

**AN EXAMINATION OF DRAFTING STANDARDS: A CASE  
STUDY OF COMPANIES' REGULATIONS, 2021.**

**BY**

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## **ABSTRACT**

Companies Regulations (CR) 2021 is a subsidiary legislation issued under the Companies and Allied Matters Act (CAMA) 2020, primary legislation, to regulate the registration of companies, business names, incorporated trustees and allied matters. This research noted a series of problems which hinders the smooth implementation and comprehension of the CR. Some of the problems include inconsistency in language and style of drafting, disconnect between the CAMA and CR in penalties and cumbersome drafting style in setting out procedures at the post-incorporation stage. These problems have created severe confusion amongst the lawyers and other stakeholders of CAC. The specific objectives of this research are to examine the standards of legislative drafting used in drafting the CR, to identify and discuss some challenges and prospects associated with the standards of drafting styles and to assess the rationale behind the shift from the old drafting style to the modern drafting style. The main justification of this research has to do with the speed at which the CR could be issued to solve a particular legal problem.

This research adopts a doctrinal approach for each objective, by using primary and secondary materials such as CAMA 2020, CR 2021, textbooks on legislative drafting and other scholarly published articles, Newspapers and online materials, amongst others. The research identifies the challenges impeding the application of the Regulations and develops a more comprehensive framework among others.

This research finds that the CAMA and CR are under severe criticism from the practitioners and other critical stakeholders especially in the management of the Incorporated Trustees which calls for an immediate review. Furthermore, the CR has failed to address recurrent challenges of internet network failure which paralyses the services of CAC. More also, CR which ought to serve as the tool for implementing the CAMA, 2020 contains numerous drafting errors.

The research recommends amongst others review of CR and re-drafting of the entire provisions to take care of omitted areas of practice and to bring the regulations in conformity with modern drafting style by avoiding legalese, archaic words above all to changing the language to a plain language approach. The research further recommends developing an in-house drafting manual which shall guide the drafters to work in line with the recommendations of this research.

## **GENERAL INTRODUCTION**

### **CHAPTER ONE**

## 1.1 background to the study

Companies Regulations (CR) 2021 is a subsidiary legislation issued under the Companies and Allied Matters Act (CAMA) 2020 to regulate the registration and related affairs of companies, business names, incorporated trustees and allied matters. The Companies and Allied Matters Act, 2020 established the Corporate Affairs Commission (CAC). The CAC is a government organization in Nigeria responsible for company registration, regulation, management oversight, and wound up.<sup>1</sup>

The CR 2021, published by the CAC includes provisions aimed at leveraging technology to automate specific CAC administrative processes, clarifying certain compliance requirements of the CAMA 2020, and providing comprehensive governance and procedural framework in line with global regulatory best practices. The CR 2021 contains forty-nine sections divided into two (2) parts to provide a framework for implementing the CAMA 2020. There has however, been complains that procedures for implementing some key provisions of the Act are not properly reflected, that it is riddled with drafting challenges and thus impeding implementation of the Act.

Effective legislative drafting is required to achieve effective law making which involves conversion of policies into legal framework. Legislative draftsman performs an extremely difficult task of drafting. Legislation drafted in conventional legal English is often difficult to understand and those who draft legislation in plain language seek to overcome these failings by using the structure of the legislation to communicate to the target audience.<sup>2</sup> As legislation governs all aspects of our lives in any given society, it is of paramount significance that the audience for whom the legislation is meant comprehends it to foster compliance and effectiveness of the

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<sup>1</sup> Companies and Allied Matters Act, 2020

<sup>2</sup> Peter Butt, 'Plain Language in Property Law: Uses and Abuses' (1991)73 ALJ 807, 808

legislation. Legislation is meant to communicate to a relevant public. The public must be able to understand the language being communicated otherwise the communication is not effective.

Nigeria is in dire need of an official policy that elevates the quality of language used in the texts of legal documents, especially legislation.<sup>3</sup> The national strategy to be developed by such legislative drafting experts will be characterized by robust consultations, inter-dependence amongst all the major stakeholders that are involved in the production of Bills and legislation.

## **1.2 Statements of the problem**

CR is developed to simplify the implementation of the CAMA 2020. However, a cursory observation of the CAMA 2020 in content and style needs to be more consistent in the legislative drafting style used in drafting the CAMA and CR. Therefore, the Draftsperson should be consistent in the language and style of drafting the CAMA and CR. In addition, this research further noticed a disconnect between the CAMA and CR in penalties and procedures post-incorporation. For instance, CAMA allows one person to own a company, but post incorporation, there are instances where one person can only own part of the shares. This problem has created severe confusion amongst the lawyers and other stakeholders of CAC. Furthermore, it is a trite principle of law that the primary law shall prevail in case of a conflict between the primary law and its Subsidiary.

The inherent problem of language and the impossibility of legislature to regulate unforeseeable future conduct present difficulties in the interpretation of words used in CAMA and CR. Besides the inherent language problem, traditional or orthodox principles of interpretation of statutes need to be revised regarding relevancy in the field of interpretation. The challenge in this regard centres

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<sup>3</sup> Tunde Opeibi, 'Between Obscurity and Clarity in Nigerian Legal Discourse: Aspects of Language Use in Selected Written Texts' in Anne Wegner and Sopia Cacciaguidi-Fahy (eds.) *Obscurity and Clarity in the Law-Prospects and Challenges* (Ashgate, 2008), 216

on the style of interpretation of words in the CAMA and CR. The need for consistency has always been the hallmark and objective of ordinary law jurisdiction through its judicial precedence. This will promote harmony and eliminate confusion in understanding the CAMA 2020 and CR 2021. One noticeable problem is the need for a uniform Nigerian drafting style that will standardise our current drafting style and abolish the archaic one. For the CAMA and CR to be effective, they must meet the needs of the society it seeks to serve.

### **1.3 Research questions**

Legislation is effective if it communicates actively. Therefore, legislation of good quality is one that produces the types, extent and level of compliance with the regulations. Drafting virtues are concepts that support and promote legislative quality. Few questions have been formulated for the purpose of this research, namely:

- i. Whether standard legislative drafting can aid the understanding of CR and implementation of CAMA 2020?
- ii. How can we relate lack of skilled legislative drafters and the quality of regulations made by the CAC?
- iii. To what extent did the CR 2021 address the implementation challenges of CAMA 2020?

### **1.4 Aim and objectives**

The aim of this research is to examine the comprehensiveness and conformity with modern legislative drafting standards both for the staff of the Commission and the general public.

The objectives of this research include:

- i. To examine the standards of legislative drafting in drafting the CR 2021.

- ii. To identify and discuss some challenges and prospects associated with the standard drafting style of CR 2021.
- iii. To assess the rationale behind the shift from the old drafting style to the modern drafting style.
- iv. To make a recommendation for review.

### **1.5 Scope and limitation**

The research concerns the standards of drafting style used in drafting the CR 2021. Therefore, the study is limited to evaluating the drafting style of CR, 2021. However, an effort will be made to cover some key provisions of the CAMA which needed to be adequately reflected in the CR, 2021 due to poor drafting and, thus, the impending implementation of the Act by the staff of the Commission and the general public.

### **1.6 Research methodology**

Research methodology is an important aspect of academic inquiry. It refers to the process of systematically investigating a topic of interest in order to gather information and knowledge about it. The phrase “research methodology” has been coined from a combination of the words ‘research’ which means to investigate, inquire, or to probe and gather knowledge about a thing, topic or a subject of interest. This subject may be academic or a social inquiry of personal interest. ‘Methodology’ itself is an inflection, a latin derivation of two words, method and logy<sup>4</sup> (study or discourse), thus meaning a study method. Research methodology will therefore pass for a systematic (method of) study, or investigation, or inquiry for gathering knowledge about a thing,

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<sup>4</sup> The New Webster’s Dictionary of the English Language (Lexicon Publications, Inc. 2004) p. 583

topic, or a subject. Legal research methodology denotes the exposition, the description or the explanation and the justification of methods used in conducting research in the discipline of law.<sup>5</sup>

This work adopts the doctrinal method of research strategy, in achieving the stated objectives, the sources of gathered data include, statutes, analysis of provisions of statutes, books, journals, articles, newspaper publications and other online research sources.

Doctrinal method is a research into law as a normative science that is a science that lays down norms and standards of human behavior. In this regard, doctrinal legal research is defined as research which asks what the law is in a particular area. It is concerned with analysis of the legal doctrine and how it has been developed and applied. Doctrinal research is also known as pure theoretical research. It consists of either a simple research directed at finding a specific statement of the law or a more complex and in-depth analysis of legal reasoning.<sup>6</sup> S. N. Jain further considers doctrinal research as analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions through legal reasoning or rational deduction.<sup>7</sup>

One of the key strengths of the doctrinal method of research strategy is its ability to provide a comprehensive and detailed analysis of legal issues. This method allows researchers to explore the underlying principles and concepts that inform legal decision-making, and to identify patterns and trends in the development of legal doctrine. Doctrinal research also allows researchers to critically

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<sup>5</sup> Essay UK: Free Law Essays, Conducting Independent Legal Research at Postgraduate Level, <https://www.essay.uk.com/free-essays/law/legal-research-postgraduate.php> (15/11/2022)

<sup>6</sup> I Dobinson & F Johns. Qualitative Legal Research, in Research Methodology for Law. (2007). University Press, Edinburgh. P. 18-19.

<sup>7</sup> S. N. Jain. Doctrinal & Non-Doctrinal Legal Research in Legal Research and Methodology.(2006). Indian Law Institute. P.68.



evaluate the legal reasoning and arguments presented in cases and other legal documents, and to identify areas where the law may need to be revised or updated.

### **1.7 Significance of the study**

This research will strengthen the significance of the CR 2021 in the registration of companies at all levels, thereby ensuring elegance in the drafting style. In addition, it will further strengthen the methodology of the Commission in conducting its regulatory oversight of the companies in Nigeria. Furthermore, this research will be complete upon appreciating the principles expounded in the body text of this research. This is to contribute to the body of knowledge by filling the gap in the rule-making process as subsidiary legislation and by adding to knowledge for developing legislative drafting skills in the Commission. Here are some ways in which a study on the evaluation of drafting standards can be significant:

***Improving regulations:*** By evaluating the drafting standards of regulations, the study can identify areas where regulations can be improved to better achieve their intended goals and minimize negative consequences for regulated entities. This can lead to more effective and efficient regulations that better serve the public interest.

***Cost-effectiveness:*** Through the evaluation of drafting standards, the study can also determine the cost-effectiveness of regulations, which is essential for both policymakers and the regulated entities. By identifying regulations that are disproportionately costly or ineffective, the study can help regulators make more informed decisions about when and how to implement new regulations.

***Enhancing competitiveness:*** A study on the evaluation of drafting standards can also help improve the competitiveness of regulated entities, especially small and medium-sized enterprises (SMEs). Poorly drafted regulations can have a disproportionate impact on SMEs, making it harder for them

to compete with larger firms. By identifying and addressing these issues, the study can help level the playing field for SMEs.

***Creating awareness:*** The study can raise awareness of the importance of well-designed regulations among policymakers and the public. By highlighting the potential negative consequences of poorly drafted regulations, the study can help ensure that the regulations are written in a way that benefits society as a whole.

***Enhancing knowledge:*** The study can also contribute to the existing body of knowledge in the field of regulation and governance by providing new insights and perspectives on the evaluation of drafting standards. This can help inform future research and policy decisions in this area. Overall, a study on the evaluation of drafting standards can have a significant impact on improving the effectiveness and efficiency of regulations, and on enhancing the competitiveness of regulated entities.

## 1.8 **Organization of Chapter**

This study is divided into five chapters beginning from the general introduction to the subject of discourse, the statement of the problem which necessitated the research, the aim and objectives of the work, as well as research questions, scope and limitation of the research, the significance of the research and the research methodology used in the research.

Chapter two covers conceptual clarification, historical development of the CR and literature review of the materials used. Chapter three deals with evaluation of drafting structure and style, syntax, gender neutrality, plain English and application and compliance, and also discusses the CR in comparative perspective. Chapter four focuses on challenges of the CR.

Chapter five provides for the summary of the research findings, conclusions based on the findings of the research, recommendations, the contributed to knowledge and the areas for further research.

## CHAPTER TWO

### **CONCEPTUAL CLARIFICATION, HISTORICAL DEVELOPMENT OF COMPANY REGULATIONS AND LITERATURE REVIEW**

There is a need for the general overview of some words to formalize a conceptual clarification which is necessary in understanding the topic. Thus, relevant literatures will be consulted and adequately tapped from. It is also imperative to look at the historical development of legislative drafting in Nigeria as it is necessary to examine the way legislative drafting developed the company law in Nigeria and how that development has influenced the company's law and its' regulations.

## **2.1: CONCEPTUAL CLARIFICATIONS**

Companies:

No precise legal meaning can be attached to the word 'company'. However, a company or corporate body can be described as a company as several people united in an industrial or commercial enterprise.<sup>8</sup> Gower says that the term is used for all people generally associated with economic purposes,<sup>9</sup> even though only in some cases. However, the modern company differs from the old, statutory, or chartered partnership. According to Collin, a company is a group of people organised to buy or sell or provide a service which has been legally incorporated<sup>10</sup> and so is a legal entity from its members. Webster describes a company as a number of people united in an industrial or commercial enterprise.<sup>11</sup> Gower says that the term is used for all people generally associated for economic purposes,<sup>12</sup> even though not in all cases. However, the modern company is rather different from the old partnership or statutory or chartered company. According to Collin, a

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<sup>8</sup> Webster's Encyclopaedic Dictionary, De Luxe Ed., (1993), p199

<sup>9</sup> L.C.B Gower's Principles of Modern Company Law, 4th Ed., (Stevens & Sons, 1979), p.3

<sup>10</sup> P.H. Collin, English Law Dictionary (Evans, 1987), p. 51

<sup>11</sup> Webster's Encyclopaedic Dictionary, De Luxe Ed., (1993), p199

<sup>12</sup> L.C.B Gower's Principles of Modern Company Law, 4th Ed., (Stevens & Sons, 1979), p.3

company is a group of people organized to buy or sell or provide service which has been legally incorporated<sup>13</sup> and so is a legal entity from its individual members.

In this context the company can be defined as a legal entity representing an association of people, whether natural, legal or a mixture of both, with specific objectives having a separate legal entity, juristic personnel and a perpetual succession.<sup>14</sup>

Corporate Affairs Commission:

Also known as Commission is a body corporate with perpetual succession and a common seal capable of suing and being sued in its corporate name and acquiring, holding or disposing of any property movable or immovable to carry out its functions.<sup>15</sup> The headquarters of the Commission is located in Abuja, with branch offices in other states of the federation. Some of its functions include administration of the Companies and Allied Matters Act- including the regulations and supervision of the formation, incorporation, registration, management and winding up of companies, among others.<sup>16</sup>

Regulations: are broadly defined as the imposition of rules by the government, backed by the use of penalties intended to modify the economic behaviour of individuals and firms in the private sector.<sup>17</sup> A Regulation also means an official government rule for certain administrative agencies to have a narrow authority to control conduct within their areas of responsibility.<sup>18</sup> These agencies

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<sup>13</sup> P.H. Collin, English Law Dictionary (Evans, 1987), p. 51

<sup>14</sup> Essay UK: Free Law Essays, Conducting Independent Legal Research at Postgraduate Level, <<https://www.essay.uk.com/free-essays/law/legal-research-postgraduate.php>> accessed on 15 November 2022.

<sup>15</sup> Section 1, Companies and Allied Matters Act, 2020

<sup>16</sup> Ibid.

<sup>17</sup> Merriam-Webster online dictionary, 'Regulation Definition & Meaning' <<https://www.merriam-webster.com>> accessed 23 January 2022.

<sup>18</sup> Legal Meaning of Regulation, Legal Information Institute <<https://www.law.cornell.edu>> accessed 23 January 2023.

have been delegated legislative power to create and apply the rules or "regulations". Derived from "regulate

For this research, the word Regulation means Companies Regulation issued by the Corporate Affairs Commission under the Companies and Allied Matters Act 2020. It is also subsidiary legislation to the Companies and Allied matters Act 2020 and their environment so they can continue living.

Standard:

This is said to be a level of quality or attainment or something used as a measure, norm, or model in comparative evaluations, e.g. "the wages are low by today's standards".<sup>19</sup> Authority can also establish a rule for measuring quantity, weight, extent, value, or quality and constituting or conforming to a standard, especially as established by law or custom. Substantially uniform and well established by usage in the speech and writing of the educated and widely recognised as acceptable.<sup>20</sup> Standard referred to is an authoritative principle of rule that usually implies a model or pattern for guidance compared with the quality, excellence, correctness, etc., of other things that may be determined.<sup>21</sup>

In economics, a standard means a value as an agreed-upon worth for a transaction in a medium of exchange, such as the US dollar or gold. A standard of value is needed so that the value of goods

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<sup>19</sup> Investopedia, 'What Is a Company, How to Start One, Different Types' <<https://www.investopedia.com/terms/c/company.asp>> accessed 23 January 2023.

