

Chapter 9

Definitions and Interpretation Provisions

9.1 Introduction

It is important to remember that, in general, words in legislation carry their ordinary dictionary meanings and do not need to be expressly defined.

However, sometimes it is necessary to restrict or enlarge that ordinary meaning (as commonly with, e.g., 'person', 'document'), and many words are capable of carrying different meanings that can vary with the context in which they are used (e.g. 'oil', 'theatre'). Sometimes a word is inherently vague or imprecise (words denoting means of transportation are common examples: 'vehicle', 'aircraft', 'vessel'). It is in these cases that it becomes necessary to clarify the meaning for the purposes of legislation.

9.2 Definitions and other interpretation provisions generally

A definition contains two elements:

- **the definition term:** the word or words to be given a specific meaning

"driver"

- **the definition:** the meaning that is given to the definition term

means a person who drives a motor vehicle, or who is in a position to set the vehicle in motion even though it is stationary.

This is a typical enlarging definition that **extends** the ordinary meaning (see further section 9.3.2). Note, however, that exactly the same concept can be presented in an alternative way, as a general interpretation provision:

For the purposes of this Act, a person is to be treated as driving a motor vehicle, even though the vehicle is stationary, if that person is in a position to set the vehicle in motion.

The device of a definition is the more commonly used, but a general interpretation provision might be more useful where the concepts are more complex:

In a provision of this Act relating to the surrender, or the loss or destruction, of a certificate of insurance, a reference to that certificate is to be construed:

- (a) in relation to a policy under which more than one certificate is issued, as a reference to all certificates; and
- (b) where a copy has been issued of a certificate, as including a reference to that copy.

9.3 Different kinds of interpretation provisions and definitions

The following examples are of **definitions only**, but the categories apply equally to interpretation provisions:

9.3.1 Labelling (i.e. using a short term in place of a longer one)

"Authority" means the Electricity Authority established under section 3;

"Commissioner" means the Commissioner of Banking appointed under section 12;

"Convention" means the Convention on International Trade in Endangered Species 1970.

9.3.2 Stipulating (i.e. giving a specific meaning to a term)

- Comprehensive (giving a fixed meaning to an otherwise indeterminate term):

"aircraft" means a powered heavier than air machine designed for flight and capable of carrying at least one person;

"financial year" means the period of 12 months ending on 31 March;

"senior police officer" means a police officer of or above the rank of Chief Inspector.

- Restricting (confining the term as indicated within a potentially wider one):

"animal" means a farmed or domesticated mammal;

"motor vehicle" does not include an invalid carriage or a powered motor mower;

"oil" means crude petroleum in an unrefined state.

- Enlarging (extending the meaning beyond that which it normally carries):

"theatre" includes a cinema and a concert hall or other similar place of entertainment;

"oath", in the case of a person allowed by law to affirm or declare instead of swear, includes an affirmation or declaration;

- Clarifying (explaining a term about which some doubt might otherwise exist):

"function" includes a power, duty, responsibility or jurisdiction;

“household” includes members of a taxpayer’s family, domestic staff and paying guests;

“personal injury” includes damage to an artificial joint or limb;

- Referential (borrowing a definition from somewhere else without altering it):

“bank” has the same meaning as in section 2 of the Banking Act;

“land” means “agricultural land” as defined in section 21 of the Land Tribunals Act.

9.3.3 Labelling and stipulating

The following examples show a combination of both attributes:

“accused person” means a person who has been charged under this Act with an offence.

“witness statement” means a statement made by a witness for the prosecution in accordance with section 246.

These definitions are labelling ones in the sense that they avoid constant repetition of the words in them, but also stipulating in that:

- the former gives a special technical meaning to ‘accused’, in that the word is not used merely in the general sense of ‘blamed for wrongdoing’, but it specifically imports the status of a person after a formal charging process; and
- the latter confines the meaning to a formal statement made under specified provisions, not, for example, an oral statement made in the course of an investigation.

9.4 Writing definitions

9.4.1 Words within a definition introducing the given meaning

- ‘Means’ defines the definition term for the purposes of the legislation
- ‘Includes’ and ‘does not include’ either clarify the dictionary definition of the definition term for the purposes of the legislation, or elaborate on the definition itself.

Combinations of these words may be used:

“vessel” means a ship, boat or other floating craft designed for transport by water, and includes a hovercraft or other aircushion vehicle capable of use over water;

"petroleum processing" means the extraction, production, separation or treatment of crude petroleum, but does not include petroleum refining.

However, note that a combination in the rolled up form 'means and includes' in a single expression, sometimes formerly encountered in bad drafting, is confusing, if not meaningless. Neither that nor the following form should be used:

"vessel" means, but is not limited to...

