CONSTITUTIONAL LAW OF GHANA

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PART III – LAW MAKING UNDER THE REPUBLIC

CHAPTER 8

LEGISLATIVE METHODS – ACTS OF PARLIAMENT

Having described the nature of an Act of Parliament and the functionaries who are concerned with its enactment, we now turn to the detailed methods used to turn a legislative proposal into an operative Act. In order that these may be understood it is necessary first to explain the structure of what begins life as a draft Bill and, if it survives the hazards of Parliamentary procedure, ends as an Act of Parliament. We shall not only describe the component parts of a Bill or Act but also give some account of the way in which it is, or should be, drafted. The importance of this is not limited to the draftsman himself: any person who looks at a Bill or Act will understand it better if he knows something of drafting methods.

1. THE STRUCTURE OF A BILL

As is recognized by the Acts of Parliament Act, the structure of a Bill corresponds closely with that of an Act, and a description of the one virtually describes the other.[1] Such differences as there are will app:ar in the course of this chapter.

Short Title

Every Bill is required to bear at the head a short title, the citation of which, when the Bill has become an Act, is sufficient to identify the Act.[2] The short title almost always ends with the word " Act " followed by the year in which assent is given. Only in the case of codifying Acts is this practice occasionally departed from, as for example with the Criminal Code, 1960 (Act 29).

The short title is intended to serve two purposes. One is to indicate at a glance the subject-matter of the Bill, and later the Act. The other is to provide a brief name by which the Bill or Act can be referred to. The first purpose requires that the short

[1] See Acts of Parliament Act, 1960 (C.A. 7), s. 1.
[2] *Ibid.*, ss. 2, 12.

title should be as descriptive as possible; the second that it should be as short as possible. It will be apparent that these two purposes may compete. If, for example, a Bill dealt with Ministers, the Cabinet, Government Departments and Ministerial Secretaries, a fully descriptive short title might be The Cabinet, Ministers, Government Departments and Ministerial Secretaries Act. But it would be intolerable to have to write all this out in order to refer to it, and a briefer title must therefore be chosen, for example, the Ministers of Ghana Act. This is not chosen merely by picking out one only of the matters with which the Bill is concerned. Ministers will be found to be connected with each of the four matters referred to previously. They form the Cabinet, the Government Department is a Minister's Department and Ministerial Secretaries are appointed to assist Ministers. The art of choosing an appropriate short title lies in selecting what is the predominant purpose of a Bill. If it proves impossible to discover one predominant purpose this may indicate that the subject-matter should be divided among two or more separate Bills.[1]

A number of different short titles may be equally appropriate for the same Bill, but some consistency should be used in choosing titles for Bills dealing with the same subject-matter. For example, if there is already an Act entitled The Representation of the People Act, a further Act on the same subject should be given a similar title and not called for example The Electoral Provisions Act, although in other respects the latter might be equally suitable.

A word should be said about Consolidation Acts. It was the custom towards the end of the last century in England always to use the word " consolidation " in the short title of a Consolidation Act, e.g. The Customs Consolidation Act, 1876. This practice adds to the length of the short title, and it is now considered to serve no useful purpose. In any case consistency requires that it should either be used for all Consolidation Acts or none.

Where an Act makes minor amendments in a major Act, it is sometimes thought desirable to include the word " amendment " in the short title. Thus an Act amending a Courts Act which contains the bulk of the statutory provisions relating to courts might be called the Courts (Amendment) Act. Since however most Acts which do not consolidate existing Acts will

[1] *Cf.* Standing Order 57 (1): " Matters having no proper relation to each other shall not be provided by the same Bill."

be found to amend them, there is much to be said for omitting the word amendment in the short title. Nor is it necessary to include the name of the Act which is being amended.[1]

Where a Bill contains provisions on a large number of minor points within one subject, it is sometimes useful to use the words " miscellaneous provisions " in the short title. This indicates that the Bill is not concerned with major amendments of the law.

Long title

The short title is required to be followed by a long title describing the provisions of the Bill.[2] The Interpretation Act provides that the long title is to be treated as forming " part of an Act intended to assist in explaining the purport and object of the Act ".[3] Although useful, it is relatively unimportant except in relation to the restriction of debate and of the putting down of amendments to the Bill. This brings us to the doctrine of scope.

Every Bill has its own scope, and an amendment to a Bill which is beyond its scope is out of order. It is a matter for the Speaker or other person presiding at proceedings of the National Assembly on the Bill to determine what the scope is if the question should arise. In doing this, he will be guided by the long title. It is important therefore that the long title should adequately embrace everything contained in the Bill when it is introduced. If there is no desire on the part of the promoters of the Bill to restrict debate and the moving of amendments, the long title can be brief and comprehensive. If on the other hand such restrictions are desired, it may be necessary to have an elaborate long title. An example may help to make this clear. A Bill is required to do two things. One, to establish a new system of retirement pensions for the police and two, to set up a new police promotions board. If it is desired to restrict debate and the moving of amendments to these two points, the long title of the Bill might run as follows:

> " An Act to provide, in relation to the Police Service, for the establishment of a new system of retirement pensions and for the setting up of a promotions board."

[1] An awful warning of what this practice may lead to is furnished by the British Act whose short title was "the Artizans Dwellings Act, **(1868)** Amendment Act, (1879) Amendment Act, 1880".

[9] Acts of Parliament Act, 1960 (C.A. 7), s. 2.

* Interpretation Act, 1960 (C.A. 4), s. 2,

If, on the other hand, it is proposed that debate shall be free to range over the whole subject of the police, it will be enough to have a long title in such terms as

" An Act to make further provision with respect to the Police Service."

This illustrates how the long title determines the scope of a Bill. In the first example given above, the scope of the Bill is restricted to the two questions of retirement pensions and promotions. In the second example, the scope is the Police Service as a whole.

There are limits, however, to the way in which the scope can be restricted by the long title. If a Bill were intended to deal not only with police pensions and promotions, but also with the provision of marriage quarters, the payment of compensation for injury and the stoppage of pay for indiscipline, the scope could not be limited to these five matters by listing them in the long title. A Bill such as this would clearly throw the whole of the police organisation under discussion. It may be said that the scope of a Bill containing one or two specific matters can be restricted in this way, but that more than two specific matters will be likely to lead to a decision that the scope is thrown open to the whole field of the Bill.[1]

It should be emphasised that an amendment will not necessarily be out of order because it is not within the wording of the long title. In the example given above of the Police Bill dealing with five different subjects it would be quite in order to put down an amendment to deal with, e.g., recruitment. But if the long title had been drawn in restrictive terms it would be necessary, if the amendment were accepted, to amend the long title accordingly.

Strictly speaking, a Bill is out of order if it is introduced with a long title insufficient to cover the whole of its contents.[2] For this reason use is sometimes made of " sweeping up words " such as " and for matters connected therewith ". The use of such words is to be discouraged, however, as is the use of any words in the Bill which are not strictly necessary. A long title will not be construed narrowly with the purpose of holding a Bill to be out of order, and it will happen but rarely, if ever, that the provisions

[1] Since private Members rarely use their right to move amendments the doctrine of scope has not yet assumed much importance in Ghana.

[2] See Standing Order 57(2): " No Bill shall contain anything foreign to what its 1-ong Title imports."

of the long title are held not wide enough to cover the inclusion of ancillary provisions.

