CONSTITUTIONAL LAW OF GHANA

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PART III - LAW-MAKING UNDER THE REPUBLIC

CHAPTER 6

MODES OF LEGISLATION

Legislation may be understood either as the process of lawmaking or as the product of that process. In this Part we are concerned with both these meanings. It is proposed to discuss the various types of legislation provided for by the Republican Constitution, the functionaries who are concerned with producing the laws and the detailed methods by which laws come into existence. We take the Constitution as it exists and deal with normal legislation. The special case of constitutional amendment and the exercise of the reserved powers of the people has already been discussed. [1]

1. ACTS OF PARLIAMENT

Ghana has inherited the British system under which supreme legislative authority is conferred on Parliament. Subject only to the Constitution which created it, Parliament, consisting of the President and the National Assembly, has complete power to make and unmake law. It does so through the medium of an Act of Parliament, which is literally an *act* done by Parliament in the exercise of its constitutional functions. This, when it comes into force, affects the existing body of law by altering certain of its provisions or by adding new ones. It may operate not only on other Acts of Parliament but on any element in the existing law, such as an Ordinance of the former Gold Coast Colony, a statutory instrument, a rule of customary law, an English statute of general application and so on.[2] It always supersedes an earlier law which is inconsistent with it, whether it mentions the earlier law or not.

A law is usually understood to be a general rule of conduct which is laid down by the legislature and which the inhabitants of the country must obey. Thus, for example, s. 20 of the National Assembly Act, 1961 (Act 86)[3] states:

[1] See pp. 147, *et seq.*, *ante*.
[2] For an explanation of the various elements in the laws of Ghana, seepp. 169, *et seq.*, *ante*.
[3] The section is also embodied in art. 21 (3) of the Constitution.

> " There shall be freedom of speech, debate and proceedings in the Assembly and that freedom shall not be impeached or questioned in any court or place out of the Assembly."

This lays down an express rule of conduct, which applies to everyone. Breach of the rule is a contempt of Parliament and is punishable accordingly.[1] This may be regarded as a classic example of a law, but in fact Acts of Parliament seldom take this form. A general rule is more often laid down by implication than in express terms. Thus in the Criminal Code rules of conduct are laid down not, as one might expect, in the form " No person shall commit fraudulent breach of trust ", but in the form " Whoever commits fraudulent breach of trust shall be guilty of a misdemeanour ".[2] Again, a rule frequently applies not to the community generally but only to one section of it. An example of this is s. 23 of the Civil Service Act, 1960 (C.A. 5), which states that " A Civil Servant holding a category A post shall not take part in any activity on behalf of a trade union ..." These matters apart, many Acts of Parliament—perhaps the majority— do not lay down rules of conduct at all, or only do so incidentally. They are concerned instead with such things as establishing, and laying down the structure and functions of, public corporations and other bodies,[3] specifying the legal rights of individuals in civil matters,[4] conferring executive powers on Ministers and other functionaries of the State,[5] and so on. An Act may even deal specifically with an isolated matter in a way which has nothing of the general law-giving quality about it at all, as by indemnifying an individual against a particular legal claim or ordering the deportation of named persons.[6] The field within which Acts of Parliament may operate is infinitely various but every Act has the characteristic that persons affected by it are expected to conduct themselves in accordance with its provisions. If they do not they run the risk of sanctions being imposed against them—usually by the courts. They may be subjected to a fine or imprisonment where a criminal offence is involved. In other cases they may fail to obtain some right or advantage which

[1] See the National Assembly Act, 1961 (Act 86), ss. 28, 45.
[2] Criminal Code, 1960 (Act 29), s. 128.
[3] See, *e.g.*, the Ghana Holding Corporation Act, 1958 (No. 45).
[4] See, *e.g.*, the Contracts Act, 1960 (Act 25).
[5] See, *e.g.*, the State Property and Contracts Act, 1960 (C.A. 6).
[6] See, *e.g.*, the Kumasi Municipal Council (Validation of Powers) Act, 1959 (No. 86), the Deportation (Indemnity) Act, 1958 (No. 47) and the Deportation (Othman Larden and Amadu Baba) Act, 1957 (No. 19).

compliance with the law would have secured. If they purport to exercise statutory powers but do not observe the conditions laid down they may find their acts ineffective. If they fail to carry out a duty imposed upon them they may be made the subject of an injunction issued by the court. If they meddle unlawfully with the property of others, or deal improperly with their own, they may be required to pay damages, or forfeit their property. These are all personal sanctions, but there is often a higher interest at stake. Legislation is the instrument by which many of the Government's policies are implemented. If the requirements and procedures laid down by Act of Parliament are not loyally observed national efficiency and progress inevitably suffer. The nation pays a penalty even where the individual escapes.

The term " Act of Parliament " came into use when Ghana was first provided with a Parliament on obtaining independence in 1957. It has of course long been employed in the United Kingdom and elsewhere in the Commonwealth to describe supreme legislative enactments. Its current use in Ghana is referable to art. 24(2) of the Constitution. This provides that a Bill passed by the National Assembly shall become an Act of Parliament when the President signifies his assent to it. It tells us that, again following the British practice, an Act of the Parliament of Ghana starts its life as a Bill. The form of Bills, and the procedure for their introduction and passage through the Assembly, are not dealt with in the Constitution, but are regulated by the National Assembly Act, 1961 (Act 86), the Acts of Parliament Act, 1960 (C.A. 7) and the Standing Orders of the National Assembly. These are described in detail in Chapter 8 of this book, but some of the salient features may be given here. The form of a Bill closely resembles that of an Act. Indeed the Bill is so drawn that it is capable of operating as an Act as soon as assent is given and with no alteration except in the formal words at the beginning. It contains a short title, followed by a long title indicating its scope and purpose. After the enacting formula the body of the Bill appears. In most cases this is divided up into clauses, and clauses of any length are usually further divided into subsections. At the end of the Bill one or more schedules may appear. Any member of Parliament has the right, on obtaining the leave of the Assembly, to introduce a Bill. The invariable practice in Ghana, however, has been for the Government only to introduce Bills. Before it can be presented for the President's assent a Bill must pass through various stages. These are the first reading (which is

formal), the second reading (at which the main principles of the Bill are debated), the consideration stage (at which the Bill is examined clause by clause, and amendments made where necessary) and finally the third reading.

Although a Bill goes through three " readings " this does not mean that the Bill is read aloud in the Assembly. Since a printed copy is available for each member reading aloud is not necessary.[1] The significance of the three readings, together with the consideration stage, is that they provide several opportunities for Members to weigh up the merits of the Bill and to suggest improvements. Whether these opportunities are taken or not depends on the alertness and interest shown by Members, and also, it must be said, on the timetable laid down by the Business Committee. There is a tendency in Ghana for Bills to be put through all their stages at one time—a process which rules out the possibility of errors being corrected, and improvements made, through the perspicacity of Members.

A Bill is taken to have been passed by the Assembly if, but only if, it has been read three times and has passed through the consideration stage.[2] If opinions differ about whether a Bill should pass any stage the decision is taken by holding a division, the question being decided by a simple majority of votes cast. When a Bill has been passed by the Assembly it must be presented to the President, who may assent to the whole or a part of it or refuse assent. When the President signifies his assent the Bill, or the part to which assent is given, as the case may be, becomes an Act of Parliament. Acts of the Republican Parliament are numbered consecutively from Act 1, the numbering not being started again at the beginning of a year.

2. STATUTORY INSTRUMENTS

The will of Parliament is expressed by Acts of Parliament but it is not possible to include in an Act all the matters of detail which will need attention if the legislative purpose is to be achieved. There are a number of reasons for this. Most countries which use the Parliamentary system have found that, under the circum-

[1] A person is not qualified for election as a Member of Parliament unless he is able to read the English language with a degree of proficiency sufficient to enable him to take an active part in the proceedings of the Assembly. A person prevented from reading by blindness or other physical cause is not however disqualified. (National Assembly Act, 1961 (Act 86), s. 1 (1)).

[2] Standing Order No. 68.

stances of today, when it is generally accepted that legislation should regulate almost every aspect of a nation's social and economic life, Parliament has neither the time nor the capacity to concern itself with all the ramifications of its enactments. Furthermore the conditions upon which legislation operates are often in a state of change, necessitating frequent adjustments to the law which, where they are not substantial, it would be unnecessarily rigid to call upon Parliament to make itself. Again, particularly in the administrative field, the legislative purpose may call for day-to-day decisions to be taken by Ministers, civil servants and others. These decisions, which are often executive rather than legislative in character, may require expert knowledge which Parliament does not possess. Whether this is so or not, they can usually only be taken on the facts of particular cases as they arise, and thus cannot be taken by Parliament itself. These factors are commonly experienced, and have everywhere led to the delegation of Parliamentary powers. In Ghana they are felt also, but one point of difference should be noted. It can hardly be said that the National Assembly has no time to consider more detailed legislation than it does at present. In fact, owing to the disinclination of many Members to join in debate and the lack of use made of the opportunities offered by Parliamentary procedure (for example the right of back-benchers to put down amendments and to introduce Bills of their own), the House often finds itself with nothing to do. On the other hand, to balance this factor, the Government frequently requires important legislation to be prepared so quickly that there is not time to do more than set out the broad outlines in the Act and leave the details to be filled in later under delegated powers. This may have an incidental advantage. If the Act is properly drafted, the legislative scheme is easier to grasp when it is not obscured by masses of detail.

