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The Renton Report

In May 1973 the Heath Government set up a departmental committee under Sir David Renton MP to review the form in which public Bills are drafted "With a view to achieving greater simplicity and clarity in statute law." This action was prompted by the House of Commons Select Committee on Procedure, itself acting on a suggestion made by the Statute Law Society.[1] The Society, set up in 1968, had orchestrated the discontent within statute law obscurity by setting up successive committees of enquiry. The first, chaired by Sir Desmond Heap, reported in 1970 on the various grievances of statute users.[2] The second, chaired by Lord Stow Hill, published its recommendations for improvement in 1972.[3]

The Renton Committee reported in May.4 It is perhaps ironical that a committee chaired by a former junior Home Office minister should give short shrift to a committee chaired by a former Home Secretary, but this is what it does. The Stow Hill committee found that two considerations were of paramount importance -

> "(a) That there must be in operation an effective process of continual consolidation of statute law which so far as practicable will ensure that all or virtually all statute law is contained in consolidation statutes within a reasonably short period of years in the future.
> "(b) That as and when amendments and changes are made in those laws, the procedure and form of the amendments and changes adopted is such as to keep that body of consolidated law tidy, well arranged and ordered so as to be easily accessible to and ascertainable by users of all kinds."

To achieve this objective, the Stow Hill committee advocated a "crash programme" of consolidation, using all available resources. The Renton Committee contemptuously dismisses this key suggestion, describing it as "fantasy" (para 7.21) and "neither practicable nor desirable" (para 14.10). By an extraordinary perversion of reasoning, the committee reach the conclusion that -

> "It would not be practicable to consolidate the whole statute book within a limited number of years, nor to do so on the principle of 'one Act, one subject,' nor to maintain each such 'principal' Act in a state of perpetual consolidation by the exclusive use of textual amendment; moreover Acts framed in this way would not necessarily be clearer or simpler for the user (paras 14.7-14.10)."

It is of course true, as the Stow Hill committee had recognised, that there are exceptional statutes (such as Magna Carta) which cannot be incorporated in a consolidated statute book, that a consolidation Act, even if amended exclusively by the textual method may ultimately need to be reorganised and enacted afresh, and that the shortage of draftsmen may hinder a "crash" programme. But to let such difficulties entirely prevent the adoption of a scheme of reform most people would consider essential is indeed to throw out the baby with the bath-water. The first official committee to examine the subject for 100 years thus firmly tells us that we are not to enjoy, as almost all other Commonwealth countries enjoy, a properly-organised statute book, arranged under titles and kept up to date by textual amendment. Will statute users meekly accept this abdication of a central duty of the State?

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1 Report of the Select Committee on Procedure 1970-71 (HC 538, paragraph 68).
2 Statute Law Deficiencies, Sweet & Maxwell Ltd. on behalf of the Statute Law Society.
3 Statute Law:the Key to Clarity. Sweet & Maxwell Ltd. on behalf of the Statute Law Society.
4 The Preparation of Legislation. Cmnd.6053.

Mercifully, the Renton Committee do not reject textual amendments altogether. Indeed they find that users are "in the main critical of Acts which amend existing legislation non-textually" (para 6.17). One witness, the Lord Chief Justice, told the committee that he "wholeheartedly supports textual amendment and that when complex legislation was amended textually, it was of enormous help to the judge" (para 6.16). The Master of Rolls, Lord Denning said -

> "I would like to have the whole [Act] printed out with the complete new amendment written in. I do not like legislation by reference whereby you amend by saying that in such a previous Act you shall have some other thing taken as so-and- so. I think that ought to be avoided as far as possible. It is a far more difficult task to interpret when you have legislation by reference. I do not like incorporation by reference at all. I would rather say ' in place of such-and- such a section we shall have this." (para 6.16).

The Lord President of the Court of Session took the same line, and admirably expressed the objection to the system of referential amendment traditionally used in drafting our statutes. Expressing "a strong preference for textual amendment to be used wherever possible," he said that this makes it

> "so much easier to discover what the law is. Instead of having your fingers in about three different statutes at one and the same time, you get in an ideal textual situation the final form of the live statute which you have to deal with, and when you want to discover the history of the final form you look back to the earlier one. What I think from the point of view of the user is invaluable, is to be able to look at the amended form of the section in a complete state instead of having to look, here, there and everywhere at the same time" (para 6.16).

Why has textual amendment, so obviously prefereble, not been commonly used? The answer lies in the "four corners doctrine." Enunciated by Lord Thring, first of the Parliamentary Counsel, the four corners doctrine says that

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> "It is not fair to a legislative assembly that they should, as a general rule, have to look beyond the four corners of a Bill in order to comprehend its meaning" (para 7.14).

