function in freedom from outside interference, and that the dignity and authority of the Assembly are preserved. Breach of privilege in most cases constitutes contempt of Parliament, and is punishable by the Assembly itself and also, when committed by strangers, by the courts administering the criminal law.

The principal statement of Parliamentary privilege is contained in the Constitution itself:

" There shall be freedom of speech, debate and proceedings in the National Assembly and that freedom shall not be impeached or questioned in any court or place out of the Assembly."!

" Freedom of speech is a privilege essential to every free council or legislature."² " There could be no assured government by the people, or any part of the people, unless their representatives had unquestioned possession of this privilege."³ These quotations show the importance that has been attached to this general principle of Parliamentary freedom. Since the principle is taken from the Bill of Rights (although it had been recognized long before) it may be assumed that it will be treated in Ghana as having much the same effect as in England. By analogy with the English position, as described by Erskine May, the following rules may be drawn from it. Some aspects of them, as will appear, have been separately stated in the National Assembly Act.

1. The principle extends not only to everything done in the full Assembly or a committee in the course of Parliamentary business, whether by Members or officers, or by strangers concerned in such business, e.g. as witnesses, but also things done outside the Assembly for the purposes of its business—as for example the action of a Member in sending to the Clerk written notice of a question to be asked in the Assembly. This does not mean that every act done even in the Chamber itself will be protected. For example, a slanderous conversation carried on between two Members while a debate was in progress, or an assault by a Member upon an usher, might well be held to fall outside the scope of proceedings in Parliament.

¹ Article 21 (3). The wording is adapted from the 9th Article of the Bill of Rights. It is repeated in Part IV of the National Assembly Act, 1961 (Act 86), which is thus made comprehensive.

² Erskine May, *op. cit.*, p. 46.

³ White, *The English Constitution*, p. 440.

2. The principle gives the Assembly complete and exclusive control over the subjects chosen for debate, legislation and other business and over the procedure adopted for dealing with those subjects. The Assembly, in the words of Erskine May, " is not responsible to any external authority for following the rules it lays down for itself, but may depart from them at its own discretion ".*

3. In respect of an act to which the principle extends, no person may be questioned about the act in court or elsewhere, or be proceeded against for having done the act, whether by civil or criminal proceedings, or be intimidated, molested or treated in any discriminatory or prejudicial manner by reason of the doing of the act. In particular therefore, a Member may, again in the words of Erskine May, " state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation ".² The most important aspects of this rule are made explicit by s. 21 of the National Assembly Act, which provides that, without prejudice to the general principle of freedom of debate, no civil or criminal proceedings shall be instituted against a Member in any court or place out of the Assembly by reason of anything said by him in the Assembly or any of its committees, or any matter or thing brought by him before the Assembly or a committee by petition, Bill, motion or otherwise.

4. The previous rule does not prevent the Assembly itself, in exercise of the power to control its own proceedings, from taking action against a Member or other person who abuses his privileges. Privileges are given not for the benefit of individuals but for the benefit of the Assembly as a whole. We have seen how misbehaviour in debate is dealt with by the Speaker, and when we come to consider contempt of Parliament and the punishment of offences it will appear that the Assembly possesses ample powers to punish abuse of privilege. Another way in which a Member may offend the Assembly itself is by entering into an engagement which is designed, or tends, to restrict his own freedom of speech. Every Member is under

¹ *op. tit.*, p. 60.

² *Op. cit.*, p. 51.

a duty to the Assembly to safeguard Parliamentary freedom so far as lies within his power. He is clearly in breach of this duty if he fetters his own freedom. The House of Commons resolved in 1947 that:

" It is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof."!

5. The Assembly has the right to exclude strangers from its proceedings whenever it thinks fit. This right, which enables the Assembly to prevent strangers from disturbing its proceedings or attempting to influence debate from the galleries, and to go into secret session when necessary, has already been discussed.²

Particular privileges

In addition to the general statement of Parliamentary privilege laid down by the Constitution and explained in the five rules suggested above, the National Assembly Act confers a number of particular privileges which will now be discussed.

It would hamper the Assembly in carrying on its proceedings, as well as prejudicing its dignity, if the courts were permitted to subject Members and officers to judicial process at times when their services were required by the Assembly. For this reason the National Assembly Act confers certain privileges by restricting the normal powers of the courts in relation to the service and execution of process and the summoning of persons as witnesses, jurymen or assessors.

Immunity from service of process and arrest.—No civil or criminal process can be served on, or executed in relation to, the Speaker or any Member while he is on his way to, attending at or returning from any proceedings of the Assembly.³ Thus, for

¹ Erskine May, *op. cit.*, p. 50.

² See p. 304, *ante*.

³ National Assembly Act, 1961 (Act 86), s. 22 (a).

example, a Member who is on his way to the Assembly cannot be served with a writ or arrested under a warrant issued by a court. In criminal matters however the Speaker has power to waive Parliamentary privilege where he thinks it proper to do so and to give consent to the service of a summons on a Member, or the execution of a warrant for his arrest, or otherwise.¹ In addition to these restrictions, the Act also prohibits altogether the service or execution of civil or criminal process within the precincts of the Assembly at a time when the House is sitting, or through the Speaker, Deputy Speaker or any officer.²

Immunity from witness summons.—While attending the Assembly the Speaker, Members and officers are immune from any requirement to attend as a witness elsewhere. The immunity ceases when the Assembly is not sitting.³

Immunity from jury service.—The Speaker, Members and officers are at all times exempt from service as jurymen or assessors.⁴

The particular privileges mentioned above are personal to Members and officers. We now turn to various privileges which may be claimed by strangers as well.

Immunity for acts authorised by Assembly.—No person can be under any civil or criminal liability in respect of an act or omission ordered or authorised, in accordance with law, by the Assembly or a committee, or by the Speaker, a Member or officer.⁵ Where the act is authorised by an individual the immunity exists only if the act is in some way connected with the business of the Assembly. A certificate by the Speaker is conclusive evidence of the ordering or authorising of the act.

Immunity for publication of proceedings.—No person can be under any civil or criminal liability in respect of the publication of the text or a summary of any report, paper, minutes, votes or proceedings of the Assembly unless it is shown that the publication was effected maliciously or otherwise in want of good faith.⁶ This rule is subject to the provisions relating to contempt of Parliament, which, as we shall see, make it an offence to publish

¹ National Assembly Act, 1961 (Act 86), proviso to s. 22.

