

# SYNTACTIC DISCONTINUITY IN THE LANGUAGE

## OF UK AND EU LEGISLATION

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### 1 GENERAL REMARKS UPON SYNTACTIC DISCONTINUITY IN LEGISLATIVE WRITING

Syntactic discontinuity is a relatively frequent result of a deliberate manner of formulation in legislative writing. It occurs if two elements of the same phrase, e.g. a noun phrase, which would normally be situated beside each other in the sentence structure, are formally separated by another expression or clause being inserted in between them. As a result of this, the two elements, which are both semantically and structurally related, may end up distanced from each other in the structure of the sentence and the close semantic or structural relation between them may become less obvious.

Naturally, this phenomenon does not occur in legislative documents without cause. In fact, the reason for syntactic discontinuity in legislative writing is obvious – it is connected with the frequent use of the so-called qualifications in legislative provisions (Bhatia 1994). These adverbial constructions are an essential part of legislative provisions, as their function is to establish the scope of application of legislative rules. The problem arises if there are too many such expressions to be inserted within the bounds of a single sentence. As Bhatia points out (1994, pp. 147 – 148), ‘if qualifications on the one hand

make the main provisional clause more precise and clear, they can also promote ambiguity if they are not placed judiciously. That is the main reason why legal draftsmen try to insert qualifications right next to the word they are meant to qualify... The result of all this effort is that these qualifications are inserted at various points where they create syntactic discontinuities rarely encountered in any other genre.'

What has been stated about syntactic discontinuity thus far may create the impression that it is a phenomenon which is closely connected with legislative documents, or specialist texts in a wider sense. However, syntactic discontinuity is not restricted to any particular varieties of the language and may appear in any genre. It often appears within the bounds of a noun phrase, i.e. between the head and the modifier, as the following examples show.

(a) *a book by a young promising author about his adventures in Africa*

(b) *I got a letter from the bank detailing the reasons for the extra charges.*

The reasons for syntactic discontinuities in general English are nevertheless different from the reasons for syntactic discontinuities in legislative writing. In legislative writing syntactic discontinuity helps safeguard precision and rule out ambiguity. However, in non-specialist language, syntactic discontinuity is used to harmonise the structure of the sentence, i.e. the word order, with the semantics of the sentence.

Quirk et al. (1985, p. 1398) identify two motives for using syntactic discontinuity in English sentences. The first one is 'to achieve a stylistically well-balanced sentence in accordance with the norms of English structure; in particular to achieve END-WEIGHT'. This can be demonstrated by rephrasing example (a) above.

(1) *A book by a young promising author about his adventures in Africa has been published.*

(2) *A book has been published by a young promising author about his adventures in Africa.*

It is obvious that sentence (1) lacks balance, as the subject (including all its modifiers) is disproportionately longer than the verb in the sentence. The principle of end-weight is complied with in sentence (2), as the verb has been

inserted in between the head of the subject and its post-modifier.

However, much as the sentence would be acceptable in the so-called general English, it would be inappropriate in legislative writing. The reason is that although it meets the requirement of end-weight, it creates ambiguity at the same time. The phrase *by a young promising author* could be interpreted as relating to *a book*, or to the act of publishing the book. The question would arise based on this ambiguity over whether the ‘young promising author’ is just the author of the book, or whether he is the publisher as well. Due to this inaccuracy, a legislative drafter would probably opt for another formulation which would use syntactic discontinuity. This formulation would rule out any potential ambiguity and at the same time it would guarantee the principle of end-weight, as shown below.

(3) *A book by a young promising author has been published about his adventures in Africa.*

The other motive regarded by Quirk et al. as essential for the existence of syntactic discontinuity in English sentences is the need ‘to achieve an information climax with END-FOCUS’. This is connected with the theory of functional sentence perspective and the division of the sentence into the theme, the transition and the rheme. There is a tendency to place the information focus towards the end of the sentence to achieve the information climax. This can be demonstrated by rephrasing example (b).

*I finally got the letter from the bank detailing the reasons for the extra charges.*

In this sentence, syntactic discontinuity affects the structure of the object. There is an obvious agreement between the word order and the typical distribution of communicative dynamism throughout the sentence. The thematic part, i.e. *I finally got the letter*, is followed by the transition, i.e. *from the bank*, and the sentence ends with the rhematic part which provides the information climax, i.e. *detailing the reasons for the extra charges*. Apart from complying with the principle of end-focus, the sentence also complies with the principle of end-weight at the same time.

