Bennion on Statute Law

Part IV - Dynamic and Static Processing of Texts

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Static Processing of Texts

Aiding text collation

The statute user's problem of text collation was described briefly in chapter 13 (pp 210-211). In order to discover what statute law provides for a factual situation, it is necessary, as we have seen, for the user to find out which are the relevant texts, and then make sure he has them in up-to-date form. In Britain the tools officially provided for this purpose are of high quality. This is one respect in which we are in advance of some other Commonwealth countries. The basic need is for an *index* arranged under topics (from which to compile a list of relevant texts) and a *table* in which texts so compiled are listed chronologically, with annotations showing amendments, commencement dates etc. Both these are provided by the British authorities.

The nearest we have to a keeper of the statute book in Britain is the Statute Law Committee. This was set up in 1868 by Lord Cairns. Its chairman is the Lord Chancellor of the day, who appoints the remaining members. Its current terms of reference are as follows:

> To consider the steps necessary to bring the Statute Book up to date by consolidation, revision and otherwise, and to superintend the publication and indexing of Statutes, Revised Statutes and Statutory Instruments. (Renton 1975, paras 5.1 and 5.2.)

In 1870, shortly after the setting up of the Statute Law Committee, the first official index was published under its direction. This was in response to a suggestion made by Lord Cairns to the then Lord Chancellor, Lord Chelmsford. The title of the work was *Index to the Statutes in Force.* In 1876 Lord Thring prepared a paper of instructions, laying down improved principles. The scheme of the index, nowadays called the *Index to the Statutes,* continues to be to group, under appropriate headings, entries relating to the whole of the general statute law in force. Lord Cairns' suggestion also extended to the production of a chronological table, and this too began publication in 1870. It still continues, under the title *Chronological Table of the Statutes.*

In 1887 Alexander Pulling sent a memorandum to the Statute Law Committee. In it he made suggestions for remedying the inconvenience arising from the lack of an official system of indexing or collating what Pulling called 'statutory rules and orders' (a name which stuck). In the result Pulling was asked by the Committee to prepare the first of an annual series of volumes of S R & O's. They also desired him to compile a comprehensive index. The initial annual volume appeared in 1889. It has been repeated in each year since. The first index produced by Pulling was published in 1891. He also compiled the first collected edition of S R & Os. It contained instruments of a public and general character issued before 1890, and ran to eight volumes.

In 1893 the Rules Publication Act was passed. This required rule- making authorities, as the Act called them, to send the rules and orders they made to the Queen's Printer to be registered, numbered and printed. In the following year the Treasury made regulations governing the details of this process. In 1895 Pulling was placed in charge of indexing both statutes and what are now known as statutory instruments. The Statutory Publications Office was born, but has never itself been a publisher. That function continues to be in the hands of Her Majesty's Stationery Office (HMSO).

The *Index to the Statutes* is published 'annually', though publication difficulties in recent years have meant that this aim is not always realised. The *Index* covers in two volumes all public general statutes in force, including ante-Union Scottish Acts. A corresponding work relating to Northern Ireland is published less frequently. There is also an index to local Acts. These give local authorities special powers in relation to such matters as highways and streets, public utilities etc. This publication is called *Index to Local and Personal Acts*.

The Chronological Table of the Statutes also aims (though not always successfully) at annual publication, also in two volumes. It lists all public general Acts passed since 1235, whether or not they are still in force. If an Act remains operative, the *Table* lists the amendments which have been made to it. Again, there is a corresponding publication for Northern Ireland. At the end of the second volume of the *Chronological Table of the Statutes* there is a chronological table of local and personal Acts. This was instituted by a direction of the Statute Law Committee in 1974, and shows all amendments to local and personal Acts after 1973.

In relation to statutory instruments, there are two useful official publications. The *Index to Government Orders* is a biennial publication showing under appropriate subject headings the powers to make statutory instruments, together with titles of instruments made under those powers and still in force. The *Table of Government Orders* is a cumulative annual publication. It lists general statutory instruments in chronological order, showing whether each instrument is still in force and, if it is, giving details of any amendments which

affect it. The *Table* also includes instruments made under the Royal prerogative. The information given by these two publications is updated by *Annual, Monthly* and *Daily Lists of Statutory Instruments* issued by HMSO. Another useful feature is the supplementary material given in the annual volume of public general Acts passed during the year. This includes tables of short titles and effects of legislation, subject index, tables of derivations and destinations of consolidation Acts and a table of textual amendments made to Acts by statutory instruments.

