Chorzowskie Studia Polityczne
Nr 7 rok 2014

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Repeal and Amendment Provisions of Legislation*

There is so much legislation; it is too detailed; the drafting may not have measured up to the highest standards; too often legislation is of the vague enabling variety, the statute, or parts of it may not stand the test of time, it may be becoming inappropriate or obsolete, it may be casting oppressive burden upon individuals, society […] such as business especially small business and the public service […] There is a wide spread view that repeal or amendment is necessary or desirable […] so why not repeal or amend the offending legislation either by primary or indeed perhaps by secondary or indeed any other means properly available.

A. Samuels, *Repeal and Amending Legislation by Non-Legislative Means*

Summary. The paper examines Repeal and Amendments provisions of legislation through reliance on secondary and primary materials. It presents the thesis that where a provision in legislation fails to serve the end for which it is meant because of some prevailing circumstances, the Legislature can strike out the provision totally, or in part, from the Statue Book. This paper reveals that the effect of a repealed law is to consider it as if it never existed, whilst an amending legislation alters the text of an earlier law. The paper starts with an introduction followed by a discussion on the nature of repeal and amendments. Thereafter, it treats the modern techniques of drafting repeal and amendments in a legislation as well as issues that pertain to drafting transitional provisions. Further, the

* The views expressed in the paper are that of the author and not that of the Nigerian Institute of Advanced Legal Studies (NIALS).

discourse centres around the effect of repeal and amendment. The paper ends with the conclusion that there may be less repeal and amendment if legislation is systematically assessed and scrutinized before and after enactment. This approach will facilitate repeal and amendment where they become unavoidable. Thus removing dead woods from the law; make the law modern and save time for all stakeholders to easily access justice.

Key words: amendment, amending provisions, amending legislation, drafter, legislation and repeal

Introduction

In contemporary legal, moral and political philosophy, descriptive and prescriptive approaches have been adopted in examining the functions of law; the former asserts that the law serves a particular purpose, and the latter being a normative approach, states the ends that law ought to serve; thus current legal philosophy examines the common good as an aspect of the nature of law[1].

However, where a provision in legislation seems to be at odds with serving the end, which the law ought to serve, that is the "common good". Or to put it another way, the law as the words that are meant to govern people's lives fail to do so, perhaps, because of the dynamic nature of the society in terms of prevailing social, economic and political situations or because of the reasons encapsulated in the epigraph above. The legislature can easily strike out from the law such provision totally or in part pursuant to the exercise of its legislative powers[2].

Thus the legislature can repeal or amend a legislation to achieve a particular legislative end for the society at large. Under what circumstances are these generally done? What are the techniques employed? And what are the effects of such repeals and amendments? Or better still, what are the nature and the functions of repeal and amendment provisions of legislation? These are the issues that this paper sets out to interrogate. This paper will also highlight the modern practice scheme of drafting repeals and amendments in provisions of legislation.

1. Why Repeal or Amend Legislation?

Repeal is the removal or the reversal of a law[3]. An enactment is said to be repealed when its operation is brought to an end; repeal is called for when a dispensation

[1] A.O. Obilade, *The Idea of Common Good in Legal Theory*, in: *Issues in Nigerian Law*, ed. J.A. Omotola, Faculty of Law, University of Lagos, Lagos 1991, p. 1.

[2] This power in Nigeria is vested in the National Assembly consisting of a Senate and a House of Representatives as well as the House of Assembly of a State by section 4 (1) and (6) respectively of the 1999 Constitution of the Federal Republic of Nigeria as amended.

[3] See *Repeal*, en.wikipedia.org/wiki/Repeal#Partial_or_full_repeals [14.05.2013].

introduced by an enactment is no longer required either in its entirety or in the form in which it previously has been applied[4].

The most obvious reason for repeal is because Parliament wishes to change the law. The second reason is that, although the old law is not necessarily being changed, a new Act is restating the law, perhaps by consolidating statutory provisions formerly found in different places. Yet another reason for repeal is to remove dead wood from the statute book[5]. However, the removal of secondary legislation from the statute book is normally referred to as a revocation and not repeal[6].

