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RENTON REPORT, Sweet and Maxwell 1971
(Published on behalf of the Statute Law Society)
Any footnotes are shown at the bottom of each page
For full version of abbreviations click 'Abbreviations' on FB's website.

Page 70

4.

ORAL EVIDENCE TO THE RENTON COMMITTEE

BY FRANCIS BENNION

Present: The Rt. Hon. Sir David Renton M.P. (Chairman); The Duke of Atholl; The Rt. Hon. Baroness Bacon; The Hon. Mr. Justice Cooke; Sir Basil Engholm; Mr. J. A. R. Finlay; Sir John Gibson; Mr. P. G. Henderson[1]; Sir Noel Hutton; Mr. K. R. Mackenzie; Sir Patrick Macrory; Mr. S. J. Mosley; Mr. Ivor Richard M.P.; Mr. Ewan Stewart.

Secretaries: Mr. A. M. Macpherson and Mr. R. S. Cumming.

CHAIRMAN: First of all I would like to thank you, Mr. Francis Bennion, for the trouble you have taken to submit this paper which you sent to us last July, and which I know has aroused a great deal of interest among us all. I understand you would like to start your oral evidence by some opening remarks of your own, and as we all have quite a number of questions to put to you, perhaps you could let us hear your remarks as briefly as possible.

A: In view of your hint I will try to make them brief; but I find very great difficulty in dealing in a brief way with something which is a very complex matter, anything said about which, to be meaningful, inevitably is complicated. I would like to explain how I come to be here, although there is something said in my written evidence about it. It may seem rather strange that a civil servant should appear before the committee in the way I am here. I seem to have contracted at an early stage a kind of bug which does not allow me to rest—I complain bitterly about it because it is a great nuisance to me—but something has got into me which does not allow me to behave perhaps as a normal parliamentary counsel would and accept the limitations of the position. I went into the office in 1953, over 20 years ago, and I remember

[1] Now Sir Peter Henderson, Clerk of the Parliaments.

at the very beginning of the first day entering that office with a feeling of great apprehension, because I regarded the law and the place where the law was manufactured as almost a holy place. I took up law as a career because I have a very high opinion of its value to the community—in fact it is essential to any civilised community. In the parliamentary counsel office I found that the facilities did not nearly come up to what seemed necessary for the nation's law-factory. For example, instead of finding what should have been the best library in the country for those engaged in changing the law, it was nothing of the kind. That was rather symptomatic of the whole set-up, and I still feel the way in which we tackle the problems of preparing legislation in this country is not commensurate with the great importance of the task to the country as a whole.

It follows that I think this committee is an extremely important

committee. I consider it the most important thing that has happened in relation to statute law since 1875 (when the Select Committee was set up). I have said something in my written evidence of the centuries-long complaint about the intractability of statute law, and I do not need to repeat that. Because the problem is so vast and so important, and because of the warning you have given me about time, I would like to confine my opening remarks to what m my opinion is the nub of the whole thing. First of all, that we should go over to a system of textual amendment; and secondly, that there should be some serious attempt to produce a scientific statute book for the first time in this country.

Textual amendment is dealt with in Part 2, beginning at page 6, of my written evidence, and I probably do not need to repeat anything there, except perhaps what I say in paragraph 10, which I stand by, that: “In my view the major part of our statute book would ideally be arranged, as the first Statute Law Commission said in 1854, in ' 300 to 400 statutes, ' each with a convenient scope and title.”

This brings me to what I call the principal Act, and the operation of textual amendment. There is a great deal of controversy about how you would arrange a statute book under titles if you were going to have one. I would like to stress right at the outset that what I am advocating about textual amendment *can operate perfectly well on the system we now have.* That is, every time there is a new principal Act, a clean Act, (that is, every time there is a new consolidation Act of any sort or a new Act which operates—as the Local Government Act 1972 did in a whole sector of public life—by modifying statute law and replacing it) it should not be amended in any way but textually. As I say in paragraph 12 of my written evidence, we have half our output, or even more, in the form of principal Acts which are clean, which are unamended, and I cannot express too strongly my feeling of the absurdity of having people spend a great deal of time in producing clean Acts, with an expertise which is very rare, and then having a system under which, immediately, Parliament begins to pass Bills which dirty the clean Act, which amend it otherwise than textually. I do not think I need explain what textual amendment is, or what the other form of amendment is, which I refer to as referential amendment or indirect amendment. I take it what I have said in my written evidence about the precise meaning of those terms and the way in which they work out in practice need not be repeated now.

This committee is fortunate in having a sort of panacea available. There are very few official committees set up to deal with any problem who have got in their grasp something which will at least go halfway to solving that problem. It can be done without any expenditure, without the setting up of new bodies or anything at all, except a resolve in the future to amend clean principal Acts textually so that the amendments can be written into the Act to preserve the integrity of structure. I feel it would be—and I can think of no smaller word—a catastrophe if the committee came to any other conclusion than that we should go over to textual amendment wherever possible. I am certain if we go on with the present system there is no

hope of tidying up the mess the statute book is in, or if it were tidied up, keeping it tidy. I am certain of that. If anybody does not accept it I would be glad to

Page 72

hear the reasons why and try to deal with them. I think this is the nub of the whole thing.

Q. Before you go on to the other main theme you wish to develop, I was wondering whether you would like us to deal with the question of textual amendment. I wonder if I might put the first question by referring you to paragraph 24 of your paper. You say: "Accordingly I would propose that each House of Parliament be invited to adopt a new standing order running as follows: A Bill amending any enactment shall do so by directly altering its text, unless this is impracticable." That I think is the climax of your argument, the crux of the whole matter; would you agree?

A. Yes, indeed.

Q. I think I could tell you that other witnesses have pointed out the advantages of textual amendment; many of us are, I think, convinced of the advantages. But other witnesses have also pointed out that the opportunities for textual amendment are limited; that many other factors have to be borne in mind, that although a counsel of perfection would undoubtedly be to have textual amendment all the time, it is just not practicable—to use the same expression as you have used here. In view of what I have said, would you care to say when you think it would be impracticable to have textual amendment?

A. I have dealt with this in paragraph 23 of the memorandum, where I say: "In the present state of our statute book there are certain limitations on the use of the textual amendment system. A provision of an Act which has been heavily amended referentially will probably have to go on being amended in that way until it is consolidated." Then a little lower down:

"Another limitation arises in the case of old Acts whose language is different from present-day usage." There are undoubtedly a number of cases where it is not practicable, and that is why my argument is limited to the clean principal Act, although in the proposed standing order I have not used precisely that language, but that is basically what I am proposing.

Q. You say you should have textual amendment whenever there is a suitable principal Act which deals with the matter in that way. But when there is not one you cannot. That is what you are saying?

A. To give it more precision, whenever there is a suitable Act which either has not been amended at all, or if it has been amended is amended only textually. I might stress that under the long-standing practice of the Parliamentary Counsel Office (based on the four corners doctrine) there are a great many instances where textual amendment is perfectly practicable, but is nevertheless not used.