In an account of the work of the Statutory Publications Office by a former Editor, AB Lyons, it is stressed that 'our function is to make the laws available to all, not to make them intelligible' (Lyons 1969, p 2). Intelligibility belongs to the realm of text- comprehension, also discussed in chapter 13 (pp 211-212). As we saw in chapter 14, there are specific factors that cause impaired intelligibility in the drafting of legislation. It remains to consider a further aspect related to the subject of this chapter. Can the drafting of Acts be improved to render text-collation easier?

Since an Act changes the law, it often has to include what are called transitional provisions. It cannot be brought fully into force with immediate effect, but must spell out precisely how its substantive parts are modified for pending cases and other transactions already in train. The Act also has to specify relevant dates. Usually these transitional provisions are quickly spent. Thereafter, their dead words cumber the Act, obscuring its substance.

Later on, the Act is likely to be amended by a further Act. Let us hope this is done by direct textual amendment, and not indirectly. The original Act can then be reprinted as amended, and endures as one coherent text. Even if the amendments are textual however, there is still a transitional problem. It is the same problem as arose with the original Act—of dealing with pending cases (and other transactions already in train) and specifying relevant dates. It means that further transitional provisions are needed to deal with the amendments made by the new Act.

Each time the original Act is amended, the same thing happens. Let us take as a model Principal Act 1960 and Amending Acts 1965, 1970, 1975 and 1980. Suppose that each Amending Act amends Principal Act 1960 textually and contains its own transitional provisions (which, following the usual practice, are not textually incorporated into Principal Act 1960). Suppose further that Principal Act 1960 is reprinted as textually amended. To get the whole story the user still needs to consult *five* documents, as follows:

(1) Substantive provisions of Principal Act 1960 (as textually amended by Amending Acts 1965, 1970, 1975 and 1980) plus transitional provisions 1960.
(2) Transitional provisions 1965.
(3) Transitional provisions 1970.
(4) Transitional provisions 1975.

(5) Transitional provisions 1980.

To deal with this problem I devised a special type of Schedule when drafting tax legislation for the Jamaican Government in the early 1970s. Using the above model, the device works as follows. Principal Act 1960 would have contained a schedule on the following lines (which later came to be known as a Jamaica Schedule). Paragraph 1 of the schedule states the commencement date for every provision of the Act not specified in any subsequent paragraph of the schedule ('the master commencement date')- Subsequent paragraphs deal seriatim with substantive provisions of the Act for which the master commencement dates does not apply, or for which transitional provisions are required (setting them out). Subsequently, each Amending Act (as well as amending the substantive provisions of Principal Act 1960) also textually amends the Jamaica Schedule to Principal Act 1960 as necessary to incorporate transitional provisions for the new amendments.

The result is that once Principal Act 1960 is reprinted as amended textually, the whole story is to be found in one document instead of five. It should be added that amendments to the Jamaica Schedule would also include repealing provisions, with operative dates. The Jamaica Schedule thus operates as a complete historical file on the substantive provisions of the principal Act. (For additional details see Statute Law Society 1972, pp 12 and 32). At least one academic commentator has welcomed the aid given by the Jamaica Schedule (Samuels 1974, p 534).

A further refinement ought to be mentioned. Where, as frequently happens, commencement dates are not specified in the Act itself but are left to be prescribed by order, the power to make commencement orders would include a requirement that each order should amend the Jamaica Schedule textually so as to write in the commencement date. As we have seen (p 49), a comparable procedure was adopted for the Consumer Credit Act 1974.

The great utility for computer use of equipping Acts with a Jamaica Schedule or historical file was fully spelt out in an article I wrote for the New Law Journal in 1981 and supplemented in a subsequent letter (see Bennion 1981(3) and (4)). The need for this reform is demonstrated by the flow of cases concerned with doubt as to the commencement of enactments (for examples see f 19831 Crim LR 255-6).

Text manipulation

Our final task is to examine ways of easing the statute user's problems of text comprehension, which were outlined in chapter 13 **(pp 211-** 212). We saw in chapter 14 the factors that cause legislative texts to be drafted in ways inimical to understanding. If we accept that these factors are ineluctable, and are content to take drafting methods as they are, what remedies can we devise? The clue is given in

Access to the Law, a study conducted for the Law Reform Commission of Canada in 1975. As the author, Dean Friedland of the University of Toronto, says: 'The challenge is to simplify the manner of presentation, not necessarily to simplify the law itself (Friedland

How can this challenge be met? First let us see exactly what is involved. We rule out summaries and paraphrases, whether official or unofficial. They have their uses, but they are not ways of presenting the text. An unfortunate consequence of the complication of legislative texts is that people despair of understanding them and resort to substitutes. Yet as we saw from the remark of Sir William Dale quoted in chapter 2 (p 26) 'when once one understands a United Kingdom Act, one can usually ascertain the answer to one's question.'

