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ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
INTERPRETATION ACT, 2009 ACT 792

AN ACT to revise and consolidate the law relating to the operation, construction and interpretation of enactments and for related matters.

DATE OF ASSENT: *31st Decembei; 2009.*

ENACTED by the President and Parliament

Interpretation

Meaning of certain expressions

1. In this Act, unless the context otherwise requires, "Act" means an Act of Parliament;

"assent" means the assent of the President under article 107 of the Constitution;

"common law" has the meaning assigned to it by article 11 of the Constitution;

"Constitution" means the Constitution of the Republic;

"Court" means a court of competent jurisdiction;

"constitutional instrument" means an instrument made pursuant to a power conferred in that behalf by the Constitution;

"enact" includes to issue, make or establish;

"enactment" means an Act of Parliament, or a statutory instrument, or a constitutional instrument, or a provision of an Act of Parliament, or of a constitutional instrument, or of a statutory instrument;

"executive instrument" means

(a) an instrument specified by an Act of Parliament as an executive instrument, or

(b) a statutory instrument which is of an administrative character or of an executive character and is not an instrument

(i) of a judicial character, or

(ii) of a legislative character;

"instrument" includes a notice, Rules, Regulations, By-Laws or a Proclamation, an order, or a warrant, other than an order made, or a warrant issued, by a Court;

"legislative instrument" means a statutory instrument that is legislative in character;

"President" means the President of the Republic;

"private Act" means an Act for the purpose of affecting or benefiting a particular person;

"statutory instrument" means an instrument made, whether directly or indirectly, under a power conferred by an Act of Parliament;

"statutory document" means a document issued under an *Act*, other than a statutory instrument or an order of a Court.

Application of this Act

2. (1) This Act applies to an enactment whether enacted before or after the coming into force of this Act, to a legislative measure continued in force by the Constitution, and an instrument made directly or indirectly under an enactment unless a contrary intention appears in that enactment, measure or instrument.

(2) This *Act* applies to this Act and to an enactment specified in subsection (1) and references in this Act to an enactment so passed shall be construed accordingly.

Application of rules of construction

3. This Act shall not be construed as excluding the application to an enactment of a rule of interpretation or construction applicable to that enactment and not inconsistent with this Act.

Words of enactment

4. (1) The words of enactment shall follow the preamble where there is one, and after the long title to the Act, and the several sections within the body of the Act shall follow in a concise and enunciative form.

(2) In a Bill presented to the President for the assent, the words of enactment shall be,

"Passed by Parliament and assented to by the President".

Public and Private Acts

Public Acts

5. (1) An Act is a public Act and shall be judicially noticed as a public Act; unless the contrary is expressly provided by the Act.

(2) An Act shall bear at the head a Short Title immediately followed by the Long Title describing the scope of the Act.

(3) As soon as a Bill is passed by Parliament, the text of the Bill as passed shall be sent by the Clerk of Parliament to the Government Printer, who shall print four copies of the Bill on vellum paper or on paper of enduring quality and send the copies to the Clerk.

(4) On receiving the copies, the Clerk shall carefully compare them with the text of the Bill as passed and if the Clerk finds the copies to be correct, shall sign on each copy a statement in the form set out in the First Schedule, and shall send the copies so authenticated to the President for the assent.

(5) Where the Bill was passed in accordance with the relevant provisions of article 108 of the Constitution, the Clerk shall, before causing the copies to be presented to the President, submit them to the Speaker who, if satisfied that the Bill was passed in accordance with the Constitution shall sign on each copy a certificate in the Form set out in the First Schedule.

(6) After the assent, the Clerk shall enter on the copies the appropriate number of the Act.

(7) Acts shall continue to be numbered consecutively from the establishment of the First Republic in accordance with the order in which they became Acts, and the numbering shall not begin afresh at the commencement of a calendar year, a new Parliament or any other period.

(8) Each of the copies as assented to by the President constitutes an original copy of the Act and shall be conclusive evidence of the terms of the Act, its number and the date of assent.

(9) The original copy of the Act shall be kept respectively by the President, the Speaker, the Chief Justice and the National Archives.

(10) A copy of an Act, other than an original copy, purporting to have been printed or published by the Government Printer, is *prima facie* evidence of the terms of the Act, its number and the date of assent.

Provisions in private Acts

6. A provision in a private Act does not affect the rights of a person not specifically mentioned in the private *Act*.

Application of enactments

7. An enactment shall, unless the contrary intention appears, apply to the whole of the Republic.

References to the President, Republic

8. (1) A reference in an enactment to the President shall be construed as a reference to the President for the time being in office.

(2) An enactment does not bind or in any manner affect the Republic or the rights and prerogatives of the Republic unless it is expressly stated in the enactment that the Republic is bound by it.

(3) This Act binds the Republic.

(4) A private Act shall be construed as containing a saving of the rights of the Republic.

Substantive enactments

9. A provision of an enactment has effect as a substantive enactment without introductory words.

Aids to construction

Aids to interpretation or construction

10. (1) Where a Court is concerned with ascertaining the meaning of an enactment, the Court may consider

(a) the indications provided by the enactment as printed, published and distributed by the Government Printer;

(b) a report of a Commission, committee or any other body appointed by the Government or authorised by Parliament, which has been presented to the Government or laid before Parliament as well as Government White Paper;

(c) a relevant treaty, agreement, convention or any other international instrument which has been ratified by Parliament or is referred to in the enactment of which copies have been presented to Parliament or where the Government is a signatory to the treaty or the other international agreement; and the *travaux préparatoires* or preparatory work relating to the treaty or the agreement, and

(d) an agreement which is declared by the enactment to be a relevant document for the purposes of that enactment.

(2) A Court may, where it considers the language of an enactment to be ambiguous or obscure, take cognisance of

(a) the legislative antecedents of the enactment;

(b) the explanatory memorandum as required by article 106 of the Constitution and the arrangement of sections which accompanied the Bill;

(c) pre-parliamentary materials relating to the enactment;

(d) a text-book, or any other work of reference, a report or a memorandum published by authority in reference to the enactment, and the papers laid before Parliament in reference to the enactment;

(e) the parliamentary debates prior to the passing of the Bill in Parliament.

(3) Subject to article 115 of the Constitution, a Court shall have recourse to parliamentary debates under subsection (2), where the legislative intention behind the ambiguous or obscure words is clearly disclosed in the parliamentary debate.

(4) Without prejudice to any other provision of this section, a Court shall construe or interpret a provision of the Constitution or any other law in a manner

(a) that promotes the rule of law and the values of good governance,

(b) that advances human rights and fundamental freedoms,

(c) that permits the creative development of the provisions of the Constitution and the laws of Ghana, and

(d) that avoids technicalities and recourse to niceties of form and language which defeat the purpose and spirit of the Constitution and of the laws of Ghana.

References in enactments

11. (1) A reference in an enactment to any other enactment shall be construed as a reference to that other enactment as amended by or under any other enactment, including the enactment in which the reference is made.

(2) A reference in an enactment to a statute of general application or to an instrument made under that statute, shall be construed as a reference to that statute or instrument as it applies to the Republic; and that statute or instrument shall be read with the requisite alteration, modification or adaptation so as to make that statute or instrument applicable to the circumstances.

(3) Where in an enactment reference is made to a provision of a statute of general application and that provision is subsequently repealed and re-enacted without substantial modification that reference shall, if the context so requires, be construed as a reference to the provision as so re-enacted.

(4) A reference in an enactment by number or letter to a Chapter, Part, section, subsection, paragraph, sub-paragraph or other division of any other enactment or a statute of general application shall be construed as a reference to that Chapter, Part, section, subsection, paragraph, sub-paragraph or other division of that other enactment or statute as printed by authority.

(5) A reference in an enactment by number or letter to two or more Chapters, Parts, divisions, sections, subsections, paragraphs, sub-paragraphs, Schedules, instruments or forms shall be construed as including the number or letter first mentioned and the number or letter last mentioned.

(6) Where in an enactment reference is made to a Chapter, Part, division, section, Schedule or form without anything in the context to indicate that a reference to a Chapter, Part, division, section, Schedule or form of some other enactment is intended, the reference shall be construed as a reference to the Chapter, Part, division, section, Schedule or form of the enactment in which the reference is made.

(7) Where in a section of an enactment reference is made to a subsection, paragraph, sub-paragraph or other division without anything in the context to indicate that a reference to a subsection, paragraph, subparagraph or other division of some other section or provision is intended, the reference shall be construed as a reference to the subsection, paragraph, sub-paragraph or other division of the section in which the reference is made.