Q. My only other question on this matter relates to consolidation, and it goes without saying—without elaborating what you have already told us— that the whole key to this problem of extending textual amendment is the rate of consolidation; and in another part of your paper you have indeed referred to that in some detail. First of all, would you agree that just as the principal aim in your opinion should be textual amendment, so the principal method of achieving textual amendment must be greatly extended consolidation?

A. Yes. Only by that can we reap the full advantage of textual amendment in keeping the statute book tidy.

Page 73

Q. Could you tell us what in your opinion are the principal limitations on consolidation today?

A. First of all there is the shortage of draftsmen. Under the system of referential amendment consolidation of the amended and amending Acts together is often extremely difficult. It requires what in my paper I call conflation, which is a useful word to describe the perplexing mental process of working out the effects of cumulative statutes piled one upon the other. This is what the consolidating draftsman has to do whenever he is faced with a referential amendment of an Act to be consolidated. If he were only concerned with textual amendments, the consolidation could be done by an assistant. I mention that because it does add to the length of time taken for consolidation; although nothing can be done about that in the case of existing Acts. The shortage of draftsmen is quite remarkable. It is highlighted by the fact that the Law Commission in their first annual report, when they were reporting the staff they had in 1965, said that there were four draftsmen on their staff of 35, and they also made the remark that "In due course it will clearly be necessary to increase their number."[2] Yet in their latest annual report you find the number of draftsmen is still four, though the total staff has increased to 47.[3] That is why we have no dramatic increase in consolidation. That is the main obstacle. Secondly, and also very important, is the shortage of staff in the Departments who operate the Acts to be consolidated. I had experience of that myself, because I did a housing consolidation which ought to have been before Parliament now, and when the first draft of the Bill, which was about 330 clauses, had been completed, the onus was then on the Department of the Environment to comment on it and say where it did not agree with what they thought the Bill should say. But owing to under-staffing in the legal department of the DOE we had no way at all of making progress, because the staff were tied up with the current Housing Bill, and it meant the consolidation was put aside. I have made a suggestion in my written evidence to deal with that, which is that there could be attached to every major department a legal officer whose sole function it is to deal with statute law consolidation and other matters of that kind.

Q. For the record, could you point out the paragraph?

A. It is the second half of paragraph 68, beginning: "One aspect of the manpower problem, key to the success of the Commission. ..." I think this is an aspect of the Cinderella treatment that statute law has always had in this country, that nobody ever thought it worthwhile making sure the major departments had an officer who kept his eye on the state of the statute law affecting that department and was available for consolidation and other similar work, and was not taken away from it to deal with current departmental business. It is often, almost invariably, the case that consolidation has to wait. It is last in the queue. I think those are the two principal factors. A third factor, which I do not regard as serious, is the possibility that the manning of a joint select committee processing consolidation Bills might be a real obstacle, because there must be ways,

even if the committee has to sit in several divisions, of overcoming that problem.

CHAIRMAN: I think members of the committee will have questions on this matter of textual amendment and consolidation combined.

LADY BACON: Can I ask a question about textual amendment arising from paragraph 26 of Mr. Bennion's paper? I must say his paper is absolutely wonderful, but I did not quite follow the argument on the four corners doctrine. Mr. Bennion says the reason why the referential amendment system persisted so long was the traditional desire to make a Bill comprehensible to Members of Parliament without their having to consider other documents. I do not quite follow this, because I would have thought that with textual amendments the Member of Parliament would have been able to understand a Bill very much better without having to look up so many previous Acts of Parliament. I do not follow this at all, because we have been

[2] The Law Commission, First Annual Report, 1965-66, para. 10.
3 The Law Commission, Eighth Annual Report, 1972-73, para. 74.

assuming in this committee that if we had textual amendment it would in effect mean fewer documents to look at rather than more.

A. It is quite true that if we had textual amendment there would be fewer documents to look at in order to *see precisely* what a Bill does. If a Bill were further amending a principal Act which had already been heavily amended textually we could discover the Bill's precise effect by just looking at one other document—a version of the principal Act printed as previously amended. Though if there were a lot of textual amendments made by the Bill it might still be difficult to get their effect without physically writing them in (that's what a textual memorandum or Keeling Schedule is for).

Under the present system we have to look at the principal Act and each amending Act as well in order to discover *the precise* effect of the Bill. But the four corners doctrine caters for M.P.s who only want a *rough* idea of what the Bill does, and gives them this within the four corners of the Bill so that they need look at no other document. But if the Bill is making textual amendments then it will be difficult to follow the meaning of the Bill without some other document which shows how these textual amendments alter the Acts in question. Could I refer to the example of the Furnished Lettings (Rent Allowances) Bill, I think the members of the committee have had this.

CHAIRMAN: We have got it, and the explanatory memorandum as well.

A. Please look at Schedule 1 to the Furnished Lettings (Rent Allowances) Act 1973—just glance at the first two or three paragraphs. I think you can see they are meaningless in themselves. In the Bill they were accompanied by a textual memorandum which showed by heavy type and other devices what the effect of those amendments was. It could not have been done by a Keeling Schedule, because the amendments scatter too widely around the Act being amended—in this case the Housing Finance Act 1972. Here you have to have *two* documents so that Members of Parliament can understand what the Bill is getting at. Therefore that is a breach of the four corners doctrine, which requires amendments to be put in such a way that Members of Parliament are roughly able to understand the Bill without looking at anything else. Perhaps I could summarise it this way. If you only want a *rough* idea of what a Bill does, the four corners doctrine gives it you in the Bill itself, whereas with textual amendment you also need (if there is no

Keeling Schedule) a textual memorandum. **But** to find *out precisely* what a Bill does under the four corners doctrine you have to conflate the Bill, the principal Act and the amending Acts. Under the textual amendment system you can usually obtain precision just from the textual memorandum (or Keeling Schedule), but if you want to consult the principal Act as well you can do so easily, since it will not have been amended otherwise than textually, and its integrity will therefore have been preserved. The textual memorandum in the example I have shown you sets out the provisions of the Housing Finance Act 1972 which were amended by the Bill, and includes parts of Schedules 3, 4 and 10. The explanation is in the preface on the inside of the front cover.

Q. In effect the textual memorandum serves the same purpose as a Keeling Schedule?

A. Yes, it does. There are two differences. One is you could not have a Keeling Schedule in this Bill without it being extremely lengthy, because of the wide scatter of amendments; the other thing, which is the more important, is that a Keeling Schedule remains in the Bill after it has become an Act, and clutters up the statute book; it is sometimes useful to have this in the statute book, but quite often it is not. In those cases it is better to have a separate document.

MR. MOSLEY: If a referential amendment is used, it means you must look at the principal Act as well?

LADY BACON: That is the point I had.

