Chapter 13
Final Provisions

Powers enabling the making of subsidiary legislation are sometimes considered to be final provisions and would normally precede the provisions covered here but they are dealt with as a separate topic, headed 'Delegated powers to legislate', in Chapter 15. This chapter examines repeals, transitional and savings provisions, and Schedules. The first three of these are very closely interrelated.

13.1 Repeals

13.1.1 General matters

As is the case with amendments, repeals should always be in **express terms**. The courts will, if driven to do so, construe an implied repeal of an earlier provision, but unless they are unable to escape the conclusion that the two sets of provisions are so inconsistent that both cannot have legal effect, they will attempt to distinguish the provisions by holding:

- the two supplement each other
- general provisions do not repeal earlier specific ones, or
- the repeal is only partial.

Confusingly, different words are used in relation to repeals:

- '**repeal**' (usually with respect to Acts or provisions in an Act down to and including a section)
- '**revoke**' (with respect to a piece of subsidiary legislation as a whole)
- '**rescind**' (usually applied to court orders, but also sometimes applied to legal notices applying the law)
- '**delete**' (when referring to provisions in an Act less than a section, or in subsidiary legislation)
- '**cancel**' (a general word sometimes applied to legal notices).

13.1.2 Kinds of repeal

Simple repeal, where legislation on the particular matter is no longer required. This might arise because:

- the legislation in question has become spent (e.g. a specific Government Loan Authorisation or Loan Guarantee Act)

- the need for regulation of some matter has ceased because, for example, exhaustion of natural resources has led to cessation of the activities concerned (e.g. a Tin or Gold Mining Act)
- a statutory corporation has been set up in the past for the administration of some matter the need for which has ceased for practical purposes to exist (e.g. a Regional Development Authority Act)
- Government has decided to discontinue some kind of institution or deregulate an activity previously regulated by legislation (a Public Libraries Act, a Post Office Savings Bank Act, a Price Control Act).

Repeal and re-enactment: where the new enactment **consolidates** the law previously contained in a number of enactments and which is to remain essentially unchanged. This process was common in the past in the UK but comparatively rare in Commonwealth jurisdictions generally. The process might, however, apply if it were desired to rationalise legislation by combining into one Act the provisions contained in a number of different ones (see the examples given in Chapter 12 relating to short titles, particularly those relating to Tobacco and Evidence Acts).

It can also apply where a statute that has been repeatedly amended over the years is re-enacted to rationalise it and get rid of complex section numbers (see chapter 16, section 16.7). This would apply in particular to an Income Tax or Corporation Tax Act.

The important thing to remember about this procedure is that the law itself remains unchanged; it is merely its **format** that is being altered.

Repeal and replacement: where existing legislation is being **reshaped** to meet new circumstances, or existing circumstances more effectively. This procedure might involve merely the repeal of an existing Act and its replacement by a new one bringing in a wider or more modern administrative regime (e.g. a new Insurance Act to replace the existing Insurance Act), or it might involve a new Act that is more comprehensive than the existing one and streamlines administration in a number of areas. Thus a new Public Health Act that widens the scope of administration and includes matters previously dealt with under other legislation, might require (as well as repeal of the existing Public Health Act) repeal of also e.g. an existing Human Tissues Act, Rabies Act and Malaria Prevention Act.

Of these different kinds the last, **repeal and replacement**, is in practice by far the most common situation.

13.1.3 Legal effects of repeal

The applicable rules are standard in most Commonwealth jurisdictions and are typically stated in an Interpretation Act:

> **39**(1) Where a written law repeals an Act or subsidiary legislation, or a provision in an Act or subsidiary legislation (in this section called "an enactment"), that repeal does not, unless the contrary intention appears:
> (a) revive anything not in force or existing at the time at which the repeal takes effect;
> (b) affect the previous operation of the repealed enactment or anything duly done or suffered under that enactment;
> (c) affect a right, title, interest, status, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment prior to the repeal;
> (d) affect a penalty or forfeiture incurred or liable to be incurred in respect of an offence committed against that enactment;
> (e) affect an investigation, legal proceeding or remedy in respect of any such right, title, Interest, status, privilege, obligation or liability, or penalty or forfeiture.
>
> (2) An investigation, legal proceeding or remedy mentioned in subsection (1)(e) may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed.

Sometimes the Interpretation Act goes further to provide specifically for when a repeal and replacement situation exists. If it does not, consideration needs to be given as to whether all or some of the following (transitional) provisions should be drafted into the replacing Act:

- offices and bodies constituted, and appointments made, under the repealed Act, and in existence at the commencement of the replacing Act, continue as if constituted or made under the replacing Act
- proceedings taken under the repealed Act are to be continued under and in conformity with the replacing Act, so far as is consistent with that Act
- subsidiary legislation made under the repealed Act, and in force or having effect at the commencement of the replacing Act, continues in force or to have effect as if made under the replacing Act, so far as is consistent with that Act
- other things done under the repealed Act, and having effect at the commencement of the replacing Act, continue to have effect as if done under the corresponding provision of the replacing Act, so far as is consistent with that Act.

