Legislative Technique

Principal Acts and Textual Amendment

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What is the most convenient form for an Act of Parliament to take? If Acts are not in their most convenient form, users will" have unnecessary difficulty. Yet there is lack of agreement on what the most convenient form is. Why should this be so? Can the disagreement be resolved? Difficult questions, on which much has been written. In this article we examine two aspects of the current situation concerning British Acts.

First, the question of the principal Act. It seems obvious to many people (though others disagree) that the best form for enacted law to take is one Act for one subject. Each topic dealt with by legislation has its one and only Act. If the Act has to be amended this is done textually, so that the amended Act can be reprinted as one text. It is the principal Act dealing with the subject, all others being merely amending Acts which need not be referred to once the amended principal Act is reprinted.

That is not the position in Britain, though we are moving closer to it. The authorities, whose decision is what counts, have not supported the idea of the principal Act. It is too tidy: life is not like that. Legislation arises from the political needs of the moment, and cannot be comprehensively planned. There could be no agreement on what is a "topic". People don't want to have to buy a bulky Act if they are only interested in a small part of the subject. They want the needle without the haystack. How valid are these arguments?

It is helpful in answering this question to look at the arrangement followed by ***Halsbury's Statutes***. In this work current Acts are published under 140 Titles, ranging from "Admiralty" to "Wills". Of these, 22 are divided into Parts. If we say that each individual Title, and each Part of a divided Title, could be a principal Act we get a total of 206 principal Acts. In fact, however, the total of Acts included in the work is about 4,000. Of these, 228 are spread over two or more Titles or Parts, as the following shows:

Acts	*Titles or Parts*
114	2
48	3
21	4
16	5
9	6
4	7
6	8
4	9
0	10
3	11
3	12

These multi-subject Acts tend to be of more than average importance. Many are Finance Acts. The Administration of Justice Act 1970 is distributed among the following Titles: Bankruptcy, County Courts, Courts, Criminal Law, Husband and Wife, Judgments, Landlord and Tenant, Magistrates, Mortgage, Patents, Practice and Royal Forces. The European Communities Act 1972 is spread as follows: Agriculture, Animals, Companies, Constitutional

Law, Customs and Excise, Food, Road Traffic, Theatres, Trade and Industry. The Family Law Reform Act 1969 is apportioned between: Affiliation, Constitutional Law, Evidence, Executors, Husband and Wife, Industrial Societies, Infants, Registration and Wills.

This splitting of Acts between Titles is inconvenient to the user. An Act is meant to be read as a whole. It usually contains sections which apply to all its provisions (such as definition and extent sections). Splitting could be avoided if there were agreement on the system of Titles, and amending Acts were confined to one Title.

Consolidation Acts

It might be thought obvious that a consolidation Act should exhaustively set forth a distinct segment of statute law. If we cannot have an orderly statute book under Titles, at least let us have consolidated law on clearly-defined topics. This reasoning has not always been followed however. The Housing Act 1957 consolidated the enactments relating to housing, except certain financial ones. These were consolidated separately as the Housing (Financial Provisions) Act 1958. Similarly, the Hire Purchase Act 1964 consolidated all the hire-purchase law except that relating to advertisements. This was consolidated separately in the Advertisements (Hire-Purchase) Act 1967. In 1979 the enactments relating to customs and excise duties were consolidated. The previous consolidations of these provisions followed the natural course and combined them in one Act (see the Customs Consolidation Act 1876 and the Customs and Excise Act 1952). In 1979 however the provisions were consolidated in no less than seven Acts!

There are two reasons for this apparently wayward behaviour on the part of the authorities; one practical and the other theoretical. The practical reason relates to shortage of manpower. This leads to the philosophy that consolidation had better be done piecemeal as opportunity offers. Otherwise it may not get done at all. It is also believed, no doubt rightly, that consolidation of even part of a subject does represent *some* improvement.

The theoretical reason for breaking up consolidation units in the manner used for the customs and excise legislation in 1979 was set out in the Renton Report. The Committee dismissed the plea for consolidation on a one Act-one subject basis put forward by the Statute Law Society and other witnesses. "The proposal is, in our view, based on the erroneous assumption that every statute can be completely intelligible as an isolated enactment without reference to the provisions of any other statute" (para 14.7). Their view as to what the proposal was based on was in fact mistaken. No one with any knowledge of the subject would suppose that Titles could stand entirely on their own. But they would produce the inestimable advantage of organising each body of law as a coherent whole, with a unified system of internal numbering and cross-reference. Practitioners would know just where to look for what they wanted, just as users of ***Halsbury's Statutes*** quickly learn which Title to consult.