² *Ibid.*, s. 22 (b), (c).

³ *Ibid.*, s. 23.

* *Ibid.*, s. 24.

⁵ *Ibid.*, s. 25.

⁶ *Ibid.*, s. 26.

certain evidence or documents in defiance of an order of the Assembly. The immunity is primarily directed against outsiders, and not the Assembly itself. Erskine May remarks¹:

"... the publication, whether by order of the House or not, of a fair and faithful account of a debate ... is protected by the same principle as that which protects fair reports of proceedings in courts of justice, namely, that the advantage to the public negatives the presumption of malice and outweighs any disadvantage to individuals."¹

If the publication is by order of the House protection will be given by the preceding rule, and even proof of malice will not destroy the immunity.

Privilege of witnesses.—Witnesses before the Assembly or a select committee are entitled to the same privilege as witnesses before a court of law; and except in criminal proceedings for perjury an answer given by such a witness is not admissible in evidence against him in any other proceedings. Evidence on matters of state cannot be demanded by the Assembly from public officers except with the President's consent.²

CONTEMPT OF PARLIAMENT

The National Assembly Act contains a number of sections specifying the acts which constitute contempt of Parliament. It might be thought that contempt of Parliament would be simply the obverse of Parliamentary privilege, or in other words that those acts which infringed privilege, and only those acts, would constitute contempt. The position is not as simple as this, however. Indeed Erskine May treats breach of privilege and contempt as two different things.³ In Ghana the matter is treated entirely under the heading of contempt, but this embraces a number of matters which are not included in the Part of the National Assembly Act dealing with privilege, as for example disobedience to the orders of the Assembly and defamation of Members. Similarly, not every act which went against a particular privilege would constitute contempt. Thus service of a writ on a Member in ignorance of the fact that he was on his way to Parliament House might well be held not to amount to contempt,

¹ *Op. tit.*, p. 54.

² National Assembly Act, 1961 (Act 86), s. 27,

³ *Op. tit.*, p. 41.

although it would clearly infringe the member's immunity from service of process. In general, the scope of contempt is wider than that of privilege, though in both the constitutional law is concerned with the same object, namely to safeguard the efficiency and dignity of the Assembly.

General definition of contempt

Part V of the National Assembly Act begins by stating that any act or omission which impedes or tends to impede the Assembly in the exercise of its functions, or affronts the dignity of the Assembly, is a contempt of Parliament.¹ Although the Act goes on to specify particular types of contempt this is not to be taken to limit the generality of the opening definition, which applies to Members, officers and strangers alike. No case has yet arisen under this general definition, but mention may perhaps be made here of the only case of breach of privilege (or contempt of Parliament, as it is now called) upon which proceedings have ever been brought in the National Assembly. This was the *Adama Case*, which occurred in 1958, at a time when Parliamentary privilege was governed by an Ordinance which contained no general definition of breach of privilege.² Mr. Adama, who was then the Opposition Chief Whip, announced in debate that he had received a secret Cabinet paper which recorded a decision that the Northern Territories should be left undeveloped and educationally backward so as to preserve the supply of "hewers of wood and drawers of water". When challenged he said that he had got the document in his pocket, but later denied this and said he would produce it on another occasion. Some three weeks later he did so, and read it out to the Assembly. The following day the Assembly resolved to refer the matter to the Committee of Privileges and ordered the Committee to report whether the document was genuine or false and whether Mr. Adama had committed a breach of privilege. In the Committee's report, which was accepted by the House, it was found that the document was a false and fabricated one, that Mr. Adama knew it to be so when he referred to it in debate, and that by using it in the House in the way he did he committed a breach of the privileges of the House. No punishment was inflicted since Mr. Adama craved the indulgence of the House and rendered an

¹ National Assembly Act, 1961 (Act 86), s. 28.

² Legislative Assembly (Powers and Privileges) Ordinance, 1956 (No. 20).

unqualified apology, which Members accepted without dissent. The interesting feature about this case is that no specific provision of the Powers and Privileges Ordinance was relied on—indeed, as Mr. Adama himself pointed out, it would have been difficult to find one that fitted the case. The Assembly never went beyond its undoubted power to refer what it thought fit to one of its own Committees and to debate the Committee's report. The stage of imposing punishment, at which difficulties might have been encountered, was never reached. If a similar case arose under the present law there would be no difficulty in bringing it within the general definition of contempt. To address arguments to the House based on a " Cabinet paper " which the speaker knew to be false and fabricated would clearly tend to impede the Assembly in the exercise of its functions and might well be held to affront its dignity. In addition, the production of a false document has been included among the particular contempts.¹

Particular contempts

The particular contempts specified by the National Assembly Act are not easy to classify. Some relate only to acts done by Members, or by strangers; others may be committed by anyone. The seriousness of the contempt may range from the grave, such as an assault on the Speaker while in the Chair, to the trivial, such as the entry of a stranger into the precincts in technical disobedience of Standing Orders. No classification is ideal, **but** the Act divides particular contempts into five categories: interference with Members and officers, interference with proceedings, inducing false or incomplete evidence, disobedience to the orders of the Assembly, and defamation of the Assembly. Of these, the first four are concerned more with the earlier part of the general definition of contempt, namely impeding the exercise of the Assembly's functions, while the fifth is related to the later part of the definition and protects the dignity of Parliament.

