

Appendix D

Suggested Approaches to Translation of Policy

Legislative counsel will first of all need to be satisfied as to the type of legislation to be employed (this and associated matters are referred to in Chapter 11). From there it is a question of the detailed analysis of the policy. Apart from the use of the 'six serving men', and the requirement to ensure that as far as possible the matters referred to in the '6 Cs' of effective communication (both referred to in Chapter 2) apply, there can be no universal guide to the analysis required to effectively translate a particular policy into an effective legislative rule or series of rules. Obviously, each will depend on its own particular set of circumstances.

However, there follow two instances of simple policy statements and how legislative counsel might approach each of them:

Policy 1: Wildlife in nature sanctuaries to be protected

Firstly counsel would need to consider the broader aspects of the policy by asking fundamental questions about it:

Why?	Environmental conservation.
Who?	Anybody who is inside a sanctuary.
What	... exactly is being protected? Unless instructed about specific exceptions, counsel must assume this means all animal, and coral and plant life (including what might be termed as vermin, for e.g. rats).
How	... is protection to operate? Presumably this is to be by a complete ban on killing, injuring or damaging the animal and plant life.
Where?	Obviously the protection is to apply within each sanctuary. Firstly counsel will need to establish to what kinds of area the policy is to apply. Do 'sanctuaries' included national wildlife parks or reserves, about which there may already be legislation? Or are they to be contained in legislation at a more local level (e.g. for local parks or wildlife sanctuaries)? This will probably be apparent from the nature of the instructions, but counsel might need to consider whether a definition of 'nature sanctuary' or 'wildlife sanctuary' is required.

Presumably the protection also applies to animals in, and plants growing in, a sanctuary that are accessible from outside it.

Having satisfied himself or herself as to the above, there is no rule as to how counsel should now proceed, but it is often a good idea to produce a first draft. This can then serve as a basis for further analysis and refinement. The following assumes that the sanctuary is a land rather than a marine one.

First draft

A person must not kill, injure or cause damage to an animal or plant in a nature sanctuary.

As the process of analysis continues, it can quickly be seen that there are further matters that require attention.

Policy analysis refinements

‘Animal’ is capable of more than one meaning, depending on the context in which the word is used:

- mammals
- mammals, reptiles and amphibians (i.e. not birds, fish or invertebrates)
- all animal (as opposed to plant) life.

Presumably here the third of these is intended (i.e. to include birds, fish, insects, spiders, molluscs, snails, worms, etc.) and if so the term needed will be ‘animal life’. As regards plants, instructions might be needed with regard to whether a definition is required to include, for example, fungi or seaweed, and it might be helpful to refer to larger plants (trees and shrubs) specifically.

Is the list of prohibited conduct exhaustive? Where animal life is concerned, **capturing** obviously needs also to be included, even where this action causes no injury. Furthermore, at a more subtle level, a ban would also be needed on behaviour that might frighten or disturb animals, especially if it is likely to affect their feeding or ability to breed.

Where plant life is concerned, there are activities that do not necessarily damage a plant that also probably need to be banned, namely removal in whole or part (e.g. some roots or branches), or picking flowers or fruit from it.

And what about domesticated animals that may wander into the sanctuary? Presumably the protection is not intended to apply to them, especially where they are, for example, farm animals that have escaped. Does the same consideration need to be given to domesticated plants (this is possible but less likely)?

How can distinction be made in a rule between what is a domestic animal or plant and what is not? Probably the expression ‘in the wild’ will cover the latter.

In the light of all these further considerations, counsel would be ready to produce a revised draft.

Revised draft

A person must not:

- (a) kill, injure, capture, remove or disturb animal life occurring in the wild in a wildlife sanctuary;
- (b) destroy, damage, uproot or remove the whole or part of a tree, shrub or other plant growing in a wildlife sanctuary.

There are two particular points to note with regard to this. Firstly, the legal subject (see Chapter 4) is ‘a person’, not ‘a person in a wildlife sanctuary’; hence, the application to those who might do something prohibited from outside the sanctuary itself. Secondly, the expression ‘occurring in the wild’ applies only in paragraph (a), meaning that protection for domesticated plants as well as wild ones would be afforded.

Policy 2: No standing on the bus

Here the basic policy analysis is simple:

Why?	Safety of passengers.
Who?	Applies to passengers, not, for example, bus company personnel.
When?	The bus is moving.
Where?	Inside the bus (not literally ‘on’ top of it), but ‘on’ conveys that idea

As in the previous example, an initial rough draft might help to focus on the problems.