Amendments expressed textually require accompanying explanation and transgress the four corners doctrine. The Renton committee firmly says that "In principle the interests of the ultimate users should always have priority over those of the legislators: a Bill should be regarded primarily as a future Act" (recommendation (8) p.149). Accordingly the four corners doctrine should be scrapped, textual amendment should be used "as generously as possible" and explanations should be given by separate textual memoranda or in similar ways. A trial should be taken of printing explanations alongside the clauses of Bills, as in Canada (para 15.10).

Given a change to the textual amendment system, the Renton committee finds little wrong with the present technique of drafting Bills. Users want an Act to give them a specific answer to a particular problem, but also ask for short simple provisions. A short simple provision will only give a specific answer if it is dealing with an essentially simple situation. The committee says that "it is not possible to deal in simple non-technical terms with subjects which are in themselves technical and involved" (para 7.5). This is true if certainty is to be achieved, an objective which our legislature "tends to prize...exceptionally highly."

> "Statutes confer rights and impose obligations on people. If any room is left for argument as to the meaning of an enactment which affects the liberty, the purse, or the comfort of individuals, that argument will be pursued by all available means. In this situation Parliament seeks to leave as little as possible to inference, and to use words which are capable of one meaning only" (para 7.5).

Where an Act drafted in simple terms has been in force for some time, "any gain in apparent clarity and

simplicity...may be found merely to have shifted the complex task of ascertaining its precise effect, in a particular case, further into the area of case-law." This can be inconvenient and expensive for users:-

> "Where the statute is a new one, there may bea period of greater uncertainty while the lines on which the principles stated in the statute should be applied are being settled by the courts, often at considerable personal expense to individual litigants. As long ago as 1875 it was estimated that it had cost the country at least #100,000 to ascertain the meaning of the Statute of Frauds" (para 10.10).

The committee make 18 recommendations on drafting techniques. The first says boldly: "The draftsman should not be forced to sacrifice certainty for simplicity." (Recommendation (14) p.150).

The remaining recommendations on this point either reinforce existing practice or suggest trifling modifications.

Some people place their hope of improvement in computers, and the Renton committee consider this aspect. If statute users had access, through terminals operating visually or by printout, to up-dated texts stored in a computer they would gain much. Enactments bearing on a particular point could be located more easily. Once located, the text could be inspected by bringing it up on a television-type screen or after printing by the terminal. There would be no need to wait until amended Acts had been re- published in the conventional way; no need to wait for revised indexes. The internal arrangement of an Act would become less important. Regulations and case law could be searched along with the Act. All this will come in time no doubt, but its cost- effectiveness and the willingness of practitioners to use it have yet to be established.

Such a computerised system would have value in the preparation of legislation. At present the draftsman relies on the third edition of *Statutes Revised* (published in 1948) and the subsequent annual volumes. These will have been up-dated by manuscript alterations and the insertion of gummed amendment sheets. As the Renton committee say: "The draftsmen need a clean edition of the statute book if they are to do their work properly, and they have not now got it" (para 8.1). With the latest computerised text-management systems the draftsmen could even do his drafting into the computer, which could then be used for typesetting the resulting product. While, as the committee recognise, all these things hold promise for the future they will not produce any immediate relief. Indeed, with the understandable reluctance of printing unions to move from hot- metal to computerised typesetting, and the general expense and upset that such revolutionary methods entail, the immediate prospect for the computer is discouraging.

Casting about for something really telling to say about "achieving greater simplicity and clarity in statute law," the Renton committee come up with the idea of the post-royal assent facelift. Although unsuitable in itself, this idea contains the germ of a solution to the whole problem of obscure statutes - a point I return to below. The idea of the facelift is that Bills could be "rearranged and tidied up after Parliament has finished with them so that they are more fit to go out into the world and be of help to those who must use them" (para 18.35). The committee recommended that there should be a special procedure whereby Acts which are obscure or otherwise defective in form could be rewritten within three to six weeks after royal assent and then re-enacted expeditiously.

Now this remarkable suggestion pinpoints the weakness of the Renton Committee. It was largely made up of officials whose job it has been (or still is) to operate the very system whose shortcomings were under review. Unlike the Heap and Stow Hill committees, it was in no sense a committee of *users* of statute law, and it contained not one representative of the commercial law publishing firms. As any practitioner knows, it is the commercial publishers alone who, by producing updated collections such as *Halsbury's Statutes, Current Law* and *Halsbury's Statutory Instruments,* and by speedily getting out annotated editions of important Acts, have enabled our system of statute law to function. If there had been a commercial publisher on the committee, or even if the committee had invited a commercial publisher to testify, it is unlikely that the proposal for a post-royal assent facelift would have seen the light of day. One has only to consider what happens with say Finance Acts (notorious for obscurity) to see how impractical the notion is. Commercial publishers rush out annotated

editions of Finance Acts in the shortest practicable period after third reading in the House of Lords. This is because lawyers, accountants and other practitioners need them desperately in order to advise their clients. Are they now to be told that, although the Finance Act has become law, they had better wait because in 3 to 4 months it is likely to be shuffled and dealt again, and re-enacted in a different form?