Interference with Members and officers.—If any person assaults, obstructs, molests or insults the Speaker or a Member within the precincts of the Assembly, or while the Speaker or Member is on his way to or returning from the proceedings of the Assembly, he is guilty of contempt. The same rule applies in relation to the

¹ The record of the various proceedings in the *Adama Case* will be found in *Nat. Ass. Deb. Official Report* Vol. 11, cols. 1397-1403, 1420-24, 1969-72, 2042-78; Vol. 16, cols 1423-38.

officers of the Assembly except that no contempt arises unless the offender was aware, or had reasonable grounds for believing, that the person in question was an officer.¹ It is contempt for *any person* to endeavour, by means of bribery, fraud or the infliction or threatened infliction of violence, restraint or spiritual injury, to influence a Member in the exercise of his functions, or to inflict violence, restraint or spiritual or temporal injury on a Member by reason of anything he has done or failed to do in connection with Parliamentary business. If a *Member* accepts a bribe or other benefit, or procures a benefit for himself or anyone else, in return for an undertaking to vote in a particular way, or otherwise to carry out his Parliamentary functions in a certain manner, the Member is himself guilty of contempt.²

Interference with proceedings.—There are three offences under this heading. It is contempt for *any person* to create or join in a disturbance (whether within or outside the precincts) which interrupts or is likely to interrupt the proceedings of the Assembly. It is contempt for a *stranger* to sit or vote in the Assembly. It is contempt for a *Member* persistently to obstruct the proceedings of the Assembly, whether or not in contravention of Standing Orders.³

Inducing false or incomplete evidence.—The Assembly itself does not in practice hear evidence, but the need to do so sometimes arises with select committees, particularly the Public Accounts Committee. Accordingly the giving of false evidence, the production of a false document, the suborning of witnesses, and similar offences are specified as contempts when done by *any person**

Disobedience to the Assembly's orders.—It is contempt for *any person* to disobey without reasonable excuse an order made by the Assembly or a select committee to attend before it or produce a document or answer a question, or to publish evidence or documents in contravention of the Assembly's order prohibiting such publication.⁵ It is contempt for a *Member* to disobey an order given in accordance with Standing Orders by the person

¹ National Assembly Act, 1961 (Act 86), s. 29 (1).

² *Ibid.*, s. 29 (2).

³ *Ibid.*, s. 30.

* *Ibid.*, s. 31.

⁶ *Ibid.*, s. 32.

presiding at a meeting of the Assembly or a committee.¹ It is contempt for a *stranger* to enter or remain within the precincts in contravention of an order of the Assembly or to behave within the precincts otherwise than in accordance with Standing Orders or an order given thereunder.²

Defamation of Assembly.—It is contempt for *any person* to make a statement or otherwise publish any matter which falsely or scandalously defames either the Assembly as a whole or the Speaker or an individual Member or officer in his capacity as such, or which contains a gross or scandalous misrepresentation of any proceedings of the Assembly.³

PUNISHMENT OF OFFENCES

Members

The National Assembly Act specifies four different penalties for offending Members, not all of which are limited to cases of contempt of Parliament. In ascending order of gravity the penalties are: exclusion, reprimand, suspension and expulsion. Unlike a stranger, a Member who is guilty of contempt is not liable to criminal proceedings unless his act also constitutes a criminal offence under the general law.

Exclusion.—A Member whose conduct is grossly disorderly may be excluded from the precincts for the remainder of the day's sitting.⁴

Reprimand.—Where a Member has been found guilty of contempt by the Assembly he may be directed by the Assembly to be reprimanded in his place by the Speaker.^B

Suspension.—The suspension of a Member " named " for disorder has already been mentioned.⁶ Suspension is not limited to disorderly conduct, but may be imposed by the Assembly in any case of contempt. The period of suspension may be anything up to nine months, but where a Member is " named " Standing Orders lay down the period which is to apply unless the Assembly otherwise orders. If the Member has not previously been

¹ National Assembly Act, 1961 (Act 86), s. 33.

² *Ibid.*, s. 34.

³ *Ibid.*, s. 35.

⁴ *Ibid.*, s. 36.

⁶ *Ibid.*, s. 37.

⁶ See p. 316, *ante*.

" named " during the session the period is five sitting days. If he has been " named " once before, the period is extended to ten sitting days. If he has been " named " more than once before, the period is twenty sitting days. For the period of his suspension a Member forfeits his salary and allowances as a Member and the period does not count towards entitlement to a gratuity.¹

Expulsion.—A Member may be expelled if he has been found by the Assembly to have been guilty of conduct which, whether or not it amounts to contempt, is so grossly improper as to indicate that he is unfit to remain a Member. At least seven days' notice must be given of a motion for expulsion, and the votes of at least two-thirds of the total number of Members are required.²

Officers

Where an officer other than the Speaker or Deputy Speaker has been found by the Assembly to be guilty of contempt the action which may be taken by the Assembly itself is narrowly limited. Since the officer will normally be a civil servant the appropriate punishment will be by way of disciplinary proceedings under the Civil Service Act, 1960 (CA. 5). Accordingly the National Assembly Act merely provides that the Assembly may order the finding of contempt to be reported to the Civil Service Commission. The Assembly may also suspend the officer from duty pending the conclusion of disciplinary proceedings. While suspended he must not enter the precincts.³ No special provision is made for misconduct by the Speaker or Deputy Speaker. The only remedy the Assembly would have against an offending Speaker would be to dismiss him: the Deputy Speaker is subject to the same penalties as any other Member.

Strangers

As might be expected, the severest penalties are reserved for strangers. In ascending order, they are as follows: exclusion, reprimand, detention for one day, criminal prosecution. In addition, a stranger who is trespassing may, like a Member who has been suspended or excluded, or an officer who has been suspended, be removed from the precincts by the Marshal or any

¹ National Assembly Act, **1961** (Act 86), ss. 6 (4), 38; Standing Order 51 (5).

² National Assembly Act, **1961** (Act 86), s. 39.

³ *Ibid.*, s. 40.

other officer, who is entitled to use such force as is reasonably necessary.

Exclusion.—When a stranger has been found by the Assembly to be guilty of contempt, the Assembly may order him not to enter the precincts for a period not exceeding nine months.¹ Although in many cases this would hardly amount to any punishment at all, there are some people, such as lobby correspondents of newspapers or news agencies, who might suffer from being denied access to Parliament House.

Reprimand.—A stranger found guilty of contempt may be ordered by the Assembly to appear at the bar of the House and be reprimanded by the Speaker.²

Arrest and detention.—Any officer may, without warrant or order, arrest a stranger whom he sees misbehaving in a way which amounts to contempt, or whom he reasonably suspects to have been guilty of such misbehaviour. The arrest must be reported to the Speaker, who may order the stranger to be detained for the remainder of the day's sitting or handed over to the police to await criminal prosecution.³

Criminal prosecution.—Whether or not any proceedings have been taken against him by the Assembly itself, a stranger who has committed a contempt of Parliament is liable to criminal prosecution. If found guilty by the court he may be sentenced to imprisonment for up to one year or fined up to £G100, or both.⁴ Certain contempts, notably bribery and perjury, constitute offences under the Criminal Code and may be prosecuted accordingly, whether committed by strangers or by Members or officers.