<sup>20</sup> <https://www.merriam-webster.com>> accessed 15 January 2023

<sup>21</sup> Section 868 Companies and Allied Matters Act no3 of 2020

and services can be consistently determined. Without a standard of value, other ways of exchanging goods may arise, such as a barter system.<sup>22</sup>

From the legal perspective, a standard is established by authority, custom, or general consent as a model, example, or point of reference. It also means something established by authority as a rule for measuring quantity, weight, extent, value, or quality.<sup>23</sup> For this research, the standard is the standard in legislative drafting. Therefore, it referred to the standards of legislative drafting deployed for drafting the subsidiary legislation in line with the house style or manual of legislative drafting.

Evaluation:

This is the process of judging or calculating the quality, importance, amount, or value of something.<sup>24</sup> Evaluation is a systematic determination and assessment of a subject's merit, worth and significance using criteria governed by standards. It can assist an organisation, programme, design, project or any other intervention or initiative in assessing any aim, realisable concept or proposal, or any alternative to help in decision-making; or to ascertain the degree of achievement or value regarding the aim and objectives and results of any such action that has been completed. The primary purpose of evaluation, in addition to gaining insight into prior or existing initiatives, is to enable reflection and assist in identifying future change. Evaluation is often used to characterise and appraise subjects of interest in various human enterprises, including the arts,

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<sup>22</sup> Investopedia (n12).

<sup>23</sup> Standard – 'FindLaw Dictionary of Legal Terms' <https://dictionary.findlaw.com> accessed on 23 January 2023.

<sup>24</sup> Cambridge 'Evaluation' < <https://dictionary.cambridge.org/dictionary/english/evaluation> > accessed 23 January 2023.

criminal justice, foundations, non-profit organisations, government, health care, and other human services. It is long-term and done at the end of a period.<sup>25</sup>

Under this research, evaluation means evaluating the standards used in drafting the company's regulations for 2021. To determine whether the style used in drafting the Subsidiary legislation- Company Regulation 2021- conforms to the standards of legislative drafting in Nigeria.

Drafting:

Refers to generating preliminary versions of a written work.<sup>26</sup> Drafting happens at any stage of the writing process as writers generate trial versions of the text they are developing.<sup>27</sup> Legal drafting creates binding legal text. It includes enacted laws like statutes, rules and regulations; contracts (private and public); personal legal documents like wills and trusts; and public legal documents like notices and instructions. Legal drafting requires no legal authority citation and generally is written without a stylised voice.<sup>28</sup> Drafting in this context refers to the Act of drafting company regulation 2021.

Legislative drafting:

This is a precursor to the legislative process because the legislative process refers to proceedings on an already prepared legislative draft. The outcome of a "legislative draft" is a "BILL". In

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<sup>25</sup> Staff (1995–2012). "2. What Is Evaluation?". International Center for Alcohol Policies - Analysis. Balance. Partnership. International Center for Alcohol Policies. Archived from the original on 2012-05-04. Retrieved 13 May 2012.

<sup>26</sup> Onyekachi Duru, 'Legislative Drafting Techniques and Principles' <https://www.linkedin.com/pulse/legislative-drafting-onyekachi-duru-esq#:~:text=Legislative%20drafting%20is%20a%20precursor,as%20the%20case%20may%20be> accessed 23 January 2023.

<sup>27</sup> Elbow, Peter. *Writing Without Teachers*. 2nd ed. New York: Oxford UP, 1973, 1998. p.15.

<sup>28</sup> *English Thesaurus* (Bookmart Limited, Abbeydale Press, 2001) 158



contrast, the outcome of a legislative process, where completed, is an "ACT" or "LAW", as the case may be, and the outcome of a draft regulation is a 'Regulation'.<sup>29</sup>

The Act of writing legislation.<sup>30</sup> This will pass the methods, processes and skills of the drafter's ability to produce a well-scrutinized legislative policy framework. The subject of legislative drafting, which forms a good part of this research, generally encompasses the draft of subsidiary legislations, also called regulations.

## **2.2: HISTORICAL DEVELOPMENT OF LEGISLATIVE DRAFTING AND COMPANIES REGULATIONS**

### **2.2.1: Historical Development of Legislative Drafting**

The legislative drafting style in Nigeria has its roots in the English Legal System, just like the common law itself. However, legislative drafting evolved over a long period through the experience of drafters working in many jurisdictions where most legislation is drafted using the Traditional English Drafting Style.<sup>31</sup>

The modern codification of civil law developed from the tradition of medieval customaries, collections of customary law that developed in particular communities, slowly gathered, and later written down by local jurists.<sup>32</sup> Customaries acquired the force of law when they became the undisputed rule by which certain rights, entitlements, and obligations were regulated between

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<sup>29</sup> Ibid.

<sup>30</sup> L. E Filson and Sandra L. Strokof, the Legislative Drafter's Desk Reference (Second Edition, CQPRESS, 2008)9

<sup>31</sup> Potu.Rahul Choudary, Historical Back Ground of Legislative Drafting

<[https://www.academia.edu/19931942/HISTORICAL\\_BACK\\_GROUND\\_OF\\_LEGISLATIVE\\_DRAFTING](https://www.academia.edu/19931942/HISTORICAL_BACK_GROUND_OF_LEGISLATIVE_DRAFTING)> accessed 31 January 2023.

<sup>32</sup> Ibid.

community members.<sup>33</sup> Each religion started following the law under the postulations inscribed in their respective religious guides, and most of the religious laws are contained in the scriptures.<sup>34</sup> While different laws govern all communities, there are similarities between them that can be extrapolated to establish common principles around which legislative drafting practice might be developed.<sup>35</sup>

Ethical and legal norms by which human conduct is sometimes evaluated and governed. Natural law is often contrasted with positive law, which consists of the written rules and regulations enacted by the government. The term natural law is derived from the unwritten body of universal moral principles that underlie the Roman term *jus natural*. Adherents to natural law philosophy are known as naturalists. Subsequently, most of the natural and customary laws became an essential source of our laws and were subsequently drafted down in the form of statutes.<sup>36</sup>

Naturalists believe that natural law principles are an inherent part of nature and exist regardless of whether government recognises or enforces them. Naturalists further believe that governments must incorporate natural law principles into their legal systems before justice can be achieved. The incorporation of natural law also gave rise to legislative drafting. In the olden days, there was no legislation, but the administration of justice was going in according to customs, conventions, usages and practices.<sup>37</sup> Although proper legislation was not there, justice was available to the public according to the system of natural justice and which they used to call 'Divine law'. When

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<sup>33</sup> WIPO, Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues, [https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview\\_customary\\_law.pdf](https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf) accessed 31 January 2023.

<sup>34</sup> Harold J. Berman, Religious Foundations of Law in the West: An Historical Perspective, *Journal of Law and Religion*, Vol. 1, No. 1 (Summer, 1983), pp. 3–43.

<sup>35</sup> Choudary (n49).

<sup>36</sup> *Ibid.*

<sup>37</sup> WIPO (n51)

the times pass on, a law which initially may be regarded as the common property of collective people, there should be a write-up guiding the lawgivers while adjudicating the matters from the village level. These laid the foundation for modern-day legislative drafting.

### **2.2.2: Historical Development of Companies Regulations**

Subsidiary legislation is an ancient principle of English legal jurisprudence; it dates back several centuries, such as the Statute for Exportation of Wool of 1337 and the Statute of Staple of 1388.<sup>38</sup> Administrative provisions made by the Supreme council consisted of the buck of *modus operandi* of the government of this era.<sup>39</sup> As time progressed, statutes emerged that empowered the king in council to proclaim that potency with an Act of Parliament.<sup>40</sup> Benson posited that “it was not until parliament asserted their powers as the sole agents responsible for law making that the exercise of government to make laws was seen as being conferred on them by Parliament.”<sup>41</sup>

There was a tremendous rise in the volume of Subsidiary legislation in the 19th century, as England alone holds the record of passing about three to four thousand Subsidiary legislation annually.<sup>42</sup> This legislation varies from simple to complex issues of societal importance. However, one unique feature of most of them is that they deal with a citizen's daily life as they form part of the vast legislative instrument that regulates citizens' conduct.<sup>43</sup> These legislations have become very important because of the enormous legislative responsibilities and the fact that not all matters can be included in the primary legislation of the legislators. The above scenario brought about the dire

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<sup>38</sup> Kingsley Osinachi N. Onu, *Delegated Legislation in Nigeria: Taming the Wilddog While its Still Early*, Institute (Institute of Natural Resources Law, Legal Brief, Volume 11, No. 3, (2022), pp. 1539–1545.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> Jemina Fabiawari Benson, 2014, *Delegated Legislation in Nigeria: Challenge of Control*. LL.M Dissertation, Institute of Advance Legal Studies, University of London Miers

<sup>42</sup> Onu (n56)

<sup>43</sup> *Ibid*

need for a division of law-making power between the legislative arm of government and the executive arm of government.<sup>44</sup> Whereas the legislators focused on the form of the law, the executive focused on the details.

Henry Thring<sup>45</sup> is of the firm view that the Parliament only fulfils its primary function by restricting itself to the material provisions while allowing the governmental departments to deal with the details. Dicey<sup>46</sup> gave credence to the above postulation when he stated that "the substance and form of the law will be improved if the executive could work out the detailed applications of the Act of Parliaments". Our courts have also accepted the above position. The Supreme Court of Nigeria made this point through Per Nnaemeka-Agu, JSC (as he then was) in the celebrated case of *Nwosu v. Imo State Environmental Sanitation Authority*.<sup>47</sup> thus: Although the courts are strict in requiring that statutory power shall be exercised by the persons on whom it is conferred and by no one else, they make liberal allowance for the working of the official hierarchy at least so far as it operates within the sphere of responsibility.

Nigeria, one of the countries colonised by Britain, received all the English laws.<sup>48</sup> They were enacted in England on or before the first day of January 1900, together with their subsidiary legislation. Furthermore, most of the laws enacted by Nigerian legislators usually make provisions

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<sup>44</sup> Ibid

<sup>45</sup> Beatson J., (1979). 'Legislative Control of Administrative Rule-making: Lessons from the British Experience', Cornell International Law Journal, Vol 12 Issue 2

<sup>46</sup> Dicey AV, (1959) an Introduction to the Study of Law of Constitution (London, Sweet and Maxwell 10th Ed).

<sup>47</sup> SC.207/1988.

<sup>48</sup> The English laws which comprise Acts or Orders-in-Council that are applied directly to Nigeria are statutes of General Application, the Common Law and the doctrine of equity. The Received English law is part of our colonial legacy. Following the Berlin Conference of 1884-1885, which was summoned by the Chancellor of Germany, Otto von Bismark, Britain was empowered to control the coast from Lagos up to Calabar. Therefore, prior to the year 1900, laws that were enacted and passed for Britain in the British Parliament applied to Nigeria as a British colony. "With the result that laws that came into existence at the time Nigeria were not even in contemplation as a country still applies to this country up to this day.

delegating some of the legislative functions to the executive and other arms of government. Against this background, the Corporate Affairs Commission, according to section 322 of the Companies and Allied Matters Act 2020, issues the Companies Regulations 2021 to regulate the pre and post-incorporation of companies, business names, and incorporated trustees.

### **2.2.3: Legislative Drafting and Its Place in the Study of Law**

Legislative drafting is the process of constructing a text of legislation. Legislative drafting must be distinguished from legal drafting, which involves the construction of a text used in the judicial process. And it is a narrower concept to the civil law, it is an aspect of law-making: law-making encapsulates the whole process of conceptualization of legislation and thus reflects the legislative process, whereas legislative drafting reflects the drafting process only<sup>49</sup>. But of course this does not mean to say that drafting is completely foreign to the legislative process. In fact, the drafting process is part of the legislative process, which in turn is part of the policy process.<sup>50</sup>

The drafting process is divided by Garth Thornton into five stages: (1) Understanding the proposal. (2) Analyzing the proposal. (3) Designing the law. (4) Composing and developing the draft. (5) Verifying the draft.<sup>51</sup>

In practice, stage 1 involves the receipt and careful reading of drafting instructions compiled by the policy and legal instructing officers of the department that requests the drafting of legislation. Drafting instructions are data provided to the legislative drafter by the policy makers as a means

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<sup>49</sup> IALS Student Law Review | Volume 1, Issue 1, Autumn 2013, pp. 57-70

<sup>50</sup> Constantin Stefanou, 'Legislative Drafting as a form of Communication' in Luzius Mader and Marta Tavares de Almeida (eds), *Quality of Legislation Principles and Instruments* (Nomos 2011) 308; and also see C. Stefanou, 'Drafters, Drafting and the Policy Process' in Constantin Stefanou and Helen Xanthaki (eds), *Drafting Legislation: A Modern Approach* (Ashgate 2008) 321.

<sup>51</sup> Helen Xanthaki, *Thornton's Legislative Drafting* (5th edn. Bloomsbury 2013), pp.145-162.

of assisting the drafter to draft effective legislation within the parameters detailed by the policy makers of the government. They can be brief or detailed but they must provide the drafter with the necessary background information for the comprehension of all aspects of the political decision to proceed with legislation and the choice of the proposed legal means for the achievement of government policy; they must not take the form of a lay or rough draft law.

The Legal Adviser's main tasks are to work out what additions to, or changes in, the law are needed to give effect to the policy; to provide all the information the drafter needs in order to be able to draft the Bill (namely, to provide the drafter with proper drafting instructions; to discuss with the drafter any problems or difficulties arising out of the instructions; to ensure that every draft produced by the drafter is thoroughly examined by the Legal Adviser and the Administrators to see whether it achieves the desired results and to correct errors, wrong internal references etc. Above all, to make sure that the final draft really will achieve the main results desired. Detailed instructions prepared by Legal advisers within the Department are sent to the Office of Parliamentary Counsel (OPC)<sup>52</sup>.

This is the concept of the "Bill Team". Private Members' Bills do not, in principle, receive drafting support from the OPC. And delegated legislation is instructed and drafted within each Government Department.

Stage 2 involves the compilation of a legislative plan, also known as a legislative research report. It involves a brief or longer report on the basic elements of the drafter's response to the drafting instructions. It does not need to be complete, but a written sketch of the report or plan will assist the drafter to reap the advantages of the design of a legislative solution.

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<sup>52</sup> Helen Xanthaki, Thornton's Legislative Drafting (5th edn. Bloomsbury 2013), pp.145-162.

The main advantage of a legislative plan is that it ensures that the end result of the legislation is what is expected from their policy makers: often matters of policy arise when the drafter attempts to transform an idea to a legislative text. Thus, the design acts as a bill's quality control.

The legislative plan includes an analysis of the existing law (the mischief); an analysis of the necessity of legislation, a regulatory tool that can only be used as a solution of last resort where every other regulatory choice would not be effective; analysis of potential danger areas (constitutional, legal, practical); and an analysis of the practical implications of the legislative proposal, including an analysis of matters for which secondary legislation is likely to be needed to implement the draft law<sup>53</sup>.

Stage 3 of the drafting process involves designing the law, namely structuring the legislative text in a manner that facilitates understanding, and consequently invites implementation. Bergeron<sup>54</sup> states that Bills must be arranged in a logical order. The provisions of the statute that are of a permanent nature precede those expected to have a limited life. The statute must be preceded by a table of provisions showing the headings and the section titles.

The table of provisions is not part of the statute but is included to make it easier to consult. The statute is divided into parts only in those cases where the number of sections and the possibility of arranging them in categories constituting adequate conceptual units justifies this. But the main source of doctrine when it comes to structure is Lord Thring, former First Parliamentary Counsel, who expressed his prioritization of provisions in 5 rules: <sup>55</sup>

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<sup>53</sup> IALS Student Law Review | Volume 1, Issue 1, Autumn 2013

<sup>54</sup> R. Bergeron, Rules of Legislative Drafting – Letters to Ukrainian Drafters (1999, Department of Justice Canada and Ministry of Justice of Ukraine, Kiev).

<sup>55</sup> V.C.R.A.C. Crabbe, Legislative Drafting (Cavendish Publishing 1998), pp.148-150.

*Rule 1:* Provisions declaring the law should be separated from, and take precedence over, provisions relating to the administration of the law:

The first part of the above rule is founded on the consideration that it is convenient for the purpose of clearness to separate the law from the authority to administer the law, and the reason for giving precedence to the law over administration is that until the law to be administered is determined, the proper authority to administer that law cannot be judged of any verbal difficulty created by referring to the administrative authority before its constitution is stated may be avoided by the use on the occasion of the first mention of the authority of the phrases "the court by this Act constituted," "the commissioners in this Act referred to," or other referential phrases. The latter part of the rule, however, giving precedence to the law over the authority which administers the law is only applicable to a limited number of cases. Frequently the subject matter is of such a character as to require the authority to precede the law. Take, for example, the law as to *coroner*, the better mode would seem to be to create the *coroner* before laying down the law of inquest, on the ground that the law would seem to be an emanation from the authority, rather than the authority of an Institute established for administering an antecedent law<sup>56</sup>.

*Rule 2:* The simpler proposition should precede the more complex and, in an ascending scale of propositions the less should come before the greater. Thus, in principle, assault should be provided for before aggravated assault:

For example, in an Act relating to offences against property, theft should precede theft with violence, or robbery, and so forth; similarly, in dealing with the authority to administer the law, the lesser should precede the greater, the local the central e.g., in the Public Health Act, 1875, the sanitary authority is dealt with before the Local Government Board.