It is of course the *authoritative* answer to the question, direct from the horse's mouth. It is not the opinion of someone else (however expert he may be), but the pronouncement of the legislator. That is why it is worth going to a good deal of trouble to find it out. Modern drafters take care to spell out the detail of their provisions in a logical and consistent way. Usually, if not always, they succeed. If the matter goes to court, the court usually arrives at the result the drafter intended. The fact that we have spent time in this book analysing the deficiencies of this system ought not to obscure that.

So we must work with the official text, and the whole of it. But the official text is arranged in the way required by parliamentary procedure, its shape perhaps distorted by factors extraneous to its meaning. The language is compressed by the need for brevity, and the text is deficient in headings and other signposts. It may be only of several texts that the user needs to fit together or conflate.

The first question in meeting the challenge posed by Dean Friedland is this. Can we, so as to 'simplify the manner of presentation', as it were play about with the official text? Can we juggle the order of sections, or mix up provisions from an Act with provisions from a statutory instrument? This is not as straightforward as might appear.

The doctrine of the free-standing Act

It has been customary in Britain to regard each Act as a self-contained entity. It was drafted as a whole, and is to be read as a whole. It is a rounded piece of work, standing alone. Its author has not designed it to slot into some larger structure, created by other hands. This principle partly explains the inveterate opposition of parliamentary counsel to the textual amendment method. The doctrine was also responsible for the hostility by some drafters to publications such as *Statutes Revised,* which print the text in amended form and not as originally enacted. For convenience we will call it the doctrine of the free-standing Act.

If the doctrine has any substance in law it may form an impediment to the idea of shuffling the textual units around in an effort to 'simplify the method of presentation'. Has it any substance?

We saw in chapter 3 (p 48) how the draftsman of the Criminal Law Act 1977 may have felt inhibited by one manifestation of the doctrine. This is the rule in *A-G* v *Lamplough* (1878) 3 Ex D 214. We can illustrate the point now by a simplified example.

An Act prohibits certain conduct 'where condition A, B or C is satisfied'. It goes on to say that 'in any other case' the conduct is permissible if specified requirements are observed. A later Act repeals the reference to condition B. Do the words 'in any other case' now include B, although they clearly did not do so before?

It is arguable *that A-G* v *Lamplough* lays down a rule to the contrary. An Act amended by the repeal of certain words is not to be read in future by closing up the gaps and pretending the words were never there. In our model the phrase 'in any other case' did not include condition B when enacted. The repeal does not alter this (unless of course there are other words in the amending Act to indicate that the alteration is intended). So the repeal removes conduct satisfying condition B from control altogether.

It will be seen how inconvenient this rule is. The literal meaning of the amended text cannot be followed. Indeed to show the true meaning it is necessary to print the text with the repealed words included. The reader must be alert to remember that they have been repealed but he needs to know what they are because they affect the meaning of the words that remain. This is the triumph of the old-fashioned view. You must read each Act as originally enacted. No one must come to your aid by processing the text. So the statute book, instead of presenting a jigsaw picture with the pieces interlocking, resembles a pack of cards. Each Act trumps the one before. Fortunately the rule in *A-G* v *Lamplough* is not firmly established. It is little known, and if it ever comes up for review one hopes the courts will overrule it. We can do without unnecessary traps and obstacles to simplification.

The opposite of the doctrine of the free-standing Act may be called the doctrine of the continuous text. The drafter, whether of an Act or a statutory instrument, regards his text (so far as text- validation procedures allow) as something to be slotted into the existing legislation rather than as an independent entity. But he does not make the mistake involved in the now discredited practice of providing that an Act is to be 'construed as one' with various other Acts. (For the confusions caused by this see Craies 1971, pp 138-9, 223 and 360-1).

The drafter using the continuous-text method makes clear the relationship of his text to other texts with which it is 'continuous'. He does not set any traps or puzzles in relation to other texts, but he does enable helpful rearrangements to be made by processors. It is believed that most modern drafters now follow this method,

and that it is firmly enough established to enable us to devise processing methods which rely on it. We aim therefore to 'simplify the manner of presentation' while retaining the entirety of the official language, juggling it around as may seem convenient. What methods shall we use?

A text that lays down a series of alternatives operating according to the particular factual situation can be presented sequentially. This converts a generalised statement into a method by which the user can trace out the answer to his own problem without stumbling over provisions that for him are irrelevant. Moreover he is saved from having to work out which provisions *are* irrelevant. All he need do is answer a series of factual questions.

