

**Script of television programme: 'COMPOSITE RESTATEMENT'**

**1. TITLE: COMPOSITE RESTATEMENT (10 seconds)**

**1A. SUBTITLE: A NEW WAY OF PRESENTING STATUTE LAW (10 seconds)**

**1B. PRINT: WRITTEN AND NARRATED BY FRANCIS BENNION (10 seconds)**

**2. BENNION ON CAMERA (35 seconds)**

Composite Restatement or CR is a method of presenting statute law in an easier way. It can be used in the preparation of legal textbooks or for computer retrieval systems.

If you are a user of Acts of Parliament and statutory instruments CR can do half the work for you. That's a large claim. In what follows I will try to justify it.

**3. TWO VOLUMES OF 1980 STATUTES (40 seconds)**

These are the 1980 continuation volumes for Halsbury's Statutes. In that year the Westminster Parliament passed 68 public general Acts. With annotations, they take up one thousand seven hundred and thirty-three pages in these two volumes. That represents a great deal of effort by a great many highly-paid people. It also requires a lot more effort on the part of the numerous people (not all so highly paid) whose job it is to understand the Acts of Parliament.

**4. FRONT OF 1980 No.54 (15 seconds)**

The Acts of Parliament are not all. Nearly 2,000 statutory instruments were also made in 1980. Nothing unusual there. 1980 was an average year for legislation.

**5. FRONT OF 'THE PREPARATION OF LEGISLATION' (15 seconds)**

How easy does the practitioner find it to understand all this legislation? In 1975 a Government Committee chaired by Lord Renton reported on the question.

**6. 'THE PREPARATION OF LEGISLATION' WHOLE OF PAGE 27 (15 seconds)**

The Committee found widespread concern that our statute law lacks clarity. They grouped the complaints they had received under four headings.

**7. AS 6 SHOWING PARA 6.2(a) TO (d) ON PAGE 27 (15 seconds)**

As you see, these headings were Language, Over-elaboration, Structure and Arrangement and amendment.

**8. 'STATUTE LAW' PAGE 231 (20 seconds)**

Composite Restatement (or CR) is designed to deal with the complaints made by statute users to the Renton Committee. Before looking at how it does so, we need to understand a bit more about just where the shoe pinches. What exactly is wrong?

**9. TYPED DISPLAY AS FOLLOWS:**

Compression  
Anonymity  
Distortion  
Scatter (45 seconds)

The problem is summed up in these four words, which can be remembered by the disrespectful mnemonic 'Our legislators are CADS'. Compression means compression of language. Anonymity refers to lack of labelling or signposting. Distortion relates to the structure of an Act, distorted for Parliamentary reasons. Scatter, perhaps most troublesome of all to the statute user, describes the way provisions dealing with a particular point are scattered around different Acts and statutory instruments. Let's look at these one by one.

#### 10. TYPED DISPLAY AS FOLLOWS:

##### COMPRESSION OF LANGUAGE

"For the purpose of this Part of this Schedule a person over pensionable age, not being an insured person, shall be treated as an employed person if he would be an insured person were he under pensionable age and would be an employed person were he an insured person". (40 seconds)

This is an example of compression cited in the Renton Report. The Committee's comment was: '...any enactment of this type is liable to be provocative, and the more so the more skilfully it is compressed.' The drafting skill here is undoubted, and the draftsman's object was nothing more than to keep his Bill short.

#### 11. CONSUMER CREDIT ACT 1974, SECTION 147 (75 seconds)

Here is another type of compression. This example is taken from the Consumer Credit Act 1974. In Part III, consisting of 22 sections, the Act has imposed a licensing system on every business that provides credit or hire. Now it wants to impose a similar licensing system on ancillary credit. The draftsman doesn't want to encumber his Bill with a further 22 sections. So he 'applies' Part III, setting out the necessary modifications. This is a very common device. The trouble is that every user who wants to know how the Act regulates an ancillary credit business is forced to read provisions drafted for a quite different type of business. In doing so, he has to keep the specified modifications in his head. Not an easy task.

#### 12. COURTS ACT 1971, SECTION 59(5) AND (6) (40 seconds)

This technique of 'applying' provisions intended for one purpose so that they also operate indirectly for a different purpose causes particular problems for statute users in Scotland and Northern Ireland because it is so frequently used to 'adapt' English Acts for those countries. Here is just one example, from the Courts Act 1971.

#### 13. THEFT ACT 1968, SECTION 9(1) AND (2) (40 seconds)

This is the current statutory definition of burglary, a widespread and serious crime. If any enactment should be worded in a way easy to comprehend this should. Jurors and lay magistrates need to be able to understand it, not to mention householders. It is short, but is it simple? Again compression has been at work.

