PARLIAMENTARY BILLS AND THE RENTON COMMITTEE

House of Commons Select Committee on Procedure

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Appendix 21

Memorandum by Mr. F .A. R. Bennion (a former Parliamentary Counsel)

(Apart from the final section, this paper follows the numbering of the 'Questions on Public Bill Procedure').

2. Where Bills contain textual amendments to existing Acts Members should be provided with textual memoranda showing the effect of the amendments. In Renton 13.24 my recommendation to this effect was accepted. A description of textual memoranda is given in paragraphs 42 to 48 of my written evidence to the Renton Committee. Recent examples of textual memoranda are to be found in Cmnd. 5183, 5235 and 5242.

3. Yes, I would favour forbidding the introduction of Bills in dummy. It would avoid confusion, particularly among new Members, if a Bill were taken to be introduced when the text of the Bill was published. Whenever under present procedure a Bill is 'introduced' by handing in the long title I would substitute a procedure of giving notice of presentation in the shape of an informal description of the proposed Bill's effect. It is impossible to be certain of drafting correct long title before one has drafted the Bill. This often produces difficulty, particularly with ballot Bills.

4. The rigid rules requiring a Bill to consist of clauses and Schedules have hampered development. It should be possible for a Bill to take whatever form seems most convenient for conveying its effect. A Bill is a statement of legislative intent or the 'command' of the legislature, and there is no reason why it should not be framed like any other document. If, for example, it were more convenient to have cross headings rather than side notes this could be done. Headings could be given to subsections, thus breaking up large masses of print. Schedules should be treated as part of a Bill without having to be referred to in the body of the Bill.

This suggestion involves changing the Committee rule requiring every clause and Schedule to be stood part of the Bill. There is no need for this, and it tends to lengthen debate.

My other suggestion about the form of Bills is that provisions amending other Acts should be drafted to do so textually unless this is impracticable. I proposed to the Renton Committee that there should be a standing order requiring this (Renton 13.18). With respect, I do not consider the Committee's reasons for rejecting this proposal justified.

9. I think it would be most unfortunate if there were any departures from the present publicity given to committee proceedings on Public Bills. It is important for outside interests affected by a Bill to see what amendments are being circulated, and to learn immediately of amendments made to the Bill. This is so that they can make representations to Members if they wish, a necessary process in public consultation.

I favour considerable changes in standing committee procedure however. It should be possible for *any member of the committee to table a question for answer by the Member in charge of the Bill*. This would do away with the need for probing amendments, which often cause mystery and speculation among civil servants whose duty it is to provide briefs. Second, I would like to see amendments to Bills divided into two categories, amendments of

substance and drafting amendments. Amendments raising points of substance should not need to be drafted textually; it would be much more convenient if the Member desiring to propose an alteration of substance were able to do it in broad language clearly indicating the point involved. Only where an amendment was likely to be added to the Bill then and there (as is usually he case with governments) would it be necessary to draft an amendment textually. It might be desirable to go further and provide that even government amendments raising points of principle should in the first instance be drafted in general words. If the principle were approved, the government could later table the necessary textual amendment to give effect to the point. This could lead to a system under which only the amendments expressed in general terms were debated, while textual amendments would not be debated either because they gave effect to broad amendments previously agreed to or were minor or consequential.

10. It would often shorten proceedings if the draftsman and other officials normally present could address the standing committee. It would be desirable that they should sit in the body of the committee next to the Member in charge of the Bill. This would avoid much tedious passing of notes and desperate attempts by Ministers to convey information not fully within their grasp.

11, 13 & 16. The biggest opportunity for saving time in Bill procedure is to abolish the report stage, coupling this with two further changes. First, the committee should after completing a Bill adjourn for such time as is necessary to enable amendments to be drafted to give effect to undertakings. The committee should then resume and go through the amendments, though it should not deal with any other matters. Second, there should be a limited opportunity for Members who are not on the committee to move amendments on Third Reading. I would contemplate that strict selection of amendments would take place here, so that only a point which had not been discussed in committee would be selected.

It sometimes happens that where the Minister in charge of the Bill is unable to give an immediate answer to a question raised in proceedings on the Bill he undertakes to write to the Member concerned. It is very unsatisfactory for outsiders investigating the Parliamentary progress of a Bill to read in Hansard that the Minister has written to a Member explaining a point but to be unable to find out what the explanation was. I suggest that where a Minister writes to a Member in this way the text of the letter should be included in the Hansard report of the next stage of the Bill.

I venture to mention one final matter, although I appreciate it is not within the scope of your investigation at this stage. After many years of struggling with the problem of statute law obscurity, I have reached the conclusion that whatever reforms are made to it the nature of the legislative process precludes producing material in fully satisfactory form for use by those affected. I identify four vices of statute law: *compression* (produced by the need to keep Bills short),*anonymity* (inadequate headings and other sign posting), *distortion* (the structure of an Act is affected by Parliamentary considerations), and *scatter* (provisions dealing with a point are scattered between different Acts and statutory instruments). The solution I have arrived at is Restatement. This involves dealing with the whole corpus of material (Acts and statutory instruments) dealing with a particular subject and designing a structure enabling it to be presented in a systematic and coherent fashion. Details of this scheme are given in an article in The Solicitors' Journal, Vol. 120, No.24, pp. 389-408[1] and in my recently published book *Consumer Credit Control*[2] a copy of which is in the library of the House of Commons.

I would like to suggest for consideration that the Restatement process be carried out under the auspices of a joint select committee of both Houses. It would not be enacted, which would be impracticable since it includes statutory instruments, but would be of persuasive authority.

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[1] Our Legislators are 'CADS', 120 SJ (11 Jun 1976) 390-392, www.francisbennion.com/1976/001.htm.
[2] See *Consumer Credit Control*, www.francisbennion.com/1976/004.htm.