On the other hand, legislation's amendment is also a change to the law. However, the change here is one of a degree and not of a kind[7]. This change can happen during the discussion or the drafting process, but only after the law/bill has first been submitted, or after a final approval. Such amendment, like the legislation as a whole, requires a majority vote of the House in order to be enacted. Each country has a different system of scrutinizing and amending legislation[8]. For instance in Nigeria, section 58 of the Constitution of the Federal Republic of Nigeria 1999 as amended, provides the general mode of the exercise of Federal legislative power.

2. Nature of Repeal and Amendment

Repeal can be partial or full[9]. A partial repeal occurs when a specified part or provision of a previous Act is repealed but other provisions remain in force[10]. On the other hand, a full repeal occurs when the entire concerned Act is repealed[11]. As far as repeal of legislation is concerned, there are two basic types of repeal, namely, repeal with re-enactment or replacement of the repealed law or repeal without a replacement[12]. An Act is repealed and enacted when the law in the area is being

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[4] G.O. Soremi, *Amending Legislation*, Nigerian Institute of Advanced Legal Studies, Training Manual for the Postgraduate Programme in Legislative Drafting (n.d), p. 194.

[5] A.L. Diamond, *Repeal and Desuetude of Statutes*, "Current Legal Problems" 1975, Vol. 25, p. 107.

[6] Ibidem.

[7] V.P. Sarathi, *The Interpretation of Statutes*, Eastern Book Company, Delhi 1968, p. 383.

[8] See *What is a Legislation Amendment?*, www.wisegeek.com/what-is-a-legislation-amendment.htm [15.05.2013].

[9] *Repeal,* op. cit.

[10] For instance, the Act of Union of 1800 providing for the Union between the formerly separate kingdoms of Great Britain and Ireland as the United Kingdom was partially repealed in 1922. This was consequent upon the Anglo-Irish Treaty whereby 26 of the 32 Counties of Ireland were constituted as the Irish Free State, thus these Counties ceased to form part of England. Ibidem.

[11] Ibidem.

[12] Ibidem.

updated, but the law being repealed needs to be replaced with another law suitable for a modern era[13]. Re-enactment can be with or without amendment. Repeal and re-enactment without amendment normally occurs only in the context of a consolidation Bill, that is, a Bill to consolidate the law in a particular area[14]. Repeal without replacement takes place when a law is no longer effective. Or the law is having more negative consequences than were originally envisioned[15]. Nevertheless, repeal without replacement is a function of major changes in society[16].

On the other hand, amending provisions are not construed as altering completely the character of the principal law unless clear language is found indicating such intention; and the effect of amending legislation must be ascertained by the tenor of the principal and amending legislation read as forming part of a whole[17]. Thus it is of prime importance that the drafter of any amending legislation makes sure that such legislation be construed to form one coherent whole with the Principal Act as well as with any existing laws *in pari materia*[18]. This is because, it has been an age long settled practice, as far as interpretation of statutes is concerned, that "where there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory of each other"[19].

Apart from the foregoing, there are other considerations that must be taken into account in the drafting of amending legislation. First, the language and style of the amending Act must be consistent with that of the principal Act. The reason for this is because a change in language may give rise to the unintended inference that there is also a change in the meaning. Also *prima facie,* an alteration in language will be considered intentional[20]. For example, if the principal Act refers to the "issue of a license", then the amendment should be referred as "issue" and not "grant of a license". Also if the principal Act refers to a specific day, the

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[13] Ibidem.

[14] For example, the repeal of Poor Laws in England in 1948 reflected their replacement by modern social welfare legislation. Ibidem.

[15] Ibidem.

[16] Examples of repeal without replacement include; the old Jim Crow laws or Blue laws in the United States; the Corn Laws in England repealed in 1846 and repeal of Prohibition enacted by the 18th Amendment to the United States Constitution. The repeal here was carried out through the 21st Amendment and it is the only constitutional amendment to be repealed in the United States. Ibidem.