Preamble

A preamble was often used in former times to exp'ain the reasons and objects of the legislation. Its place is now partly taken by the explanatory memorandum which is affixed to the front of a Bill. The advantage of this is that it does not form part of the Bill and therefore no possibility can arise of inconsistency between the objects stated in the preamble and the provisions of the Bill. Such inconsistency formerly arose not infrequently and was the subject of a troublesome line of authority.

Nevertheless the preamble is not entirely obsolete, and it was thought worth while to include in the Interpretation Act the statement that the preamble forms " part of an Act intended to assist in explaining the purport and object of the Act ",[1] It is still used to add dignity to a Bill of great constitutional importance, as for example in the Constitution and the Acts of the Constituent Assembly, and its use may assist considerably in the drafting of other types of Bill, particularly where the Bill is not readily comprehensible unless some pre-existing state of affairs can be assumed to be known by the reader. Such an assumption cannot easily be made where the Bill is dealing with some matter of mainly private concern, e.g., is altering the constitution of a body such as the Red Cross or the St. John Ambulance Brigade. Suppose, for example, it is desired to extend the powers of the St. John Ambulance Brigade. The following alternatives may be open to the draftsman—

(1) To use a preamble and start the Bill as follows—

> " Whereas, by a charter of incorporation made on the 18th day of February, 1956, the St. John Ambulance Brigade was empowered to expend money for any purpose connected with the relief of persons suffering an injury:
>
> And whereas it is expedient to empower the said Brigade to expend money for other purposes:
>
> Now therefore be it enacted etc.
>
> The charter of incorporation of the Brigade is hereby amended as follows, that is to say, for the words " the relief of persons suffering an injury " there shall be substituted the words " the relief of persons suffering any injury, illness or other disability ".

[1] Interpretation Act, 1960 (C.A. 4), s. 2.

(2) To dispense with a preamble, and express the operative provisions of the Bill as follows—

" The charter of incorporation of the St. John Ambulance Brigade (which at present limits expenditure of money by the Brigade to expenditure for the relief of persons suffering an injury) is hereby amended by the substitution, for the words "persons suffering from an injury" of the words "persons suffering any injury, illness or other disability ".

The first method has the advantage of telling the reader exactly what is being done, but the second method is shorter and, in view of the advent of the explanatory memorandum, just as effective.[1] Since consistency is important, enabling those who look at Bills to know what to expect, it seems that the preamble should be reserved for the rare occasion when a Bill of constitutional magnitude is in question, or where the necessary statement of preliminary facts is lengthy and complex; and that the explanatory memorandum should ordinarily be regarded as taking its place.

Enacting formula

The enacting formula, couched in the imperative mood, is what gives effect to the legislative provisions. Formerly every section of a British Act required to be prefaced by words of enactment, but the current rule is that the enacting formula at the beginning governs all the provisions. Section 3 of the Acts of Parliament Act requires the provisions of every Act to be prefaced by the words " *Be it enacted by the President and the National Assembly in this present Parliament assembled as follows*— . . ." These words extend " to all sections of the Act and to any Schedules and other provisions contained therein ". Unlike the case in the United Kingdom, where a special formula is used for Bills in p sing 'axation or making good Pa liamentary grants the enacting formula used in Ghana is invariable, although where there is a preamble the words " Nowtherefore " are inserted before " be it enacted ".

Clauses

After the preliminary features described above come the substantive provisions of the Bill. Where a Bill contains more than

[1] The second example incidentally illustrates the use of descriptive words where another enactment is mentioned and it is desired to show its purport. Such words " are intended for convenience of reference onlv and do not form part of the enactment ": Interpretation Act, 1960 (C.A. 4). s. 5.

one substantive provision it is required to be divided into numbered clauses, which on enactment become sections.[1] Bills vary in size from the one-clause Bill, which has only a single thing to say, to the major Bill containing hundreds of clauses and designed to regulate a whole branch of the law.[2]

One of the first arts of the draftsman is to be able to divide his material into appropriate clauses. He needs to take plenty of elbow-room, and begin a fresh clause as each new aspect of the subject comes to be dealt with. This rule would only need to be departed from if it were expedient for political reasons, in assisting the passage of the Bill, to keep down the number of clauses.[3] The draftsman engaged in consolidation should bear in mind that an Act which he is consolidating may have been drafted with such political reasons in mind, and may therefore have a smaller number of sections, each containing more material, than is really desirable. In consolidation of course there is no reason why the clauses should not be taken apart so that the reader gets a clearer view. Amendments made during the passage of a Bill may also have distorted the structure, and this again can be corrected in consolidation.

Except where the material to be embodied in a clause is short, it will be necessary to divide the clause into subsections.[4] Each subsection, or, where the clause is not divided into subsections, the clause itself, should read as one sentence. It is not generally desirable to include successive sentences within one subsection, since it becomes difficult to identify a particular sentence when reference needs to be made to it. If it is thought necessary to do so, as where an expression used in a subsection needs to be defined, the second sentence should be inserted as a new paragraph. Where an expression requiring definition is used only once in a Bill the definition should be placed as a separate paragraph in the subsection in which the expression is used. If it is used several

[1] Acts of Parliament Act, 1960 (C.A. 7), s. 4. *Cf.* Standing Order 56.

[2] Until 1960, in Ghana as in the United Kingdom and elsewhere it was impossible to have a genuine " one-clause Bill " since it was always neces sary to have a clause conferring a short title. This pointless requirement was done away with by ss. 2 and 12 of the Acts of Parliament Act, 1960 (C.A. 7).

[3] This consideration, which often arises at Westminster—-where debate on " clause stand part ", particularly in committee of the whole House, is sometimes protracted—has scarcely yet arisen in Ghana.

[4] Section 4 of the Acts of Parliament Act, 1960 (C.A. 7) requires that " if a section contains more than one enactment it shall be divided into subsections ". The term " subsection " i3 used both for clauses and sec tions.

times, but only in one clause, the definition should be placed as a subsection at the end of the clause or, if the clause is difficult to understand unless the definition has first been read, at the beginning. Where the term is used throughout the Bill, either it is defined in the first place where it occurs and a reference to the definition is inserted in the interpretation clause at the end of the Bill, or, if the meaning of the term is fairly self-evident and it is defined merely to avoid doubt, the definition appears only in the interpretation clause.

The draftsman should try to avoid producing clauses or subsections consisting of many lines of uniform print. Such blocks of print make understanding difficult, and can easily be avoided by the use of paragraphs. Paragraphs are numbered (a), (b), (c) and so on. If sub-paragraphs are required they are numbered (i), (ii), (iii) and so on. A subsection should not break immediately into a paragraph: introductory words are needed. Where paragraphs are used, care should be taken not to leave the reader waiting too long for the verb and the substance of the provision. There can be no doubt which of the two following variations is to be preferred—

" 1. A person who is—
(a) a Member of Parliament, or
(b) a practising barrister, or
(c) a Judge or officer of the Supreme Court, or
(d) a local court magistrate,
shall not be liable for jury service."

" 2. A person shall not be liable for jury service if he is—
(a) A Member of Parliament, or
(b) a practising barrister, or
(c) a Judge or officer of the Supreme Court, or
(d) a local court magistrate."