In Ghana delegated powers have a history as old as the Colonial regime itself. Indeed, in Colonial times all the Governor's powers were delegated to him by the Crown and were exercised in the form of Ordinances, Orders of the Governor in Council, proclamations and so on.[1] After the setting up of the Parliament of Ghana in 1957, Acts of Parliament provided for the delegation of a wide variety of powers. These ranged from power to make

[1] See Chapter 1, *ante*. Ordinances frequently provided for further delegation; indeed it was common to include in an Ordinance a wide power to make regulations for carrying it into effect, though this was often reserved to the Governor himself.

rules or regulations which were legislative in character and of a general and lasting importance to power to make an order or other instrument of an executive and personal character, such as a deportation order or an instrument of appointment to an office. Despite their differing character and importance almost all these instruments were described as " delegated legislation ", numbered in one series and bound up together in one annual volume. In some cases, however, an important power, as for example to bring an Act into operation, would be exercisable not by a formal instrument but by a notice published in the *Gazette*. This system, or lack of it, led to difficulties. It was troublesome to hunt up important regulations in a volume containing masses of ephemeral executive orders. It was worse to find that no scheme of noting up the regulations or otherwise presenting them in their current form existed. Nor could such a scheme be made practicable until the wheat was first separated from the chaff.[1] Towards the end of 1959 it was therefore decided to reform the entire system of subordinate legislation. Since the reform was based to some extent upon similar reforms carried out in the United Kingdom it is necessary to say a word about these first.

Until 1893 there was no general control over the form and publication of delegated legislation in the United Kingdom. In that year however, following complaints of difficulties caused by the growing volume of such legislation and the failure to make it sufficiently known to the public, the Rules Publication Act, 1893 was passed. This required all statutory rules to be numbered in one series and published by the Queen's Printer, and applied to rules, regulations or byelaws which were made under an Act of Parliament and which related to procedure in courts of justice or were made by Her Majesty in Council or a Government department. Thereafter, until 1947, annual volumes of these instruments, under the name of " Statutory Rules and Orders ", were published by the Stationery Office. The definition of " statutory rules " in the Rules Publication Act was found to be too narrow and in 1946 the Act was replaced by the Statutory Instruments Act. By this the new term " statutory instrument " was applied

[1] The 1958 volume of subsidiary legislation contains 419 legal notifications (as they were then called). Of these only 84 were, under the system later adopted, " wheat ", that is legislative instruments. The remaining 355 were " chaff ", or executive instruments. In 1960, the first year in which the new system operated, 92 legislative instruments were made as against 273 executive instruments.

to orders, rules, regulations and other subordinate legislation made by a Minister under a power conferred by that or any future Act if the Act in question stated that the power was exercisable by statutory instrument.[1] This means that, when an Act conferring power to make subordinate legislation is being enacted in the United Kingdom it is for Parliament (or in practice the department concerned) to decide whether an instrument by which this power is exercised is likely to be sufficiently important to be published in the numbered series of statutory instruments. In Ghana it was decided to adopt the term " statutory instrument " but to widen its meaning by including in it all instruments made under statutory powers, drawing a distinction between statutory instruments which were legislative in character and those which were executive. Although in many cases it is obvious whether an instrument is legislative or executive, there is a wide borderland in which this is very much a matter of opinion. As mentioned above, the British Statutory Instruments Regulations state that instruments made under statutory powers earlier than 1948 are to be treated as statutory instruments if they are " of a legislative and not an executive character ". In order to decide whether to look in the statutory instruments series for an instrument made under a pre-1948 power it is therefore necessary to make up one's mind whether the instrument is likely to be legislative in character. This is often a matter of considerable difficulty, and in Ghana it was found possible to attain greater precision by expressly stating which powers under existing legislation were powers to make instruments of a legislative character. The great complexity and bulk of British statute law made this course impracticable in the United Kingdom, but in Ghana the chance was seized while the body of statute law was still relatively small. The importance of the distinction between the two types of instrument in Ghana lies mainly in the method of publication. Legislative instruments, which are usually general in application and permanent in nature, and are often subject to amendment, are published in a convenient form in the cumulative binder service, which incorporates amendments as they are made.[2] Executive instruments are published

[1] Statutory Instruments Act, 1946, s. 1. The term also includes Orders in Council, and instruments of a legislative character made under Acts passed before 1948 (Statutory Instruments Regulations, 1947 (S.I. No. 1), reg. 2).

[2] This is discussed in detail at pp. 291. *et seq., post.*

separately and amendments (which are infrequent) **are not** incorporated.

The new system was introduced by the Statutory Instruments Act, 1959 (No. 52). Section 3 of the Act provides that an instrument made (whether directly or indirectly) under a power conferred by an enactment shall be known as a statutory instrument. The term thus covers not only delegated legislation but also what is sometimes known as sub-delegated legislation, that is instruments made under powers contained in other subordinate legislation. The word " enactment " has a special meaning here, the effect of which is to bring within the description " statutory instrument " all past and future instruments made (whether directly or indirectly) under any Act, Ordinance or Order of Her Majesty in Council. Since it might have been said that an Act of Parliament was itself made under an enactment in this sense, provisions laying down the legislative powers of Parliament were expressly excluded.[1] It will be seen that the definition of statutory instrument is so wide that it covers the most trivial documents, for example a driving licence or a letter of appointment to a post. It also covers documents issued by or under the authority of a court of law. It was considered impracticable to attempt to exclude such things as these, but, for reasons which will appear, the width of the definition does not matter in practice.

The Act next proceeds to define a legislative instrument. This is done differently in relation to existing powers and powers to be contained in future Acts. In relation to existing powers the Attorney-General was enabled by s. 4(1) to make a declaration to the effect that statutory instruments made under specified enactments " are legislative in character and of sufficient importance to justify separate publication ". This is the only indication given by the Act of the nature of legislative instruments, but further light may be obtained from the explanatory note at the beginning of Volume 1 of the cumulative binder service. This begins as follows:

> " Legislative instruments form the most important body of delegated legislation in Ghana. They consist of those statutory instruments *(i.e.,* instruments made under statutory powers) which are legislative in character and are of general importance either because they amend or otherwise affect Ordinances and Acts of Parliament or because they embody rules, regulations or similar provisions of continuing public concern.

[1] Statutory Instruments Act, 1959 (No. 52), s. 2.

The order embodying the Attorney-General's declaration was made some three months after the passing of the Statutory Instruments Act.[1] During this period the entire statute book, consisting of the four volumes of the 1951 edition of the Ordinances, the two volumes of the 1952-1954 supplement and the five subsequent annual volumes, was read through to pick out the provisions which should be treated as conferring power to make legislative instruments. This was done by one person so as to produce uniformity of treatment. The resulting order specified four hundred and eleven empowering provisions, of which two hundred and forty-four conferred power to make regulations. Other descriptions of the delegated legislation in question included orders, rules, declarations, notices, notifications, resolutions, instruments, proclamations and byelaws. The use of such terms as these is not affected by the new arrangements, and a set of rules or regulations, for example, may continue to be described as such although embodied in a legislative instrument.

The other half of the definition of a legislative instrument dealt with future Acts. This was a much simpler matter. It would be left to the draftsman of the Act to decide, when drawing a provision conferring power to make statutory instruments, whether the power was of such a nature that the instruments should be legislative. Thus s. 4(2) of the Statutory Instruments Act states that, in addition to those made under powers specified in the Attorney-General's declaration, instruments made " under powers expressed to be exercisable by legislative instrument " shall be known as legislative instruments. The first use of this formula occurs in s. 4 itself, which begins " The Attorney-General may *by legislative instrument* declare ..." Deciding whether a power should be exercisable by legislative instrument or not is to some extent one of " feel ", but draftsmen have been advised that the following should normally be legislative instruments—

(a) instruments which amend Acts, Ordinances, or other legislative instruments;
(b) rules and regulations which are " permanent " and either general or, although local, of national importance;
(c) instruments made under powers contained in consolidation Acts reproducing any of the enactments specified in the Attorney-General's declaration;

[1] Statutory Instruments Order, I960 (L.I. 9).

(d) instruments bringing an Act into operation;
(e) instruments which are otherwise legislative rather than executive in their effect and of national importance—not being merely temporary.

In exceptional cases even temporary instruments may, because of their great importance, be classed as legislative. Thus for example regulations made when a state of emergency has been declared under the Emergency Powers Act, 1961 (Act 56) * are treated as legislative because they are likely to contain drastic provisions, including provisions modifying Acts of Parliament. Legislative instruments are required by s. 4(3) of the Statutory Instruments Act to be published by the Government Printer. If the instrument itself is not published in the *Gazette*, a notice of its publication must be inserted in the *Gazette* as early as possible. In fact legislative instruments are published in a separate series.[2] They are numbered consecutively from L.I. 1, the numbering not being started again at the beginning of a year.

Section 5 of the Act provides that statutory instruments other than legislative instruments or instruments of a judicial character are to be known as executive instruments. As mentioned above, court orders, being made under statutory powers, are within the definition of a statutory instrument. It would be misleading to describe them as executive instruments however, and hence they are excluded. Also excluded as being of a judicial character are a small number of instruments which more closely resemble delegated legislation, as for example declarations under s. 9 of the Stool Lands Boundaries Settlement Ordinance (Cap. 139).