[17] G.C. Thornton, *Legislative Drafting*, Butterworths, London 1979, p. 311. See also *Earl Fitzwilliam's Collieries Co. v. Philips* [1943] A. C. 570 at p. 580.

[18] According to Thornton; existing law *in pari material* includes, common law, case law and statutes. Ibidem. However, under section 315(4) (b) of the Constitution of the Federal Republic of Nigeria as amended: "existing law" means any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when the section came into force or which having been passed or made before that date comes into force after that date.

[19] Per Lord Mansfield, L.C.J. In *R. v. Loxdale* (1758S) 1 Burr. 455.

[20] *Brighton Parish Guardians v. Strand Union Guardians* [1891] 2Q. B. 156 C. A. at p. 167.

amending Act should not use "date" in a similar context[21]. But this rule, that the language of the amending legislation must be consistent with the principal Act, is subject to the exception that archaic and unnecessarily complex language should be replaced with equivalent and plain language, unless it creates inconsistency and uncertainty[22]. Also use of gender neutral language is recommended, even if it is not used in the principal Act [23]. Generally, it need be noted that in Drafter's lore, "excess matter in Bills, as in people tends to go septic"[24], thus repetition or elegant variation in saying the same thing may lead the Court to infer that a different meaning is intended[25].

Consequently, for amending provisions, the Drafter must choose and must make a choice that ensures not only that the provisions being drafted will not be misconstrued but also that similar provisions in the statute book are not misconstrued because of the solution in question[26].

In addition, consistency in style produces a neater and easily understood legislation[27]. More so, the Court may take a look at the amending Act in order to resolve any ambiguity in an earlier Act that has been amended by it[28].

Secondly, the effect on any other legislation of the instructed amendments must be studied and all necessary consequential amendments made. This way what is new must be related to what is old, as the failure to make consequential amendments may lead to ambiguity or absurdity[29].

Thirdly, the amending provisions, where necessary, must be related to circumstances, as they exist when those provisions come into force by specific commencement, application or transitional provisions[30]. Thus, where punishment is increased for an offence, it may be desirable to state by specific provision that the increased penalty applies only to offences committed after coming into effect by the amendments. Also this is applicable where the rate of taxes or benefits is altered[31].

Having looked at the general nature of repeal and amendment clauses, our preoccupation in the segment that follows is to analyse the techniques usually employed to draft these clauses.

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[21] See *Drafting Amending Legislations*, www.nzlii.org/nz/other/nzlc/report/R35-Appendix-2.html [2.06.2013].

[22] Ibidem.

[23] Ibidem.

[24] Quote from Sir Geoffrey Bowman KCB cited in: S. Law CB, *Drawing the Line*, in: *Drafting Legislation: A Modern Approach,* eds. C.A. Stephanou, H. Xanthaki, Ashgate, Hampshire 2008. p. 31.

[25] Ibidem.

[26] Ibidem.

[27] See (n 15) at 31.

[28] *Kirknees (Inspector of Taxes) v. John Hudson and Co. Ltd* [1955] 2 All E. R. 345 H. L.

[29] Ibidem.

[30] Ibidem.

[31] Ibidem.

3. Techniques of Repeals and Amendments

Repeal of a statute may be express or implied.

3.1. Express Repeal

Express repeal occurs where express words are used in a statute to repeal an earlier one[32]. Here the repeal is specific and the clause is usually straight-forward. For example:

I The Dogs Act 1874 is repealed.
II Part II of the Dogs Act is repealed.
III Section 4 of the Dogs Act 1903 is repealed.
IV Section of 4 of the Dogs Act 1903 is amended by repealing subsection (2)[33].

Although no particular form of words is necessary to affect repeal, but the foregoing example above is recommended as the words "is repealed" is thought to be the plain approach for drafting a repeal clause[34]. This is in contrast to the phrase "is hereby repealed" which is in widespread use notwithstanding the fact that the word "hereby" is redundant[35]. Thus the technique of the Drafter in for example, "The National Library Act 1964 is hereby repealed"[36] is not recommended.