2. THE CABINET

The Cabinet is the body which, as part of its constitutional function of exercising general direction and control over the government of the country, decides what legislative proposals are to be introduced into the National Assembly or carried into

¹ National Assembly Act, 1961 (Act 86), s. 41.

² *Ibid.*, s. 43.

³ *Ibid.*, s. 42.

⁴ *Ibid.*, s. 45.

effect by statutory instrument. As the opportunities available for the introduction of private Members' Bills are not used, the Cabinet in practice entirely controls the introduction of Bills. Since 1951, when the Assembly was first established, the present Government has enjoyed a substantial Parliamentary majority. This has meant that a Cabinet decision to introduce a Bill has, with a few exceptions, been equivalent to a decision to pass the Bill into law. Cabinet Ministers are also leading Members of the Assembly, and are responsible for explaining during the passage of a Bill the Cabinet's object in promoting it. There is thus a close link between the two bodies, and while Members of Parliament speak their minds freely on the Bills put before them, and have wide opportunities for reshaping and even rejecting Government Bills, it is true to say that in Ghana as in many other democracies it is the decisions of the Cabinet that provide the motive power for legislative action.

The way in which the Cabinet carries out its various and important functions in the legislative process will be explained in the course of the two following chapters. Here we will merely describe briefly its composition, legislative role and general organization. The provisions of the Constitution which provide for the existence of the Cabinet have already been described.¹ They are amplified by Part I of the Cabinet and Ministers Act, 1960 (C.A. 3). At the time of writing, one year after the inauguration of the Republic, the Cabinet consists of the President and fifteen Members, and normally meets twice a week on Tuesdays and Fridays. Meetings are called by the President or, in his absence, by a Cabinet Minister authorised by the President for that purpose.² The President is required to attend and preside at Cabinet meetings whenever practicable. When the President is not at the meeting a Cabinet Minister authorised by him to do so is required to take the chair.³ At present the Cabinet meets in the President's headquarters at Flagstaff House, Accra; the Cabinet table and chairs are an exact replica of those used at 10, Downing Street—a gift from the British Government at the inauguration of the Republic. Cabinet meetings are not limited to Members of the Cabinet, and other persons holding office in the Government or the Convention Peoples Party are frequently

¹ See pp. 144 *et seq.*, *ante*.

² Cabinet and Ministers Act, 1960 (C.A. 3), s. I. In practice Cabinet meetings are rarely if ever held in the absence of the President.

³ *Ibid.*, s. 2.

invited to attend and voice their opinions.¹ This is expressly recognized by s. 3 of the Cabinet and Ministers Act, which states:

"... any proceedings of the Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Cabinet or otherwise took part in the proceedings."

The section goes on to provide that the quorum is to be five although, as in the case of the National Assembly, this does not become operative unless attention is drawn to the lack of a quorum. Cabinet decisions are by simple majority, the President or other person presiding having a casting vote as well as his original vote.²

The Cabinet does not usually decide to embark on legislation unless a memorandum advocating this has been laid before it by a Minister after consultation with his advisers, with the Law Officers, and with interested bodies and persons outside. It sometimes happens however that a discussion will arise in Cabinet about some matter which has not previously been considered in the context of legislation. This may be one of the many non-legislative subjects on the agenda or may be something raised in the spontaneous discussions which frequently occur. These spot decisions, taken without advice and background information, are often difficult to implement. They happen frequently enough to justify the statement that the Cabinet has a twofold role as a legislative functionary. On the one hand it takes decisions about legislative proposals initiated elsewhere; on the other it initiates such proposals itself and commands their execution. As will be seen, the Cabinet not only decides on the principles of new legislation but also on the detailed drafts by which it is to be carried into effect and on the timing, amendment and, where necessary, withdrawal of Bills.

Cabinet Secretariat

The Cabinet and Ministers Act provides that the Secretary to the Cabinet, who is the administrative head of the civil service, is to have charge of the Cabinet office. He is required, in accordance

¹ In addition to the actual members of the Cabinet, the following are invariably notified of the agenda and invited to attend: the Regional Commissioners, the Minister Resident in Guinea, the Guinea and Mali Resident Ministers in Ghana, the Executive Director of the Development Secretariat, and the General Secretaries of the T.U.C. and Ghana Farmers Council.

² Cabinet and Ministers Act, 1960 (C.A. 3), s. 3 (3), (4). In practice voting does not occur.

with such instructions as may be given to him by the President, to arrange the business for, and keep the minutes of, meetings of the Cabinet, and convey the decisions of the Cabinet as soon as is practicable to the appropriate person or authority.¹ In practice these duties are delegated to an official known as the Deputy Secretary to the Cabinet, who acts as head of the Cabinet Secretariat. He is assisted by the Clerk to the Cabinet, who relieves him of much routine work and acts as a " progress chaser " to ensure that effect is given to Cabinet decisions. Apart from the Assistant Secretary, who is subordinate to the Clerk, the remainder of the Cabinet Secretariat consists of the usual secretarial and clerical staff.

Legislation committee

There are a number of standing committees of the Cabinet which handle matters such as delegation of the President's powers, preparation of Government speeches, civil service establishments and so on. The only one which is concerned with our present subject is the Legislation Committee. The chairman of the Committee is the Minister for Parliamentary Affairs and Leader of the House. The other members at present are the Minister of Justice, the Minister of Foreign Affairs and the Minister of Transport and Communications. The meetings of the Committee, which are also attended by Parliamentary Counsel and members of the President's office, normally take place about one month before the beginning of a meeting of the National Assembly. The Committee considers a draft legislative programme for the Assembly meeting and the two following meetings and, in the light of comments from Parliamentary Counsel as to the drafting progress of the various Bills, approves the programme with such revision as may be necessary. The draft programme is compiled from returns submitted by the Ministries and special Departments in response to a request circulated by the President's Office about two months before each meeting of the National Assembly. When approved by the Legislation Committee, the programme is submitted to the full Cabinet, who usually pass it without discussion.