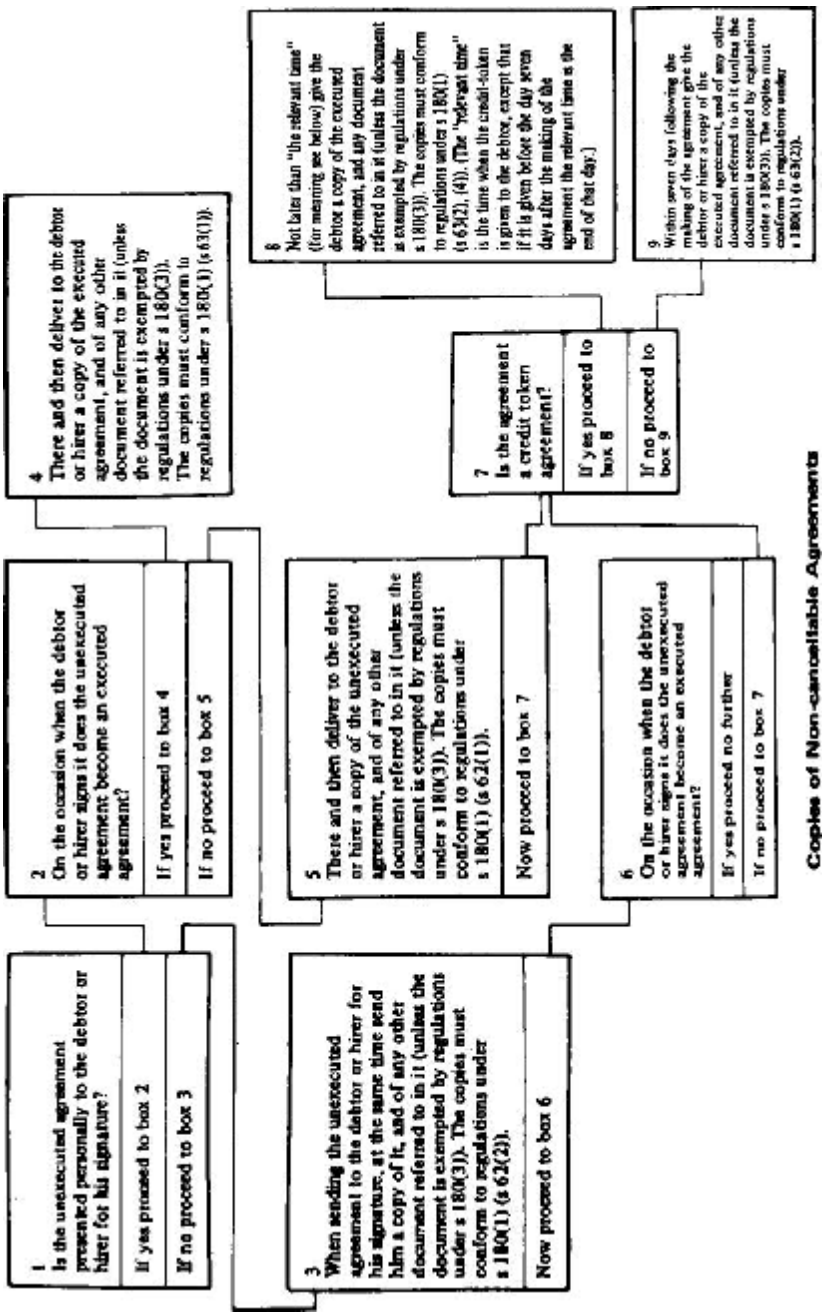
This presentation of a legislative text is called an algorithm. The following diagram is an algorithm I devised for my book *Consumer Credit Control*. It uses nothing else but unabbreviated provisions of the Consumer Credit Act 1974. The idea is to inform a trader of his statutory duties in relation to certain agreements governed by the Act. It will be seen that the algorithm gives only partial relief. Before using it the trader must decide that the agreement in question is not a 'cancellable agreement'. This involves applying a definition in the Act. (A different algorithm is provided for cancellable agreements.)

While this algorithm retains the complete statutory language, thus satisfying the condition under which we are operating in searching for ways of simplifying the manner of presentation, it is far from telling the *whole* story. Many terms used in it are defined terms, and for completeness the user needs to look in the Act for the definitions. There are references to certain regulations, and again the user needs the text of these. This illustrates the limitations of algorithms. They are useful, but only where some detailed set of alternatives is involved. The more alternatives there are, and the more clear-cut the factual situation involved in each one, the more effective and useful will the algorithm be.

Where texts in machine-readable form are stored in a computer data base, they can be accessed by various techniques for search and retrieval. Examples are key words in context (KWIC) and lists giving words used and numbers of occurrences. Hard copy (printouts) can be obtained, and texts can be scanned visually using VDUs.