Oftentimes, the dispensation being replaced was introduced by an enactment that has applied in the country because of special circumstances. This being the case, the repealing enactment should indicate the limited nature of the repeal. For example, "The Copyright Act 1911 of United Kingdom (in so far as it had effect in Nigeria) and the Copyright Act *are repealed*"[37].

Furthermore, where an enactment contains a number of repeal provisions, these provisions should be assembled in one section or, in schedule and not scattered about throughout the statute. As the use of schedules is a legitimate and helpful device for the clearer presentation and more efficient communication of

[32] See *Repeal*, op. cit. In *Adesanoye v. Adewole* [2006] 14NWLR Pt. 1000. p. 242, the Supreme Court of Nigeria held that by virture of paragraph 2 of the Osamawe of Ondo (Chieftaincy Declaration) Order 1991, the Osamawe of Ondo Chieftaincy Declaration of 1958 made pursuant to the Appointment and Recognition of Chiefs Law 1958 was revoked.

[33] G.C. Thornton, op. cit., p. 306.

[34] Ibidem.

[35] Ibidem.

[36] See section 12, National Library Act Cap 264 LFN 1990.

[37] Italics are mine for emphasis. The technique actually employed by the Drafter is "are hereby repealed". See section 18 (11) Copyright Act Cap. 68 LFN 1990.

the content of legislation[38]. However, scheduled repeals and amendments require linking section in the body of the enactment which gives effect to the relevant amendments or repeals as scheduled. For example:

> The enactments in Schedule 2 are amended as indicated.
> The enactments referred to in Schedule 3 are repealed[39].
> Then a cross reference to the linking section appears at the beginning of the schedule[40].

Aside the technique or formula for drafting repeal clause as presented above, it need be noted that with regard to repeal of subsidiary legislation, there are varies of approaches. In many jurisdictions the practice is to "revoke" rules, regulations and orders and to "cancel" proclamations, bye-laws and notices[41]. The word "rescind" is equally used. However, it is recommended that for clarity and consistency, the formula "is repealed" be adopted for all forms of subsidiary legislation[42]. Now let us consider implied repeal.

3.2. Implied Repeal

The doctrine of implied repeal is a concept in constitutional theory which states that where an Act of Parliament or an Act of Congress conflicts with an earlier one, the later Act takes precedence and the conflicting parts of the earlier Act are repealed[43]. This doctrine is expressed in the Latin phrase (*Leges posteriores priores contrarias abrogant*). This means subsequent law repeal prior conflicting ones[44]. This may be so because the legislature does not always sufficiently consider the possible effect of a new statute upon an older one as such the issue of implied repeal may arise[45].

However, there is presumption against implied repeal, as repeal by implication is not favoured by the courts[46]. In addition, repeal by implication is undesir-

[38] See (n 30) at 309.
[39] See (n 23).
[40] Ibidem.
[41] See (n 18) at 306.
[42] Ibidem.
[43] *Vauxhall Estates Ltd v. Liverpool Corporation* (1932) 1KB 733.
[44] See (n 29).
[45] See A.O. Obilade, op. cit.
[46] The principle recognisable as the presumption against implied repeals seems to have been articulated for the first time in seventeenth century England. But Courts do not appear to have applied the presumption in a comparable consistent way. Thus recent use of the presumption as a strict rule barring implied repeal under any circumstances arguably allows the Courts greater latitude to engage in "tortured judicial legislation" to reconcile putatively conflicting statutes without candidly weighing complex policy considerations. See K. Petroski, *Retheorizing the Presumption against Implied Repeals*, "California Law Review" 2004, Vol. 92, issue 2, p. 487.

able because a user of the earlier enactment may be unaware of the existence of the later provisions or there may be real doubt whether two enactments can be reconciled[47].

4. Techniques of Amendment

Generally, amending legislation is designed to alter some existing legal positions, and this can take two forms namely; direct and textual amendment and indirect or non-textual amendment. Textual amendment is one where the new provision substitutes new words for existing ones in a legislative text or introduces completely new words into that text. In other words, "by textual is meant the specific and seriatim insertion, substitution or deletion of words, paragraphs, sections or subsections in or from the principal Act, in the same way as a new spare parts is inserted into an engine in the place of an old one"[48]. This approach to changing legislation may cause the new provision to make little sense on its own without contextual reference to the original provision that has been amended[49].