(8) Where in a Schedule or part of a Schedule to an enactment reference is made to a paragraph, sub-paragraph or other division without anything in the context to indicate that a reference to a paragraph, sub-paragraph or other division of some other enactment or division is intended, the reference shall be construed as a reference to the paragraph, sub-paragraph or other division of the Schedule or the part of the Schedule in which the reference is made.

(9) Where in an enactment reference is made to a statutory instrument or a statutory document, without anything in the context to indicate that a reference to a statutory instrument or a statutory document made under some other enactment is intended, the reference shall be construed as a reference to the statutory instrument or the statutory document made under the enactment in which the reference is made.

(10) A reference in an enactment to a power exercisable, or to a statutory instrument or a statutory document made or issued or an act or a thing done, under an enactment or a statute of general application, shall include a reference to a power exercisable, a statutory instrument or a statutory document made or issued or an act or a thing done, by virtue of that enactment or statute or of a statutory instrument or of a statutory document made or issued under or by virtue of that enactment or statute.

Amending provisions

12. (1) An Act may be amended, altered or repealed in the same session of Parliament.

(2) An amending enactment shall, so far as consistent with its tenor, operate and be construed as part of the enactment which it amends and, without prejudice to subsection (1) of section 11 shall, as from the date on which it comes into operation, have effect accordingly for the purpose of the construction and operation of any other enactment which refers to, or is incorporated with, the enactment which it amends.

(3) A reference in an enactment to any other enactment shall be construed as a reference to the other enactment as amended by a provision, including a provision contained in the enactment in which the reference is made or in a later enactment.

(4) Where an enactment is repealed or revoked and another enactment is substituted by way of amendment, revision or consolidation, a reference to the repealed or revoked enactment shall be construed as a reference to the substituted enactment.

(5) Where an enactment applies another enactment, whether with or without modification, and the applied enactment is subsequently repealed or revoked the applied enactment shall continue to apply according to the terms of the enactment which applies it, despite the repeal or the revocation.

(6) Where an enactment is amended, the Attorney-General may authorise the reprinting or the revision of the enactment as amended in so far as the reprinting or the revision does not affect the matter (substance of the enactment as amended).

(7) Where an enactment is reprinted or revised under subsection (6) a copy of the enactment as so reprinted or revised shall have the force of law effective from the date of the reprinting or revision if

(a) the date of the reprinting or revision is set out on the copy and

(b) the copy purports to be printed by the Government Printer

Operation of enactments

Long title and preamble

13. The long title and the preamble form part of an Act intended to assist in explaining the intent and object of the Act.

Punctuation

14. Punctuation forms part of an enactment and may be used as aid to its construction.

Headings

15. Titles placed at the head or beginning of a subdivision¹ of an enactment and notes and references placed before the beginning of a provision are intended for convenience of reference only but may be as an aid to construction of the enactment.

Descriptive words

16. Words in an enactment descriptive of another enactment are intended for convenience of reference only and shall not be used as an aid to the construction of the enactment to which they refer.

Date of commencement of enactments

17. (1) The date of the commencement or coming into force of an Act is the date in accordance with clause (11) of article 106 of the Constitution on which it is published in the *Gazette* or as otherwise specified in the Act.

(2) The day, month and year of the assent shall be inscribed on an Act and that inscription is part of the Act.

(3) The date of the making of a statutory instrument is the date expressed as the date of the making of the instrument, but where the instrument is made by two or more authorities jointly and is expressed to have been made by those authorities on different dates, the date of the making of the instrument is the last date so expressed.

(4) Where a statutory instrument made by an authority or a person requires the concurrence or approval of any other authority or person, the concurrence or approval shall be formally inscribed on the instrument.

Publication and Commencement

18. (1) An enactment shall be published in the *Gazette* and subject to section 17, and unless the enactment otherwise provides, shall take effect and come into operation on the date of the publication.

(2) Where an enactment is expressed to come into force or operation on a particular day, or where the enactment is a statutory instrument, on the making of the instrument, and whether that day is named in the enactment or is to be appointed or fixed or ascertained in any other manner, the enactment shall be construed as coming into force immediately on the expiration of the day before that particular day.

(3) Where an Act provides

(a) that it is to come into force or operation on a day or date to be fixed or determined, or appointed by Proclamation, or other statutory instrument; or

(b) that it is not to come into force or operation until a day or date to be so fixed, determined or appointed,

that Proclamation or other statutory instrument

(c) may apply to the whole of, or to a provision of, the Act, and may be issued at different times in respect of that provision, or (d) may specify different dates in respect of different provisions of the Act.

(4) The date of the publication in the *Gazette* of an enactment or any other instrument shall be inscribed at the end of the enactment or instrument.

Expiration of enactments

19. (1) Where an enactment is expressed to expire or otherwise cease to have effect on a particular day, the enactment shall, except as provided by subsection (2), be construed as ceasing to have effect immediately on the expiration of that day.

(2) Where a Bill is introduced in a session of Parliament for the continuation of an Act limited to expire in that session and the Act expires before the Bill receives in that session the assent and is published in the *Gazette*, then, subject to subsection (3), that Act shall be deemed to have continued as fully and effectively in operation as if the Bill had received the assent and been published in the *Gazette* before the Act expired.

(3) Subsection (2) shall not operate so as to render a person liable under the provisions of an Act which has expired to a penalty or forfeiture by reason of an act done by that person before the date on which the Bill for the continuance of that Act receives the assent and is published in the *Gazette*.

Exercise of powers before commencement

20. Where an enactment is not in force and it contains provisions conferring power to make Regulations or to do any other thing, that power may, for the purpose of making the enactment effective on its commencement, be exercised at any time before its commencement but Regulations so made or a thing so done does not have an effect until the commencement of the enactment, except in so far as may be necessary to make the enactment effective on its commencement.

Statutory functions

21. (1) Where an enactment confers a power or imposes a duty, the power may be exercised and the duty shall be performed, as occasion requires.

(2) Where an enactment confers a power to make a statutory instrument, the power shall be construed as including a power, exercisable in the like manner and subject to the like consent and conditions, to amend, alter, rescind, or revoke that statutory instrument and to make other statutory instruments.

(3) Where a power is given to a person or an authority to do an act or a thing, or enforce the doing of an act or a thing, that power includes any other powers that are reasonably necessary to enable that person or authority to do that act or thing, or enforce the doing of that act or thing, or are incidental to the doing or enforcement of that act or thing.

(4) Where an enactment authorises or requires an act or a thing to be done collectively by more than three persons, a majority of those persons may do that act or thing, unless a quorum is fixed by that or any other enactment.

(5) A power conferred by an enactment to make a statutory instrument or issue a statutory document may be exercised

(a) either in relation to the cases to which the power extends, or in relation to those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

(b) so as to make, as respects the cases in relation to which it is exercised,

(i) the full provision to which the power extends or a less provision, whether by way of exception or otherwise;

(ii) the same provision for the cases in relation to which the power is exercised, or different provision for different cases or classes of case, or different provision as respects the same case or class of case for different purposes of the enactment;

(iii) any other provision either unconditionally or subject to a specified condition.

(6) Where an enactment confers a power on a person or an authority to make a statutory instrument, for a general purpose and also for a special purpose incidental to that power, the enumeration of the special purposes shall not be construed as derogating from the generality of the power conferred with respect to the general purpose.

(7) Where an enactment confers a power to make a statutory instrument that power includes a power to provide

(a) a punishment by way of a fine or a term of imprisonment or both or to community service for a contravention of a provision of that statutory instrument;

(b) that an offence against a provision of that statutory instrument may be tried summarily.

(8) A statutory instrument may be made

(a) by one authority under two or more separate powers;

(b) by two or more authorities jointly under one or more separate powers vested in each or them.

(9) One statutory instrument may be made under powers variously expressed as powers to make Rules, Regulations or any other different descriptions of legislative instrument or under powers variously expressed as powers to make orders, or give directions or any other different descriptions of executive instrument, and the provisions of the instrument may be described as being of one of those descriptions.

(10) Subsection (11) shall apply in relation to a power expressed merely as a power to make a legislative instrument or an executive instrument as it applies in relation to a power expressed as a power to make a particular description of legislative instrument or executive instrument.

(11) Subsections (8), (9) and (10) do not authorise the making of a legislative instrument partly under a power to make an executive instrument or the making of an executive instrument partly under a power to make a legislative instrument.