So far the legal texts stored in computer data bases throughout the English-speaking world have consisted of archival material designed originally for conventional print media. Law reports, textbooks, even statutes are in a form designed for another age. There is little sign as yet that the significance of this has been grasped. The service rendered by the computer is only as good as the materials put into it. In time they will be designed for the purpose.

The boldest idea in this regard is to begin with the law itself, and frame it from the start in a logical symbolism. Instead of storing


1
Is the unexecuted agreement presented personally to the debtor or hirer for his signature?
If yes proceed to box 2
If no proceed to box 3
2
On the occasion when the debtor or hirer signs it does the unexecuted agreement become an executed agreement?
If yes proceed to box 4
If no proceed to box 5
3
When sending the unexecuted agreement to the debtor or hirer for his signature, at the same time send him a copy of it, and of any other document referred to in it (unless the document is exempted by regulations under s 180(3)). The copies must conform to regulations under s 180(1) (s 62(2)).
Now proceed to box 6
4
There and then deliver to the debtor or hirer a copy of the executed agreement, and of any other document referred to in it (unless the document is exempted by regulations under s 180(3)). The copies must conform to regulations under s 180(1) (s 63(1)).
5
There and then deliver to the debtor or hirer a copy of the unexecuted agreement, and of any other document referred to in it (unless the document is exempted by regulations under s 180(3)). The copies must conform to regulations under s 180(1) (s 62(1)).
Now proceed to box 7
6
On the occasion when the debtor or hirer signs it does the unexecuted agreement become an executed agreement?
If yes proceed no further
If no proceed to box 7
7
Is the agreement a credit token agreement?
If yes proceed to box 8
If no proceed to box 9
8
Not later than "the relevant time" (for meaning see below) give the debtor a copy of the executed agreement, and any document referred to in it (unless the document is exempted by regulations under s 180(3)). The copies must conform to regulations under s 180(1) (s 63(2), (4)). (The "relevant time" is the time when the credit-token is given to the debtor, except that if it is given before the day seven days after the making of the agreement the relevant time is the end of that day.)
9
Within seven days following the making of the agreement give the debtor or hirer a copy of the executed agreement, and of any other document referred to in it (unless the document is exempted by regulations under s 180(3)). The copies must conform to regulations under s 180(1) (s 63(2)).
Copies of Non-cancellable Agreements

within a data base formulations in ordinary language, which can then be accessed as a book is taken down from a library shelf, the computer is given the means of working out problems for itself, and delivering the answers. LEGOL, a linguistic system developed at the London School of Economics, points the way (see Bennion 1981(10)).[F]

From the point of view of the citizen, if not perhaps of the legal profession, the prospect opened up by LEGOL is exciting. The citizen is required to obey the law. Ignorance of it, however excusable, is not excused. Moreover ignorance of what has become all-pervasive statute law can be a considerable handicap in a person's business and private activities. To be able to interrogate a desk-top electronic counsellor about one's income tax, or one's duty in respect of a traffic accident, or one's right of recourse against a recalcitrant travel agency, will be of distinct advantage. There is a long way to go before the entire body of law can be made available in this way, but a start has been made.

No doubt there will always be areas where a judicial or administrative discretion must be exercised before the definitive answer can be known. Here all the computer can do is provide the citizen with information on how, in the light of relevant factors, the functionary entrusted with the discretion is likely to decide. Information so made available might indeed influence the decision itself. After all, the functionary will have a desk-top terminal too!

As well as assisting the individual citizen in this way, linguistic techniques like LEGOL may be expected to enhance the general quality of law. Logical consistency and certainty of operation are not conspicuous features of our present legal system, yet they are highly desirable. Use, for example, of 'entities' tested and refined in expression by the LEGOL technique need not be confined to the Act for which they were devised. An entity of general application (as many are) becomes available to be used over and over again as required in subsequent legislation. In time, the availability of what might be called prefabricated legislative units will shorten and simplify the drafting process, as well as furthering consistency of treatment in the law generally.

After that flight into the future, we return to the present day. Even within the limitations of our existing legal system, what is good for the computer is good apart from the computer. The computer will give more effective service if archival material can be rationalised *before* it is entered in the data base. No software yet written can achieve rationalisation by itself.

So what we need, both for the computer and apart from it, is manipulation of legislative texts to overcome the vices described in chapter 14. While retaining the official language, we need to present it in the most helpful way possible. That is the purpose of composite restatement.

Composite restatement

For the statute user, it is a matter of indifference whether the law on the point he is concerned with is contained in an Act of Parliament or a statutory instrument. He just wants to know what the law is; and he would like to find it in one place. He needs a simple system to direct him to the place. Once there, he wants the point dealt with as simply and comprehensively as the subject matter allows. He also needs the provision to be in up-to-date form.

