

**DELEGATED LEGISLATION AND LEGISLATIVE RESPONSIBILITY IN  
NIGERIA: THE WAY FORWARD**

**BY**

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**PG/NLS/2015017**

**A DISSERTATION SUBMITTED TO THE NATIONAL INSTITUTE FOR  
LEGISLATIVE AND DEMOCRATIC STUDIES (NILDS)/UNIVERSITY OF BENIN  
(UNIBEN) POST-GRADUATE PROGRAMME IN PARTIAL FULFILMENT OF  
THE REQUIREMENTS FOR THE AWARD OF DEGREE OF MASTER OF LAWS  
(LLM) IN LEGISLATIVE DRAFTING OF THE UNIVERSITY OF BENIN/NILDS**

**JULY, 2023**

## ABSTRACT

Delegated legislation is usually made by the executive pursuant to the powers given to it under an Act/Law of the Legislature. The Act/Law is usually known as the enabling Act/Law. The legislature sometime sets the parameters within which a delegated legislation can be made. Such powers can either be drawn broadly or narrowly. Delegated legislation is to be made within the ambit of the powers delegated. Often times, legislative drafters are not involved in the drafting of these delegated legislation and as a result, most delegated legislation in Nigeria are replete with a lot of ambiguity, verbosity and ultra vires the powers delegated to them by the primary legislation. This problem forms the basis of this research. This research examined the legislative responsibility in delegated legislation in Nigeria. However, the legislature seems not to be responsible for how these delegated legislations are made after they pass the enabling Act/Law.

This research used the Doctrinal method of research, which is library oriented and used primary sources of materials such as the 1999 Constitution of the Federal Republic of Nigeria and many other relevant statutes and secondary materials such as textbooks, journals, articles, newspapers, internet sources and other materials are used for the purpose of carrying out the research.

The research found that there is no standardise legislative framework for legislative responsibility on delegated legislation in Nigeria. The legislature just donates powers to the delegate without an institutionalised framework to exercise oversight on how the delegated legislation is made. Similarly, professional legislative drafters are not used in drafting delegated legislation.

The research recommended that there should be a standardise statutory framework that will give the legislature oversight powers over delegated legislation thereby making them

legislatively responsible as to how delegated legislations are made in Nigeria. Similarly, legislative drafters should be involved in drafting delegated legislation.

## CHAPTER ONE

### 1.1 Background to the study

The doctrine of separation of power is the core of every modern democracy. Separation of powers entails that a state's government is divided into branches, each with separate, independent powers and responsibilities so that powers of one branch are not in conflict with those of the other branches. Responsibilities are divided to distinct branches of government by limiting any one branch from exercising the core functions of another. The separation of powers is intended to prevent the concentration of power to one division so as to provide for checks and balances. The typical division is into three branches: a legislature, an executive, and a judiciary. The legislature makes laws, the executive enforces them and the judiciary interprets them to apply them to the specific case arising out of the breach of law<sup>1</sup>.

Under the Nigerian Constitution, the National Assembly and State Houses of Assembly make laws for the federation and states respectively. The National Assembly of the Federal Republic of Nigeria is a bicameral legislature established under section 4 of the Nigerian Constitution. It consists of a Senate and a House of Representatives. At the state level, legislative functions are exercised by the respective Houses of Assembly<sup>2</sup>. In the exercise of its powers, the legislative arms of government both at the state and federal levels establish statutory bodies and organs and also empower these bodies with the power to make regulations for the exercise of their duties. These powers are subject to the provisions of the enabling law establishing these bodies. Laws made in the exercise of these powers are referred to as delegated legislation.

Historically the authority to delegate law making powers to other arms of government by the legislature in Nigeria is based on the application of English laws as a colonial legacy and has

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<sup>1</sup> L Atsegbua, *Administrative law: An Introductory Text* (4<sup>th</sup> ed. Benin: Fifers Lane Publishers, 2012), pg. 46

<sup>2</sup> See section 4 of the Constitution of the Federal Republic of Nigeria, 1999

received judicial approval in the Supreme Court decision in *Williams V. Majekodunmi (No. 3)*<sup>3</sup> in which the Supreme Court confirmed that it is within the legislative competence of the National Assembly to delegate some of its law-making powers to the executive. The Court further held that it is not unconstitutional for the legislature in the Emergency Powers Act 1961, to grant authority to the Governor-General-in-Council to make regulations to empower another person to make rules and orders provided of course that the matter is within legislature's legislative power and its own law has effect in that matter. Similarly, the subordinate legislation must confine itself within the ambit of the authority conferred on it by the legislature. The court cautioned that if the legislature itself overstepped the bounds of its own authority, or if it did not fulfil certain conditions which were indispensable to give effect to its own legislation, then insofar as its own legislation was ineffective, the subsidiary instrument would equally be without effect.

Generally, the primary legislation sets out the framework of a regulatory scheme and delegates the authority to develop the details and express them by the instrumentality of delegated legislation.

According to Okany, delegated legislation are rules and regulations made by any person or body authorized to do so by an Act of the legislature<sup>4</sup>. Delegated legislation has also been defined as that which proceeds from any authority other than the sovereign power and is, therefore, dependent for its continued existence and validity on some superior or supreme authority<sup>5</sup>. In *Maderibe V. F.R.N*<sup>6</sup>, the court held that departmental circulars, though of significance in administrative affairs, has no legal effect whatsoever and have no statutory authority. Therefore, it is not considered as delegated legislation.

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<sup>3</sup> (1962) 1 ANLR 413

<sup>4</sup> M. C. Okany, *Nigerian Administrative Law*, (Onitsha: Africana First Publishers, 2005), 39.

<sup>5</sup> John Salmond, *Jurisprudence* (9<sup>th</sup> ed., London: Sweet and Maxwell Ltd, 1937), 210.

<sup>6</sup> *Maderibe V. F.R.N* (2014) 5 NWLR (pt. 1399) p. 92 para A-F

In summary therefore, delegated legislation is the exercise of law-making powers by persons or bodies other than the legislature. Delegated legislation reduces the workload of the legislature, enables experts to legislate on technical matters, saves time and cost of the legislature.

Despite the fact that delegated legislation is constitutional and important, there is a need for the legislature to exercise some form of legislative responsibilities on the powers they delegated for the making of this delegated legislation.

## **1.2 Statement of the research problem**

The Constitution of the Federal Republic of Nigeria, 1999 vests legislative powers of the federation in the National Assembly<sup>7</sup>. It however did not specifically provide for the delegation of that law making powers by the National Assembly to other arms of government. However, it allows for some administrative law making such as the making of rules and regulations by heads of court.<sup>8</sup>

While it is impossible to ensure that every single piece of legislation which is in force in the country originates from the legislature itself, it is important to ensure that delegated legislations are subjected to the same principles of drafting which the primary legislations are made pursuant to. More importantly, it is crucial to ensure that extant mechanisms for the regulation of delegated legislation is improved upon and there are proper checks for the exercise of the powers to make delegated legislations.

Currently, Nigeria, does not have a single statutory framework for legislative oversight of delegated legislation. The limits and procedures for making delegated legislation are usually contained in the individual principal legislations. This creates a problem of difficulty in

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<sup>7</sup> Section 4 of the Constitution of the Federal Republic of Nigeria, 1999

<sup>8</sup> Section 236 of the Constitution of the Federal Republic of Nigeria, 1999

maintaining standard through proper legislative oversight. Also, the legislature has abdicated their legislative responsibility of providing oversight to the powers they delegated under the primary legislation.

Furthermore, legislative drafters are not involved in the drafting of these delegated legislation. Because of this, delegated legislation in Nigeria is repleted with a lot of ambiguity, verbosity, and some of them are drafted ultra vires the powers delegated to them by the primary legislation. This has created a lot of problem in the interpretation and application of delegated legislation.

There is therefore, a need to examine the application of legislative responsibility on delegated legislation in Nigeria and also consider the role the legislative drafter plays in drafting delegated legislation. These problems are the fulcrum of this research.

### **1.3 Research questions**

From the above problems, the research formulates and provide answers to the following questions:

- a. What is delegated legislation?
- b. What is the legislature's legislative responsibility on delegated legislation in Nigeria?
- c. How effective is the legislative oversight on delegated legislative powers in Nigeria?
- d. Are there gaps in the legislature's legislative responsibility on delegated legislation in Nigeria?
- e. What role, if any, do legislative drafters play in the drafting of delegated legislation?

### **1.4 Aim and objectives of the study**

The aim of this research is to examine legislative responsibility in delegated legislation in Nigeria. This research therefore, has the following objectives:

- a. To examine concept of delegated legislation in Nigeria.
- b. To examine the legislature's legislative responsibility on delegated legislation in Nigeria.
- c. To examine the effectiveness, if any, of the legislative oversight on delegated legislative powers in Nigeria.
- d. To identify any existing gaps and proffer solutions to strengthen the legislature's legislative responsibility on delegated legislation in Nigeria.
- e. To appraise the role of the legislative drafter in drafting delegated legislation

### **1.5 Scope of study**

This research focuses on the applicability of the legislative responsibility on delegated legislation in Nigeria. However, comparative analysis was done between Nigeria and other countries in order to draw lessons from how their legislature has been responsible for the exercise of oversight on their delegated legislation.

### **1.6 SIGNIFICANCE OF THE STUDY**

This research examines the strengths and weaknesses of the system of legislative responsibility of delegated legislation in Nigeria, mapping the existing gaps and making recommendations for improvements. Therefore, this research will be important to scholars, legislators, the executive particularly and the general public who are required to comply with delegated legislation. The findings may also lead to better scrutiny by the legislature in the exercise of oversight functions on delegated legislation.



## 1.7 LITERATURE REVIEW

Delegated legislation is an interesting aspect of law making and has received the attention of several scholars. Nwabueze<sup>9</sup> is of the view that though the legislature delegated law making powers to the executive, it retains the power and has the duty to ensure that the delegated power is properly exercised and not abused. However, this work did not discuss the legislative responsibility of the legislature on delegated legislation.

