

Bennion on Statute Law

Part III - The Need for Processing of Texts

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Vices that Block Comprehension

The methods of text-creation and text-validation employed in British type legislation produce four characteristics which can justly be described as the four vices of statute law. In the title of an article, *Our legislators are CADS* (Bennion 1976(1)), I offered a mnemonic for remembering them. The four vices are Compression, Anonymity, Distortion and Scatter.

Compression

In chapter 2 we saw how modern drafters are required to make their Bills as brief as possible. At the same time, governments and legislators in British-type systems wish to see statutes worked out in close detail. This provides the origin and justification for common-law drafting as opposed to civil-law drafting. Where both brevity and detail are demanded the only course available to the drafter is compression of language. If we add the parameters of certainty and legal effectiveness we tighten the screw further. As the Renton Committee remarked, 'a primary objective is certainty of legal effect, and the United Kingdom legislature tends to prize this objective exceptionally highly'. They added:

For these reasons statutory phrases often irritate or baffle the reader, either because they state the obvious or because the 'punch-line' is delivered with such economy that it is intelligible only to those who have the time and inclination to inform themselves of the whole context on which it operates (Renton 1975, para 7.5).

The Renton Committee received with sympathy complaints that 'skilfully compressed wording' was difficult to understand, and that it would be preferable 'to sacrifice such elegant economy of expression in order to achieve greater clarity, even at the cost of increased length' (Renton 1975, para 17.18). They cited the following example:

For the purposes 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.

The Committee commented that 'any enactment of this type is liable to be provocative, and the more so the more skilfully it is compressed' (Renton 1975, para 6.3). However they missed a vitally important point, which is that the difficulty can be largely removed by better presentation of the same wording. The quoted passage contains a number of defined terms. If by typographical means (say the use of italics) this fact is conveyed to the reader, and he knows where to find the definitions, his task of comprehension is eased. It is eased still further if the passage is spatially broken up into its grammatical clauses. The treatment, which may be called *comminution* (from the Latin *comminuere*, to split into smaller parts), produces the following:

- (1) For the purposes of this Part of this Schedule
- (2) a person OVER *pensionable age* (not being an *insured person*)
- (3) shall be treated as an *employed person* if—
- (4) he would be an *insured person* were he UNDER *pensionable age*

AND

- (5) he would be an *employed person* were he an *insured person*. Why cannot our legislation be produced in this form? There are

practical difficulties. A Bill printed like this would take up more pages, and would be more difficult to amend. It is better to administer this treatment *after* enactment, combining it with remedies for the other three vices of statute law. That is the course adopted in the Composite Restatement method (chapter 23). The above is an extreme instance of the technique of compression by use of defined terms. Its 'provocative' quality springs from the fact that to the unwary reader it appears to be nothing more than clever gibberish. Unless you realise it to be stuffed with defined terms, and you read it alongside the definitions, it *is* gibberish when considered as a sample of English prose. In truth, it is not prose at all but telegraphese.

Another form taken by the vice of compression is the covering of too many different cases by a single formula. Sometimes this grossly distorts the natural meaning of words, and inevitably leads to difficulties in interpretation. An example is the way the law deals with certain types of dishonest conduct. If dishonest trespass to the person or to goods is 'unsuccessful', so that the ingredients of the crime of theft are not present, all the law (as expressed in the Theft Acts 1968 and 1978) can do is fall back on the concept of 'attempt'. Yet from the viewpoint of common sense, many cases of dishonest trespass amount neither to theft nor attempted theft.

The House of Lords held in *Haughton v Smith* [1975] AC 476 that one cannot 'attempt' to do something which is in fact impossible, eg steal from an empty pocket. In *R v Easom* [1971] 2 QB 315 it was held that a would-be thief committed no crime when he picked up a woman's handbag from the floor in a cinema, went through it and (finding nothing he wanted) put it back intact. Both

cases would have been caught by an offence of dishonest trespass on the following lines:

(1) A person commits an offence if, with intent to steal, he commits trespass to the person or trespass to goods.