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<sup>56</sup> 32 & 33 Vict e.55" General rules of arrangement of act rule 1



This rule also is in a great measure arbitrary and suggested with a view of enabling the draftsman to form a clear conception of the relative bearing of sections, rather than to make it imperative on him to adopt it on all occasions. Such a rule must constantly yield to political pressure, and the draftsman is frequently required by his instructions, or by the special circumstances of the case to put the more complex proposition before the less complex, or the higher authority before the lower. On the whole, however, experience would seem to suggest that the observance of the rule leads to clearness and brevity in drawing; and uniformity in Acts of Parliament is of so much consequence that it is most desirable that some general rule of arrangement should wherever practicable be adopted<sup>57</sup>.

*Rule 3:* Ordinary provisions should be separated from supplemental. The latter should be placed towards the end of the Act, while the former should occupy their proper position in the narrative of Act of the occurrence to which they refer.

Ordinary provisions are such enactments as are in all cases required to carry into effect the material objects of the Act. Supplemental provisions are framed with a view to supply vacancies in offices, defects in procedure, and so forth, or to declare in detail the mode of working out the principles which have previously been laid down. Taking as an illustration the Public Health- Act, 1875, the sections in Part II. Constituting sanitary districts and sanitary authorities are ordinary provisions; the sections in Part VIII. Altering the areas of districts and referring to the formation of united districts are supplemental provisions. In short, the recommendation as to the separation of the ordinary provisions and the supplemental provisions amounts to this, that on the first mention of a series of legislative acts, it should be assumed that everything proceeds in its ordinary course, that

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<sup>57</sup> 38 & 39 Vict. c. 71 " General rules of arrangement of act rule 2

no one concerned will die or become bankrupt or omit to do his duty, and that no abnormal circumstance will occur. This mode of arrangement will doubtless be objected to by persons who are desirous of acquiring a partial knowledge of an Act without reading the whole, as being defective by reason of its not grouping under one head all the provisions relating to the same subject-matter<sup>58</sup>.

*Rule 4:* (a) Local or Exceptional provisions (b) temporary provisions and (c) provisions relating to the repeal of Acts should be separated from the other enactments, and placed by themselves under separate headings.

Taking the Bankruptcy Act, 1869, as an example of temporary provisions, the new court is defined in the body of the Act in the same manner as if no other court were intended to be dealt with, while the temporary jurisdiction of the existing court and the status of the existing officers are found in a separate part of the Act. These provisions should never be mixed up with the permanent enactments, but should be set apart by themselves, as in a short time they die off and leave the measure complete with-out them. Examples of Repeal clauses are found at the end of almost every Act which disturbs existing statute law<sup>59</sup>.

*Rule 5:* Procedure and matters of detail should be set apart by themselves, and should not, except under very special circumstances, find any place in the body of the Act.

One maxim should however be steadily borne in mind by the draftsman, that whatever deviation may be allowed in the arrangement of principles and heads of law as between themselves, the essential conditions of a well-drawn Act of Parliament are that every principle of law and every

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<sup>58</sup> The composition and language of act of parliament by Sir. Henry Thring; Sept 11, 1936.

<sup>59</sup> The composition and language of act of parliament by Sir. Henry Thring; Sept 11, 1936.

head of law should be separated from every other principle and head of law, and should form the subject of a separate enactment or series of enactments, and that in framing any enactment or series of enactments, the principle or head of law contained in such enactment or enactments should be stated at the outset, and the mode of giving effect to that principle or head of law should be dealt with by subordinate enactments, or otherwise according to circumstances. Frequently, when the draftsman has sifted the materials of his Act according to the foregoing rules, and is about to turn his attention to the enactments, he will find a difficulty in ascertaining their mutual relations to each other ; in other words, the subject, although reduced in bulk, is still too large for him to classify throughout<sup>60</sup>.

But modern legislative drafting theory, as part of the plain language movement demanding plainer legislative texts, urges legislative drafters to bare the text from preliminary provisions and, following the lessons learnt from media studies and advertising, to start as early as possible with the regulatory message that the government is trying to convey to citizens.

Legislation is a form of communication: it involves, in its most part, the expression of a prohibition of citizen activity: after all, citizens can do whatever they wish, unless it is prohibited by law. And so the pursuit of modern drafters is to share that message with their audience (the users of the legislation) in a manner that gets them to get heard loud and clear. And so, the traditionally long list of preliminary provisions is being cut shorter and shorter.

The long title, namely the description of the manner in which the law is reformed, remains at the very top of modern legislative texts. But the role of the preamble is diminished to a cosmetic one in the case of archaic or ceremonial laws, or to a transitional one in the case of the confirmation of

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<sup>60</sup> 25 &26 Vict e.89" General rules of arrangement of act rule 5

the legal basis of the law and the observance of the constitutional stages of the legislative process in newer or weaker democracies.

The enacting clause remains, as a constitutional requirement without which the text lacks legitimacy. The short title remains as a means of reference to the law in the index of the statute book. But commencement, duration, expiry, application, and interpretation provisions are now transferred to the final provisions part.

Similarly, definitions are finding their way either in final provisions or, preferably, in schedules at the back of the legislative text. And what seems to be making a surprise revival is purpose clauses, which may have been persecuted to extinction in the past but now are invited back as objectives clauses including measurable and concrete criteria for the effectiveness of the legislation in regular post-legislative scrutiny cycles. Substantive provisions introduce rights, powers, privileges, and immunities of persons to be benefited or regulated.

These provisions are drafted as prescriptions, prohibitions, regulations or combinations. Statutory corporations are introduced with care: their powers can only be those awarded to them by statute and those which are necessary for the completion of the purpose of incorporation (even if they are not directly awarded to them by statute).

Licensing and registration provisions cover the appointment of a licensing authority, the object of its activity, the manner of application for the license, the sanctions for breach of the obligation to obtain a license or fraudulent behaviors in the procedure, appeals procedures, inspection issues, subsidiary legislation and any transitional regimes.

Final provisions include savings, transitional provisions, repeals and consequential amendments, and schedules. Savings provisions preserve or “save” a law, a right or privilege that would otherwise be repealed or cease to have effect.

In other words, saving provisions keep in being laws, rights or obligations that might otherwise disappear when an existing law is repealed. Transitional provisions are necessary to enable a smooth transition to be made between the existing law and the new law; they tie up the loose ends which would otherwise be left dangling.

Although, savings and transitional provisions are often confused, they are two different species and should carry separate headings. Savings provisions do not relate to time: they simply preserve a circle of persons or activities from the field of application of the new regime; they are long term provisions. Transitional provisions focus on regulating for the short term issues that continue to fall within the field of application of both the old and new regime but the regulation changes with the new regime. They are short term provisions that regulate the transition between the old and the new regime for the same class of subjects, or objects, or activities. Repeals are deletions of provisions or Acts from the statute book. They must be introduced expressly to avoid confusion. Implied repeals, namely repeals that come about de facto but have not been expressly introduced in the legislative text are an anomaly of drafting and cannot be tolerated<sup>61</sup>.

At the end of the day repeals are a drafter’s not a judge’s job. Repeals can be simple, where legislation is no longer required (unusual in practice); combined with re-enactment, where a new enactment consolidates the law that is essentially unchanged; or combined with replacement, where existing legislation is being remolded to meet new circumstances in different ways (the most

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<sup>61</sup>Legislative Manual: Structure and Style, New Zealand Law Commission Report No 35 (1996, Wellington).

usual circumstance in practice). It is still questionable whether amending Acts or subsidiary legislation deriving from the repealed Act need to be expressly repealed.

From a constitutional and statutory interpretation perspective they do not need to be repealed, as they will have merged with the principal Act on coming into force. From that point of view express repeal of such an amending Act or provision would be required only in the rare instance that it had not yet come into force at the date of proposed repeal. But from a drafting perspective where clarity and certainty in the law lies at the heart of the matter, express repeal even of delegated legislation is crucially helpful to the user, and must be upgraded to best practice.

Schedules are provisions attached to the main text of the law, hanging from a substantive provision within the text. They free the main body of an Act from a possible charge of untidiness.<sup>62</sup> The use of schedules can make a substantial contribution to effective communication by clearing away procedural and other distinct groups of provisions to schedules in order to present the main provisions of the statute prominently and in a less cluttered package.

The Keeling Schedule<sup>63</sup> is a device which ‘sets out the wording of the enactment, indicating by bold type the changes proposed.’<sup>64</sup> It is only used where the changes made by the Bill in the previous enactments are exclusively textual amendments or repeals.

The Keeling technique not only shows, in the Schedule how the law will look once it is amended, but also makes clear, in the text of the Bill itself, how the law is being amended.’<sup>65</sup>

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<sup>62</sup> V.C.R.A.C. Crabbe, *Legislative Drafting* (Cavendish Publishing 1998), pp. 145-147.

<sup>63</sup> It is named after Mr. E. H. Keeling, (later Sir Edward Keeling) who, with Mr. R. P. Croom-Johnson (later Mr. Justice Croom-Johnson) made the original proposal.

<sup>64</sup> Francis Bennion, *Bennion on Statute Law* (3rd edn. Longman 1990) p 56.

<sup>65</sup> Renton Report (Cmnd 6035) para 13.22.

Stage 4 sees the actual drafting of the text. The drafting of substantive provisions requires application of the rules for words and grammar that are considered to serve the intelligibility of the text.

Drafters use words that are plain, clear, well understood, and unambiguous. Bad practices include the use of unnecessary words; the use of the same word or phrase in different contexts; synonyms; jargon; passive voice; plural; gender specific language; archaic terms (such as “said” as an adjective); the use of “shall” to express a duty, obligation or prohibition. Best practice includes the use of the present tense and indicative mode; the use of “may” to express a power or privilege, and “must” or present tense to express the imperative mode; and gender-neutral language.

Best practice also encourages good presentation techniques. Drafters lay out the draft so that, when printed, the text is easy to work with. And so encouraged is the use of plenty of "white space" (i.e. the text is not densely packed); short sentences, and paragraphing to display component parts; a consistent system for numbering articles, paragraphs and tabulations; and visual aids, such as formulae, maps and diagrams.

Stage 5 involves the verification of the legislative text. Drafts need to be verified as a means of achieving quality. Verification takes place internally, namely within the drafting team, and externally, namely by other interested Ministries and affected agencies.

Scrutiny of the legislative text should be a continuous process throughout the drafting, particularly to improve its clarity and to check its practicability.

Best practice calls for each version of a draft should be subjected to scrutiny of legal form, clarity and comprehensibility; and at the end of drafting, the final version of the law must be scrutinized on a wider range of matters, including a series of legal verifications. Checks on legal form, clarity

and comprehensibility includes controls that the conventional requirements as to the form, structure and presentation of legislation have been followed; the language of the legal provisions follows standard language usages and is easily comprehended and free of ambiguity; the ordering of the provisions in the law is logical and facilitates its use; terms used in the law are followed consistently throughout the law and that unnecessarily legalistic or archaic terms are not used. Legal verification checks include constitutional and legal compliance controls.

#### **2.2.4: Comparative Law Analysis/Cross Country Experience**

The comparative law analysis under this section examines the “systematic” approaches and strategies that some selected countries have adopted to improve the quality of their legislation. Although, this research argues that Patchett’s seven strategies is the most appropriate (as a holistic and long-term strategy) for improvement of the quality of Bills and legislative drafting in Nigeria, the purpose of this comparative law analysis is to identify appropriate (short-term) strategies that other countries have successfully applied that Nigeria could adopt and adapt. There are two categories of countries that have been selected for comparative law analysis in this research. The first category (United States of America, and United Kingdom) is the comity of countries with high level of economic development considering that they are ranked amongst the top ten economies in the world<sup>66</sup>.

The high rate of economic development in these selected countries is relevant to the analysis in this research study considering in the abstract of this research study, we already initially adapted a prevailing theory and thesis in the field of legislative drafting that there is a nexus between good

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<sup>66</sup> Caleb Silver; (2022) The Top 25 Economies in the World  
<https://www.investopedia.com/articles/investing/022415/worlds-top-10-economies.asp> accessed 25 June, 2023



quality Bills, legislative drafting and economic development wherein [legislative] drafting can help third world development<sup>67</sup>.

The second category of countries (South Africa and Kenya) are amongst the top ten economies in Africa<sup>68</sup>, the successful application of “systematic” strategies for improvement of their Bills and legislative drafting would provide examples and inspiration for Nigeria. Below are some details of the strategies for improvement of the quality of Bills and legislative drafting that are applied by the case studies selected, the details are not exhaustive but rather a representative samples, they are as follows:

1. United States of America (USA)-For the purposes of drafting all Federal legislation, the USA Congress (the federal legislature) has put in place some strategies that improve the quality of Bills and legislation as listed below:

(i) An institutional arrangement for legislative drafting that is encapsulated within a legal/legislative framework which consists of the Offices of Legislative Counsel for the Senate and House of Representatives respectively. According to the establishment legislation, the Office of Legislative Counsel of the Senate of the US Congress was established in the year 1919. Section 1 of the said legislation reads: “There shall be in the Senate an office to be known as the Office of the Legislative Counsel, and to be under the direction of the Legislative Counsel of the Senate”, a brief information of the Office is provided on the website as follows: The Office of the Legislative

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<sup>67</sup> See Constantin Stefanou, The Policy Process and Legislative Drafting in C.Stefanou and H.Xanthaki (eds) Manual in Legislative Drafting (Department for International Development, 2005), p. 3

<sup>68</sup> Emeka Chigozie; (2018) Top 10 African Countries with the biggest economy <https://answersafrica.com/largest-economies-africa.html> accessed 25 June, 2023

Counsel was established in 1919 to assist "in drafting public bills and resolutions or amendments thereto" upon the request of any Senator, committee, or office of the Senate.

The Legislative Counsel of the Senate was appointed by the President pro tempore of the Senate solely on the basis of his or her qualifications to perform the duties of the position.

The Legislative Counsel was authorized to appoint Senior Counsels, Assistant Counsels, support staff, and other employees, to establish salaries, and to otherwise administer the Office. All appointments were made without regard to political affiliation and were subject to the approval of the President pro tempore of the Senate<sup>69</sup>.

(ii) The Offices of Legislative Counsel of the US Senate and House of Representatives are at the forefront of improving and maintaining high quality of Bills and legislation in the USA considering that the Legislative Counsel who is the Head of the Office, has the responsibility of scrutinizing all Bills and legislation before their enactment and publication. Each of these two offices have published a "Legislative Drafting Manual" which serves a drafting guide/manual and tool for undertaking scrutiny of legislation. These legislative drafting manuals are available online on the websites of both offices<sup>70</sup>.

(iii) In addition, to the legislative drafting manual, a tailor-made bespoke computer legislative drafting software and laptop computer is made available to each legislative drafting lawyer of both Offices for undertaking Bill and legislative drafting assignments.

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<sup>69</sup> National Archives Catalog, U.S. Senate, Office of the Legislative Counsel.  
<https://catalog.archives.gov/id/10534712> accessed 5 June, 2023

<sup>70</sup> Ibid.

In the field of legislative drafting, a combination of both formal training programmes and “mentorship through-on-the-job-training” respectively are the two methods for redress the “worldwide shortage of legislative drafters...”<sup>71</sup>

(iv) High Remuneration as a strategy for staff retention. During a formal interview, his researcher was informed by the Head of the Legislative Counsel Office of the US Senate, that his salary and the salary of other legislative drafting lawyers of that Office was higher than the salary of any senator of the USA Congress.

The said Head of the Legislative Counsel Office retired in March 2018 after thirty-seven (37) years of employment in the Office of Legislative Counsel, USA. This is due to the high remuneration which prevents high turnover.

(v) Ratio of legislative drafting lawyers (30)<sup>72</sup> per senator/legislator (100)<sup>73</sup> is good and workload is manageable. This is not the case in Nigeria where there are only eleven (11) legislative drafting lawyers and staff of the Legal Drafting Unit of the Legal Services Directorate of the National Assembly to attend to one hundred and nine (109) senators.

(vii) Division of labor between the Office of Legislative Counsel and the Congressional Research Service (CRS).

Unlike the situation in Nigeria, wherein legislative drafting lawyers have to combine the tasks of drafting Bills as well as scrutiny of Bills, in the US Congress the lawyers in the Offices of

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<sup>71</sup> S. Markman, Training Legislative Counsel: Learning to draft without Nellie” Commonwealth Law Bulletin (2010) Vol. 36, Issue 1, available online at: <https://www.tandfonline.com/doi/abs/10.1080/03050710903573431> accessed 7 May 2023

<sup>72</sup> National Archives Catalog, U.S. Senate, Office of the Legislative Counsel, Senate Committees <https://www.gpo.gov/fdsys/pkg/CDIR-1997-06-04/pdf/CDIR-1997-06-04-3.pdf> accessed 7 May 2022

<sup>73</sup> Ibid

Legislative Counsel are completely devoted and dedicated to drafting of Bills while the staff of the CRS are dedicated to providing in-depth scrutiny and analysis of Bills for legislators. During a study visit to the CRS by a delegation of NILDS in the year 2015, it was noted that the CRS receives an average of 30 to 50 requests per week. It is estimated that the CRS has about 600<sup>74</sup>staff/employees.