The Act does not require executive instruments to be published, but such a requirement is sometimes included in the enactment which empowers a particular executive instrument to be made. In practice executive instruments of any importance are usually published—most of them in the executive instruments series which is published by the Government Printer and numbered from E.I. 1 onwards, starting afresh at the beginning of each year. Some instruments which are strictly executive instruments are however for greater convenience published in the *Gazette* itself or in one of the three Official Bulletins.

A power to make a statutory instrument normally implies a power to amend or revoke the instrument once made.[3] This is

[1] See p. 253, *ante*.
[2] See p. 295, *post*.
[3] The term " revoke " is applied to statutory instruments, " repeal " being used only of Acts.

laid down by s. 14(1) of the Statutory Instruments Act, which applies unless the context of the empowering enactment otherwise requires. The amendment or revocation must be done by the same authority as has power to make original instruments and must be exercised in the same manner.[1] A power to make, amend or revoke an instrument may be exercised from time to time, as occasion requires.[2]

The Statutory Instruments Act concludes by empowering the Attorney-General, by legislative instrument, to amend any existing enactment conferring power to make statutory instruments so as to bring it into line with the new arrangements, or to make such other provision as appears expedient for the purposes of the Statutory Instruments Act.[3] It was contemplated that the amending powers would be used to make textual amendments in all the enactments specified in the Attorney-General's declaration. However, many of these enactments have, under the statute law reform programme begun early in 1960, been repealed and re-enacted with appropriation modifications. Since this programme is expected to continue until the entire pre-Republic-can statute law has been re-enacted in modern form the amending powers are not likely to be used. The power to make " such other provision as appears expedient " has been used to lay down rules as to the form of statutory instruments. These rules, together with provisions of the Statutory Instruments Act which govern the making of instruments, are described in Chapter 9.

3. OTHER MODES OF LEGISLATION

It may be thought that since art. 20 of the Constitution provides that so much of the legislative power of the State as is not reserved by the Constitution to the people is conferred on Parliament there can be no room for modes of legislation other than those already discussed. This is true in the sense that Parliament is the only sovereign legislature, whose powers are superior to all others and whose enactments, if duly made, can override any existing laws. Nevertheless there are other bodies whose actions can change the law in various ways. These are as follows—

[1] Note that where the power to make original instruments has been transferred since the instrument which is to be amended or revoked was made, it is the transferee authority who has power to amend or revoke, and not the authority who made the instrument.

[2] Interpretation Act, 1960 (C.A. **4),** s. **10.**

[3] **Statutory Instruments Act, 1959 (No. 52), s. 17.**

(a) The courts, by their pronouncements on what the **law** is;
(b) The first President, by the exercise of his special powers under art. 55 of the Constitution; and
(c) chiefs and other customary bodies, by declarations and modifications of customary law.

The courts

There is a long-standing controversy over whether courts which follow the British tradition exercise a legislative or merely declaratory function in making pronouncements about the rules of common law and equity. The matter has been discussed at length by **a** number of writers and it is not proposed to embark upon it here.[1] What is certain however is that the courts in Ghana have been given a freedom to choose between different lines of development of common law and equity which in effect confers upon them something very like legislative power.[2] Again, within the field of statute law, this quasi-legislative power exists. Suppose a particular enactment to be ambiguous. Before the courts have pronounced upon it, the law on this topic may be one thing or it may be the other—no one knows. If then the High Court adopt one interpretation and reject the other they have to some extent played a law-making role. There is now authority for saying that the enactment is not ambiguous but has a definite meaning. Now suppose that the same point comes before the Supreme Court, who overrule the previous decision and pronounce in favour of the other interpretation. It is possible to argue that the law has not changed, but has only at last been properly enunciated. Nevertheless the practical effect is the same as if Parliament had passed an Act stating that, for the avoidance of doubt, the second interpretation was declared to be the correct one. Since every court is bound by art. 42(4) of the Constitution to follow the Supreme Court's decision it has on such a matter as this the same effect as an Act of Parliament. Nor is the principle restricted to ambiguities—it applies whenever Parliament has failed to make its intention clear or has deliberately left the detailed working **out** of its intention to the courts. In the United Kingdom **a** celebrated example of the latter occurred in the Workmen's

[1] See, *e.g.*, Salmond, *Jurisprudence* (11th edn.), pp. 163-164. The learned author concludes by rejecting the declaratory theory in relation to common law and equity: " We must admit openly that precedents make law as well as declare it."

[2] This is discussed more fully at p. 173, *ante.*

Compensation Act, 1906, which gave a right to compensation where a workman was injured in an accident " arising out of and in the course of his employment ". These simple words were found to conceal great difficulties and in the spate of litigation which followed over the next forty years the British courts worked out for themselves the detailed rules which might have been embodied in the Act in the first place. Another well-known example of Parliament's leaving it to the courts to make law was to be found in s. 15 of the Road Traffic Act, 1930,[x] which required the court to impose disqualification on a person driving when not insured unless there were " special reasons " for not doing so. Here also the British courts worked out rules for determining what is a " special reason "—as for example that it must be a reason special to the circumstances of the particular offence and not applicable to the offender whenever he may have been driving. Sir Carleton Allen, in discussing this legislative function of the courts, has said with reference to their reaction when faced with a *casus omissus* in a statute:

> " In innumerable instances the fate of the *casus omissus* lies entirely in the hands of the judges, and in no real sense depends on the will of the legislator. The courts lay down a rule exactly because the legislature has not done so, and has not intended to do so. Judges must and do carry out the express will of the legislature as faithfully as they can; but there is a very wide margin in almost every statute where the courts cannot be said to be following any will except their own ... It is in the process of filling in these gaps, more than anywhere else, that the common law may be called, with some plausibility, ' judge-made law '. To assert, as is sometimes done, that judges do not in fact cement these interstices in statutes is to run counter to a thousand instances."[2]

Legislative powers of first President

The special legislative powers of the first President have been described in Chapter 3 and little more need be said about them here.[3] The powers are exercisable by legislative instrument and thus are subject to such of the provisions of the Statutory Instruments Act, 1959 (No. 52) as are not inconsistent with art. 55 of the Constitution. Since the powers are conferred directly by the Constitution, however, and since they enable the first President to modify Acts of Parliament at any time he thinks fit, they

[1] Repealed by the Road Traffic Act, 1960.
[2] *Law in the Making* (6th edn.), p. 484.
[3] See 135 *et seq., ante.*

can hardly be looked upon as powers to make delegated or subordinate legislation. Legislative instruments made under art. 55 must be looked on as a form of primary legislation. Whether they will come to form an important body of primary legislation cannot as yet be foreseen. At the time of writing, nearly two years after the passing of the Constitution, no such instruments have been made.

Declarations and modifications of customary law

Customary law is stated by art. 40 of the Constitution to form part of the laws of Ghana. Modes of altering customary law are therefore modes of legislation. Customary law is subject to alteration not only by the modes already discussed but also by the action of chiefs and other authorities exercising the functions which custom gives them. These functions have been modified and regulated by statute to some extent and are of little importance today. They are discussed further in Chapter 11.

4. INTERPRETATION

When the legislature has expressed its will by means of an Act or statutory instrument it is the duty of everyone concerned to conduct himself accordingly. This cannot be done unless the meaning and effect of the enactment is clear. In Ghana, as in the United Kingdom, the preparation of Bills and the more important statutory instruments is entrusted to a professional draftsman, and great reliance is placed on his skill and attention to detail. So important is the role of the draftsman in translating Government policy into legislation fitted to carry it out that considerable space will be devoted to it in the following chapters. Before describing in detail the ways in which legislation is prepared however, we should say something about the rules governing its interpretation.

Ghana has followed the modern practice of equipping itself with an Interpretation Act to shorten and clarify Acts and statutory instruments.[1] The Interpretation Act is the shadowy companion of each Act and statutory instrument, having the same effect as if expressly written into it. For this reason no one

[1] The practice began with the passing in the United Kingdom of Lord Brougham's Act in 1850. Its title was " An Act for shortening the language used in Acts of Parliament."

who has occasion to consult legislation should fail to consider the Interpretation Act; without this he will have only part of the story. Also to be borne in mind are the rules of construction which have been worked out by the courts but have not found their way into the Interpretation Act because they are not sufficiently precise in their application to be capable of statement in legislative form.

The Interpretation Act

Ghana has been equipped with a statute laying down rules of interpretation since the establishment of the Gold Coast Colony.[1] The purpose of such a statute is to lay down once and for all definitions and rules of interpretation which apply generally and would otherwise have to be set out afresh or otherwise provided for in every new Act or statutory instrument. Thus for example the earliest of all interpretations statutes, Lord Brougham's Act of 1850, introduced in s. 4 the rule (which has been repeated in interpretation statutes ever since) that:

> "... in all Acts words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural, and the plural the singular, unless the contrary as to gender and number is expressly provided."

