

# Legalese and Plain Language

Mark Adler's presentation to the CALC conference

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*I am grateful to Stephen Laws, UK Office of Parliamentary Counsel's specialist on the Appropriation Acts (but not the Acts' drafter), for his patient explanations and advice, without which I could not have written this.*

## ***This paper's purpose***

This paper considers how we might convert the legalese of s.4(1) of the UK's Appropriation Act 2008 into plainer language.

I chose this subsection because it is typical of legalese in that:

- Its convoluted style obstructs rather than helps the reader.
- It is based on an old precedent, with additional material bolted on without adequate redrafting; and
- it is regularly re-used (being reenacted annually with only the figures changing).

## ***Background: how the Appropriation Acts work***

The (usually biannual) Appropriation Acts record parliamentary approval of the government's spending estimates and release the approved amounts from public funds.

The annual Consolidated Funds Acts are almost identically worded. They

authorise the use of resources ... and ... apply certain sums out of the Consolidated Fund ...

while the Appropriation Acts

authorise the use of resources ... and ... apply certain sums out of the Consolidated Fund ... and appropriate the supply authorised in this Session of Parliament ....

The "appropriation", which is all that distinguishes the two types of Act, is the allocation of funds to particular heads of expenditure. The Consolidated Funds Acts just give the total amount issued for that year.

The numbering system is also slightly confusing. The first Appropriation Act (AA) of the financial year (approving the main estimates for the year which began that April) is passed in July and is the second AA of the parliamentary and calendar years, the March Act having updated the estimates for the financial year then

ending. So the subordinate Act is the No.1 Act and the main Act is the No.2 Act. The table below shows this in more detail.

				Year ending 31 March					
				2005	2006	2007	2008	2009	2010
AA	1	2006	Mar	√	√				
	2		Jul			√			
CFA			Dec			√	√		
AA	1	2007	Mar		√	√			
	2		Jul				√		
CFA			Dec				√	√	
AA	1	2008	Mar			√	√		
	2		Jul					√	
3	Oct						√		
CFA			Dec					√	√

### *The text of subsection 4(1)*

#### **4. Appropriation of amounts and sums voted for supply services and limits on appropriations in aid**

- (1) All the amounts and sums authorised by this Act and the other Act mentioned in Schedule 1 to this Act, for the service of the year that ended with 31st March 2007 and of the year ending with 31st March 2008, totalling, as is shown in the said Schedule, £22,441,622,000 in amounts of resources authorised for use and £15,099,258,000 in sums authorised for issue from the Consolidated Fund, are appropriated, and shall be deemed to have been appropriated as from the date of the passing of the Acts mentioned in the said Schedule 1, for the services and purposes specified in Schedule 2 to this Act.

*170 syllables in 106 words in 1 sentence*

*Flesch readability score: on scale from 0 (very difficult) to 100 (very easy): -20*

## *Parsing (to unravel the structure)*

I find it helpful to begin by breaking a complex paragraph into its component parts, using indentation to show the relationships between those parts, like this:

All the amounts and sums authorised by  
this Act and  
the other Act mentioned in Schedule 1 to this Act,  
for the service  
of the year that ended with 31st March 2007 and  
of the year ending with 31st March 2008,  
totalling,  
as is shown in the said Schedule,  
£22,441,622,000 in amounts of resources authorised for use and  
£15,099,258,000 in sums authorised for issue from the  
Consolidated Fund,  
are appropriated, and  
shall be deemed to have been appropriated as from the date of the passing of  
the Acts mentioned in the said Schedule 1,  
for the services and purposes specified in Schedule 2 to this Act.

The parts can then be more easily re-arranged and each part more easily rewritten.

## *Considering the detail*

In rewriting I consider:

1. What can be omitted; and
2. How what is left can be more naturally expressed.

The numbered notes below show my thinking as I worked on this subsection.

### **4. Appropriation of amounts and sums<sup>1</sup> voted<sup>2</sup> for supply services<sup>3</sup> and<sup>4</sup> limits on appropriations in aid<sup>5</sup>**

(1) <sup>6</sup> All <sup>7</sup> the amounts and sums authorised by this Act and the other Act mentioned in Schedule <sup>8,9</sup> 1 to this Act <sup>10,11</sup> for the service <sup>12</sup> of the year that ended with <sup>13</sup> 31st <sup>14</sup> March 2007 and of the year ending with 31st March 2008 <sup>15</sup>, totalling, <sup>16</sup> as is shown in the said <sup>17</sup> Schedule, <sup>18</sup> £22,441,622,000 <sup>19,20</sup> in amounts of resources <sup>21</sup> authorised for use and £15,099,258,000 in sums authorised <sup>22</sup> for issue from the Consolidated Fund, <sup>23</sup> are appropriated <sup>24</sup>, and shall <sup>25</sup> be deemed to have been appropriated as from <sup>26</sup> the date of the passing of the Acts <sup>27,28</sup> mentioned in the said Schedule 1, <sup>29</sup> for the services and purposes<sup>30</sup> specified in Schedule 2 to this Act.