Generally speaking, syntactic discontinuity is more common in formal language than in informal language. An exception to this rule would be unprepared

spoken discourse, where a syntactic discontinuity is a sign of spontaneity and impromptu formulation. The main difference between the occurrence of syntactic discontinuity in legislative writing on the one hand, and the so-called general English on the other is evident. Whereas in the so-called general English syntactic discontinuity appears to be a peripheral feature of the syntax, in legislative writing it is one of the prominent and therefore central syntactic features of the text.

The following example shows an instance of a discontinuous noun phrase in legislative documents.

*Nothing in Parts I to V of this Act applies in relation to any information held by a publicly-owned company which is excluded information in relation to that company.*

Freedom of Information Act, 2000, s. 7(7)

The example shows a syntactic discontinuity between the object and its post-modifying relative clause. As the relative pronoun *which* has the potential of being ambiguous if it is not attached immediately to its antecedent, the relative clause includes a reiteration of the antecedent, i.e. *information...which is excluded information*. This makes it impossible to relate *which* to the immediately preceding element *company*.

Another type of syntactic discontinuity, i.e. a discontinuous verb phrase, is shown in the following example.

*Either Chief Inspector may, in exercising his functions under this section with respect to a registered inspector, have regard to any action taken by the other Chief Inspector with respect to that registered inspector.*

Education (Schools) Act, 1992, s. 11(4)

The syntactic discontinuity in the example above affects the operator and the predication, which are separated by a relatively long adverbial expression. Strangely enough, syntactic discontinuity in a verb phrase is not mentioned in Quirk et al. (1985).

Another type of syntactic discontinuity is a discontinuous coordinate construction, an example of which is presented in the following sentence.

*An appeal under this section may be brought only with the leave of the Immigration Appeal Tribunal or, if such leave is refused, with the leave of the appropriate appeal court.*

Asylum and Immigration Appeals Act, 1993, s. 9(2)

Syntactic discontinuity can also be traced in adjective phrases, as the following example suggests.

*... the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made, ...*

Sale of Goods Act, 1979, s. 12(2)(a)

No matter how many instances of syntactic discontinuity there are in a sentence, syntactic discontinuity always tends to make the structure more complicated and impede comprehensibility to some extent. This is so even when there is only one instance of discontinuity in a sentence.

## **2 THE EFFECT OF CONTEXTUAL CIRCUMSTANCES ON THE LANGUAGE OF UK AND EU LEGISLATIVE DOCUMENTS**

The decision to study syntactic discontinuity in the context of UK and EU legislative materials was a deliberate one. Both UK and EU legislation have been formed under totally different circumstances, which is likely to affect the language in which they are formulated.

Whereas UK legislation has gone through a long development, the earliest EU legislative documents are only several decades old. The origins of UK legislation are in the Anglo-Saxon period although at that time, legislative rules existed only in their spoken form. It was only later in connection with the development of society that the formation of a written legal standard became inevitable. The introduction of printing in the 15<sup>th</sup> century made it possible to introduce unifying rules into the procedure of legislative drafting. On the whole, it is apparent that British legislative writing has evolved through a long continuous process and that its current state is largely determined by its history and tradition.

On the other hand, EU legislation is a relatively recent type of legislative writing. The European Union was established by the Maastricht Treaty at the beginning of the 1990s. It encompasses the former European Communities, i.e. the European Economic Community, the European Coal and Steel Community and the European Atomic Energy Community, which were established during the 1950s. Apart from these primary documents, EU legislation also includes various regulations, directives, decisions, recommendations and opinions which differ from one another by various degrees of applicability and enforceability in member states.

It is clear that as opposed to UK legislation, EU legislation is not affected by centuries of development. It also differs from UK legislation in that it follows continental drafting methods rather than those of Britain, which is a common law country. As Maley points out (1994, p. 29), continental drafting gives more power to the individual court as far as the interpretation of statutes is concerned. EU legislation is quite general and provides a rather wide scope for interpretation.

