STATUTE LAW SOCIETY

Statute Law Deficiencies

Report of the Committee appointed by the Society to examine the failings of the present Statute Law System

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STATUTE LAW SOCIETY

is an association of statute users which aims, by methods such as encouraging research, promoting publications and meetings, making representations and liaison with appropriate bodies and individuals, to secure improvements in the system whereby laws are expressed, produced and published, and to further education in legislative processes. The following are members of the Council:

The Rt. Hon. Lord Shawcross, Q.C. (*Vice-President*}

The Rt. Hon. Lord Stow Hill, Q.C. (*Vice-President*

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Applications and inquiries about membership may be made to: D. A. Singer, The Assistant Secretary, 16 Lincoln's Inn Fields, London, W.C.2.

PART I

INTRODUCTORY

1. The Statute Law Society was formed in May 1968. Its primary objects are: ‘

(i) to procure and further the making of technical improvements in the form and manner in which statutes and delegated legislation are expressed and published with a view to making the same more readily intelligible, and

(ii) to further the education of the public in the processes and scope of legislation of all kinds and at all stages and for this purpose to gather and disseminate information on legislative processes of all kinds.

2. In 1968 the Council of the Society appointed this Committee “to examine the ways in which the official system of framing, enacting and publishing statute laws of the United Kingdom Parliament fail to meet the requirements of the user”. The members of the Committee are as follows:

Sir Desmond Heap (Comptroller and City Solicitor) - Chairman.
F. A. R. Bennion (formerly Deputy Parliamentary Counsel).
J. Clement Jones (“Express & Star”, Wolverhampton, and Press Council).
R. H. Glutton (Chartered Land Societies Committee).
M. F. Coop (Confederation of British Industries).
P. D. J. H. Cox (Law Society).
C. L. Dodd (Chairman of the Law, Parliamentary and Taxation Committee of the National Chamber of Trade).
Prof. P. J. Fitzgerald (University of Kent at Canterbury).
P. Fleming (Institute of Directors).
D. C. Hobson (Chartered Accountant).
C. W. G. T. Kirk (Society of Town Clerks).
H. H. Marshall, C.M.G. (British Institute of International & Comparative Law).
M. Maxwell (Sweet & Maxwell, Law Publishers).
E. C. Meade (Institute of Chartered Accountants).
Sir John Mellor (Chairman, Prudential Assurance Company).
F. P. Neill, Q.C. (Bar Council).
N. Rudd (Society of Local Government Barristers).
B. S. Russell (Bar Association for Commerce, Finance & Industry).
Prof. W. L. Twining (The Queen’s University of Belfast)
Prof. G. S. A. Wheatcroft (London School of Economics).
D. A. Singer (Advocate) - Secretary of the Committee.

We have had eight meetings, and have studied material submitted to us by numerous statute law users.

3. To aid us in our task 5,000 copies of a Questionnaire which we had prepared were sent out to a wide range of users including members of the professions, local authorities, members of both Houses of Parliament and representatives of trading, commerce, industry, academic life, trade unions and social welfare institutions. Around 360 replies were received. We wish to express our gratitude to those who took the trouble to reply. We would mention that throughout this Report percentages relate, of course, to the total of those replying to the Questionnaire.

4. The Questionnaire was divided into two Parts, Part I being susceptible to analysis by a computer and Part II inviting comment in more general terms. The form of the Questionnaire is given in Appendix B to this Report, and the computer analysis of the figures is reproduced in Appendix A.

5. This Report is intended to form the basis for detailed proposals for reform. The Society has appointed a further committee under the chairmanship of Lord Stow Hill to examine this report and to recommend solutions to the problems outlined in it. For this purpose further comments on grievances and suggested solutions are welcomed and should be sent to The Assistant Secretary, The Statute Law Society, 16, Lincoln's Inn Fields, London W.C.2.

PART II

THE BACKGROUND TO THE PROBLEM

A. THE NATURE, PURPOSE AND CREATION OF LEGISLATION

6. Acts of Parliament (Statutes) are the form of law created by the supreme legislative body in the United Kingdom, the Queen in Parliament. They commence their existence as Bills of which there are basically three classes:

> (i) Public Bills (relating to matters of public policy, and introduced directly by members of either House): they are further divided into those of the Government and those of Private Members;
>
> (ii) Private Bills (relating to particular interests of individuals, corporations, local authorities or other bodies, being solicited by these parties themselves based on petitions deposited in accordance with the relevant Standing Orders; private legislation can repeal or amend Public Acts); and
>
> (iii) Hybrid Bills (Public Bills affecting particular private interests, their passage being governed by special procedure).