(2) For the purposes of subsection (1) a person may be treated as intending to steal notwithstanding that his intent is conditional and the condition is unsatisfied.

These are examples of conceptual error, treating as 'attempts' acts which are not. Even without conceptual error, compression leads to trouble. Different cases are treated in one formula when it would be more comprehensible to present each in turn separately. The drafter, in search of brevity, uses a single statement to encompass a wide variety of circumstances. The crime of burglary furnishes an example, of heightened importance since it has to be understood by lay jurors (not to mention ill-educated members of the criminal class). The Theft Act 1968 defines burglary in a building (as opposed to a vehicle or vessel) in two brief subsections (s 9(1) and (2)). These encompass no fewer than six basic situations, but do not separate them out:

(1) A person is guilty of burglary if—

(a) he enters a building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or

(b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.

(2) The offences referred to in subsection (1)(a) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm or raping any woman therein, and doing unlawful damage to the building or anything therein.

These few words encompass a number of serious criminal offences, all of great concern to the citizen.

They are as follows:

(1) entry as a trespasser with intent to steal,

(2) stealing or attempting to steal *after* entry as a trespasser,

(3) entry as a trespasser with intent to inflict grievous bodily harm,

(4) inflicting or attempting to inflict grievous bodily harm *after* entry as a trespasser,

(5) entry as a trespasser with intent to rape,

(6) entry as a trespasser with intent to do unlawful damage.

A jury is likely to be faced with an indictment, and evidence, related to only one of these six situations. The jurors would obviously find life much simpler if the law they had to consider were framed only in terms of that one. In other words there should be six separate formulations of the burglary offences, instead of a drafter's omelette frying them all together in one pan.

Why did the drafter of the Theft Act 1968 not create six separate burglary offences? He would no doubt answer, somewhat impatiently, that to do so would have made his Bill six times as long, and ministers would not have stood for that. It may not be altogether a sufficient answer. Drafters could often do more in this direction if they wished to, since they have much *de facto* authority. Nor would the Theft Act 1968 really have been six times as long on this basis (though it might have been twice as long). Fortunately, by post-enactment processing, we can achieve much the same result. Unlike a real omelette, a drafter's omelette can usually be unscrambled.

Of the six offences of burglary listed above, the first and second (both concerned with stealing) are the most commonly committed. Unscrambling the omelette for the first would produce the following:

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.

This is considerably simpler than the way entry with intent to steal is scrambled together with the other five fact-situations in s 9(1) and (2) of the Theft Act 1968. Indeed it is too simple, as we can now see. It does not fit all the circumstances it was intended to catch. Also it is ambiguous in its reference to stealing 'anything therein'. (For details see Bennion 1979(3), p 1172.) Here we perceive a major drawback of compression of language. Even the drafter may fail in the task of text-comprehension, notwithstanding that it is his own text.

A drafting technique for easing compression is the *spacing-out* of provisions. This can be shown schematically as follows. It is desired to say 'X shall apply except in cases Y and Z'. To describe each of X, Y and Z requires many words, so the proposition is spaced out in the form of three provisions, as follows:

- (1) X [describing it] shall apply, subject to paragraph (2).
- (2) X shall not apply where [description of case Y], nor in a case falling within paragraph (3).
- (3) A case falls within this paragraph if it is [description of case Z].

The advantage of this technique of spacing out is that, instead of three complicated descriptions being crammed together into one paragraph, each gets a paragraph to itself. The user does not always appreciate this advantage. Thus a practising solicitor described spacing out as 'the contradictory style beloved of draftsmen but no one else' (see Bennion 1981(6), where a full description of the above schematic treatment is given). It is true that spacing out makes for tortuous prose. Statute users need to learn the characteristics of this prose, so that they can better understand it. It is not adopted just to annoy.