A clause can often be rendered more easily comprehensible by the use of the proviso. This enables a general statement to be made followed by words reducing its generality in particular cases. The use of the proviso should be restricted to cutting down the generality of the immediately preceding proposition. Thus a proviso to a subsection should not cut down the generality of words not found in that subsection. A common infringement of this rule is found in a proviso such as the following—

" A person guilty of driving without due care shall be liable to a fine of fifty pounds:
Provided that nothing in this Act shall render a person liable to be punished twice for the same offence."

Where the exception can be pexressed very shortly, it may be of advantage, instead of using a proviso, simply to continue the sentence with the words " so however that . . ." If the proviso is to contain more than one excepting provision, it should be arranged in paragraphs.

The proviso is sometimes criticized by writers on drafting technique, but it has its uses and in Ghana, as in the United Kingdom, it is used frequently. It comes into its own when a general principle is to be laid down with relatively minor exceptions. Often it is much clearer and simpler to state the general principle first and then follow it with the list of exceptions in the form of a proviso. When the correct modern use of the proviso is properly understood and applied this method has no defect in substance, whatever formal objections may be levelled on historical or grammatical grounds.[1] Sup ose the intention is to require all holders of foreign currency (with certain limited exceptions) to offer it for exchange to the Bank of Ghana. One could draft in this way:

> " Every person in possession of foreign currency, other than a banker, or a person whose holding is of the value of £G10 or less, or who holds the currency on behalf of some other person, or with the consent of the Bank of Ghana, shall within the prescribed period offer it to the Bank of Ghana for exchange into Ghana currency."

It is surely better however to express the proposition like this:

> " Every person in possession of foreign currency shall within the prescribed period offer it to the Bank of Ghana for exchange into Ghana currency:
>
> Provided that this requirement does not apply to—
>
> (a) a banker,
> (b) a person whose holding is of the value of £G10 or less,
> (c) a person who holds on behalf of some other person, or
> (d) a person who holds with the consent of the Bank of Ghana."

Here it is easy to take in the general statement and then, warned by the words " Provided that ", to register one by one the various exceptions.

It frequently happens that the complete expression of a single proposition requires the inclusion of a considerable amount of detail. Thus to lay down what types of persons are disqualified

[1] Elmer Driedger criticizes the use of the proviso through an entire chapter: see *The Composition of Legislation,* Chap. XI. The examples he gives, and succeeds in demolishing, are all however examples of its *misuse.*

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for election to the National Assembly it was necessary to mention a number of different cases, some of them complex.[1] This could not be done within the ambit of an ordinary subsection, and yet the details were too important to be relegated to a Schedule. The solution to such difficulties lies in the use of a table set out at the end of the subsection.[8]

Arrangement and grouping of clauses

A well-drawn Bill is a well-arranged Bill. The draftsman will have worked out a logical and orderly scheme and the reader will be taken through the subject-matter in a clear, connected fashion. After careful examination by the draftsman most legislative projects will be found to be divisible into a number of distinct compa tments[3] and, once the policy is clear to him, it is his prime duty to work out what these compartments are and in what order they should be presented. In the case of major Bills the clauses will be so grouped as to form separate Parts. Smaller Bills, or Parts within a major Bill, may have the clauses arranged in groups, each with a descriptive cross-heading. Where the Bill contains only a few clauses neither method of subdivision will be needed.

It is often easier to divide the subject-matter into compartments than to work out the order in which these should be presented. Sometimes, as with " miscellaneous provisions " Bills, the compartments will bear little relation to one another and their order does not matter. Usually, however, there is a connecting thread. The only general principle is that the reader should be able to start at the beginning of the Bill and progress by logical steps to

[1] The most complex was the following—

" A person who has been convicted in Ghana of an offence which involved dishonesty, not being a person—

(a) who has been granted a free pardon in respect of the said offence, or

(b) whose imprisonment for the said offence terminated more than five years previously, or

(c) who, not having been sentenced to imprisonment for the said offence, was convicted more than five years previously."

[2] National Assembly Act, 1961 (Act 86), s. 1 (2). Note how the need for repeating the table in relation to unseating of members is avoided by the wording of s. 2 (2) (a) and compare the corresponding provisions (ss. 25 and 26) of the Ghana (Constitution) Order in Council, 1957 (L.N. 47). For other examples of the use of tables see Civil Service Act, 1960 (C.A. 5), s. 28; Judicial Service Act, 1960 (C.A. 10), s. 8; Pharmacy and Drugs Act, 1961 (Act 64), s. 41.

[3] In what follows " compartment " is used as a neutral word which may refer to a Part of a major Bill, or to **a** group of clauses within a smaller **Bill or within a Part, or to a clause.**

the end. He should not be subjected to puzzles, as by coming across an expression such as " the Minister " which clearly needs definition but is not defined in the place where it first occurs. Nor should he be misled, as by reading a succession of clauses imposing severe restrictions only to find at the end of the Bill a clause providing for wholesale exemptions from them.

Often a chronological order will be most suitable. Where some form of procedure is being laid down it is best to start with the initiation of the procedure, then deal one by one with the successive stages, and close with the way in which the procedure may be terminated. Two examples may be given: the Criminal Procedure Code, 1960 (Act 30) and the draft Bill recommended by the recent Insolvency Commission.[1] The Criminal Procedure Code begins by dealing with the arrest of an offender and then successively provides for the place of trial, the initiation of proceedings, the conduct of the trial, the punishments which may be imposed, the execution of sentences, the bringing of appeals and the release of convicts. In the case of the draft Insolvency Bill the task of arrangement was complicated by the fact that, while there are of course successive stages in insolvency proceedings there are also many functions connected with the administration of an insolvent's affairs and the distribution of his assets which may be exercised during two or more stages. Also there are a number of special cases to be dealt with, such as those where the debtor is dead or is of unsound mind, or a private arrangement with creditors is made, or the debtor undergoes successive insolvencies. Where such complications exist it may be impossible to produce an arrangement which is satisfactory in all respects. The draft Insolvency Bill, consisting of seventy-eight clauses, was divided into seven Parts. The first Part set the stage by creating the office of Official Trustee and providing for the new administrative machinery that would be needed. The second Part, comprising seven groups of clauses arranged under cross-headings, dealt successively with the entire course of the formal insolvency proceedings, beginning with the initiation of proceedings by petition and ending with the discharge of the debtor and the mode of terminating proceedings. The chronological arrangement had to be interrupted in the middle by a group of clauses laying down the general duties and disabilities of the debtor. In the third Part, directing the mode of administration and distribution of

[1] See p. 349, *ante*.

the debtor's property, a chronological order was inappropriate and the Part was divided into three groups. The first specified the various ways in which assets of the debtor could pass to the Official Trustee, the second laid down the various duties of the Official Trustee in the administration, and the third described in chronological order the methods by which assets would pass from the Official Trustee. Subsequent Parts were concerned with arrangements with creditors apart from insolvency proceedings, modifications of the earlier provisions in special cases, administration of the estates of deceased insolvents, and supplemental provisions. Most Bills of any size require supplemental provisions dealing with such matters as interpretation, the making of regulations, repeals and commencement. These machinery clauses are now put at the end of the Bill so that the more important matters may come first, the former practice of putting them at the beginning having been abandoned in 1960. This was a reversion to the principle advocated by the earliest of the British Parliamentary Counsel, Lord Thring, who said