#### 14. 'STATUTE LAW' PAGE 106, TOP HALF (40 seconds)

The trouble with the definition of burglary is that it tries to cover too much in too little space. There are in fact no less than six quite different factual situations dealt with by this brief definition, as we see here. The only thing the six have in common is entry of a building as a trespasser.

#### 15. CONSUMER CREDIT ACT 1974, SECTION 43(1) (50 seconds)

The last compression technique I want to show you is the use of defined terms. This provision of the

Consumer Credit Act 1974 is about advertisements. In the Act 'advertisement' has quite a complicated meaning, and is used in a number of places. It would take up too much space to repeat the complications of the intended meaning every time advertisements are mentioned in the Act. So the Act follows the usual course of defining the term 'advertisement' once only, in the definition section.

#### 16. CONSUMER CREDIT ACT 1974, SECTION 189(1) - DEFINITION OF 'ADVERTISEMENT' (20 seconds)

Here is the definition. We notice that it is quite a long one, not easy to follow. Nor is comprehension aided by the way the definition is printed as a single block of type.

#### 17. AS 15 (30 seconds)

Returning to the section we saw just now, where the term 'advertisement' is used, we notice another difficulty. There is no indication that 'advertisement' is a defined term. The unwary reader might easily assume that the word simply had its ordinary meaning and was not specially defined.

#### 18. BENNION ON CAMERA (70 seconds)

So much for the first of the four vices of statute law, Compression. There are two points I'd like to make now. One is that in this treatment I am not going to enter on the question of whether any of these so-called vices could be cured by changes in official drafting practice. As a draftsman myself I know only too well the difficulties in the way of this. Moreover the vices are of long standing. On Compression for example, Sir Edward Coke remarked in the seventeenth century that 'it was the wisdom of ancient parliaments to comprehend much matter in few words'. It is more profitable for us to look instead at ways in which adverse effects on the user can be mitigated by post-enactment text manipulation, which is what Composite Restatement amounts to.

The other point is that I propose to defer an explanation of exactly how CR corrects these defects until we have first seen what the other problems are. We shall return later to some of the examples I have given, and then see what CR can do to help.

#### 19. BANKING ACT 1979, PAGES 56 AND 57 (30 seconds)

The second of the four vices of statute law can be dealt with more briefly. It is Anonymity, or the lack of adequate labels or signposts. Here is a typical example. If you open the Banking Act 1979 at these two pages you will not find a single heading or sidenote to tell you what this mass of type is all about.

#### 20. AS 15 (30 seconds)

Here once more is that section of the Consumer Credit Act dealing with advertisements. The absence of any indication that 'advertisement' is a defined term is another example of lack of signposting. As passed, our legislation makes no use of typographical aids to clarity. Cross references are another aid which is neglected.

#### 21. PRINT READING AS FOLLOWS:-

##### DISTORTION CAUSED BY PARLIAMENTARY FACTORS

1. Bill must be arranged from point of view of debate.
2. Parliamentary rules must be complied with.
3. Amendments made during Bill's progress.
4. Political shibboleths. (50 seconds)

The third of the four vices of statute law is Distortion of the structure and layout of the Act. This is caused by the fact that the same text has to serve two purposes. First it serves as a Parliamentary Bill, and must be made as appealing as possible to MPs most of whom are non-lawyers. Then, at Royal Assent, the very same text becomes at once an Act of Parliament. The functions of a Bill and an Act are quite different. If the design suited the function it would be different for each, but it has to be the

same.

22. PRINT READING: DISTORTION (1): Bill must be arranged from point of view of debate. (30 seconds)

MPs can demand a separate debate on each clause of a Bill, so to keep debating time short Governments want their Bills arranged in as few clauses as possible. Also, they want politically important matter specially treated. It might have to be put in the first clause, which is debated first and gets most media publicity. Or it might have to be 'hidden' by being tucked away in an obscure part of the Bill.

23. PRINT READING: DISTORTION (2): Parliamentary rules must be complied with. (30 seconds)

The layout of Bills is closely controlled by Parliamentary rules. There must be a long title. The material must be arranged in clauses and Schedules. The doctrine of 'scope' must be complied with. Financial provisions must be presented in a certain way, and so on.

24. PRINT READING: DISTORTION (3): Amendments made during Bill's progress. (30 seconds)

When the draftsman is designing his Bill he does not know what, when Parliament has finished with it, it will contain. Many Bills are heavily amended during their passage, often by the insertion of chunks of wholly new material. An architect would not design a very tidy building if at each stage of its construction he were told that the client's requirements had radically changed.