Failure in text-comprehension is more likely still with another compression technique. This is the device of *applying* detailed

provisions, with specified modifications, to a situation they were not drafted to cover. Returning to the Consumer Credit Act 1974, used as an example in chapter 3, we find an instance of this. Part III of the Act creates a licensing system for credit and hire businesses. It contains 22 sections, and is very detailed. When (in Part X) the Acts get round to dealing with another kind of business, to which it gives the label 'ancillary credit business', it needs to impose a licensing system on this also. To avoid setting out a further 22 sections in similar words, the Act says (in s 147) that the provisions of Part III apply to an ancillary credit business as they apply to a credit business. But it is not quite as simple as that, because the whole of Part III is not suitable as it stands. So some of its provisions are disappplied, and others are modified, for this purpose.

The device is also used as a means of extending *non-statutory* legal rules to additional cases. For example the rules relating to contempt of court were originally developed by the judges, without assistance from Parliament. Section 6(1) of the Bail Act 1976 extends the rules by making absconding from bail an offence punishable 'as if it were a criminal contempt of court'. The difficulties of interpretation that can be caused by the use of what might be termed *asifism* are illustrated by *R v Singh* [1979] QB 319. An absconder from bail was given a custodial sentence by the Crown Court. He appealed on the ground (a) that the judge-made rules only provided for imposing a custodial sentence where a contempt was committed *in the face of the court* and (b) that these words did not appear in the statutory hypothesis. The Court of Appeal held that they were implied. (As we shall see in chapter 15, this is an example of the drafter's technique of *ellipsis*.)

A case that went the other way is *Slater v Richardson and Bottoms Ltd* [1980] 1 WLR 563. To end tax dodging in the building industry by the so-called 'lump', the Finance Act 1971 requires main contractors to withhold 30 per cent of sums due to non-exempt subcontractors and pay it over to the collector of taxes. Relief may be given by the collector against inadvertent failure to comply. In *Slater*, the collector refused relief, and the contractor sought to appeal. The relevant regulations dealt with appeals by applying 'all the provisions of the Income Tax Acts regarding appeals'. Nevertheless the right to appeal was denied by the court. The Income Tax Acts deal with appeals from decisions of *inspectors*. This was a decision of a *collector*.

Asifism, or the statutory pretence that something is so when it is not, appears in a wide variety of forms. One example, contained in s 72 of the Housing Act 1980, was characterised by Lord Roskill as 'the worst piece of parliamentary drafting for 1980' (125 SJ 232). Section 72 is brief. It starts by abolishing rent tribunals. Then it says that the functions previously conferred on rent tribunals are to be carried out by rent assessment committees. Finally comes this piece of asifism: '(3) A rent assessment committee shall, when

constituted to carry out functions so conferred, be known as a rent tribunal'. This is what aroused Lord Roskill's ire. It was not altogether the drafter's fault. He was instructed to do it by the department sponsoring the Bill (though he would have been wiser not to accept the instruction). The department acted with the best of motives. They thought it would be helpful to the public to retain the name rent tribunal even though the animal itself had vanished. The grin, according to respectable precedent, was to survive the Cheshire cat.

Another respectable precedent tells us that tangled webs get woven once we embark on deception. Nor is innocent, well-meaning deception immune. Are there heated arguments in pubs (or elsewhere) between citizens who are sure they have heard that rent tribunals have been abolished and other citizens who insist that they have just been up before one? If a kindly lawyer within earshot attempts an explanation will this, if understood, enhance the law's reputation or diminish it? Can it really be wise to shield the public from confusion by a pretence which confuses even learned law lords?

Because the 'application' technique provides an easy and brief way of legislating, it is frequently employed. But this is a convenience gained by the drafter and legislator at the expense of the statute user. It is a difficult mental exercise to read a text drafted for one type of case as if it were instead drafted in terms of another. The usual problems of text-comprehension are compounded. The difficulty is made worse where the reader is further instructed to bear in mind specified modifications to the text. A frequent victim of this technique has been the Scottish lawyer. Acts of the Westminster Parliament often have provisions tacked on which 'adapt' them to Scottish law. The resulting problems were thus described by the Law Society of Scotland:

Whereas an English practitioner has a clear run-through of the legislation, the Scottish practitioner has to engage in a most time-consuming and frustrating process of elimination and amendment before he can make sense of the new legislation (cited in Renton 1975, para 12.1).