> The Bill should be clear and should state at the very commencement the important principle of the measure and the greatest pains should be taken to separate the material from the comparatively immaterial provisions."[1]

Titles given to Parts of Bills, and cross-headings separating groups of clauses, " are intended for convenience of reference only and do not form part of the enactment ".[2]

Sidenotes

Every clause is requiied by Standing Order 56 to have annexed in the margin a sidenote giving a short indication of its contents. It is not, however, correct to give sidenotes to subsections of a clause, since these are distracting and take away from the unity of the clause as expressed in its sidenote. The sidenote does not form part of the Bill. It is for convenience of reference only and is not to be used as an aid to construction.[3] It should be so worded as to provide a very brief but comprehensive description of the contents of the clause, and it is a good practice to compose the sidenote as soon as the clause is drafted, if not before. Difficulty in finding a suitable sidenote may indicate that too much

[1] *Practical Legislation* (John Murray) 1902, p. 8.
[2] Interpretation Act, 1960 (C.A. 4), s. 4.
[3] *Ibid,*

has been put into one clause. If amendments made during the passage of the Bill affect the correctness of the sidenote, it is suitably altered by the Clerk after consulting the draftsman. To avoid confusion the same sidenote should not be used for more than one clause of the Bill.

Where clauses have been divided up into groups the sidenote will be worded on the assumption that the relevant cross-heading has been read. For example, the Presidential Elections Act, 1960 (Act 1) consists of fourteen sections divided into six groups by cross-headings. One cross-heading reads " Dissolution Elections " and the sidenote of the first section in it is " Preferences ". Some draftsmen might have preferred not to use cross-headings but the sidenote would then have had to be expanded to read " Preferences in dissolution elections ".

It is a mistake to try and make the sidenote a precis of the effect of the clause. It should be in telegraphic form, omitting as many verbs as is consonant with its making sense. Where the clause is very short, every effort should be made to keep down the length of the sidenote. There have been cases where the sidenote has been longer than the clause! Apart from its absurdity, this leads to a distracting gap between one clause and the next, since the sidenote may take up several more lines of print than the clause. The greatest care must be taken to ensure that the sidenote is not in any way inconsistent with the clause, since this can only cause confusion.

Schedules

Schedules contain matter which because of its length cannot be conveniently embodied in the clauses of the Bill and which is of relatively minor importance. Matter of major importance should only be included in a Schedule in special cases, as for example, where an Act is to be passed to confirm a treaty. The body of the Act will be very brief and the treaty will be contained in a Schedule to it.

Where a Bill contains repeals exceeding two or three in number it is the practice to include a Schedule of repeals. This Schedule should be comprehensive, that is it should include all repeals effected by the Bill even if some have been included in the body of the Bill already. This will have been done if the repeals are of such importance that it is necessary to place them in a prominent position. Where this double repeal is to be effected, it is the practice in England to say in the body of the Bill that the enact-

ment in question shall " cease to have effect ", and then repeal it by means of the repeal Schedule. The repeal Schedule should not contain any repeal that is not either consequential on some provision in the Bill or of minor importance, *e.g.* the repeal of a spent enactment. It is the practice to place the repeal Schedule at the end of the Schedules. Where numerous amendments are made to other enactments they are often embodied in a Schedule. Again, these may repeat amendments already made in the body of the Bill and should in any case be consequential or minor.

It was formerly the practice in England to include in a Schedule any forms required to be used in the administration of an Act. This practice has become obsolete: it is much better to give power to prescribe forms by statutory instrument, since this enables alterations to be readily made and keeps down the bulk of the Statute Book.

Similar principles are used in the drafting of Schedules to those mentioned above for clauses. The subdivisions of a Schedule are known as paragraphs, and a lengthy Schedule may be arranged in Parts or in groups of paragraphs under cross-headings. A Schedule is made effective by an appropriate reference to it in one of the clauses, although if such a reference were accidentally omitted the Schedule could not be ignored since it forms part of the Bill.[1]

Punctuation

Punctuation forms part of a Bill or Act and may be used as an aid to its construction.[2]

2. PREPARATION OF BILLS

In the discussion of legislative functionaries in the previous chapter, we have touched upon various aspects of the initiation and preparation of Parliamentary Bills. We will now describe the process in chronological order, taking first a typical departmental Bill and then mentioning some of the differences that may arise in the case of other types of Bill. The stage before introduction into Parliament may be subdivided as follows:

(a) initiation of the legislative proposal;
(b) obtaining Cabinet approval in principle;
(c) preparation of drafting instructions;

[1] Acts of Parliament Act, 1960 (C.A. 7), s. 3.
[2] Interpretation Act. 1960 (C.A. 4), s. 3.

(d) settlement of draft Bill;
(e) obtaining Cabinet approval of draft Bill and consent to introduction;
(f) publication of draft Bill.

Initiation of the legislative proposal

There are numerous ways in which a decision to legislate may originate, but the beginnings will usually be found within one particular Ministry or Department. The Minister may start the ball rolling on his own initiative, or he may be prompted by someone else—perhaps the President or a fellow Minister, or some departmental official. Occasionally the initiative will come from representations made by some p:rson or body outside the circle of Government altogether. However this may be, responsibility foi the Bill must be assumed by some Minister. The matter is governed by administrative instructions issued under the Civil Service Act, which provide that where proposals for legislation are initiated within a Ministry they are the responsibility of the Minister holding the portfolio for the Ministry, but that where they are initiated within a special Department they are the responsibility of the Minister for Presidential Affairs, who must be approached by the Head of Department with a view to obtaining his decision as to whether the legislation is necessary. In either case interested persons and bodies are to be consulted wherever possible.[1]

Cabinet approval in principle

Having decided that new or amending legislation by Act of Parliament is necessary, the Minister must seek the approval of his Cabinet colleagues to the principles of the proposed legislation. This is done by the submission of a memorandum prepared by the administrative official in charge of the project. This sets out the principles of the policy intended to be carried into effect by the proposed Bill and the reasons why it is considered necessary, but should not enter on the detailed changes in existing law which will be needed. A draft of the memorandum is required to be sent in advance to the Attorney-General's department so that Parliamentary Counsel may advise on whether an Act of Parliament is in fact necessary in order to achieve the objects desired,

[1] *Administrative Instructions on the Preparation of Legislation* Accra 1961, para. 1 (1), (2).

and on other legal aspects of the proposal.[1] The memorandum must state the recommended priority of the Bill, for which purpose there are four categories providing respectively for introduction at the current meeting, the next meeting, the next but one, or some later time.[2] If the Cabinet approve the Bill in principle, they will normally adopt the Minister's view as to its priority, and the Bill will then take its appropriate place in the legislative programme, subject to such recommendations as may later be made by the Legislation Committee.[3] Administrative instructions provide:

> " Legislation which is not included in the programme may be introduced during the Meeting, with the approval of the Cabinet, if the need should arise, but this should as far as possible be avoided, since in such cases there is seldom time for full consideration of the drafting of the Bill. Hasty and ill-considered legislation is likely to contain errors which may interfere with its intended working and bring the law into disrepute."[4]

Drafting instructions

Where Cabinet approval in principle is given, the Cabinet Office notify the Department concerned and also the Attorney-General's Department. It is then the duty of the head of the Ministry or Department responsible for the Bill to prepare drafting instructions for Parliamentary Counsel. Much will depend on the thoroughness with which this is done. In the words of Lord Thring,