Errors and omissions

22. (1) Where an enactment confers a power or imposes a duty on a person to do an act or a thing of an administrative or executive character or to make an appointment, the power or duty may be exercised or performed in order to correct an error or omission in a previous exercise of the power or the performance of the duty.

(2) The substantive rights of, or the procedures for redress by, a person who has suffered loss or damage or is otherwise aggrieved as a result of an omission or error corrected as is referred to in subsection (1) shall not be affected as a result of the correction of that omission or error and an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation or a liability shall continue as if the omission or error had not been corrected.

Provisions as to holders of offices

23. (1) Words in an enactment which authorise the appointment of a person to an office confer, in addition, on the authority in whom the power is vested,

(a) a power, at the discretion of the authority, to remove or suspend that person;

(b) a power, exercisable in the manner and subject to the like consent and conditions applicable to the appointment,

(i) to reappoint or reinstate that person,

(ii) to appoint any other person, whether substantively or in an acting capacity, and judicially noticed, and shall authenticate a document to which it is affixed

and attested in accordance with the law applicable to the attestation of documents;

(iii) the right to acquire and hold real or personal property for the purposes for which the corporation is constituted and to dispose of or charge that property;

(iv) the right to regulate its own procedure and business; and

(v) the right, subject to article 195 of the Constitution, to employ the necessary staff for the performance of its functions;

(b) to vest in a majority of the members of that body corporate the power, subject to a quorum fixed by the enactment under which it is established or by the relevant regulations or rules to bind the other members of that body corporate, but in an important matter or question which has financial implications the quorum shall not be less than two-thirds of the members of the governing body of that body corporate; and

(c) to exempt from personal liability for the debts, obligations or acts of that body which are not offences committed by that body corporate, the members who do not contravene the provisions of the enactment under which that body is established.

(2) Subsection (1) is subject to the operation of article 88 of the Constitution and does not

(a) prevent additional powers being conferred by an enactment on that body; or

(b) prevent the powers conferred by the subsection being limited by an enactment; or

(c) prejudice or affect the liability of a member of that body to be surcharged with the payment of an amount which may be disallowed in the accounts of that body by an auditor whether acting in pursuance of an enactment or otherwise.

Offences and penalties

25. (1) Where an act or omission constitutes an offence under two or more enactments or under an enactment or at common law, the offender is liable to be prosecuted and punished under either or any of those enactments or at common law, but shall not be punished twice for the same offence.

(2) Where an offence under an enactment is committed by a body corporate, and the body corporate is convicted, the director, the general manager, the secretary or any other senior officer of that body corporate shall be deemed to have also committed that offence.

(3) A person shall not be convicted of an offence pursuant to subsection (2) where it is proved to the satisfaction of the Court that, having regard to the nature of the offence,

(a) that person did not consent to, or did not connive at, the commission of the offence, or

(b) that person did exercise the degree of reasonable diligence as ought in the circumstances to have been exercised to prevent the commission of the offence.

(4) For the purposes of subsections (2) and (3), a body corporate includes a firm or partnership and those subsections shall be construed accordingly in the case of a firm or a partnership.

(5) Subsections (2) and (3) shall not operate so as to affect the liability of the members of the body corporate.

(6) A person shall not be charged under subsection (2) except with the prior consent in writing of the Attorney-General.

(7) An enactment creating criminal liability for an act or omission which, apart from that enactment, would give rise to a civil liability shall not operate to prejudice the civil liability.

(8) Subsection (7) shall not be construed as excluding the application of a rule of law which restricts the right to take civil proceedings in respect of an act or omission which constitutes a criminal offence.

(9) Where an enactment provides a punishment for an offence against the enactment, the offence is punishable by a punishment not exceeding that provided in the enactment.

(10) Where an enactment creates an offence, an attempt to commit that offence is an offence under the enactment and the attempt is punishable as if the offence itself had been committed.

(11) Where under an enactment an animal or a thing

(a) is or is ordered by a competent authority to be confiscated or forfeited, the forfeiture shall be to the Republic;

(b) ordered or deemed to be forfeited is sold, the net proceeds of the sale shall be paid into and form part of the Consolidated Fund.

(12) Subsection (11) shall not prejudice an enactment under which the whole or a part of a forfeiture or the proceeds of a forfeiture is, or are, recoverable by a person or may be granted by an authority to a person.

(13) A fine or pecuniary penalty imposed by or under an enactment shall be paid into the Consolidated Fund in accordance with article 160 of the Constitution.

(14) Where in an enactment an offence is declared to be triable on indictment or summarily, the procedure in respect of the trial, the punishment for the offence, the recovery of the penalty and the matters incidental to, or arising out of the trial and punishment of the offence or the recovery of the penalty, shall be in accordance with the law relating to the trial of offences on indictment or the trial of summary offences.

(15) Where in an enactment an offence is provided and a provision is not made as to whether the offence is triable summarily or on indictment the offence shall be triable summarily.

Fines expressed as penalty units

26. The imposition of a fine as a penalty for the contravention of a provision in the enactment, shall be expressed in terms of a number of penalty units.

Pecuniary value of a penalty unit

27. (1) For the purposes of section 26 one penalty unit is equivalent to the amount of cedis specified in the Second Schedule.

(2) The Attorney-General may, by legislative instrument, amend the Schedule.

***Procedures of Courts* Rules of procedure of courts and tribunals**

28. (1) Subject to clause (2) of article 157 of the Constitution, where an enactment confers jurisdiction on a Court or a tribunal or extends or varies that jurisdiction, the authority having power to make Regulations, Rules or Orders regulating the practice and procedure of that Court or tribunal may make the Regulations, Rules or Orders that appear to the authority to be necessary for regulating the practice and procedure of that Court or tribunal in the exercise of the jurisdiction so conferred, extended or varied, and it shall not be necessary for any other enactment to confer power on the authority to make Regulations, Rules or Orders for these purposes.

(2) An authority empowered to make Regulations, Rules or Orders regulating the practice and procedure of a Court or a tribunal shall not, in the exercise of that power, make without the concurrence of the Minister responsible for Finance an order which

(a) directs money to be paid out of, or into the Consolidated Fund, or

(b) prescribes or alters court fees.

(3) The validity of Regulations, Rules or Orders made pursuant to subsection (1) shall not in proceedings in a Court or a tribunal be impugned by the Court or the tribunal or by a party to the proceedings on the ground only that the concurrence of the Minister responsible for Finance has not been given or is not expressed to have been given.

Service of documents

29. (1) Where an enactment authorises or requires a document to be served by post that document shall be sent by registered post to the person on whom the document is to be served at that person's last known place of abode or business.

(2) Where an enactment authorises or requires a document to be served on a person without directing it to be served in a particular manner the service of that document may be effected

(a) by personal service; or

(b) by post in accordance with subsection (1); or

(c) by leaving it with an adult person at that person's usual or last known place of abode, occupation, vocation or business; or

(d) in the case of a corporate body or of an association of persons, whether incorporated or not, by delivering it to the secretary or clerk of the body corporate or association at the registered or principal office of the body corporate or association or serving it by post on the secretary or clerk at that office; or

(e) where it is not practicable after reasonable enquiry to ascertain the name or address of an owner, a lessee, or an occupier of premises on whom the document ought to be served, by addressing the document to that person by the description of "owner" or "lessee" or "occupier" of the premises (naming them) to which the document relates, and .

(i) by delivering it to an adult person on the premises,

or

(ii) by affixing it, or a copy of it, to a conspicuous part of the premises if an adult person is not on the premises to whom it can be delivered.

Deviation in forms

30. Where a form is prescribed or specified by an enactment, deviations from that form not materially affecting the substance and not calculated to mislead shall not invalidate the form used.

Oaths, affirmations and declarations

31. (1) Where an enactment authorises or requires evidence to be taken on oath, or authorises or directs an oath to be made, taken or administered, the oath may be administered, and a certificate or acknowledgement of it having been made, taken or administered may be given by a person authorised by the enactment to take the evidence or by a judge of a Court or a notary public, or a commissioner for oaths or a person so authorised by any other enactment.

(2) In an enactment the word "oath" or "affidavit" includes an affirmation or a declaration.

(3) A reference in an enactment to a statutory declaration shall be construed as a reference to a declaration made

(a) by virtue of the enactment relating to statutory declarations; or

(b) under the enactment relating to the taking of evidence where the declaration is made before the appropriate competent authority.

(4) A power conferred by an enactment upon a person to administer an oath or an affirmation, or to take an affidavit or a declaration, may be exercised by a notary public or a commissioner for oaths.