Consequently, textual amendment often requires an accompanying textual memorandum so as to be comprehensible and in order to show how the text will be read with the amendment written in[50], or explanatory material in parentheses[51]. On the other hand, non-textual amendment as the name implies, does not change the actual wording of the existing statute, but changes the operation or the effect of those words[52].

However, in the United Kingdom case of *Thoburn v. Sunderland* [2003] QB 151; [2002] 3 WLR 247; [2003] ALL ER 156 dealing with section 2 (2) of the European Community Act, it was held that some constitutionally significant statutes held higher status in U.K law and were not subject to the doctrine of implied repeal and would therefore require Parliament to expressly repeal them. In this respect, it was held that Parliaments Act and Human Rights Act are not subject to the doctrine of implied repeal. Nevertheless, some constitutional statutes can still be expressly repealed if Parliament wishes, but unless the words doing so are totally unambiguous; the court will follow the precedent established in Thoburn's case. See *Repeal*, op. cit. See also: *Punjab v. Mohar Singh* [1955] 1SCR 893: AIR 1941 SC 84.

[47] See (n 23).

[48] H.H. Marshall, N. S. Marsh, *Case Law, Codification and Statute Law Revision,* cited in: G.C. Thornton, op. cit., pp. 312-313.

[49] G. Slapper, D. Kelly, *The English Legal System: 2011-2012*, Routledge, London 2011, p. 94.

[50] F.A.R. Bennion, *Principal Acts and Textual Amendments*, "National Law Journal" 1980, Vol. 130, p. 913.

[51] See (n 18) p. 315. Another device that improves certainty and intelligibility of textual amendment is to use repeal and replacement provisions instead of multiple direct amendments. Ibidem.

[52] See (n 45). According to Bennion, indirect amendment was evolved to comply with the Four – corners doctrine which held that Members of Parliament should not need to look beyond the four corners of an amending Bill to understand it. See (n 46). Ibidem.

Non-textual amendment may have more immediate meaning than textual amendment, but because non-textual amendment does not change the original provision of legislation, the two provisions have to be read together in order to establish the legislative intention[53]. That is to say, that the texts of the existing and amending laws must be read together. However, this may lead to uncertainty and confusion[54].

In summary, other important aspects that need to be given attention, whilst drafting amending legislation include the following:

4.1. Design

This depends on the technique of amendment that is used; however, the amending law may amend the principal law directly by deletions, substitutions and insertions. It may repeal and replace the old law; also the new law may stand separately on enactment but may be construed and cited as one with the law it amends[55].

4.2. Title

The title of an amending Act should reflect the title of the principle Act[56]. Thus an Act amending for example the 1999 Constitution of the Federal Republic of Nigeria should entitle: "Constitution of Federal of Nigeria (Alteration) Act 2010"[57]. It should be noted that the statement of the year of enactment relates to the amending Act and the not the principal Act.

Furthermore, if the amendment should be made more than once or subsequently in a year, then the first and the subsequent amendment will be entitled for example: "Constitution of Nigeria (First Alteration) Act 2010 and Constitution of Nigeria (Third Alteration) Act 2010"[58] respectively.

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[53] Ibidem.

[54] See (n 23).

[55] See (n18), p. 116. It need be stated that political and technical considerations are at issue for the choice open to the Drafter. Thus the Drafter may be flexible and consult widely where the amending legislation in question is politically sensitive. However, in the absence of special considerations, the preferable amending techniques are the ones that amend directly the principal law as well as the one that entails that the new law repeals and replaces the old law by way of consolidating the new with the old. Ibidem.

[56] See (n 43).

[57] Federal Republic of Nigeria, "Official Gazette", 17 July 2010.

[58] Federal Republic of Nigeria, "Official Gazette", 7 March 2010.