Schwartz<sup>10</sup> also posited that an essential safeguard for those whose interests is to be affected by the exercise of subsidiary legislation must lie in the procedure which is adopted in arriving at the final settlement of rules by which they are to be bound. The position of the erudite author is enlightening because on most occasions, there are no consultations with the populace whom the delegated legislation is targeted at unlike what is obtainable in the legislature during public hearing. The author opines that the only means that the legislature can exercise legislative oversight on is through the involvement of members of the public in the formulation process in as much as the facilities of public hearing in drafting and enacting delegated legislation is important. This author however did not explore other ways through which delegated legislations can be put in check. This research will go further to bring to light the various means through which the legislature can exercise legislative oversight on delegated legislation aside through public hearing at formation stage of the legislation.

Malemi<sup>11</sup> contended that though the criticisms of delegated legislation are well founded, the question is no longer whether there should be delegated legislation because it is clearly inevitable that the running of the society requires the delegation of powers and delegated legislation, the contention is now how the legislature can exercise effective legislative oversight

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<sup>9</sup> BO Nwabueze, *Constitutional Law in Nigerian* (London: Butterworths. 1964)

<sup>10</sup> B. Schwartz, *An Introduction to American Administrative Law* (2nd edn, American Administrative Law Press, 1962)

<sup>11</sup> E Malemi, *Administrative Law* (Lagos: Princeton Publishing Company. 2012)

on delegated legislation. Malemi didn't give a justification as to why delegated legislation is necessary and how the legislature can exercise legislative oversight on delegated legislation. This research intends to contribute to filling that gap.

Aremu, Olaniyi and Saka<sup>12</sup> also holds the position that subsidiary legislations exist as a result of the need for Inter-Governmental Relation. Their position is that the interaction that take place among the organs of government is imperative and cannot be made away with in any functioning society. Their work majorly argues that subsidiary legislations only exist to forester cooperative relationship between the executive and the legislature. They further held that the political space is flooded with weak institutions struggling with their roles at deferent level. The above work focused on the importance and advantages of subsidiary legislation in Nigeria and did little or no discussion at all on how the legislature can exercise legislative oversight on delegated legislation. This research goes further to examine the various ways by which the legislature can exercise legislative oversight on delegated legislation in Nigeria.

Similarly, Schoenbrod<sup>13</sup> argues that instead of the Congress making the laws that govern the society, generally give bureaucrats the power to make laws through agency regulations. The elected "lawmakers" then take credit for proclaiming popular but inconsistent statutory goals and later blame the inevitable burdens and disappointments on the unelected bureaucrats. This research will expose further how the legislature has abandoned the duty of law making to the executive arm through the instrumentality of delegated legislation. Whereas this research work agrees with the erudite scholar on the premise that much of the laws today are made through the instrumentality of delegated legislation, the research will further explain the need for the legislative oversight of these types of laws.

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<sup>12</sup> F. Aremu and J. Olaniyi and L. Saka, *Travails of Democratic Politics in Nigeria's Fourth Republic* (College Press; Lead City University Press, 2020)

<sup>13</sup> David Schoenbrod, *Power without Responsibilities* (Yale University Press, 1995)

Furthermore, Pollard, Hughes and Papworth<sup>14</sup>, are of the view that delegated legislation became a necessity because the legislature lacks the time and expertise to make all the legislation required to run the society. Though delegated legislation is valid and remains part of the law and within the competence of the legislature to make and extend it does not give the delegate unlimited powers to make laws without constraints. This work did not however identify the challenges of delegated legislation with a view to proffering solutions.

Okoeguale<sup>15</sup> identified ways by which the role of the legislative arm of government in Nigeria can be further strengthened by putting in perspective the concept of accountability in delegated legislation in Nigeria. This article however did not discuss the role of a legislative drafter in drafting delegated legislation which is what this research aims at achieving.

Also, Mp Jain and Sn Jain, in discussing delegated legislation, opined that in a parliamentary democracy, it is the function of the legislature to legislate. If the legislature therefore seeks to delegate its legislative powers to the executive because of some reasons, it is not only the right of the legislature but also its obligation, as principal, to see how its agent i.e., the executive carries out the agency entrusted to it. They stated further that since it is the legislature that grants legislative power to the administration, it is primarily its responsibility to ensure the proper exercise of delegated legislative power, to supervise the actual exercise of this power and ensure against the danger of its objectionable, abusive and unwarranted use by the administration<sup>16</sup>. While this book is good for the present research, it did not however cover the Nigerian experience of how the legislature can exercise legislative oversight over delegated legislation which is what this research intends to explore.

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<sup>14</sup> DM Pollard; D Hughes and N Parpworth, *Constitutional and Administrative Law: Text with Materials* (3rd edition. London: Lexis Nexis, 2001)

<sup>15</sup> H Okoeguale, Strengthening the Legislative Controls over Delegated Legislation in Nigeria (2019) 10(2) *NAUJILJ*

<sup>16</sup> MP Jain and SN Jain, *Principles of Administrative Law* (Lexis Nexis India, 2011)

Onu<sup>17</sup> in his article considered the fact that even though separation of powers is considered a strong pillar in modern day democracy, however, modern day realities have shown that a strict adherence to this sacred principle can halt governance. Therefore, it is important that law making powers are donated to a person, organ or institution other than the legislature. This will ease legislative burden on the legislature. This work however, did not consider the legislative responsibility over delegated legislation which is what this research aims at achieving.

Another work worthy of consideration is that of Puttick<sup>18</sup> who considers delegated legislation as laws made under the authority of an enabling parliamentary Act. After he examined the evolutional system, the context and history of delegated legislation, he concluded that delegated legislations have become an essential feature of modern government and the legal system. His work further discusses the way delegated legislations is made and takes effect but most importantly it examined the system of regulatory control by the use of statutory instruments. However, his work did not deal with the challenges of legislative oversight of delegated legislation which is the focus of this research.

Oluyede<sup>19</sup> posited that subsidiary legislation evolved out of the need for effective governance. As the responsibility of government increased, coupled with the increase in population, it became inevitable to evolve an expeditious and effective means of law making in such a way that the legislature is not required to produce every legal instrument needed to run the government. He further argued that another reason for the evolution of subsidiary legislation is the technicality of the subject matter. Where a subject matter requiring legislation is too technical as to exhaust the competence of the legislature, such matters are referred to a department or agency of government having competence and technical resources regarding the subject matter. Subsidiary legislation bothering on technical areas are also more difficult to be

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<sup>17</sup> KO Onu, *Delegated Legislation in Nigeria: Taming the Wild dog while it's still Early* (2022) 11(3) *Legal Brief*

<sup>18</sup> Keith Puttick, *Challenging Delegated Legislation* (London: Waterloo Publishers, 1988)

<sup>19</sup> P. A. Oluyede, *Nigerian Administrative Law* (Ibadan: University Press Plc, 2007), 326 – 327

controlled by the legislature. Oluyede's work focuses more on the importance and the need for subsidiary legislation without doing much on the legislative responsibility of delegated legislation which is what this work deals with.

According to Iheabunike<sup>20</sup>, delegated legislation refers to those laws made by persons or bodies to whom parliament has delegated law-making authority. Where Acts are made by parliament, in appropriate cases the principal Act makes provision for subsidiary legislation to be made, and will specify who has the power to do so under that Act. Ordinarily, delegated legislation can only exist in relation to an enabling Act. Delegated legislation will usually contain the many administrative details necessary to ensure that the provisions of the Act will operate successfully. Regulations are the most common forms of delegated legislation. They are made by the executive or a minister and apply to the general population or a section of the society. Iheabunike's work though important, is very restrictive because it focuses on the subject matter of delegated legislation in terms of its essential ingredients with little or no reference at all to other aspects such as an effective legislative oversight of delegated legislation. This research expands on this.

Benson<sup>21</sup> in her thesis on delegated legislation, discussed how delegated legislation can be controlled and also identified the fact that Nigeria has no legal framework for the legislature to take legislative responsibility on delegated legislation. This work however did not discuss the role the legislative drafter plays in drafting delegated legislation which is what this research has achieved.

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<sup>20</sup> Godwin Iheabunike, *The Making of Subsidiary Legislation: Rules, Regulations, Orders etc.*; Synopsis of the presentation at the Joint Legislative Drafting Training themed "New Innovation in Legislative Drafting Skills" organized by the Open Government Partnership with the Support of Trust Africa at Bolton White Hotel, Abuja on 7th March, 2018

<sup>21</sup> J F Benson, *Delegated Legislation in Nigeria: The Challenges of Control*, being an LLM thesis presented to the Institute of Advance Legal Studies, University of London, 2013-2014.

Another work worthy of consideration is the article by Nwagbara<sup>22</sup>. He examined the concept of delegated legislation and delegation of power. Even though the concepts are closely related, they are indeed different. Nwagbara discussed their relevance and usefulness to modern day governance because the legislature at the federal, state and Local level have to delegate some of its functions for efficiency. This work however, did not discuss the legislative responsibility of delegated legislation which is what this researcher intends to achieve by this research.

More than the works cited above, this research focuses on the applicability of the legislative responsibility if delegated legislation in Nigeria.

### **1.8 Research methodology**

The researcher used the Doctrinal Approach to Research which is also known as the library research and not the non-doctrinal approach to research. Doctrinal research is one of the most dominant approaches to legal research. It relies mainly on logical analysis of legal provisions with little or no input from empirical evidence. The doctrinal method of legal research is also known as library or desk research because all argument and analysis done using this method, is based on the textual content of the law being put to test against principles of law and sound reasoning. Doctrinal research does not rely on external evidence to gain validity but whether a particular principle, rule of law or judicial pronouncement can be logically justified within the contact of law or legal system to which that principle applies<sup>23</sup>.

This method of legal research is of advantage because it gives law precision, coherence and a transparent structure. It also brings about trust in the law and promote stability and predictability in the law without undue interference by a world dominated by political dynamics.

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<sup>22</sup> C Nwagbara, Delegated Legislation of Powers in the Administrative Law Context (2015) 3(2) *International Journal of Business and Law Research*

<sup>23</sup> B. U. Ihuga *Introduction to Legal Research Method and Legal Writing* (Lagos, Malthouse Press Ltd 2020) 5

In using the doctrinal method to carry out this research, data were obtained from the Constitution of the Federal Republic of Nigeria, Acts, published books and journals. These data were used to analyse the applicability of the legislative responsibility in Nigeria on delegated legislation so as to bring a degree of certainty in the interpretation of the result of the research.

This research also adopts the descriptive and comparative techniques in order to ensure that the researcher examines already existing literature on delegated legislation. The researcher conducted qualitative and comparative analysis of the data collated from secondary sources and arranged them based on the research objectives of the study in order to find answers to the research questions.