A. Could I distinguish between getting a rough idea of what the Bill is about and going deeply into the effect? If you want to do the latter you would have to look at the Act being amended. But if a Member of Parliament merely wants to see the basic effect of the Bill he gets it (under the four corners doctrine) from the text of the Bill itself. Take any Act of Parliament. I refer to the Housing Act 1961—I do not know whether the members have it, but perhaps I could at random find something. If you take section 6 of the Housing Act 1961, that is referentially amending section 8 of the Housing (Financial Provisions) Act 1958. It goes on in brackets for about three-and-a-half lines to explain the effect of section 8, and after the brackets close you get the enacting provision that subsections (1) and (2) of section 8 should apply as they apply under the said Act of 1958, but as if . . .—and then with various modifications. If you read the words in brackets and the following words you get a rough idea of what the amendment does; whereas if it had been done textually you would not get any idea of what the effect of the amendment was without a textual memorandum or Keeling Schedule. I hope that makes it clear.

THE DUKE OF ATHOLL: With the Bill you also have a textual memorandum?

A. That is so; and in fact on this Bill you have three versions of it, the versions after the first labelled first revision and second revision.

Q. Is it not possible, instead of having a memorandum, which I suppose may not be very clear, to label them incorporating the amendments at committee stage?

A. That is done in the words in the middle of the front cover.

Page 76

CHAIRMAN: The second revision, which as I understand it was added for use by members of the House of Lords?

A. Yes.

Q. Because it refers to amendments proposed to be made by the Bill as amended by the House of Commons. Therefore it has already been through the Commons, and this would be making it clear what the effect of the amendments proposed in the Lords would be, is that right?

A. No, the Bill was not amended in the Lords, so that the second revision of this memorandum was the final version. It enables Members of the House of Lords to see, when they get the Bill as printed in that House and look at the second revision of the memorandum, what the effect of the Bill would be on the Housing Finance Act 1972.

SIR JOHN GIBSON: Could you tell us whether in this instance you found that the team, by which I mean counsel, departmental solicitors and others concerned in the preparation of the Bill, were able to accommodate reasonably easily the extra work imposed by having to prepare the textual memorandum in those three versions?

A. Yes, I in fact did it myself.

Q. There would be some extra work, and I think the committee would like to know whether this extra work can reasonably easily be accommodated?

A. Yes, there is a certain amount of extra work, which in this case I did myself for all the three versions. It did not take me very long, and it has got the extremely valuable effect that the draftsman is forced to see exactly what he is doing. He ought to prepare the text of the main Act, as it will be after his amendments, and in doing so one always finds, and I think Sir John will probably agree, the points one has overlooked, and one improves them. On top of that, everybody on the team found it an immense help to have a document which shows what is being done; so although it is a small Bill, I admit that, on balance I think the memorandum did not add to anybody's work and produced a better Bill. There was extra printing of course.

SIR BASIL ENGHOLM: I do not want to underrate the importance of the question of textual amendment, but I got the impression you were claiming rather much for it; in fact you said it

would be a sort of panacea. Various things may be claimed for textual amendment, but it does nothing to clarify a principal Act. If the principal Act is full of detail, any amount of textual amendment will not help to make the Act less detailed. Then again you have to consider the style of drafting, and improving drafting techniques. Is it not asking rather a lot of us to believe that if you go over to textual amendment, then by 1984 everything will be perfect?

A. I am currently engaged in drafting, and I do not intend to play down the importance of what Sir Basil has in mind, namely to improve techniques of drafting so as to simplify the expression of the law. I am really looking, as I think the committee is looking, for some fairly dramatic improvement, and I know textual amendment would provide that, and that within 10 years the statute book would be very much better than it would be in 10 years if you did not have textual amendment. I am not saying drafting style cannot be improved; but I honestly believe the draftsmen in this country, both

English and Scottish, try their very best to turn out a high quality product.

For better or worse they are the draftsmen we have got—and you cannot in a short space of time get a troop of archangels who can draft very much better. I do not believe the technique of draftsmen is very defective; they have so many handicaps, and one of the biggest is the state of the statute book. When I draft, and probably everybody else, I cannot do what I ought to be able to do—that is, scientifically examine the statute book to see precisely where changes are required, what the effect of what I am doing is going to be over here and over there. I am sure Sir John knows what I am talking about. We have not got the tools and equipment which enable us to do the sort of job an architect does in extending a house, because we are in the dark owing to the inadequacy of the statute book. If we could remedy this I think the drafting standard itself would go up.

Q. Whatever you may say about the standard of drafting, you still have the difficulties of detail and all the things that can complicate legislation— the approach to legislation, the way in which one is looking at the framework, how much detail is being put in, how much provision you are making to cover contingencies. All this sort of thing is far from drafting; it is the approach to legislation as such, and this makes it, whatever you do about textual amendment, still a complicated business.

A. Indeed, I would not dissent from that at all. Nobody is going to draft a simple income tax law in this country, or a simple Companies Act, because the subject is not simple.

MR. JUSTICE COOKE: You are giving us your observations to the effect that there is considerable scope for the use of the textual amendment system now. That is correct, is it?

A. Yes.

Q. The other thing I wanted to ask about was consolidation, Mr. Bennion, you of course were vice-chairman of a committee of the Statute Law Society which produced a report which we have all read called *Statute Law, the key to clarity.* You have a copy of that, I see, and are no doubt very familiar with its contents. Would you please look at paragraph 16 on page 5 where at the beginning you say: “This being the existing situation, we consider it of great importance that, in so far as this is feasible, a programme should as soon as possible be formulated of large-scale consolidation over a measurable period of years”. Then rather more than halfway down the page you refer to one of the difficulties being the shortage of draftsmen, and you say: “Our correspondence with the Law Commission on this head is with their permission reproduced in Appendix B to this Report.” When one looks at Appendix B on page 21, one sees a letter from the Statute Law Society to Sir Leslie Scarman dated 15 October 1969; and in that letter about halfway down you say this: " While the carrying out of a consolidation programme may be difficult, there seems no great difficulty about drawing up a programme and seeing what it involves. We suggest that this could be done within a period of 12 months or so, and we would like to suggest the aim should be to complete it by the end

of 1970. The actual programme of consolidation might, of course, take a period of something like 20 years, but the important thing is to make a start." What I

Page 78

wanted to ask you was this: is 20 years still your estimate of the period which would be required to put into effect a programme of that kind?

A. I think if the programme is to include the measures listed in paragraphs (a) to (d) of that letter,[4] and is vigorously pursued with adequate finance, that it could be done in 20 years.

CHAIRMAN: Without increasing the number of draftsmen?

A. Certainly not. If you look at the letter, it says the scheme implies the following, and then you have a list beginning with (a) a list of titles of future consolidating Acts; and under (c) an indication of the manpower requirements and other resources required, together with suggestions as to how those might be met; for example, recruitment and training of draftsmen. It would not be difficult to estimate on the assumption that you are drawing up a full scale programme with all that involves.