The work of the Legislation Committee is unfortunately hampered by factors such as the suddenness with which legislative

¹ Cabinet and Ministers Act, 1960 (C.A. 3), s. 4.

proposals are often decided upon and put through, the departmental delays caused by congestion of work and reorganization, and the frequent visits abroad of the President, in whose absence major decisions are rarely taken. The result is that the carefully-planned programme for the next meeting often bears little relation to what in fact occurs.

3. DEPARTMENTAL MINISTERS

Apart from their legislative functions as Members of Parliament and members of the Cabinet, Ministers who are in charge of Government departments have certain additional duties. Besides their general responsibility in relation to legislation dealing with subjects assigned to them by the President, such Ministers may be regarded as having the following specific functions.

(1) Initiation of proposals

An alert Minister, who has a real interest in the subjects within his portfolio, will often have his own projects for legislation. Before laying them before his Cabinet colleagues he will probably wish to set the officials in his Ministry to work on investigating the background details of the project, seeking expert advice from outside the Ministry, framing appropriate legislative proposals and so on. When this work has been done and discussed with the Minister he may decide to seek Cabinet approval in principle with a view to having a Bill drafted or he may reach the conclusion that the proposal should not after all be proceeded with.

(2) Adjudicating on proposals submitted by officials

As pointed out in the next section, administrative civil servants will sometimes come across a need for legislative action and will seek the agreement of their Minister to approaching the Cabinet. Again, as mentioned in Section 5 of this chapter, Parliamentary Counsel, besides drafting legislation, also have occasion to propose it. Proposals at the official level cannot reach the Cabinet without the intervention of a Minister—or of course the President himself. The departmental Minister will thus often be called upon to decide whether to agree to submit a memorandum to the Cabinet asking for the necessary approval.

(3) Ensuring that Cabinet decisions are implemented

It is the duty of a Minister, once the Cabinet has ordered legislation to be prepared on a matter within his portfolio, to ensure that his officials do what is required to comply with the order, and to give them such assistance as lies within his power.

4. ADMINISTRATIVE OFFICIALS

Officials in the administrative class of the civil service, and their counterparts in statutory corporations and other public bodies, have an important part to play in the processes of legislation.¹ Their functions may be summarized as gathering information, shaping policy, advising Ministers and instructing Parliamentary Counsel.⁸

In the course of their day-to-day work in supervising the workings of the executive government, administrative officials come across many instances which reveal defects in the law or show the need for novel departures. This is particularly so where the law in question is recently enacted, as is the case with a great deal of Ghana's law in these early days of the Republic. On the other hand defects are equally likely to exist in old law designed for the quite different circumstances of a Crown Colony. As such instances accumulate in the files of the Ministry it is likely that legislative action will be proposed from one quarter or another. If no one else suggests it, the Principal Secretary or Head of Department may himself raise the matter with his Minister. In any event the background information thus collected will be invaluable in helping to produce effective new law.

Another aspect of the need for information arises in the case where it is desired to set up a branch of law or a statutory system which is quite new to Ghana. An independent state needs to provide for matters, such as a central bank, a currency system, a law of nationality and citizenship, and a national defence organization, which in the case of a dependency are the responsibility of the ruling power. Moreover the rulers of Ghana have ideas of their own to carry out, as for example the development of co-operative enterprises, and the creation of a great hydroelectric and aluminium smelting project on the Volta River. In

¹ For details of the administrative class, and of the civil service organization generally, see pp. 180 *et seq.*, *ante*.

² Parliamentary Counsel, whose main function is the drafting of legislation, are described in the next section, p. 339, *post*.

all such cases legislation is necessary, and the administrative official may need to go far beyond Ghana in his search for useful information. Other countries may be asked about their own experiences in similar matters; international bodies such as the specialist organizations of the United Nations may be consulted, and so on. Occasionally it may be necessary to appoint a commission of enquiry to carry out a thorough investigation,¹ but in most cases it falls upon the administrative officer to organize the accumulation of facts upon which a sound legislative structure can be built.

The crucial role of the administrator is in the shaping of policy. The need for this arises as soon as a legislative project comes under discussion. If it first comes under discussion at the official level some suggestions as to the policy to be followed must be worked out for submission to the Minister. If the Minister raises the matter himself he will need the assistance of his officials in settling the outlines of policy which are to be laid before the Cabinet in seeking approval in principle. If the Cabinet decides to legislate on its own initiative it will not do more than state briefly the policy to be followed, leaving it to the departmental officials, in consultation with their Minister, to hammer out the details.

In the normal case, where Cabinet approval in principle has been sought and obtained, the shaping of policy then enters on another, more detailed, stage with the need to prepare drafting instructions. It is now that the main outlines should be filled in, so that Parliamentary Counsel can be presented with a complete picture of what is wanted. Where the Cabinet has decided to legislate on its own initiative the two stages are combined, since the draftsman must be instructed as soon as possible thereafter.²

Throughout all stages of legislation the administrative official needs to be quick-thinking and assiduous. He should be always ready with sound and well-informed advice whenever his Minister needs it. He may, if he is alert, be able to prevent the taking of ill-considered decisions, or at least secure a necessary modification in them. This role does not come easily to Ghanaians, who are not accustomed to dispute (however tactfully) with their superiors and whose natural courtesy inclines them to agree

¹ Commissions of enquiry are described in Section 6 of this chapter, p. 346, *post*.

² Drafting instructions are dealt with more fully in the next chapter, p. 365, *post*.

with whatever is said. It is important that both Ministers and their subordinates should appreciate how essential it is that legislative decisions should not be taken without full advice and information and that the official who insists on proffering useful, though perhaps unpalatable, advice is discharging his duty far better than he who tells his Minister only what he wants to hear.

5. PARLIAMENTARY COUNSEL

The drafting of all Government Bills and of the more important legislative instruments is carried out by specialist lawyers known as Parliamentary Counsel.¹ The Parliamentary Counsel Branch of the Attorney-General's Department was set up in 1957 and re-replaced the system under which legislative drafting was not treated as a specialised subject but was entrusted to a Government lawyer temporarily holding the post of Legal Draftsman in the course of his career in the legal service of the Colonial Government. The advent of independence called for a heavy programme of legislation, and the Government decided to follow the pattern of the Parliamentary Counsel Office in Westminster and encourage a limited number of lawyers to devote themselves to Parliamentary drafting. There are now about half a dozen draftsmen in the Parliamentary Counsel Branch.