I had the temerity, in giving evidence to the Renton Committee to suggest that a new body, perhaps called the Statute Law Commission, should be set up to act as "keeper of the statute book." I suggested that

> "The Commission would take over from the Law Commission the tasks of consolidation and statute law reform, but not codification. Other functions of the Statute Law Commission would be keeping under review the state of the body of statutory instruments and local and private Acts, compilation of indexes and chronological tables, preparation of a new Interpretation Act, supervision of all official publications of statutory material, devising and executing a training scheme for draftsmen, and providing a drafting service for Members of both Houses of Parliament."

In giving oral evidence I pointed out that the Law Commission, while performing splendidly in its main field of law reform, had not kept up with the problem of consolidation and had failed in its statutory duty of preparing a *comprehensive* programme of consolidation. I pointed out that, although early on in announcing its intention to increase its drafting resources substantially, it still had no more draftsmen, after ten years, than the four it started with. This required temerity because the Chairman of the Law Commission was himself a member of the Renton Committee and could scarcely be expected to take kindly to such criticisms, well-meant though they were.

The committee dismiss my suggestion and absolve the Law Commission -

> "This list [of Law Commission consolidations] represents a considerable achievement and in our view demonstrates that within the limitation imposed by the available resources great efforts have been made to forward the work of consolidation as fast as possible. For this we pay tribute to all concerned" (para 14.14).

There is really no difference of view. My point was that the Law Commission had *failed to increase "the available resources",* not that it failed to use them properly. This brings us to the nub of the problem.

Our statute law is in a mess. Despite the 121 recommendations of the Renton Committee, useful though many of them are, it will remain in a mess. This is because there is no sign that any person or body with sufficient financial resources and sufficient *dynamism,* coupled with a single-minded determination to solve the problem, will be given a chance to do so. One dynamic reformer was the late Sir Greville Ram. He saw what was required and did move towards than anyone else in this century. Certain it is that nothing in the Renton Report will in itself lead to a solution.

I have often said that what the user requires is to find the law dealing with the point that interests him *in one place* and in up- to-date form. He does not care whether it is in a section of an Act, a Schedule or a regulation: it is all of the same force (disregarding the question of *ultra vires*). After many years campaigning in this field I have reached the conclusion that, now the system of textual amendment has been adopted, there is little more to be done by way of improving Acts of Parliament themselves. It is impossible that an Act should be an ideal formulation of the rules it lays down. Its arrangement is planned by a draftsman who has to bear in mind Parliamentary considerations and who does not know what the Act, as finally passed, will contain. He has to keep it as short as possible, which means compressed wording and the use of such devices as "applying" a set of provisions dealing with one subject to another subject without restating them. He has to divide the provisions between clauses and Schedules. Furthermore,

when the Act is passed it may have to stand with other Acts, and be supplemented by statutory instruments.

What then is the solution? I believe a further process is needed, following the *creation* of an enactment by Parliament or a minister. This is the *restatement* of the provisions, keeping so far as possible to the official language but pulling out the compressions and setting out in full "applied" provisions and other abbreviated matter. This would be coupled with a *rearrangement*, bringing provisions on the same point together, and a detailed system of descriptive headings. Statutory instruments could be included in the restatements which would be revised as required.

Let me give an example, taken from the Consumer Credit Act 1974. Section 32 deals with the *suspension* or *revocation* of a *standard licence* or a *group licence* to carry on a *consumer credit business.* By section 147 it is applied to an *ancillary credit business.* If a question arises about say the suspension of a standard licence to carry on an ancillary credit business the reader's task is complicated by having to consider material relating to the other aspects as well. A restatement could avoid this by setting out separately under appropriate headings the rules relating to -

(a) the suspension of a standard licence to carry on a consumer credit or ancillary credit business,
(b) the suspension of a group licence to carry on such a business
(c) the revocation of a standard licence to carry on such a business, and
(d) the revocation of a group licence to carry on such a business.

Admittedly this system of restatement would suffer to some extent from the same drawbacks as the "face-lift" suggested by the Renton Committee, but its great advantages would outweigh this. Furthermore it would not change the basic statutory wordings and with the aid of a table of comparisons the user shouldhave no difficulty in applying it.

Ideally, such restatements would be prepared and published by a body such as my proposed Statute Law Commission, and commercial publishers could be left to produce their own annotated versions. In practice I suspect that if the idea is taken up at all it will be by commercial publishers who, as so often before, will be left to shoulder the entire burden of securing that the laws enacted by the state are enabled to work with at least some degree of effectiveness.

125 NLJ (1975) 660.