Previously it had been considered necessary either to include such a provision in each separate Act or to use such tedious locutions as

> " . . .if any person or persons shall be summoned as a witness or witnesses . . . and shall neglect or refuse to appear at the time and place to be for that purpose appointed, without a reasonable excuse for such his, her or their neglect or refusal . . . "[2]

Ghana's present interpretation statute is the Interpretation Act, 1960 (C.A. 4). This Act, which was passed by the Constituent Assembly, marked a fresh start in Ghana. The previous Act, the Interpretation Act, 1957 (No. 29), had been the latest in a series of revisions of the 1876 Ordinance. The present Act was drafted anew. Some of its provisions were drawn from similar enactments in the United Kingdom, Canada, Northern Ireland and the Irish Republic; others were original . Unlike many interpretation statutes this one confines itself to matters of interpretation;

[1] The first of these was the Interpretation Ordinance, 1876 (No. 3).
[2] Land Tax Redemption Act, 1802, s. 191.

provisions governing the form, citation, etc., of Acts and statutory instruments are contained elsewhere.[1] Nevertheless the Act has a fairly wide scope. It not only applies to statutes, that is the Constitution, Acts and Ordinances, but also to statutory instruments. It not only lays down rules of construction and the meanings of common terms but also defines the content of a statute or instrument, namely what does and what does not form part of it. It deals with such important matters as the meaning of " common law " and " customary law " and the countries recognized as members of the Commonwealth.

The Act begins by stating that, with one important exception, each provision of the Act applies to every *enactment* being:

(a) the Constitution, an Act (including the Interpretation Act itself) of the Constituent Assembly or the Republican Parliament;
(b) a legislative measure continued in force by the Constitution, or
(c) an instrument made (directly or indirectly) under any such enactment.[2]

It will be noticed that the various laws specified here are only covered if they are *enactments.* The term " enactment " is defined in s. 32(1) and since it is a term which is frequently used, not only throughout the Interpretation Act itself but in legislation generally, we must examine it in detail. The term is defined as " an Act or statutory instrument or any provision of an Act or statutory instrument ". It may thus be used interchangeably to mean an entire piece of legislation or any portion of it. This makes the term extremely flexible and useful. The reference in the definition to an Act is elaborated by a separate definition which is also given in s. 32(1). This states that " Act " or " Act of Parliament " means the Constitution, an Act of the Constituent Assembly or of Parliament, or any legislative measure of an authority formerly exercising power *to* make laws for the territory or any part of the territory comprised in the Republic, but does not include an English statute of general application.[3] Returning to the opening words of the Act, we now see that, with the important exception already mentioned, each provision of the Act

[1] See the Acts of Parliament Act, 1960 (C.A. 7) and the Statutory Instru ments Act. 1959 (No. 52).
[2] Interpretation Act, 1960 (C.A. 4), s. 1. For the relationship of the Act to the Constitution, see p. 99, *ante.*
[3] As to statutes of general application, see pp. 395, *et seq., post.*

applies to all written law in force in Ghana (whenever made) except the English statutes of general application, which are governed by Lord Brougham's Act and any interpretation provisions they may themselves contain.[1] The important exception referred to lies in the concluding words of s. 1, which state that the Act applies to an enactment " except insofar as the contrary intention appears in the enactment ". When reading the Interpretation Act it is essential to bear this exception in mind since it only appears in this one place and is not, as is frequently the case with interpretation statutes, repeated wherever it applies. A contrary intention may occasionally be expressed in terms which actually refer to the Interpretation Act but will more usually be implied, as by the insertion of a different definition of a term defined by the Interpretation Act or the use of language which indicates that a term is to have its natural meaning or that a rule of construction is not to apply.[2]

Having indicated the way in which the Interpretation Act applies, we will now describe its most important provisions, except those that are dealt with elsewhere in this book. Five of its sections (ss. 5 to 9) deal with the effect that one enactment may have upon another by way of repeal, revocation or amendment.

(1) *Repeals?*—A repeal may be effected either by the statement that the enactment in question " is hereby repealed " or by a statement of similar purport, *e.g.* that the enactment shall cease to have effect. For the sake of uniformity the former is preferred. Apart from the Interpretation Act and any savings contained in the repealing enactment, an enactment which is repealed " must be considered (except as to transactions past and closed) as if it had never existed ".[4] The Interpretation Act modifies this in the following ways—

(a) the repeal does not revive anything not in force or existing when it takes effect;[5]

[1] In the case of enactments made in Ghana before the Republic " Act " and " Act of Parliament " retain the misleadingly wide meaning given to them by the Interpretation Act, 1957 (No. 29); see the Interpretation Act, 1960 (C.A. 4), s. 32 (2).

[2] *Cf.* the definitions of " enactment " and " instrument " in the Statutory Instruments Act, 1959 (No. 52), s. 2.

[3] What is said here about repeals applies equally to the revocation of statutory instruments and, where appropriate, to cases where an enact ment expires, lapses or otherwise ceases to have effect *(cf.* Interpretation Act, 1960 (C.A. 4), s. 8 (2)).

[4] *Per* Lord Tenterden in *Surtees* v. *Ellison* (1829), 9 B. & C. 750, at p. 752. [5] Interpretation Act, 1960 (C.A. 4), s. 8 1) (a).

(b) the repeal does not affect the previous operation of the repealed enactment, or anything duly done or suffered under it, or any right or liability acquired or incurred under it;[1]

(c) where another enactment is substituted for the repealed enactment by way of amendment, revision or consolidation, certain things such as appointments, legal proceedings and documents continue to be effective under the new enactment, and any reference to the repealed enactment is taken to refer to the new enactment.[2]

(2) *Amendments.*—Amendments may be verbal or indirect. A verbal amendment occurs when the actual wording of the enactment is altered by repealing certain words in it or substituting different words. An indirect amendment consists in a modification of the effect of an enactment without an alteration in its wording. An example will show the distinction.

Original enactment. (Section 10 of the Animals Act).—" No person shall slaughter any cow or sheep without a licence from the Minister."

Verbal amendment.—" After the word ' cow ' in section 10 of the Animals Act there is hereby inserted the word ' pig '."
Indirect amendment.—" Section 10 of the Animals Act shall apply in relation to pigs as it applies in relation to cows and sheep."

An amendment may be even more indirect than this. If, for example, it were desired to abolish the need for a licence for the slaughter of cows this could be achieved by saying " Notwithstanding anything in any enactment, a licence from the Minister shall no longer be required for the slaughter of a cow." Verbal amendments are always to be preferred to indirect amendments because, provided the statute-book is kept in an up-to-date form, they give the reader the whole story. In the case of the above example, a noted-up version of the Animals Act or one which, as in Ghana, is reprinted as amendments occur, will show at a glance that a licence is needed for the slaughter of pigs as well as cows and sheep, whereas the indirect amendment might

[1] Interpretation Act, 1960, ss. 6 (3), 7, 8 (1).
[2] *Ibid.*, ss. 6 (2), 9. Note that there is no saving for statutory instruments made under the repealed enactment. It was felt that these would need careful scrutiny and should not be kept alive automatically.

easily be missed. The only disadvantage of the verbal amendment in the above example is that it does not tell Members of Parliament and others who are interested in the Bill containing the amendment what its real effect is. This disadvantage can be got round by describing in the amendment itself what section 10 of the Animals Act does, so that the amendment would read:

> " After the word ' cow ' in section 10 of the Animals Act (which prohibits the slaughter of cows and sheep without a licence from the Minister) there is hereby inserted the word 'Pig'-"

Since arguments have been advanced in English courts to the effect that descriptive words such as these may be used as guides to the meaning of the enactment to which they refer, s. 5 of the Interpretation Act makes it clear that they are for convenience of reference only and are not to be used as an aid to construction. In many cases it is not possible to cram into a few words the full effect of a section, and as the memorandum to the Interpretation Bill remarked:

> " . . .if such descriptive words were to be regarded as aids to interpretation the result would be that their use would have to be discontinued."[1]

The Interpretation Act also has something to say about the case where an enactment refers to another enactment which has been or is later amended. Section 6(1) provides that the reference is to be construed as referring to the enactment

> "... as tor the time being amended by any provision, including a provision contained in the enactment in which the reference is made or in a later enactment."

As this is a matter of some difficulty and importance a full explanation will be attempted here. Take the case of an Act (let us call it the Disqualification Act) which imposes a disqualification on " any person who has contravened section 10 of the Animals Act ". Suppose that at the time when the Disqualification Act was passed s. 10 had already been amended by the verbal amendment given above. Does the disqualification extend to a person who slaughters a pig without a licence? Before the enactment of s. 6(1) of the Interpretation Act the matter would have

[1] This memorandum, which contains a useful summary of the Act, is reprinted at the beginning of Vol. I of the cumulative binder service of Acts- of Ghana.

been in doubt unless the point had been dealt with, as was commonly done, by referring to s. 10 of the Animals Act " as subsequently amended ". Even this would not help however if, after the passing of the Disqualification Act, s. 10 were further amended by adding a reference to horses. Would a person who thereafter slaughtered a horse without a licence be liable to disqualification? It will be seen that s. 6(1) takes care of this possibility too, and also the third possibility of an amendment being made to s. 10 of the Animals Act by the Disqualification Act itself. A reference to another enactment is thus made self-modifying, a point to be borne in mind particularly where indirect amendments have been made.

The Interpretation Act next proceeds to perform the useful function of spelling out the consequences of conferring certain functions.[1] In particular, power to appoint a person to an office is stated to carry with it power to remove, suspend, reappoint or reinstate him and power to appoint a substitute.[2] Again, the consequences of authorising or requiring the service of documents are spelt out in great detail, thus avoiding frequent repetition of the procedure for effecting service.[3]

The Act begins its general treatment of the interpretation of enactments by acknowledging that its own provisions may not be enough. Section 19 empowers the court to turn for help—

> "... to any text-book or other work of reference, to the report of any commission of inquiry into the state of the law, to any memorandum published by authority in reference to the enactment or to the Bill for the enactment and to any papers laid before the National Assembly in reference to it, but not to the debates in the Assembly."