In contrast, UK legislation tends to be as specific as possible and attempts to cater for any possible interpretation in the text itself and leave little scope for the court to come up with its own interpretation. Therefore, UK legislation tends to use a large number of legal qualifications to strictly determine the application of legislative rules while taking into account every case which the court may face. Of course, this is too difficult a task to be mastered by simple language if the language should ensure precision and rule out ambiguity at the same time. As a result, the clarity and comprehensibility of legislative formulation are often reduced at the expense of all-inclusiveness.

On the basis of the above-mentioned facts, it is possible to formulate a hypothesis regarding the frequency of syntactic discontinuity in UK and EU legislative documents. As the language of UK legislation tends to use a high number of legal qualifications to safeguard precision and all-inclusiveness, we can anticipate that this tendency will result in the frequency of syntactic discontinuity being higher in UK legislation than in EU legislation. The following analysis of selected UK and EU legislative materials should either confirm or deny this.

### **3 REMARKS UPON THE SELECTION OF SOURCES**

## TO BE ANALYSED

The choice of legislative materials for the analysis reflects the effort to provide an accurate and credible picture of contemporary legislative language both in UK and EU law.

The analysis will study a number of different documents which were drawn up in the course of a relatively long period of time. This should guarantee a high degree of objectivity and therefore reliable results, as each legislative document has its own individual character and what applies to one does not necessarily have to apply to another. A certain document may show a frequent occurrence of a particular feature which at the same time could be underrepresented in another document. Therefore using several different sources will lead to the analysis having better credibility. For the same reason the analysis does not focus on legislation drafted in the same period, but deals with documents drafted over a longer period of time. This diversity should also guarantee that the results of the analysis will not be distorted.

The analysis is therefore based on a sample consisting of 1200 sentences – 600 of which come from UK legislative materials and 600 from EU legislative materials. While for the UK sample five different documents have been used, for the EU sample, as many as 16 different legislative documents have been chosen. This is because EU legislative documents tend to be shorter. For a full list of the analysed documents, see the bibliography.

## 4. A NUMERICAL ANALYSIS OF SYNTACTIC

### DISCONTINUITY IN UK AND EU LEGISLATIVE

### DOCUMENTS

The frequency of syntactic discontinuity in the UK sample is shown in Fig 4(a) below.

<b>Act of Parliament</b>	<b>Number of sentences analysed</b>	<b>Total no. of instances of syntactic discontinuities</b>	<b>Average no. of syntactic discontinuities per sentence</b>
Sale of Goods Act 1979	145	39	0.27
Copyright, Designs and Patents Act 1988	182	80	0.44
Education (Schools) Act 1992	39	12	0.31
Asylum and Immigration Appeals Act 1993	56	14	0.25
Freedom of Information Act 2000	178	73	0.41
<b>UK Total</b>	<b>600</b>	<b>218</b>	<b>0.36</b>

Fig 4(a) shows that the occurrence of syntactic discontinuity is fairly even throughout the UK sample, ranging from **0.25** instances of syntactic discontinuity per sentence in the **Asylum and Immigration Appeals Act 1993** to **0.44** instances per sentence in the **Copyright, Designs and Patents Act 1988**. The average frequency of syntactic discontinuity in the whole of the UK sample reaches **0.36** instances per sentence, which is relatively high. Although the frequency of syntactic discontinuities in other varieties of the English language is not known, it can be assumed that hardly any genre can compare with legislative English in this respect.

The occurrence of syntactic discontinuities in the EU sample of legislative documents is presented in Fig 4(b). The table shows that there is a significant difference between the occurrence of syntactic discontinuity in primary EU legislation and secondary EU legislation. While in primary EU legislation, i.e. the EC Treaty, there are on average **0.46** instances of syntactic discontinuity per sentence, in secondary EU legislation the average frequency of syntactic discontinuity ranges from **0.06** to **0.22**. This indicates a greater tendency towards syntactic discontinuity in primary EU legislation. Compared to the results obtained while analysing UK legislation, it is obvious that the frequency of syntactic discontinuity in the EC Treaty exceeds even the highest frequency recorded in the UK sample, i.e. **0.44** instances per sentence in the **Copyright, Designs and Patents Act 1988**.

The following table shows the frequency of syntactic discontinuity recorded in the individual documents of the EU sample.