1. **Doubling.** What, if anything, is the difference between *amounts* and *sums*?

There **is** a difference - in this context only, as far as I know - but I suspect it is known only to the Appropriation Act cognoscenti. It arises under the new accounting system introduced in 2000: *sum* is used for “cash” (that is, money in and out) and *amount* for “resources” (that is, “cash” with certain accounting adjustments [for example, depreciation, and payments allocated to one year but paid in another]).

This leaves the question: *Is the distinction useful in this context?*

If so, could it be more clearly expressed? Who is the audience?

If not, is there a single word that covers both meanings?

As amounts and sums are treated in the same way I have assumed that the distinction isn't useful and have provisionally used *money* in my draft revision to cover both meanings.

2. **Doubling.** Is *voting* different from *appropriating*?

Again, there's a coded difference, though it's not used consistently. Stephen Laws says that, traditionally, *appropriate* has been used for the allocation of funds to particular heads of expenditure, whereas *vote* has been used for the allocation of funds to a particular department. But he adds that *vote* is also used to describe the allocation of the total (unapportioned) amount.

*Voted* here means *already voted* [in previous Acts] *and voted here*. It seems to me that this is an unnecessary complication, and that *voted* can be omitted.

3. **The heading does not match the text.** *Supply services* are not mentioned in the text. *Supply* seems to be used in its common sense of *provision* and the parliamentary process of which the Appropriation Acts form part is known as the *supply procedure*. On the assumption that the single word *services* is sufficient in the text, I have used only that in my draft revised heading.
4. **Miscuing.** The range of *and* is not immediately clear, and it is necessary to read on and think back to decide that the heading is not

Appropriation of amounts and sums voted for  
... services  
and  
limits ...

but

Appropriation of amounts and sums voted for supply services  
and  
Limits on appropriations in aid.

To avoid this “reader stumble” in my draft revision I have put a comma after *services*.

5. **Matching heading to text.** *Appropriations in aid* are routine income received by government departments and held back to pay expenses instead of being paid into the Consolidated Fund. Those amounts are extra, not included in the main appropriations. They are dealt with in s.4(2), so are appropriate in the heading to s.4.
6. **Overlong sentence.** There are 106 words in this sentence, with only commas to break it up.
7. **Wordiness.** *All* is redundant.
8. **Overuse of capital letters.** *Schedule* is a common noun, so the capital is unnecessary (though this is not a major point). (*Act* is of course a special case.)
9. **Wordiness.** This is a standard clause which allows for more than one Act in the schedule, but while there is only one it would be easier to name the Consolidated Fund Act 2007 in the text than refer to it as *the other Act mentioned in the Schedule*.

Alternatively, as this Act is also listed in the schedule, *authorised by this Act and the other Act mentioned in Schedule 1* might be reduced to *authorised by the Acts listed in schedule 1*.

10. **Stating the obvious.** *To this Act* is unnecessary. (See UK OPC *recommendations and policies on legislative drafting matters* in CALC newsletter 2.09, p.43)
11. **Poor punctuation.** At first I thought this comma was a mistake, wrongly separating the subject of the sentence from its verb. To make sense of it, I had to break off from reading and jump ahead. Was it signalling a pause, closing the parenthesis which should have begun with *and the other Act*, opening a new parenthesis (and if so, where did that end), or what? The problem arises from stuffing too many clauses into one sentence.
12. **Obscure vocabulary.** This use of *service* in the singular is unusual, and contrasts with the use of *services* in the clause heading and in the penultimate line. of the subclause. Confusingly, in “supply” parlance, the *service* for the year is the total of the individual *services*.
13. **Prepositions signalling wordiness.** *Ended with = Ending*.
14. **Wordiness.** *31 March* is now common, and perhaps neater (and recommended by UK OPC).
15. **Repetition.** *Of the year that ended with 31st March 2007 and of the year ending with 31st March 2008 = of the years ending 31 March 2007 and 31 March 2008*.