4.3. References in Amending Laws

A. Prior Enactments

In respect of this, section 4 of the Interpretation Act[59] provides:

- a reference in an enactment to another enactment shall, if the other enactment has been amended, be construed as a reference to the other enactment as amended,
- where an enactment is repealed and another enactment is substituted for it, then the repealed enactment shall remain in force until the substituted enactment comes into force.

B. The Principal Act

Also amending Act should contain a provision declaring that the Act amended is the Principal Act. This will avoid the need of reference in each amending provision to the complete title of the amended Act. Thus, a separate section early in the amending Act makes the reference explicit[60]. For example, "The Constitution of the Federal Republic of Nigeria Cap. C23, Laws of the Federation of Nigeria, 2004" (in this Act referred to as "the Principal Act") is altered as set out under this Act[61].

C. Section Amended

Sections are the most convenient identifiers in an Act. Therefore, each section in an amending Act should begin by identifying the section that is being amended, or the section before or after which the new provision is to be inserted[62]. For example, section 5 of the principal Act is amended by repealing subsection (4). Or "subsection (4) of section 5 of the principal Act is repealed". And not: "the principal Act is amended by repealing subsection (4) of section 5"[63]. Also for specific provisions, it is best to refer to them by number and letter. Using imprecise terms such as "preceding", "above" or "following" can cause confusion especially if later amendments are going to insert further provisions[64].

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[59] Cap. 123 LFN 2004.

[60] See (n 43).

[61] See section 1 'Alteration of Cap.23 LFN' Constitution of the Federal Republic of Nigeria (Third Alteration Act) Act, 2010.

[62] See (n 43).

[63] See (n 23).

[64] Ibidem.

Notwithstanding the foregoing, it is important to put some systems in place so that the reader of an amending statute is made aware of the existence of previous amendments; thus, it is suggested that on the first page of each amending Act, in a marginal note, reference should be made to all previous enactments which contributed to the amendment of the principal Act as well as the amended sections[65].

4.4. Renumbering After Amendment

Where a paragraph, subsection or section is inserted or repealed, the subsequent paragraphs subsections or sections, as a rule should not be renumbered. This is because renumbering is likely to lead to misunderstanding, as far as cross-references are concerned. Thus, where a statute has been subject to frequent amendments, renumbering makes it more difficult to identify the content of a particular paragraph, subsection or section at a particular time[66].

Specifically, where there are insertions, difficulty may be avoided by the use of distinguishing letters. For instance, a section inserted in a statute may be given the number of the section that it follows to which a capital A is added. The letters B, C etc. may be added to the same number if more than one section is to be inserted[67]. For example, this can be illustrated as follows: New Parts of an Act inserted after Part II should be numbered IIA, IIB etc. Sections inserted between sections 1 and 2 should be numbered 1A, 1B and 1C etc. Subsections inserted between subsections 3 and 4 should be numbered 3A, 3B and 3C etc. Paragraphs inserted between paragraphs (a) and (b) should be numbered (aa), (ab) and (ac) etc.

4.5. Punctuation

Punctuation is a devise of syntax- a means supplementary to word, suggesting the grouping of words in a sentence and thus revealing its structural pattern. The purpose of punctuation is to assist the reader to comprehend more quickly the intended meaning by providing signposts to the structure of a sentence [68]. And one instance where the usage of punctuation should be consistent is in drafting amending provisions. This is because when a statute is carefully punctuated and there is no doubt about its meaning, weight should be given to the punctuation[69].

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[65] See (n 5), p. 197.
[66] Ibidem.
[67] See (n18), p. 320.
[68] Ibidem, p. 33.
[69] V.P. Sarathi, op. cit., p. 556.

Furthermore, punctuation forms part of an enactment, and regard shall be made to it accordingly in construing the enactment[70].

For amending provisions therefore, punctuations perform crucial functions at three levels, namely: a) there is the punctuation in the formal part of the amending section which introduces and indicates the nature of the amendment, b) there is the punctuation identifying that which is repealed, substituted or inserted, and c) there is the internal punctuation contained in the expression of that which is repealed, substituted or inserted[71].

For the first level, a colon or dash is suitable for the introduction of paragraphed material, whilst paragraphs should be separated by semi-colons[72].