By qualitative analysis of data implies the systematic collection, organisation and interpretation of textual materials derived from written materials, talks and observations so as to arrive at the result of this research<sup>24</sup>.

## **1.9 SYNOPSIS OF CHAPTERS**

This research work covered five chapters. The five chapters was used to dissect the research topic for a better and logical understanding.

Chapter one covered the introduction to the research topic. In this chapter, the research topic was introduced, the statement of the problem that warranted the research was also established. The aim of the research was also considered, the research objectives and questions were also considered, scope and delimitation of the research, the significance of the research and the research methodology used in the research together with the literature review of the materials used in the research, were all discussed under this chapter.

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<sup>24</sup> B. U. Ihuga *Introduction to Legal Research Method and Legal Writing* (Lagos, Malthouse Press Ltd 2020) 55

Chapter two discussed the conceptual foundation, legal framework and historical development. The chapter clarified concepts such as legislation, legislature and delegated legislation. The history of delegated legislation was traced and also the need for delegated legislation.

Chapter three considered how delegated legislation is drafted. In doing so, the chapter discussed how delegated powers are drafted, and went ahead and consider how a delegated legislation is drafted by looking at the four parts of a delegated legislation. The chapter closed with an examination of the role of legislative drafter in drafting delegated legislation in Nigeria.

Chapter four covered a delegated legislation and legislative responsibility in Nigeria. The Legislative responsibility of the legislature on primary legislation and delegated legislation was considered. The chapter ended with a discussion on the innovation of the House of Representative to improve legislative responsibility on delegated legislation in Nigeria.

Chapter five covered the conclusion of the research. It captured the summary of the research findings; observations as regards the research and Recommendations. The chapter also discussed how this research will contribute to knowledge and suggested areas for further studies.



## CHAPTER TWO

### CONCEPTUAL FOUNDATION, LEGAL FRAMEWORK AND HISTORICAL DEVELOPMENT

This chapter clarified and examined concepts such as legislation, legislature and delegated legislation, it also discussed extensively the legal tools/framework used for legislative responsibility on delegated legislation in Nigeria. The chapter went further and traced the history of delegated legislation and its development and finally appraised the need for delegated legislation.

#### 2.1.1 Legislation

Legislation is the will of the Legislature. It is a form of communication that dictates the rights, obligations, powers, privileges and duties of a people. It therefore spells out should be done and what should not be done (the dos and don'ts). Legislation is also known as Statute. It can be an Act of the National Assembly or Law of the State Houses of Assembly in Nigeria. In many instances, legislations compel or direct and prescribe punishment for its non-compliance<sup>25</sup>. Legislation also covers delegated legislation, bye laws made by other arms or agencies of government pursuant to powers delegated by the Legislature.

Legislation does not only involve the action by a legislative body, but also involve the participation of the executive. The executive is required to give its concurrence for a legislation to become effective. However, the legislature can veto such power by a sufficient majority from each house of the legislature<sup>26</sup>. Furthermore, the executive plays a role far more than mere giving assent and refusing assent. They participate extensively in the formulation of governmental policy and often in the actual preparation of legislation.<sup>27</sup>

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<sup>25</sup> D.T Adem, *Legislative Drafting Manual* (LexisNexis Worldwide 2014)

<sup>26</sup> See section 58 of the Constitution of the Federal Republic of Nigeria 1999.

<sup>27</sup> <https://www.britannica.com/topic/legislation-politics> accessed 12th July 2023

### 2.1.2 Legislature

Legislature is the law-making branch of the government. The legislature is that organ of the government that makes laws for the peace and order of a country. It has the power to formulate the will of the government and that of the people, and vest it with legal force and authority. It is the assembly of elected representatives of the people who represent national public opinion and power of the people<sup>28</sup>.

Section 4 (1) of the Constitution of the Federal Republic of Nigeria, 1999 establishes the National Assembly which consists of the Senate and the House of Representative and vests them with the legislative powers to make laws for peace, order and good governance of the Federation and any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the second schedule to the constitution. The National Assembly which is the Nigerian Legislature, also has powers to legislate on the subjects provided in the concurrent legislative list to the extent allowed by the constitution <sup>29</sup>. Section 4 of the Constitution of the federal Republic of Nigeria 1999 provides:

4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the 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 this Constitution.

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<sup>28</sup> Lecture Note by Miss Deepika Gahatraj

<sup>29</sup> Section 4 of the Constitution of the Federal Republic of Nigeria 1999

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this Section, the National Assembly shall have power to make laws with respect to the following matters, that is to say-

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(b) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall to the extent of the inconsistency be void<sup>30</sup>.

The National Assembly has a total of 469 members. The Senate has 109 members, with each state represented by three senators, while the Federal Capital Territory, Abuja is represented

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<sup>30</sup> Section 4(1), (2), (3), (4) and (5) of the Constitution of the Federal Republic of Nigeria 1999

by one senator. The House of Representatives has 360 members. Representation in the House of Representatives from each state is determined by the population of the state as against what is obtainable in the Senate wherein representation is based on equality of the state.

The Constitution also established the House of Assembly of the state and gave them legislative powers to make laws for the peace, order and good government of the State or any part thereof with respect to any matter not included in the Exclusive Legislative List, any matter included in the Concurrent Legislative and any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution. Section 4(6) and (7) of the Constitution of the Federal Republic of Nigeria 1999 provides:

4(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say-

(a) any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution;

(b) any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and

(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution<sup>31</sup>.

### 2.1.3 Delegated Legislation

The court in the case of *Olarenwaju V. Oyeyemi*<sup>32</sup> defined a delegated/subsidiary legislation as:

A subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment. It derives its force and efficacy from the principal legislation to which it is therefore secondary and complimentary<sup>33</sup>.

Furthermore, section 37(1) of the Interpretation Act, 1964 defines Statutory Instrument as:

any order, rules, regulation, rules of court, bye laws made either before or after the commencement of this Act in exercise of powers conferred by an Act.<sup>34</sup>

Delegated legislation derives their legitimacy from the primary legislation. Therefore, delegated legislation has the same force of law as the primary legislation. However, the scope of the delegated legislation must be within the powers delegated by the primary legislation.

The court in *Din v. A.G. Federation*<sup>35</sup>, had this to say:

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<sup>31</sup> Section 4(6) and (7) of the Constitution of the Federal Republic of Nigeria 1999

<sup>32</sup> (2001) 2 NWLR (697) 229

<sup>33</sup> OLARENWAJU V. OYEYEMI (2001) 2 NWLR (697) 229

<sup>34</sup> Section 37(1) of the Interpretation Act 1964

<sup>35</sup> (1988) 4 NWLR (Pt.87) 147

It is settled law that a subsidiary legislation derives its authority and validity from and subject to the provisions of the parent enabling statute. It follows therefore that a subsidiary legislation cannot expand or curtail the provisions of the substantive statute. It must be within the authority derived in the main enabling statute<sup>36</sup>.

In buttressing this fact, the Interpretation Act 1964 in defining law, also included delegated legislation as law. Section 18(1) of the Interpretation Act 1964 provides:

"Law" means any law enacted or having effect as if enacted by the legislature of a State and includes any instrument having the force of law which is made under a Law

Therefore, it safe to say that delegated legislation refers to that legislation which is made by an entity other than the legislature elected by the people to make laws, pursuant to and under a power validly conferred upon that entity by the primary legislation. Delegated legislation is also referred to as 'subordinate legislation', 'subsidiary legislation', 'administrative legislation' or 'administrative rule making.

Some of the characteristics of delegated legislations are<sup>37</sup>:

- i. They are made by persons or bodies the legislature has delegated the law-making authority.
- ii. They require an Enabling or Principal Act
- iii. They are made within the confines of the powers donated to it by the enabling Act.

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<sup>36</sup> Din v. A.G. Federation (1988) 4 NWLR (Pt.87) 147

<sup>37</sup> M. C. Okany, *Nigerian Administrative Law* (Africana First Publishers, Onitsha 2005) pg. 50

iv. It contains many administrative details necessary to ensure that the provisions of the Act will operate successfully<sup>38</sup>.

There are different types of delegated legislation. Section 37(1) of the Interpretation Act 1964 in defining what a subsidiary instrument is, listed some types of delegate legislation which includes: order, rules, regulation, rules of court and bye laws. However, this list is not exhaustive as there are other types of delegated legislation some of whom includes, directions, ordinance, proclamation etc. Furthermore, there is no fixed demarcation between one type of delegated legislation and another. The difference is mainly a function of the provision of the primary legislation.

## **2.2 Legal framework for legislative responsibility on delegated legislation in Nigeria**

### **2.2.1 The Constitution of the Federal Republic of Nigeria 1999**

Though the Constitution of the Federal Republic of Nigeria 1999, provides for separation of powers<sup>39</sup> between the three arms of government, it did not prohibit the delegation of law-making powers by the legislature. However, unlike some common law jurisdictions and the USA where specific statutory provisions provide for some guidance in the making and execution of delegated legislation,<sup>40</sup> Nigeria has no statutorily institutionalized framework for legislative oversight of delegated legislation.

The Constitution of the Federal Republic of Nigeria (CFRN) 1999 vests legislative powers of the federation in the National Assembly,<sup>41</sup> and does not specifically provide for the delegation of that law making powers by the National Assembly to other arms of government. It however

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<sup>38</sup> M. C. Okany, *Nigerian Administrative Law* (Africana First Publishers, Onitsha 2005) pg. 50

<sup>39</sup> Constitution of the Federal Republic of Nigeria, 1999 in sections 4, 5 and 6 vested legislative powers in the National and State Houses of Assembly, Executive powers in the President and Judicial powers in the Courts established by the Constitution, respectively.

<sup>40</sup> Statutory Instruments Laws of Canada, Australia, United Kingdom and India, Kenya. (The Statutory Instruments Act 1946 United Kingdom, The Statutory Instruments Act Canada, The Legislative Instruments Act 2003 Australia (renamed Legislations Act 2003 in 2016) Statutory Instruments Acts Kenya, and The Administrative Procedures Act United States of America.