(vii) Format of Bill scrutiny/analysis Report During the 2015 NILDS study visit<sup>75</sup> to the CRS it was reported that the CRS has a tradition of providing a two page CRS Bill scrutiny and analysis report that “captures all the relevant information and makes it easier for legislators to read”. This is not the case in Nigeria, wherein the prescribed format of Bill Scrutiny and Analysis Report by National Institute for Legislative and Democratic Studies makes it susceptible to wordiness and lengthiness.

2. United Kingdom-The United Kingdom also applies similar strategies for improvement of Bills and Legislative Drafting considering that there is an Office of Parliamentary Counsel consisting of over seventy lawyers, the said office was established in the year 1869 and its sole responsibility is to draft Bills and legislation for the UK Parliament. Just like its counterpart Offices in the USA, it has published its own legislative drafting manual. The additional measures for improving the quality of Bills and legislative drafting in the UK are:

(i) The Legislative and Regulatory Reform Act, 2006. In a nutshell, this legislation prescribes the procedures to be applied for enactment of legislation and Regulations (secondary legislation). For examples, it stipulates that holding consultations with citizens and others who are likely to be

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<sup>74</sup> Wikipedia, the free encyclopedia Congressional Research Service  
[https://en.wikipedia.org/wiki/Congressional\\_Research\\_Service](https://en.wikipedia.org/wiki/Congressional_Research_Service) accessed 7 June, 2022

<sup>75</sup> L. Hamalai, Report of the Visit to the United States Congress and the UK Parliament by the National Assembly and NILDS Delegation, 20-23 October 2015.

affected by prospective legislation or Regulation is a mandatory part of the legislative and regulation process and documented evidence of undertaking such consultations must be provided by government officials.

This piece of legislation is significant considering that it demonstrates a keen understanding of the fact that as a supplement or complement to legislation, regulation (secondary legislation and other alternative tools) could be applied to solve certain problems. This is the equivalent of “alternatives to legislation” as it is called under Patechett’s seven strategies.

This is one of the problems that Nigeria is yet to address, namely the over-reliance on legislation as a tool for solving all of its problems.

(ii) Pre-legislative scrutiny (primary and secondary legislation) committees of the UK Parliament: Since the year 1998, the UK Parliament established two standing committees to undertake scrutiny of any and every Bill, primary and secondary legislation as a pre-requisite before its consideration and enactment by the UK Parliament<sup>76</sup>. More recently in the year 2013, the UK Parliament established the Political and Reform Committee which advocated five key reforms with a view to improving the quality of legislation in the UK.<sup>77</sup>

Publication of a draft Code of Legislative Standards and Pre-and post-legislative scrutiny are part of the reforms advocated. Also, the UK Office of Parliamentary Counsel, published its own GOOD

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<sup>76</sup> Article by Peter C. Oliver\* Cite as: (2019) 65:2 McGill LJ 207 — (2019) 65:2 RD McGill 207

<sup>77</sup> A. Samuels, Ensuring Standards in the Quality of Legislation, Statute Law Review (2013) Vol. 34, Issue 3, pp. 296-299 at 296

LAW Initiative<sup>78</sup> as a statement of the principles that would guide legislative drafters in addition to its legislative drafting manual.

(iii) Financial Memorandum and cost-benefit analysis of proposed Bills/legislation Beginning from the 1998/1999 Parliamentary Session, the UK Parliament made it a mandatory requirement that every Bill that is submitted for debate and legislative consideration must be accompanied by a Financial Memorandum that states the financial implications that are involved in implementation of the proposed Bill or legislation.

Historically, this was as a result of UK's membership of the EU which made it a requirement amongst EU member states to undertake and publish a "rudimentary cost-benefit analysis"<sup>79</sup> of proposed Bills/legislation.

It is noteworthy, that this strategy is already been adapted and applied in Nigeria since the year 2011, when the Senate of Nigeria's legislature blazed a trail when it enacted Order 77 (3) of the Standing Orders of the Senate, 2011, this provision made it a mandatory requirement for any senator who sponsors a Bill to submit an accompanying document named a Compendium of Financial Implications of any proposed legislation (Bill).

(4) South Africa- There are several initiatives for promoting good quality Bills, legislation and legislative drafting in South Africa, some of them are:

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<sup>78</sup> Guidance, Good law principles, <https://www.gov.uk/guidance/good-law> accessed 7 May 2018 (This guidance was withdrawn on 20 January 2020, the Initiative is now part of department's list of priorities.)

<sup>79</sup> See C. Stefanou, Drafters, Drafting and the Policy Process in C.Stefanou and H. Xanthaki, (eds) Drafting Legislation-A Modern Approach (Aldershot, UK: Ashgate Publishing, 2008) pp.321-346 at p.327, its rightly stated: "One point to note here is that in some small jurisdictions (or in jurisdictions where drafting takes place inside a ministry) the drafters are even expected to complete relevant Regulatory Impact Assessment (RIA) checklists or even (for minor bills) a rudimentary cost-benefit analysis.<sup>20</sup> This is not the case in large common law jurisdictions where RIAs are prepared by specialists in the relevant ministries."

(i) “Tagging” of Bills as a mechanism of the Parliament of South Africa to scrutinize and ensure good quality Bills. Tagging <sup>80</sup>occurs “as soon as a Bill is introduced in Parliament it needs to be classified into one of the 4 categories mentioned above by the Joint Tagging Mechanism (JTM). This is called “tagging” and will determine the procedures the Bill must follow to become law. The JTM consists of the Speaker and Deputy Speaker, and the Chairperson and permanent Deputy Chairperson of the Council. These office-bearers are assisted by the parliamentary legal advisors”.

(ii) certification of Bills and legislation by the Office of the Chief Law Adviser<sup>81</sup>, Department of Justice, Government of South Africa. Other legislative drafting duties of the Office of the Chief Law Adviser include:

(a) Assist municipalities in drafting by-laws & training in drafting of by laws;

(b) Legislative drafting training internally and in other departments

(c) Translation and drafting in indigenous languages.

(iii) Legislative drafting training programmes at three South African universities: University of Pretoria, University of Cape Town and the University of Johannesburg. South Africa represents the country with the highest number of formal legislative drafting programmes by law schools and Universities.

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<sup>80</sup> Parliament of the Republic of South Africa, <https://www.parliament.gov.za/how-law-made> accessed 8 may, 2023.

<sup>81</sup> Justice and Constitutional Development Department, the Republic of South Africa, <http://www.justice.gov.za/ocsla/services.html> accessed 8 September, 2022.

(5) Kenya-“A Guide to the Legislative Process in Kenya”<sup>82</sup> published in the year 2015 by the Law Reform Commission of Kenya is the official publication and guide for the procedure(s) and the officials responsible for pre-legislative scrutiny of legislation and legislative drafting.

The Legislative Drafting Division,<sup>83</sup> Office of the Attorney-General of Kenya is responsible for drafting of Bills and legislation.

### **2.2.5: Theory of legislative drafting<sup>84</sup>**

But determining what drafting is continues to be under debate<sup>85</sup>. The prevailing view, mostly within the common law world, is that drafting is a pure form of art<sup>86</sup> or a quasi-craft<sup>87</sup>. It is this approach to the discipline that supported the mentoring style of training for drafters. If drafting is an art or a craft, then creativity and innovation lies at the core of the task. Rules and conventions bear relative value, and the main task of the drafter is to learn the craft from those with more experience.

If one believes that drafting is an art, then formal training is not relevant to drafters. In other words, if experience is the only thing that really matters, then simply time spent by a senior may offer the apprentice the only opportunity to learn on the job. But is drafting really a liberal skill possessed by enlightened legal scholars who take part in drafting committees on behalf of a variety of

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<sup>82</sup> A Guide to the Legislative Process in Kenya, ©Kenya Law Reform Commission, 2015  
<http://www.klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf> accessed 8 June, 2023.

<sup>83</sup> Office of the Attorney-General and Department of Justice of Kenya  
<http://www.statelaw.go.ke/legislative-drafting-division/> accessed 8 June, 2023

<sup>84</sup> This section appears in H. Xanthaki, “Duncan Berry: A true visionary of training in legislative drafting” [2011] *The Loophole*, pp.18-26.

<sup>85</sup> For an analysis on the science v art debate, Helen Xanthaki, “On transferability of legislative solutions: the functionality test” in Constantin Stefanou and Helen Xanthaki (eds), *Drafting Legislation: A Modern Approach – in Memoriam of Sir William Dale*, (Ashgate 2008), pp.1-18.

<sup>86</sup> B. G. Scharffs, “Law as Craft” (2001) 45 *Vanderbilt Law Review*, 2339.

<sup>87</sup> C. Nutting, “Legislative Drafting: A Review” (1955) 41 *American Bar Association Journal*, 76.



governmental Ministries and agencies drafting legislation?<sup>88</sup> Or is drafting a science<sup>89</sup> or technique<sup>90</sup>? This is the prevailing approach in most of the civil law world.

If drafting is a science, then there are formal rules and conventions whose inherent nomoteleia manages to produce predictable results, provided that the application is correct. If this approach is followed, then there is plenty of scope for formal training. Drafters may learn the rules and conventions of their science, and the correct way in which these are applied in order to produce predictable results. But is one bound to a strict choice between art or science? If one sees drafting as a sub discipline of law, then there must be a third option: law is not part of the arts, nor is it part of the sciences<sup>91</sup> in the positivist sense.<sup>92</sup>

In sciences rules apply with universality and infallibility: gravity applies everywhere in the world [ok, on earth], and at all times. Law is different. “All law is universal but about some things it is not possible to make a universal statement which will be correct... the error is not in the law nor in the legislator but in the nature of the thing”.<sup>93</sup>

Thus, using the term “shall” may be an abomination for those of us who avoid ambiguity, but it would be rather misguided to reject the use of the term rigidly: it may well be that “shall”, ambiguous as it is, would be understood better, and therefore be more effective, in amendments of archaic laws where the term is used repeatedly to signify “must”; here, using the term “must” in

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<sup>88</sup> F. Ost and M. van de Kerchove, *Jalons pour une Theorie Critique du Droit* (Brussels, Publications des Facultés universitaires Saint-Louis, 1987), 52.

<sup>89</sup> contra Editorial Review, 22 [1903] *Can. L. Times*, 437.

<sup>90</sup> contra J-C Piris, “The legal orders of the European Union and of the Member States: peculiarities and influences in drafting” [2006] *EJRL*, 1.

<sup>91</sup> For an analysis of the contra argument on law as a science, M. Speziale, “Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory” 5 [1980] *Vt. L. Rev.*, 1

<sup>92</sup> R. R. Formoy, “Special Drafting” 21 [1938] *Bell Yard: J.L. Soc'y Sch. L.*, 3; but contra C. Langdell, “Harvard Celebration Speeches”, 3 [1887] *LAW Q. Rev.*, 123-124.

<sup>93</sup>Aristotle, *E.N.*, 5.10.1137b13-24.

conjunction with the existing “shall” would create the legitimate impression to the user that the meaning of “shall” and “must” is somewhat different. But rejecting the view that drafting is a science does not necessarily confirm that drafting is an art. Art tends to lack any sense of rules. In the pursuit of aesthetic pleasure, art uses whatever tools are available. Art is anarchic. But drafting is not. Of course its rules are not rigid, but they are present.

The use of synonyms is a principle by which drafters abide, mainly to serve clarity. There may be exceptions to all rules of drafting, but this does not mean that there are no rules. And these rules carry with them a degree of relevant predictability, since the latter is one of the six elements of theory.<sup>94</sup>

But if drafting is neither pure science nor pure art, what is it? For Aristotle<sup>95</sup> all human intellectuality can be classified as<sup>96</sup> science as episteme; art as techne; or phronesis<sup>97</sup> as the praxis of subjective decision making on factual circumstances or the practical wisdom of the subjective classification of factual circumstances to principals and wisdom as episteme.<sup>98</sup>

Law and drafting seem to be classical examples of phronesis, as they are liberal disciplines with loose but prevalent rules and conventions whose correct application comes through knowledge and experience. Drafting as phronesis is “akin to practical wisdom that comes from an intimate familiarity with contingencies and uncertainties of various forms of social practice embedded in

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<sup>94</sup> B. Flyvbjerg, *Making Social Science Matter: Why social inquiry fails and how it can succeed again*, (Cambridge University Press 2001), 39

<sup>95</sup> Aristotle, *Nichomachean Ethics*, bk VI, chs. 5-11 (David Ross trans. Oxford University Press 1980).

<sup>96</sup> M. Griffiths and G. Macleod, “Personal narratives and policy: never the twain?” [2008] 42 *JPE*, pp.121-143, at 126.

<sup>97</sup> Aristotle, *Nichomachean Ethics*, bk VI, chs. 5-11 (D. Ross trans. 1980).

<sup>98</sup> S-U von Kirchmann, *Die Werlosigkeit der Jursprudenz als Wissenschaft* (1848, Verlage von Julius Springer, Berlin).

complex social settings”.<sup>99</sup> In other words, the art of drafting lies with the subjective use and application of its science, with the conscious subjective Aristotelian application and implementation of its universal theoretical principles to the concrete circumstances of the problem.<sup>100</sup>

Phronesis supports the selection of solutions made on the basis of informed yet subjective application of principles on set circumstances.<sup>101</sup> Phronesis is “practical wisdom that responds to nuance and a sense of the concrete, outstripping abstract or general theories of what is right. In this way, practical wisdom relies on a kind of immediate insight, rather than more formal inferential processes”.<sup>102</sup> So the drafter’s task simply involves the choice of the appropriate rule or convention that delivers the desired results within the unique circumstances of the specific problem at any given time.

In other words, the drafter needs to be aware of the multitude of often clashing rules and conventions; the drafter needs to identify the most relevant set of circumstances applicable to the problem; and the drafter needs to have the theoretical knowledge and practical experience to promote the rule or convention that best delivers under the mostly unique circumstances of the problem.

In other words, as drafting entails both elements and art and elements of science, the drafter’s task entails both identification of all relevant circumstances and rules; and promotion of the most appropriate rule. And so the skills required are: both an understanding of the relevant rules, and

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<sup>99</sup> S. F. Schram and B. Caterino, “Introduction” in S. F. Schram and B. Caterino (eds) *Making Political Science Matter: Debating, Knowledge, Research, and Method* (New York University Press 2006) p.8.

<sup>100</sup> W. Eskridge Jr., “Gadamer/Statutory interpretation” [1990] 90 *ColumLRev*, 635.

<sup>101</sup> E. Engle, “Aristotle, Law and Justice: the tragic hero” [2008] 35 *NKyLRev*, 4.

<sup>102</sup> C. Rideout, “Storytelling, narrative rationality, and legal persuasion” [2008] 14 *Legal Writing: J. Legal Writing Inst.*, 75.

wisdom through experience in the application of the most appropriate rule. These are the main skills that training in drafting must deliver. And they form the core of the reasoning behind the argument that training in drafting must be both academic and practical, both formal and via mentoring.

But before we explore this further, let us clarify which are the rules of drafting, and what is the basis of the drafter's subjective choice when selecting the most appropriate one. In other words, which is the ultimate criterion whose correct application leads the drafter to the appropriate choice between rules and drafting conventions? What is quality of legislation? My definition of quality is neither technical, nor empirical. My definition of quality in legislation is functional. If one sees legislation as a mere tool for regulation, then drafting becomes simply part of the legislative process, which in turn is part of the policy process. The object of a policy process is the promotion of a government policy, or from a social perspective the regulation of a citizens' activity. If legislation is seen as a mere tool for regulation, then a good law simply contributes its best to the achievement of the policy that it serves.

As a law on its own cannot produce adequate regulatory results without synergy from the other actors of the policy process,<sup>103</sup> a good law is one that, with synergy, is able of producing the regulatory results required by policy makers.<sup>104</sup> A good law is one that is capable of leading to efficacy of regulation.

A good law is an effective law. And ultimately quality in legislation is effectiveness. Effectiveness is the criterion that drafters use when selecting the most appropriate drafting rule for the problem

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<sup>103</sup> J. P. Chamberlain, 'Legislative drafting and law enforcement' 21 (1931) Am.Lab.Leg.Rev. 235-243 at 243.

<sup>104</sup> . Mader, 'Evaluating the effect: a contribution to the quality of legislation' 22 (2001) Statute Law Review 119-131 at 126.

before them. This qualitative definition of quality in legislation respects and embraces the subjectivity and flexibility of both drafting rules and conventions and, ultimately, of phonetic legislative drafting.

### **2.3: LITERATURE REVIEW**

Several learned authors have written extensively on legislative drafting, covering some aspects of drafting subsidiary legislation. However, the subject matter of this research is scattered in several books and journals. Therefore, they will be referenced to discuss their significance and positive limitation.