This last form severely curtails, if not nullifies, the effect of the definition by providing in effect that it is setting out mere examples of the use of the term. Assuming the definition is not to be a comprehensive one in this case, it would be better to use 'includes' to refer specifically to kinds of watercraft over which there might be some doubt.

9.4.2 Words in the relevant section introducing definitions

It is the practice in some jurisdictions to introduce a definition or series of definitions with the formula:

In this Act, unless the context otherwise requires:

However, the words underlined introduce an unacceptable degree of uncertainty, as what is in effect stated is that the words and phrases defined might not mean what they are stated to mean (although no clue is given as to whether or not that is actually the case).

Secondly, if there is indeed a context that 'otherwise requires', normal rules of statutory interpretation will require proper effect to be given to it anyway. Consider the following example from an interpretation section of an Insurance (Motor Vehicles) Act:

(1) In this Act...

"insured person" means a person insured against third party risks under section 6;...

(2) Section 45 of the Insurance Act, in so far as it applies to an insured person under a life assurance policy, applies to this Act for the purposes of construing terms in a contract of insurance which are void.

There could be no difficulty in holding that the underlined words in subsection (2) are used in a different context from that envisaged in the definition in subsection (1), and a court would undoubtedly so hold.

If there is a possibility of doubt as to whether or not the context does "otherwise require", then that difficulty must be addressed by the drafter, for example:

"insured person" means, except in sections 14 and 15, a person...

However, a drafter should **not** normally define the same word in different ways in the same piece of legislation.

It is also important to be **concise** in the introductory words:

“In this Act:...”

should normally suffice. In any event, it is necessary in the interests of plain language to avoid wordy and somewhat pretentious formulae such as:

In this Act the following words and expressions have the meanings hereby assigned to them, that is to say:

9.5 Where particular care is needed in definitions

- The defined term is not actually used in the legislation! This can easily arise when legislative counsel has redrafted provisions and forgotten to delete a now unused definition.
- Unnecessary (e.g. dictionary) and confusing definitions:

“bird” includes a bird which is biologically incapable of flight;

“church” means a building designed for Christian worship;

“forest” means an area containing trees.

- Incomplete definitions that introduce uncertainty:

“cattle” includes sheep, horses, buffaloes and camels;

“knife” means an instrument consisting of a blade inserted into a handle.

In the first of these examples, the question is raised as to whether, for example, goats and donkeys are also included. But it is anyway unsatisfactory to artificially stretch the normal meaning of ‘cattle’ in this way (see further the category discussed in the point below). In the second example, it is unclear whether axes, machetes or even swords are included.

- Artificially stretched definitions:

“educational institution” includes a hospital;

“motor vehicle” includes a cycle rickshaw;

“place” includes a house, building, tent and any means of transport, whether by land, sea or air.

The first of these can at least be understood when it is realised that hospitals are often recognised teaching institutions; and the third when it

is understood that it is taken from a Motion Pictures Act. But it is usually unsatisfactory to artificially stretch the normal meaning of a word.

- Definitions should not contain legal rules:

“entry permit” means a permit which the officer in charge may issue to enable the permit holder to enter the restricted premises named in it;

“exempt vehicle” means a vehicle that is the subject of an exemption that the Minister may grant by notice in the *Gazette*.

In these two examples, the **definition** seemingly purports to give the officer or Minister the power to issue a document or to make subsidiary legislation. This must be done in the substantive provisions. Compare:

“entry permit” means a permit issued under section 6 enabling the permit holder to enter the restricted premises named in it;

“exempt vehicle” means an vehicle exempted by the Minister under section 24;

Occasionally, the inclusion of a legal rule in a definition may result in a significant loophole:

“parking space” means a space, no smaller than 3 metres by 6 metres, for off-street parking of a motor vehicle;

Here the definition seemingly contains a rule about the size of a parking space (which ought to be in a substantive provision). However, it could be argued that as a definition cannot lay down a substantive rule (as opposed to a rule of interpretation), there would be nothing to stop the provision of smaller parking spaces. If so, any such smaller space would not be a ‘parking space’ within the meaning of the definition, and hence not covered by any rule that applies to those spaces (e.g. that a minimum number must be provided).

If it is needed at all, the definition should omit the underlined words.

9.6 Where do interpretation provisions go?

- In an interpretation section of an Act or appropriate division of subsidiary legislation, usually placed immediately after the section providing for the short title (and commencement provisions, if any)
- In an interpretation section of a Part of an Act or subsidiary legislation
- In an interpretation provision within a section, or the appropriate division of subsidiary legislation
- Especially in cases of unusually numerous, or complex technical definitions, in a Schedule.