Here the form of text-manipulation which can come to the rescue is a rewriting of the 'applied' provisions, incorporating the specified modifications. Thus the Land Compensation (Scotland) Act 1973 re-enacted (under the procedure applicable to consolidation) the provisions and Scottish modifications contained in the Land Compensation Act 1973. On the consolidation of any Act which uses the 'application' technique it would be possible to write out the applied provisions in full, but this is rarely done. The device of 'writing-out' forms a useful feature of the Composite Restatement method (chapter 23).

Drawing together the threads on Compression, the first of the four vices of British-type statute law, we may say that it works

in two different ways. One way retains and condenses material, while the other omits it. Here it may be useful to summarise.

Retaining and condensing material

We saw above that a legislative proposition can be divided up under the headings Case, Condition, Subject, Declaration and Exception. Compression by retaining and condensing material involves dealing in a single proposition with a *number* of elements falling under one of these headings, instead of with just one. It may even extend this treatment to two or more of the headings. If we took the original example given on p 45 and applied this kind of compression to it throughout, we might get the following result:

<i>Heading</i>	<i>Elements</i>
Case	Where a person is in charge of a vehicle, or is driving or attempting to drive it, or is the owner of it
Condition	if so required by a constable, or a traffic warden,
Subject	or anyone having reasonable cause to believe an offence is being committed
Declaration	that person, or anyone authorised by him, or otherwise acting on his behalf shall produce his licence or (if the licence is not in his possession or custody, or he does not hold a licence) shall give his name and address
Exception	unless he is exempt from holding a licence, or is a police constable, ambulance officer or fire officer on duty.

A drafter who combined all these elements in one legislative sentence (or even in two) would furnish an example of Compression by retaining and condensing material. We have examined a real life example relating to burglary, where the draftsman combined no less than six disparate elements in his statement of the Case (p 219).

Omitting material

As we have seen, the two ways of achieving Compression by omitting relevant material from the legislative proposition are (a) by relegating it to a definition section and using a defined term to denote it, or (b) by utilising material which exists elsewhere by 'applying' it with or without modifications.

Anonymity

The second of the four vices of statute law can be dealt with more briefly. From the descriptions of Acts and statutory instruments given in chapters 3 and 4 it can be seen that few headings, sidenotes

and other signposts are provided for the user. Cross-references are sometimes given, but are more often omitted. Typographical devices are not employed to pick out key phrases or defined terms.

There are sound reasons for these deficiencies. A Bill is usually heavily amended in its progress through Parliament. This amendment takes place at four or five different stages. Each time, the Bill is reprinted in updated form. The numbering of clauses, subsections etc is altered accordingly. It would add to the difficulties of the legislative process if the provisions were not largely anonymous, and numerous headings, cross-references etc had to be changed at every stage. Printing problems would multiply, and errors increase. But, it may be asked, cannot these aids be added when the Act is printed after assent? Parliament however is rightly jealous of any tinkering with its finished work. If what is produced is to carry full authority as an Act of Parliament it must be scrutinised by Parliament, and must be capable of amendment. That would lead back into the difficulties mentioned in the previous paragraph.

Mere typographical changes might avoid this objection. The Renton Committee examined the question, and the objections put forward by officials. Sir Anthony Stainton, for example, feared that special type might be a distraction to the reader (Renton 1975, para 11.18). Finally the Renton Committee recommended that the Statute Law Committee 'should consider what visual aids and pointers could be helpful in the light of available type faces, page space and technology generally' (Renton 1975, para 11.21). Nothing has come of this.

There are two practical remedies for anonymity of the type described above. One is the provision of indexes and other external aids. The other is the addition of signposting and typographical devices in reprinted versions of the text. This is a feature of Composite Restatement. Both are described in chapter 23.