7. The ideas for Government Bills may come from a variety of different sources, but essentially the details are worked out in the Departments. Since 1869 the work of drafting public Bills has been mainly performed by Parliamentary Counsel to the Treasury. Purely Scottish Bills are drawn in the Scottish Office under the supervision of the Lord Advocate, and purely Irish Bills, previously drawn in the Irish Office under the Irish Law Officers, are now drawn in Northern Ireland in the Office of the Parliamentary Draftsman in Belfast. Other vital agencies concerned in the process of drafting are the Law Commissions in England and Scotland. These operate according to similar methods. The English Commission has a duty

> "to prepare and submit to the Lord Chancellor from time to time-programmes for the examination of different branches of the law with a view to reform, and to make recommendations as to the agency by which those examinations are to be carried out. In undertaking such examinations the Commission, if it thinks reform is necessary, is to formulate proposals by means of draft Bills. If requested by the Lord Chancellor, it is to prepare comprehensive programmes for the consolidation and revision of the statutory law, and to prepare draft

> Bills to give effect to these programmes. It is to provide advice and information to Government Departments and other bodies concerned, at the instance of the Government, with proposals for law reform. In the performance of its functions, the Commission is to obtain information as to the legal systems of other countries.
>
> "The programmes of the Commission, if approved by the Lord Chancellor, are to be laid before Parliament. Likewise, the Commission's proposals for reform, formulated according to an approved programme, are to be laid before Parliament whether or not the Lord Chancellor approves them. Finally, the Commission is to make an annual report to the Lord Chancellor, and he is obliged to lay that report before Parliament with such comments, if any, as he thinks fit to make" (Mr. Justice Scarman in "Law Reform", pp. 10-11).

8. Depending on the nature of a Government Bill there may be some degree of external consultation before it is drafted. The Government frequently puts out a White Paper outlining its legislative proposals beforehand, and occasionally this is combined with a draft of the Bill.

9. In practice the Civil Servants who are responsible for formulating the principles of the Bill brief the departmental lawyers as to what they require, and these in turn draft instructions to the Parliamentary Counsel to the Treasury. This work is normally performed according to a strict timetable. The draftsmen perform their work normally in pairs in an atmosphere of extreme secrecy. The senior of the two takes full responsibility for the drafting of the Bill and of the amendments to it made at subsequent stages. He is also responsible for advising Ministers and Parliamentary officials as to matters which arise during the Bill's progress through Parliament. The whole drafting process may take up to a year for a major Bill, and as many as twenty successive drafts may be printed and circulated to those concerned before its initial publication. Normally there is no outside scrutiny of a draft Bill before the date of its introduction into Parliament. In this it differs from legislation based on proposals by the Law Commission which generally follow the draft of a Bill already published with the proposals. The number of Public Bills enacted annually approaches a hundred.

10. The published Bill normally comprises the folio wing elements:

Long title, preamble (if any), enacting formula, short title, definitions, principal provisions, administrative provisions, miscellaneous clauses, penal clauses, clauses dealing with the making of rules or byelaws, saving clauses, temporary and transitory clauses, repeal and savings, date of coming into operation (if specified), duration of the Act if limited, and schedules (Sir Alison Russell's analysis of the general frame of a Bill).

11. An explanatory memorandum is also now published on the front of Bills. The clauses are drafted so as to be fairly self-explanatory in their references to existing legislation; for this purpose much use is made of descriptive words in parentheses. Also published on the front is the financial memorandum (where appropriate). Expenditure provisions are required to be printed in the Bill in italics as it is introduced into the Commons. Another device sometimes used is the "Keeling Schedule", whereby the text of an enactment as modified by a Bill is scheduled to the Bill. This was used, for example, when the Education Act 1968 amended earlier legislation.

12. No specific drafting facilities are officially provided for private members, although Public Bill Office officials help and the Government may be persuaded to adopt a Bill as its own. A principle has emerged that all private members' Bills likely to become law are placed in the hands of Parliamentary Counsel for necessary redrafting. A Standing Order provides for time in which these have precedence over Government Bills. Such time is very limited and precedence among members *inter se* is conferred by means of the ballot.

13. The procedure relating to a Public (non-Money) Bill is initiated in either House by the First Reading which consists of the placing before the House of the title of the Bill. This is a formal stage, after which the Bill is printed. The Second Reading allows the opportunity for discussion on the general principles and the Bill is then sent normally to one of the Standing Committees for detailed clause-by-clause discussion and amendment. The Committee stage may instead be taken by Committee of the Whole House. During the ensuing Report stage the Bill is reported to the House and again amendments may be made. It is then sent to the other House where a similar procedure is adopted and amendments by that House may cause some coming and going between the two Houses. Eventually the Bill is read a third time and receives the Royal Assent.

