

Statutory Drafting and Interpretation: Plain Language and the Law

The Law Reform Commission has now published its [Report on Statutory Drafting and Interpretation](#). The Consultation Paper on this subject [LRC CP14-1999 Consultation Paper on Statutory Drafting and Interpretation: Plain Language and the Law](#) was published in mid-1999 and was followed by a discussion process which, due to the high level of interest in this topic, included two well-attended seminars at which the views of judges, academics, parliamentary counsel, law officers, members of the Oireachtas and other experts in this field were obtained. Having now considered these useful contributions and having completed further research on the subject, the Commission submitted its Report, including recommendations for law reform, to the Government.

On the drafting side, a number of the changes which the Report recommended included: omitting archaic words like 'herein', 'heretofore' or 'whereof'; using positive rather than negative statements; using examples, maps, diagrams and mathematical formulae; adopting attractive modern methods of presentation (like the highlighting in bold font of terms which have been defined earlier in an Act); and providing explanatory memoranda, where appropriate.

At the same time, in a complicated area where certainty is vital, simplification can only go so far, and the Report emphasises that a statute is never going to read like a song. For instance, certain words or grammatical constructions, though not in common usage, have been stamped with a well-established legal meaning, and they should continue to be used, for the sake of clarity and brevity.

As regards the interpretation of statutes by judges, the Commission recommended that a Court should be able to depart from the strict and literal interpretation and to choose instead a construction based on the plain intention of the Oireachtas, when a provision of an Act is ambiguous or obscure; or when a literal interpretation would be absurd or would fail to reflect the plain intention of the Oireachtas.

Another source of difficulty in interpretation arises where changes have occurred in social conditions, or in technology, during the time - maybe a century or more - between the enactment of a statute and the case coming before the Court. Sometimes, in such cases, the literal meaning of the words may not accurately, or fully, reflect the policy of the Act. For example, in a Supreme Court case, a statute which authorised the Commissioners of Irish Lights to erect "lighthouses, buoys or beacons" was considered. The question before the court was whether this provision of the Act could be construed, more than a hundred years later, so as to include a mast which formed part of a radar system. Such a system could not have been envisaged by the makers of the original law, and as the language was not apt to catch such a radar mast, the Court held by a majority that the Commissioners had no power to erect it. The Law Reform Commission recommends that where appropriate, a court should be able to make allowances for such changes in law, social conditions, technology, the meaning of words, and other relevant matters.

In its Report, the Commission also considered situations where the meaning of a provision in a statute is unclear. Occasionally, clues to the correct interpretation may be found in the document

containing the text of the Act itself, as officially printed. These might include, for example, cross-headings and marginal notes. For historical reasons, the use of such aids is banned, but the Commission recommended that a court should be entitled to refer to these. On other occasions, guidance as to the intended meaning of the Act may be found elsewhere; for example, in Oireachtas Committee Reports, in treaties or other international agreements, or in the official record of debates in the Dail and Seanad. The Commission's Report discussed the advantages and disadvantages of allowing the courts to have regard to such extrinsic aids and makes recommendations as to the circumstances in which this should be allowed, which hopefully will be of assistance to parliamentary counsel and lawyers.