25. PRINT READING: DISTORTION: (4): Political shibboleths. (30 seconds)

Often, party political shibboleths distort structure. For example it was fundamental dogma when the Labour Government came to office in 1974 that the Industrial Relations Act 1971 was to be swept away. Its total repeal was politically essential. Nevertheless the new Government wished to retain a lot of its provisions. Here's how this was managed in the Trade Union and Labour Relations Act 1974:-

26. PRINT READING:-

(1) The Industrial Relations Act 1971 is hereby repealed.

(2) Nevertheless, Schedule 1 to this Act shall have effect for re-enacting the under-mentioned provisions of that Act... (30 seconds)

Simple when you know how!

The last of the four vices of statute law is Scatter. Instead of being dealt with in one place, the law on a topic is scattered about in several different texts. Already, we have seen some examples of this.

27. AS 11. (45 seconds)

We looked at this previously as an example of Compression. Instead of setting out again 22 licensing sections with modifications, the draftsman 'applies' provisions designed for one purpose to another purpose. The statute user is required to puzzle out for himself just what is involved.

This very common drafting technique is also an example of Scatter. Instead of finding the licensing of ancillary credit dealt with in one place, the user must hop about between Part III of the Act and this section.

28. AS 15. (20 seconds)

We have seen this before too. It introduces Part IV of the Consumer Credit Act, which controls credit and hire advertising (among other things). Some of the controls are contained in the Act itself...

29. PRINT READING:-

44.-(1) The Secretary of State shall make regulations as to the form and content of advertisements to which this Part applies, and the regulations shall contain such provisions as appear to him appropriate

with a view to ensuring that..... (15 seconds)

.and some are contained in regulations and orders made under the Act. This very common device inevitably means that the relevant provisions are scattered between the Act (often there are several Acts) and the regulations or orders.

### 30. COMMENCEMENT ORDER (35 seconds)

Here is another very common device, the commencement order. More than half all present-day Acts are brought into force by these Ministerial orders. Sometimes one Act has a dozen or more commencement orders, all of course made at different times. The user has the problem of finding out which orders have been made and obtaining copies. Often, the orders include transitional provisions, which have to be read alongside the Act.

### 31. BENNION ON CAMERA (40 seconds)

There are many other causes of Scatter. Amending Acts have to be read with the Acts they amend. The same goes for statutory instruments that amend other instruments - or even sometimes amend Acts themselves. There is Scatter within an Act, as between Schedules and the provisions they are linked to. The various types of Scatter have one thing in common. They require the user to carry out the difficult task of conflation, or the reading together of different provisions to extract their combined meaning. How does Composite Restatement cure these defects?

### 32. THREE VOLUMES OF 'CONSUMER CREDIT CONTROL' (10 seconds)

I will demonstrate by showing you how I have used CR in producing this book on the Consumer Credit Act.

### 33. WHOLE OF PAGE 1003 (25 seconds)

This is the first page of the Restatement proper. The Restatement is arranged in ten Divisions. The first Division sets out all the definitions, over 200 of them. Some are taken from the Act, some from the regulations. The rest derive from other sources.

### 34. AS 16 (10 seconds)

Here once more is that definition of the term 'advertisement', as it appears in the Act. Note the solid block of type.

### 35. PAGE 1003 (DEFINITION OF 'ADVERTISEMENT') (20 seconds)

Here we see how that definition appears in the Restatement. This is just the beginning of it. Typographical aids are used to space it out for easy reading. It is divided into numbered clauses for ease of reference.

### 36. PAGE 1003 (BEGINNING OF 'ADVANCE PAYMENT') (35 seconds)

To show some other features, here is the first definition on this page. We see the signposting provided by the first subheading 'credit'. We also notice that in clause (1) the phrase 'personal credit agreement' is in single quotes. That tells the reader that the phrase is itself a defined term. The definition will be found in its alphabetical place in Division One.

### 37. PAGE 1003 (LAST PART OF 'ADVANCE PAYMENT') (30 seconds)

At the end of each section of the Restatement the source of the material restated is set out. It is important to grasp that the text of each section is not a paraphrase or summary. It reproduces the exact wording of the law. We see that the wording of this definition is taken from a number of different places.

### 38. AS 11 (15 seconds)

Here once again is that provision of the Consumer Credit Act which applies Part III of the Act to a different sort of business. Let's see how the Restatement deals with this.

39. TOP OF PAGE 3003 (30 seconds)

The Restatement puts all the licensing provisions together in Division Three. We notice here the ample signposting, and the annotations that can so easily be set alongside the restated provisions. Whereas the Act deals with licensing of credit and hire in Part III, then applies this in another Part to ancillary credit the Restatement gives the full provisions as they apply to all three types of business.