In his book<sup>105</sup> *Legislative Drafting: Topical Approach* was written based on some papers presented on topical legislative drafting issues by the Author. The book deals with some exercises for legislative drafters. The book was designed to aid other legislative drafters while dealing with legislative drafting issues. The book is not all-encompassing, but it lays down some relevant basic rules relating to legislative drafting. The book has provided helpful insight into the style and practices used in drafting government bills and Subsidiary legislation. It is informative and practical and explains drafting styles and practices in general terms. It also provides valuable guidelines on drafting issues, from arranging provisions to writing in plain language and illustrating them with examples and exercises. The weakness of this work is that it was published in 2015 before the enactment of the Companies and Allied Matters Act 2020 and the Companies Regulations 2021. However, the book will serve as excellent reference material for this research. The present research fills the identified gaps.

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<sup>105</sup> DT Adem, 'Legislative Drafting a Topical Approach' 2015 LexisNexis South Africa.

In his book,<sup>106</sup> offers an introduction to modern legislative drafting devices, techniques and technical aids. The Author draws examples from his personal experience and influences from various jurisdictions; the book examines best practices in areas such as using definitions, mathematical formulae, verbal examples, diagrams or charts to illustrate legislative provisions. The weakness of this work is that the book needed to capture the best practice and styles of drafting subsidiary legislation generally and, particularly, best practices in drafting the company's regulations of 2021. However, the book will serve as excellent reference material in this research in drafting definitions, mathematical formulae, and the use of verbal examples, diagrams or charts to illustrate legislative provisions in drafting subsidiary legislation.

Legislative Drafting in Plain English.<sup>107</sup> The Author addresses the importance of a Plain English approach to legislative drafting. The book takes as its starting point the need for legislation to achieve and communicate its purpose and provisions in simple and effective language. To that end, the Author considers how legislative drafters can avoid legalese whilst also improving grammar, punctuation, sentence structure and the layout of legislation. The book highlights typical mistakes or misuse of words and offers fifteen drafting exercises to help the reader develop a best practice. It is also noted that the books discussed plain language generally without integrating plain language drafting concerning drafting subsidiary legislation which is the crux of this research. However, the book will serve as a perfect reference material in this research in drafting subsidiary legislation in plain language.

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<sup>106</sup> DT Adem, 'Legislative Drafting Maths and Other Devices' 2013 LexisNexis South Africa.

<sup>107</sup> DT Adem, 'Legislative Drafting in Plain English' 2016 LexisNexis South Africa.

In his book<sup>108</sup> The Author explains how to untangle the web of confusion and technical detail surrounding legislative drafting and presents drafting in an easy-to-understand way. Further, he provides a practical guide to legislative drafting. The book is intellectually engaging. It is concise and user-friendly. However, the major weakness of this book is that the Author is not a Nigerian, and the book was published in the United States. Consequently, the book did not address issues of drafting subsidiary legislation in Nigeria, and at the time of publishing the book, the CAMA 2020 still needs to be enacted.

This book<sup>109</sup> constitutes one of the first thorough academic analyses of legislative drafting. By placing the study of legislation and its principles within the paradigm of Flyvberg's phronetic social sciences. The book offers a novel approach which breaks the tradition of unimaginative past descriptive reiterations of drafting conventions. Instead of prescribing legislation rules, it identifies efficacy as the main aim of the actors in the policy, legislative and drafting processes and effectiveness as the primary goal in drafting legislation. Through the prism of effectiveness as synonymous with legislative quality, she explores the stages of the drafting process, guides the reader through structure and sections in their logical sequence, and introduces rules for drafting preliminary, substantive and final provisions. Special provisions, comparative legislative drafting and training for drafters complete this thorough analysis of the drafting of legislation as a tool for regulation. Instead of teaching the reader which drafting rules prevail, the book explores why drafting rules have come about, thus encouraging readers to understand what goal each rule serves and how each rule applies. The book should have generally addressed the issues surrounding

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<sup>108</sup> Arthur Rynearson, *Legislative Drafting Step-by-Step*  
< <https://cap-press.com/books/isbn/9781611633801/Legislative-Drafting-Step-by-Step>> accessed 24 January 2023.

<sup>109</sup> Helen Xanthaki, 'Drafting Legislation: Art and Technology of Rules for Regulation' Hart Publishing (16 October 2014)

drafting subsidiary legislation, precisely the issues of drafting Company Regulation 2021. This research fills these gaps.

In a guide for drafting subordinate legislation of the Commission of New Zealand. The Commission explained that subordinate legislation.<sup>110</sup> Includes regulations and instruments such as codes, rules, guidelines, rulings, and determinations. The Commission added that regulations and other instruments are a single continuum of subordinate legislation. The choice of instrument may have significant drafting implications, but the variations make generalisation difficult. The piece has attempted to explain what subordinate legislation is all about. The Commission also provided a guide for drafting the subordinate legislation. However, the guide is specifically designed to cover New Zealand. Consequently, the guide needed to address the issues relating to drafting subsidiary legislation in Nigeria and specifically the Company Regulation 2021. However, it will serve as useful material for this research work.

Welsh<sup>111</sup> Government in its handbook on subordinate legislation, states that subordinate legislation is law made by a Minister, or occasionally by a public body, under powers given to them by primary legislation (e.g. Acts of the UK Parliament, Assembly Measures, and Acts including Acts which received Royal Assent before the Senedd was re-named). The handbook provides a guide on how to draft subordinate legislation in Welsh. The handbook should have covered other

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<sup>110</sup> New Zealand Law Commission, 'Appendix 'A' Drafting Subordinate Legislation' <<http://www.nzlii.org/nz/other/nzlc/report/R35/R35-Appendix.html#:~:text=In%20drafting%20subordinate%20legislation%2C%20the,of%20the%20primary%20legislation%3B%20and>> Accessed 24 January 2023.

<sup>111</sup> Welsh Government, 'Legislation Handbook on Subordinate Legislation September 2020' <<https://www.gov.wales/sites/default/files/publications/2020-09/legislation-handbook-on-subordinate-legislation.pdf>> accessed 24 January 2023.



jurisdictions of the world. Furthermore, the handbook needs to address the challenges of drafting Company Regulations, which is the crux of this research.

In the manual for bill drafting of Montana,<sup>112</sup> The Bill drafting division provides a uniform standard for bill drafting. Its primary purpose was to provide the drafter with a reference source to the requirements of Senate and House rules, statutes, the Constitution, and case laws of Montana as well as suggestions on the mechanics, technique, and style of legislative drafting. First, the manual only provides a guide for drafting a bill, which differs from the standards of drafting subsidiary legislation. Second, the manual was developed for the Senate and House of Montana without making any attempt to provide a guide for other jurisdictions. However, the manual will be a good reference material for this research.

In his book Principles of Legal and Legislative Drafting in Nigeria<sup>113</sup> He covers distinct but closely related fields of study: legal drafting and legislative drafting. The book on legal drafting focuses on using the English language and drafting certain documents such as letters, memorandum legal opinions, reports, and minutes of meetings, amongst others. The second leg of the book for legislative drafting was developed primarily for students taking a course on legislative drafting in private and public sectors and members and staff of legislative houses. This aspect deals with the characteristics of a good Bill, and the last part of the book deals with the statutory functions of the Nigeria Law Reform Commission. This book only deals with legal drafting and conveyancing components, bill drafting and law reform and review. Nothing was mentioned or discussed on drafting standards of subsidiary legislation in Nigeria. This research will fill this gap.

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<sup>112</sup> Bill drafting manual for the Montana Legislative Assembly, <https://archive.org/details/billdraftingmanu1996montrich> accessed 30 January 2023.

<sup>113</sup> Sylvester Omoregie Imhanobe, Principles of Legal and Legislative Drafting in Nigeria, Imhanobe books 2014.

Fundamentals of Legislative Drafting<sup>114</sup> is a compilation of essays by eminent scholars and legal practitioners assembled by the Nigerian Institute of Advanced Legal Studies in 2012. The compilation or compendium addresses contemporary issues in legislative drafting. It presents the reader with basic requirements for producing flawless legislation, judging from the depth of research and the wide range of topics covered. The compendium covers topical legislative drafting topics, which include: the Research Tools and, Constitutional Considerations in the Legislative Process, Policy of Legislation, Effective Communication Skills in Legislative Drafting, Legislative Drafting Style and Technique, Interpretation and Definition Clauses and Delegated Legislation,<sup>115</sup> among others. The compendium deals with some aspects of drafting delegated legislation. The weakness of the compendium is that it was published in 2012 when the CAMA contained in the laws of the Federation of Nigeria 2004 was operating. Now that we have CAMA 2020, the paper still needs to address the standards of drafting companies' regulation 2001. This book will fill the gaps.

Drafting Legislation in Nigeria: Constitution Imperative.<sup>116</sup> This a compilation of book chapters assembled by the Nigerian Institute of Advanced Legal Studies in 2012. Chapters in this publication address intricate techniques of drafting various aspects of legislation in light of constitutional provisions. Issues addressed include the Constitutionality of Legislation; the Constitution as an Organic Law; the Process of Constitutional Amendment; the Nigerianisation of Legislative Drafting; Legislation and Social Engineering, and the relationship between the Constitution and Convention. It also addressed issues relating to Transplantation in Legislative Drafting; Legislating Justiciability Provisions; Constitution and Statutory Instruments; Modern

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<sup>114</sup> NIALS Fundamentals of Legislative Drafting, 2012.

<sup>115</sup> Ibid, S.O. Imhanobe Esq at pages 196 to 213

<sup>116</sup> NIALS Drafting Legislation in Nigeria: Constitution Imperative.

Approach to viii Contextual Drafting; Legislative Studies in Nigeria, and the place of Schedules to the Constitution in Drafting, among others. The weakness of the publication is that no chapter deals with drafting subsidiary legislation in Nigeria; this gap will be addressed in this research.

Conveyancing and Legal Drafting<sup>117</sup> It provides a guide to legal drafting in all its ramifications. The Book, as the name implies, consists of two broad areas of law, legal drafting and conveyancing. It covers a general introduction to legal drafting, official letter, memorandum, legal opinion and report writings, legislative drafting, interpretation of statutes, will, codicil and customary conveyancing. It observed that the course material only deals with the aspect of legal drafting without touching the aspect of legislative drafting. However, the course material will serve as good reference material for this research.

Muhammed Tawfiq Ladan<sup>118</sup> argues that Executive orders are a set of presidential directives or guidance issued to an executive and other branches of government to execute or implement the provision of any existing federal law or policy and enforce the provisions of the Constitution. He added that such orders are usually directed towards federal administrative agencies, and they may alter administrative and regulatory processes, affect how legislation is interpreted and implemented, and take whatever action is permitted within the boundaries of their constitutional or statutory authority. The weakness of this Law Information Brief is that the Author concentrates on only one aspect of subsidiary legislation, 'executive order', without discussing other kinds of

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<sup>117</sup> Law 521 Conveyancing and Legal Drafting, a course material developed by the National Open University of Nigeria.

<sup>118</sup> Muhammed Tawfiq Ladan, The Legal Effect and Limit of Presidential Executive Orders in Nigeria and the USA: A Review of Executive Orders 1-6 of 2017 - 2018 In Nigeria, DLSS Law Information Brief No. 5 September 2018, Publication of National Institute for Legislative and Democratic Studies Maitama Abuja.

subsidiary legislation, which includes the Companies Regulations 2021; however, the information brief will serve as a good reference material in this research.

Yahaya Shamsu and Onyinyechi Ezete<sup>119</sup> discussed the need for Parliamentary Control of Subsidiary Legislation in Nigeria. They noted that subsidiary legislation is synonymous with delegated legislation or subordinate legislation. They added that it is another form of law-making by administrative bodies based on powers granted to them by the primary legislation. They argued that an increase in governance activities makes it necessary to delegate powers to government agencies to make Subsidiary legislation concerning matters too technical for effective legislative handling. They observed that the subsidiary legislation had been criticised because the issuing authorities might have abused it. The authorities may exceed their limits as given to them under the primary legislation. They submitted that because the legislature does not make Subsidiary legislation, it may face some challenges in control, hence the need for parliamentary control to check the possible excesses of the issuing authorities.

The authors made an excellent attempt to raise issues that warrant control for the subsidiary legislation in Nigeria by making cross-border analyses from advanced democracies. However, this research focuses on the drafting standards of companies regulations of 2021 issued under the Companies and Allied Matters Act of 2020 and not the control of the subsidiary legislation. The paper will serve as good reference material for this research.

Usman Ibrahim, Shamsu Yahaya and Edoba B. Omoregie<sup>120</sup> Criticised the current drafting styles of explanatory memorandum, long titles and interpretation clauses in Nigeria. This paper discussed

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<sup>119</sup> Yahaya Shamsu and Onyinyechi Ezete 'Need For Parliamentary Control of Subsidiary Legislation In Nigeria' NILDS Journal of Law Review 3, 2020 PP 133-146.

<sup>120</sup> Usman Ibrahim, Shamsu Yahaya and Edoba B. Omoregie, 'A critique of current drafting styles of Explanatory Memorandum, Long Title and Interpretation Clause' NILDS-JLR (2021) VOL 4 Pp 67

styles used by Draftspersons in drafting the explanatory memorandum, long title and interpretation Clause of a Bill. The authors purposely review the current practice of drafting the identified parts of the legislative proposal for the National and State Houses of Assembly. The weakness of this paper under this research is that it needs to pay attention to bill drafting only without discussing the same or similar parts in drafting subsidiary legislation. However, this paper will serve as good reference material.

Delegated legislation has become a part of the legal system in Nigeria. The legislature like in other countries sees the need to delegate powers to the executive but, there is hardly opportunity for the scrutiny of these legislations by the legislature before or after they are passed. Also, unlike other jurisdictions, there are no general pattern or procedure that are laid down that can be followed for the making of these legislations<sup>121</sup>. Generally, the delegation of law making powers can be traced to the Constitution. Section 4(1) and 4(6) vests the legislative powers on the National Assembly and the State Houses of Assembly respectively<sup>122</sup>. This power to make laws that reside with the legislative arm can however be delegated to another body but the legislature must first lay down the legislative policy and principle and must afford guidance for carrying out the policy before it delegates it to a subsidiary body.<sup>35</sup> Section 27(1) of the Interpretation Act underscores this fact<sup>123</sup>.

In a guide for drafting subordinate legislation of the Commission of New Zealand. The Commission explained that subordinate legislation <sup>124</sup> Includes regulations and instruments such as codes, rules, guidelines, rulings, and determinations. The Commission added that regulations

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<sup>121</sup> Legislative Instrument Act 2003 (LIA) Australian, see also Statutory Instrument Act in United Kingdom

<sup>122</sup> Constitution FRN 1999 as Amended

<sup>123</sup> Cap 192 LFN 1990

<sup>124</sup> New Zealand Law Commission, 'Appendix 'A' Drafting Subordinate Legislation'

<http://www.nzlii.org/nz/other/nzlc/report/R35/R35-Appendix.html#:~:text=In%20drafting%20subordinate%20legislation%2C%20the,of%20the%20primary%20legislation%3B%20and&gt;>

Accessed 24 January 2023.

and other instruments are a single continuum of subordinate legislation. The choice of instrument may have significant drafting implications, but the variations make generalisation difficult. The piece has attempted to explain what subordinate legislation is all about. The Commission also provided a guide for drafting the subordinate legislation. However, the guide is specifically designed to cover New Zealand. Consequently, the guide needed to address the issues relating to drafting subsidiary legislation in Nigeria and specifically the Company Regulation 2021. However, it will serve as useful material for this research work.

The need for delegated legislation in modern society is not farfetched. Due to the increasing complexities of modern societies and the impossibility of regulating all activities in primary legislation delegated legislation has become inevitable.<sup>125</sup> Government rely on it as public general Acts to give legal effect to its policies<sup>126</sup> and as legislative machinery in relation to matters of commencement, duration or application of an Act and to modify existing laws.<sup>127</sup> It has been used as reserve power to make consequential amendment on matters that may not have been foreseen at the time when the enabling Act was enacted. In such instances such a delegated legislation amends the enabling Act which is known as the Henry VIII Clause<sup>128</sup>.

Some Acts wholly depend on the enactment of delegated legislation. These Acts are described as “Skeleton Acts” They have the general structure of an intended law but leave all the details to be provided in a delegated legislation.<sup>129</sup> Others rely on delegated legislation not merely to administer their provisions but also to give them substance<sup>130</sup>.

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<sup>125</sup> Muktar A, Etudaiye, ‘ The Status of Tax, Duties, Fees and Legislative Powers’, Unilorin.edu.ng assessed

<sup>126</sup> McLeod (n 5) 147

<sup>127</sup> Carr (n 25)

<sup>128</sup> C Forsyth & E Kong, ‘The Constitution and Prospective Henry VIII Clauses’, 2004 Judicial Review 17

<sup>129</sup> Greenberg, Craise on Legislation (n 22) 117

<sup>130</sup> National Migration and Asylum Act 2002 in the United Kingdom

As far back as 1893 Sir Henry Jenkins in support of the delegation of legislation wrote: “statutory rules are in themselves great public advantage because the details can thus be regulated after the bill passes into an Act with greater care and minuteness and with great adaptation to local and other special circumstances than they can possibly be in the passage of a Bill through Parliament<sup>131</sup>.