CHAIRMAN: What it primarily involves is more skilled draftsmen?

A. Yes.

MR. JUSTICE COOKE: In your evidence today you have mentioned obstacles to consolidation, and referred to the need for more skilled draftsmen, and also the need for more departmental resources. I wanted to ask you if those were the only obstacles to consolidation? May I make it easier by putting this? Very frequently you find that before a branch of law can be taken, separated out and consolidated, it needs amendment. Would you agree with that?

A. Yes.

Q. That of course would be a delaying factor in the programme of consolidation?

A. Yes.

Q. Another delaying factor which I will put to you arises out of an experience which you have described to us in your evidence this afternoon. You said about the consolidation of the Housing Acts—on which I understand on good authority you have made splendid progress—that the whole thing had to be postponed because of a departmental programme; that is right, is it not?

A. The reason I was given for the postponement was not the mere existence of another Bill making alterations in the law of housing, but the fact that the preparation of that Bill took away people whose time would otherwise have been available for the consolidation.

Q. Does it not frequently happen that a departmental programme for one reason or another holds up a consolidation?

A. For one reason or another, yes.

Q. And that is a fairly common thing, is it not?

A. I think it is a fairly common experience.

CHAIRMAN: Are there any more questions on textual amendment?

MR. FINLAY: Paragraph 24 of your written evidence suggests that there should be a new standing order as follows: "A Bill amending any enactment shall do so by directly altering its text, unless this is impracticable." Would it be feasible to contemplate such an order without any reference to impracticability, so that it read: "A Bill amending any

Page 79

[4] *Statute Law: the key to clarity*, p. 21.

enactment to which this order applies shall do so by directly altering the text"; and then to provide that the order applied to any enactment not amended otherwise than in the manner permitted by the order—which would limit its scope of course to clean Acts? This would not give the order such wide application as it might have if you attempted to bring in the concept of impracticability? Would an order limited in that way produce anything like the kind of effect in a decade that you spoke of?

A. Obviously it would depend on how the word "impracticable" was interpreted and applied in practice. Yes, I think it would produce much the same effect as the other. But it has greater precision. I do contemplate there would be occasions when the standing order suggested by Mr. Finlay would have to be suspended, because there might well be cases where an Act is being amended that has not been previously amended, but it is still very difficult to do it textually.

Q. So even in the case of a clean Act, one that had never been amended at all, it might be necessary to amend it otherwise than by textual amendment?

A. I cannot envisage an example, but I would not rule out the possibility, because there may be separate individual Acts each independently standing, and what you want to achieve not being possible by textual amendment in each of them; and also the possibility of an emergency, because sometimes you have to pass Bills quickly, they have to be passed in one day.

MR. FINLAY: Might I ask one other question, not related to the last. The form of the textual memorandum on the Furnished Lettings (Rent Allowances) Bill 1972 is that it sets out the two Acts which were being amended, and then in the preface explains that the text of these two Acts is set out in the document. It is set out so that additions and substitutions are indicated in heavy type, and repeals with or without substitutions are indicated by the repealed words being printed with a line drawn through them. Would it be right to say that any textual memorandum explaining the amendments proposed by a Bill which used the textual memorandum method would be a textual memorandum in this form, and no other kind of explanation would be required?

CHAIRMAN: As to the text anyway; there might be as to the substance.

MR. FINLAY: But so far as the text is concerned the memorandum would always be in this form? Is that going too far?

A. No; I could suggest two variations in the **form, if I may.**

CHAIRMAN: Are they set out in your paper?

A. No, not really. First, if it is a big Bill, I think the textual memorandum would have to indicate which provisions of the Bill make which changes, so that one could find an amendment one was interested in. That is not done here because it is a short Bill. The other point is that where the textual amendment takes the form of adding a whole new section, I do not think that needs to be set out again in a textual memorandum. An example occurred in the Centre Point amendment to the Local Government Bill, which I think perhaps has been circulated to the committee.[5] What I wanted to show the committee is this. There is a single clause moved into the

Local Government Bill, it was actually added to the Bill last night toy the House of Commons, and it added two sections to the principal Act, which is the Rating Act of 1967. This is interesting because you see you can add two sections by one clause; whereas the other way, the referential way, you have two clauses; so there is immediately a saving on parliamentary debating time—instead of having two clauses you have one. The other point is that no kind of textual memorandum is given for this, it is self-explanatory. So where you are

5 See Appendix A (not reproduced).

adding a whole new section you do not need the textual memorandum, or very often you do not, because it can be made self-explanatory. The other point I wanted to make is that, if you look at the new section 17B, right at the end, subsection (9), that is a commencement provision which on the system of referential amendment would be in the amending Bill; and therefore you could not, as you can with this, be content with just looking at the principal Act as amended by this one as the whole story. It would greatly simplify the law if that procedure were followed all through. I do not know whether there is time, but I would like to make a point on the question of drafting. This was to deal with office blocks remaining empty. The instructions were that there was to be a penal surcharge on the rates unless the owner had tried his best to let the building. It seemed to me that was a perfectly good simple phrase, so I put it in. That is subsection (2) *(a) of* the new section 17A. It says "where *(a)* the owner has tried his best to let the building. . . ." The meaning of that is given in subsection (5), which gives the factors to be taken into account in deciding whether the owner has tried his best to let the building. I did that in an attempt to use an everyday phrase; it seemed to me to do what was required. But it did not meet with much success in the House of Commons, and I thought the committee might be interested to see what the House of Commons said about it. The report is in today's Hansard.[6] That is the reward of the draftsman who tries to use simple language.

SIR JOHN GIBSON: There are occasions when the draftsman cannot win.

CHAIRMAN: I could have hazarded a guess that "did his best" would have been regarded as probably much too colloquial.

A. I wanted to get in the idea of trying.

SIR PATRICK MACRORY: You did say early on that there would be occasions when textual amendment would not be possible. If one had to choose between a fixed rule for referential amendment or textual amendment what would you say?

A. I must say if it had to be one or the other I would choose the former, because it would be far too constricting to say you must always have textual amendments. It would not work.

CHAIRMAN: It would not work, you must have a principal Act and an amendment.

SIR PATRICK MACRORY: What is the reason for the shortage of draftsmen?

A. This work is just not appealing to many people. One has to have the sort of bug which unfortunately I seem to have contracted, because I find it fascinating.

CHAIRMAN: It does seem to be a bug which infects those who embark on

this particular kind of activity. It is very rare for people, even if they leave the parliamentary draftsmen's office, not to become deeply interested in the work, captivated by it; and therefore it would seem to be a question of spreading it around that this really is not only well paid and secure as a form of employment in our profession, but terribly important and very interesting. It surprises me that, although it is one of the most important jobs in the profession, there have been so few people who have even attempted it. Why do you think there have been so few?