(5) Where by an enactment power is conferred to require evidence to be given on oath otherwise than in a Court, the power includes a power to administer an oath or take an affidavit or statutory declaration.

***Repeals* Cessation of operation of enactments**

32. Where in an enactment it is declared that the whole or a part of any other enactment is to cease to have effect, that other enactment shall be deemed to have been repealed to the extent to which it is so declared to cease to have effect.

Repeals and revocations

33. The repeal or revocation of an enactment which provides for a textual insertion in any other enactment or amends any other enactment by operation of law shall not affect the insertion or amendment and the text of the altered enactment shall continue to stand as altered despite the repeal or revocation.

Effect of repeal

34. (1) Where an enactment repeals or revokes an enactment, the repeal or revocation shall not, except as in this section otherwise provided,

(a) revive an enactment or a thing not in force or existing at the time at which the repeal or revocation takes effect;

(b) affect the previous operation of the enactment that is repealed or revoked, or anything duly done or suffered under the enactment;

(c) affect a right, a privilege, an obligation or a liability acquired, accrued or incurred under the enactment that is repealed or revoked;

(d) affect an offence committed against the enactment that is repealed or revoked, or a penalty or a forfeiture or a punishment incurred in respect of that offence; or

(e) affect an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation, a liability, a penalty, a forfeiture or a punishment;

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the enactment had not been repealed or revoked.

(2) Subsection (l) does not authorise the continuance in force after the repeal or revocation of an enactment or of an instrument made under that enactment.

(3) Where an enactment expires, lapses or otherwise ceases to have effect, this section shall apply as if that enactment had then been repealed or revoked.

(4) The inclusion in the repealing provisions of an enactment of an express saving with respect to the repeals affected by the inclusion does not prejudice the operation of this section with respect to the effect of those repeals.

Effect of substituting enactment

35. (1) Where an enactment repeals or revokes and re-enacts, with or without modification, an enactment, a reference in any other enactment or statutory document to the enactment so repealed or revoked shall, without prejudice to the operation of subsections (2) and (3), be construed as a reference to the enactment as re-enacted.

(2) Where an enactment repeals or revokes an enactment, in this subsection and in subsection (3) referred to as the "old enactment", and substitutes, by way of amendment, revision or consolidation with any other enactment,

(a) a person acting under the old enactment shall continue to act as if appointed under the enactment so substituted;

(b) a bond or a security given by a person appointed under the old enactment remains in force and the books, papers and things used or made under the old enactment shall continue to be used so far as is consistent with the enactment that is substituted;

(c) a proceeding taken under the old enactment shall be continued under and in conformity with, the enactment so substituted, so far as it may be done consistently with the substituted enactment;

(d) in the recovery or enforcement of penalties and forfeitures incurred, and in the enforcement of rights, existing or accruing under the old enactment, or in any other proceeding under the old enactment, the procedure established by the enactment so substituted shall be followed so far as it can be adapted; and

(e) where a penalty, a forfeiture or a punishment is reduced or mitigated by a provision of the enactment so substituted, the penalty, forfeiture or punishment, if imposed or awarded after the repeal or revocation, shall be reduced or mitigated accordingly.

(3) In addition to subsection (2), where an enactment repeals or revokes an enactment and substitutes by way of amendment, revision or consolidation, another enactment,

(a) the statutory instruments or statutory documents made, issued, confirmed or granted under the old enactment and the decisions, authorisations, directions, consents, applications, requests or things made, issued, given or done under the old enactment

(i) which are in force at the commencement of the enactment that is substituted, and

(ii) which are not inconsistent with the enactment that

is substituted,

shall have the like effect and the like proceedings may be had on and in respect of the enactment as if they had been made, issued, confirmed or granted or made, issued, given or done under the corresponding enactment that is substituted; and

(b) a reference to the old enactment in an unrepealed or unrevoked enactment shall,

(i) in relation to a subsequent transaction, matter or thing, be construed as a reference to so much of the enactment that is substituted as relates to the same subject-matter as the old enactment; and,

(ii) if nothing in the enactment that is substituted relates to the same subject-matter, the old enactment shall stand good, and be read and construed as unrepealed or unrevoked where it is necessary to support, maintain or give effect to the unrepealed or unrevoked enactment.

Enactments always speaking **Enactment always speaking**

36. An enactment shall be construed as always speaking and anything expressed in the present tense shall be applied to the circumstances as they occur, so that effect is given to each enactment according to its true spirit, intent and meaning.

Expressions in statutory instruments

37. (1) Where an enactment confers a power to make a statutory instrument or issue a statutory document, unless a contrary intention appears,

(a) expressions used in the statutory instrument or statutory document have the same respective meaning as in the enactment; and

(b) the expression "Act" if used in the statutory instrument or statutory document shall be construed as referring to the Act under which the instrument is made or the document is issued.

Application of definitions

Applications of interpretation provisions

38. (1) Definitions or rules of interpretation contained in an enactment apply to the construction of the provisions of the enactment which contains those definitions or rules of interpretation.

(2) An interpretation section or provision contained in an enactment shall be read and construed as being applicable,

(a) only if the contrary intention does not appear in the enactment; and

(b) to the enactments relating to the same subject-matter, unless a contrary intention appears in the enactment.

Parts of speech

39. Where a word is defined in an enactment, other parts of speech and grammatical variations of that word and cognate expressions shall have corresponding meanings in that enactment.

Names commonly used

40. In an enactment, a name commonly applied to a country, place, government department, body, corporation, society, Minister, officer, functionary, person, party, statutory provision, or other thing means the country, place, government department, body, corporation, society, Minister, officer, functionary, party, statutory provision or thing to which the name is commonly applied, whether or not the name is the formal or an abbreviated form of designation.

Rules as to number and gender

41. (1) Words in an enactment importing

(a) male persons include female persons; and (b) female persons include male persons.

(2) Words in an enactment importing persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons.

(3) A reference in an enactment to a party aggrieved includes a reference to a body corporate in a case where that body corporate is a party aggrieved.

Construction of *shall* and *may*

42. In an enactment the expression "may" shall be construed as permissive and empowering, and the expression "shall" as imperative and mandatory.

Distances

43. In the measurement of a distance for the purposes of an enactment, the distance shall be measured in a straight line on a horizontal plane.

Time

44. (1) In an enactment, words relating to time and references to a point in time shall be construed as relating or referring to Greenwich Mean Time.

(2) Where in an enactment a period of time is expressed to begin on a particular day, that day shall be included in the period.

(3) Where in an enactment a period of time is expressed to be reckoned from or after a particular day, that day shall not be included in the period.

(4) Subject to subsection (7), where in an enactment a period of time is expressed to end on, or to be reckoned to, a particular day, that day shall be included in the period.

(5) Where the time limited by an enactment for the doing of a thing expires or falls on a Saturday, Sunday or a public holiday, the time shall extend to and the thing may be done on, the first following day that is not a Saturday, Sunday or a public holiday.

(6) Where in an enactment a thing is required to be done on a particular day, then, if that day falls on a Saturday, Sunday or a public holiday, the thing shall be considered as duly done if it is done on the first following day which is not a Saturday, Sunday or a public holiday.

(7) Where a period of time prescribed by an enactment for the doing of a thing does not exceed five days, Saturdays, Sundays and public holidays shall not be included in the computation of the period.

(8) Where by an enactment a period of time is expressed as "clear days" or is qualified by the term "at least", both the first day and the last day shall be excluded from the computation of the period.

(9) In an enactment,

(a) a reference to midnight, in relation to a particular day, shall be construed as a reference to the point of time at which that day ends;

(b) a reference to a week-day shall be construed as a reference to a day that is not a Saturday or a Sunday;

(c) a reference to a month shall be construed as a reference to a calendar month;

(d) a reference, without qualification, to a year, shall be construed as a reference to a period of twelve months as specified in the enactment.

(10) For the purposes of an enactment, a person shall be regarded as having attained a given age at the beginning of the day on which the anniversary of the birth of that person occurs and not on the previous day.

(11) In an enactment, the expression "public holiday" means a day that under the enactment or other law is, or is declared to be, or is proclaimed as, a public holiday.

(12) An enactment requiring or authorising the doing of a thing but not prescribing or limiting the period within which that thing is to be done, or may be done, shall be construed as requiring or authorising that thing to be done within a reasonable time and with the requisite convenient speed and not otherwise.

(13) Subsections (1) and (2) shall have effect in relation to deeds and other legal instruments as they have effect in relation to an enactment.