These needs are self-evident, and scarcely need confirmation. One example of such confirmation is furnished by a note in what is perhaps the legal practitioner's most used publication, the Supreme Court Practice or White Book. This regrets that as a result of the enactment of s 31 of the Supreme Court Act 1981 (dealing with judicial review) the advantage has been lost of enabling a relevant rule of procedure 'to be found in one instrument instead of partly in a statute and partly in rules' (1982 edn, para 53/1-14/2). Composite restatement is designed to meet all these needs, while retaining the official wording in its entirety. As will be seen, it provides an answer to all the vices of statute law examined in chapter 14. A restatement is far easier to understand than the source material it processes; it is far more reliable than any summary, precis, digest or abridgement.

The Composite Restatement method outlined

Choice of topic A topic is selected which is largely regulated by statute law. (The method does not cover codification of common law rules.) Restatement is more useful the more Acts and statutory instruments are involved in the topic. Topics largely dealt with by ancient Acts, or by a short Act standing alone, are unsuitable. So are topics dealt with by formal Acts, Acts only of concern to officials, Acts relating to overseas territories, Statute Law Revision Acts and other special categories. Otherwise all legislation is suitable.

The restater The person constructing the restatement (whom we may call the restater) should have some experience of legislative drafting. He needs to have a thorough understanding of text creation, text validation and general principles of legislation. This includes use of the Interpretation Act, styles of drafting and techniques of commencement, amendment, repeal etc.

Text-collation The restater assembles the original official texts of all Acts and statutory instruments to be included in the restatement, including of course amending Acts and instruments.

Structure of the restatement There are a number of ways a restatement might be arranged but this account follows the system

I myself have devised and used. The basic textual unit is the ***paragraph.*** Groups of paragraphs dealing with an aspect of the topic are arranged in ***divisions,*** the first division consisting of ***definitions.*** A paragraph may stand alone or may consist of two or more ***sub- paragraphs.*** A paragraph or sub-paragraph usually consists of a single sentence, but unless very short the sentence is broken up spatially into ***clauses.***

Numbering Divisions are numbered from 1 onwards. In numbering paragraphs allowance is made for future additions, so they are numbered in fives. The sign § is used as a prefix, so the first paragraph in Division 1 is referred to as 1 § 5. If § 5 is broken up into sub- paragraphs they are referred to as § 5A, § 5B, etc. Clauses are given marginal numbers (1), (2) etc, so clause (2) of § 5B is referred to as § 5B(2).

Headings Each division is given a heading, and if convenient there are cross-headings within the division. Each paragraph and sub- paragraph is also given a heading. Again if convenient, cross-headings are supplied within a paragraph or sub-paragraph.

Example Division 6 of my book *Consumer Credit Control* (Bennion 1976 (4)) begins as follows:

CURRENCY OF AGREEMENTS

6§5 Variation of regulated agreement under power contained in agreement

6§5A Notice requirements (general rule)

INTRODUCTORY

(1) Where under a power contained in a 'regulated agreement' other than a 'non-commercial agreement'
(2) the 'creditor' or 'owner' varies the agreement
(3) the variation does not take effect before clauses (4) to (6) below are satisfied (or by virtue of *6§5B* or *6§5C* are treated as satisfied).

STATEMENT OF RULE

(4) A notice in 'writing' setting out particulars of the variation
(5) must be 'given' to the 'debtor' or 'hirer' (or to each of them if more than one)
(6) not less than ***seven days*** before the variation takes effect.

Source notes Following each sub-paragraph its source is stated. The source note to the example given above cites five different provisions of the Consumer Credit Act 1974 and three different sets of regulations.

Typography As the example shows, different typefaces and other typographical devices are used to aid clarity. Understanding is assisted by splitting up the clauses so that the reader does not have to work out for himself where the breaks in sense occur. Single quotation marks are used to indicate defined terms, the definitions being set out alphabetically in Division 1. Another typographical device is to italicise key words or phrases to draw them to attention (see clause (6) of the example).

Restater 's task The structure in which the restated texts are arranged is designed to present the relevant statutory provisions to the reader in the most logical and helpful manner possible. The restater must at the start work out the best way to do this. Then he takes the official texts and fits them together accordingly. He is not inhibited about mixing provisions of an Act with those of a statutory instrument. For this purpose the two are of equal rank, and the restater's function is to carry out once and for all the task of conflation that otherwise needs to be attempted by each user who comes to the topic. In doing so he must be careful not to change the official language more than is strictly necessary for purposes of 'carpentry'.

A modern Act removes detail from the body of the Act, and avoids repetition, by alloting a label to detailed provisions and using that instead. The restater can sometimes improve on the Act or instrument in this respect. He can further simplify the substantive provisions of the restatement by devising additional definitions. This does not involve any change in meaning, but aids the reader who seeks only the main outline.