A. I think the reason basically is that in the universities statute law has always been regarded as a vulgar subject, not worthy of academic treatment. It was not regarded as having the interest attaching to common law doctrines. That has led to its not being taken seriously in the universities, which after all provide the formative basis for young men who might later enter the parliamentary counsel office. It is astonishing there is no university in the United Kingdom with a chair in legislation. Legislation is a vitally important subject. Every bit of our law is formed that way, it is done in the form of Acts of Parliament. The way they are drafted, interpreted, their interaction with each other, the principles behind it, the comparative studies

[6] See Appendix B.

of this subject by reference to other countries, and in particular of course the EEC countries which raise very pressing problems, have been entirely neglected. Legislation has been the Cinderella of the universities as well as of the Government and government departments. This is why I have argued the case for setting up a special body.

SIR NOEL HUTTON: I wanted to remind you of what you said in the Heap Report in 1970,[7] and I suppose you, unlike other witnesses from the Statute Law Society, actually read this publication before putting your name to it.

A. It expresses the views of a large committee, much larger than this.

Q. May I come to the interesting question of the Furnished Lettings (Rent Allowances) Bill, which you attached to your memorandum, and ask you a couple of questions about it. If you look at the text of the Bill you could not get any idea at all what the Bill is doing?

A. No.

Q. You are not supposed to be able to get anything from this. You have to go to the title, and that tells you what this Bill is really trying to do. It is perfectly intelligible and there is no need to look any further. Do you have any difficulty, has the Chief Clerk of Public Bills any great difficulty in seeing if the provisions of the Bill are always within the title of the Bill? Do you have to speak to the Chief Clerk of Public Bills in such a case; do you give him a memorandum, or do you leave him to work out for himself the amendments covered by the title?

A. I did discuss the matter with the Chief Clerk of Public Bills. It was an unusual departure, and the Clerk advised me on the best way of publishing the memorandum. I do not think he expressed any difficulty about the question whether the Bill was within the title. The memorandum should be some help in that.

SIR NOEL HUTTON: The very first amendment, to section 18 (3) *(b)* of the Housing Finance Act of 1972, is obviously not covered by the title. I have

no doubt the answer is that when you have got your motions you can find out.

CHAIRMAN: If I may interrupt: I want to understand what Sir Noel is getting at. As I understand it, the first amendment in the first Schedule is a mere paving amendment, it is mere drafting, and it is not the sort of thing one would expect to find referred to, although it may be indirectly covered by it, either in the long title or the explanatory memorandum.

A. Could I explain, Mr. Chairman. This amendment has no operative effect at all. It is mere statute law revision. The Act deals with rebates, from rent of dwellings, and section 18 (3) *(b)* mentions the case where there is no rent. How you can have a rebate from a non-existent rent one does not know. We took the opportunity to remove those words because they had no effect, and that was clear to the Clerk. It was allowed despite the long title because it had no operational effect and it made no difference; it was a bit of tidying up.

SIR NOEL HUTTON: I have stumbled on an interesting point. I was really asking that to pave the way for my next question. On a Bill of this kind, is it really possible for a private member to get his amendments in order?

A. I have dealt with that in my memorandum.[8] Perhaps I can say briefly that no difficulty was experienced in this. As a general answer, if there is a reasonable indulgence by the Chair, as I think there is increasingly, to enable a member to raise the point of substance he wishes to make, I do not think there is a serious problem. But members would welcome advice on drafting amendments of that kind, perhaps given by the Statute Law Commission I propose.

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[7] *Statute Law Deficiencies.*

[8] Paras. 37-40.

CHAIRMAN: I think we must now go over to that theme. Perhaps you could outline your views on that, and we will then question you.

A. In my submission, this committee cannot review the form in which public Bills are drafted without also reviewing the form of the statute book. Bills are intended to amend the statute book and, except on the question of textual versus referential amendment, the form in which Bills are drafted is largely dictated by the form of the statute book. To improve the form of Bills with a view to—in your actual terms of reference— "achieving greater simplicity and clarity in statute law" it is essential to improve the form of the statute book, including the form in which it is published, and the means available of using it. This committee, therefore, in my submission, has power to consider and make recommendations on ways of improving the statute book, including the setting up, as suggested in Part 6 of my written evidence, of a special body for that purpose which, for convenience, I call a Statute Law Commission.

Perhaps I could refer the committee to paragraph 55 of my written evidence. Before going on to that I would like to make it clear why this is the Second part of my solution to the problems we face. The first is to have clean Acts amended in a way which keeps them clean. The second part is, put shortly, to hurry up the process of getting clean Acts, and into the situation where you have what could be called a consolidated, classified, systematic statute book, as various committees going back to 1835 have

asked for. I say in paragraph 55 that the history and present state of the statute book irresistibly points to one conclusion: "It is that the problem of obscure statute law will not be solved until a body is established whose primary function is to keep under continuous review the state of our statute book." And I suggest that body should be, as it were, the keeper of the statute book. I am absolutely convinced after 20 years' personal experience in this matter, that the key to a permanent solution of the problem of complex statute law is to set up a body whose function it is to look after the statute book, to keep it under continuous review; and I have given to you, Mr. Chairman, a suggested list of functions for such a body.[9] It is really a further working out of the proposals in Part 6 of my paper. What I have done is set out various functions, most of which I think it is essential that somebody should be carrying out if we are to solve the problem of the statute book. May I outline that to you, Mr. Chairman?

. Q. That might take some time, but I would have thought you could single out one or two, or at the most three of these functions as being the really essential ones.

A. Unfortunately I regard almost all as essential.

Q. Here is one: "Keep the statute book under continuous review from the technical aspect." That covers some of the others. Then you have:

"Devise and carry out a scheme for reducing the statute book to an orderly collection of enactments in up-to-date form arranged by subjects." That also covers some of the others. Then thirdly: "Secure the drafting and enactment of Consolidation and Statute Law Revision Bills". Do those three points not sum up all?

A. I think if I could have a little indulgence, this is so important that I would welcome a few minutes to put it to the committee. The first of the functions is to enable Bills to be shortened, simplified and made more consistent by various ways, such as devising ways of eliminating overlapping, conflicting or divergent provisions, and harmonising drafting practices; scrutinising Bills in draft and after introduction to Parliament preparing model clauses and standard definitions. Then I suggest rationalisation of the rules relating to interpretation and the drafting of a new Interpretation Act. Another suggestion is to promote the application of computers to statute law. Here I would like to say that Mr. Leitch, who has recently retired as Chief Parliamentary Draftsman, Northern Ireland, wrote a very valuable article on computers and statute law.

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[9] See Appendix C.

CHAIRMAN: Which we have got.

A. But I might make a short quotation from that, because he says, on the question of computers, "There is as yet no clear allocation of responsibility within the Government machine and, if any real progress is to be made, it is essential that some person in authority should have a continuous and controlling grasp of the whole subject-matter of the application of computers."[10] That, I think, is an important function of any body such as a Statute Law Commission.