This marks a considerable increase in the sources made available to the court. In includes such things as Government White Papers and the memorandum of objects and reasons published on the front of every Bill. In relation to textbooks it removes the argument that the author must be an established authority (or must even be dead) before the court can consider what he has to say. It does not of course interfere with the rule that where the words of an enactment are clear effect must be given to them. Nor does it prevent the court from attaching what weight it things fit

[1] Interpretation Act, 1960 (C.A. 4), ss. 10, 12, 14 and 15.
[2] *Ibid.,* s. 12.
[a] *Ibid.,* s. 13.

to the sources named. The exclusion of references to debates in the Assembly was explained in the memorandum to the Interpretation Bill as follows:

> " There are two cogent reasons for their exclusion: first, it would not be conducive to the respect which one organ of State owes to another that its deliberations should be open to discussion in Court; and, secondly, it would greatly interfere with the freedom of debate if members had to speak in the knowledge that every remark might be subject to judicial analysis."

A third reason might be added, namely that the extempore answer of a Minister pressed to explain a provision in a Bill is not always a reliable guide to its meaning.

The Act goes on to deal with a number of miscellaneous matters, most of which do not require special comment. The Republic, like the Crown before it, is not bound by an enactment except under express terms or necessary implication.[1] References to time, distance and age are explained.[2] Male words are made to include females and the singular to include the plural, and vice versa.[3] " Shall " and " may " are stated to mean what they say.[4] Recognized abbreviations, such as " the United Kingdom " are authorised.[5] Finally a list of forty-nine definitions is given.[6] The tests adopted in deciding whether to include a particular term in this list were stated by the memorandum to the Bill to be—

> "... first, whether the term is capable of being given a settled meaning; secondly, whether the term is generally employed in the same sense; thirdly, whether it has already been denned generally in some other enactment; and fourthly, whether its meaning is so obvious as not to require definition."

It should be mentioned that in the third of these reasons " defined " has a rather wide meaning. The case referred to is rather one where a universal *name* has been assigned by another enactment. If for example a statutory corporation is set up under a particular name—say the Bank of Ghana—it has that name for all purposes and it would be otiose to include in the Interpretation Act or any individual interpretation section a provision to the effect that " Bank of Ghana " means the body corporate established by the Bank of Ghana Ordinance.

[1] Interpretation Act, 1960 (C.A. 4), s. 20.
[2] *Ibid.*, ss. 22-25.
[3] *Ibid.*, s. 26.
[1] *Ibid., s.* 27.
[6] *Ibid.*, s. 30.
[6] *Ibid., s.* 32.

Judicial rules of interpretation

The courts of Ghana have hitherto followed the rules of statutory interpretation laid down by British courts, and legislation is drafted on the assumption that they will continue to do so. Since very full accounts of these rules are available elsewhere we will do no more than mention briefly some of the more important of them.[1] The antiquity of many is shown by their being embodied in Latin maxims.

The golden rule.—The golden rule of statutory interpretation is that where the words used in an enactment are clear and unambiguous effect must be given to them. This is so even though the court thinks that the result is unjust or otherwise unsatisfactory. Where Parliament has used plain language it is not for the court to argue that it could not have meant what it has said. The rule is salutory. Apart from preventing interference by the judiciary with the sovereign power of Parliament, it tends in the long run to keep up the quality of the law. If the clear words of a statute produce injustice or absurdity it is for Parliament to alter them—if it chooses, as it normally will. The alteration can then be done in a thoroughgoing way, in which the words of the Act are corrected to meet all cases and for all to see. An attempt by the court to mitigate hardship by putting a gloss on the Act can only produce uncertainty as to how far the gloss extends; hard cases make bad law. In England this is small comfort to the person whose misfortune has brought the point to light, since retrospective amendments are frowned upon—especially where they effect a reversal of a court decision. In Ghana however the law is frequently altered with retrospective effect, occasionally even to the advantage of a litigant who has been unsuccessful in court proceedings.[2]

Ut res magis valeat quam pereat (it is better that a thing should have effect than be made void).—Parliament cannot be taken to have stultified itself by enacting a nullity. If therefore there is a choice between two interpretations, but one of them will render

[1] The leading authority is *Maxwell on The Interpretation of Statutes* (10th Edn.), one of the editors of which was until lately a judge of the Supreme Court of Ghana. See also *Craies on Statute Law* (5th Edn.).

[2] See, *e.g.*, Kumasi Municipal Council (Validation of Powers) Act, 1959 (No. 86). Here the unsuccessful litigant was a municipal corporation, the other party being a private individual: see *Tsiboe* v. *Kumasi Municipal Council* 1959 G.L.R. 253. The case is not ciced here as an example of the retropsective amendment of an unjust law, but rather to show that such an amendment would be feasible in Ghana.

the enactment ineffective, the other must be adopted. Even if, on a literal interpretation, only the construction which would render the enactment ineffectual is open, the words used can seldom be regarded as so clear that the golden rule is to be applied. In such a case it is the duty of the Court to strive to give effect to the underlying intention.[1]

Penal provisions.—If two or more constructions are equally open, the Court should prefer a construction which does not impose a penalty over one which does. If persons are to be penalized by the law it is only fair and reasonable that the conditions under which the penalty is to be incurred should be plainly stated.

Ejusdem generis (of the same kind).—Where a string of terms all of the same kind is followed by a wider term not expressly limited to that kind, the final term is, under the *ejusdem generis* rule, taken to be so limited by implication. Thus in the expression " any orange, lime, paw-paw, banana or other article " the word article would be taken to be limited to an article of the same genus as the preceding words, namely fruit. There must be at least two preceding words: in a reference to " any banana or other article " the word article would not be taken as restricted to fruit under this rule, although in certain contexts the *noscitur a sociis* rule might be held to apply. There must also be a genus: if the preceding words are widely dissimilar the final word will not be taken to be limited by them. Because of the uncertainty of its application, the draftsman should not deliberately rely on the *ejusdem generis* rule—in the first example given above " or other article " should be replaced by "or similar article ", or better still " or other fruit ".[2]

Noscitur a sociis (a thing is known from its associates).—This is similar to the *ejusdem generis* rule but is wider in scope. Where words or phrases capable of analogous meanings are associated, they take colour from each other and this may exclude meanings which would be possible if the words or phrases stood alone. Thus, where a power was given to " break up the soil and pavement of roads, highways, footways, commons, streets, lanes,

[1] Where the court's sympathies are against this intention it may not strive very hard, as occurred in *Cornish Mutual Assurance Co., Ltd.* v. *Inland Revenue Commissioners,* [1926] A.C. 281.

[2] The *ejusdem generis* rule was disapplied by s. 35 of the Interpretation Act, 1957 (No. 29), but this section was omitted from the 1960 Act.

alleys, passages and public places " the court held, " construing the word ' footway ' from the company in which it is found " that the power was limited to paved footways in towns and did not extend to a field footpath.[1]

Expressio unius est exclusio alterius (to mention one thing is to exclude another).[2]—This is a most important rule, of frequent application. If a reference is wide enough to cover a number of different things, but the enactment goes on to mention only some of them, the others are by implication excluded. Thus an enactment may refer to a man " and his issue ". If this stands alone it may be uncertain whether " issue " is limited to children or includes all descendants, and also whether illegitimate issue are covered. If, however, the phrase is followed by the words " including his legitimate grandsons " the *expressio unius* rule indicates that all descendants other than children and legitimate grandsons are excluded, though whether the children must be legitimate to qualify remains in doubt. The rule may lead to danger where unnecessary references are made. Suppose there are three separate sections in an Act which deal with the supply of drugs. Section 1 says that no person shall sell any drug from premises which have not been registered under the Act. Section 2 says that no person shall sell a poison except on prescription, Section 3 says that no person shall sell a narcotic without a licence from the Minister. These three sections are mutually independent, and it is clear that a licence from the Minister under s. 3 to sell a narcotic which also happens to be a poison cannot authorise it to be sold from unregistered premises, or without a prescription. But if, in a way which frequently happens, the draftsman has ended s. 3 with the words " Provided that nothing in this section shall affect the requirements of *section two* of this Act " doubt immediately arises. What about s. 1? If the Minister has granted a licence, can a narcotic be sold on prescription from *any* premises, whether registered or not? The *expressio unius* rule indicates that it can, but the court, treating the rule with the caution that is often necessary, would probably hold this to be contrary to the intention of the Act.

Generalia specialibus non derogant (general provisions do not derogate from particular ones).—It frequently happjns that an enactment lays down a general rule in terms wide enough to

[1] *Scales* v. *Pickering* (1828), 4 Bing, 448.