> " The sum of the whole matter is this, that to prepare a good Bill the draftsman must receive sufficient instructions, but they will necessarily be short, and he must exercise a very large discretion in filling up the gaps."[5]

Drafting instructions are required to contain full details of the policy intended to be carried into effect by the Bill and must refer to the enactments (if any) proposed to be repealed or amended. The priority as fixed by the Cabinet must also be stated.[6] It is important that no attempt be made to present the instructions

[1] *Administrative Instructions on the Preparation of Legislation,* para. 1 (4).
[2] *Ibid.,* para. 1 (3).
[3] See p. 335, *ante.*
[4] *Administrative Instructions on the Preparation of Legislation,* para. 4 (2).
[6] *Practical Legislation,* John Murray, 1902, p. 8.
[8] *Administrative Instructions on <he Preparation of Legislation,* para. 3 (1).

in the form of draft clauses, since the draftsman will best understand what he has to do if the policy is described in ordinary language.[1] Drafting instructions are required to be accompanied by any relevant memoranda, reports of committees, and other material which may be useful to the draftsman.[2]

Settlement of draft Bill

With a Bill of any complexity, the process of settling the draft for submission to Cabinet will fall into two stages: the period before and the period after the production of the first draft. On the initial reading of his instructions the draftsman, coming to the subject with a fresh mind, will form some valuable first impressions. A particular proposal may strike him as unworkable or unnecessary, or it may be inconsistent with something elsewhere in the instructions or in conflict with established legal principles. There may be omissions or obscurities which he cannot clear up himself. A complicated scheme may be suggested for achieving an object which could be gained more simply. A proposal may affect the work of another Dtpartment, which apparently has not been consulted. The draftsman will do well to note down these first impressions immediately, and after further consideration of the instructions and any accompanying material he will decide whether he can proceed with the preparation of the Bill or whether he must ask for additional information. In the latter case a letter or telephone call may elicit what is required, but more often a meeting with officials of the instructing Ministry and other persons concerned will be necessary. This may last an hour or two, or, in extreme cases, may go on for several days while the details of the Bill are hammered out in discussion. The draftsman should always resist pressure to begin drafting before the policy is clear and definite. He may be asked to provide alternative drafts to help those in charge of policy to make up their minds, but wherever possible such requests should be refused. They are usually an excuse for procrastination, since it is nearly always much easier to decide between alternative lines of policy when they are expressed in ordinary language rather than the more formal phrases demanded by the law.

Having elicited the information he requires from those instructing him and having made a thorough examination of all

[1] See Driedger, *op. cit.*, pp. xvi-xvii.
[2] *Administrative Instructions on the Preparation of Legislation*, para. 3 (2).

existing laws which will be affected by the proposed Bill or otherwise have a bearing on it, the draftsman is in a position to begin work on the draft. With all but the simplest Bills it is first necessary to draw up a scheme of arrangement. The principles governing the arrangement of a Bill have been discussed in the previous section of this chapter, and here we need hardly do more than emphasize the crucial importance of working out, in advance of actual drafting, a proper legislative structure. The draftsman must decide whether the Bill is to be divided into Parts, and if so, the subject-matter of each Part. He must work out the approximate order of the clauses, and the material to be contained in each. The result will resemble the Arrangement of Clauses which will subsequently appear at the beginning of the Bill, although in some cases it may be helpful to present it in the form of Heads of a Bill.[1] The scheme of arrangement will normally be for the sole use of the draftsman, but if its preparation throws up problems not seen earlier, it may form a useful basis for further discussion with instructing officials.

When he embarks on actual drafting, the draftsman will often have second thoughts about his scheme of arrangement. He should not regard it as sacrosanct, but make adjustments as they appear necessary. He may in some cases be forced to the conclusion that his original arrangement is so defective that it should be scrapped. He should not hesitate to scrap it and work out another one—it will be much more difficult to do so once the first draft of the Bill has been completed.

The first draft is normally printed by the Government Printer on the instructions of Parliamentary Counsel, who sends copies to the Ministry concerned and any other interested body. Since the draft is confidential, it will not normally be sent to persons outside the public service. There has been a tendency to assume that when a legislative proposal has been " put into legal language " by Parliamentary Counsel it can be accepted without examination. The new administrative instructions frown upon this facile view:

> " It is the duty of all persons to whom a draft Bill is sent to scrutinise the Bill with care to make sure that it gives effect to the policy desired. It should not be assumed that, because a Bill has been drafted by Parliamentary Counsel, it does not require scrutiny in this way. It may happen that there has been

[1] For the meaning of this expression, and many others used in legislation, see the glossary set out in Appendix B, p. 491, *post.*

some misunderstanding over the legislative intent, or there may be other reasons calling for corrections in the draft."[1]

Scrutiny of the first draft, both by instructing officials and the draftsman himself, will usually bring to light points on which some amendment is needed. Any formal errors arising from typing and printing will also have to be put right. With simple Bills these matters can be dealt with by corrections to the proof when it is returned for the printing of Cabinet copies. In other cases it may be necessary to hold further meetings to discuss the draft and work out the necessary changes. Where a major Bill is concerned, the process may have to be repeated through several successive drafts—peihaps amounting to a dozen or more. Alterations to the text of the draft Bill must in no circumstances be made otherwise than by Parliamentary Counsel.[2]

Cabinet approval of draft Bill

When the form of the Bill has been agreed between the Ministry concerned and Parliamentary Counsel, the Minister responsible will submit it to the Cabinet for final approval and seek permission to introduce the Bill into the National Assembly.[3]

In most cases a draft of the explanatory memorandum required by Standing Order 55 to appear on the front of the Bill will be submitted to Cabinet at the same time. Although the memorandum is the responsibility of the sponsoring Minister, he often likes to obtain the approval of his colleagues to its wording. The memorandum is drafted by the app¯opriate administrative official, but Parliamentary Counsel should be consulted to ensure that it correctly describes the contents of the Bill.[4]

Publication of draft Bill

When the Cabinet have given permission for the introduction of a Bill, the draft is normally published as a supplement to the following Friday's *Gazette* so that Standing Order 58 may be complied with.[5] It is the duty of the sponsoring Ministry to arrange for this, although Parliamentary Counsel has the responsibility of checking the proof of the *Gazette* copy.[6] Administrative instructions point out:

[1] *Administrative Instructions on the Preparation of Legislation,* para. 5 (3).
[2] *Ibid.*
[3] *Ibid.,* para. 7 (1).
[1] *Ibid.,* para. 6.
[6] See p. **371,** *post.*
• *Administrative Instructions on the Preparation of Legislation,* **para. 8 (2).**

" It is sometimes the case that a Bill prepared at the instance of one Ministry and designed for a particular purpose affects other Ministries, or is one to which an amendment could be moved to deal with minor points with which other Ministries are concerned. It is important therefore that all Ministries should study Bills published in the *Gazette,* as well as paying careful attention to the legislative programme generally."[1]

Special cases

The procedure outlined above is sometimes departed from in various respects. The types of Bill which most often give rise to these departures are mentioned below. In addition it must be pointed out that the desire of the Government for extreme haste in legislation often makes it difficult to conform to all aspects of the procedure.