<b>EU Document</b>	<b>Number of sentences analysed</b>	<b>Total no. of instances of syntactic discontinuity</b>	<b>Average no. of syntactic discontinuities per sentence</b>
EC Treaty	69	32	0.46
84/450/EEC	26	2	0.08
85/374/EEC	44	3	0.07
92/59/EEC	67	12	0.18
93/13/EEC	27	3	0.11
64/221/EEC	28	3	0.11
1612/68/EEC	27	6	0.22
68/360/EEC	29	2	0.07
1251/70/EEC	16	1	0.06
73/148/EEC	31	2	0.06
75/34/EEC	19	3	0.16
92/51/EEC	90	12	0.13
91/250/EEC	31	6	0.19
40/94/EC	74	10	0.14



75/117/EEC	9	1	0.11
76/207/EEC	13	1	0.08
<b>EU Total</b>	<b>600</b>	<b>99</b>	<b>0.165</b>

#### Fig 4(b) – Syntactic Discontinuity in EU Legislation

The figures obtained through the analysis of the EU sample are evidently lower than the figures obtained through the analysis of the UK sample. In the EU sample, the average number of syntactic discontinuities per sentence in secondary legislation ranges from **0.06** in **Commission Regulation 1251/70/EEC** and **Council Directive 73/148/EEC** to **0.22** in **Council Regulation 1612/68/EEC**. Consequently, the average number of syntactic discontinuities per sentence in the whole of the EU sample is approximately **0.165**. This shows a remarkable difference between UK legislation and EU legislation as far as the occurrence of syntactic discontinuity is concerned.

The summary of the whole numerical analysis is presented in Fig 4(c) below.

<b>Features analysed</b>	<b>UK legislation</b>	<b>EU legislation</b>
Number of sentences analysed	600	600
Number of instances of syntactic discontinuity	218	99
Average number of synt. discontinuities per sentence	0.36	0.165
Average number of sentences per syntactic discontinuity	2.75	6.06

#### Fig 4(c) – Syntactic Discontinuity in UK and EU Legislation – Summary

The summary of the numerical analysis of syntactic discontinuity in UK and EU legislative documents confirms that the occurrence of discontinuous sentence structures is distinctly higher in UK legislation than in EU legislation. Whereas the EU sample contains **99** instances of syntactic discontinuity, the UK sample contains as many as **218** instances of syntactic discontinuity. This means that the frequency of syntactic discontinuities is higher in UK legislation by more than **120** per cent. As a result, whereas in UK legislation there are approximately **0.36** syntactic discontinuities per sentence, in EU legislation there are only **0.165** instances of syntactic discontinuity per sentence.

The difference becomes even more obvious if we put the results into another perspective. While in the UK sample on average every third sentence contains some syntactic discontinuity, in the EU sample on average every sixth sentence contains an instance of syntactic discontinuity. This assumption is based on the fact that in the UK sample there are on average **2.75** sentences per instance of syntactic discontinuity, whereas in the EU sample there are on average **6.06**

sentences per instance of syntactic discontinuity.

Of course, the above described results are only general results. It would be desirable to focus further research on the character of the inserted units, i.e. the elements causing syntactic phrases to be discontinuous, and on the distribution of the individual types of syntactic discontinuity. It seems that syntactic discontinuity in UK legislative materials tends to affect mainly noun phrases, whereas in EU legislative materials it tends to affect predominantly verb phrases. However, more research is necessary in this area to prove this hypothesis.

#### **4 SYNTACTIC DISCONTINUITY IN UK AND EU**

##### **LEGISLATION – CONCLUSION**

As stated earlier, the phenomenon of syntactic discontinuity is closely related to the necessity of qualifying the application of legislative rules. There is no doubt that to a certain extent syntactic discontinuity contributes to a greater complexity of the text and makes greater demands on the interpreter. The reason for this is that due to syntactic discontinuity, the relations between individual clause elements throughout the legislative provision are less transparent and less explicit. The interpretation thus requires much analytical thinking and experience.

The numerical analysis of the sample has confirmed that syntactic discontinuity is significantly more frequent in the language of UK legislation than in the language of EU legislation. This also suggests that its effect on how easy or difficult it is to interpret the text is greater in UK legislation than in EU legislation.

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