

Chapter 8

Punctuation (and Capitalisation)

The function of punctuation in legislation is, as in any type of writing, to facilitate comprehension and hence aid interpretation. Each of the punctuation marks used in legislation is examined, with commas (those that are in practice the most difficult) left to last.

8.1 Full stop

A full stop is used to indicate the end of a sentence (it should not appear in the middle of a section or subsection, as each of these divisions should constitute a single sentence on its own). It is also used:

- to indicate an abbreviation (rarely used in legislation);
- after the section number (1., 2., etc.) but **at the beginning of a section only**.

8.2 Colon

A colon is used to introduce something that follows. This mark is now more widely used than a dash as an introducer because of the possibility of an 'orphaned' dash in word processing (i.e. where the dash stands alone at the beginning of the line below the text to which it attaches).

In some jurisdictions, use of a colon after introducing words, as opposed to a dash, indicates that what follows is **a list which does not** depend grammatically on them:

The following constitute members of the Board of the Commission:
 (a) a chairman to be appointed by the Minister;
 (b) the Director-General *ex officio*;
 (c) four members elected by the.....

8.3 Dash

A dash is an alternative to a colon, but now less often used for reasons already described. In some jurisdictions, use of this mark, as distinguished from a colon, indicates that what follows **does** depend grammatically on the introducing words:

A member of the Board must vacate his or her office if –

- (a) incapacitated by physical or mental illness;
- (b) his or her estate is sequestrated; or
- (c) nominated as a candidate for election to Parliament or a provincial legislature.

8.4 Semi-colon

A semi-colon indicates a pause that is longer than indicated by a comma and shorter than a full stop. It is used:

- Grammatically, to indicate linked clauses of equal importance:

An inspector may enter relevant premises at any reasonable time; but the inspector must show his or her authority to enter if required to do so.

- Technically (normally only in legislation, and text following a legislative layout) to indicate the end of a paragraph within a section or subsection, or a subparagraph within a paragraph. However, in some jurisdictions a comma replaces a semi-colon in this use.

Somewhat confusingly, some house styles require a comma to be placed at the end of the last paragraph or subparagraph in a sequence:

A person at a public gathering commits an offence if that person:

- (a) behaves in a noisy or disorderly manner;
 - (b) incites another person to commit a breach of the peace; or
 - (c) uses or distributes a document containing threatening, abusive or insulting words,
- and is liable to imprisonment for 12 months.

It is suggested that it would be better to maintain consistency by using either semi-colons or commas throughout.

8.5 Quotation marks (or inverted commas)

These marks are used to indicate a definition term, i.e., a word or series of words being defined (see Chapter 9):

“dealer” means a person licensed under this Act to deal in...

The Utopian Reinsurance Corporation (“the Corporation”) is established as a body corporate...

See also the examples below under **brackets**.

They are also used in amending legislation (see Chapter 16) to indicate a word, series of words or block of text to be deleted or inserted. The following example demonstrates both this and the use referred to above:

Section 4 of the Insurance Act, in this Act called “the principal Act”, is amended by deleting “subject to the approval of the Minister” and inserting “unless the Minister otherwise directs”.

However, in some jurisdictions alternative devices to quotation marks are used to indicate a definition term (e.g. by printing it in bold italics) or to amend text (e.g. by the use of bold or underlined text, or a combination of both).

8.6 Brackets

Brackets are sometimes used, following the practice of private legal documents, to indicate the creation of a definition:

An application may be made to a court by or on behalf of a person for whose benefit a maintenance order has been made (“the applicant”)...

A person (“the seller”) who sells fuel to a licensed retailer may not recover the part of the sale price representing the subsidy for the sale except under this section.

They are used in short titles of Acts to indicate a refinement of the subject matter (see Chapter 12), and they are occasionally also used in amending legislation to provide clarification or explanation not forming part of the official text:

Section 64 of the principal Act (*which provides for appeals to the Minister*) is amended by deleting subsection (4).

8.7 Hyphen

A hyphen is used as required by grammatical convention to indicate paired words:

by-law, cross-reference, loud-speaker, polling-booth, two-fifths, Attorney-General.

It is also used to indicate a word-break at the end of a line of printed text (although this use is now rare in legislative texts).

Note that technically a hyphen is shorter than a dash.

8.8 Apostrophe

An apostrophe is used:

- To indicate the possessive (the magistrate’s court, licensed dealers’ premises). Note that in the plural the apostrophe follows the final letter¹; and

¹ The rules concerning the possessive are sometimes complicated and reference is recommended to a style manual such as *New Hart’s Rules*, Oxford University Press, 2005.

- For contracted words (doesn't, cat o' nine tails); little used in legislation except possibly in o'clock (on the clock); fo'c's'le (forecastle, or forward part of the lower deck of a ship).

