Want to know the law? It'll cost you

by Francis Bennion

Do you know the law? All citizens are supposed to know it. By a rule dating back to the fourteenth century, it is no excuse if we do not. In 1364 Chief Justice Thorpe sternly told the barons, burghers and peasants: "every one is bound to know what is done in Parliament, even although it has not been proclaimed in the country".

Of course it's a help if it is proclaimed. For many centuries our government considered it their duty to see that it was. There was no question of making money out of this. Fairness apart, it was seen to be in the government's interest. Things are different now, as the law publishers are currently complaining.

Early on, the spreading of knowledge of new laws was done through the king's officer, the shire reeve or sheriff. Statutes were proclaimed in the county court, successor to the Saxon shire moot, of which in medieval times the sheriff was president. He was required to proclaim every new Act not only in the full county court but also in the townships. He had to make copies and transmit them, without payment, to knights of the shire, justices of the peace and other leading figures. It was their duty to pass them down.

In 1796 the authorities ordered printed copies of the statutes to be distributed throughout the country without charge soon after their enactment. In 1801 the House of Commons ordered the King's Printer (ancestor of the present-day Her Majesty's Stationery Office or HMSO) to supply Acts to listed judicial and administrative officers.

This practice continues. The list, revised from time to time, is known as the promulgation list. A relic of the age of enlightenment, it scarcely suffices to do the job today. Government efforts to beef it up have been inadequate. The latest, an ambitious publishing enterprise started 20 years ago under the name Statutes in Force, ended in disaster and has now virtually ceased publication.

All this meant that the modern equivalent of proclaiming new laws in the shires had to be assumed by private enterprise. The great names in law publishing, Butterworths, Sweet and Maxwell, Longman and so forth, have in recent years taken care of that side of our welfare. Without them, the legal system would have broken down.

It began with Halsbury's Laws of England, still the leader of the field. Many other textbooks, edited by experts, nowadays bring the law to the people and their advisers. Yet HMSO is putting a spoke in the wheel. The law publishers complain of ever more stringent restrictions. These are imposed on the publication of statutes, statutory instruments and related texts such as codes of practice, official circulars, policy guidelines and the Highway Code. They even apply to court judgments. Not only are HMSO demanding royalties; in some cases they refuse to allow publication by anyone but themselves on any terms.

The rot started with the passing of a new Copyright Act in 1988. This created a novel form of Crown copyright in our laws, and gave the management of it to HMSO. Once this was a useful little public body concerned with letting everyone know what the Government was up to. Now it aims to be a money-raising entity, second only to tax-gatherers like the Inland Revenue in its itch to feed Treasury coffers.

That law should be in the public domain and freely available is recognised by most civilised states. On the continent of Europe there is no copyright in laws. Many laws, such as those of Germany, Italy, Denmark and Holland, expressly state that copyright does not apply to them. The same is true of Japan and Mexico.

Last year in New South Wales the Attorney General announced that all copyright in Acts of Parliament and subordinate legislation was waived. He said: "One of the cornerstones of democracy is that the people own the legislation ... copyright should not prevent people having access to the legislation that they own".

The United States Code, title 17, says that copyright protection is not available for any work of the United States Government. Statutes are in the public domain, and anyone can publish them without charge.

Canadian law makers say court judgments, statutes and regulations are not "owned". Like the air, they are free to all. To claim Crown copyright in court decisions would, they argue, interfere with judicial independence.

The protest by British law publishers against unreasonable restrictions should be supported by all affected by the law (that means everyone). Our Government has a duty to ensure that the law is widely promulgated, and that no obstacle is placed in the way of this. Certainly no royalty or other charge should be exacted from anyone who disseminates the law. They are doing the Government's job for it.

Spreading the law is not something that should be privatised and used to raise revenue. No official text which forms the law, or is used to interpret the law, should be restricted in any way. From the start, it belongs in the public domain.

[Published in The Times 26 July 1994.]