One of the first arguments that were put in support of delegated legislation was the pressure on legislative time. Modern legislation requires more time and details than the legislature has the time or inclination to handle<sup>132</sup>.

The relative speed with which delegated legislations are usually made is also an advantage to it.<sup>133</sup> This is very necessary in times of emergency. An example is the Emergency Power Act of Nigeria 1961, which confers on the President the power to make regulations that are necessary or expedient for the purpose of maintaining order in the country<sup>134</sup>.

Under the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Assembly is the exclusive legislative arm of the Government. By virtue of section 4 (1) of the 1999 Constitution of the Federal Republic of Nigeria, the legislative powers of the Federal Republic of Nigeria is vested in the National Assembly for the Federation<sup>135</sup>. The National Assembly consists of a Senate and a House of Representatives. The mode of exercising legislative powers is by bills passed by the Senate and House of Representatives and assented to by the President. Section 4(2) empowered the National Assembly to make laws for the peace, order and good government of the

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<sup>131</sup> Greenberg, Craise on Legislation, (n 22) quoting Sir Henry Jenkins First Parliamentary Counsel, 291

<sup>132</sup> R v St Helens Justices ex p Jones [1999] 2 All ER 73 at 83.

<sup>133</sup> McLeod, (n 5) 160

<sup>134</sup> State of Emergency (Certain States of the Federation) Proclamation 2013

<sup>135</sup> Constitution FRN 1999 as Amended

Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to the Constitution<sup>136</sup>.

Under Nigerian Law, there are two basic forms of legislation. These are Primary legislation and Subsidiary legislation. Primary legislative bodies typically have power to make laws on all matters, subject to the limitations stated in the Constitution. This power permits the enactment of legislation (“enabling legislation”) delegating a limited legislative power to other bodies, even when, as is usually the case, the Constitution is silent on the matter. Those bodies may exercise that power by issuing their own legislation, commonly referred to as subsidiary legislation. Legislative power is typically delegated to a wide range of bodies such as the President, Ministers, Ministries, Departments and Agencies, statutory authorities, local government councils, etc<sup>137</sup>.

A proposal for making subsidiary legislation could come from a Minister, or from a department or agency and approved by its Minister. The legislation is generally drafted or vetted by the Legal Drafting Department, Federal Ministry of Justice, in line with the instructions from the relevant end user department or agency. The final draft will be signed by that Minister/other body. It is then published in the Government Gazette and will commence at the date of publication in the Gazette or at a specified date.<sup>138</sup>

The relevance of evaluating drafting standards to this current thesis is that Patchett apparently suggests that a regulatory framework for law drafting is a strategy and again evaluating if the legislation/drafting meet the standard required (indeed the first strategy) for improvement of the quality of legislation, considering that the seven strategies for improvement of law drafting will

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<sup>136</sup> Constitution FRN 1999 as Amended

<sup>137</sup> Greenberg, Craise on Legislation, (n 22) quoting Sir Henry Jenkins First Parliamentary Counsel, 291

<sup>138</sup> The Making of Subsidiary Legislation | Godwin Iheabunike - Academia.edu



inevitably result in improvement of the quality of legislation in CEE countries and, by extension, to Nigeria as proposed in this thesis.

The analogy is that improving the quality of the foundation is likely to improve the quality of the building (final product). In this equation, evaluating the regulatory framework is the foundation, whereas the legislation (companies' regulation 2021) is the final product. Previous legal studies on legislative drafting in Nigeria have a tendency to concentrate on the procedure for producing a legislative draft (Bill) and the drafting process with insufficient consideration of such important issues as evaluating the drafting standard (especially those of company regulations, 2021) with the aim of improving policy development; making fuller use of consultations and improving access to legislation which are key elements of Patchett's framework.<sup>139</sup>

This study aims to address this gap in the literature by examining the drafting standards of CR to determine their effectiveness and potential areas for improvement.

For the law to be effective, it must meet the needs of the society which it seeks to serve. One noticeable problem is absence of a common platform for training drafters and to expose them for current trends in drafting.

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<sup>139</sup>See generally D.O.Adesiyan, A Handbook on Legislative Drafting (Tefton Books,1996); R.Esegbabon, The Nigerian Legislative Process (Law-Link Consults, 2005)

## **CHAPTER THREE**

### **COMPLIANCE WITH LEGISLATIVE DRAFTING STANDARDS**

#### **3.0: INTRODUCTION**

The legislative power of the federation and states is primarily vested in the National Assembly and state houses of assembly respectively. Whenever the legislature desires to delegate its power to legislate, before doing so, it must lay down the legislative policy and principle and afford guidance for carrying out the said policy. Legislation made by bodies or authority other than the legislature is a delegated or subsidiary or subordinate legislation. The adjectives delegated, subsidiary, subordinate attached to the noun legislation adequately describes the status of this kind of legislation as being lower in ranking from the principal legislation wherefrom it derives its authority or legitimacy.<sup>140</sup> However, there are provisions in the Constitution that confers powers in the executive or judiciary to make rules, orders etc. for example, Sections 236 and 248 of the Constitution<sup>141</sup> (as altered) empowers the chief justice of Nigeria, the president of the court of Appeal and other heads of courts to make rules for regulating the practice and procedure of their court.<sup>142</sup> The Companies Regulations, 2021 is a subsidiary legislation issued under the CAMA, 2020 to regulate the registration and related affairs of companies, business names, incorporated trustees and allied matters.<sup>143</sup>

#### **3.1: Examination of application and compliance**

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<sup>140</sup> Principles of Legal & Legislative Drafting in Nigeria by Sylvester O. Imhanobe, p288

<sup>141</sup> Of the Federal Republic of Nigeria, 1999

<sup>142</sup> Supreme Court Rules (as amended in 2008), Court of Appeal Rules, 2011

<sup>143</sup> Section 4 of the Companies and Allied Matters Act, 2020.

The Companies Regulation 2021 was drafted as a regulatory instrument to guide companies and individuals in complying with the provisions of the newly passed Companies and Allied Matters Act 2020. In keeping with the administrative mandate of the Corporate Affairs Commission (CAC) in respect of the new CAMA, coupled with the Federal Government of Nigeria's initiative on ease of doing business, the regulatory guidelines contained in the 2021 regulations are expected to align the Nigerian business environment with international best practices. Consequently, the Companies Regulation 2021 contains innovations, variations and some outright modifications to the defunct Regulation of 2012.<sup>144</sup>

### **3.2: Examination of drafting structure and style**

Drafting legislation especially with the view to modernizing the text of the law in order to meet the needs and aspiration for effective communication requires the acceptance and adoption of the conventions on the form. However, as far as style is concern no absolute judgments may be passed, no arbitrary line can be drawn between good style and bad style. Style is a relative matter provided in the drafting manual.

To communicate effectively through legislation, the provisions of the legislation should be clear, certain, concise, correlated, consistent, complete and comprehensive. Compliance with the standard requirements as to format, presentation and style with the best practice as to legislative expression and composition, logical and accessible organization of the provisions. The general rules of drafting particularly with respect to form and arrangement, syntax, rules of legislative expressions and other general rules applied to drafting the principal legislation are *mutatis mutandis* applicable to drafting delegated legislation which includes:

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<sup>144</sup> GM George Taylor & Co. Legal Practitioners And Estate Managers

a. Heading;

The heading states the short title of the principal legislation and the enabling provision in the principal legislation. The heading found in the Companies Regulations, 2021 made under the CAMA, 2020 is as follows;

*Regulations Made Under Companies and Allied Matters Act, 2020*

From the above can be argued that this heading is not in conformity with the drafting standards, the heading is not complete as required and the commencement date is missing, however, the commencement date cannot be a date before the enactment of the principal legislation but may commence in the future or upon the occurrence of an event or by the authority of a person. A standard heading is as follows,

*The Companies and Allied Matters Act, 2020*

*Companies Regulations 2021*

*Commencement date*

b. enacting provision;

This is a statement made by the person or authority issuing the delegated legislation in which he or she makes reference to the enabling provision in the principal legislation. This provision is missing in the Companies Regulations, 2021. However, what enacting of the regulations ought to be is as follows,

*In exercise of the powers conferred on it by section 4 of the companies and allied matters act, 2020 and of all other powers enabling it in that behalf, the corporate affairs commission (“commission”) makes the following*

*Regulations*

c. definition;

Section 19(1) of the Interpretation Act provides that, an expression used in a subsidiary instrument has the same meaning as in the Primary Act conferring power to make the instrument. This is to ensure consistency in the meaning of words used in a particular legislation. So there is usually no need to repeat meaning of words unless the meaning is different. This provision can be found at page 218 of the Regulations.

d. substantive provisions;

These are the details of the substantive provisions of the delegated legislation. In regulations each clause is referred to as *Regulation*.

The principal purposes of legislation are to establish and delimit the law and to communicate the law from the lawmaking authority to society and in particular to the persons affected. Nevertheless the drafter must in each case endeavor to draft in such a way that the law is successfully communicated.

### **3.3: Evaluation of syntax, gender neutrality and plain English**

#### 3.3.1: Syntax

Sentence structure, or syntax, is about the relationships among the words that form a sentence. It is one of the most important factors affecting the readability of a text. Sense is communicated not only by the dictionary meaning of words but also by their arrangement in sentence patterns. A sentence is more than just a series of words it is a structure or pattern in which the component words are grouped in a particular way. The nature of the grouping contributes to and in most cases controls the sense conveyed.<sup>145</sup> Legislation is inevitably a formal or standard use of language and what is acceptable and what is not acceptable will be decided in that context. For the drafter, one

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<sup>145</sup> Legislative Drafting: G. C Thornton (fourth edition) at p14

of the prime purposes of the study of syntax is to detect analyses and remove ambiguity. It can be stated categorically that the CR is in compliance with the syntax rule to a certain extent.

### 3.3.2: Gender neutrality

Gender neutrality is a neutral presentation of gender that does not distinguish between men and women. Perhaps a vital step toward gender neutrality is using neutral language or not being biased towards or against either gender. Gender neutrality is another evolving trend in drafting. Generally, it deals with the style of avoiding gender-marked or gender sensitive terms.

Today gender neutrality is also about avoiding gender-specific language in writing, speech, and other forms of communication. There are several different ways to achieve gender neutrality as well examples can be seen from the CR is noncompliance with the gender neutrality:

- Avoid using male and female pronouns when referring to people. For example, instead of saying “he” or “she,” use “they.” Example ...about to be violated, he shall refer the complaint...<sup>146</sup> the provided regulation will be in conformity with gender neutrality if the word *he* is written as they ...about to be violated, *they* shall refer the complaint...
- Avoid using him/his pronouns when referring to a group of people as seen in the example Notice of his appointment as supervisor shall be with the Commission...<sup>147</sup>in my view it will be appropriate to write Notice of the appointment as supervisor shall be with the Commission..

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<sup>146</sup> Regulations 39(2), Companies Regulations, 2021

<sup>147</sup> Ibid 22(2),

... dishonesty within five years of his proposed appointment.<sup>148</sup> the word his should be replaces with the.

The above few examples shows the noncompliance with the rule of gender neutrality the use of the word he/his/him is been specifically been referred to the male gender.

### 3.3.3: Plain English

Plain English in legislative drafting is not a new phenomenon or discipline.<sup>149</sup> It has a long and distinguished history that only is just reaching its peak.<sup>150</sup> Plain language drafting is characterized by short and simple sentences. Precision and clarity go hand in hand in this style of drafting. Plain language reflects language as a method or means of communicating ideas and includes mathematical languages, flow charts and characters, and words.<sup>151</sup> It is a broader term and it is more appropriate for bilingual or multilingual jurisdictions. Plain English is a narrower term<sup>152</sup> particularly because English is a language. It should be noted that the purpose of plain English is to improve the communication of legislative to the audience. Plain English aims to promote uninhibited communication between the drafter, who is a lawyer with drafting training and experience, and the user of the legislative text. The rules applied in plain English are designed to make legislation intelligible without changing its meaning. It will not remove all ambiguities but will remove unnecessary ones that clog the draft and make it difficult to read.<sup>153</sup>

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<sup>148</sup> Regulations 30(1)d Companies Regulations, 2021

<sup>149</sup> A Watson-Brown, 'Defining Plain English as an aid to Legal Drafting' (2009) 30(2) SLR 85-96, 86

<sup>150</sup> Kelly, Lam, 'Plain Language-a Promising Tool for Quality Legislation, (PhD diss., University of London, 2015)

<sup>151</sup> H Xanthaki, 'On Transferability of Legislative Solutions: The Functionality Test' in Stefanou and Xanthaki

<sup>152</sup> Ibid

<sup>153</sup> Aimeya Belinda Okpebholo (Mrs.) A Case Study for More Use of Plain Language in Legislative Drafting in Nigeria @ p42

## **CHAPTER FOUR**

### **CHALLENGES**

#### **4.0: Introduction**

This chapter examines the challenges of legislative drafting that drafters always face in order to achieve quality law making.

#### **4.1: Significance of Company Regulation**

It is hoped that the Regulation will fill some of the gaps in the substantive provisions of the CAMA to address the inadequacies that could only be resolved by amending the substantive Law in the Commission's continued determination to meet the expectation of its customers and standardize its processes and procedures in line with Global best practice. However below are some of the significance for the companies regulations as a delegated legislations.

Pressure on the time of the legislature

One of the first arguments that were put in support of delegated legislation was the pressure on legislative time. Modern legislation requires more time and details than legislature has the time or inclination to handle<sup>154</sup>. With this shortage of legislative time, requiring them to enact the minute details of every legislation will be impossible. Therefore, its concentration on the essentials<sup>155</sup> while leaving details to be worked out by the departments is a welcome development. Henry Thring in support of this is of the view that, parliament will have more time for the consideration

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<sup>154</sup> R v St Helens Justices ex p Jones [1999] 2 All ER 73 at 83.

<sup>155</sup> S G G Edger, *Craise on Statute Law*, Seventh edn, London Sweet and Maxwell, 1971, 291



of more serious questions involved in legislation, if subordinate matters can be withdrawn from its cognizance.<sup>156</sup>

## Need for Flexibility

Another justification for delegated legislation could be seen with regards to the relative speed with which it can be made.<sup>157</sup> Delegated legislation is capable of changing rapidly and adjusting to situations.<sup>158</sup> This makes it suitable to be used for certain types of regulations like those whose details have not been fully worked out at the time when the Act is being passed. Others are those statutes which are likely to change frequently example fees payable for the application of a license. The foregoing has made it clear that the conditions and situations that require for the use of delegated legislation may be weighty but this does not mean that the traditional role of the legislature being the body that is responsible for law making should be ignored. This rule is still very prevalent in our legal system only that it should be relaxed when necessary.<sup>159</sup> Also, there is no dispute that the primary use of delegated legislation is to allow statutory authorities to fill in the details of a statutory scheme.

## **4.2: Challenges**

### **1. Legislative skills and Knowledge**

Legislative drafting is an intricate decision making process demanding great skill and knowledge and therefore mostly performed by specialist. To ensure quality drafts, drafters approach drafting methodically. The legislative drafter is saddled with the task of ensuring that the proposed

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<sup>156</sup> Thring (n 31)

<sup>157</sup> McLeod, (n 5) 160

<sup>158</sup> Edger, ( n 58) 291

<sup>159</sup> Xanthaki, (n 7)Thornton's Legislative Drafting, 405

legislation achieves the policy objective in a legally effective way, thus faced with the challenge of not only expressing legislative intention appropriately, but also ensuring that the legislation is well comprehended by its subject and perfectly interpreted by the courts. Legislative drafter will mainly focus on how to word and frame each provision to minimize any dispute regarding it (unless a court's discretion is required to further interpret or determine the provision) because the skill of legislative drafting develops all the time.

Thornton notes that some essential equipment for producing effective draft legislation in a drafting office include a language dictionary, synonym dictionary, language usage guide, sentence construction guide, grammar usage guide, judicially defined words and phrases, judicial dictionaries, statutory interpretation guides, legislative composition guides, legislative forms and precedents and legislative drafting resource material or manual.<sup>160</sup> The challenges are associated to inadequate training of legislative drafters and tools of drafting, career development, culture of law breaking, expertise, experience, training process. According to Dickerson “this is due partly to inadequate training. More fundamental is the widespread misunderstanding of what adequate draftsmanship involves. One of the most battling aspects of the problem is hard and, even more basic, that any problem exists. I have discussed the matter with many lawyers, government officials and law professors. I rarely meet one who does not consider himself a well-trained, and even expert, draftsman. That the average lawyer or law professor senses little inadequacy either in himself or among bar members generally may explain the condescension they often show they often show.”<sup>161</sup> In a paper written by Nainendra Nand on legislative drafting in the Pacific, he stated

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<sup>160</sup> Thornton (n 2) 127-128

<sup>161</sup> Dickerson Reed “Legislative Drafting: A challenge to the Legal profession” (1954) Articles by Maurer Faculty. Paper 1494.