In the case of a new country like Ghana, which relies exclusively on the enactment of statutes for remodelling its system of laws, it is difficult to exaggerate the importance of the draftsman's role in legal development. Almost invariably he is the sole lawyer concerned with working out the details of a legislative project, and the burden of producing a sound Bill, well adapted to carry out Government policy and yet fitting harmoniously into the framework of an evolving jurisprudence, rests almost entirely on him.

Furthermore his work is not, before it passes into law, subjected to the close and expert scrutiny which is brought to bear on legislative proposals in countries with a longer experience of Parliamentary government. The importance which thus attaches to the draftsman is not widely understood; perhaps because, in

¹ An exception exists in the case of Bills relating to income tax, which have always been drafted in the Income Tax Department.

Ghana as elsewhere, there is a tendency to underrate statute law.¹

Nor is very much known about the way the draftsman goes about his task. A detailed exposition of drafting technique is beyond the scope of this book but it may be helpful to give here a brief account of some of the more important aspects.

Drafting technique

It is necessary that there be rules to govern the drafting of legislation. Without these there would be such a lack of consistency in the law as seriously to impair its effect. Moreover many words would be needed to convey a meaning which, by the use of some drafting convention, can often be briefly expressed.

As the American draftsman, Reed Dickerson, has pointed out:

" Suitable standards and conventions not only save the draftsman's time, but the time of private citizens, administrative officials and the courts. (It is safe to say that the lack of these things costs the government and the public many millions of dollars annually.) More important, they improve the quality of the end product as a vehicle for carrying out the legislative will. Sound legislative approaches, consistence, and clearness are tools for eliminating errors of substance or omission that would otherwise remain hidden until after enactment."²

With the introduction of a Republic in Ghana, the opportunity arose of laying down new rules for the drafting of legislation which it was hoped would promote its maximum efficiency. These are dealt with elsewhere in this Part and here we need only mention the necessity, in construing the new legislation, of bearing these rules in mind. The draftsman will have relied upon them and his meaning cannot be understood unless the reader consults them also.

As we shall see in the two following chapters, the draftsman is given instructions as to the changes in the law which, as a matter of policy, are required to be made. It is his task to discover how the policy can be implemented in the way which will best fit the existing framework of the law. The change of law must leave

¹ Professor G. W. Paton has remarked on this tendency in English legal education. In his view " not enough emphasis is placed on the technique of drafting statutes " and " only the fullest knowledge of the technique of drafting and interpretation of statutes will succeed in retaining some consistency in English law as a whole": *A Text-book of Jurisprudence* (2nd Edn.). p. 195.

* *Legislative Drafting*, p. 6

no loose ends elsewhere to cause trouble later nor must it conflict unintentionally with legal principles that are intended to remain undisturbed. It is a job of dovetailing. All this means that a good deal of research and hard thinking is required of the draftsman. It may often have to be done against the clock, since legislation in Ghana is usually required very quickly and the belief is widely held outside the Parliamentary Counsel Branch that the interval between taking a policy decision and producing a Bill should normally be a matter of days, if not hours, whereas in many cases it ought to be a matter of months.¹ So far as he can in the time allowed him, the draftsman will prepare the ground thoroughly before beginning his draft, and will act upon the principle of taking nothing he is told about the legal background for granted. He will check every reference by going to the source, and never merely accept what he is told by those instructing him as to the effect of any provision of the existing law, or rely entirely on his own memory. The good draftsman has the sort of memory that warns him that a particular point needs consideration and gives him some idea of where to look it up. Sometimes a provision in a Bill will make necessary an extensive search of the Statute Book to make sure that no consequential amendments have been overlooked. Occasionally it may even be necessary for the draftsman to go right through the Statute Book for this purpose. An obvious example is the enactment of the Constitution, which called for consequential amendments in almost every Ordinance and Act, but the need may arise in ordinary legislation.²

The drafting of legislation is a task that calls for the highest degree of accuracy.³ In construing a legal enactment, every word counts—at least if proper rules of drafting have been observed and no unnecessary words included. If, as is nearly always the case, a Bill involves some amendment of existing law and is not an entirely fresh departure, it is necessary before drafting is begun to study the law which is to be altered. No Act should ever be

¹ " . . . there is for each bill an irreducible period for preparation . . . as the time is cut down, the quality deteriorates, so that ultimately the point is reached where no bill fit for introduction can be produced ": Driedger, *The Composition of Legislation*, Ottawa, 1957, p. xvi.

² As in the case of the Statutory Instruments Order, 1960 (L.I. 9); see p. 267, *ante*.

³ " Bill drafting must have the accuracy of engineering, for it is law engineering; it must have the detail and consistency of architecture, for it is law architecture ": cited Reed Dickerson, *Legislative Drafting*, p. 11.

amended unless it has been carefully examined from beginning to end. This is necessary because any change nearly always involves consequential alterations elsewhere in the Act. It may well involve consequential amendments also in other Acts. It is the duty of the departmental official who prepares instructions for the draftsman to indicate the places in which amendments of this sort will be required, but the draftsman cannot rely on this and must make his own researches.

Apart from accurately informing himself as to the existing law, the draftsman must of course display accuracy in his Bill. He must be accurate in relying on definitions contained in the Interpretation Act, and on those he inserts in his Bill. It is not uncommon to find an expression defined in the Bill itself which is not accurately employed. A provision in a Bill may sometimes depart from a definition in using a particular term, but it must be done deliberately and in a manner which clearly shows that a departure is being made.

An attention to accuracy is needed at all stages of the preparation and passing of a Bill. It is rarely wise to include in a first draft of a Bill any provision whose accuracy is suspect. It may be tempting to put something down with the intention of checking on it later, but a later opportunity may not arise or the draftsman may forget that the draft was provisional. Whenever an alteration is made in a draft care has to be taken to see that consequential alterations are made. These may be no more than the renumbering of clauses and section references, or they may involve substantial alterations all through the Bill. A thorough final check of the accuracy of a Bill also has to be made after its publication in the *Gazette* and before the blue copies are printed for distribution to Members of Parliament. By Standing Order 58(1) it is permissible, with the consent of the Clerk of the National Assembly, to make minor alterations in the published text before the Bill is introduced. If a Bill is amended during its passage through the Assembly, accuracy is again called for in making sure that all consequential amendments are effected.