The Renton Committee argued that customs and excise enactments should be split up because "the person who is interested in duties on hydro-carbon oil will not want to pay for, and wade through, an enormous Act containing the whole of the customs and excise legislation. . . . What such a person wants is the needle without the haystack" (*ibid*). That is what we all want of course, but we are not looking always for the same needle. The person whose only legislative interest throughout life is in hydrocarbon oil duties is likely to consult a guide put out by his trade association rather than the text of an Act of Parliament.

We may take it that the Hydrocarbon Oil Duties Act 1979 owes to the Renton Committee's philosophy its existence as one of the seven Acts into which the customs and excise legislation was then divided. Yet for the meaning of no less than sixteen of the expressions used in that Act, the reader is expressly referred to one or other of the remaining six Acts! So the Renton Committee's mythical needle-hunter, who economised by purchasing only the one Act, would find himself cheated. Even though dealing with a non-debatable consolidation Bill, the draftsman could not bring himself to incur the repetition needed to make each Act truly independent. He thus neatly proved the Renton Committee wrong — along with every

one else who resists the obviously desirable reform of a one Act-one subject statute book.

The Employment Bill

We turn now to our second question, which concerns textual amendment. As we have seen, the principal Act system in its basic form is still some way off. We must make do with the principal Acts we are allowed to have. They do not conform to a scientifically-designed system of Titles, but they often state a considerable body of law. They start life "clean" (ie unamended) — either as consolidated or new legislation. It is to the user's advantage that when they are later amended this should be done directly (textually) rather than indirectly. Indirect amendment was evolved to comply with the Four-corners doctrine, which held that MPs should not need to look beyond the four corners of an amending Bill to understand it. Direct amendments often require an accompanying textual memorandum if they are to be comprehensible. The absence of a textual memorandum, which shows how the text will read with the amendments written in, led to trouble on one recent Bill, the Employment Bill (now the Employment Act 1980).

The Employment Bill may be taken as an example of current practice. It shows that we have come a long way towards adopting a full system of textual amendment and discarding the Four-corners doctrine. But not by any means the whole way — and that was where the trouble arose when the Bill reached the House of Lords.

If we had a principal Act called the Employment Act, dealing with all aspects of employment law, this Bill would have consisted entirely of textual amendments to it. Since we do not have such an Act, the Bill began with five independent clauses. It continued with ten clauses entirely consisting of textual amendments to the Employment Protection (Consolidation) Act 1978. Finally came clauses 16 to 18, a mixture of direct and indirect amendment. They were the ones that caused the row in the House of Lords. It is instructive to see precisely why.

Apart from a textual amendment substituting a new version of section 15 (peaceful picketing) of the Trade Union and Labour Relations Act 1974, clauses 16 to 18 entirely consist of indirect amendments to section 13 (exemption of industrial action from tortious liability) of that Act. The drafting of clause 17 aroused particular indignation because of its obscurity. It opens by saying that nothing in section 13 shall prevent an act from being actionable in tort on a ground specified in subsection (l)(a) or (b) of that section in any case where the contract concerned is not a contract of employment. Instant bafflement arises from the fact that subsection (1) refers to nothing else but contracts of employment. How then could there possibly be any scope for clause 17 to operate? Enlightenment dawns only when it is realised that a new version of subsection (1) was substituted by an Act of 1976. Nothing in the Bill gives the reader this information.

Clauses 16 to 18 largely consist of provisions beginning "Nothing in section 13 of the 1974 Act shall . . .". There was no reason why these provisions could not have been drafted (in the form of additional sections) as textual amendments to the 1974 Act. As it was, the President of the Law Society was moved to write a letter of complaint, Lord Renton was moved to propose a series of drafting amendments in the Lords and Lord Gisborough was moved to remind the Government that "the main thing about a Bill is that it should be simple, or reasonably simple, so that people can understand it" (*Hansard.* HL. July 14, 1980, cols 1540 to 1546). Nobody spotted the real cause of the difficulty, namely the arbitrary decision of the draftsman to depart from textual amendment and the failure to provide MPs and peers with a textual memorandum.

Conclusions

We may draw the following conclusions. First, the arguments against the principal Act are unsound. Our political life is not so volatile that a system of Titles could not successfully be officially drawn up and adhered to. Second, draftsmen should not be allowed to get away with

unnecessary departures from the textual amendment system. Third, MPs and peers should demand the provision of textual memoranda where needed.

The depressing thing, for those working for improvements in our statute law, is that few if any politicians seem able to diagnose the drafting obscurities of which they complain, and identify the proper remedies. Admittedly the problems are not easy. Shortage of space prevents fuller discussion here. Those interested can pursue the questions further in my book *Statute Law*, just published by Oyez.

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