Page 84

Another one is the carrying out of comparative studies of drafting techniques and so on.

Then, in square brackets, there are suggestions upon the scope of the Commission in relation to local and private Acts and statutory instruments. I think it is important to realise there is other work, besides public Bills. Then the Parliamentary function: provide a legislative drafting service to Members of both Houses of Parliament; carry out liaison with officials of both Houses of Parliament; operate a training course for draftsmen of statutes and statutory instruments.

There are some possibly questionable proposals at the end: helping the statute user; carrying out continuing research into the needs of statute law users, by methods including consultation with professional bodies, universities and law publishers; providing an information service on general aspects of statute law to Members of both Houses of Parliament, civil servants, local authorities, professional practitioners; and acting as an Ombudsman regarding complaints about the form of statute law.

I contend that most of these things are essential activities if we are to have a proper statute book, and if we are to have clear law; and somebody ought to be doing them who is single-minded. The Law Commission have been charged with some of these functions by the Law Commissions Act 1965. If I may be allowed to be perfectly frank—I mean no offence, and I hope none will be taken—the Statute Law Committee was set up in 1868 with this sort of function, the broad function of looking after the statute book and modernising it, making sure it was in good shape. But what has happened? After over a century it is still in an appalling state, and the Statute Law Committee has proved a quite ineffective body; not surprisingly, because it is composed of highly eminent end busy people meeting only once a year. How any body like that with such a membership and meeting once a year can possibly superintend the statute book is a mystery. It is impossible, and was shown to be impossible by setting up the Law Commission in 1965 with functions of this kind. I believe the Law Commission has got quite enough for one body. I hope its chairman will forgive me, because it is not a personal thing at all, but the function of tidying up legal doctrine is an enormously important and difficult function in itself, and I think the Law Commission has been constituted more with that in mind. The people appointed as members of the Commission and the staff have been more experienced in that field than in the field of statute law—I except the present chairman obviously. But if one reads its annual reports and the way it deals with statute law—it reaches almost despairing conclusions. The work it has done has been done with the draftsmen who are merely on secondment from the Parliamentary Counsel Office; they are not themselves committed to this work. They are there for two years, and nobody in those conditions can evolve a continuing policy to superintend the statute book. The Parliamentary Counsel Office itself cannot do it, because the Parliamentary Counsel Office always has the prime concern of getting the Government programme through, and no government is going to tolerate for a moment any hold-ups in its programme which can possibly be avoided. That is the preoccupation of the parliamentary counsel. I think we have therefore an overwhelming need for a new body to be set up with the right sort of people,

[10] W. A. Leitch, "A Canadian Contrast on 'Computers and Law'," *N.I. Legal Quarterly,* September 1969,p.286.

Page 85

who will be hard to find: real experts, particularly in drafting, because drafting is the key to the problem. They should have the permanent function of spreading the word in the universities, having liaison with the universities and with the law publishers, who have a great deal of expertise. We have this new edition called *Statutes in Force*. But I have misgivings about that. One of the great drawbacks about it—and I am not alone in thinking this by any means—is that it does not operate by issuing single pages which can be replaced with revised versions whenever there are amendments; but operates instead by having a booklet for each Act. You cannot replace the booklet without waste until the Act has been heavily amended all through. The result is that we are going to have in my opinion, and those of many other people, a product inferior to the third edition of *Statutes Revised*. That involves writing in amendments by hand, sticking bits of paper all over the place. It is very untidy but has got the advantage, which I make use of every day, that one can have a set of statutes fully annotated, and one can be sure that one has the whole story, subject to the problems of referential amendments—but at any rate one has the whole story. However, with the *Statutes in Force* that is not going to be so, and many people are going to be worried about that. Again, it has been launched without consultation or working in with the law publishers. Cooperation with law publishers is an unheard-of thing here, but in the United States it has been done with great success. All these procedures of publishing Acts of Parliament are extremely expensive; and I put forward a scheme some years ago which I still believe to be the very best one could have, where the publication of the text of the Act on a loose leaf system is done officially, but arrangements are made to interleave that with editorial matter provided by the commercial law publishers. At its most sophisticated, this would enable interleaving by statutory instruments as well. The various kinds of material could be indicated by different coloured paper. Then one could order precisely the material one wants. A user who was interested in a very narrow spectrum, say customs duty on certain goods, could order all the serials related to that and nothing else, and he would automatically get the reprints. He would then have a completely comprehensive and completely up-to-date system for the law he was interested in. I know from my work on the Statute Law Society where the two leading law publishers were represented by their managing directors, they were very willing to co-operate in this way, and not just to make money. This kind of co-operation is something a Statute Law Commission could deal with.

The history of this matter goes back to the fifteenth or sixteenth centuries. Many people say you will never get to the bottom of it. Why on earth should we not have a statute book as good as those of the Canadians or Australians? Their system is marvellously good. The Canadians have a completely reissued set of statutes every 10 years, despite the double handicap that all their statutes have to be in French and English and that they have a federal system, so that there are federal statutes and provincial statutes. I really feel strongly it is time this country brought itself up-to-date in statute law. Far too much is at stake; there are far too many people who need this sort of provision.

Page 86

It is sometimes asked whether it matters if the statute book is not in an orderly arrangement, because most people just want to look up one particular thing. I do not think this is true; there are many people who need to look at the law comprehensively to start with; and when a Bill comes amending an Act they need to have the Act in up-to-date form, in comprehensive form. The draftsman who has to amend the Act needs to have it in that form.

I have suggested that the major part of our statute book would ideally be arranged in 300 to 400 statutes, each with a convenient scope and title. This is meant to amount to what the 1835 Statute Law Commissioners referred to as Acts “framed as part of a system,” to which the

Select Committee of 1875 added the proposition that it should involve a "proper classification of public statutes." This was the system adopted in this country for colonies. It has been retained, in much more sophisticated form, by all the independent countries which were formerly British colonies. So far as I know there are no exceptions.

Many people have felt no need to justify what seem to be the obvious merits of an orderly, systematic statute book arranged under titles. I would list the following advantages—

(i) The user knows where to look for the law he wants.[11]

(ii) The specialist practitioner has his law properly organised in one place in a semi-permanent form he can become familiar with.

(iii) The person who needs to obtain a grasp of a subject for some purpose finds his task made easier. This helps, e.g.

Members of Parliament, draftsmen and officials concerned with an amending Bill.

A business man moving into a new field (or his advisers).

A foreigner needing to know some aspect of British law.

A student studying a particular topic (who is often given the relevant Act for use in the examination room.)

(iv) Producers of textbooks and compilations such as *Halsbury's Statutes* are able to present an orderly account of the law.

(v) Order is always better than chaos.

This ridiculous system we have is self-defeating, because the draftsman cannot even begin to produce clean law. He is operating in a frightful muddle.