Accuracy is again essential where a statutory instrument is being drafted. It is the first duty of the draftsman of a statutory instrument to ensure that it does not exceed the power under which it is made. Accordingly the most careful scrutiny of the empowering Act must be made. Care has to be taken to recite in the instrument the occurrence of any events which are a necessary pre-requisite to the exercise of the power. Thus the

enabling Act may say " If the Minister is satisfied that a state of emergency exists he may, by executive instrument. ..." The executive instrument will begin by reciting that the Minister is satisfied that a state of emergency exists. The instrument will also employ the same terminology as the enabling Act.¹

Accuracy (and indeed industry) is also needed in the marking and checking of proofs. Although Ghana is the fortunate possessor of an excellent Government Printing Department, misprints cannot be entirely avoided and it is the responsibility of the draftsman as well as the printer to check proofs with meticulous accuracy. To have to ask the Cabinet to approve the introduction of an amending Bill because, say, a line of type has dropped out unobserved is to confess a failure which every self-respecting draftsman would wish to avoid—even at the cost of much time spent in the pedestrian task of proof-reading.²

Alertness is also needed in drafting. If he is not alert, the draftsman may assume that because he has been instructed to prepare a Bill which will effect a particular change in the law he must therefore proceed to prepare the Bill in every case. It frequently happens, however, either that no Bill is necessary because the desired purpose is already provided for by the existing law or that the instructions for the Bill are misconceived because it would be simpler and more satisfactory to achieve the desired result in some other way—perhaps by some slight modification of an existing enactment or procedure instead of the setting up of an entirely new system. It is sometimes said that one of the disadvantages of statute law as compared with other forms is that its growth is inorganic. Whereas customary law or common law is developed gradually by the working out and extension of established principles, statute law is a crude system of disconnected provisions. If the draftsman is alert, he can on occasion take some of the force out of this criticism by producing the desired result through a modification or development of an existing and familiar statutory provision—a process which has something of the organic about it.

Another aspect of the need for alertness lies in the field of

¹ For an example of this see s. 4 (1) of the Statutory Instruments Act, 1959 (No. 52) and para. 2 of the Statutory Instruments Order, 1960 (L.I. 9).

² " Except for uncontrollable time limitations, the other principal reason why most proposed Bills are insufficiently revised is either a distaste for detail or simple laziness. If a lawyer lacks the will to overcome these difficulties he will never be a first-rate draftsman": Reed Dickerson, *Legislative Drafting*, p. 41.

policy. The draftsman ought not to be concerned with policy as such, but he is concerned, and has a duty, to see that the policy decision is effected in a way that will be workable. He should therefore be alert to observe flaws in the policy scheme which may interfere with its smooth working when transformed into law. For this he also needs some degree of imagination. By visualising what a scheme will mean in terms of real life when it comes to be put into operation, the draftsman may be able to suggest improvements and to point out defects. For example, he may be instructed to prepare a Deportation Bill which includes a provision that any ship or aircraft leaving the country may be required to include among its passengers the alien who is to be deported. If the draftsman tries to visualise the circumstances in which the deportation may take place and the countries to which persons may be deported, he will realise that it may in some cases be necessary to deport a person to a neighbouring country, and to do so by the use of a land vehicle. He will thus be able to suggest the addition of this form of transport to those mentioned in his instructions. As Sir Courtenay Ilbert has said:

If a parliamentary draftsman is to do his work well, he must be something more than a mere draftsman. He must have constructive imagination, the power to visualize things in the concrete, and to foresee whether and how a paper scheme will work out in practice.

There is also room for subtlety in the art of drafting. No enactment can deal in express terms with every situation in which it may fall to be applied. For one thing, no one can envisage at a time when legislation is being prepared all the possible combinations of future circumstances. For another, even if such foresight were possible, an enactment which tried to deal expressly with all combinations of events would be so long and complicated as to be unendurable. This problem is one of the most difficult facing the draftsman. He can meet it by producing a draft which, although its terms are short and simple, yet by the use of subtlety contains the key to determine a very large number of possible combinations of circumstance.

A manifestation of subtlety by the draftsman is in the use of implications. This needs to be frequent, both to avoid length and unwieldiness in the draft and also to avoid stating propositions which are obvious and yet may need to be confirmed in some way.

¹ *Legislative Methods and Forms*, p. 240.

Thus, in a Bill setting up a new office, the draftsman, in defining the circumstances in which the office may become vacant, will want to avoid providing expressly that a vacancy shall arise on the death of the office-holder, since this is so obvious as to make a formal statement of it absurd. He may on the other hand feel reluctant to leave the matter entirely without mention. A simple solution is to bring it in in a provision relating to the method by which the vacancy is to be filled.¹

Implications are of great importance in drafting and both the draftsmen and the reader should constantly watch for them. To take one example, a statement that " No person shall supply a poison in a container which does not bear the prescribed label " contains an implication that everyone is free to supply poison in a container which does bear the prescribed label. This implication may be cut down by other provisions. Elsewhere the Act may state that no person who is not a pharmacist shall supply any poison. These two provisions taken together carry by implication the proposition that every pharmacist is free to supply poisons if they are in correctly-labelled containers. To add this proposition expressly is neither necessary nor desirable, since legislation proceeds on the principle that a man may do as he chooses except where the law forbids him.

Other functions of Parliamentary Counsel

The functions of Parliamentary Counsel are not limited to the actual preparation of legislation but extend to the initiation of proposals for legislation on matters of peculiarly legal concern. In the course of their duties Parliamentary Counsel inevitably come across cases where some defect in the law calls for legislation, or where heavy amendment of enactments dealing with a particular subject has made their consolidation desirable. Furthermore when, as at the present time, a programme of statute law reform is under way, Parliamentary Counsel will need to put forward the necessary Bills.