<sup>41</sup> Section 4 of the Constitution of the Federal Republic of Nigeria

allows for some administrative law making such as the making of the rules and regulations by heads of court<sup>42</sup>. This provides the basis for the making of delegated legislation. Therefore, it can be safely said that the Constitution of the Federal Republic of Nigeria 1999, provides the legal framework for the making of delegated legislation in Nigeria.

However, the shortcoming as regards to this provision is the fact that even though there is an implied power by the Constitution of the Federal Republic of Nigeria, 1999 for the legislature to donate some of their law-making powers, the Constitution does not provide for how the legislature can exercise oversight on the powers so donated.

### **2.2.2 The Interpretation Act, 1964**

The Interpretation Act 1964 also serves as a viable legal framework for the making of delegated legislation. It makes some very important provisions that are applicable to delegated legislation.

The interpretation Act is a legislation of general application. By this, it means that except the contrary appears, the provisions of the Interpretation Act apply to all other Legislation.

Section 1 of the Interpretation Act 1964 provides:

This Act shall apply to the provisions of any enactment except in so far as the contrary intention appears in this Act or the enactment in question<sup>43</sup>.

Therefore, except there is a contrary intention in the provision of an act or enactment, the provisions of the Interpretation Act shall apply to all enactment.

Some of the provisions that has to do with delegated legislation as captured by the Interpretation Act 1964 are:

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<sup>42</sup> Section 236 of the Constitution of the Federal Republic of Nigeria, 1999

<sup>43</sup> Section 1 of the Interpretation Act 1964



Section 37(1) of the Interpretation Act, 1964 defines Statutory Instrument as:

any order, rules, regulation, rules of court, bye laws made either before or after the commencement of this Act in exercise of powers conferred by an Act.<sup>44</sup>

Even though this definition of delegated legislation is limited, however, this has provided a viable source for the definition of delegated legislation by the primary legislation.

On the powers to make delegated legislation, section 12 of the Interpretation Act 1964 provides:

12(1) Where an Act confers a power to make a subsidiary instrument, proclamation or notification, the power shall include-

(a) power to make different provision for different circumstances;

(b) power, exercisable in the like manner and subject to the like consent and conditions (if any), to vary and revoke the instrument, proclamation or notification;

(c) in the case of a subsidiary instrument, power to prescribe punishments for contraventions of provisions of the instrument, not exceeding as respects a particular contravention-

(i) in the case of rules of court imprisonment for a term of three months or a fine of fifty naira or both;

(ii) in any other case, imprisonment for a term of six months or a fine of one hundred naira or both.

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<sup>44</sup> Section 37(1) of the Interpretation Act 1964

(2) A contravention of a provision of a subsidiary instrument may be prosecuted in a summary manner<sup>45</sup>.

This provision is to the effect that when an enabling legislation empowers the making of a delegated legislation, such power shall be interpreted to include power to make different provision for different circumstances and power to revoke and vary the delegated legislation.

On the interpretation of delegated legislation, section 19 of the Interpretation Act 1964 provides:

19(1) An expression used in a subsidiary instrument has the same meaning as in the Act conferring power to make the instrument.

(2) In a subsidiary instrument, the expression "the Act" means the Act conferring power to make the instrument<sup>46</sup>.

By this section, any expression used in a delegated legislation, has the same meaning as that particular expression as used in the enabling Act. Therefore, when drafting a delegated legislation, words used in the delegated legislation are said to have the same meaning as they are used in the enabling legislation.

### **2.2.3 Judicial Pronouncements**

The judiciary has also provided a legal framework for delegated legislation in Nigeria by its pronouncements. In the case of *Williams V. Majekodunmi (No.3)*<sup>47</sup> the Supreme Court declared that it is within the competence of the legislature to delegate some of its lawmaking powers to the executive and that such delegation is constitutional and may also provide a ground for sub-delegation by the delegate where the enabling Act so provide. Though the

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<sup>45</sup> Section 12 of the Interpretation Act 1964

<sup>46</sup> Section 19 of the Interpretation Act 1964

<sup>47</sup> (1962) 1 ANLR 413

Supreme Court provided a judicial nod to the delegation of legislative powers, it did not provide a framework for its oversight.

Unlike some countries, Nigeria does not have a legislation specifically dedicated to provide for how delegated legislations are made and for their oversight. United Kingdom has the Statutory Instruments Act 1946 UK, Canada has the Statutory Instruments Act of Canada, Australia has the Legislative Instruments Act 2003 (renamed in 2006 as Legislations Act 2003), Kenya has the Statutory Instruments Acts Kenya, and the United States of America has the Administrative Procedures Act.

In order for the legislature to exercise legislative responsibility on delegated legislation in Nigeria, it is important that a separate legislation be made that will specifically deal with the procedure for making of delegated legislation, the procedure to follow after a delegated legislation is made and how the legislature that delegated such powers can exercise oversight over the delegated legislation. This will ensure that the making of delegated legislation follows a uniform procedure as determined by the legislature.

### **2.3 History of delegated legislation**

How delegated legislation evolved as a concept of law has been attributed to the works and debates engendered by the works of John Locke. The position of John Locke is to the effect that the people vested law making powers in the legislature and any delegation of such powers will be going against the will of the people who have not authorized such delegates to make laws<sup>48</sup>. Even though John Locke had many adherents to his position, it was equally observed that the realities of an industrialized and democratic economies made the delegation of legislative powers inevitable.<sup>49</sup>

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<sup>48</sup> Okoyomoh, P. 'An Examination of Delegated Legislation in Nigeria and Canada' 2019, [https://www.academia.edu/37522117/An\\_Examination\\_Of\\_Delegated\\_Legislation\\_In\\_Nigeria\\_and\\_Canada](https://www.academia.edu/37522117/An_Examination_Of_Delegated_Legislation_In_Nigeria_and_Canada) accessed 24th November 2022.

<sup>49</sup> Atsegbua, L. *Administrative law: an introductory text* (4<sup>th</sup> ed. BENIN: Fifers Lane Publishers, 2012) 46.

Pearce and Argument, in their work<sup>50</sup> traced the origin of delegated legislation to the “Statute of Proclamations” by Henry VIII of Britain. This statute authorized the King, with the advice of his council, to make proclamations which were to be observed “as though they were made by an Act of parliament”. The statute of proclamations itself was criticized by Lord Hewart in his 1929 work “The New Despotism” wherein he argued that delegation of powers goes against the principle of parliamentary sovereignty and encourages arbitrariness on the part of executive<sup>51</sup>.

At inception, there were no clearly defined parameters for the exercise of the lawmaking powers of the executive arm and subsequently, there was an emergence of statutes which gave the King in Council powers to make proclamations which were to have the same force as Acts of Parliament. However, this undefined nature of the exercise of legislative powers by the executive was subsequently limited when the parliament asserted its power as the arm of government authorized to make laws.<sup>52</sup>

This need to delegate the power to legislate surfaced in England in the sixteenth century when the King was empowered by the Statute of Proclamation of the year 1539 to make proclamations which were deemed Acts of parliament. This power was sanctioned by parliament because, it was contemplated that situations might arise which required speedy remedies by way of proclamations. This power of the King was extinguished in 1547 but in practice, the King continued to use it. Consequently, in 1611, Sir Edward Coke and three other judges were commissioned to consider the legitimacy of the King’s power to issue proclamation in the famous *Case of Proclamations*. The determination of the panel effectively and significantly limited the power of the King to issue valid proclamations. Particularly, the

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<sup>50</sup> Pearce, D. and Argument, S. *Delegated legislation* (3<sup>rd</sup> ed. Australia: LexisNexis Butterworths 2005)

<sup>51</sup> Taggart, M. 'Parliamentary Powers' to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century' *The University of Toronto Law Journal* [2005] (5). (55) 3. <WEBPAGE > accessed August 14, 2020

<sup>52</sup> D.R. Miers; A.C. Page, *Ibid*

case determined definitively that the King lacked the powers to create offence which did not exist on the day of the said proclamation. The determination of the case by Sir Coke set the tone for the development of the concepts of separation of power and delegated legislation<sup>53</sup>.

The 19<sup>th</sup> century witnessed a significant increase in the volume of delegated legislation and it has been reported that there were about four thousand delegated legislation passed annually in the United Kingdom alone within this period.<sup>54</sup> Delegated legislation passed during this period dealt with several matters affecting the everyday life of the citizens. This delegated legislation became necessary in modern societies as a result of increased legislative responsibilities of the parliament and the consequent impossibility of deciding all issues in primary legislation. This situation saw the need for parliament to divide the law-making powers with the government. In response to this, the principle was formulated that parliament's responsibility was to deal with the form while the government has to deal with the details<sup>55</sup>.

This led to a proposal by Henry Thring, who was of the opinion that parliament's attention should be confined to material provisions only, leaving the details to be settled departmentally by government as that is the only way they can carry out their functions effectively. This position was further supported by A.V Dicey who stated that the substance and form of law will be improved if the executive could work out the detailed applications of Acts of Parliaments<sup>56</sup>. This is seen as a welcome development as it would help in the drafting of the primary legislation on the whole as matters of details will not be included in the legislation and this will improve the drafting of the primary legislative text.

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<sup>53</sup> A. W. Bradley and K. D. Ewing, *Constitutional and Administrative Law*, (Edinburgh: Pearson Education Limited, 2011), 621.

<sup>54</sup> D. Greenberg, *Craise on Legislation*, (London Sweet and Maxwell 2012) pp 116

<sup>55</sup> J. N. Egwummuo, *Modern trends in Administrative Law*, (Enugu: Academic Printing Press, 2000), 215-216

<sup>56</sup> Dicey, *An Introduction to the Study of Law of Constitution* (10th edn 1959) pp. 52-53

Nigeria by reason of colonial history had delegated legislation implanted in its laws as part of the legacy of British rule, therefore, delegated legislation has become a part of the legal system in Nigeria. Just like other countries, the Nigerian legislature see the need to delegate powers to the executive however, these legislation are hardly scrutinized by the legislature before or after they are passed. Similarly, unlike other jurisdictions, there are no general pattern or procedure that are laid down that can be followed for the making of these legislations. The procedure to be followed in each particular case largely depends on the enabling law and this causes a lot of variations between the different delegated legislation that are made and as such the safeguards in place are far too meagre to constitute an adequate control of delegated legislation.

Generally, the delegation of law-making powers to the executive can be traced to the Constitution of the Federal Republic of Nigeria, 1999. Section 4(1) and 4(6) vests the legislative powers on the National Assembly and the State Houses of Assembly respectively.