13.1.4 Drafting repeal provisions

These should apply only to the **principal** Act or subsidiary legislation, or to specific provisions in either:

> The Engineers Act 1978 is repealed
> Parts IV and V of the Financial Institutions Act, Cap.327, are repealed
> The Road Traffic (Construction and Use) Regulations 1992 are revoked

Amending Acts or subsidiary legislation, or provisions in them, do not normally need to be expressly repealed, as they will have merged with the principal Act, etc. on coming into force (see further Chapter 16). However, technically, provisions in an amending Act containing the authority to cite by its short title (usually section 1) cannot merge and, unless there is a background rule in the Interpretation Act stating that they are to be treated as having become spent on commencement of the amending Act, theoretically remain on the statute book. In the absence of such a rule, the practice varies in different jurisdictions: in some they need to be expressly repealed, in others they are simply presumed to have become spent or ceased to exist.

Express repeal of an amending Act, or revocation of subsidiary amending legislation, or a provision in either, would therefore be required only in the rare instance that **it had not yet come into force** at the date of proposed repeal.

13.2 Transitional and savings provisions

13.2.1 General matters

These provisions are not required in every case. They will usually be consequent on a repeal and therefore in the arrangement of sections in an Act logically follow any repeal provisions.

13.2.2 Transitional provisions

Transitional provisions are necessary to enable a smooth transition to be made between the existing law and a new law; they tie up the loose ends that would otherwise be left in the air. Some have already been noted above (section 13.1.3); others might concern, for example:

- what happens to cases already in the pipeline when a new system of trial, or appeal, is instituted?
- even if there is no new system of trial, how are the civil or criminal actions that were begun under repealed legislation to be affected?

- how are licences granted under the old legislation to be affected by the new legislation?
- what happens to the assets and liabilities of a body corporate whose constitution is being changed from a private company to a statutory corporation?

13.2.3 Savings provisions

Savings provisions, many of which overlap in their functions with transitional provisions, keep in being laws, rights or obligations that might otherwise disappear when an existing law is repealed. As has been noted above, interpretation legislation normally deals expressly with the savings that are generally to be construed as applying when legislation is repealed.

Particular reference to savings provisions may be necessary where a rule is to be enacted on a subject matter previously governed by the common law. Consideration would need to be given to whether the new rules are to **replace** common law rules or to **supplement** them; and in the latter case it might be necessary expressly to save them in order to avoid confusion.

13.2.4 Particular commonly needed transitional provisions

- transfer of assets and liabilities where a change in structure of a statutory body is effected

  > At the commencement of this Act, all assets and liabilities of the Utopia Gas Board are transferred to the Utopia Public Utilities Corporation...

- pending proceedings

  > Where proceedings under the repealed Act had been instituted at the date of commencement of this Act, those proceedings may be continued as though this Act had not been passed.

- interim arrangements pending the setting up of a permanent management structure for a body

  > Pending the establishment of the Board under section 6, the Managing Council established under the repealed Act is to constitute an Interim Board, and may exercise all of the functions of the Board in relation to...

- issue of licences

  > Where a person who was operating a zoo immediately before the date of commencement of this Act applies in the prescribed manner for

a licence within 60 days of that date, the Board must issue that person with a licence, but the licence is subject to conditions imposed by this Act.

- registration

  Despite section 52 (*qualifications for registration*), a person registered as a chiropractor at the commencement of this Act is to be regarded as qualified for the purposes of that section if...

13.2.5 Particular commonly needed savings provisions

- preservation of obligations

  A duty imposed under this Act is in addition to, and does not detract from, other duties imposed by another written law, the common law or customary law.

- preservation of rights of appeal

  Despite section 15 (*transfer of jurisdiction*), where proceedings were concluded under the repealed Act but the time for appeal from those proceedings had not expired at the commencement of this Act, that right continues, and an appeal may be lodged, as though this Act had not been passed.

- saving of existing licences

  A licence issued under the repealed Act continues in force as though issued under, and is subject to the conditions specified in, this Act.

- continuance in being

  The revised edition of the Laws of Utopia established by the repealed Act continues in force.

- preservation of civil rights

  The prosecution of a person for an offence under this Act does not affect the right of a person to bring civil proceedings against the first-mentioned person arising out of the same facts.

See further Chapter 19.4 ('Licensing legislation').

13.3 Schedules

Schedules are a convenient device for setting out provisions of a detailed or specialist nature which would otherwise interrupt the flow of the main body of provisions in an Act or subsidiary legislation.

Although Schedules (note the conventional spelling, with an upper case S) form part of the legislation, they cannot stand on their own and must be appended to a particular provision in the main body of the legislation. This is done by the use of what are called ‘inducing words’ in a section:

> The procedure of the Board is governed by the rules set out in Schedule 2.
>
> ‘Class A drug’ means a substance listed in Part I of the First Schedule;

Schedules are numbered, for example First Schedule, Second Schedule, etc., or, more commonly in modern drafting, Schedule 1, Schedule 2, etc., and should contain as part of their heading a reference to the section or division of subsidiary legislation in which the inducing words appear:

Schedule 3

(section 6(2))

Rules of Procedure of the Engineers Registration Board

Second Schedule

(rule 4)

Forms for Application for a Licence

Schedules are typically used for the following types of matter, but this list is by no means exhaustive:

- composition of a body established by the legislation
- procedure at meetings of such a body
- lists of persons, items or places to which the legislation applies or does not apply
- designations of traffic signs
- statements of boundaries or delimitations of areas
- formulae for calculating taxes
- tables setting out benefits or rates of taxes
- specification of forms (especially in subsidiary legislation)
- relevant articles or sections in a treaty or international agreement to be given the force of law
- repeals and amendments (especially if numerous)
- transitional and savings provisions (especially if numerous)
- interpretation provisions (especially if numerous).