Cabinet Bills.—As mentioned in the previous chapter, the Cabinet sometimes orders legislation to be prepared on its own initiative and without previous consideration.[2] Where this happens much of the normal procedure is by-passed. There will be no memorandum seeking approval in principle, and there are unlikely to be any drafting instructions beyond the sentence or two recording the Cabinet decision in the minutes. The first draft will probably be the final draft, and as often as not the Bill will not be published, but will be introduced on a certificate of urgency and passed through all its stages in one day.

Law Reform Bills.—Consolidation Bills, Bills re-enacting English statutes of general application and other law reform Bills originate in the Attorney-General's Department. Approval in principle is not sought for individual Bills, since the Cabinet has given general approval to the law reform programme. No drafting instructions are prepared; the draftsman, as it were, instructs himself. The draft is, however, sent out to interested departments, who may see an opportunity for making reforms they have long sought and put forward appropriate suggestions. Since these Bills are of peculiarly legal interest, consultations often take place with the judges, the Bar Council, and the Law School.

Committee Bills.—Ghana is familiar with the practice of appointing an expert committee to advise on the content of a Bill

[1] *Administrative Instructions on the Preparation of Legislation,* para. 8 (4).
[2] See p. 334, *ante.*

required to deal with a specialised subject. The degree of formality varies. Sometimes a commission of enquiry is set up with all the ceremony described in the previous chapter.[1] In other cases a working-party of officials is convened, or an expert from abroad is obtained to examine the problem and tender his advice. Almost always Cabinet approval will have been obtained before the committee begins work, and the committee tends to occupy the role of the administrative officials in the process of Bill-preparation. It instructs the draftsman, criticizes his draft and works out with him the details of the Bill which is to be included in its report. Alternatively the committee omits any draft legislation from its report but makes recommendations which, if the report is adopted, will later form the basis for drafting instructions. In rare cases the committee may draft a Bill itself, but unless Parliamentary Counsel is a member of the committee this is to be discouraged, since the result, even if well done, is likely to be out of line with normal drafting practice in Ghana, and to require extensive revision by Parliamentary Counsel before it can be enacted.

3. THE PASSAGE OF A BILL

The National Assembly is left to decide for itself the procedure for the introduction, consideration, amendment and passing of Parliamentary Bills. The procedure is laid down by the Standing Orders made by the Assembly under s. 14 of the National Assembly Act, 1961 (Act 86). In theory, Bills are divided for the purpose of their passage through the Assembly into two categories, public Bills and private Bills; and the category of public Bills is subdivided into Government Bills, private Member's Bills and hybrid Bills. In practice all Bills are Government Bills. The various types may be defined as follows:

Public Bill.—Any Bill which is not a private Bill.

Private Bill.—A Bill which is introduced by a private Member and of which the *sole* purpose is "to affect or benefit some particular person, association or corporate body *".*[2]

Government Bill.—A Bill introduced by a Minister, a Ministerial Secretary or the Parliamentary Secretary.

[1] See p. 346, *ante.*
[3] See Standing Order 69.

Private Member's Bill.—A public Bill (not being a hybrid Bill) which is introduced by a private Member.

Hybrid Bill.—A Bill which is introduced by a private Member and of which the purpose is in part the same as that of a private Bill, but which also has some public purpose.

Standing Order 69 requires additional publicity to be given to a private or hybrid Bill before introduction and provides that after second reading it shall stand referred to a select committee, before whom any person affected may appear and make representations. In other respects the procedure for such Bills is the same as for a private Member's Bill, and they will not be further referred to here.[1]

Introduction of Bills

Leave of the Assembly is required for the introduction of a private Member's Bill, but Government Bills are introduced without leave.[2] Except where the Government introduce a Bill on a certificate of urgency, no Bill can be introduced and no motion for leave to introduce a Bill can be made unless certain requirements as to publication have been satisfied.

Publication.—The text of the Bill must have been published as a supplement to an ordinary issue of the *Gazette* within a specified period.[3] The period normally begins with the termination of the previous meeting of the Assembly and ends seven days before the day on which the Bill is to be introduced or the motion made for leave to introduce. To allow for the case where a meeting begins shortly after the end of the previous meeting it is permissible to treat the period as beginning one month before the date of introduction or motion. The text of the Bill as introduced need not be exactly the same as the published text—variations are permitted if, in the opinion of the Clerk of the Assembly, they are merely of a trival or drafting character.[4]

Certificate of Urgency.—Every Government finds it necessary occasionally to pass legislation without taking time to give advance publicity. In Ghana this could be done merely by suspending the relevant Standing Order, but the Assembly has preferred

[1] The British procedure requiring Government Bills which affect particular individuals or bodies to be treated as hybrid is not followed in Ghana.

[2] Standing Order 58 (3).

[3] Ordinary issues of the *Gazette* are published weekly on Fridays.

[4] Standing Order 58 (1).

to lay down a special procedure.' The President signs a certificate to the effect that the Bill is required to be passed into law without delay. The certificate is sent to the Speakei (who lays it before the Assembly) and operates to dispense with the need for prior publication of the Bill. It also enables the Bill to be passed through all its stages in one day. Administrative instructions sound the following warning:

> " It is emphasized that this procedure for the introduction of a Bill is for use in emergency only and is to be avoided as much as possible. In order to achieve its purpose of giving effect to Government policies, legislation needs to be prepared with care and due consideration. Apart from its other drawbacks, legislation put through in haste and without adequate publicity is likely to prove defective."[1]

Nevertheless approximately half the Bills put through in the first year of the Republic were introduced under a certificate of urgency.

Memorandum.—Standing Order 55 requires every Bill to be accompanied by a memorandum explaining the main features of the Bill. This is signed by the Minister or other Member introducing the Bill and printed at the front of it. The memorandum should state the effect of the principal provisions and give reasons for the proposal to enact them. In Colonial times it was known as the statement of objects and reasons and appeared at the back of the Bill.

Mode of Introduction.—At the stage in the day's business set aside for the presentation of Bills, the Speaker calls successively each Member in whose name a Bill stands on the order paper. As each Member's name is called he rises in his place and bows to the Chair, whereupon the Clerk of the Assembly reads aloud the long title of the Bill. This ceremony constitutes both the introduction and first reading of the Bill. Copies of the Bill printed on blue paper are then circulated among the members, and if the Bill has not already been published in the *Gazette* it must be so published unless it is to be put through all its stages on that day.[2]

Second reading

The proceedings on second reading provide the House with its

[1] *Administrative Instructions on the Preparation of Legislation,* para. 9 (3). « Standing Order 58 (5), (6).

first opportunity to get to grips with the Bill. The Member in charge of the Bill moves that it "be now read a second time " and delivers a speech explaining the purpose of the Bill.[1] Members are then free to debate " the principle and general merits " of the Bill, but at this stage they are not allowed to move amendments to it.[2] They may, however, move to amend the motion for second reading if they do not wish the Bill to proceed further. There are two ways of doing this. The first is to seek to amend the motion so that it reads " That the . . . Bill be rejected ". The other is to move a " reasoned amendment " to substitute words stating " the object and motive on which the opposition to the Bill is based ". These words must be strictly relevant to the Bill and not deal with its details.[3] If an amendment in either form is agreed to by the House, or if the original motion for second reading is lost, proceedings on the Bill lapse.

The second reading is the most important stage of a Bill's progress. If it is agreed to, the House is taken to have accepted the main policy of the Bill, though not its details. Although there remains another opportunity for rejecting the Bill, in practice further examination by the House will be directed to ensuring that the clauses of the Bill are apt to carry its policy into effect.