“The countries in the pacific experienced that turning government policy into clear legislation is not easy task. Those responsible for giving instruction to the legal drafters are often middle to lower level managers in government departments who have no training in the law and are often handicapped in giving quality instructions to the legislative drafter.<sup>162</sup>

Imhanobe<sup>163</sup> note that, the long presence of military rule in Nigeria legislative drafting has suffered from a stunted development as a result of which there is absence of instructing officers as compare to what is obtained in developed jurisdiction. When instructions related matters and expectations of the policy are not clear or explained clearly, the drafter is left to develop the policy and take responsibility for both the drafting and the policy. This is one of the most common challenges been faced by legislative drafters. If the drafter does not clearly understand the policy instructions, it is difficult to draft and the drafting process is usually delayed. For instance, it may be necessary to determine how activities that were started under the old law but have not yet been completed will be dealt with under the new law, also Issues relating to savings and transitional provisions are equally difficult to draft if clear policy are not given.

Good draftsmen are needed. This is not generally realized because the drafting skill is more subtle and copes with problems more difficult than surface appearances suggest. Legal drafting, like teaching, looks easy. But, as with teaching, the answers are rarely clear cut. The test of success is usually someone's individual judgment. Legal drafting is not for children, amateurs or dabblers. It is a highly technical discipline, the most rigorous form of writing outside of mathematics. Few

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<sup>162</sup> Nainendra Nand “Legislative drafting, distance education and its contribution to good governance in the pacific (2008)

<sup>163</sup> Imhanobe, S.O principle of Legal and Legislative Drafting, Amfitop Nigeria Ltd. (2014).

lawyers have the special combination of skills, aptitudes and temperament necessary for a competent draftsman. This is due partly to inadequate training.<sup>164</sup>

## **2. Professional Development and Training Opportunities**

Legislative drafters largely develop their skills through the on-the-job training. Experienced legislative drafters consider that the process of acquiring sufficient skills to work without supervision usually requires at a very minimum of 5 years on the job training. In addition, drafters in National institute for legislative and democratic Studies, National Assembly often undertake undergraduate level courses offered by the institute or other Universities in the world. Such professional development courses include Masters in Legislative Drafting, Postgraduate Diploma in Legislative Drafting. The particular value of on-the-job training cannot be overemphasized, be for short term periods or placement of an experienced expatriate legislative drafter in the department to provide on-the-job training and mentoring to less experienced drafters.

## **3. Undue pressure in drafting process**

The law making system must be a planned and coordinated process which is deliberately devised to provide adequate time for preparation, consultation, inside and outside government and parliamentary consideration. Bills most especially executive bills, are gazette I a day or even not gazette before being formally introduced to the floor of the house. After the first reading, the Committee the bill is assigned to is given few days to discuss and submit their reports after which the report is considered, passed and forwarded to the executive for assent.

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<sup>164</sup> Few practitioners and fewer law teachers have experience in legislative advocacy or legislative draftsmanship". Horack, "Objectives in the Field of Legislation", 6 J. Leg. Ed. 18, 20 (1953)

The fast tracking of bills has a negative impact on the quality of legislation and could lead to unforeseen errors and this results in bills of various qualities which vary in compatibility, uniformity and applicability.<sup>165</sup> As a result the new laws have severe inconsistencies and shortcomings and they need to be amended by drafters and this of course will make subsequent implementation phase difficult as low quality laws are difficult to interpret.

#### **4. Poor Public Participation Mechanism**

Danwaka<sup>166</sup> stated that public consultation should take place in every stage of legislative process. Furthermore, he observe that the public consultation has many benefits as it may *inter alia* give rise to better understanding of the activities to be regulated and problem to be solved. It may also result in legal solutions which will more likely encourage compliance and it may enable government to be more responsive to the needs and interest of the affected persons. Also public participation legitimizes the resulting legislative document which will lead to greater compliance.

#### **5. Lack of Scrutiny and Analysis Mechanisms on the Effectiveness of Legislative Instruments**

According to Danwaka<sup>167</sup> a proper legislative drafting system should conduct scrutiny and analysis to establish the impact after the enactment of the legislation. Such scrutiny and Analysis would address a number of questions; first, what is the background of the bills? Second, has the objectives being achieved with current provisions? Third, what is the content structure of the bill? Fourth, what is the cost and benefit of the bill? Fifth, what is the international experienced on the proposed

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<sup>165</sup> Ibid criterion

<sup>166</sup> Danwaka S. A. bill process and subsidiary legislation. Presentation at a practical training programme for Legislative officers of Bayelsa State House of Assembly at Yenagwa. 19-23 June, 2018.

<sup>167</sup> Ibid.

subject matter of the bill? Sixth, has the provision proven itself as practicable and will it be observed and obeyed? Seventh, is there a need for repeal or amendment?<sup>168</sup>

Results of such scrutiny and analysis are potent tools in the hands of the drafter when amending or repealing laws. As Crabbe<sup>169</sup> observes, many laws are passed as a matter of formality and this may lead to the law being largely unknown to the audience intended and maybe resisted by the intended audience hence a negative impact on the efficacy of the as well as the efficacy of Government.

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<sup>168</sup> Danwaka S. A. bill process and subsidiary legislation. Presentation at a practical training programme for Committee Clerk and Legal officers Delta State House of Assembly. 11-12 May, 2018.

<sup>169</sup> Crabbe, Vincent (1993) Legislative Drafting, (London: Cavendish Publishing Ltd), 1st Edition.

## **CHAPTER FIVE**

### **SUMMARY, FINDINGS, CONCLUSION, RECOMMENDATIONS AND CONTRIBUTION TO KNOWLEDGE**

#### **5.1: Summary**

Corporations, company names, partnerships, and trustees of certain communities, bodies, and associations are all governed by the CAMA. Like its predecessors, the abolished CAMA, which was preserved by the CFRN, 1999 and remained in existence for 30 years, was criticized and called for review.

The repealed CAMA comprised 613 provisions in three parts, but after so long, it failed to address developing challenges like digitalization, increased fees, and others. The Corporate Affairs Commission has often covered these gaps with business regulations, but the Act itself needed a full revamp. The reenacted CAMA, which has 870 sections divided into parts A-G, is mostly a refined edition of the repealed Act by reproducing the major operating parts and adding new features to give it a more modern touch, but as pointed out in chapter 3, many rules of standardized drafting were violated from the start. Analyzing our findings:

Except for grammar, syntactic, gender neutrality, and word ambiguity errors, CAC drafting techniques meet legal standards. In chapter three of this research, we provided many examples.

Lack of skilled drafters has a major impact on clear, efficient laws. Per In enlightened legislative drafting, legislative quality is judged by the text's ability to deliver the desired regulatory results.

The Corporations and Allied Matters Act 2020 (CAMA 2020) was enacted and gazetted on August 7, 2020. The 1990 Act is repealed, transforming Nigeria's corporate environment. The CAC's Companies Regulations 2021 (the "Regulations") apply CAMA 2020's framework.

## **5.2: Findings**

The Companies and Allied Matters Act regulates the general conduct and operation of businesses of all kinds, including incorporation of companies, registration of business names, partnerships and incorporation of trustees of certain communities, bodies and associations.<sup>170</sup> Though, just like its predecessors, the repealed CAMA which was saved by the CFRN, 1999<sup>171</sup> and remained in force for 30 years faced a lot of criticisms with observers frequently calling for its review.

The repealed CAMA had 613 sections divided into three parts,<sup>172</sup> but having stayed for so long, it started failing to meet the peculiarities of emerging developments like digitalization, inundated fees, among other emerging issues. While the Corporate Affairs Commission had frequently risen to the occasion with company regulations to cover these lapses, it was overwhelmingly apparent that the Act itself needed a complete overhaul.

The reenacted CAMA; which on its part has 870 sections divided into parts A - G is majorly a refined edition of the repealed Act by reproducing the major operating parts of the repealed Act and adding new features to give it a more modern touch but however the Companies Regulations, 2021 which ought to serve as the tool for implementing the CAMA, 2020 also comes with a lot of

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<sup>170</sup> See the preamble to the CAMA

<sup>171</sup> CFRN 1999 (as amended), s 315

<sup>172</sup> Part A (companies: sections 1-568), Part B (business names: sections 569-589), Part C (incorporated trustees: sections 590-612). Section 613 is the short title.



errors in the drafting which was rightly pointed out in chapter 3 where many rules of standardized drafting were violated from the inception of the draft. Our findings can be outlined as follows:

- The CAC drafting styles conform to the legal standard except in some instances where grammatical error, syntax error, negligence with gender neutrality and ambiguity in words sets in. we gave some examples of many of these instances in the chapter three of this research work.
- The issue of lack of skilled drafter cannot be overemphasized in terms of its consequences it has on efficient legislation that is clear and unambiguous in its implementations. According to <sup>173</sup> An enlightened approach to legislative drafting proposes that legislative quality is effectiveness of the legislative provision, which is measured by means of the text's ability to produce the desired regulatory results.
- The Companies and Allied Matters Act 2020 (“CAMA 2020” or the “Act”) was signed into law and gazetted with a commencement date of 7 August 2020. The Act, which repeals the 1990 Act, introduces sweeping changes to Nigeria’s business environment. The Corporate Affairs Commission (“CAC”) has also issued the Companies Regulations 2021 (the “Regulations”) to serve as the implementation reflecting the framework for CAMA 2020.
- We will be discussing how drafting standard can be improved extensively in the recommendation section of the chapter five of this work.

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<sup>173</sup> Xanthaki, (n 7) Thornton’s Legislative Drafting, 29

### **5.3: Conclusion**

From the legal perspective, legislative quality focused traditionally on legislative expression: words, terms, syntax and grammar lay at the heart of legislative drafting analyses. Legislation is often criticized for being inaccessible in using convoluted language. Often provisions were drafted in very complex and detailed sentences that made it hard for ordinary person to read or understand. This is true where most of our laws contains detailed rules covering all foreseeable cases and are drafted with accuracy and precision to ensure there is certainty with applying rules. This was mainly because the common law drafter paid little attention to readability (either through the use of loose and vague languages) but only give effect to government's policy. This often resulted in legislation that was hard to understand, and of course resulting to administrative and legal costs.

### **5.4: Recommendations**

#### **Consultation**

This is a process whereby steps are taken to inform those who will be affected by the proposed subordinate legislation of the intention to make such legislation and to give them the opportunity to comment on it.<sup>174</sup> Depending on the statute that is being dealt with, it may require certain persons to be consulted or consultation can be open to the general public. In Nigeria, a situation where the interest of the public may be affected there is always a requirement that consultation should be with the Council of Ministers example Section 33(1) of the Fire Arms Act provides that the

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<sup>174</sup> Gregory Craven, Consultation and the Making of Subordinate Legislation- A Victorian Initiative, 15 Monash U L Rev. 95, 1989) heinonline.org assessed 4th June 2014

President after consulting with the Council of Ministers is empowered to make regulations for the carrying out of the general purpose of the Act<sup>175</sup>.

It is, the role of the legislature to ensure that these procedure are followed in all delegated legislation for the sake of good administration because where these procedural elements of publication and consultation are lacking, it would seem unfair to the public who will be affected by the legislation for this may be the one chance they have in having a say in the regulation that would determine their conduct in the society.

According to Schwartz, an essential safeguard for those whose interest are to be affected by the exercise of delegated legislation must lie in the procedure which is adopted in arriving at the final settlement of rules by which they are to be bound.<sup>176</sup> This is because, these rule will sometimes be made by government officials who will face little or no public criticism unlike the legislature in the making of these rules. These decisions are made in the departments and subject to no direct political control. The knowledge of such persons are rarely complete as such it is necessary for interested persons to always present their views and the facts that are within their knowledge and probably give an alternative course if need be.<sup>177</sup> This will ensure that government officials do not just make rules that come out of their heads, but rules that adapt to the circumstances for which they are intended.

The technical knowledge that could be brought in before any delegated legislation is made can be of immense benefit to the system as a whole because the essence of this consultation is to give advice. Therefore the powers so conferred should be made subject to the prior satisfaction of this

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<sup>175</sup> Cap 69 LFN 1990

<sup>176</sup> Schwartz B, An Introduction to American Administrative Law (1962) 2nd Edn American Administrative Law 1948, 37

<sup>177</sup> Ojo ( n 78) 233

condition of consultation.<sup>178</sup> In Nigeria, this requirement is only provided for in some Acts, both at the federal and the state levels, the importance of the affected persons in the rule making process is not realized.

The inclusion of this requirement usually depends on the importance of the subject matter at hand. As such, the procedure to consult persons that are likely to be affected by proposed measures are not fully utilized. As a result of this people are not even aware that these rules are in place.

### **Checks and Balances through Scrutiny**

If the legislature or its committee is able to put in place these checks, delegated legislations when made will conform to general drafting rules. Issues of clarity, unambiguity, precision and accessibility would be complied with. Such legislations would be made in clear and lucid form, the language to be used would be plain and the words precise.<sup>179</sup> On the whole, such an instrument will promote the effectiveness of the overall legislative system. Powers would be transferred at the proper time and from trust worthy authorities.

### **Development of comprehensive drafting manual**

The Legislative Drafting Manual is the Legislative Council publication that prescribes the form and style of bills and resolutions and provides drafting guidelines. The legislative drafting guide set a standard format and style for drafting. This will enhance the quality and efficient legislative drafting and assist with the rigorous task of drafting on a daily basis. The manual will also improve the training of practitioners.

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<sup>178</sup> Oleyami T O, *The Challenges of Controlling Administrative Legislation in Nigeria*, 202

<sup>179</sup> Toriola ( n75) 68

## **5.5: Contribution to Knowledge**

The thesis "An Evaluation of Drafting Standards: A Case Study of Companies Regulation 2021" is a significant contribution to the field of legal drafting and regulatory policy. The study focuses on evaluating the effectiveness of the Companies Regulation 2021 and identifying areas for improvement in the drafting standards of regulations. The thesis provides valuable insights into the importance of drafting standards and their impact on the quality and effectiveness of regulatory policies. One of the major contributions of the thesis is its focus on the Companies Regulation 2021. The study evaluates the effectiveness of the regulation by analyzing its drafting standards and comparing them with international best practices. This analysis provides a comprehensive understanding of the strengths and weaknesses of the regulation and helps identify areas for improvement. The findings of the study can be used by policymakers to revise and improve the regulation to make it more effective in achieving its objectives.

Another significant contribution of the thesis is its focus on drafting standards. The study highlights the importance of drafting standards in ensuring the clarity, consistency, and comprehensibility of regulatory policies. It also emphasizes the need for drafting standards to be aligned with international best practices to ensure the effectiveness and efficiency of regulatory policies. The study provides a framework for evaluating the drafting standards of regulations and identifies key elements that should be included in drafting standards.

The thesis contributes to the knowledge of corporate law by providing a critical evaluation of the Companies Regulation 2021. It identifies areas where the regulation conforms to drafting standards and areas where it falls short. This analysis can be used to inform future policy decisions and

revisions to the Companies Regulation to ensure that it effectively regulates the corporate sector. The evaluation of the drafting standards used in the Companies Regulation 2021 can contribute to the development of best practices in legal drafting. The analysis can provide guidance on the drafting standards that are effective in producing clear, concise, and consistent legal documents. This knowledge can be used to develop training programs for lawyers and legislative drafters to improve their skills in legal drafting, thereby improving the quality of legal documents produced in the corporate sector and other areas of the law.

The thesis can contribute to the development of legal drafting standards for international organizations. The evaluation of the drafting standards used in the Companies Regulation 2021 can serve as a model for the development of similar regulations in other countries. This knowledge can be used by international organizations such as the United Nations to develop drafting standards that are effective in producing clear, concise, and consistent legal documents in the corporate sector and other areas of the law.

Finally, the evaluation of the drafting standards used in the Companies Regulation 2021 can contribute to the development of legal drafting standards in emerging areas of the law. The corporate sector is constantly evolving, and new legal issues are arising as a result of technological advancements, globalization, and other factors. This analysis can be used to develop drafting standards that are effective in addressing these emerging legal issues, ensuring that legal documents are accessible, understandable, and effective in regulating the corporate sector.

In conclusion, the evaluation of drafting standards used in the Companies Regulation 2021 using the doctrinal method has significant contributions to the knowledge of legal drafting and corporate law. The analysis can provide insights into the quality of legal drafting, inform future policy

decisions, develop best practices in legal drafting, contribute to the development of legal drafting standards for international organizations, and address emerging legal issues in the corporate sector. These contributions can lead to improvements in the quality of legal documents produced in the corporate sector and other areas of the law, thereby enhancing the effectiveness of the legal system in regulating society.

#### **5.6: Suggestions for further research**

Beyond adding to the literature on this discourse, this work has laid the foundation for future discussions on the drafting standards in justifying the call for review of specific sections of CR in Nigeria and this research calls for keen look into drafting standards of Insolvency Regulations among others

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Aimeya Belinda Okpebholo (Mrs.) A Case Study for More Use of Plain Language in Legislative Drafting in Nigeria @ p42

A. Samuels, Ensuring Standards in the Quality of Legislation , Statute Law Review (2013) Vol. 34, Issue 3, pp. 296- 299 at 296

A Guide to the Legislative Process in Kenya, ©Kenya Law Reform Commission, 2015  
<http://www.klrc.go.ke/images/images/downloads/klrc-a-guide-to-the-legislative-process-in-kenya.pdf> accessed 8 June, 2023

A Watson-Brown, ‘Defining Plain English as an aid to Legal Drafting’ (2009) 30(2) SLR 85-96, 86

Aristotle, E.N., 5.10.1137b13-24.