Section 4(1) of the Constitution of the Federal Republic of Nigeria, 1999 provides:

4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives<sup>57</sup>.

While section 4(6) of the Constitution of the Federal Republic of Nigeria, 1999 provides:

4(6) The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State<sup>58</sup>.

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<sup>57</sup> Section 4(1) of the Constitution of the Federal Republic of Nigeria, 1999

<sup>58</sup> Section 4(1) of the Constitution of the Federal Republic of Nigeria, 1999

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 provide guidance for carrying out the policy before it delegates it to a subsidiary body.

## **2.4 The need for delegated legislation**

Delegated legislation is needed for various reasons. Some of them are:

### **2.4.1 Saves legislative time**

The legislature is faced with increasing responsibilities and administrative functions which makes it difficult for the legislature to have sufficient time to discuss all the matters in details and to make laws on different areas. Therefore, the legislature makes primary legislation that formulate the general policy and allows Ministries, Departments and Agencies to by way of delegated legislation, deal with the details of those issues. This saves legislative time and efforts and also, helps avoid overloading the limited legislative timetable of the legislature<sup>59</sup>.

### **2.4.2 Flexibility in Amendment**

There is flexibility in amending delegated legislation. Delegated legislation can be amended without having to go through the rigorous and time-consuming legislative process. The strict rules of procedure observed in the legislature are not binding on the executive in their exercise of delegated legislative powers. Therefore, delegated legislation can be easily amended without delay<sup>60</sup>.

### **2.4.3 Knowledge and Expertise**

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<sup>59</sup> Ian McLeod, *Principles of Legislative and Regulatory Drafting* (Oxford and Portland Oregon, 2009) pg. 159-160

<sup>60</sup> S G Edger, *Craise on Statute Law* (7<sup>th</sup> edn. Sweet and Maxwell, London 1971) pg.291

Legislation covers diverse group of interests and areas in which the legislators may lack comprehensive knowledge or expertise. Where the subject matter of a legislation is technical, the legislature establishes the main principles and framework for the legislation and leaves the details for the experts in that area to deal with by way of delegated legislation. Therefore, delegated legislation enables law making by persons who have expert knowledge in the relevant areas.<sup>61</sup>

#### **2.4.4 Emergency situations**

In times of emergency, delegated legislation can easily and timeously be used to cover that particular area without having to have it pass through the rigorous and time-consuming legislative process. The executives are granted emergency powers which is utilized in times of emergencies such as wars, natural disasters and internal disturbances as well as environmental and health disasters. This emergency power has been put to good use by the executive through the instrumentality of delegated legislation<sup>62</sup>.

#### **2.4.5 Saves cost**

Delegated legislation saves the financial costs, human and material resources. It saves cost on the formalities, time consuming and tedious process required to pass the technical primary legislation<sup>63</sup>.

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<sup>61</sup> Ogwezzy Et Al, Ibid

<sup>62</sup> State of Emergency (Certain States of the Federation) Proclamation 2013 made by president Goodluck Jonathan under the Nigerian Emergency Power Act of 1961; President Muhammadu Buhari issued the Covid-19 Regulations 2020, under the Quarantine Act Cap Q2 LFN 2004.

<sup>63</sup> KO Onu, Delegated Legislation in Nigeria: Taming the Wild dog While it's Still Early (2022) 11(3) *Legal Brief* pp. 1549



## CHAPTER THREE

### DRAFTING DELEGATED LEGISLATION

How delegated powers/legislation are drafted and its types were exposed in this chapter and importantly, the chapter examined the role of legislative drafter in drafting delegated legislation in Nigeria and finally in this chapter, a re-draft of a delegated legislation was attempted over a delegated legislation the researcher considered badly drafted for being ultra vires the powers delegated by the primary legislation.

#### 3.1 Drafting delegated powers

Delegated powers are the authorizing words in the primary legislation that permits for the making of delegated legislation. The delegated powers set the limit or fulcrum by which delegated legislation should be drafted. Delegated powers in the primary legislation are drafted in three (3) ways<sup>64</sup>. They are drafted as:

- a. general power to legislate.
- b. power to legislate on a specific matter.
- c. combination of general and specific powers.

##### 3.1.1 General power to legislate

General powers to legislate confers a general authority to make delegated legislation so as to achieve the intention of the primary legislation. An example of how a general power to legislate is drafted in a primary legislation, is in section 14 of the Nigerian Law Reform Commission Act 2022. The section provides:

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<sup>64</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

14. The Commission may make regulations generally for the purposes of carrying out or giving full effect to the provisions of this Act<sup>65</sup>.

Another example is in section 22(1) of the Nigerian Council for Management Development Act 2022. It provides:

22(1) The Council may with the approval of the Minister make regulations as may be necessary or expedient to give effect to the provisions of this Act<sup>66</sup>.

### **3.1.2 Power to legislate on a specific matter**

Power to make delegated legislation on a specific matter, authorises the making of a delegated legislation for a stated purpose. It also authorises the making of a delegated legislation in relation to a stated subject area. The power is not general. It is given for a specific matter and therefore, for matters not covered in the powers, delegated legislation cannot be made for them<sup>67</sup>.

An example is in section 11(4) of the Legal Practitioners Act 1975 which provides:

11(4) It shall be the duty of the bar council to prepare, and from time to time revise, a statement as to the kind of conduct which the council considers to be infamous conduct in a professional respect, and the registrar shall send to each person whose name is on the roll and whose address is shown in the records of the

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<sup>65</sup> section 14 of the Nigerian Law Reform Commission Act 2022

<sup>66</sup> Section 22(1) of the Nigerian Council for Management Development Act 2022

<sup>67</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

Supreme Court relating to legal practitioners, by post to that address, a copy of the statement as for the time being revised; but the fact that any matters are not mentioned in such a statement shall not preclude the Supreme Court or the disciplinary committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters<sup>68</sup>.

The specific matters for which the Bar Council can make delegated legislation for, according to this section is as to rules of professional conduct of a legal practitioner.

Another example is in section 11(4) of the Legal Practitioners Act 1975 which provides:

15(3) The committee shall have power to make orders regulating generally the charges of legal practitioners and, without prejudice to the generality of that power, any such order may include provision as to all or any of the following matters, that is to say-

- (a) the maximum charges which may be made in respect of any transaction or activity of a description specified by the order;
- (b) the ascertainment of the charges appropriate for any transaction or activity by reference to such considerations as may be so specified;
- (c) the taking by practitioners of security for the payment of their charges and the allowance of interest with respect to the security; and

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<sup>68</sup> section 11(4) of the Legal Practitioners Act 1975

(d) agreements between practitioners and clients with respect to charges<sup>69</sup>.

The specific matter for which the Committee is to make delegated legislation on is as regards charges and remuneration of legal practitioners.

### **3.1.3 Combination of general and specific powers**

Combining general and specific powers is the most common form of drafting delegated powers. Powers are delegated for the making of delegated legislation on specific matters and, more broadly, for any other incidental matters of administration that warrants delegated legislation<sup>70</sup>.

An example is in section 51 of the Immigration Act 1963. The section reads:

51. (1) The Minister, may make all such regulations as in his opinion are necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of the provisions of subsection (1) of this section, regulations may be made for all or any of the following purposes-

(a) for the control of aliens resident in Nigeria;

(b) for the establishment of a uniformed immigration service and the terms and conditions of employment therein;

(c) for the imposition of penalties for the breach of any regulations not exceeding a fine of N100 or imprisonment for six months or of both<sup>71</sup>.

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<sup>69</sup> section 11(4) of the Legal Practitioners Act 1975

<sup>70</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

<sup>71</sup> section 51 of the Immigration Act 1963

Another example is in section 53 of the Trade Unions Act 1973. The section provides:

53(1) The Minister may make such Regulations as appear to him to be necessary or expedient for carrying this Act into effect, and in particular for prescribing anything required or authorised by this Act to be prescribed.

(2) Without prejudice to the generality of subsection (1) of this section, Regulations may be made under this section with respect to—

- (a) registration;
- (b) the forms to be used for the purposes of this Act;
- (c) the seal, if any, to be used by the Registrar for the purposes of this Act;
- (d) the inspection of registers and documents kept by the Registrar and the making of copies of, or any part of, the contents thereof;
- (e) the fees to be charged for registration, inspection or any other service or matter for which provision is made in this Act or the Regulations; and
- (f) definition of the limit of relationship and degree of affiliation between the Federation of Trade Unions and any trade union.

(3) Regulations under this section may make different provision for different circumstances, and in particular

may make special provision with respect to future Federations of Trade Unions which may come into existence and the Federation of Trade Unions which is in existence at the commencement of this section<sup>72</sup>.

### **3.2 Drafting delegated legislation**

Just like the primary legislation, delegated legislation made up of four (4) parts. These parts make up the whole of delegated legislation. They are:

- i. Preliminary Provision
- ii. Principal Provision
- iii. Miscellaneous Provision
- iv. Final Provision

#### **3.2.1 Preliminary provision**

Some of the items found under the preliminary provision are:

##### **a. Title**

The title of a delegated legislation is the first thing you will see when you take a look at the delegated legislation. The wordings of the enabling section in the primary legislation is usually of great help when a legislative counsel wants to choose a title.

Sometimes, a legislative drafter can include the first word or two of the short title of the enabling Act as the first words of the title. Therefore, the first words of the short title of the enabling Act are used while the crux of the delegated legislation is included in parenthesis<sup>73</sup>.

An example of a title is as follows:

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<sup>72</sup> section 53 of the Trade Unions Act 1973

<sup>73</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)434

LEGAL PRACTITIONERS RENUMERATION (FOR  
BUSINESS, LEGAL SERVICE AND REPRESENTATION)  
ORDER 2023<sup>74</sup>

Drafting the title of a delegated legislation this way is good because it links the delegate legislation to the primary legislation. However, this is not a strict practice.

Another example is:

CENTRAL BANK OF NIGERIA (CUSTOMER DUE  
DILIGENCE) REGULATION 2023<sup>75</sup>.

**b. Enacting provision**

This similar to the enacting formula in primary legislation. It is also called the authorising words. The enacting provision recites all the enabling powers and any other matters upon which its validity depends together with the words of enactment. The enacting provision states the delegate authorised to make the subsidiary instrument and that the delegated legislation pursuant to a stated statutory power<sup>76</sup>.