For example, section 6 of the principal Act is amended:

– by repealing ...;

– by... ;

Or section 6 of the principal Act is repealed and the following section is substituted:

– "6".

As for the internal punctuation identifying that which is repealed, substituted or inserted, the following is correctly punctuated:

> Section 6 of the principal Act is amended:
> (a) by repealing subsection (2);
> (b) by repealing subsection (3) and substituting the following subsections:
> "(3)...
> (3A)...".
> (c) in subsection (5), by repealing paragraph (iv) and substituting the following:
> "(iv)...";
> (d) by repealing subsection (6) and substituting the following:
> "(6)..."[73].

Yet for the third level of punctuation contained within the material repealed, substituted or inserted, and as far as the material to be repealed is concerned, the punctuation is to be reproduced exactly the way it stands in the statute. Whilst taking into consideration any punctuation at the beginning and the end of the material[74].

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[70] See section 3(1) Interpretation Act Cap 123 LFN 2004.

[71] See (n 17), p. 322.

[72] The old practice in Nigeria is that the introductory function performed by the colon is performed by the colon followed by a dash. See G.O. Soremi, op. cit., p. 197. However, it is submitted that the modern practice is to use either the colon or the dash and not both. See G.C. Thornton, op. cit., p. 322.

[73] See (n 63).

[74] See (18), p. 323.

4.6. Whether to Repeal and Re-enact

Where there is extensive amendment to a section, then consideration should be given to repeal and re-enactment to the whole provision. This is an alternative to the enactment of direct amendment which may be difficult to follow. However, consideration should also be given to matters that may present transitional challenges.

4.7. Scheduling Amendments

Minor and consequential amendments[75] that are large in number and similar in an Act are often presented in a schedule. For example:

The principal Act is amended as set out in the Schedule.

Schedule Section 12
Amendments Relating to Decimal Currency[76]

Provision amended	Repeal	Insert
Section 15 (5)	Two thousand pounds	Four thousand dollars
Section 16 (1) (a)	Ten thousand pounds	Twenty thousand dollars
Section 41	One hundred pounds	Two hundred dollars
Section54A	Twenty-five pounds	Fifty dollars

4.8. Transitional Provisions[77] on Repeals and Amendments

Generally, when an Act contains substantive, amending or repealing provisions, it usually contains transitional provisions which regulate the coming into operation of those enactments and modify their effect during the period of transition. Where the Act fails to include such provisions expressly, the Court is required to draw such inferences as to the intended transitional arrangement, as in the light of

[75] These are amendments to an enactment made in consequence of the provisions contained in a later Act or instrument. See F.A.R. Bennion, op. cit., p. 216.

[76] Ibidem, p. 329.

[77] Transitional provisions spell out precisely when and how the operative parts of an enactment are to take effect. See F.A.R. Bennion, *Statutory Interpretation: A Code*, Butterwhorths, London 1997, p. 233. In *Britnell v. Secretary of State for Social Security* [1991] 2 ALL ER 726, it was observed that "the function of a transitional provision is to make special provision for the application of the legislation to circumstances which exist at the time that legislation comes into force" per Lord Bridge pp. 729-730.

interpretation criteria; it considers Parliament to have intended[78]. Consequently, it beholds the Drafter to put the appropriate transitional provisions so as to make clear whether and if so, to what extent, the repeals or the amendments have retrospective effect[79].

5. Effect of Repeal and Amendment

"When an Act of Parliament is repealed, it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule"[80]. Thus the repeal removed the statute from the corpus of the law[81]. According to Tinda C.J.:

> The effect of repealing a statute is to obliterate it as completely from the records of Parliament as if it has never been passed; and it must be considered as law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law[82].

This rule of construction about the effect of the repeal of an Act is recognised by the Interpretation Act[83] in Nigeria. Thus the Act provides:

> (1) The repeal of an enactment shall not:
> (a) revive anything not in force or existing at the time when the repeal takes effect;
> (b) affect the previous operation of the enactment or anything duly done or suffered under the enactment;
> (c) affect any right, privilege, obligation or liability accrued or incurred under the enactment;
> (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under the enactment;
> (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.
>
> And any such investigation, legal proceeding or remedy may be instituted , continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the enactment had not been repealed.
>
> When an enactment expires, lapses or otherwise ceases to effect, the provisions of subsection (1) of this section shall apply as if the enactment had been repealed[84].