16. **Over-punctuation.** Again, too many clauses call for too many commas and make the sentence difficult to parse.
17. **Wordiness.** *Said* is otiose. *As is shown in the Schedule* is also unnecessary but it may be useful.
18. **Embedding.** The comparatively unimportant aside *as is shown in the said Schedule* unnecessarily separates the verb *totalling* from its complement (£22bn). And this is an **embedded clause** within an **embedded clause**, separating the **subject** and its necessary but over-long **complement** from the **verb**:

All the amounts and sums authorised by this Act and the other Act mentioned in Schedule 1 to this Act, for the service of the year that ended with 31st March 2007 and of the year ending with 31st March 2008, totalling, as is shown in the said Schedule, £22,441,622,000 in amounts of resources authorised for use and £15,099,258,000 in sums authorised for issue from the Consolidated Fund, are appropriated.

19. **Unnecessary detail.** If the figures are shown in the schedule, is it necessary to repeat them here? Useful, perhaps.
20. **Format.** I wouldn't recommend writing the amount in words, but this figure is difficult to read, and the problem will be worse when inflation takes us into trillions. 22.441622 billion might be a useful compromise, perhaps (if the convention came to be accepted) using comma separators after the decimal point: 22.441,622 billion.
21. **Doubling.** Does *amounts of* add anything to *resources*?
22. **Repetition.** *Authorised* is used 3 times in this sentence before we even get to the main verb.
23. **Over-punctuation.** The shower of commas makes it difficult to see which pairs belong together to signal parenthesis, and which have other functions. I think that the one after *Consolidated Fund* should not be there. It doesn't seem to be part of a pair, and it separates the subject from its verb, giving, in effect:  

*The sums, are appropriated.*
24. **Passive verbs and archaic language.** The traditional use in this context of the passive usually triggers the stilted (and by lawyers, overused) *hereby* to make clear that the appropriation comes from this (performative) statement, and that the drafter is not referring to some pre-existing appropriation. Conversion to the active voice ("This Act appropriates") avoids this, and usefully promotes the main verb to word 3 of the sentence.

25. **Archaic language.** *Shall* is ambiguous (at least between the future and the imperative). And as this is declaratory even the traditional legislative *shall* to indicate obligation is inappropriate here.
26. **Archaic language and wordiness.** I wonder if it is necessary to create a legal fiction here by *deeming*. *The sums are appropriated, and shall be deemed to have been appropriated as from = The sums are appropriated with effect from.*
- I didn't challenge the *deeming* in the conference handout but wrote "As *from* can always be replaced by a single preposition. *On* would surely do in this case." But if we don't *deem*, *as from* does indicate that the appropriation is backdated.
27. **Wordiness and repetition.** A surfeit of *ofs* signals wordiness. *The date of the passing of the Acts = The date the Acts were passed.* Or perhaps, as appropriation is momentary rather than continuous: *As from the date of the passing of the Acts = when the Acts were passed.*
28. **Overstuffing.** Strictly speaking, there is no single *date of the passing of the Acts*. Presumably this means that the amount authorised by each Act is to be appropriated from the date of that Act, but it doesn't say so.
29. **Embedding.** The 24-word subordinate clause *and shall be deemed ...in the said Schedule 1* would be better moved to the end to avoid breaking up the main flow of the sentence.
30. **Doubling.** What is the difference between *services* and *purposes*? They are bundled together in column 1 of schedule 2 and it seems to me that *purposes* would cover both words.

## Revision

### 4. Appropriation of money for services, and limits on appropriations in aid

#### Version 1

This Act appropriates the money authorised by the Acts listed in schedule 1 for the purposes\* listed in schedule 2.

The appropriation of the money authorised by the Consolidated Fund Act 2007 is backdated to the date of that Act.

65 syllables in 40 words in 2 sentences  
Flesch score: 49.06 ("difficult")

#### Version 2

For the purposes\* listed in schedule 2, this Act appropriates the money authorised by:

- (a) the Consolidated Fund Act 2007, with effect\*\* from the date of that Act; and

(b) this Act, with immediate effect.\*\*

*52 syllables in 33 words in 3 "sentences"*  
*Flesch score: 62.36 ("plain English")*

***Notes to both versions***

\* I have not added *and periods*, since schedule 2 gives as the purposes the use during the specified years.

\*\* Someone has suggested since the presentation that this may be ambiguous (if only technically so), in that it could be the authorisation, rather than the appropriation, which takes effect on those dates. If so, it can be cured, though inelegantly, by replacing *with* with *the appropriation taking*. But does the comma before *with* prevent the ambiguity?