An example is in the Conversion and Renewal (Licences and Leases) Regulations, 2022 which provides:

In exercise of the powers conferred on it by section 10(f) of the Petroleum Industry Act, No. 6 2021, (“the Act”) and of all other powers enabling it in that behalf, the Nigerian Upstream

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<sup>74</sup> See Legal Practitioners Remuneration (For Business, Legal Service and Representation) Order 2023

<sup>75</sup> Central Bank of Nigeria (Customer Due Diligence) Regulation 2023.

<sup>76</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

Petroleum Regulatory Commission (“Commissssion”) makes the following Regulations -<sup>77</sup>

From the above, the powers to make the regulation was given to the Commission by section 10(f) of the Petroleum Industry Act, No. 6 2021. The section provides:

10. The Commission shall have power to –

(f) issue guideline in accordance with the provisions of this Act or any regulation in respect to upstream petroleum operation<sup>78</sup>.

Another example is in the Rules of Professional Conduct for Legal Practitioners, 2023. It provides:

In exercise of the powers conferred on it by section 12(5) of the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004, as Amended, and of all other powers enabling it in that behalf, the General Council of the Bar (“Bar Council”) makes the following Rules –<sup>79</sup>

Section 12(5) of the Legal Practitioners Act 1975 that delegated that power provides:

12(4) It shall be the duty of the bar council to prepare, and from time to time revise, a statement as to the kind of conduct which the council considers to be infamous conduct in a professional respect, and the registrar shall send to each person whose name is on the roll and whose address is shown in the records of the

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<sup>77</sup> See Conversion and Renewal (Licences and Leases) Regulations, 2022

<sup>78</sup> section 10(f) of the Petroleum Industry Act 2021

<sup>79</sup> See Rules of Professional Conduct for Legal Practitioners, 2023



Supreme Court relating to legal practitioners, by post to that address, a copy of the statement as for the time being revised; but the fact that any matters are not mentioned in such a statement shall not preclude the Supreme Court or the disciplinary committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters<sup>80</sup>.

### c. Commencement

This usually comes after the enacting provision. Usually, delegated legislation commences upon their being published in the Gazette. However, where a special date is intended, then it can be inserted<sup>81</sup>.

An example is in the Central Bank of Nigeria (Customer Due Diligence) Regulation 2023 which placed the commencement date thus:

[31<sup>st</sup> Day of May, 2023] Commencement<sup>82</sup>

Another example is in the Legal Practitioners Remuneration (For Business, Legal Service and Representation) Order 2023:

[16<sup>th</sup> Day of May, 2023] Commencement<sup>83</sup>

### 3.2.2 Principal provisions

Principal provisions are the main provisions in the delegated legislation. Principal provisions are divided into substantive provisions and administrative provision. Delegated legislation

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<sup>80</sup> Section 12(5) of the Legal Practitioners Act 1975

<sup>81</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

<sup>82</sup> See Central Bank of Nigeria (Customer Due Diligence) Regulation 2023

<sup>83</sup> See Legal Practitioners Renumeration (For Business, Legal Service and Representation) Order 2023

deals mainly with the substantive provisions as most times, the administrative provisions are already dealt with in the primary legislation.

### **3.2.3 Miscellaneous provisions**

Miscellaneous provision captures other provisions that supplement the substantive provisions of the delegated legislation. Even though these provisions are important to the subsidiary instrument, they are however, supplementary to the functions of the subsidiary instrument. Some of these provisions are, amending provisions, revoking provisions, transition and savings provisions.

### **3.2.4 Final provision**

The final provision contains items such as the date in which the delegated legislation was signed, the signature of the delegate and a schedule where necessary.

## **3.3 The role of the legislative drafter in drafting delegated legislation**

In Nigeria, most delegated legislation is drafted by the civil servants in the Ministry, Department or Agency of the delegate. The Ministry, Department or Agency that is granted the power, usually drafts delegated legislation. There is little or no involvement of a legislative drafter in the drafting process. This is one of the reasons why a lot of delegated legislations are ultra vires their powers. When a legislative drafter is involved in the drafting process of the legislation, the legislative counsel guides the Ministry, Department or Agency on how to draft the delegated legislation within the ambit of the powers granted to them by the primary legislation. However, in some Commonwealth countries, delegated legislation is drafted by legal officers attached to the delegate of the power. The legal officer though not a legislative drafter, guides the Ministry, Department or Agency on how best to draft the delegated legislation. But then, if a legislative drafter is brought in instead of just a legal officer, the legislative drafter will come

with a more advance knowledge of the legal context within which the delegated legislation should be drafted<sup>84</sup>.

Most times, the legislative drafter that drafted the primary legislation is not even the one that drafts the delegated legislation. Even when the primary legislation was drafted by the Legal Drafting department of the Federal or State Ministry of Justice, it is very much unlikely that the delegated legislation will be drafted by the same legislative drafter that drafted the primary legislation<sup>85</sup>.

An example to buttress the fact that it is important to involve legislative drafters in drafting delegated legislation is in the drafting of the Rules of Professional Conduct for Legal Practitioners 2007. The Rules were made pursuant to powers delegated by section 12(4) of the Legal Practitioners Act 1975. The section provides:

12(4) It shall be the duty of the Bar Council to make rules from time to time on professional conduct in the legal profession and cause such rules to be published in the gazette and distributed to all the branches of the Association<sup>86</sup>.

Furthermore, section 1(1) of the Legal Practitioners Act established the Bar Council. Section 1(2) provided for the membership of the Bar Council to include:

- (2) The Bar Council shall consist of-
  - (a) the Attorney-General of the Federation, who shall be the president of the council;
  - (b) the Attorneys-General of the States; and

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<sup>84</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)

<sup>85</sup> GC Thornton, *Legislative Drafting* (4<sup>th</sup> Edn. Butterworths, Reeds Elevier (UK) Ltd 1996)427

<sup>86</sup> section 12(4) of the Legal Practitioners Act 1975

(c) twenty members of the association<sup>87</sup>.

However, the Rules of Professional Conduct for Legal Practitioners 2007 was drafted by the then Attorney General of the Federation and not the Bar Council. This is in contradiction to the delegated powers under section 12(4) of the Legal Practitioners Act 1975. The enacting words of the Rules of Professional Conduct for Legal Practitioners 2007 provides:

In exercise of the powers conferred on it by section 12(5) of the Legal Practitioners Act 1990, as amended, and of all other powers enabling me in that behalf, I, BAYO OJO, Attorney General of the Federation and Minister of Justice/Chairman, General Council of the Bar hereby make the following Rules:<sup>88</sup>

It should however be noted that the Attorney General is just the Chairman of the Bar Council and he is not the Bar Council. The Bar Council is made up of members as stipulated in section 1(2) of the Legal Practitioners Act 1975. The Attorney General of the Federation cannot therefore make such rules except the Bar Council. This violation was further followed by the amendment to the Rules in 2020 by Abubakar Malami SAN, the then Attorney General of the Federation. A careful study of the enacting words shows that it followed the same style of the 2007 Rules. The enacting words is provided below:

In exercise of the powers conferred on it by section 12(5) of the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004, as Amended, and all other powers enabling it in that behalf, I, ABUBAKAR MALAMI, Attorney General of the

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<sup>87</sup> section 1(1) of the Legal Practitioners Act 1975

<sup>88</sup> Rules of Professional Conduct for Legal Practitioners 2007

Federation and Minister of Justice and President, General  
Council of the Bar make the following Rules-<sup>89</sup>

An attempt to a re-draft of the above drafted Rules of Professional Conduct 2020 is hereunder:

In exercise of the powers conferred on it by section 12(5) of the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004, as Amended, and all other enabling powers, the General Council of the Bar make the following Rules-

If legislative drafters are involved in the drafting of delegated legislation, some of these fundamental errors will not be seen as the legislative drafter is trained to properly scrutinise the primary legislation before drafting a delegated legislation. Therefore, non-involvement of the legislative drafter in drafting delegated legislation is detrimental to drafting delegated legislation as there is every possibility that the delegated legislation can be drafted in variance with the primary legislation donating such powers.

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<sup>89</sup> Rules of Professional Conduct for Legal Practitioners (Amendment) Rules 2020

## CHAPTER FOUR

### DELEGATED LEGISLATION AND LEGISLATIVE RESPONSIBILITY IN NIGERIA

One of the major concerns of those opposed to delegated legislation is the fear that the power may be abused. Therefore, to curb such abuse and prevent arbitrariness, there is need for the legislature to exercise a form of legislative oversight on delegated legislation<sup>90</sup>.

In Nigeria unlike some other common law jurisdictions<sup>91</sup> there is no statute stipulating the procedural or substantive framework for the exercise of delegated powers. If such provisions exist, they are contained in different enabling Acts and are not specific. This has been identified as one of the major problems against legislative responsibility on delegated legislation. This has led to confusion, lack of uniformity and poor quality of delegated legislation<sup>92</sup>.

In light of the above, it is important to consider how the legislature has and can exercise oversight functions on delegated legislation in Nigeria in the absence of a specific statutory framework in that regard.

#### 4.1 Legislative responsibility on legislation

##### 4.1.1 Legislative responsibility on primary legislation.

The Constitution of the Federal Republic of Nigeria, 1999 gives the National Assembly the powers to make laws for peace, order and good governance of the Federation and any part thereof with respect to any matter included in the Exclusive Legislative List set out in part 1 of the second schedule to the constitution. The National Assembly also has powers to legislate on

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<sup>90</sup> Nwagbara, C. 'Delegated Legislation and Delegation of Powers in the Administrative Law Context' (2015) vol 3(2) *International Journal of Business & Law Research* pg. 84

<sup>91</sup> In many common law countries, delegated legislation is governed by statutory enactments. There is the Canadian Statutory Instruments Act 1970-1971, c.38; The Statutory Instruments Act 1946 UK, The Legislative Instruments Act 2003 Australia (renamed Legislations Act 2003 in 2016), The Statutory Instruments Act 2013, Kenya and the Administrative Procedures Act of the USA.