Another simplification is to omit provisions of no immediate interest to the user, such as regulation-making powers or provisions not yet operative. Ideally the restatement should be published in looseleaf form so that it can be updated as legislative changes occur. It should consist of all currently operative law on the topic, but not law which is not yet in force or has ceased to operate. A further aid is the spelling-out in detail of applied provisions, thus curing the difficulty referred to on pp 220-221.

Textual notes Sometimes the preparation of the restatement brings to light ambiguities, obscurities or omissions. Unless the true intention is so plain that the restater feels no doubt that a court would give effect to it, the errors must be reproduced. Either way, the restater's treatment of the point is explained in a *textual note.*

The Analysis Preparation of the restatement as a logical structure produces a valuable by-product. If the headings of divisions, paragraphs and sub-paragraphs are printed by themselves in numerical order, they form a useful *outline* of the legislative provisions applying to the topic.

Since the restatement presents the current statutory provisions in logical order, suitably conflated, it serves as a sound basis for explanation and commentary. We are accustomed to annotated Acts and statutory instruments, but the notes are themselves rendered inadequate by the inadequacies in presentation of the official texts. Now the expert commentator can do a more effective job.

The annotator There is no reason why the restater and the annotator should be the same person. The skills required are different. A restater needs no special knowledge of the topic with which his restatement deals. The annotator on the other hand should be knowledgeable in the topic. He need not wait for completion of the restatement to begin work. The essence of the composite restatement method is that the official language is retained, and this of course is available to the annotator from the outset.

Method To achieve maximum utility, a composite restatement needs copious annotation. As we have seen, the statutory text by itself is but the dry bones. It needs to be fleshed out by explanations and examples. While notes on sources, and any textual notes, need to be drafted by the restater, the other notes, as we have said, can be compiled by a different person. Apart from general introductory explanations, it is best if these notes follow each paragraph or sub- paragraph.
Appendix B gives extended examples of the Composite Restatement method. Part I sets out the portion of the Analysis section of *Consumer Credit Control* relating to Division Nine. Part II sets out the beginning of Division Nine omitting all annotations except those giving the sources and interpretation references.

An official restatement?

All statute users would gain if the main body of statute law were made available in the Composite Restatement form. There are three ways this might be done:
(1) By Parliament itself (the restatement might be enacted in the form of an Act of Parliament).
(2) By one or more private bodies, such as commercial publishers or university law departments.
(3) By a body, such as a Statute Law Commission, which has an official status (perhaps conferred by Act of Parliament) but has no power to override legislation.
In some ways an enacted restatement would be better than any other. It would itself constitute the law, and would repeal the Acts and subordinate legislation restated by it. The possibility of conflict between the enacted law and the restatement would be avoided, as would the need for anyone to consult both texts. Yet there are serious problems about an enacted restatement. First, the restatement

must include not only Acts of Parliament but also statutory instruments the making of which Parliament has delegated to ministers. It has done this because statutory instruments concern matters of detail which Parliament has not time to consider itself or because they relate to topics on which speedy action may be needed, or for similar reasons. Having delegated this responsibility Parliament ought not to be asked to take it back by passing statutory instruments in the form of an Act of Parliament.

Second, Parliament is unlikely to agree to enact the restatement without either being satisfied that it exactly reproduces the existing law (apart from formal or trifling departures) or allowing itself an opportunity to debate and amend it. Either of these would be destructive of the object of the restatement. The history of the process of consolidation (always well behind requirements) shows the danger of insisting on slavish reproduction of the existing law, with all its obscurities and ambiguities. Even the freedom given first by the Consolidation of Enactments (Procedure) Act 1949 and later (to a wider extent) by the system of 'consolidation with Law Commission amendments' has not enabled the output of consolidation in Britain to keep pace with requirements, partly because even the abbreviated parliamentary procedures are time and effort-consuming for the drafter. To allow parliamentary debate and amendment on the other hand would be unworkable. Parliament has insufficient time for substantive legislation, and we should in any case be back with the problem of distortion of the legislative structure by amendments made in Parliament.

The third objection to an enacted restatement is that it would have to take the form of a parliamentary Bill, so that the improvements in structure and signposting effected by the restatement would be lost. This might be obviated by making the restatement a schedule to an Act, rather as some constitutions were treated in the days when Westminster provided constitutions for other countries. This is a clumsy device however. Of course if parliamentary procedure were changed so that the forms of Acts could be improved, that might get round the difficulty.