[2] Another version is: *expressum facit cessare taciturn* (where some things only are mentioned the ones not mentioned axe taken to be excluded).

cover a particular case for which a special rule has already been provided. If the special rule is not repealed it may be held to remain unaffected by the later enactment. Thus a Bills of Sale Act requiring registration of agreements creating a charge over movable property has been held not to supersede provisions in a Companies Act providing in detail for the special case of the registration of debentures issued by a limited company, although such debentures would be agreements of the type mentioned in the Bills of Sale Act.[1]

An Act is to be construed as a whole.—This is an important rule, since it is easy, by taking a particular provision of an Act in isolation, to obtain a wrong impression of its true effect. The dangers of taking passages out of their context are well known in other fields, and they apply just as much to legislation. Even where an Act is properly drawn it still must be read as a whole. Indeed, a well-drawn Act consists of an interlocking structure, each provision of which has its part to play. Warnings will often be there to guide the reader, as for example that an apparently categorical statement in one place is subject to exceptions laid down elsewhere in the Act, but such warnings cannot always be provided. Where an Act is defective, the rule is even more important, since a statement in one place may be countered by what appears to be an inconsistent statement elsewhere, and the reader must then try to arrive at the intention of the legislature by construing the Act as a whole. It should be stressed, however, that this does not enable express words to be evaded because they conflict with an *implication* which might otherwise be drawn from elsewhere: *expressum facit cessare taciturn.* Where two provisions of an Act are contradictory, and the contradiction cannot be resolved by construing the Act as a whole, the earlier provision gives way to that which appears later in the Act: " the known rule is that the last must prevail ".[2]

It was formerly common practice to provide in an Act that it should be read as one with an earlier Act or Acts. This practice has fallen into disfavour because it tends to produce intolerable complexities.[3] Where it has been followed the result is that every provision of each Act must be construed as if contained in a single

[1] *Re Standard Manufacturing Co.,* [1891] 1 Ch. 627.
[2] *Wood* v. *Riley* (1867), L.R. 3 C.P. 26.
[3] These were particularly acute in the case of the nineteenth century public health legislation in England.

Act except where some inconsistency requires it to be assumed that the later Act has modified the earlier.[1] In Ghana a statutory instrument is normally to be construed as one with the Act under which it is made.[2] This does not permit the instrument to override the Act, unless of course the Act authorises it to do so.[3] The main purpose of the rule is to avoid the need to repeat in the instrument interpretation provisions contained in the Act.

5. PUBLICATION OF LAWS

The duty to act in accordance with law requires for its observance that the law should be readily available in its most up to date form. This brings us to the subject of how laws are published. The system of publication was changed on the inauguration of the Republic, but since many pre-republican laws remain in force the system developed in Colonial days is of present importance as well as historical interest.

The Colonial system

Throughout the Colonial period primary laws made in Ghana took the form of Ordinances, and a threefold system was developed to make the Ordinances available to those who needed to refer to them. The first stage was the publication in the *Gazette* of the text of each Ordinance as it was made. The second stage was the publication soon after the end of each year of a bound volume containing the Ordinances made in that year. The third stage was the publication every few years of a collected edition, printed in England, of the Ordinances currently in force. Subsidiary legislation, Imperial Acts applying to the Gold Coast, Imperial Orders in Council, Letters Patent and other relevant instruments were treated in much the same way, the collected editions including these as well as the Ordinances. Ten of these collected editions were published in the century preceding the attainment of independence, the years of publication being 1860, 1874, 1887, 1898, 1903, 1910, 1920, 1928, 1937 and 1954-1956. As the number of volumes required grew from one in 1860 to eleven in 1954-1956 so the method of treatment grew more elaborate, and special Ordinances were passed to enable the form of the law to be

[1] *Phillips* v. *Parnaby* [1934] 2 K.B. 299.
[2] Interpretation Act, 1960 (C.A. 4), s. 21.
[3] Statutory Instruments Act, 1959 (No. 52), s. 7.

revised and to make the resulting edition the authorised statute book.[1] The table on p. 286 gives an outline of the position.

Factors such as the humidity of the climate and the voraciousness of paper-loving insects mean a short life for books in Ghana, and not even the National Archives in Accra possess a complete set of editions of Gold Coast laws. The table has been compiled from the materials available and is believed to be complete, although it is possible that further collected editions were published in the nineteenth century and have since been lost sight of.

The editions of 1860 and 1874 were merely collections in chronological order of the Ordinances and other laws in the form in which they were made, the 1874 edition containing also the texts of various treaties made with local Chiefs. In the 1887 edition, the first of the three prepared by Sir William Brandford Griffith, certain improvements were made. An Ordinance was passed which repealed a number of spent and obsolete enactments and thus enabled them to be omitted from the collected edition.[2] Although the remaining Ordinances were printed in chronological oTder as passed, footnotes were included to show where amendments had been made. It must have been apparent however that this was not enough, and before work was begun on the next edition an Ordinance was passed appointing Sir William Brand-ford Griffith a Commissioner for the purpose of preparing a revised edition and authorising him to do anything relating to form and method which might be necessary for the perfecting of the new edition.[3] In particular he was authorised to omit spent enactments, to consolidate Ordinances *in pari materia,* to alter the arrangement of Ordinances, and to add short titles and marginal notes. On being approved by the Governor the edition so prepared was to constitute " the sole and only proper Statute Book of the Gold Coast Colony up to the date of the latest of the Ordinances contained therein ".

The 1898 edition, which was prepared under this Ordinance, did not perhaps exploit the powers given as fully as it might have done. Apart from the incorporation of amending Ordinances in the principal Ordinances affected by them, the method remained

[1] Between 1894 and 1954 no less than twenty-eight Ordinances were passed with respect to these collected editions, as well as a number of others which repealed spent Ordinances or otherwise provided for statute law revision.

[2] Statute Law Revision Ordinance, 1886 (No. 1).

[3] Reprint of Statutes Ordinance, 1896 (No. 14).

No. of volumes	r#fc	*Containing law in force at*	*Published*	*Extent*	*Statutory authority*	*Prepared by*
1	Ordinances of the Forts and Settlements on the Gold Coast	31st Dec, 1859	1860	H.M.'s jurisdiction	—	
1	Ordinances of the Gold Coast Colony	31st Dec, 1870	1874	Colony	—	Algernon Montagu
1	Laws of the Gold Coast *Colony*	7th April, 1887	1887	Colony	—	Sir William Brandford Griffith, *Chief Justice of The Gold Coast Colony*
2	Ordinances of the Gold Coast Colony	June, 1898	1898	Colony	Reprint of Statutes Ordinance, 1896 (No. 14)[1]	
2	Ordinances of the Gold Coast Colony	31st March, 1903	1903	Gold Coast	Reprint of Statutes Ordinance, 1903 (No. 4}	
3 1	Ordinancesof the Gold Coast Colony Ordinances of Ashanti/ Ordinancesof the Northern Territories	31st Dec., 1909	**1910**	Gold Coast	Reprint of Statutes Ordinance, 1909 (No. 16)	F. H. Gough, *a Puisne Judge of the Colony*
3 1 1	Laws of the Gold Coast Colony 1920 Laws of Ashanti 1920 Laws of the Northern Territories of the Gold Coast 1920	31st Dec, 1919	1920	Gold Coast	Revised Edition of the Laws Ordinance, 1920 (No. 16)*	Sir Donald Kingdon, *Attorney-General of the Colony*
3 2	Laws of the Gold Coast Colony 1928 Laws of Ashanti, British Togoland and Noi thern Territories 1928	1st Jan., 1928	1928	Gold Coast and British Togoland	Revised Edition of the Laws Ordinance, 1928 (No. 12)[3]	E. G. Smith, *a Puisne Judge of the Colony*
4	Laws of the Gold Coast (including Togoland under British Mandate) 1936	1st Sept., **1936**	1937	Gold Coast and British Togoland	Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24)[4]	Sir Leslie M'Carthy, *Solicitor-General of the Gold Coast*
5	Laws of the Gold Coast (1951)[6] Laws of the Gold Coast	**31st** Dec, **1951**	1954	Gold Coast and British Togoland	Revised Edition of the Laws Ordinance 1951 (No. 36)"	Sir Percy McElwaine
4	**(1954)°** Laws of the Gold Coast	**31st** Dec, **1954**	1956			Sir Patrick Branigan, *Attorney-General of the Gold Coast*
2	Supplement 1952-1954[7]		1955			

[1] As amended by Ordinances No. 17 of 1897 and No. 13 of 1898.
* This was the Colony Ordinance; similar Ordinances were passed for Ashanti (No. 8 of 1920) and the Northern Territories (No. 5 of 1920).
* As amended by Ordinance No. 26 of 1929. This was the Colony Ordinance; similar Ordinances were passed for Ashanti (No. 2 of 1928 as amended by No. 21 of 1929 British Togoland (No. 1 of 1928) and the Northern Territories (No. 1 of 1928).
[4] As amended by Ordinances Nos. 8 and 29 of 1937. The Tocoland Ordinance was No. 30 of 1936, as amended by Ordinance No. 16 of 1937.
• Volumes I to V of the 1951-54 Edition, containing Ordinances only. [a] Volumes VI to IX of the 1951-54 Edition, containing subsidiary legislation, etc [7] Containing the Ordinances of 1952-1954, the Income Tax Ordinance, 1943 and a chronological table of Ordinances from 1852 onwards.
• As amended by Ordinance No. 35 of 1954.

much as before and the Ordinances continued to be arranged in chronological order. This was also true of the two following editions, made under similar powers. In 1920 however Sir Donald Kingdon introduced a new method, following a recommendation made in a circular from the Secretary of State.[1] The Ordinances of the Colony were arranged under twenty-four Titles, each Ordinance being given a chapter number in place of its original number. The Titles were as follows, the figures in brackets indicating the number of chapters in each—

1. Legislation (4).
2. Abolition of Slavery (2).
3. Administration of Justice (11).
4. Public Officers (13).
5. Police and Prisons (6).
6. Political Prisoners (7).
7. Military Affairs (5).
8. Posts and Telegraphs (5).
9. Medical and Sanitary Affairs (12).
10. Local Government (1).
11. Religion and Education (4).
12. Marriage (6).
13. Labour (3).
14. Native Affairs (5).
15. Land (7).
16. Mines (3).
17. Forestry and Agriculture (4).
18. Animals (2).
19. Ways and Communications (11).
20. Finance (22).
21. Trade and Customs (24).
22. Regulation and Control of Various Matters (17).
23. Immigration (5).
24. War (18).