<sup>92</sup> B. O. Iluyomade, B. U. Eka, *Cases and Materials in Administrative Law in Nigeria*, (Obafemi Awolowo University Press, Ile-Ife 2007) pg. 93

the subjects provided in the concurrent legislative list to the extent allowed by the constitution

<sup>93</sup>. Section 4 of the Constitution of the federal Republic of Nigeria 1999 provides:

4(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

(2) The National Assembly shall have power to make laws for the peace, order and good government of the 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 this Constitution.

(3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

(4) In addition and without prejudice to the powers conferred by subsection (2) of this Section, the National Assembly shall have power to make laws with respect to the following matters, that is to say-

(a) any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution

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<sup>93</sup> Section 4 of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

to the extent prescribed in the second column opposite thereto;  
and

(b) any other matter with respect to which it is empowered to  
make laws in accordance with the provisions of this Constitution.

(5) If any Law enacted by the House of Assembly of a State is  
inconsistent with any law validly made by the National  
Assembly, the law made by the National Assembly shall prevail,  
and that other Law shall to the extent of the inconsistency be  
void<sup>94</sup>.

As regards the state, section 4(6) and (7) of the Constitution of the Federal Republic of Nigeria  
1999 provides:

4(6) The legislative powers of a State of the Federation shall be  
vested in the House of Assembly of the State.

(7) The House of Assembly of a State shall have power to make  
laws for the peace, order and good government of the State or any  
part thereof with respect to the following matters, that is to say-

(a) any matter not included in the Exclusive Legislative List set  
out in Part I of the Second Schedule to this Constitution;

(b) any matter included in the Concurrent Legislative List set out  
in the first column of Part II of the Second Schedule to this  
Constitution to the extent prescribed in the second column  
opposite thereto; and

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<sup>94</sup> Section 4(1), (2), (3), (4) and (5) of the Constitution of the Federal Republic of Nigeria 1999



(c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution<sup>95</sup>.

The Constitution did not stop at just empowering the National Assembly with powers to make laws for order and the good governance of the federation, the Constitution went ahead to empower the National Assembly with powers to conduct investigation into any matter or thing of which it has power to make law. Also, the National Assembly can conduct investigation in the conduct of affairs of any person, authority, ministry, or government department charged with the responsibility of executing or administering the laws enacted by the National Assembly. Section 88 of the Constitution of the Federal Republic of Nigeria 1999 provides:

88. (1) Subject to the provisions of this Constitution, each House of the National Assembly shall have power by resolution published in its journal or in the Official Gazette of the Government of the Federation to direct or cause to be directed investigation into –

(a) any matter or thing with respect to which it has power to make laws, and

(b) the conduct of affairs of any person, authority, ministry or government department charged, or intended to be charged, with the duty of or responsibility for –

(i) executing or administering laws enacted by National Assembly, and

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<sup>95</sup> section 4(6) and (7) of the Constitution of the Federal Republic of Nigeria 1999

(ii) disbursing or administering moneys appropriated or to be appropriated by the National Assembly.

(2) The powers conferred on the National Assembly under the provisions of this section are exercisable only for the purpose of enabling it to –

(a) make laws with respect to any matter within its legislative competence and correct any defects in existing laws; and

(b) expose corruption, inefficiency or waste in the execution or administration of laws within its legislative competence and in the disbursement or administration of funds appropriated by it.<sup>96</sup>

This provision of the Constitution makes the National Assembly legislatively responsible for conduct of investigation into any matter or thing of which it has power to make law and also, for the conduct of affairs of any person, authority, ministry, or government department charged with the responsibility of executing or administering the laws enacted by the National Assembly. This provision has aptly provided a legal framework for legislative responsibility on primary legislation enacted by the National Assembly.

Section empowers each House of the National Assembly to conduct investigation on any matter they are empowered to make law on and the conduct of the affairs of the executive and its agencies which are charged with the administration of laws made by the National Assembly and disbursing monies appropriated to it by the National Assembly<sup>97</sup>. This legislative responsibility helps the National Assembly to exercise oversight over the laws they have made.

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<sup>96</sup> Section 88 of the Constitution of the Federal Republic of Nigeria 1999

<sup>97</sup> Section 88 (1) of the Constitution of the Federal Republic of Nigeria 1999

Furthermore, section 89 of the Constitution of the Federal Republic of Nigeria 1999 empowered the National Assembly in their bid to carry out this investigative function and to make it more effective. The section provides:

89. (1) For the purposes of any investigation under section 88 of this Constitution and subject to the provisions thereof, the Senate or the House of Representatives or a committee appointed in accordance with section 62 of this Constitution shall have power to –

(a) procure all such evidence, written or oral, direct or circumstantial, as it may think necessary or desirable, and examine all persons as witnesses whose evidence may be material or relevant to the subject matter;

(b) require such evidence to be given on oath;

(c) summon any person in Nigeria to give evidence at any place or produce any document or other thing in his possession or under his control, and examine him as a witness and require him to produce any document or other thing in his possession or under his control, subject to all just exceptions; and

(d) issue a warrant to compel the attendance of any person who, after having been summoned to attend, fails, refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the House or the committee in question, and order him to pay all costs which may have been occasioned in compelling his attendance or by reason of his failure, refusal or

neglect to obey the summons, and also to impose such fine as may be prescribed for any such failure, refused or neglect; and any fine so imposed shall be recoverable in the same manner as a fine imposed by a court of law.

(2) A summons or warrant issued under this section may be served or executed by any member of the Nigeria Police Force or by any person authorised in that behalf by the President of the Senate or the Speaker of the House of Representatives, as the case may require.<sup>98</sup>

This section of the Constitution, vests quasi-judicial powers on the National Assembly in carrying out these investigative functions. They have the powers to summon any person, examine and compel the appearance of any person before them in order to carry out such investigation. It can be safely concluded that as regards legislative responsibility on primary legislation enacted by the National Assembly, the Constitution has provided a solid framework for the National Assembly to carry out the oversight over the laws they enact.

#### **4.1.2 Legislative responsibility on delegated legislation**

As already discussed earlier, even though the Constitution of the Federal Republic of Nigeria 1999, provides for separation of powers between the three arms of government,<sup>99</sup> it did not expressly prohibit the delegation of law-making powers by the legislature.

The Constitution of the Federal Republic of Nigeria 1999 vests legislative powers of the federation in the National Assembly,<sup>100</sup> and does not specifically provide for the delegation

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<sup>98</sup> Section 89 of the Constitution of the Federal Republic of Nigeria 1999

<sup>99</sup> Constitution of the Federal Republic of Nigeria, 1999 in sections 4, 5 and 6 vested legislative powers in the National and State Houses of Assembly, Executive powers in the President and Judicial powers in the Courts established by the Constitution, respectively.

<sup>100</sup> Section 4 of the Constitution of the Federal Republic of Nigeria, 1999

of that law making powers by the National Assembly to other arms of government. It however allows for some administrative law making such as the making of the rules and regulations by heads of court<sup>101</sup>. This provides the basis for the making of delegated legislation. Therefore, it can be safely said that the Constitution of the Federal Republic of Nigeria 1999, provides the legal framework for the making of delegated legislation in Nigeria.

However, even though there is an implied power by the Constitution of the Federal Republic of Nigeria, 1999 for the legislature to donate some of their law-making powers, the Constitution does not provide for how the legislature can exercise legislative oversight over delegated legislation. Under legislative responsibility on delegated legislation, this researcher discussed that section 88 and 89 of the Constitution of the Federal Republic of Nigeria, 1999 provides a solid legal framework for the oversight of primary legislation made by them. However, this is not the case with delegated legislation. What is implied is that the legislature can donate their law-making powers to other organs of government but there is no provision for how the legislature can exercise oversight over the powers so donated by them.

Nigeria has no specific legislative framework for legislative oversight of delegated legislation. The practice with regards to legislative oversight on delegated legislation has been for the legislature to include certain conditions or parameters in the enabling Act to achieve some legislative oversight or participation in the exercise of delegated powers. An example is in section 4 of the Official Secrets Act 1962. The section provides:

- 4(1) The Minister may make regulations-
  - (a) for controlling the manner in which any person conducts any organisation for receiving letters, telegrams, packages or other matter for delivery or forwarding to any other person; and

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<sup>101</sup> Section 236 of the Constitution of the Federal Republic of Nigeria, 1999

(b) without prejudice to the generality of the foregoing paragraph, providing for the furnishing of information and the keeping of records by persons having or ceasing to have the conduct of such an organisation.

(2) Regulations under this section may contain such incidental and supplementary provisions as the Minister considers expedient for the purposes of the regulations, including in particular provisions imposing penalties (not exceeding imprisonment for a term of three months or a fine of N 100 or both) for any failure to comply with the regulations; and the regulations may make different provisions for different circumstances.

***(3) Regulations under this section shall not come into force until they are approved by resolution of each House of the National Assembly<sup>102</sup>.***

A provision like the one in section 4(3) of the Official Secrets Act 1962, ensures that the legislature maintains some level of oversight over the Regulations made. However, it should be noted that this is not a mandatory requirement for the delegation of law-making powers by the legislature and most primary legislation do not have this prescription. This therefore makes it possible for delegated legislation to come into effect without any involvement or oversight by the legislature.

It is therefore important that Nigerian has a specific legislation that deals with how the legislature can exercise legislative responsibility over delegated legislation just like its

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<sup>102</sup> section 4 of the Official Secrets Act 1962

counterparts such as the United Kingdom that has the Statutory Instruments Act 1946 UK, Canada has the Statutory Instruments Act of Canada, Australia has the Legislative Instruments Act 2003 (renamed in 2006 as Legislations Act 2003), Kenya has the Statutory Instruments Acts Kenya, and the United States of America has the Administrative Procedures Act.

#### **4.2 Innovation of the House of Representative to improve legislative responsibility on delegated legislation in Nigeria**

Even though there is no primary legislation that provides the legal framework for legislative responsibility on delegated legislation, the 8<sup>th</sup> Assembly under the leadership of its speaker Rt. Hon. Yakubu Dogara established a Standing Committee on Delegated Legislation for the House of Representative. Though the Nigerian Legislature operates a committee system, there was no committee on delegated legislation in Nigeria until the 8<sup>th</sup> Assembly of House of Representative of the National Assembly of the Federal Republic of Nigeria which established a Standing Committee on delegated legislation in 2016<sup>103</sup>. According to the then Speaker of the House of Representative Rt. Hon. Yakubu Dogara:

Consistent with our agenda, the House set up a Standing Committee on Delegated legislation with a mandate to ensure that the process of Rulemaking, Regulations and other Subsidiary Legislations by MDAs are properly followed<sup>104</sup>.