Detailed consideration of the Bill by the Assembly normally follows the second reading, but Standing Orders allow for the Bill to be referred at this stage to a select committee. This would allow a complex Bill to be examined in detail by a small number of Members who were specially interested in the subject or peculiarly qualified to discuss it. Since, however, the procedure is not used, it will not be further discussed here.[4]

Consideration stage

Where a Bill has been read a second time and has not been referred to a select committee, it is required to pass through the consideration stage in the Assembly. Until the advent of the Republic this was known as the committee stage, the Bill being referred to a committee of the whole House. Except where the Bill was introduced under a certificate of urgency, forty-eight

[1] In the case of a private Member's bill the motion must be seconded.
[2] Standing Order 59 (1).
[3] Standing Order 59 (3). For an illustration of a reasoned amendment see Appendix B, p. 495, *post.*
[4] For details of the procedure sec Standing Orders 60, 63 and 65.

hours (excluding days when the Assembly is not sitting) must elapse between second reading and consideration.[1]

The purpose of the consideration stage is to enable the House to scrutinise each individual clause and other provision, to amend it if necessary, and to decide whether it shall form part of the Bill. New clauses and schedules may also be added. What members are not allowed to do is re-open discussion on the principle of the Bill.[2] The informality associated with the old committee stage remains, and Members may speak more than once to any question.[3]

The consideration stage begins with the first clause; the long title and any preamble are deferred to the end. The Clerk of the Assembly reads out the number of the clause and the side-note, and members may then move amendments and discuss the details of the clause. If no one wishes to do either of these things, the Clerk proceeds to read the number and sidenote of the next clause, and so on until a clause is reached on which some Member rises to speak. When this happens the Speaker puts the motion, on the previous clauses not yet agreed to, " That clauses ... to ... [or it may merely be " clause . . ."] stand part of the Bill ". Where necessary, clauses may be taken in an order different from that in which they are arranged in the Bill.

An amendment may consist of the deletion of words in the Bill, or the insertion of further words, or the substitution of one set of words for another. In the case of substitution, two separate questions arise, namely whether the words proposed to be left out should stand part of the Bill and if not, whether the new words should be inserted. It is not in order to move an amendment to delete a whole clause: the correct procedure is to vote against the motion that the clause stand part of the Bill. A motion may be made to insert a new clause, and this will be considered when the existing clauses have been disposed of or, if more convenient, at the place where it is proposed to insert the new clause. A new clause is treated as if it were a newly-introduced Bill. It is given a formal first reading by the Clerk calling out the sidenote, immediately followed by a second reading, the consideration of any amendments proposed to it, and then the motion that it be added to the Bill. After the clauses have been considered, the same procedure is gone through with the Schedules, if any.

~» Standing Order 61 (1). *
Standing Order 61 (2). [3]
Standing Order 42 (6).

Finally the House deals with any preambles and then the long title, which may require amendment to make it fit changes made in the body of the Bill.[1]

Third reading

Not less than twenty-four hours after the completion of the consideration stage (excluding any day on which the Assembly is not sitting) the Member in charge of the Bill may move that the Bill " be now read a third time ". No interval is necessary where the Bill was introduced under a certificate of urgency. The proceedings on third reading are usually formal and no amendments to the Bill may be moved. If last-minute amendments are thought necessary, they can be made after the passage of a motion, at any time before a Member rises to move the third reading, that the Bill, or the relevant portion of it, do pass through a second consideration stage.

The motion to give the Bill a third reading is subject to the same type of amendment as is described above in the case of second reading. In practice, however, such amendments are rarely moved, and the practice is for Bills to be given a third reading without debate. Where the motion for third reading is agreed to, the Clerk reads out the long title and the Bill is then deemed to have been read the third time and passed.[2]

Withdrawal of Bills

Either before the commencement of public business or at the commencement of any stage of a Bill, the Member in charge of a Bill may make a motion without notice for its withdrawal.[3] The same result can be achieved by refraining from moving the second or third reading, and the Bill will then lapse at the end of the session. A Government Bill will not be withdrawn, and major amendments will not be made to it, without the approval of the Cabinet. Where sudden opposition arises in the House, however, the Minister in charge of a Bill may on his own initiative move that proceedings on the Bill be suspended, and in such cases it sometimes happens that the proceedings are not resumed.

4. THE PRESIDENT'S ASSENT

The procedure which is to be followed when a Bill has been passed by the National Assembly is laid down by the Acts of

[1] The procedure on consideration is regulated by Standing Order 62.
[2] Standing Order 66.
[3] Standing Order 67.

Parliament Act, 1960 (C.A. 7). The Clerk of the Assembly is required to send the text of the Bill as passed to the Government Printer, who must print four copies " on vellum or on paper of enduring quality ",[1] These are known as presentation copies, since they are to be presented to the President for his assent. The only change made in printing is the substitution for the words " A Bill " at the beginning, of the words " Act of the Parliament of the Republic of Ghana ". The printer also inserts at the end of the presentation copies the formulas for authentication and assent which are mentioned below.

When the Clerk receives the presentation copies from the printer he is required to make a careful comparison of them with the text of the Bill, and if he finds them to be correct he must sign on each a statement to that effect in the prescribed form, and insert the date of authentication.[2] In the case of a Bill which contained an amendment to any entrenched provision of the Constitution, the Clerk would at this stage have to submit the presentation copies to the Speaker so that he could certify that power to pass the Bill had been conferred on Parliament in the manner provided by art. 20(2) of the Constitution.[3]

The Clerk next takes the four presentation copies to the President's office for assent. Except in cases of urgency he usually waits to do this until he has two or three Bills which can be dealt with at the same time. There is no ceremony of assent, as there is in the case of the Royal Assent to Bills in the United Kingdom Parliament.[4] Ghana continues the tradition of informality inaugurated in the days of the Governor-General. The Clerk waits

[1] Acts of Parliament Act, 1960 (C.A. 7), s. 5 (1).
[2] *Ibid.,* s. 5 (2). The form is set out in Part I of the Schedule to the Act.
[3] Acts of Parliament Act, 1960 (C.A. 7), s. 5 (3).
[4] Sir Courtenay Ilbert described the British ceremony as follows: " The ceremony dates from Plantagenet times, and takes place in the House of Lords. The King is represented by Lords' Commissioners, who sit in front of the throne, on a row of arm-chairs, arrayed in scarlet robes and little cocked hats. ... At the bar of the House stands the Speaker of the House of Commons, who has been summoned from that House. Behind him stand such Members of the House of Commons as have followed him through the lobbies. A Clerk of the House of Lords reads out, in a sonorous voice, the Commission which authorizes the assent to be given. The Clerk of the Crown at one side of the table reads out the title of each Bill. The Clerk of the Parliaments on the other side, making profound obeisances, pronounces the Norman-French formula by which the King's assent is signified: ' Little Peddlington Electricity Supply Act '. ' Le Roy le veult.' Between the two voices six centuries lie ": *Parliament,* p. 75.

(sometimes for quite a long time) until the President has a few moments free. He then enters the President's room and hands the presentation copies to one of the President's staff, who impresses the Presidential seal on each. On the signing by the President of the Statement of Assent on the first of the four copies the Bill becomes an Act.[1] Immediately after the signing, and the insertion by the President of the date of assent, the Clerk inserts the number of the Act in words at the beginning.[2] The same procedure is then followed with the remaining three copies.