Statutory boards

45. (1) The functions of a statutory board shall not be affected by a vacancy in the membership of that statutory board.

(2) A power conferred by or under an enactment on an authority or a person to appoint the members of a statutory board includes,

(a) the power to appoint the chairperson of the statutory board, and

(b) the power to appoint an individual person as an alternate member to act in the place of the member in respect of whom the alternate appointment is made.

(3) An alternate member when acting in that capacity shall have and perform the functions of the member in whose place the alternate appointment is made.

(4) An authority or a person empowered by or under an enactment to appoint or designate a person to be a member of a statutory board or to perform any other function may

(a) appoint or designate a person by name, or

(b) appoint or designate a person by reference to an office; and the person so appointed or designated may perform the function in respect of which the appointment or designation is made.

(5) A person is qualified to be appointed as a member of, or to continue in office as a member of, a statutory body or the governing body of a public corporation only if that person

(a) is a citizen;

(b) has not been adjudged or otherwise declared

(i) bankrupt under any law and has not been discharged, or

(ii) to be of unsound mind or is detained as a criminal lunatic under any law;

(c) has not been convicted

(i) for high crime under the Constitution or high treason or treason or for an offence involving the security of the Republic, fraud, dishonesty or moral turpitude, or

(ii) for any other offence punishable by death or by a sentence of not less than ten years imprisonment; (d) has not been found by the report of a commission or a committee of inquiry to be incompetent to hold public office; or

(e) is not a person in respect of whom a commission or committee of inquiry has found that while being a public officer had acquired assets unlawfully or defrauded the Republic or misused or abused the powers of office, or willfully acted in a manner prejudicial to the interests of the Republic, and the findings have not been set aside on appeal or judicial review;

(f) is not under a sentence of death or other sentence of imprisonment imposed upon that person by a Court; or

(g) is not otherwise disqualified by law.

(6) In addition to subsection (5), a member of the statutory body or the governing body shall cease to be a member if, in the case of person possessed of a professional qualification, the member is disqualified from practice by an order of the relevant competent authority or ceases to be a member otherwise than at the member's own request.

(7) Where in an enactment a member of a statutory board or governing body is required to disclose that member's interest, whether directly or indirectly, in a matter for decision or consideration by the board or governing body, a member who fails to disclose that interest or takes part in the decision or deliberation without disclosing that interest commits, in addition to any other provision in

that enactment, an offence if that member benefits directly or indirectly from the decision or deliberation.

(8) A member convicted of an offence under subsection (7) is liable

(a) to a term of imprisonment not less than six months; or to a fine of not less than one hundred and fifty penalty units; and

(b) to forfeit to the Republic the property which had been acquired whether directly or indirectly with the benefit resulting from the decision or deliberation.

(9) Paragraph (c) and (d) of subsection (5) shall cease to apply if (a) ten years or more have passed since the end of the sentence or the date of the publication of the report of the commission or committee of inquiry, or

(b) that person has been pardoned.

Definitions

46. In an enactment, the expression

"act" where used in reference to an offence or civil wrong includes a series of acts, and words so used which refer to acts done extend to omissions;

"access" includes ingress, egress and regress;

"adult" means a person who has attained the age of twenty-one years;

"aircraft" includes an aeroplane, an airship, a balloon, a glider, a helicopter and any other contrivance recognised by the civil aviation authority as an aircraft;

"assets" includes property and rights of any kind;

"appointed day" for the purposes of an enactment means the day specified as the appointed day by the President by Proclamation published in the *Gazette*;

"Auditor-General" means the Auditor-General appointed under article 187 of the Constitution;

"bank holiday" means a day which is by law to be kept as a close holiday in the banks;

"Cabinet" means the Cabinet established by article 76 of the Constitution;

"cedi" means the Ghana cedi or legal tender as determined by the Bank of Ghana;

"Chief Justice" means the Chief Justice appointed under article 144 of the Constitution;

"child" means a person below the age of eighteen years; "citizen" means a citizen of Ghana;

"coin" means a coin which is legal tender in the Republic; "commencement" when used with reference to an enactment

means the time at which that enactment comes into operation;

"Commonwealth" means the countries recognised by the Government as Commonwealth countries or specified or certified as Commonwealth countries in or under an Act of Parliament relating to membership of the Commonwealth;

"Commonwealth citizen" means a person who by law has the status of a Commonwealth citizen;

"committed for trial" includes

(a) committed by a Court, and

(b) committed on bail upon a recognisance to appear and stand trial before a Court;

"Commonwealth country" means a country that is a member of the Commonwealth;

"community service" means community service as determined by the Court in consultation with the Minister responsible for Social Welfare;

"Consolidated Fund" means the Consolidated Fund established pursuant to article 175 of the Constitution;

"consul" or "consular officer" includes consul-general, consul, vice-consul, consular agent, and a person authorised to discharge the duties of consul-general, consul or vice-consul; "costs" includes fees, charges, disbursements, expenses or remuneration;

"Court of Appeal" means the Court of Appeal established pursuant to articles 125 and 126 of the Constitution;

"court of summary jurisdiction" means a court exercising statutory summary jurisdiction;

"contravention" in relation to an enactment, includes a failure to comply with a provision of that enactment;

"country" includes a territory for whose international relations that country is responsible;

"day" means a continuous period of twenty-four hours; "export" means to take or cause to be taken out of the Republic; "fault" means a wrongful act or default;

"financial year" means a period of twelve months as determined by the Government;

"fine" includes a pecuniary penalty to which a person is liable for a contravention of an enactment;

"functions" includes powers and duties;

"*Gazette*" means the *Gazette* published by order of the Government;

"goods" includes movable property and animals;

"Government" means any authority by which the executive authority of the Republic is duly exercised;

"Government Notice" means an announcement, whether or not of a legislative character, published in the *Gazette* by or with the authority of the Government;

"Government Printer" includes a printer authorised by the Government;

"government survey map" means a map made under an enactment providing for the survey of land on behalf of the Government;

"High Court" means the High Court established pursuant to articles 125 and 126 of the Constitution;

"immovable property" means land;

"import" means to bring or cause to be brought into the Republic;

"indictable offence" means an offence triable on indictment in accordance with the Criminal and Other Offences (Procedure) Act, 1960 (Act 30);

"individual" means a natural person other than a corporation; "Justice" includes the Chief Justice and any other Justice of the Superior Court of Judicature;

"local authority" means a local authority established pursuant to article 240 of the Constitution;

"master" in reference to a ship, means a person, other than a pilot or harbour master, having control for the time being of the ship;

"minor" means a child;

"Minister" includes a Minister of State appointed under article 78 of the Constitution and a Minister for the time being having responsibility for a portfolio as assigned by the President or for the subject-matter of the enactment in respect of which that expression is used;

"movable property" includes property of every description and growing crops, except immovable property;

"Parliament" means Parliament as established under article 93 of the Constitution;

"payable by warrant" means payable out of the Consolidated Fund or other public fund upon the authority of a warrant under the hand of the Minister responsible for Finance; "perform" in relation to functions includes exercise;

"person" includes a body corporate, whether corporation aggregate or corporation sole and an unincorporated body of persons as well as an individual;

"prescribed" means prescribed in or under the enactment in which that expression occurs;

"prescribed by Parliament" means prescribed by the authority of Parliament;

"President" means the President elected in accordance with article 63 of the Constitution;

"presidential seal" means the presidential seal provided for under article 61 of the Constitution;

"printed by authority" means printed by the Government Printer;

"proclamation" means a declaration made by the President under the public seal;

"public corporation" includes a statutory corporation other than one set up as a commercial venture, a corporation and any other body of persons established by or under an Act of Parliament or set up out of funds provided by Parliament or by any other public fund:

"public holiday" means a day which is by law declared to be a public holiday;

"public interest" includes a right or an advantage which enures or is intended to enure for the benefit generally of the whole of the people of the Republic;

"public office" includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and service with a public corporation established entirely out of public funds or moneys provided by Parliament;

"public service" includes service in a civil office of the Government the emoluments attaching to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and service with a public corporation;

"public officer" includes the holder of a public office and a person appointed to act in that office;

"Public Services Commission" means the Public Services Commission established by article 194 of the Constitution; "public seal" means the public seal provided for under article 61 of the Constitution;

"registered dentist" means a person registered as a dentist under the law in force for the regulation of the dental profession; "registered land" means land the title to which is registered under the enactment;

"registered medical practitioner" means a person registered as a medical practitioner or a dentist under the law in force for the regulation of the medical profession;

"Regional Tribunal" means a Regional Tribunal established by article 142 of the Constitution;

'Rules of Court' when used in relation to a Court means Rules made by the Rules of Court Committee established by article 157 of the Constitution to regulate the practice and procedure of the Courts;

"sale" includes exchange and barter;

"service by post" means service in accordance with subsection (1) of section 30;

"session" in relation to Parliament means sessions as defined in article 295 of the Constitution;

"ship" includes every description of vessel used in navigation not exclusively propelled by oars or paddles;

"signature" includes the making of a mark and of a thumb print; "sitting" in relation to Parliament includes a period during which Parliament is sitting continuously without adjournment and a period during which Parliament is in committee;

"Speaker" means the person elected as Speaker by members of Parliament, and Deputy Speaker means a person so elected.