CHAIRMAN: I think you have made your point very clearly about the need for a new type of body which you call a "keeper of the statute book," or alternatively a "Statute Law Commission"; and I think .members would now like to question you about these things.

MR. STEWART: At the end of paragraph 69 of your memorandum, you say you do not presume to speak for Scotland. Are you envisaging that there would be a separate Statute Law Commission for Scotland?

A. I would certainly think so.

Q. Who would consolidate United Kingdom Acts?

Page 87

A. There is a Law Commission for Scotland; I would think you could usefully have a parallel Statute Law Commission; but I am reluctant to make any pronouncement about Scotland. '
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Q. I take it you would envisage United Kingdom statutes would be consolidated by the English Statute Law Commission?

A. I suppose they would be, yes.

Q. And the Scottish Commission would deal with purely Scottish statutes?

A. Ideally I have thought for a long time that Scotland should have its own statute book, in the sense that instead of having Acts with Scottish adaptations, a Scottish practitioner ought to have a Scottish version. I know this is an expensive idea, but I do not see any reason for the

[11] As any constant user *of Halsbury's Statutes* knows, when using the title one picks the right volume 9 times out of 10, without any preliminary reference to an index.

fact that Scottish lawyers should have an inadequate set of textbooks simply because it is not worth anybody's while publishing on the scale they do in England, and a much more difficult statute book. I would very much like to see Scottish lawyers provided with a set of Scottish statutes; and I do not think, again with textual amendment, they would be all that difficult to produce. It might be an expense, but I do not think it would be difficult in any other way.

CHAIRMAN: Scottish law is so much clearer than English law that there is much less need for explanation by textbook.

MR. STEWART: Might I follow this into the field of the current Consumer Credit Bill? You said a moment ago that you would like to see a set of Scottish statutes? Were you aware it was recommended the legislation proposed should be confined to England and Wales, but should have Scottish counterparts?

A. Yes.

MR. STEWART: **To** your knowledge were Parliamentary Counsel consulted about the form of the Bill, as to whether it should be a single United Kingdom Bill or an England and Wales Bill, and what was recommended?

A. My recollection is the instructions simply said it was a United Kingdom Bill.

MR. STEWART: That is to say, no Minister or administrator ever came to the Parliamentary Counsel Office to get advice on this question whether the Bill was to refer to the whole of the United Kingdom or just England and Wales?

A. They were advised by the Scottish draftsmen who had been working on the Bill.

Q. I am talking about what happened before you ever got departmental instructions; there was no approach to your office to say whether or not the Crowther recommendations should or should not be accepted?

; A. I am not aware of it.

Q. You knew you were embarking upon the drafting of a Bill which would apply to the whole of the United Kingdom upon a highly technical subject which the departmental committee concerned specifically recommended should be dealt with in a separate Act for Scotland?

. A. Yes.

• Q. Did you regard it as of any importance that the provisions which you

Page 88

were drafting should be able to be fitted into the existing framework of the Scottish law?

A. Yes.

Q. I am interested to find out what steps you took to see that that would happen. Did you consult your Scottish draftsman counterpart in the Lord Advocate's department before deciding on the form of the provisions?

A. The practice is to send the first draft of the provisions, not necessarily the whole Bill, to the Scottish draftsmen and to supply them with all subsequent drafts and correspondence, and they make known their views.

Q. On the form the Bill should take, did you have a consultation before starting to draft?
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A. No, the consultation takes place usually when there is something to show the Scottish draftsman; any views he expresses are taken carefully into account. To give an illustration, we frequently use terms in this Bill relating to consumer credit—in a consumer credit agreement there is the “debtor” and the “creditor,” and in a consumer hire agreement the “owner” and the

"hirer." I thought if I used the term "bailee" for hirer it would be much more satisfactory; but the Scottish draftsman pointed out that "bailee" is not a term used in Scottish law, so I immediately suggested we did not use the word "bailee" but we should use the word "hirer." That is the kind of thing which happens.

CHAIRMAN: I think, Mr. Stewart, if you look at clause 1 (6) of the Bill, you will see quite clearly there has been a deliberate attempt to meet points relating to Scottish law.

MR. STEWART: Yes, but if I could follow this point of "bailee" and "hirer"; if you look, Mr. Bennion, at clause 2 (2) *(a) of* the Bill you will see it provides it is the duty of the Commissioner, so far as it appears to be practicable, to keep under review social and commercial practices in the United Kingdom and elsewhere relating to the provision of credit or bailment or (in Scotland) hiring of goods to individuals and related activities. That is the sort of thing where Scotland should be taken into account.

A. Yes.

MR. STEWART: I do not know the technical meaning of bailment, but is it right it involves something more than hiring goods?

CHAIRMAN: With great respect, Mr. Stewart, I wonder whether this is the best use of our time. We are not having a committee stage on this Bill. You have made your point in principle by asking the question about consultation with regard to Scotland. There are other members of the committee who would like to ask questions; and I wonder if we could leave it where it is.

MR. STEWART: If you please. I should say there are a large number of points which could be taken on the Bill.

CHAIRMAN: That reinforces my interruption at that stage. I really do not think you can go on.

MR. MOSLEY: On Mr. Bennion's proposal for a Statute Law Commission, what worries me is that it is so difficult to start something new, and I wonder why you cannot get to it by the Law Commission. You have given reasons for not doing it that way; but have you entirely rejected the possibility of, say, doubling the size of the Law Commission, and

appointing another Chief Law Commissioner of equal standing to Mr. Justice Cooke who would take, over these functions? It does seem to me there would be very much overlap in the work, and that liaison between the two and an expanded office might deal better with the problems.

CHAIRMAN: Before you answer that question, might I add a supplementary one? Would you tell us what kind of people the three Commissioners would be? Would they be civil servants or judges, would they be people taken from the legal profession? Who would they be? And do you contemplate there would be a Minister responsible?

A. I do contemplate there would be a Minister responsible. I have said in my memorandum that I do not think it proper for me to embark on the question of the machinery of government. Certainly there should be a Minister responsible. With regard to the sort of people, that is an extremely difficult problem initially. I think it would be very important to make sure the first Commissioners had got administrative experience as well as experience with regard to statute law. I think there is a problem here. It is no good setting up a body like this and putting people in charge of it who have no experience whatever of the difficulty of launching any new kind of organisation, because there are administrative problems. It might be necessary to go abroad for some of them. I say that because other countries in the Commonwealth have great experience of the sort of system many of us would want to see here. Somebody from the United States might be possible; I do not know. Certainly the chief Commissioner at least should have had lengthy experience of legislative drafting in common law countries. Also, he must have drive and vision, and be totally committed to the aims of the Commission.