Aristotle, Nichomachean Ethics, bk VI, chs. 5-11 (David Ross trans. Oxford University Press 1980).

Arthur Rynearson, Legislative Drafting Step-by-Step

< <https://cap-press.com/books/isbn/9781611633801/Legislative-Drafting-Step-by-Step> >  
accessed 24 January 2023.

B. Flyvbjerg, Making Social Science Matter: Why social inquiry fails and how it can succeed again”, (Cambridge University Press 2001), 39

B. G. Scharffs, “Law as Craft” (2001) 45 Vanderbilt Law Review, 2339.

Beatson J., (1979). 'Legislative Control of Administrative Rule-making: Lessons from the British Experience', Cornell International Law Journal, Vol 12 Issue 2

Bill drafting manual for the Montana Legislative Assembly,  
<https://archive.org/details/billdraftingmanu1996montrich> accessed 30 January 2023.

C. Nutting, “Legislative Drafting: A Review” (1955) 41 American Bar Association Journal, 76.

Cambridge ‘Evaluation’ < <https://dictionary.cambridge.org/dictionary/english/evaluation> >  
accessed 23 January 2023.

Cap 192 LFN 1990

Caleb Silver; (2022) The Top 25 Economies in the World  
<https://www.investopedia.com/articles/investing/022415/worlds-top-10-economies.asp> accessed 25 June, 2023



C Forsyth & E Kong, 'The Constitution and Prospective Henry VIII Clauses', 2004 Judicial Review 17

Companies and Allied Matters Act, 2020

Constantin Stefanou, The Policy Process and Legislative Drafting in C.Stefanou and H.Xanthaki (eds) Manual in Legislative Drafting (Department for International Development, 2005), p. 3

Choudary (n49).

Contra J-C Piris, "The legal orders of the European Union and of the Member States: peculiarities and influences in drafting" [2006] EJRL, 1.

Contra Editorial Review, 22 [1903] Can. L. Times, 437.

Constantin Stefanou, 'Legislative Drafting as a form of Communication' in Luzius Mader and Marta Tavares de Almeida (eds), Quality of Legislation Principles and Instruments (Nomos 2011) 308; and also see C. Stefanou, 'Drafters, Drafting and the Policy Process' in Constantin Stefanou and Helen Xanthaki (eds), Drafting Legislation: A Modern Approach (Ashgate 2008) 321.

C. Stefanou, Drafters, Drafting and the Policy Process in C.Stefanou and H. Xanthaki, (eds) Drafting Legislation-A Modern Approach (Aldershot, UK: Ashgate Publishing, 2008) pp.321-346 at p.327, its rightly stated: "One point to note here is that in some small jurisdictions (or in jurisdictions where drafting takes place inside a ministry) the drafters are even expected to complete relevant Regulatory Impact Assessment (RIA) checklists or even (for minor bills) a rudimentary cost-benefit analysis.<sup>20</sup> This is not the case in large common law jurisdictions where RIAs are prepared by specialists in the relevant ministries."

C. Rideout, "Storytelling, narrative rationality, and legal persuasion" [2008] 14 Legal Writing: J. Legal Writing Inst., 75.

Constitution FRN 1999 as Amended

Crabbe, Vincent (1993) Legislative Drafting, (London: Cavendish Publishing Ltd), 1st Edition.

Danwaka S. A. bill process and subsidiary legislation. Presentation at a practical training programme for Legislative officers of Bayelsa State House of Assembly at Yenagwa. 19-23 June, 2018

Dickerson Reed "Legislative Drafting: A challenge to the Legal profession" (1954) Articles by Maurer Faculty. Paper 1494.

Dicey AV, (1959) an Introduction to the Study of Law of Constitution (London, Sweet and Maxwell 10th Ed).

DT Adem, 'Legislative Drafting a Topical Approach' 2015 LexisNexis South Africa.

D.O.Adesiyan, A Handbook on Legislative Drafting (Tefton Books,1996); R.Esegbabon, The Nigerian Legislative Process (Law-Link Consults, 2005)

Emeka Chigozie; (2018) Top 10 African Countries with the biggest economy  
<https://answersafrica.com/largest-economies-africa.html> accessed 25 June, 2023

Essay UK: Free Law Essays, Conducting Independent Legal Research at Postgraduate Level,  
<https://www.essay.uk.com/free-essays/law/legal-research-postgraduate.php> (15/11/2022)

Elbow, Peter. Writing Without Teachers. 2nd ed. New York: Oxford UP, 1973, 1998. p.15.

English Thesaurus (Bookmart Limited, Abbeydale Press, 2001) 158

E. Engle, "Aristotle, Law and Justice: the tragic hero" [2008] 35 NKyLRev, 4.

Francis Bennion, Bennion on Statute Law (3rd edn. Longman 1990) p 56.

Few practitioners and fewer law teachers have experience in legislative advocacy or legislative draftsmanship". Horack, "Objectives in the Field of Legislation", 6 J. Leg. Ed. 18, 20 (1953

For an analysis on the science v art debate, Helen Xanthaki, "On transferability of legislative solutions: the functionality test" in Constantin Stefanou and Helen Xanthaki (eds), Drafting Legislation: A Modern Approach – in Memoriam of Sir William Dale, (Ashgate 2008), pp.1-18.

For an analysis of the contra argument on law as a science, M. Speziale, "Langdell's Concept of Law as Science: The Beginning of Anti-Formalism in American Legal Theory" 5 [1980] Vt. L. Rev., 1

F. Ost and M. van de Kerchove, Jalons pour une Theorie Critique du Droit (Brussels, Publications des Facultés universitaires Saint-Louis, 1987), 52.

General rules of arrangement of act rule 1

Greenberg, Craise on Legislation (n 22) 117

Greenberg, Craise on Legislation, (n 22) quoting Sir Henry Jenkins First Parliamentary Counsel, 291

GM George Taylor & Co. Legal Practitioners And Estate Managers

Gregory Craven, Consultation and the Making of Subordinate Legislation- A Victorian Initiative, 15 Monash U L Rev. 95, 1989) heinonline.org assessed 4th June 2014

Guidance, Good law principles, <https://www.gov.uk/guidance/good-law> accessed 7 May 2018 (This guidance was withdrawn on 20 January 2020, the Initiative is now part of department's list of priorities.)

Harold J. Berman, Religious Foundations of Law in the West: An Historical Perspective, *Journal of Law and Religion*, Vol. 1, No. 1 (Summer, 1983), pp. 3–43.

Helen Xanthaki, *Thornton's Legislative Drafting* (5th edn. Bloomsbury 2013), pp.145-162.

Helen Xanthaki, 'Drafting Legislation: Art and Technology of Rules for Regulation' Hart Publishing (16 October 2014)

H Xanthaki, 'On Transferability of Legislative Solutions: The Functionality Test' in Stefanou and Xanthaki

I Dobinson & F Johns. *Qualitative Legal Research*, in *Research Methodology for Law*. (2007). University Press, Edinburgh. P. 18-19.

It is named after Mr. E. H. Keeling, (later Sir Edward Keeling) who, with Mr. R. P. Croom-Johnson (later Mr. Justice Croom-Johnson) made the original proposal.

*IALS Student Law Review* | Volume 1, Issue 1, Autumn 2013, pp. 57-70

Investopedia, 'What Is a Company, How to Start One, Different Types' <<https://www.investopedia.com/terms/c/company.asp>> accessed 23 January 2023.

Imhanobe, S.O principle of Legal and Legislative Drafting, Amfitop Nigeria Ltd. (2014).

Jemina Fabiawari Benson, 2014, *Delegated Legislation in Nigeria: Challenge of Control*. LL.M Dissertation, Institute of Advance Legal Studies, University of London Miers

Justice and Constitutional Development Department, the Republic of South Africa, <http://www.justice.gov.za/ocsla/services.html> accessed 8 September, 2022.

J. P. Chamberlain, 'Legislative drafting and law enforcement' 21 (1931) *Am.Lab.Leg.Rev.* 235-243 at 243.

Kelly, Lam, 'Plain Language-a Promising Tool for Quality Legislation, '(PhD diss., University of London, 2015)

Kingsley Osinachi N. Onu, *Delegated Legislation in Nigeria: Taming the Wilddog While its Still Early*, *Institute (Institute of Natural Resources Law, Legal Brief, Volume 11, No. 3, (2022), pp. 1539–1545.*

Law 521 Conveyancing and Legal Drafting, a course material developed by the National Open University of Nigeria.

L.C.B Gower's Principles of Modern Company Law, 4th Ed., (Stevens & Sons, 1979), p.3

Legal Meaning of Regulation, Legal Information Institute <<https://www.law.cornell.edu>> accessed 23 January 2023.

Legislative Drafting: G. C Thornton (fourth edition) at p14

Legislative Manual: Structure and Style, New Zealand Law Commission Report No 35 (1996, Wellington).

Legislative Instrument Act 2003 (LIA) Australian, see also Statutory Instrument Act in United Kingdom

L. E Filson and Sandra L. Strokof, the Legislative Drafter's Desk Reference (Second Edition, CQPRESS, 2008)<sup>9</sup>

L. Hamalai, Report of the Visit to the United States Congress and the UK Parliament by the National Assembly and NILDS Delegation, 20-23 October 2015.

M. Griffiths and G. Macleod, "Personal narratives and policy: never the twain?" [2008] 42 JPE, pp.121-143, at 126.

Mader, 'Evaluating the effect: a contribution to the quality of legislation' 22 (2001) Statute Law Review 119- 131 at 126.

McLeod (n 5) 147

Merriam-Webster online dictionary, 'Regulation Definition & Meaning' <<https://www.merriam-webster.com>> accessed 23 January 2022.

Muhammed Tawfiq Ladan, The Legal Effect and Limit of Presidential Executive Orders in Nigeria and the USA: A Review of Executive Orders 1-6 of 2017 - 2018 In Nigeria, DLSS Law Information Brief No. 5 September 2018, Publication of National Institute for Legislative and Democratic Studies Maitama Abuja.

Muktar A, Etudaiye, ' The Status of Tax, Duties, Fees and Legislative Powers', Unilorin.edu.ng assessed

National Archives Catalog, U.S. Senate, Office of the Legislative Counsel.  
<https://catalog.archives.gov/id/10534712> accessed 5 June, 2023

National Migration and Asylum Act 2002 in the United Kingdom

Nainendra Nand "Legislative drafting, distance education and its contribution to good governance in the pacific (2008)

NIALS Fundamentals of Legislative Drafting, 2012.

NIALS Drafting Legislation in Nigeria: Constitution Imperative.

New Zealand Law Commission, 'Appendix 'A' Drafting Subordinate Legislation'

<<http://www.nzlii.org/nz/other/nzlc/report/R35/R35-Appendix.html#:~:text=In%20drafting%20subordinate%20legislation%2C%20the,of%20the%20primary%20legislation%3B%20and>> Accessed 24 January 2023

Accessed 24 January 2023

Onyeakachi Duru, 'Legislative Drafting Techniques and Principles'

<https://www.linkedin.com/pulse/legislative-drafting-onyekachi-duru->

Ojo ( n 78) 233

Oleyami T O, The Challenges of Controlling Administrative Legislation in Nigeria, 202

Office of the Attorney-General and Department of Justice of Kenya

<http://www.statelaw.go.ke/legislative-drafting-division/> accessed 8 June, 2023

Parliament of the Republic of South Africa, <https://www.parliament.gov.za/how-law-made> accessed 8 may, 2023.

Peter Butt, 'Plain Language in Property Law: Uses and Abuses' (1991)73 AIJ 807, 808y

P.H. Collin, English Law Dictionary (Evans, 1987), p. 51

Potu.Rahul Choudary, Historical Back Ground of Legislative Drafting

<[https://www.academia.edu/19931942/HISTORICAL\\_BACK\\_GROUND\\_OF\\_LEGISLATIVE\\_DRAFTING](https://www.academia.edu/19931942/HISTORICAL_BACK_GROUND_OF_LEGISLATIVE_DRAFTING)> accessed 31 January 2023.

Principles of Legal & Legislative Drafting in Nigeria by Sylvester O. Imhanobe, p288

Regulations 39(2), Companies Regulations, 2021

R. Bergeron, Rules of Legislative Drafting – Letters to Ukrainian Drafters (1999, Department of Justice Canada and Ministry of Justice of Ukraine, Kiev).

R. R. Formoy, "Special Drafting" 21 [1938] Bell Yard: J.L. Soc'y Sch. L., 3; but contra C. Langdell, "Harvard Celebration Speeches", 3 [1887] LAW Q. Rev., 123-124.

Renton Report (Cmnd 6035) para 13.22.

R v St Helens Justices ex p Jones [1999] 2 All ER 73 at 83.

Schwartz B, An Introduction to American Administrative Law (1962) 2nd Edn American Administrative Law 1948, 37

S. N. Jain. Doctrinal & Non-Doctrinal Legal Research in Legal Research and Methodology.(2006). Indian Law Institute. P.68.

S. Markman, Training Legislative Counsel: Learning to draft without Nellie” Commonwealth Law Bulletin (2010) Vol. 36, Issue 1, available online at:  
<https://www.tandfonline.com/doi/abs/10.1080/03050710903573431> accessed 7 May 2023

Standard – ‘FindLaw Dictionary of Legal Terms’ <https://dictionary.findlaw.com> accessed on 23 January 2023.

Staff (1995–2012). "2. What Is Evaluation?". International Center for Alcohol Policies - Analysis. Balance. Partnership. International Center for Alcohol Policies. Archived from the original on 2012-05-04. Retrieved 13 May 2012.

State of Emergency (Certain States of the Federation) Proclamation 2013

S-U von Kirchmann, Die Werlosigkeit der Jurisprudenz als Wissenschaft (1848, Verlage von Julius Springer, Berlin).

S. F. Schram and B. Caterino, “Introduction” in S. F. Schram and B. Caterino (eds) Making Political Science Matter: Debating, Knowledge, Research, and Method (New York University Press 2006) p.8.

Supreme Court Rules (as amended in 2008), Court of Appeal Rules, 2011

S G G Edger, Craise on Statute Law, Seventh edn, London Sweet and Maxwell, 1971, 291

Sylvester Omoregie Imhanobe, Principles of Legal and Legislative Drafting in Nigeria, Imhanobe books 2014.

The New Webster’s Dictionary of the English Language (Lexicon Publications,Inc. 2004) p. 583

The composition and language of act of parliament by Sir. Henry Thring; Sept 11, 1936.

The Making of Subsidiary Legislation | Godwin Iheabunike - Academia.edu

The English laws which comprise Acts or Orders-in-Council that are applied directly to Nigeria are statutes of General Application, the Common Law and the doctrine of equity. The Received English law is part of our colonial legacy. Following the Berlin Conference of 1884-1885, which was summoned by the Chancellor of Germany, Otto von Bismark, Britain was empowered to control the coast from Lagos up to Calabar. Therefore, prior to the year 1900, laws that were enacted and passed for Britain in the British Parliament applied to Nigeria as a British colony. "With the result that laws that came into existence at the time Nigeria were not even in contemplation as a country still applies to this country up to this day.

This section appears in H. Xanthaki, “Duncan Berry: A true visionary of training in legislative drafting” [2011] *The Loophole*, pp.18-26.

Toriola ( n75) 68

Tunde Opeibi, ‘Between Obscurity and Clarity in Nigerian Legal Discourse: Aspects of Language Use in Selected Written Texts’ in Anne Wegner and Sopic Cacciaguidi-Fahy (eds.) *Obscurity and Clarity in the Law-Prospects and Challenges* (Ashgate, 2008), 216

Usman Ibrahim, Shamsu Yahaya and Edoba B. Omoregie, ‘A critique of current drafting styles of Explanatory Memorandum, Long Title and Interpretation Clause’ *NILDS-JLR* (2021) VOL 4 Pp 67

V.C.R.A.C. Crabbe, *Legislative Drafting* (Cavendish Publishing 1998), pp.148-150.

Webster’s Encyclopaedic Dictionary, De Luxe Ed., (1993), p199

Welsh Government, ‘Legislation Handbook on Subordinate Legislation September 2020’ <<https://www.gov.wales/sites/default/files/publications/2020-09/legislation-handbook-on-subordinate-legislation.pdf>> accessed 24 January 2023.

W. Eskridge Jr., “Gadamer/Statutory interpretation” [1990] 90 *ColumLRev*, 635.

WIPO, Customary Law, Traditional Knowledge and Intellectual Property: An Outline of the Issues, [https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview\\_customary\\_law.pdf](https://www.wipo.int/export/sites/www/tk/en/resources/pdf/overview_customary_law.pdf) accessed 31 January 2023.

Wikipedia, the free encyclopedia Congressional Research Service  
[https://en.wikipedia.org/wiki/Congressional\\_Research\\_Service](https://en.wikipedia.org/wiki/Congressional_Research_Service) accessed 7 June, 2022

Yahaya Shamsu and Onyinyechi Ezete ‘Need For Parliamentary Control of Subsidiary Legislation In Nigeria’ *NILDS Journal of Law Review* 3, 2020 PP 133-146.