Statutory anonymity has another aspect. As explained above, common law drafting eschews explanations, and concentrates on cutting edge. Furthermore the drafter may shrink from committing himself to the situation he has in mind, in case other unforeseen situations arise. So while the literal meaning of a provision may be clear, the reason why Parliament enacted it may not. Again, the remedy lies in subsequent treatment of the text.

Distortion

The third of the four vices of statute law is distortion. By this is principally meant the deformity of structure and arrangement induced by text-validation procedures. Considered as operative law, a text might be most helpfully presented in a certain way. One can envisage the possibility of its assuming an ideal form. So far as this is practicable, it is prevented by parliamentary factors. An Act of Parliament starts life as a Bill, which is a dual-purpose

text. As a vehicle for legislative proposals submitted for debate and amendment, it must comply with the parameter of *procedural legitimacy*. It must be in the form of clauses and Schedules. It must be drafted in a way to disarm political criticism and enable its crucial features to be debated in logical order. A Bill often introduces novel concepts, which have to be led up to and adequately explained. As a potential Act, it must be designed to function effectively long after its novelty has worn off and the conditions in which it was drafted and debated have passed into history. Plainly what may be desirable for a Bill may be less desirable for an Act, and vice versa. So that is one cause of distortion. Another cause lies in the fact that when the drafter 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, sometimes by the insertion of wholly new material. Thus Part III of the Health and Safety at Work etc Act 1974 goes very much wider than health and safety *at work*. It is largely concerned with building regulations, which apply to buildings of every kind. Originally a separate Bill, it was tacked on to the end of this measure to get it through when it might otherwise have failed for want of parliamentary time (see Spencer 1981). As a pointer to this, the drafter had the grace to insert 'etc' in the short title to the Act.

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. Even after assent this process of unforeseeable alteration continues, as one amending Act follows another.

Party-political factors can cause distortion. There have been many instances of the shape and content of a Bill being distorted purely for political motives. A classic example is the Children Bill of 1908, which was put forward by the new Liberal Government as a 'Children's Charter'. The proper method of legislating would have been to deal with the various matters involved by amendment of the separate Acts relating to each of them—for example those governing the sale of intoxicating liquor, variation of trusts, criminal procedure and public health. Instead, the whole was dressed up as something it clearly was not: a comprehensive reform of the legal position of children.

A common form of distortion dictated by political factors is the placing of the contents of a Bill in a smaller number of clauses than would be natural, simply in order to reduce the number of debates on 'Clause stand part'.

The average statute user is ignorant of all these considerations. He seeks to understand the text as it appears before him. It is a segment of enacted law, a portion of the Statute Book. Why is it not easier to follow, more logically arranged? As the Departmental Committee on Income Tax Codification (1927-1936) said: 'the more difficult and elaborate the subject, the more important are precision and orderliness in its presentation' (Cmd 5131, para 26).

Even an experienced legal civil servant, Sir William Dale, fell into the trap of overlooking the factors that cause distortion. In his book extolling civil-law drafting, *Legislative Drafting—A New Approach*, he criticised a number of modern British Acts on this score. One of them is the Consumer Credit Act 1974. As an illustration of the effect Distortion can have, it is instructive to examine Dale's comments (all made without reference to, or apparent awareness of, parliamentary factors).

He begins by saying that the long title of the Consumer Credit Act (set out on p 42 above) is 'admirable'. Then the criticisms start. 'Part I sets up the Director General of Fair Trading, and one must again protest that matters of administration are not of the first, or perhaps of any, concern to the normal enquirer' (Dale 1977, p 270). This happens not to be true, since the fact that the Act is administered by the Office of Fair Trading closely concerns almost everyone involved with it. Even if it were true, it is irrelevant. This is because the question of who was to administer the Act was of great interest to MPs. It was about the only issue which divided the Labour Party from the Conservatives (who wished to set up a new department headed by a Consumer Credit Commissioner).