The arrangement of Titles, and of chapters within them, was designed to bring as close together as possible subjects of a similar nature and matters continually being dealt with by the same individuals. Another change made in this edition was the separation of the Colony subsidiary legislation from the Ordinances from which it derived. The first two volumes contained the

[1] Circular Dispatch dated 18th September, 1915.

Ordinances under chapter numbers from 1 to 197 and the third contained subsidiary legislation as well as Imperial statutes, Orders in Council, etc. Each item of subsidiary legislation was made easy to find by being grouped under the same chapter number as the Ordinance giving power to make it, a useful system which continued to be employed in the subsequent editions. In the volumes for Ashanti and the Northern Territories the Ordinances continued to be arranged in chronological order, since Sir Donald Kingdon considered that the fact that a large part of the law in force consisted of applied Ordinances of the Colony precluded arrangement under Titles.[1]

In the 1928 edition the grouping of Ordinances under Titles was, "by special request of His Excellency the Governor", abandoned in favour of an alphabetical order according to the short title of each Ordinance.[2] Short titles which began with a word which was not indicative of the subject-matter, and would thus have been difficult to find in the alphabetical arrangement, were suitably altered.[3] The alphabetical arrangement was not limited to the Colony, but applied to the three so-called dependencies as well, and the chronological order was finally abandoned. The number of chapters of the Colony Ordinances remained almost the same at 190. In addition there were 24 chapters of Ashanti Ordinances, four chapters of British Togoland Ordinances and 22 chapters of Northern Territories Ordinances.

The system of Titles was restored in the 1936 edition and the new power to legislate in one Ordinance for the Colony, Ashanti and the Northern Territories[4] enabled the edition to take for the first time the form of a single statute-book covering all four territories.[5] The Titles were in the main similar to those used in the 1920 edition, although they appeared in a different order. The Titles Political Prisoners, Regulation and Control of Various Matters, and War disappeared. New Titles were Electricity and Water, Administration (relating only to the dependencies), Books and Publications, and Miscellaneous (ranging from Oaths

[1] See the preface to these volumes.

[2] Preface to the 1928 Edition, p. vii. The Governor was Sir Alexander Slater, who had succeeded Guggisberg the year before.

[3] *E.g.* the short title " British and Colonial Probates Ordinance " was changed to " Probates (British and Colonial) Ordinance ".

[4] See pp. 32-33, *ante.*

[5] By virtue of the British Sphere of Togoland Order in Council, 1923 the laws of the Colony applied in general to the southern section of British Togoland, and the laws of the Northern Territories applied in general to the northern section of British Togoland.

to Girl Guides). Another change was the omission of certain Ordinances, which were listed in the Schedule to the Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24). These were described as being " obsolescent or of a temporary nature or being under revision or being Ordinances the carrying into effect the provisions of which is doubtful ". Their omission did not affect whatever force and validity they had.[1] Although the 1936 edition was thus able to be produced in only four volumes, the problem of obsolescence caused by the increasing bulk of current legislation was becoming more acute. It was little use having the revised laws in four volumes if within a few years as many more volumes had also to be handled in order to ascertain the state of the law. To meet this problem a system of cumulative annual supplements was embarked upon in 1938.[2] Ordinances enacted after 1st September, 1936 which amended chapters of the 1936 edition were arranged in the supplement in the order of those chapter numbers. Other Ordinances so enacted were given in chronological order, incorporating any amendments subsequently made to them. Subsidiary legislation was treated in the same way. In order therefore to find out if an enactment included in the 1936 edition had been amended or repealed, it was only necessary to look in one place in the latest cumulative supplement. Unfortunately shortage of staff due to war conditions led to the suspension of the scheme in 1940 after only two annual supplements had been produced.[3] It was never revived.

When the last Colonial revision was undertaken in 1951 the bulk of statute law had greatly increased, and the task was the most formidable that had faced any editor of the Gold Coast laws. The Revised Edition of the Laws Ordinance, 1951 (No. 36) therefore authorised the editor, Sir Percy McElwaine (a former Chief Justice of the Straits Settlements), to omit a considerable number of Ordinances, which nevertheless retained their validity.[4] Provision was also made for further omissions, and also amendments and additions, to be authorised by the legislature and

[1] Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24), s. 5.

[2] Revised Edition of the Laws (Annual Supplements) Ordinance, 1938 (No. 37).

[3] The suspension was imposed by Regulations, (No. 20 of 1940) and con tinued at the end of the war by Ordinance No. 3 of 1946.

[4] See the Schedule to the Ordinance which, as amended, is printed at pp. xv to xvii of Vol. I of the 1951 edition. Further entries were made by Ordinance No. 35 of 1954.

reflected in the revised edition.[1] These steps did not prevent the edition from reaching the unprecedented size of nine volumes, with two more being added by way of supplement.[2] The Ordinances themselves were contained in five volumes and were again arranged under Titles. The number of chapters increased from 221 to 272, and the number of Titles from 26 to 30. The new Titles were Town Planning and Housing, Liquor Trade, Enquiries, Statistics and Valuation, and Arms, Explosive *(sic)* and Inflammatory Substances. The order of the remaining Titles was virtually unchanged. The system of Titles was deprived of much of what value it possessed by the failure to follow the previous practice of listing all the Titles at the beginning of the first volume.

Although containing the law as in force at the end of 1951, the volumes containing the Ordinances were not published until 1954 by which time much of the law had been altered. To prevent the subsidiary legislation volumes from falling even further behind, an Ordinance was passed to enable these to include instruments made up to the end of 1954,[3] but even so they were not published until 1956. The work was completed by a two-volume supplement which contained the Ordinances passed in 1952-1954 and also the consolidated edition of the Income Tax Ordinance, 1943 which had been prepared under separate statutory authority.[4] Those Ordinances which amended chapters included in the five volumes published in 1954 were set out under the appropriate chapter numbers after the Income Tax Ordinance at the beginning of the supplement; the remainder were given in chronological order. Subsidiary legislation under Ordinances passed in 1952-1954 was included in Volume VI of the main work.

In concluding this brief survey of the Colonial system of publishing laws some mention should be made of indexing and noting-up. The practice varied, but it was usual to supplement each

[1] Revised Edition of the Laws Ordinance, 1951, (No. 36) s. 6. The procedure was used to effect a considerable tidying-up of the statute book—see the Revised Edition of the Laws (Miscellaneous Provisions) Ordinance, 1952 (No. 52).

[2] The figures exaggerate the real increase, since not only were the 1951 volumes smaller than those of 1936 but heavier paper was used.

[3] Revised Edition of the Laws (Amendment) Ordinance, 1954 (No. 35), s. 2.

[4] Income Tax (Amendment) Ordinance, 1952 (No. 18), s. 50. The supplement itself was authorised by the Revised Edition of the Ordinances (1952-1954 Supplement) Ordinance, 1954 (No. 36).

collected edition by a full subject-matter index and also a chronological table showing every Ordinance and its subsequent fate— repeal, absorption into a chapter of a revised edition, omission or otherwise. Sometimes the index was published separately, as in the case of the 1936 and 1951-1954 editions, and sometimes it was given at the end of a volume. In the case of the 1951-1954 edition not only was a full index published separately, but an alphabetical list of Ordinances was given at the end of every volume. In each annual volume of Ordinances published thereafter a cumulative index arranged in alphabetical order of short titles was printed at the end of the volume. Noting-up was provided for by the issue, at intervals of a few months, of noting-up instructions. These set out, in order of chapter numbers of the latest collected edition followed by subsequent legislation in chronological order, the textual amendments made to Ordinances and, after Independence, to Acts of the Parliament of Ghana. The instructions enabled minor amendments to be noted in manuscript on the enactment affected, while larger amendments were cut out of the noting-up booklet and pasted in at the appropriate place in the bound volume. No notmg-up service was provided for subsidiary legislation.

The present system

When the constitutional legislation was being prepared in the early months of 1960 it became necessary to consider the question of replacing the 1951-1954 edition of the laws. More than three hundred Ordinances and Acts had been enacted since the end of 1954, together with nearly two thousand items of subsidiary legislation. In all, the local enactments were distributed among twenty-one volumes, and the absence of an up-to-date comprehensive index made the task of finding out the law on any point increasingly troublesome. In addition there was the problem of the application of British statutes. As explained elsewhere in this book, there were in force in Ghana British statutes of three types, namely the statutes of general application in force in England on 24th July, 1874, the Imperial Acts which had applied to the Gold Coast by express provision or necessary intendment, and the statutes (governing such matters as divorce, merchant shipping and registered designs) which were applied by local enactments. Although some statutes of the first two types were set out in Vol. VI of the 1951-1954 edition, there was in existence no comprehensive list of the British statutes in force in Ghana,

and the texts of most of them were available only in British collections where they had to be read with such modifications as were necessary to fit Ghanaian conditions. Other relevant factors were that the form and much of the content of the Colonial legislation had been rendered obsolete by the actual and proposed changes in the constitutional system, and that legislation was expected to continue for some years at the high rate necessary to implement the Government's plans for social and economic development.