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[78] Ibidem.
[79] Ibidem.
[80] Per lord Tenderden, *Surtees v. Ellison* (1829) 9 B. & C. 750, 752.
[81] A.L. Diamond, op. cit., p. 108.
[82] *Kay v. Godwin* [1830] 6 Bing 576, 582, cited in: *Lemn v. Mitchell* [1912] A. C. 400,406.
[83] Cap 123 LFN 4004. See also *University of Calabar v. Dr. Oduok* [2007] 12 NWLR Pt 1049 p. 664; *Unilorin v Adeniran* [2007] 6NWLR (Pt 1031), pp. 508-509.
[84] Ibidem, section 6 (1) (2).

Indeed in order to decide whether any particular transaction is affected by the repeal of an Act, it is necessary to ascertain whether the transaction in question was complete or incomplete at the time the Act was repealed[85]. Consequently, if an Act gives a right to do anything, the thing to be done, if only commenced but not completed before the Act is repealed, must upon the repeal of the Act be left *in statu quo*[86]. In other words, the repeal of a statute restores the law to its former condition before the repealed statute has been enacted.

As for the effect of amending Act, the rule is that an amending Act serves as an instrument to alter the text of the earlier Act[87]. However, this is subject to the need for commencement and transitional provisions; and unless contrary intention appears, the other provisions of the amending Act should not affect the construction of words inserted by it into the earlier Act[88].

Conclusion

This paper has made the attempt of discussing the circumstances under which the provisions of legislation can be repealed. The techniques usually employed by the Drafter whilst writing repeal and amendment clauses, as well as the effect of repealing and amending the Act have also been discussed.

Meanwhile, it is noteworthy, that there may be less repeal and amendment provisions in the statute book if legislation is carefully drafted and systematically assessed and scrutinized after enactment. Thus, there will be the facilitation of repeal and amendment of legislation where changing political, social and economic circumstances make it unavoidable or desirable.

In this connection, taking away dead wood or provisions which are no longer serving the "common good" as it were, will help to make the law more modern and save all stakeholders time to access justice.

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Uchylanie przepisów i wprowadzanie poprawek w procesie legislacyjnym

Streszczenie. Artykuł jest omówieniem kwestii dotyczących uchylania przepisów i wprowadzania poprawek w procesie legislacyjnym. Teza zawarta w artykule mówi, że wszędzie tam, gdzie przepis prawa zawodzi, władza ustawodawcza może taki przepis wykreślić całkowicie lub częściowo z kodeksu. Uchylenie przepisu powoduje, że taki przepis jest traktowany tak, jakby nigdy nie istniał. Wprowadzenie poprawek, powoduje natomiast zmianę treści wcześniejszego przepisu. We wstępie autor omawia naturę uchylania przepisów i wprowadzania poprawek. W dalszej części artykułu przedstawiono nowoczesne metody uchylania przepisów i wprowadzania poprawek oraz tworzenia przepisów przejściowych. Autor omawia również następstwa uchylania przepisów i wprowadzania poprawek. Dochodzi do wniosku, że jeśli tworzenie przepisów prawa podda się bardziej szczegółowej analizie przed i po wprowadzeniu ich w życie, to będzie można zmniejszyć liczbę przypadków uchylania przepisów lub wprowadzania poprawek. Jeśli zajdzie konieczność wprowadzenia poprawek lub uchylenia przepisów, to wyżej wymienione podejście na pewno usprawni ten proces. Zaoszczędzi to czas i ułatwi dostęp do wymiaru sprawiedliwości wszystkim zainteresowanym podmiotom.

Słowa kluczowe: poprawka, wprowadzanie poprawek, zmiana przepisów prawa, ustawodawca, tworzenie prawa, uchylanie przepisów