

DRAFTING PROJECT 5

Suggested Answer

Local Government (Miscellaneous Functions) Act

- 28.** An individual¹ who, when performing a function² conferred upon him³ by the Minister⁴ under section 27⁵:
- (a) contravenes⁶ a condition contained in a licence issued to that individual by the Minister under⁷ bye-laws⁸; or
 - (b) does an act⁹, required under the Government (Licensed Authorities) Act 1985¹⁰ to be done by that individual, otherwise than in accordance with that Act,
- commits¹¹ a summary offence¹² and is liable¹¹ on conviction by a magistrate's court¹³:
- (aa) in the case in paragraph (a),¹⁴ to the penalty¹⁵ prescribed¹⁶ in the bye- laws; and
 - (bb) in the case in paragraph (b),¹⁴ to a fine of¹⁷ \$500 and¹⁸ to¹⁷ imprisonment for 3 months.

Notes:

The Interpretation Act enables the original provision to be shortened by two-thirds (from 302 words to 100). The following changes have been made (the references are to the **model Interpretation Act 1992**):

1. The term "person" cannot be used as the definition of that term in the model Act (**s.29**) includes cases that are outside this section. The only case to which the section could apply is that of natural persons. The Act defines "individual" as having that meaning (**s.29**).
2. The definitions of "perform", "function" and "power" in **s.29** cover the cases in the original.
3. Although **s.23(1)** authorises an expression using the masculine gender to include the feminine, many drafters would add "or her", in order to achieve gender-neutral drafting.
4. The term "Minister" is defined (**s.27**) to permit references to the Constitutional source of the office and to the assigned responsibility to be omitted. References to those acting in the office are made superfluous by **s.48**.
5. Omission of "of this Act" is authorised by **s.16(3)**.
6. The term "contravenes" is defined to cover failure to comply (**s.29**). In its ordinary use, it is a synonym of "violates".
7. The term "under" is defined to cover "by virtue of" and "in pursuance of" (**s.29**).
8. A reference to subsidiary legislation without more is a reference to such legislation

made under the Act in which the reference appears (**s.16(6)**). A power to act (here to make bye-laws) may be exercised as the occasion requires (**s.45**), without the need to state it.

9. The term "act" is defined to cover both omissions and series of acts (**s.29**).
10. A reference to a specific Act is to be read as including a reference to amendments to the Act or to an Act replacing it (**s.16(1)**) and the definition of "amend" in **s.25(1)**, and to any subsidiary legislation made under the Act (**s.42(1)**).
11. The Act requires "shall" to be construed as an imperative (**s.24**). That is hardly appropriate in these cases. The present tense states a legal consequence that is always speaking (**s.20**).
12. The definition of "summary offence" (**s.26**) covers the case.
13. The term "magistrate's court" is defined to cover the original (**s.26**). Most drafters would exclude this phrase if the magistrate's court is the court with the power to try summary offences.
14. A reference to a paragraph without more is a reference to a paragraph in the provision making the reference (**s.16(4)**).
15. The term "penalty" is defined sufficiently widely to cover the various forms of punishment (**s.29**).
16. The term "prescribed" (defined in **s.25(1)**) is the appropriate term to be used here.
17. References to "not exceeding" when setting a maximum penalty can be omitted under **s.54(1)**.
18. Use of "and" to join two penalties means that these may be ordered either as alternatives or cumulatively, without additional words being needed (**s.54(2)**).

Numerical references are expressed in numbers rather than words. This desirable practice is followed in the model Act, although, of course, it does not require statutory authority.

The structure of the section could be further improved if it were broken into two subsections, so avoiding the unsatisfactory numbering of the second set of paragraphs.

28.-(1) An individual commits an offence who, when performing a function conferred upon him by the Minister under section 27:

- (a) contravenes a condition contained in a licence issued to that individual by the Minister under bye-laws; or
- (b) does an act, required under the Government (Licensed Authorities) Act 1985 to be done by that individual, otherwise than in accordance with that Act.

(2) An individual convicted by a magistrate's court of an offence under subsection (1) is liable

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- (a) in the case in paragraph (a) of subsection (1), to the penalty prescribed in the bye-laws; and
 - (b) in the case in paragraph (b) of subsection (1), to a fine of \$500 and to imprisonment

for 3 months.