40. PAGE 3003 (SUBHEADING: 'GENERAL PROVISIONS') (50 seconds)

The three types of business are specified. Each description is in single quotes to show it is a defined term. We notice another thing. The restated provision states that either a standard or a group licence will do. The Act is not so informative. It just talks about a 'licence', relying on the reader to look that term up in the definition section. Again we see that the restated provisions are spaced out and separately numbered.

I want to stress to you that this treatment removes the difficulty of conflation caused by the technique of 'applying' provisions. The provisions are set out in full in one place.

41. AS 13 (20 seconds)

As a change from consumer credit, here again is the definition of 'burglary'. We saw that there are six quite different factual situations scrambled together in this definition. Let us unscramble just one of them.

42. PRINT: A PERSON IS GUILTY OF BURGLARY IF HE ENTERS A BUILDING OR PART OF A BUILDING AS A TRESPASSER WITH INTENT TO STEAL ANYTHING THEREIN. (35 seconds)

I want to stress that this retains every word of the statutory definition, so far as it applies to entry with intent to steal. This is what CR can so easily do. You lose no word of the official language, but it is so much easier to understand. If the Theft Acts were given the CR treatment, burglary would be presented in this way as six different offences. That's what it really is of course.

43. RED LEAFLET: CONSUMER CREDIT CONTROL (30 seconds)

Back again to my consumer credit book. The Act is a very typical modern regulatory Act. It lays down the outlines, then gives Government Ministers power to fill them in by orders and regulations. The essence of this common system is that some of the story is in the Act and the rest elsewhere. CR can weave it all together. Here are two examples from the book, out of hundreds.

44. BOTTOM OF PAGE 4203 (50 seconds)

This simple example shows how a provision of the Act is presented in conjunction with a commencement order. CR is designed for printing in looseleaf form. In the first six years of the book's life there were 12 updating releases, so users were never much out of date. If CR were used with a computer retrieval system updating would be immediate. The method was designed to fit the computer. So far, computer systems have merely made available to their users material originally created for the printing press. Soon we must give them material specifically designed for the new technology.

45. TOP OF PAGE 9006 (40 seconds)

Here is the second example. If you look at the entries under the Source heading you will see how it is possible to combine numerous provisions of the Act and regulations into a single statement.

46. MIDDLE OF RESTATEMENT PAGE 17 (60 seconds)

Now I want to introduce you to another feature of CR, also designed with the computer in mind. This is the Analysis. The person who carries out the Restatement operation arranges his material into a coherent structure, equipping it with a helpful numbering system and numerous headings and subheadings to act as signposts.

When the numbers, headings and subheadings are displayed by themselves, without their accompanying wording, they form a useful outline of the provisions. I call this outline the Analysis because it forms a ready-made brief exposition of the whole topic restated. A bird's eye view in other words. The consumer credit Analysis, shown here, will shortly be made available to users of the British Telecom service Prestel.

47. AS 9. (70 seconds)

Here once again are the four vices of statute law. Let me attempt to summarize how Composite Restatement cures them without departing from the official wording.

Compression of language is dealt with by taking as many separate paragraphs as are needed to expand the compressed material, not being afraid of repetition. Obscure references to other enactments are written out in full. The reader no longer needs to carry out his own conflation.

Anonymity is cured by providing copious headings, and using typographical aids. Distortion is got rid of because the restater is not bound by the form of the original Act. He can mix Acts and statutory instruments together. Both are law, and the user does not care whether the law that binds him is in an Act or a statutory instrument. Finally, the restatement brings scattered enactments together in one place.

48. BENNION ON CAMERA (100 seconds)

When my book 'Consumer Credit Control', which uses the CR method, first came out in 1976 it was well received. The reviewer in the Solicitors' Journal was one of many who grasped the potential of the method. I would like to read you a little of what he said. [READS] "The restatement method demands the earnest attention of everyone concerned with preparing, understanding and implementing new legislation...it could point the way to a solution of the contemporary problems of too much legislation, too hastily enacted and too incomprehensible for lawyers let alone laymen...The author and his publishers may have blazed a trail which others later come to regard as the routine route to expounding and presenting parliamentary pronouncements".

Well I hope it may be so. As a Parliamentary draftsman, I have worried a great deal about the burdens we were inflicting on the users of legislation. CR is the answer I came up with, and I believe it works. In a presentation like this it is only possible to give a glimpse of what it can do. If you are interested in pursuing it you will find detailed explanations in another book of mine called 'Statute Law', which was published in December 1980.