Returning to Mr. Mosley's question about whether you need a new body; I fully accept it would be useful to have this body in the same building as the Law Commission, sharing a library and so on. But I think there are valuable gains in having a separate body; because, for one thing, the Law Commission is a reform body. That was in the very first words of the Law Commissions Act in 1965; it was set up for the purpose of the reform of the law. I do not see the Statute Law Commission's function as basically a question of the reform of the law. There is a great deal of reform to do initially, but the keeper of the statute book has a continuing function, not of reforming the law or even in relation to the law as such, but in relation to the technical aspects of the statute book. So because it is a job that has baffled everybody for centuries, and is a very peculiar operation, I think it would be better to start afresh, and recruit people with the necessary ability and experience.

MR. MOSLEY: Could the Law Commission or your proposed Statute Law Commission carry out a measure of consolidation at some very late stage of the legislative process? When a Bill has gone through both Houses, the keeper of the statute book might then step in and in consultation with the parliamentary draftsmen who had drafted the measure might decide to chop out certain provisions from an Act, add a new title and generally do the job of keeper of the statute book. It could then be laid on the table of the House. Do you see this being a function of the keeper of the Statutes, and how would it work in terms of parliamentary procedure?

A. I do not think it would be necessary to deal with it in that way. I think

the Statute Law Commission would keep an eye on Bills from their earliest inception. Indeed it would be preferable if they could be consulted well before the Bill is introduced. From their vantage point of having the whole statute book under their eyes they could then make suggestions to the draftsmen at an early stage which, given the proper relationship between the two bodies and the co-operation which I am sure you will have, would lead to the Bill, even when introduced, being in a form which satisfies the needs of the statute book.

MR. MOSLEY: Would that always be so? We have had evidence that a Minister often wants the order of clauses in a certain way for convenience in Parliament, and that is not necessarily the same order which would be chosen by the user of the statute book.

CHAIRMAN: Or a logical way.

A. Sometimes you have very long clauses to avoid too many debates on clauses, and they can be split up at such a late stage. I think there might be scope for that kind of thing.

MR. JUSTICE COOKE: You said many people were critical of the principles on which the *Statutes in Force* were being arranged and published. You also said that many people compare the new publication unfavourably with *Statutes Revised,* which is the old publication?

A. Yes.

Q. It is a fact, is it not, that the use of *Statutes Revised,* the older publication, among the practising legal profession is absolutely minimal?

A. I would not dissent from that. I have no knowledge, no idea how much. I know that for some years complete editions of *Statutes Revised* have not been available from the Stationery Office.

Q. Have you any knowledge of the circulation of the new publication?

A. No.

Q. Would it surprise you to know that in many quarters *Statutes in Force* has received a favourable reception among those professionally concerned with the law?

A. I really do not know what reception it might receive. My comments were made on the point of its presenting an up-to-date version of the law for the user; and certainly it is not going to do that.

Q. Your comment is based on the fact that there has been a good deal of criticism of the publication?

A. I have heard people who use it make this particular point; it is a very serious point to anybody who relies on it the way draftsmen do.

Q. Will you accept that it has in many quarters had a favourable reception?

A. Of course, I accept that.

Q. You are of course aware that parliamentary counsel since the inception have been represented on the editorial board of *Statutes in Forced*

A. Yes.

Q. You spoke just now of the statutory duties of the Law Commission, and you said they were primarily law reform. You would agree, I assume, that in the Law Commission Act one of these statutory duties of the Law Commission is that of keeping statute law under review?

A. Section 3(1).

Page 91

Q. Do I take it what you are saying is this: that when Parliament in passing that Act attempted to link law reform with the keeping under review of the statute law, Parliament was making an error?

A. That I accept. The Law Commission is concerned with law reform, and in section 3 (1) it is basically the duty of the Commission to take and keep under review all the law with a view to its systematic development and reform; and I made the point that there was a need in the field of statute law for a body not merely concerned with reform but concerned with the day to day running of the statute book. That is more than a reforming function.

Q. You do not regard the achievement of greater clarity and simplicity in our statute law as a measure of law reform?

A. It is a measure of law reform; reform is required, but something more than reform is needed. Might I make an observation on the way in which the Law Commission have carried out their statutory duty? Under section 3 (1) *(d)* they are required to prepare from time to time, at the request of the Minister, comprehensive programmes of consolidation. When the Lord Chancellor asked initially for them to prepare a "comprehensive programme" of consolidation, they did not do it.[12] The Statute Law Society urged the Law Commission to carry out their statutory duty, but got nowhere.[13] When the request for a second consolidation programme was made the word "comprehensive" was dropped.[14]

Q. The Law Commission in England has in fact prepared two programmes of consolidation, has it not?

A. Yes.

Q. Have you read them?

A. Yes.

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[12] The Law Commission, First Programme on Consolidation and Statute Law Revision. Note, para. 1.
[13] Statute Law: the key to clarity, pp. 20-28.
[14] The Law Commission, Second Programme on Consolidation and Statute Law Revision, Note, para. 1.

Q. Have you read in the second programme of consolidation the introduction which indicates the difficulties which are in the way of consolidation?

A. Yes.

Q. Do you agree with what the Law Commission said?

A. It is a factual report, and they say that in their first five years they have succeeded in completing only two out of the seven major topics.

Q. You have seen the reasons given?

A. I think one of the reasons given was the fact that they had only four draftsmen originally who were all on secondment, and they do not have the necessary manpower to get this job done. Perhaps I might make this clear; when they were asked to prepare a comprehensive programme of consolidation they did not do it; and this word "comprehensive" is highly significant. Indeed the correspondence the Law Commission has had with the Statute Law Society shows no determination to tackle the statute book in the way it needs to be tackled. I do not criticise the Law Commission for that; I think they were insufficiently equipped to do it. I think only a body set up for that purpose could do it.

CHAIRMAN: Lack of resources does not indicate a lack of determination.

Page 92

A. It indicates a lack of determination if you do nothing about increasing your drafting resources in eight years, and do not put the necessary pressures on. I do not want to be criticising the Law Commission; I am saying the job needs a body with no other function but looking after the statute book, because it is of paramount importance.

MR. MOSLEY: You referred to Mr. Leitch's article on the use of computers? I wonder if you could let us have your views on that?

A. I support entirely what Mr. Leitch says in his article. In conclusion I would like to make it clear my proposal for the statute book is not contrary to the idea of the *Statutes in Force*. I am not wanting to scrap that edition at all. It should be printed on loose pages, with reprinted pages issued whenever a page was amended. It would be more efficient if each group in the edition, or each subsection were in consolidated form; and that is something the Statute Law Society advocated from the beginning. But I hope no member of the committee will think that there is anything in the idea of a fully systematic statute book which is contrary to *Statutes in Force*, or requires it to be scrapped.

CHAIRMAN: We have had the benefit of your fresh, challenging and fearlessly explained point of view. Not all of us would agree with everything you have said, but I am sure all members of the committee would agree they are grateful to you for your candour, for the time you have given to the study of the subject. We have been very interested by what you have had to say. Thank you very much for coming.