What was to be done? Attention was first turned to the possibility of continuing the Colonial system and publishing a revised edition of the laws as soon as possible after the inauguration of the Republic. Weighty reasons were however advanced against this, some of a general nature and others arising out of Ghana's situation at the time. These reasons may be summarized as follows—

1. The system of producing sets of bound volumes every few years is too rigid when the law is constantly changing. The edition is out of date before it is published and can only maintain its usefulness by means of the noter-up system, which is troublesome to operate, highly susceptible to error by the clerk entering the amendments, and produces after a time volumes made difficult to read by the presence oi innumerable manuscript corrections and pasted-in bits of paper.[1] Even with noting-up there are many laws which are new and cannot be incorporated into the main volumes.

2. The system is theoretically unsatisfactory because it means that the laws change their identity every few years, being rearranged and renumbered, and frequently given new titles, new sidenotes and even new wording. The original enactment by Parliament is lost sight of, and Parliament can have no real control over the new form it assumes. Furthermore the risk of accidental omissions and other errors is considerable.

3. The system involves a great upheaval, with all the law being put in a different place and all existing volumes (with, it

[1] In the Objects and Reasons for the Revised Edition of the Laws Bill, 1951 the comment was made that " where the amendments of the Laws since the [last] revision have been incorporated in the main volumes of the Laws the books have become very cumbersome and dilapidated."

may be, the user's annotations) being superseded overnight. Law reports, textbooks, contracts and other documents referring to particular enactments immediately become difficult to follow. ■

4. The system involves the engagement of a Commissioner and other extra staff, since the work is too great over a short period to be absorbed by the Government's normal legal staff. Apart from the difficulty of finding suitable people, this adds (if not substantially) to the already heavy cost of printing and binding sets of a dozen or so large volumes.[1]

The conclusion reached was that while the Colonial system of publishing laws no doubt had its merits when the enacted law was small in quantity and relatively static (and when what was required was two or three volumes which the district commissioner could slip into his bag when going on trek) the s}'stem had outlived its usefulness in Ghana. A new one had therefore to be devised. It was decided to get round the first of the objections noted above by having loose-leaf binders and issuing replacement pages incorporating amendments as they were made. It would have been ideal to make a fresh start by publishing in this form a completely new set of laws, including a re-enactment of such of the British statutes as were still required, but this would have been an immense task calling for a large staff and was rejected as impracticable. Instead, it was decided to achieve the same results by degrees. Early in 1960 a statute law revision branch was set up within the Attorney-General's Department and a programme of consolidation of the Ghanaian and relevant British statute law was embarked upon. The resulting laws have been put through, as they became ready, in the form of ordinary Acts of Parliament, along with Acts in the current legislative programme. When complete, the law reform programme is expected to supersede, by Acts of the Republican Parliament, all local Ordinances and Acts which came into force before 1st July, 1960 and all British statutes applying to Ghana.

The cumulative binder service of Acts and legislative instruments was inaugurated on 1st July, I960.[2] The binders are as

[1] The total cost of the 1951-1954 edition was approximately £37,000, only a small proportion of which was recovered from sales.

[2] For an explanation of the division of subsidiary legislation into executive and legislative instruments see pp. 265 *et seq., ante.*

stout as could be obtained, and heavy paper is used to reduce **the** risk of tearing—a notorious disadvantage of loose-leaf systems. The first volume of the Acts of Ghana, for which red binders are used, contains a note explaining the system, followed by an alphabetical table of Acts included in the binder and a note on the Interpretation Act, 1960. The Acts begin with the Constitution (which is printed on grey paper so that it can be easily distinguished) and the eleven other Acts of the Constituent Assembly. In accordance with a resolution of the Constituent Assembly, all the Acts passed by it were numbered, in accordance with the order in which they were passed, by the insertion in the original copies of the letters CA. followed by the appropriate numeral.[1] In the published copies, however, this numeral was, as required by the resolution, omitted in the case of the Constitution. As the fundamental law, the Constitution did not need a reference number and would have appeared slightly undignified if given one.

After the Acts of the Constituent Assembly, the first volume continues with Acts of the Republican Parliament in chronological order. By s. 7 of the Acts of Parliament Act, 1960 (C.A. 7), these Acts are required to be numbered consecutively from the establishment of the Republic, and the numbering is not to begin afresh at the commencement of a calendar year, a new Parliament or any other period. The object of this is to enable an Act to be referred to simply as, for example "Act 29", rather as the corresponding chapter of the Laws of the Gold Coast (the Criminal Code) used to be referred to as " Cap. 9 ". As Acts are passed they are issued to subscribers by the Government Printer for insertion in the binder. As soon as possible after the end of each meeting of the National Assembly, that is about once a quarter, replacement pages are issued. These incorporate amendments made to Acts already in the binder, note repeals and keep the alphabetical table up to date. Amendments and repeals of pre-Republican Acts and Ordinances continue to be dealt with by the noter-up service. Acts are no longer published in the *Gazette,* or as supplements to the *Gazette.* Notice of their enactment is given in the *Gazette* however, and separate bound copies of each Act are available from the Government Printer. Although the binder service presents the law in up-to-date form, it may

[1] The text of the resolution is given in *Proceedings of the Constituent Assembly,* col. 161.

occasionally be necessary to refer to the original text of an Act which has been amended or repealed. To provide for this a limited number of annual bound volumes of Acts will continue to be published.

The binder service of legislative instruments, for which black binders are used, operates in much the same manner. Volume I begins with an explanatory note and is followed by a key to Acts and Ordinances and an alphabetical table of instruments included in the binder. The key lists enactments under which legislative instruments have been made since the beginning of 1960. The list begins with chapters of the 1951-1954 edition and continues with subsequent Acts and Ordinances in chronological order. Thus to find whether a legislative instrument has been made under s. 3 of the Wild Animals Preservation Ordinance (Cap. 246) one looks under Cap. 246 in the key and sees that L.I. 8 has been made under it. The key does not help with subsidiary legislation made before 1960, but as time goes on and the older instruments are gradually superseded it will come to present a more complete picture. After this preliminary matter the volume continues with the legislative instruments made since the beginning of 1960. Like the Acts, these are numbered consecutively without a break at the end of the year or at any other time. The numbers do not of course correspond with the numbers of the Acts under which the instruments are made—this useful feature of the Colonial system is hardly possible with the type of loose-leaf system now used. What is said above as to the issue of new material and replacement pages, the giving of notice in the *Gazette,* and the publication of bound copies and annual volumes applies to legislative instruments as it does to Acts.

It remains to consider executive instruments. These are published in a separate series, and their numbering starts afresh at the beginning of each year. There is no binder service and the instruments are issued as they are made, being notified in the *Gazette.*[1] Bound annual volumes of executive instruments are also published.

[1] A number of enactments require statutory instruments to be published in the *Gazette.* To enable uniformity of treatment to be given, the Official Publications Act, 1959 (No. 85) was passed. Section 2 of the Act states that the publication by the Government Printer of any Act, instrument, or other document otherwise than in the *Gazette* shall, if *notice* of the publication thereof is given in the *Gazette,* have the like effect as if the document had been published in the *Gazette.* The section does not apply to the publication of Bills.

The new system of publication of laws depends for its success on efficient indexing, particularly while so much of the older law remains concurrently in force. Previous indexes have perhaps tended to concentrate too much on the divisions laid down by the arrangement of chapters in the latest collected edition, and to give insufficient cross-references. We may take as an example of this the treatment of the administration of estates of deceased persons in the comprehensive index to the 1951-1954 edition, which ran to 232 pages. There were five relevant Ordinances, namely the Probates (British and Colonial) Ordinance (Cap. 21), the Administration of Estates by Consular Officers Ordinance (Cap. 22), the Administration (Foreign Employment) Ordinance (Cap. 23), the Appropriation of Lapsed Personalty Ordinance (Cap. 24) and the Probate Exemption Ordinance (Cap. 25). On looking up " Administration of Estates " in the index however one finds a reference to Cap. 22 only. On looking up " Probate " one finds references only to Caps. 21 and 25, and so on. In fact the index, in spite of its length, was really designed only to show the arrangement of material within each Ordinance, a thing which might perhaps have been more conveniently done by printing an arrangement of sections at the beginning of each Ordinance in the main volumes. Nor did the arrangement of Ordinances under Titles help very much. As mentioned above, the 1951-1954 edition did not set out in one place what the Titles were, so that they could be gathered only by looking at the beginning of five different volumes. Apart from this, it is notoriously difficult to arrange laws under really helpful Titles. The first four of the Ordinances mentioned above were printed under the Title " Justice ", but the fifth was printed in a different volume under the Title " Public Officers ". These problems can be met only by having an index which lists all the relevant law under a heading such as " Administration of Estates " and contains cross-references to this heading under words such as " Probate " which are likely to be looked up by a reader in search of information on the subject. A further essential is that the index should always be kept up to date.

In an attempt to satisfy these requirements an index of all Acts and Ordinances in force on 31st March, 1961 was prepared by the statute law revision branch and published in June, 1961. This was issued in a bound volume, which also contained a chronological table of chapters in the 1951-1954 edition and subsequent Ordinances and Acts, showing repeals and the head-

ings under which live enactments were dealt with in the index. It is proposed to reissue the volume as soon as possible in a loose-leaf binder, which will be kept up-to-date in the same way as the binder service of Acts and legislative instruments. In time it is hoped to produce a similar index for legislative instruments.