"statute of general application" means a statute of the United Kingdom Parliament as at the 24th day of August, 1874 applicable to Ghana;

"statutory corporation" means a corporation established by or under an Act of Parliament;

"statutory declaration" means a declaration made in accordance with the law relating to statutory declarations;

"statutory period" in relation to a statutory instrument means a period of twenty-one sitting days or any other period prescribed by the enactment.

"summary conviction" means conviction for a summary offence; "summary offence" means an offence triable otherwise than on indictment;

"Supreme Court" means the Supreme Court established pursuant to articles 125 and 126 of the Constitution; "surety" means sufficient surety;

"unregistered land" means land the title to which is not registered under that enactment.

"vehicle" includes a motor vehicle, a motor cycle, a bicycle and any other carriage or conveyance of any kind used, on land or 111 space;

"vessel" means a ship, boat, lighter or other floating craft used or capable of being used for transport by water;

"words" when used in an amending enactment includes figures, punctuation marks and typographical, monetary, mathematical and scientific symbols.

"year" means a period of twelve months;

"session" in relation to Parliament means sessions as defined in article 295 of the Constitution;

"ship" includes every description of vessel used in navigation not exclusively propelled by oars or paddles;

"signature" includes the making of a mark and of a thumb print; "sitting" in relation to Parliament includes a period during which Parliament is sitting continuously without adjournment and a period during which Parliament is in committee;

"Speaker" means the person elected as Speaker by members of Parliament, and Deputy Speaker means a person so elected.

"statute of general application" means a statute of the United Kingdom Parliament as at the 24th day of August, 1874 applicable to Ghana;

"statutory corporation" means a corporation established by or under an Act of Parliament;

"statutory declaration" means a declaration made in accordance with the law relating to statutory declarations;

"statutory period" in relation to a statutory instrument means a period of twenty-one sitting days or any other period prescribed by the enactment.

"summary conviction" means conviction for a summary offence; "summary offence" means an offence triable otherwise than on indictment;

"Supreme Court" means the Supreme Court established pursuant to articles 125 and 126 of the Constitution; "surety" means sufficient surety;

"unregistered land" means land the title to which is not registered under that enactment.

"vehicle" includes a motor vehicle, a motor cycle, a bicycle and any other carriage or conveyance of any kind used, on land or 111 space;

"vessel" means a ship, boat, lighter or other floating craft used or capable of being used for transport by water;

"words" when used in an amending enactment includes figures, punctuation marks and typographical, monetary, mathematical and scientific symbols.

"year" means a period of twelve months;

"young person" means a person who has attained the age of eighteen years but is under twenty-one years;

Assignment of Ministerial responsibilities

47. Notwithstanding anything to the contrary in an enactment, where a change in the assignment or responsibility for the business of government is notified in the *Gazette* by a Government Notice setting out the former assignment or responsibility and the substituted assignment or responsibility, a reference to the former assignment or responsibility in an enactment and in a document made or issued under the enactment shall be construed as a reference to the substituted assignment or responsibility from the date specified in the Government Notice.

Delegation of functions

48. Where by or under an enactment a function is conferred on a person or an authority other than a function in relation to the hearing of a petition or the making of subsidiary legislation that person or authority may by instrument in writing delegate the performance of that function to a person either by name or as the holder of an office as is specified in the instrument subject to the conditions, exceptions and qualifications that are so specified.

Signification of delegation

49. A delegation made under section 48

(a) shall, within twenty-four hours, be published in the *Gazette*; (b) may be revoked or varied by the like instrument or order as is respectively specified in that section; and the revocation or variation shall, within twenty-four hours, be published in the *Gazette*.

Instrument under the Public Seal

50. (1) A proclamation, warrant or any other instrument issued under the public seal shall be signed personally by the President.

(2) Subject to subsection (1), a statutory instrument made by the President, may be signed personally by a Minister by command of the President.

(3) Prima facie evidence of a statutory instrument may be given in proceedings before a Court by the production of a copy of the *Gazette* purporting to contain the statutory instrument.

Citation of Acts

51.(1) An Act may be cited by reference to its short title.

(2) Where a statutory instrument is published in the *Gazette* in accordance with section 18, then

(a) without prejudice to an enactment, the original of that instrument and a copy of it printed by the Government Printer, is admissible in evidence without proof of the authority, signature or capacity of the person by whom the instrument is signed;

(b) a copy of that instrument printed by the Government Printer shall be evidence of the due making of that instrument and of its content; and

(c) a copy of that instrument purporting to have been printed by the Government Printer shall be deemed to have been so printed unless the contrary is proved.

(3) In an enactment a description of, or citation from, any other enactment or from a document shall be construed as including the word, subsection, section, or other portion mentioned or referred to as forming the beginning or as forming the end of the portion comprised in the description or citation or as being the point from which or to which the portion extends.

(4) A statutory instrument may be cited by the title set out at the head of the instrument on publication or by the number allocated to the instrument on publication and the calendar year.

Repeals

52. The Interpretation Act, 1960 (c. A. 4) as amended by,

(a) the Interpretation (Amendment) Law, 1982 (P.N.D.C.L. 12), (b) the Interpretation (Amendment) Act, 1961 (Act 92), and (c) the Interpretation (Amendment) Act, 1962 (Act 145); and

the Statutory Instruments Act, 1959 (No. 52 of 1959), the Acts of Parliament of Act 1960 (C.A.7) and the Fines (Penalty Units) Act, 2000 (Act 572) are repealed.

FIRST SCHEDULE

(Section 5(4))

This printed impression has been carefully compared by me with the

Bill which was passed by Parliament on the day of
..... and found by me to be a true copy of the Bill.

.....

Date of certification

.....

Speaker

(Section 5(5))

Form of Speaker's Certificate

I hereby certify that power to pass this Act has been conferred on Parliament in accordance with the relevant provisions of the Constitution.

.....

Date of certification

.....

Speaker

(Section 5(4))

I hereby signify assent to this bill.

.....

Date of certification

.....

Speaker

SECOND SCHEDULE

Section 27(1)

One penalty unit is equal to GH¢12.00.

Interpretation Act

Previous Legislation

Ordinance NO.3 of 1876

No.1 of 1907

No.6 of 1916

No. 32 of 1921

No.1 of 1923

NO.7 of 1924

No. 11 of 1928

No.5 of 1929

Revised Edition 1936

Cap 1

Ordinance No. 6 of 1935

No. 19 of 1936

No. 13 of 1942

No. 37 of 1946

No. 19 of 1949

No.3 of 1951

Revised Edition 1951

Cap 1

Ordinance 150 of 1952

NO.6 of 1953

No. 18 of 1954

Act 1957 No 29

1960 C. A. 4

1961 Act 92

1962 Act 145

1972 PN.D.C.L. 12

MEMORANDUM

The object of this Bill is to recast the Interpretation Act 1960, which is nearly fifty years old. Much has changed in those years. The need for an up date of the Act is necessary. The Interpretation Act 1960 (CA. 4) was cast in the mould of the circumstances which formed part of a series of legislation enacted by the Constituent Assembly to usher in the First Republic Constitution 1960. The Laws of Ghana (Revised Edition) Act, 1998, (Act 562) debars, by subsection (1) of section 3, the Statute Law Revision Commissioner from making an alteration or amendment in the matter or substance of an Act. However, subsection (2) of that section provides that,

"Where the Commissioner considers,

(a) that an alteration or amendment in the matter or substance of an Act is desirable, or

(b) that an Act requires considerable alteration or amendment

involving the entire recasting of the Act,

the Commissioner shall prepare a Bill setting out the alteration or amendment or the recasting of the Act for introduction into Parliament. "

Hence this Bill. Apart from a few changes, taking into consideration the changed circumstances of the country in 1960, and the impact of the 1960 Constitution, the Interpretation Act 1960 closely followed, as was usual in most Commonwealth countries, the Interpretation Act 1889 of the United Kingdom Parliament. The 1889 Act was itself a development on statutory interpretation since Lord Brougham's Act, the Interpretation Act, 1850. We have all moved a long way since the end of the 19th century. Indeed the United Kingdom Parliament has revised its Interpretation Act 1889 into the Interpretation Act 1978. There is the need to recast our legislation.