49. PRINT:-

'STATUTE LAW' and 'CONSUMER CREDIT CONTROL'  
are published by Oyez Longman, 11/13 Norwich  
Street, London EC4A 1AB (tel. 01-404 5721).

(20 seconds)

## COMPOSITE RESTATEMENT

[An explanation of Francis Bennion's video cassette.]

As a parliamentary draftsman, Bennion has for many years been worried about the difficulties statute users experience because of textual obscurities. These worries led him to found the Statute Law Society in 1968. The obscurities arise from certain factors within our legislative process that cannot be corrected directly (that is by changes in the legislative procedure). Other ways must therefore be found.

The main factors causing statutory obscurity can be subsumed under four heads (for which an appropriate mnemonic is CADS). These are: COMPRESSION of language, ANONYMITY (insufficiency of headings, typographical aids and other signposting), DISTORTION (caused by parliamentary factors) of the natural structure of the provision as a coherent statement, and SCATTER of the enactments dealing with a particular point among a number of different Acts and statutory instruments. A fuller explanation is given below.

To counter these four causes of statutory obscurity, Bennion has devised the system of Composite Restatement. This retains the entirety of the official wording (which alone constitutes the law), but improves its presentation by various devices.

The video (recorded on the VHS system) explains the CADS obscurities and describes the Composite Restatement method of correcting them. The film makes use of two books by Bennion both published by Oyez Longman. One, the loose-leaf work entitled *Consumer Credit Control*, embodies a treatment of the Consumer Credit Act 1974 (together with subordinate legislation made under it) using the Composite Restatement method. The other, *Statute Law* (2nd edn 1983), contains a chapter describing the method.

### *Explaining the CADS obscurities*

*Compression of language* is dictated by the need to keep Bills as short as possible. Three techniques of brevity are used by the draftsman. *Defined terms* enable complex detail to be siphoned off into a definition section. The detail need not then be repeated in each place where it is relevant. Instead, the defined term is used. Secondly, the *overloaded formula* crams a number of statements into one. In ordinary speech each proposition would be stated separately. Thirdly, the *application technique* enables one set of provisions to be used a number of times without taking the space required for a full statement of them in each place. With every different application the reader is required to bear in mind numerous modifications, which add greatly to the problems of comprehension which in any case arise.

*Anonymity* is forced on the draftsman by the fact that Bills are frequently amended during their progress, and then have to be hastily reprinted between Parliamentary stages. Unnecessary typographical frills would add to the risk of delay and error at each reprinting. They would also militate against the requirement of brevity. So the draftsman has to eschew them.

*Distortion* of the structure of a Bill arises from four parliamentary factors. First, a government may wish to secure publicity for a provision by putting it at the beginning of the Bill (although it is not really the most important ingredient). Or, in the opposite case, publicity may be avoided by "hiding" a provision. Secondly, the complex rules of parliamentary procedure may distort the structure which would naturally be adopted to render the contents readily comprehensible. Thirdly comes the fact that Bills are often heavily amended during their parliamentary progress. An architect would not design a very tidy building if at each stage of construction the client's requirements changed radically. Lastly (and comparatively rarely) there is the party-political shibboleth, requiring some provisions to be presented differently from the natural way.

The fourth factor tending to obscurity is *scatter*. In the United Kingdom we have no system of One subject-One Act. Provisions dealing with a particular point are scattered about among different Acts. What is worse, they are often dealt with also in regulations, rules and orders. Yet they are all equally the law.

### ***The Composite Restatement method***

The video goes on to explain how Composite Restatement seeks to cure the CADS obscurities while retaining the official language in full.

*Compression* is dealt with as follows. Defined terms are printed in bold type or quotation marks. The overloaded formula is separated out into its constituent elements, which are each printed separately. The application technique is robbed of its difficulty either by setting out the applied provisions separately or by producing a combined version.

To deal with *anonymity* the restated version adds headings, marginal notes and other devices. It makes use of typographical aids, and breaks up blocks of type by visual separation.

*Distortion* disappears because the restatement arranges the material afresh, in the most coherent and helpful order.

Finally the restatement cures *scatter* by bringing together all enactments dealing with a particular matter. It even mixes provisions of Acts with those contained in subordinate legislation. To the user they are all law. The source of each provision is stated however, so that the user can trace it to the original in the rare case where this is necessary.

### ***The next step***

It is desirable that there should be some independent examination of the Composite Restatement method to assess its usefulness. This could be carried out by the Law Commission, by one of the professional bodies (or possibly by a joint body drawn from them), or by the Statute Law Society.