Fourthly, it would interfere with the exercise by ministers of their delegated power of legislation if their regulations and orders were crystallised into legislation. Statutory instruments should remain under the control of those with power to make them (subject of course to overriding powers of annulment or affirmation retained by Parliament). Government departments would not relish seeing their regulations picked up and remodelled without their control, and such control, if given, would be another delaying factor. Furthermore, the amendment of statutory instruments would be difficult if they had become embedded in an enacted restatement. The text of the restatement would not distinguish between the origins of its provisions, and problems of *vires* might become acute.

It is true that the objections listed above did not prevent the

enactment by Congress of the United States Code in 1926, described as 'the official restatement in convenient form of the general and permanent laws of the United States'. Clearly the possibility of an enacted Restatement is worthy of investigation.

There is of course nothing to prevent a university law department, commercial publisher or other private body from producing and publishing a restatement in some field of enacted law. It will have the value indicated by the skill and effort which has gone into it, but that will be difficult for outsiders to assess. It is true that many private compilations have won high renown — *Hahbury's Statutes* being a notable example. Ideally the restatement should be fully comprehensive, and the effort required might be beyond the reach of any one British publisher — though a consortium of commercial publishers and others might accomplish the task.

My own view is that it would be best for the restatement to be produced and promulgated by an official body such as the Law Commission, or a body set up for the purpose. The law restated would remain fully in force in its original form, and would be amended by Act of Parliament or statutory instrument in the ordinary way. It would be for the body responsible for the restatement to follow suit and issue its own amending material in accordance with such changes in the statute law. Similarly, the courts would retain their full authority to pronounce upon the meaning and effect of any enactment in the form in which it was passed by Parliament or made by a minister. The courts would no doubt treat the restatement as being of persuasive authority, but in any conflict the actual law would prevail — the restatement would not in itself be law. It may be asked what is the use of the restatement if it is subordinate to statute law. Will it not be necessary for the practitioner to look at the statute law as well, so that his burden, far from being lightened, is actually doubled? I regard this question as the crux of the whole problem of whether a restatement is worth while.

The restatement is intended as a tool for practitioners who need to find out what the statute law on a particular subject is. I believe it is also capable of being used by lay persons — at least in the form of the Analysis and as an outline exposition (ie without investigating defined terms). Tools of this kind are in common use by practitioners and lay persons. For practitioners they take the form of annotated texts (such as *Halsbury's Statutes* or the *Supreme Court Practice)* or textbooks (such as Stone's *Justice Manual* or Archbold's *Criminal Pleading, Practice and Procedure).* Very often the busy practitioner relies on statements of law which are not in the official form, and courts nowadays are ready to follow suit. The restatement, if issued by an official body, would merely give a better and more authoritative substitute source. In practice, reference to the official text would rarely be necessary. The position would become like that of the American Law Institute and its restatements, which

in time attained far greater authority than at the outset was thought possible (Lewis 1945). (As to the possibility of setting up on similar lines a British Statute Law Institute, which could perform the function of producing composite restatements, see pp 68-69 above.)

To yield its full value, the text of the restatement would need to be annotated. Statutory texts, however well drafted, require copious explanations and illustrations to become fully accessible to the reader. Should the official body responsible for the restatement also be responsible for the annotations? My answer is no. To produce the full range of annotations would greatly enlarge the task of the official body — already heavy if it is to be discharged adequately. It would be best if the official body gathered the best talent available to produce the actual restatement but left it to commercial publishers and others to produce annotated editions. Indeed for the restatement to succeed it would be necessary for the efforts now devoted by commercial publishers to producing annotated texts of statutes to be switched to the restatement.

We can now attempt to answer the questions posed above. If the restatement were produced by an official body, as I have suggested, it would have strong persuasive authority but the enacted law would remain paramount. In practice it should be possible to proceed by consulting the restatement *instead* of the enacted law, especially if published commentaries cited the restatement rather than the enacted law. Only if difficulty arose over some obscurity or ambiguity would it be necessary to compare the texts. In such cases the existence of the restatement would be a valuable adjunct.

Commercial versions of the restatement with annotations might well become the most commonly used source books for statute law. I believe they would serve a useful public purpose in bringing statute law fully before those to whom it is directed in a form they could consult easily and understand.

It would of course be an immense task for a single organisation, even when financed by the state, to produce a restatement of the entire body of statute law. I would propose that a programme of restatement should take the place of the programme of consolidation of enactments, so that the former could use the services of drafters who would be otherwise engaged on consolidation. Composite restatement is far more useful than consolidation. Even so, it is obvious that the restatement would have to be carried out by instalments. Fortunately its value does not depend on completeness. As I hope to have shown with my own restatement of consumer credit law, the method is useful even when confined to a single topic. For further information see the video cassette *Composite Restatement* (Longman 1982).