The functions of Parliamentary Counsel also include the giving of advice to Government departments, the police and other public bodies on the meaning and effect of the law in force. Because of the absence of departmental lawyers many requests for legal advice are received by the Attorney-General's Department. Where these relate to the construction of Acts or statutory

¹ See, *e.g.*, ss. 2 and 3 (2) of the National Assembly Act, 1961 (Act 86).

instruments they are generally referred to the draftsman of the legislation in question, following the practice instituted in England when the Parliamentary Counsel Office was established in 1869.¹ This is done notwithstanding Lord Halsbury's well-known dictum

"... in construing a statute I believe the worst person to construe it is the person who is responsible for its drafting."²

As Sir Courtenay Ilbert has pointed out

"... the Parliamentary Counsel can often, from his knowledge of the history and intention of an enactment, give a clue to its true construction."³

It is obvious that no one can know the structure and mechanism of an Act so well as its author. If a doubt arises he is often able to point to the provisions which will resolve it.

Parliamentary Counsel also have a close relationship with the Clerk of the National Assembly, whom they are often called upon to advise on matters of Parliamentary procedure. Among their other miscellaneous functions is that of supervising the publication of Acts and statutory instruments and the maintenance of the binder service.⁴

6. COMMISSIONS OF ENQUIRY

Before concluding this discussion of legislative functionaries, we must give some account of commissions of enquiry. The Commissions of Enquiry Ordinance (Cap. 249) empowers the President to appoint one or more commissioners to enquire into any matter in which any enquiry would, in the opinion of the President, be for the public welfare. Although not limited to matters requiring legislative action—and indeed frequently used for other purposes—the Ordinance has proved very useful in tackling complicated problems of law reform. Recently, for

¹ Ilbert. *Legislative Methods and Forms*, 1901, p. 93.

² *Milder v. Dexter*, [1902] A.C. 474, at p. 477. The remark was made in explanation of Lord Halsbury's refraining from delivering a judgment in a case concerning a statute largely drafted by him. Although it may be undesirable that a draftsman should deliver judgment on his own work in court this does not of course mean that his advice as to construction is necessarily without value.

³ *Op. cit.*, p. 94.

⁴ See pp. 291 *et seq.*, *ante*.

example, commissions have been set up to investigate such matters as company law, inheritance and insolvency.¹

In its usual form, the commission begins by reciting the powers under which it is made and the opinion of the President that an enquiry " into the matters hereinafter mentioned " would be for the public welfare. It then names the commissioners, states the quorum and sets out the terms of reference. After appointing the chairman the commission may then give directions as to the way in which the commissioners' task is to be carried out. In the case of the Insolvency Commission for example, the terms of reference were—

- (a) to consider and make recommendations regarding the better protection by law of creditors and debtors in cases of involvency; and
- (b) to consider what legislation is desirable for the purpose of the administration of the assets of insolvent persons, estates, firms and companies and of related matters, and to make detailed recommendations thereon.

The directions to the commissioners required them " to take into account the need for encouraging African enterprise in Ghana and the encouragement of foreign investment " and also to consult with the company law commissioner, whose final report was still pending.

The commission usually ends by appointing a secretary, fixing the time and place of the first meeting, stating whether meetings are to be in public or private, requiring the Commissioner of Police to place constables at the disposal of the commissioners, and finally instructing the commissioners, in reporting their conclusions, to embody a full statement of their reasons. After it has been issued by or in the name of the President, the commission must be published in the *Gazette* and takes effect from the date of publication.²

Before embarking on his duties, each commissioner makes an oath or affirmation to the effect that he will faithfully, fully, impartially and to the best of his ability discharge the trust and perform the duties devolving on him by virtue of the commission.³ The times and places of meetings other than the first

¹ See *Ghana Gazette*, 25th August, 1958 (company law) 23rd May, 1959 (inheritance) and 6th February, 1960 (insolvency).

² Commissions of Enquiry Ordinance (Cap. 249), s. 16.

³ *Ibid.*, s. 5.

are normally left to the discretion of the commissioners, as is the decision on whether meetings should be in public or private. Commissioners have the same powers as the Supreme Court to summon witnesses and examine them on oath, and also to call for the production of books, plans and documents.¹ A witness who gives false evidence commits perjury.²

As an example of the way commissions of enquiry operate as legislative functionaries we may take the Insolvency Commission, whose terms of reference have been given above. The commission consisted of the secretary of the Bank of Ghana as chairman, a Kumasi business man (who was also President of the Kumasi branch of the Ghana Chamber of Commerce), and an expert in company law and administration seconded from the Board of Trade in London. A Senior State Attorney from the Attorney-General's Department was appointed as secretary. No bankruptcy or insolvency law existed in Ghana, so the commission had a clear field. It was decided that the major part of their recommendations, relating to the insolvency of individuals, should be presented in the form of an annotated draft Bill. This would enable greater precision to be obtained and would avoid the lengthy delay that otherwise would necessarily ensue between the delivery of their report and the enactment of the resulting law. Since none of the commissioners was experienced in the drafting of legislation, Parliamentary Counsel was attached to the commission for this purpose.

The commission was appointed on 20th January, 1960 and its appointment took effect on 3rd February. The first meeting was held on 18th February and an opening statement was read by one of the commissioners. This outlined some of the main questions with which the enquiry would be concerned and on which the commissioners would appreciate advice, which could be given at the meetings of the commission or in the form of memoranda. The statement then set out the principal objectives of insolvency legislation and gave the commissioners' tentative views on some of the more important points.³

The commission held 33 meetings in towns all over Ghana. It met 27 organizations and other bodies and a total of 184 persons, as well as receiving a quantity of written memoranda.

¹ *Ibid.*, ss. 10, 12.

² *Ibid.*, s. 11.

³ *Opening Statement by the Commissioners appointed to enquire into the insolvency law of Ghana, Accra, 18th February, 1960.*

After considering, with the aid of a bankruptcy expert from the United Kingdom, all the evidence received, the commissioners set about the task of deciding upon the content of the draft Bill. They reached the conclusion that this should be novel in its terms and approach and, apart from incidental borrowings, should not be copied from the law of any other country. The commission's draft proposals, consisting of a brief introduction and an annotated draft Bill, were published on 15th April, 1961.¹ Following this the commissioners again embarked on a tour of the country, in the course of which 19 further meetings were held. After considering the comments received on the draft Bill and making appropriate amendments, the commissioners presented their final report to the President on 31st August, 1961.^a

¹ *Draft Proposals of the Commissioners appointed to enquire into the insolvency law of Ghana*, Accra, 15th April, 1961.

² *Report of the Commissioners appointed to enquire into the insolvency law of Ghana*, Accra, 31st August, 1961.