8.9 Comma

This very important punctuation mark is often misused. Its correct uses are various, but basically it indicates a notional split-second pause in the reading of the sentence concerned, usually (but not always) because of its grammatical structure. Specifically, it is used:

- to separate items in a sequence (and so prevent having to repeat 'or' or 'and' between the various words):

"educational establishment" means a university, polytechnic, institute of adult education, school, kindergarten or other place where instruction of persons is undertaken;

- to mark off separate grammatical clauses in a sentence:

Unless otherwise provided by this section, or unless the Minister grants an exemption under section 46, a log book must be kept in every ship.

- to divide a compound sentence:

The Minister may approve or refuse to approve the scheme submitted, but on refusal to do so must inform the applicant within 7 days.

- to prevent repetition:

If the skipper of, or a seaman employed in, a fishing vessel is, while on board the vessel, under the influence of drink or a drug...

These commas save having to state 'a fishing vessel' twice.

- To indicate a **commenting**, as opposed to a **defining**, modifier in a sentence:

If the seat of a member of the Council becomes vacant, the member, if qualified under this Act to offer him or herself for re-election, may seek re-election.

The commas in this sentence create a pause in the flow of information; the underlined words are said to create a **commenting** modifier. They give, in a sort of aside, general information about the member. Compare:

If the seat of a member of the Council who is qualified under this Act to offer him or herself for re-election becomes vacant, that member may seek re-election.

In this last example, there is an unbroken continuity of the sense provided by the underlined words creating a **defining** modifier. This adds very specific information about the member. Often, as here, sentences written in these slightly different ways actually mean the same thing, but a problem of ambiguity can arise as shown below.

- To facilitate understanding (but commas should not be overused):

A person who, without lawful authority, exports from Utopia, or puts on board a ship, aircraft or vehicle for the purpose of being so exported, a false or counterfeit coin, commits an offence.

The first and second commas in this sentence indicate a commenting modifier ('without lawful authority'). The third and fifth enclose a second modifying clause ('or [a person who] puts on board...'). The fourth simply indicates a sequence. However, the sixth and last comma in the sentence is inserted to enable the reader notionally to 'pause for breath', rather than because rules in any of the other paragraphs require it.

8.9.1 Problems with the use of commas

A number of problems can arise over incorrect or unthinking use of commas. This can even change the meaning of a sentence and is most likely to happen in the two types of case examined below.

8.9.1.1 When using commas to indicate commenting (as opposed to defining) modifiers

Note how the introduction of a comma can change the meaning of a sentence:

1. A driver involved in a road accident involving personal injury must remain at the scene until a police officer arrives.
2. A driver involved in a road accident involving personal injury must remain at the scene, until a police officer arrives.

The continuity of the sense provided by the **defining** modifier in example 1 adds very specific information about the duty to remain. By contrast, the comma in example 2 creates a pause in the flow of the sentence to indicate a **commenting** modifier. This seems at first sight to imply an ending of the duty to remain:

1. *The driver must wait to be interviewed by the police at the scene.*
2. *The driver is free to leave the scene when the police arrive.*

In a further example:

3. A building inspector may order the demolition of the listed premises which were declared to be substandard under the repealed Regulations.

4. A building inspector may order the demolition of the listed premises, which were declared to be substandard under the repealed Regulations.

A similar potential difference in meaning can be seen:

3. *Some of the premises were previously declared substandard.*

4. *All of the premises were previously declared substandard.*

8.9.1.2 By inadvertently changing the nature of the words that follow

1. Eats shoots and leaves.

2. Eats, shoots and leaves.

In this well-known example, the addition of a comma converts ‘shoots and leaves’ from nouns (so that the words are a comment on what giant pandas usually do), to verbs (with a completely different meaning).

This problem too can carry over into legislative provisions:

1. A disabled person must have worked for at least two years for a scheduled employer to claim the benefit.

2. A disabled person must have worked for at least two years, for a scheduled employer to claim the benefit.

1. *The disabled person has the right to claim the benefit.*

2. *The employer has the right to claim the benefit.*

The comma here converts the word ‘for’ from a preposition (‘with’, ‘under’) to a conjunction (‘in order for’).

8.10 Capital letters

These are used at the beginning of words or in acronyms. They are required:

- at the beginning of the first word in a sentence
- to indicate a proper noun (e.g. name of a person or place)
- to indicate the title to a specific office or institution
- for days of the week, months and specific public holidays
- for certain legislative terms (‘Bill’, ‘Act’, ‘Part’, ‘Schedule’ and the short title; but note, not in ‘section’, ‘subsection’, ‘paragraph’, ‘clause’, etc.)
- usually, when a labelling definition is used in legislation (‘the Corporation’, ‘the Director’); this is considered further in Chapter 9
- for initialled titles and acronyms – in both cases, all the letters will be capitalised (EU, OECD, UNESCO, NATO).