First draft

A passenger on a bus must not stand while the bus is moving

Policy analysis refinements

It does not take much thought to see that further clarification and refinement is needed. Firstly, with regard to the obligation not to stand, is it acceptable if, for example, passengers sit, crouch or lie on the floor, or on the seats?

Almost certainly not. In this case it is therefore far more effective to state what passengers are **required to do** (i.e. sit on a passenger seat) than what they are required **not** to do.

Secondly, does the rule mean literally no standing **at any time** while the bus is moving? Is it acceptable if passengers are standing while the bus is moving off if they have not yet reached their seats, or if they are preparing to get off the bus?

The practical answer to this question must be yes, meaning that some kind of exception needs to be considered.

Is the rule to be drafted for all buses whenever they contain passengers (including, for example, buses on private charter or hire), or only buses for use by the public (i.e. on scheduled service)? In the latter case, would the same rules apply to urban bus services as to inter-city bus services? These things would of course depend on the policy instructions, although it is likely that the rule would apply only to buses for use by the public. Private hire would in this sort of area probably be governed by the relevant hire agreement.

Having done the further analysis, it is now usually helpful to make a first rough draft that can be gradually refined in terms of precision and style. Making the assumption that the rule is to apply to passengers on a scheduled service, and also that an exception needs to be made in respect of getting on or off the bus. It can be seen that there are a number of alternative words and phrases that can be used:

A passenger on a bus must [sit] [remain seated] on a passenger seat while the bus is [moving] [in motion], unless in the process of [getting on or off] [embarking on to or disembarking from] the bus.

This first draft of a rule (when a stylistic decision is made as to particular words or phrases to be used) will create, when penal provisions relating to contravention are added, a straightforward offence.

Refinement of the rule

But further consideration is needed as to how practicable (that is, easy to enforce) the rule will be. This can easily be tested by asking what happens if a passenger fails to comply?

Such a situation could arise by way of deliberate refusal to sit, even though there is a seat available, although in practice it would be more likely where, having been allowed on the bus, the person concerned finds that there is in fact no such seat. If a person, after a request to do so, fails (as the case requires) either to sit or to leave the bus, the driver (if he or she is not simply to ignore the contravention) is going to have to stop the bus and attempt to manhandle the offender off it, or call a bus inspector or the police to the

scene. The latter course would almost certainly be time-consuming and highly annoying for other passengers, and supposes both that the driver would have a radio or telephone and that the inspector or police are easily locatable.

So can the rule be strengthened to get round this problem? The neatest way would be by giving the driver express powers to direct a passenger who fails to sit as required or to get off, and to control the number of persons getting on. That initially produces two rules:

If a passenger refuses to sit on a passenger seat, the driver may [direct] [require] that person to [leave] [disembark from] the bus.

If all passenger seats are occupied the driver may [direct] [require] a person for whom there is no seat not to [get on] [enter] the bus or to [get off] [disembark from] it.

As the power to require a person to leave the bus is common to both these rules, the draft could be improved slightly by combining the two sentences and by using paragraphs:

The driver may direct a person not to enter the bus or, having entered, to leave it if:

- (a) all the passenger seats are occupied; or
- (b) the person fails to occupy a passenger seat when one is available.

All that remains then is to draft the necessary penal provisions. As this is a low-level offence (it would probably exist in bye-laws), it is likely that the maximum sentence would consist of a fine only.

Putting all the elements together and polishing the draft in the process, the rule makes the assumption that the buses concerned are controlled by a driver alone:

Bus passengers to remain seated

(1) A passenger on a bus must remain seated on a passenger seat while the bus is moving, unless he or she is in the process of embarking or disembarking.

(2) The driver may direct a person to not to enter the bus or, having entered, to leave it if:

- (a) all the passenger seats are occupied; or
- (b) the person, being a passenger, fails to occupy a passenger seat when one is available.

(3) A person who contravenes paragraph (1), or who fails to comply with a direction of a driver under paragraph (2), commits an offence and is liable to a fine of \$500.

In paragraph (2) it can be noted that a distinction has to be made between a person who is not yet a passenger and one who is (having paid a fare or used or displayed some kind of pass). Practical difficulties might arise in a case where a person is mistakenly admitted as a passenger, and provision made for a refund or credit of any fare paid.

Although an offence is created under both paragraphs (1) and (2), in practice any prosecution would probably be under (2). However, paragraph (1) is still needed to set out the full context of the rule.