The committee was established with a mandate to ensure that the process of Rulemaking, Regulations and other subsidiary legislations by MDAs are properly followed<sup>105</sup>. It should be

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<sup>103</sup> Order 18, Rule 29, Standing Orders of the 7<sup>th</sup> House of Representatives of the National Assembly of the Federal Republic of Nigeria.

<sup>104</sup> Yakubu Dogara: One Year After: Scorecard of the 8<sup>th</sup> House of Representatives, 10<sup>th</sup> June 2016, <https://www.nassnig.org/news/item/285> accessed 10th December 2023.

<sup>105</sup> Order 18 Rule 29, Standing Orders of the House of Representative 8<sup>th</sup> Edition.

noted that there is no equivalent Standing Committee in the Senate.

However, even though this initiative of establishing a standing committee on delegated legislation is a laudable one, the idea was not properly initiated. Before such a very important standing committee is established, it is expected that a study be carried out and recommendations made as to how the legislature should scrutinize delegated legislation and if so, determine the scope of that scrutiny mechanism.<sup>106</sup> Nigeria however, did not do this. No expert committee was convened, and no public participation and input was admitted in the establishment of the Standing Committee. Because of these deficiencies, there are no provisions in the Standing Orders or anywhere else on how the committee would oversee delegated legislation and to what extent

The committee is constituted of at most, 30 members<sup>107</sup> selected from different political parties and appointed by the Speaker of the House of Representatives at the Commencement of the life of the House<sup>108</sup>. In the nomination process of members of the committee, the speaker seeks to bring in such members with the requisite technical knowledge and experience in the area of the work of the committee. However, there are not many people knowledgeable and experienced in matters related delegated legislation generally in Nigeria and particularly amongst the membership of the House of Representatives. This is also true of the staff of the House of Representatives, thereby making it difficult for the Committee effectively and professionally perform its function.

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<sup>106</sup> In South Africa before they embarked on establishing a parliamentary committee on delegated legislation, a study tour of New Zealand was undertaken and the report made recommendations; see also, NCOP Subcommittee on Delegated Legislation ‘Report on Scrutiny of Delegated Legislation’ (27 October 1999). <https://pmg.org.za/committee-meeting/4698/> accessed 10<sup>th</sup> January, 2023.

<sup>107</sup> Order 18, Rule 29(1) provided that the membership of the Standing Committee on Delegated Legislation shall not exceed 30 members.

<sup>108</sup> Order 18, Rule 29(1)



The functions of the committee include:

- a. to examine the provisions of Bills which seek to: delegate powers to make rules and regulations;
- b. amend earlier Acts delegating such powers with a view to seeing whether suitable provisions for the laying of the 'Orders' before the House has been made therein;
- c. examine any other matter relating to "Orders" or any question of delegated legislation arising therefrom;
- d. Consider whether the Order is in accord with the Constitution or the Act pursuant to which it is made;
- e. whether the Order contains matter which in the opinion of the committee, should be more properly be dealt by an Act of the National Assembly;
- f. whether the order directly or indirectly bars the jurisdiction of the Courts;
- g. whether the order gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- h. whether the order involves expenditure from the Consolidated Revenue Fund of the Federation or the public revenues;
- i. whether the order appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Acts pursuant to which it is made;
- j. whether there appears to have been unjustifiable delays in the publication or laying of the order before the House;
- k. whether for any reason the form or purport of the order calls for any elucidation;
- l. Scrutinizing all delegated or subsidiary legislation made pursuant to any law made or deemed to be made by the National Assembly and also ensure that same is consistent

with powers granted by the Principal Act or enabling Instrument.<sup>109</sup>

The committee in performing its function is expected to work with the assistance of knowledgeable and experienced staff properly equipped to provide guidance for the membership of the committee and it is required to report to the House whether the powers delegated by the National Assembly are being properly exercised within such delegation. This is the power to make regulations, rules, sub rules, practice directions, directives etc.

In performing its functions the committee checks several aspects of the enabling legislation including constitutionality of the legislation itself, the process of enactment of the legislation, jurisdiction covered by the legislation, retrospective effect as the law should operate prospectively, publication requirements, impact on revenue of the federation, impact on the rights of the citizens and particularly with regards to delegated legislation- whether they are in conformity with the enabling Act or instrument. It should be noted that during scrutiny process delegated legislation may be held to be invalid if it is found to be beyond the scope of the power given by the enabling Act or if it violates any of the provisions of the Constitution or any other Act of the National Assembly.

It is expected that after the scrutiny process the committee should invite the relevant delegate of law-making power responsible for the delegated legislation and afford them an opportunity to make explanations or representations regarding any matter found to be contrary to the enabling Act or any other enactment or the Constitution. Same applies to any other infraction observed on the delegated legislation. Thereafter the committee makes its recommendations and requires the administrative authority to adhere and report back to the committee on compliance with the recommendations.

However, the research found out that the practice is quite different as the committee has not been able to be of significant impact since its establishment for a myriad of reasons among

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<sup>109</sup> Order 18, Rule 29, Standing Orders of the 8<sup>th</sup> House of Representatives of the National Assembly

which are the issue of how delegated legislations are made available to the committee for the scrutiny process and also, there is no statutory backing for the committee to call for records of legislations brought before the National Assembly. Furthermore, the research found out that there is no requirement for administrative authorities to submit delegated legislations made by them to the committee.

The effectiveness of the committee on delegated legislation is dependent on the:

- a. Legal and Institutional Framework for Legislative Oversight of Delegated Legislation;
- b. Committee Size and Committee Leadership;
- c. Knowledge and Skill of Committee Members;
- d. Availability of Resources;
- e. Availability of Clear Guidelines and Capacity of Support Staff/Committee Secretariat.

It is therefore important that the committee on delegated legislation be availed all of these to ensure its effectiveness. This is so because, delegated legislation is very important aspect of our body of laws.

## CHAPTER FIVE

### SUMMARY, CONCLUSION AND RECOMMENDATION

This chapter covered the conclusion of the whole research work and discussed the findings/observation discovered at the conclusion of the research, some recommendations/contribution to knowledge were discussed hereunder too and finally suggestion for area for further studies was also stated in this chapter.

#### 5.1 Summary of findings

This research focused on the abdication of the legislative responsibility on delegated legislation in Nigeria. In order to achieve the essential of the research, the research work was divided into five chapters with each chapter dedicated to one important aspect of the research.

At the conclusion of this research, the following findings were made:

- a. The National/State Assemblies of Nigeria in the exercise of its powers, sets out a framework for a regulatory scheme when enacting the primary legislation which the statutory bodies or organs established by the National/State Assemblies should follow in making regulations for the exercise of their duties.
- b. There is no specific unified statutory framework for legislative oversight of delegated legislation in Nigeria as against what is obtainable in some jurisdictions such as the United Kingdom, Australia and Kenya.
- c. The House of Representative now has a committee on delegated legislation for the purposes of oversight function, however, the Senate does not have any. Though the committee established by the House of Representative has not been able to be of significant impact since its establishment due to the issue of how delegated legislations are made available to the committee for scrutiny process and also, there is no statutory backing for the committee to call for records of legislations brought before the National Assembly.

- d. Delegated legislation is not made available to the Committee on delegated legislation and as a result, so many delegated legislation are tainted with ultra vires the powers delegated by the primary legislation.
- e. There is no statutory backing for the committee on delegated legislation to call for records of delegated legislation either before or after they are made.
- f. There is no requirement for the administrative authorities to submit delegated legislation made by them to the committee on delegated legislation.
- g. The legislative drafter is often not involved in the drafting of delegated legislation.

## **5.2 Conclusion**

Delegated legislation has become inevitable because of the exigencies of modern society. Most legislatures now have to share their legislative powers with other arms of government while they are tasked with the enactment of the important and primary legislations. Therefore, the legislature delegates some of its law-making powers to other arms of government to fill in the gap and make subsidiary legislations necessary for the implementation of the primary legislation and to cater for emergency needs.

Without doubt, delegated legislation is necessary even though it is important that regulatory measures be put in place in order to curtail the abuse of such powers by those it is delegated to. Therefore, it is important that the Nigerian legislature put in place oversight mechanisms so as to avoid the abuse and misuse of the powers they delegate to other arms of government.

### 5.3 Recommendations

Flowing from this research, it is therefore recommended that:

- a. The Legislature may consider establishing more standing committees and also call for service from highly qualified members of the public knowledgeable in a particular field under scrutiny, for the purpose of subjecting every piece of delegated legislation made to proper scrutiny before it comes into effect.
- b. The National Assembly may wish to consider enacting a unified statutory framework to guide the making of delegated legislation in Nigeria. This will provide a clear guideline for the making and administration of delegated legislation
- c. Since Nigeria operates a bi-cameral legislature, it would be nice for the Senate to also establish a standing committee on delegated legislation just as it's obtainable in the House of Representative, this will ensure fast and proper scrutiny of the delegated legislation.
- d. The Legislature may consider sponsoring periodic training of the members of the committee on delegated legislation on how to carry out their functions effectively by inviting experts on the field.
- e. The National Assembly may consider including in the enabling Act that delegated legislation be subjected to proper public awareness and debate be it comes into effect.
- f. Legislatures may also consider inserting in the enabling Act the participation of trained and experienced legislative drafting professionals in the making of delegated legislation. This will help in addressing the knowledge and proficiency gap and ensure that delegated legislation in Nigeria is properly made and not suffer from poor quality drafting.
- g. National Assembly may consider stringent measures to ensure that Delegated legislation is made within the scope of the powers delegated by the primary legislation.

#### **5.4 Contribution to knowledge**

This research has contributed the following:

- a. It has expounded the subject of delegated legislation
- b. It has helped to create awareness on the importance of delegated legislation
- c. It has helped highlight how delegated legislation can be made within the boundaries of the enabling Act
- d. It brought out the need for a specific legislation to deal with legislative oversight in the making of delegated legislation.
- e. It highlights the role of the professional legislative drafter in the delegated legislation process.

#### **5.5 Suggestions for further studies**

An area for further studies in this regard is the consideration of whether the law-making functions of other arms of government should be regarded as an administrative function or a quasi-judicial function.

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