Sir William's next complaint is that Part II of the Act consists wholly of definitions. He mysteriously adds 'and that Part cannot be, and probably was not meant to be, absorbed'. Part II is a good example of the effect of distortion. The statute user would find it convenient to have all definitions assembled in one place (under British practice he would look for them at the end of the Act). But the legislator, faced with proposals for wide-ranging new controls over more than half the commercial firms operating in this country, has a different priority. He first needs to settle just what activities are to be subject to the controls. Novel terms and concepts, of basic importance to the legislative scheme, must be hammered out and agreed before detailed consideration can start.

Dale regards the Act as 'an advanced case of what we may call the centrifugal style of drafting . . . The draftsman, instead of gathering his material into central propositions of maximum content, has made it fly off to the extremities, fragmented in definitions and similar ancillary clauses . . ." Dale cites s 21, which states 'a licence is required to carry on a consumer credit business or consumer hire business'. Strangely, he describes this as a proposition 'bare of any content at all' (*ibid*, pp 271-2). The arrangement of the Consumer Credit Act 1974 is actually an orderly one, allowing for the fact that political considerations dictated the content of the first two Parts. Part III imposes the licensing system on credit and hire businesses. Then successive Parts deal in a natural order with seeking business, entry into agreements, matters arising during the currency of agreements, termination of agreements etc. Only when we come to Part X do we again see the effect of distortion. This deals with ancillary businesses, such

as credit brokerage. The statute user would no doubt prefer to see them dealt with alongside credit and hire businesses, and not hived off at the end of the Act. Parliamentary considerations required however that all the details regarding the two main types of business subject to control should first be worked out and agreed. Only then was it politically convenient to turn attention to the question of how far these basic provisions needed to be modified for ancillary businesses.

If distortion causes deformity in the arrangement of an Act, the only remedy is to rearrange the Act when opportunity offers. This can be done on consolidation (chapter 6), and is a principal feature of the Composite Restatement method (chapter 23). Meanwhile, adequate indexes and other aids are of assistance.

Scatter

The last of the four vices is scatter. Instead of being dealt with in one place, the law on a topic is found in two or more different texts. We discussed in the last chapter the problems of textcollation and conflation to which this gives rise. There are various causes of scatter, some overlapping:

(1) The absence of a Statute Book arranged under Titles on a one Act-one subject basis means that a topic may be dealt with in two or more different Acts. Sometimes the number of Acts on a particular topic is very large indeed, though things have improved in this respect with the growth of consolidation during the last century. Writing in 1876, RM Kerr, an editor of Blackstone's *Commentaries*, said of the poor law statutes:

It is impossible to give more than an outline of the laws for the relief of the poor. The statutes in force on this subject are nearly 300 in number, and to them, therefore, the editor will on no account venture to refer the reader (1 Kerr 1876, p 329).

(2) Compression by omitting material involves scatter between the text containing the 'application' provision or defined term and the text which is applied or which contains the definition, as the case may be.

(3) Indirect or non-textual amendment of Acts (see below) creates scatter between the principal Act and the amending Act or Acts.

(4) The practice of supplementing an Act by statutory instruments made under it (chapter 4) involves scatter between the parent Act and the statutory instruments.

(5) Internal scatter occurs because of the rules governing the arrangement of an Act or statutory instrument. In particular, there is scatter between the provision introducing a Schedule and the Schedule itself. Every Act must be read as a whole, and its provisions hang together. One can never be certain of the Act's effect on a particular topic without considering all its provisions.

(6) Since the Interpretation Act applies to all other Acts, and to statutory instruments, it is invariably a cause of scatter.

Scatter of the first three types can be alleviated by consolidation (chapter 6). Acts and statutory instruments are never consolidated together however. Nor can consolidation assist with internal Scatter or the problems created by the existence of an Interpretation Act. Composite Restatement can cure all types of scatter. The greater the degree of scatter, the more important it is to have adequate indexes and other aids (chapter 23).