The President is of course entitled to refuse assent to the whole or any portion of a Bill.[3] Total refusal has not yet occurred, and is unlikely unless on a sudden change of Government policy after the Assembly has passed a Bill. There has, however, been one instance of partial refusal. In 1959 the Government decided to encourage the tourist industry by enabling licences to be granted to casino operators. As an experiment a licence was granted in June, 1960 for the opening of " Casino Africa " in Accra's leading hotel, the Ambassador. In the Government's view the experiment was not a success and after a few months the licence was revoked. There being some doubt as to whether any of the grounds for revocation specified in the enabling Act were satisfied, the Government later introduced a Bill, which was passed by the Assembly, to correct this.[4] The Bill as passed contained two clauses only. The first added as a ground for revoking a casino licence the case where the Minister was satisfied that it was in the public interest to do so. The second made the Bill retrospective to July 1, 1960, thus validating the revocation of the licence of " Casino Africa ". After the Bill was passed the Government had second thoughts however, and assent was given only to clause 1 and refused to clause 2.[5]

In the case of partial assent a special form of Statement of Assent is used,[6] and the Clerk is required to make in each presentation copy " such deletions, and such amendments of figures, punctuation and grammar " as may be necessary for the purpose of the conversion into an Act of the part of the Bill which has

[1] Acts of Parliament Act, 1960 (C.A. 7), s. 6 (3).
[2] *Ibid.,* s. 7 (2). Occasionally the delay in obtaining access to the Presi dent is so great that the Clerk has to leave the presentation copies to be signed later, having first numbered them.
[3] See pp. 151-2, *ante.*
[1] Pari. Deb. Official Report, Vol. 21, cols. 152-163.
[4] Casino Licensing (Amendment) Act, 1960 (Act 24).
[e] Acts of Parliament Act. 1960 (C.A. 7), Schedule, Part IV.

received assent.[1] The Bill is thereafter deemed to have been passed as so altered.[2]

The Act is now in its complete and final form, and takes its place in the series of Acts of the Republican Parliament. The numbering of these runs consecutively from the first Republican Act, which was the Presidential Elections Act, 1960. It does not begin afresh at the commencement of a calendar year, a new Parliament or any other period.[3] This means that for ordinary purposes an Act can be referred to simply as " Act 46 " just as an Ordinance in the collected edition of the Laws of the Gold Coast can be referred to simply as " Cap. 46 "—a matter of some convenience, particularly where the short title is not as short as it might be.

Where the procedure outlined above purports to have been followed in relation to presentation copies of an Act, the copies are deemed to be the original copies of the Act and are conclusive evidence of the terms of the Act, its number and the date of assent.[4] The President retains one of the original copies. Two others are placed in the custody of the Chief Justice and the Speaker respectively, while the fourth is deposited in the national archives.[6]

Publication

The final stage is the publication of the Act. The responsibility for this is placed upon the Government Printer, who must publish as soon as may be after the President's assent has been signified. The Act is not published exactly in the form taken by the original copies. It would be wasteful and distracting to reproduce in every published copy the authentication statement and the Statement of Assent. These are accordingly authorised to be omitted. The date of assent, which normally indicates the commencement of the Act, cannot however be omitted without causing inconvenience. It is therefore inserted by the Government Printer after the long title. In the case of an Act amending the entrenched

[1] The draftsman should be consulted before these changes are made.
[2] Acts of Parliament Act, I960 (C.A. 7), s. 6 (2).
[3] Acts of Parliament Act, 1960 (C.A. 7), s. 7 (1).
[4] *Ibid., s.* 8 (1). In case it is thought odd to refer to something as an " original copy " it should be pointed out that an Act has an existence apart from any document setting out its terms, which is necessarily only a copy of the Act. An Act is not repealed by destroying all existing copies of it.
[5] *Ibid., s. 8* (2).

provisions of the Constitution, the Speaker's certificate is also required to be included.[1] The published copies are *prima facie* evidence of the terms of the Act, its number and the date of assent.[2]

Commencement

An Act comes into force at midnight on the day of assent, unless the Act itself otherwise provides.[3] It will otherwise provide where for some reason it is desired to make the Act retrospective or where the time is not ripe for it to be brought into operation.[4] Retrospective Acts are generally frowned upon as tending to contravene the rule of law, but they are not uncommon in Ghana. From a technical standpoint it is rarely necessary to deem an Act to have come into force at some earlier date, since the desired result can often be more satisfactorily obtained by dealing expressly with the past cases. A legislative scheme designed to be acted on in the future by persons already aware of its provisions will not always fit past cases where persons were necessarily acting in ignorance of them.

There is one way in which people can be made to act in accordance with new legislation before it has been enacted. This is by making it retrospective to the date of publication of the Bill. In the case for example of the Exchange Control Act, 1961 (Act 71), which extended Ghana's exchange control restrictions to countries within the sterling area, there was an awkward problem of timing. It was thought desirable to enable banks, commercial concerns and other persons affected to study the new scheme generally for a period before it was enacted. Yet there were certain transactions brought under control by it which, if not restricted as soon as it was known about, would inevitably be carried out in large numbers to the detriment of Ghana's currency reserves. The solution was to publish the Bill with a clause giving its commencement as the date of publication, and to include in the memorandum a warning of the consequences of carrying out the forbidden transactions after that date.

Where an Act is passed but the time is not yet ripe for it to come into operation, there are two ways of providing for its

» Acts of Parliament Act, 1960 (C.A. 7), s. 9. 'Ibid.,
s. 10.
[3] *Ibid.*, s. 11 (1).
[4] Although the following discussion is in terms of Acts as a whole, what is said applies equally to portions of Acts.

commencement. Either a definite date may be specified in the Act or the Act may empower the President or a Minister to bring it into force by legislative instrument.[1] The second method is more flexible but occasionally leads to an enactment being left high and dry because after some time has elapsed it no longer seems suitable or even because no one has remembered to do anything about it.[2]

[1] It may be asked how such a power can be effectively given by an Act which *ex hypothesi* has not come into operation. Section 11 (2) of the Acts of Parliament Act, 1960 (C.A. 7) makes the power effective and avoids refined arguments of the type which have given some trouble in England.

[2] The former was the fate of the Road Transport Licensing Ordinance (Cap. 230), originally enacted in 1946 and still inoperative but unrepealed. Total forgetfulness occurred over the Spirits (Distillation and Licensing) Act, 1959 (No. 80); and s. 9 of the Akpeteshi Act, 1961 (Act 77) is perhaps worth quoting in full as showing the trouble that can be caused by spirits:—

" 9. (1) In consequence of the provisions of this Act the following enactments are hereby repealed—

(a) the Excise (Amendment) Ordinance, 1957 (No. 38) (which shall be deemed not to have amended the Excise Ordinance 1953 (No. 31));

(b) the Excise (Amendment) Act, 1958 (No. 5) (which shall be deemed never to have had any effect at all); and

(c) the Spirits (Distillation and Licensing) Act, 1959 (No. 80) (which was never brought into operation).

(2) The Excise (Spirits) Regulations, 1958 (L.N. 13 of 1959) are hereby revoked and shall be deemed never to have been made."