An Interpretation Act is an Act of wide application. It is intended to lay down certain basic rules as to how the Courts should interpret an Act of Parliament. It contains the definition of certain words and expressions. The essence is to avoid unnecessary repetition of the definition of those words or expressions in other enactments. Though an Interpretation Act provides a set of definitions and rules which regulate certain aspects of the operation of other enactments, it is not all a question of definitions.

There are other provisions which are not mere definitions or rules of construction. These are substantive rules or laws, such as are set out in *clauses* 32, 34 and 35 of the Dill. Judicial decisions have approved the application of those rules of law. But an Interpretation Act does not supply all the answers. It simplifies the law, in that it avoids repetition, promotes consistency in the use of language and clarifies, to an extent, the construction of an Act of Parliament.

Clause (2) of article 1 of the Constitution 1992, places the Constitution on a pedestal high above that of the ordinary law of the land. The Constitution is the supreme law. A law found to be inconsistent with, or in contravention of, a provision of the Constitution is void to the extent of the inconsistency or the contravention. The Constitution is thus not an ordinary law of the land. It is a legal document as well as a political testament. It embodies the soul of our people in a sense that the ordinary law cannot achieve. It is organic in its conception and thus allows for the growth and progressive development of its own peculiar conventions. Indeed, in obvious and subtle ways it is an instrument of rights and limitations and not a catalogue of powers.

But section 1 of the Interpretation Act 1960 subjects the interpretation of the Constitution to that Act. Thus an inferior law is made the vehicle by which the construction of the supreme law of the land is determined. In this sense the Constitution is subordinated to an inferior law. It detracts from the Constitution's supremacy. This Bill seeks, among other things, to do away with that concept.

By that process the construction and interpretation of the Constitution, 1992, will not be tied down by the Interpretation Act but will take account of the cultural, economic, political and social developments of the country without recourse to amendments which can be avoided if the *spirit* of the Constitution is given its due prominence. A Constitution is a sacred document. It must of necessity deal with facts of the situation, abnormal or usual. It will grow with the development of the nation and face challenging changes and new circumstances. It must be allowed to germinate and develop its own peculiar conventions and construction not hampered by niceties of language and form that would impede its singular progress.

In musical terms the interpretation and construction of the Constitution should involve the interplay of forces that produce a melody and not the highlighting of the several notes. The country is an expanding society. Those who deal with the Constitution must appreciate that concept. *Plessy v Ferguson* [163 US 537, 16 S.Ct. 1138, 41 L.Ed 256 (1896)] and *Brown v Board of Education* [347 US 483, 74 S.Ct. 686, 98 L.Ed. 873 (1954)] have demonstrated that time, circumstances and the need to keep

pace with the advancement in social conditions must be taken into consideration in construing or interpreting a Constitution.

In particular also clause (1) of article 34 enjoins the Judiciary to be guided by the Directive Principles of State Policy contained in Chapter Six of the Constitution "in applying or interpreting [the] Constitution or any other law and in taking and implementing any policy decisions for the establishment of a just and free society". We thus do not have to be pedantic in dealing with the Constitution.

On the other hand, it is appropriate for the Constitution, being the supreme law, to lay down certain principles of interpretation not only for the Constitution, but for any other law. Thus in article 297 the Constitution lays down the principle of implied power to guide the Courts in the construction of powers conferred on

various authorities and persons. *Clause 21* of the Bill reflects that principle but extends its application in relation, not to the Constitution, but to an enactment not being the Constitution.

In essence the Constitution must be construed or interpreted in a manner

(a) that promotes the rule of law and the values of good governance,

(b) that advances human rights and fundamental freedoms,

(c) that permits the creative development of the provisions of the Constitution and the Laws of Ghana, and

(d) that avoids technicalities which defeat the purpose of the Constitution and of the ordinary law of the land.

Another issue which needs to be addressed is the relaxation of the exclusionary rule which forbids the Courts from referring to the debates in Parliament in the construction or interpretation of an Act of Parliament or a provision of an Act of Parliament. Ghana led the Commonwealth in empowering the Courts under section 19 of the Interpretation Act, 1960 CC.A.4) to turn, in addition to any other accepted aid, to a textbook or other work of reference, to the report of a commission of inquiry into the state of the law, to a memorandum published by authority in reference to the enactment or to the Bill for the enactment and to any papers laid before Parliament in reference to it, *but not to the debates in Parliament*. Australia, then, New Zealand followed Ghana's example and then others.

The general rules for the construction or interpretation used by the Courts were formulated by the Judges and not enacted by Parliament. From the Mischief Rule enunciated in *Heydon's Case* [(1584) 3 Co. Rep. 7a; 76 E.R. 637] to the Literal Rule enunciated in the *Sussex Peerage Case* [(1844) 11 Co & F 85; 8 E.R. 1034], to the Golden Rule enunciated in *Grey v Pearson* [(1857) 6 H.L.e. 61; 10 E.R. 1216] the Courts in the Commonwealth have now moved to the Purposive Approach to the interpretation of legislation and indeed of all written instruments. The Judges have abandoned the strict constructionist view of interpretation in favour of the true purpose of legislation.

The Purposive Approach to interpretation takes account of the words of the Act according to their ordinary meaning as well as the context in which the words are used. Reliance is not placed solely on the linguistic context, but consideration is given to the subject-matter, the scope, the purpose and, to

some extent, the background. Thus with the Purposive Approach to the interpretation of legislation there is no concentration on language to the exclusion of the context. The aim, ultimately, is one of synthesis.

The Purposive Approach has been encapsulated in *Pepper (Inspector of Taxes) v Hart* [[1993] 1 All E.R. 42], the United Kingdom now following Australia and New Zealand. That decision now makes it possible for the Courts in other Commonwealth countries to seek assistance from

- (a) the legislative antecedents of the statutory provisions under consideration;
- (b) pre-parliamentary materials relating to the provisions in the Act in which it is contained, such as reports of committees and of commissions reviewing the existing law and recommending changes;
- (c) parliamentary materials such as the text of a Bill and reports on its progress in Parliament taking note also of explanatory memoranda, proceedings in committee and parliamentary debates.

The records of the debates in Parliament are a rich source of information regarding the intention of Parliament which the Courts when faced with problems of construction and interpretation seek to divine. But the Courts will resort to the debates only where

- (a) the legislation is ambiguous or obscure or the literal meaning would lead to absurdity;
- (b) the material relied on consists of a statement or statements made by the Minister in charge of the Bill or other promoter of the Bill which led to the enactment of the legislation, together if necessary, with such other parliamentary material as is necessary to understand the statements and their effect;
- (c) the statements of the Minister or other promoter of the Bill are clear.

We cannot now afford to let the Courts wear blinkers which would "conceal the vital clue to the intended meaning of an enactment." Parliamentary materials may shed a light or two on the meaning of the words in an Act of Parliament, and the Courts should be allowed to refer to those materials. Such materials are "an equally authoritative source" of information. The provisions of the 1960 Act which forbid the Courts from referring to parliamentary debates have thus not been repeated in the Bill: *Clause 10*. It is a function of the Courts to help

solve, through the judicial process, some of the difficulties of society. *Some*, because the Courts are a passive institution: unless we go to Court, the Courts do not have anything to adjudicate upon. When we are before them they try to adjust relationships in our commercial, cultural, economic, political and social lives. The Interpretation Act is one of the instruments at hand to help in that difficult and onerous task.

It is envisaged that the use of parliamentary material as a guide to the construction of ambiguous legislation would not involve the questioning of the freedom of speech in Parliament nor of parliamentary debate:

Counsel and Judge would refrain from impugning or criticising statements made on the floor of Parliament. The Judges seek to keep the balance that should exist in those matters in the relationship between the Legislature and the Judiciary. The purpose of the Courts referring to parliamentary material would be to give effect to, rather than thwart, the intention of Parliament. It could not be the purpose of the Courts to question the processes by which the legislation was enacted or to criticise anything said by anyone in Parliament in the course of passing the Bill.