Indirect amendment

Finally in considering the factors that impede text-comprehension, we consider a peculiarly British phenomenon. Although Britain has never possessed a Statute Book arranged under Titles on a one Act-one subject basis, its Parliament has from time to time passed Acts each of which could be regarded as the *principal Act* on the subject it deals with. Principal Acts can be identified broadly as of three types: (1) the consolidation Act; (2) the Act which embodies initial legislation on a novel topic; and (3) the Act which is a substantially- altered version of a previous principal Act. An example of the second type is the Consumer Credit Act 1974, while an example of the third is the Highways Act 1959 (p 70).

Whichever category it may fall into, a principal Act is the product of a great deal of skilled work. It tidies up the area of law with which it is concerned. Common sense would indicate that if it is later amended, the amendments should be done textually and not indirectly. That way the amended Act can be reprinted as one text. Its integrity is preserved, and the vice of scatter avoided. Instead of each statute user being required to accomplish the difficult task of *conflation*, it is done once and for all by the drafter of the amending Act. With this method, the need for consolidation is less frequent. (See further Bennion 1980(11)).

Yet the British practice has been to amend *indirectly*, and not by altering the text of the principal Act. Here is an example. The Improvement of Live Stock (Licensing of Bulls) Act 1931 imposed a licensing system for the keeping of bulls, and empowered the Minister of Agriculture to refuse a licence on certain grounds. In 1944 it was desired to extend this system to boars. Instead of amending the 1931 Act textually and altering its title accordingly, the 1944 Act extended it indirectly. Then in 1963 it was desired to broaden the grounds on which a licence could be refused. Once more the opportunity of producing a unified text was disdained. Instead, s 17 of the Agriculture (Miscellaneous Provisions) Act 1963 said:

The powers of the Minister . . . under section 2(2) of the Improvement of Livestock (Licensing of Bulls) Act 1931, or under that section as applied

to pigs by s 6 of the Agriculture (Miscellaneous Provisions) Act 1944, to refuse to grant a licence to keep a bull or boar for breeding purposes shall include power to refuse to grant such a licence if he is not satisfied that the bull or boar conforms to such standard of suitability for breeding purposes as may be prescribed for bulls or boars respectively under the said Act of 1931; and different standards may be so prescribed for different classes of bulls or boars.

The result was that anyone who, not content with a textbook summary, was concerned to discover the law on licensing of bulls and boars *from the source* had to get hold of three different texts and perform the troublesome task of conflating them. Since this was the almost invariable technique by which amendments were effected, the same applied generally throughout the field of statute law. Why should this be so? Why should a system so obviously inimical to understanding of the law be officially adopted?

The answer lies in the *four-corners doctrine* (see p 32). Indirect amendment satisfies this doctrine, whereas textual amendment is often incomprehensible without some form of accompanying explanation.

The pernicious four-corners doctrine served the convenience of those who make the law at the expense of those who need to understand and apply it. The doctrine was laid to rest by the Renton Committee in these words: 'We recommend that in principle the interests of the ultimate users should always have priority over those of the legislators: a Bill, which serves a merely temporary purpose, should always be regarded primarily as a future Act, and should be drafted and arranged with this object in view' (Renton 1975, para 10.3). (For further details of the four-corners doctrine see Bennion 1979 (4) pp 36-43 and 54-60. As to the current use of textual amendment in Britain, see Bennion 1980 (1) and (5).) Although textual amendment has largely superseded indirect amendment, it has not entirely done so. In any case, we still have a considerable legacy of statute law produced by this discredited method.

Indirect amendment produces the vice of scatter. An Act amended textually can be reprinted as a single text. Every time an Act is amended indirectly, an additional text is produced. The texts must then remain separate until brought together by a process of text manipulation such as consolidation or Composite Restatement.

Doubt-resolving

Having described the factors that induce subjective blocks on text-comprehension, we turn to the factors that cause objective doubt as to the meaning of legislative texts.