Judicial review is a principle now established in administrative law. It is of the essence of the liberty of the individual. It is a right which opens the door to the individual to claim the protection of the law when the individual feels aggrieved. To aid both the Courts and the individual *clause 21* of the Bill deals with the exercise of statutory powers. It provides for enabling powers incidental to a power conferred as well as the limits regarding the exercise of discretionary powers. These powers are to be exercised in accordance with the tenor of the enactment, should not be exceeded and will be construed subject to the enactment under which the power is conferred. When a power is conferred for an act to be done, the exercise of the power should not be inconsistent with the power so given.

Clause 21 of the Bill thus takes cognizance of articles 23 and 296 of the Constitution. *Clause 23* of the Bill also seeks to deal with the implied powers of public office holders.

It is not unknown for an authority on which or a person on whom a power is conferred to make a mistake or an error in the exercise of that power. In an important case it may require an Indemnity Act or a Validating Act to solve the problem. *Clause 22* of the Bill thus seeks to make it an ancillary power for that authority or person to correct the error or omission in the previous exercise or performance of the power or function. It should be emphasised, though, that

the correction of an error or omission will not affect the substantive rights or procedures for redress by a person who has suffered loss or damage or is otherwise aggrieved as a result of the error or omission that has been corrected. In the circumstances, an investigation, a legal proceeding or a remedy in respect of a right, a privilege, an obligation or a liability will continue as if the omission or error had not been corrected.

Another area dealt with in the Bill which requires an explanation is in respect of the incorporation of statutory bodies. Clause (3) of article 190 of the Constitution provides that whenever a body is set up the relevant legislation should make provision for a governing body. *Clause 24* of the Bill takes the matter further and provides that when in an enactment words are used that establish or provide for the establishment of a body corporate those words shall be taken to clothe the body corporate with the characteristics of a corporation whether aggregate or sole. The intendment of the *clause* is that those characteristics of a corporation, such as the power to sue and be sued, the power to own and dispose of property and the right to regulate its practice and procedures would be automatically incorporated in that enactment. There would be no need, therefore, to recite those characteristics which are common to incorporation each time a body of persons is incorporated by legislation.

However the Statute Book contains several bodies corporate established with the right to sue or be sued. Bodies corporate of that kind are organs of the Republic and the Attorney-General sues or is sued on behalf of those bodies in accordance with article 88 of the Constitution. In view of situations like that it is as well to keep in view that an Interpretation Act does not apply where there is a contrary intention-either express or by necessary implication. But there is the need to make clear the implications of article 88. And to put the matter beyond doubt *subclause (2) of clause 24* provides that *subclause (1) a/c clause 24* is subject to the operation of article 88 of the Constitution.

Before the Preamble to the Constitution, 1992 the expression the Republic of Ghana is used. However, in article 4 the expression "Sovereign State of Ghana" is used in reference to the "unitary republic". Then there is the Council of State and not the Council of the Republic. Articles 20 and *94(2)(d)* of the Constitution, also refer to the State and not to the Republic. In Chapter Six *State* is used throughout and not *Republic*. It would thus be appropriate to use the definition, "*State*" means the unitary Republic of Ghana", though article 5 7 refers to "a President of the Republic of Ghana", whilst article 63(3) uses the expression "President of Ghana". The Constitution, on the whole, uses *State* more than it employs *Republic*. However, popular usage prefers *Republic as the legal entity* and not *State* and that is reflected in the Bill.

The Constitution also, in clause (7) of article 11 requires that Regulations, Rules and Orders

"(a) shall be laid before Parliament,

(b) shall be published in the *Gazette* on the day they are laid before Parliament, and

(c) shall come into force at the expiration of twenty-one sitting days after being so laid unless Parliament, before the expiration of the twenty-one days annuls the Order, Rule or Regulation by the votes of not less than two thirds of all the members of Parliament."

Each of these instruments would fall under the definition of *statutory instrument* or *statutory document* as specified in *clause 1* of the Bill. There are other instruments not mentioned under article 11 of the Constitution, such as Bye-Laws and Proclamations. The express mention of the Orders, Regulations and Rules excludes, by necessary implication, the other statutory instruments or statutory documents not so mentioned. These instruments, therefore, do not fall within the ambit of article 11.

When an enactment provides that an instrument is "subject to an affirmative resolution" it means that the instrument shall be laid before Parliament and shall not come into operation unless Parliament has by an affirmative resolution approved its coming into operation. The result is that if Parliament does not pass the requisite resolution the instrument does not come into force. On the other hand when an enactment provides that an instrument is "subject to a negative resolution", the end result is that the instrument takes effect when it is so made and laid before Parliament. The instrument will only cease to have effect when it is annulled by the requisite resolution of Parliament.

But paragraph (c) of clause (7) of article 11 is in the nature of the parliamentary procedure of *negative resolution* and its operation as a constitutional procedure, makes it awkward to provide in other legislation for the parliamentary procedure of negative resolution and affirmative resolution.

The Fines (Penalty Units) Act, 2000 (Act 572) contains provisions which are applicable to all enactments in so far as an enactment contains provisions which impose fines as a sanction so that the law is obeyed in accordance with the

terms of the enactment. The Act applies to enactments in force before its commencement or subsequent to its coming into operation. It is therefore similar in nature to an Interpretation Act. For that reason it is appropriate for it to form part of the Interpretation Act.

When pecuniary penalties are provided for by an Act the amounts stated remain static unless amended. In the majority of cases by an amending Act of Parliament. It is a long process. Where the fines have been provided for by subsidiary legislation it is easier for the relevant authority to amend the subsidiary legislation.

Since the value of a currency changes from time to time as its purchasing power fluctuates, amendments may not keep pace with the fluctuations in the value of the currency. Hence the need to specify fines by reference to penalty units. The fluctuations can then be dealt with by an amending instrument. *Clauses 26 and 27* of the Bill thus incorporate sections 1 and 2 of the Fines (Penalty Units) Act, 2000 (Act 572). The other provisions of Act 572 are spent.

Article 11 of the Constitution deals adequately with the Laws of Ghana, their content and scope. Sections 17 and 18 of the Interpretation Act 1960 have thus not been repeated in the Bill. There is little doubt that in a contest the Constitution will prevail over an enactment in conflict with it and the Courts should be free to develop our own jurisprudence.

The Acts of Parliament Act, 1960 (CA. 7), like the Interpretation Act, 1960 (CA.4), was part of a series of Acts enacted by the Constituent Assembly and brought into force at the same time as the 1960 Constitution. Events have overtaken the operation of the Acts of Parliament Act, and most of its important provisions, for example, the provisions relating to the President's Assent, have become spent having regard to article 106 of the 1992 Constitution. But its provisions relating to numbering and original copies of Acts of Parliament are very much part of the existing law. However, in order to avoid having a 'skeletal Act' the provisions of the Acts of Parliament Act have been incorporated in the Act: *Clauses 5, 12(1), 17, 18 and 50 (1)*.

In like vein the remaining provisions of the Statutory Instruments Act 1989 (No. 52 of 1959) have been incorporated in the Bill: *clause 21(10)*.

The other provisions in the Bill are familiar features of an Interpretation Act and thus this Memorandum deals only with the salient features of the present Bill which require an explanation.

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Attorney-General and Minister for Justice

ACT 2009	INTERPRETATION ACT, 1960 C.AA	ACT 2009 INTERPRETATION ACT, 1960 C.A.4	ACT 2009 INTERPRETATION ACT, 1960 C.A.4
<i>Section</i>	<i>Section</i>	<i>Section</i>	<i>Section</i>
1	32	15	
2	1	16	
3	-	17	4
4	-	18	
5	-	19	5
6	-	20	-
7	-	21	-
8 (2)	20	22	-
9	-)"	-
10	19	<u>J</u>	-
11	29	24	-
12	6, 7	25	--
13	2	26	
14		27	10,11
28	J		-
29	14	43	
30	13	44	12
31	16	45	-
32	15	46	-
33	-	-	-
34	-	-	-
35	9	-	-
36	- 47	-	-
37	21	48	-
38	-	49	24
39	28	50	
40	30,31	51	22,23,25
41	26	52	
42	27	-	

ACT 2009	SIATUTORVINSTRUMENTS ACT, 1959 (0.52)
<i>Section</i> I 2 12(6) 21,38 21 (9), (1 0), (11) 51(4),2	<i>Section</i> 2 3,5 14(3) 6, 7 8 15