14. Private Bills are generally drafted by Parliamentary Agents. They originate by petition and may be opposed by petition: these must be deposited in the appropriate Office of either House. It is necessary to publish notices in the locality affected, so that the Bill is properly communicated to interested parties. Standing Orders must be followed in either House and subject to this there follow the first and second readings. The second reading is largely formal and the merits are usually not discussed until the Committee stage which takes place whether the Bill is opposed or unopposed. The procedure in Committee is quasi-judicial, resembling that of a court of law. Counsel and objectors are heard, and evidence is given If not rejected by the Committee, Bills are then reported

with any amendments to the House and are read for a third time; they are then sent to the other House. The final stage is the royal Assent.

15. The Supreme laws of the Queen in Parliament are to be distinguished from the delegated legislation of subordinate law-making bodies. The latter are bound by the terms of their delegated or derived authority, and courts will generally not give effect to their regulations unless satisfied that all the conditions precedent to the validity of such regulations have been fulfilled; Delegated legislation comprises Statutory Instruments and by-laws or regulations made by local authorities, public corporations, companies or societies clothed with statutory or common law powers. Statutory Instruments are prepared by Government Departments or exceptionally by other bodies and are generally drafted by the departmental lawyers. Instruments usually require to be laid before Parliament for a prescribed period and generally the negative procedure applies whereby they take effect in the absence of a negative ruling. Alternatively the parent Act may provide for laying ***simpliciter*** or laying before Parliament in draft form for a specified period, or for the use of the affirmative procedure whereby the Instrument fails to take effect in the absence of a positive resolution. Both Houses have Scrutinising Committees which may draw attention to Instruments which require further explanation.

16. Some enabling Acts require consultations to be made with appropriate authorities before the issue of regulations. For instance the Police Council for Great Britain must be consulted on the terms of a draft Instrument before it is laid in accordance with provisions of the Police Pensions Act 1948, the Police Act 1964 and the Police (Scotland) Act 1967. Such consultations may be a condition precedent to the validity of the Instruments.

B. THE COMMUNICATION OF LEGISLATION

17. Communication of Acts of Parliament to the public is officially made through the authorized Queen's Printers' edition of Statutes Revised. Statutory Instruments are published separately. The judicial canon ***ignorantia juris neminem excusat*** entails the principle that everyone is presumed to know the whole of the law and that it is no defence (particularly in criminal matters) to be ignorant of it.

18. Acts are given chapter numbers serially throughout each calendar year m the order in which they receive the Royal Assent. Public Genera Acts form one series, Provisional Order Confirmation Acts and Local Acts a second and Private Acts, if printed, a third. 1 he Controller of the Stationery Office is responsible for publication

of Statutes and for ensuring that paper prints are placed on sale to the public; such copies are accepted as evidence in courts of law.

19. A revised edition of the statutes up to 1878 was completed in 1885 and a second revised edition of 1909 was brought up to the year 1900. The present official publication, the Third Edition of Statutes Revised, was produced in 1948. This comprises thirty-two volumes from 1235 to r94-8 (the first eleven being concerned with Acts passed before 1890), and the annual volumes of statutes passed since 1948. The Stationery Office publish annually a volume entitled "Annotations to Acts" containing written amendments, text cancellations and gummed slips of paper as additions to the text.

20. A uniform procedure was laid down by the Statutory Instruments Act 1946 for the printing and publication of Statutory Instruments. Certain of them were exempted from publication and a defence was created for persons charged with an offence under an unpublished Instrument, unless their attention had been expressly or impliedly drawn to it.

21. Statutory Instruments are cited according to their calendar year and registration number; normally copies are printed and put on sale by H.M. Stationery Office as soon as possible after registration. They are classified as "general" or "local", roughly following the distinction between "public general" and "local and personal" Acts. Local Instruments arc normally exempted from the statutory provisions as to printing and sale. General Instruments which are regularly printed in another form or series and made available to persons affected by them need not be printed in the Statutory Instrument series. Exemptions from printing requirements are also granted if the life of a general Instrument is likely to be brief and if other steps for publicity are available, if a schedule or other document identified or referred to in the Instrument is too bulky for publication or if motives of public interest or security apply.

22. An annual volume of Statutory Instruments is prepared and published in the Statutory Publications Office. Local Instruments are excluded. A table is provided showing the effect of Instruments made that year on Acts and earlier Instruments. Also included is a classified list of all local Instruments for the year and an index of the subject-matter of the general Instruments.

23. The bi-annual Stationery Office publication "Index to Government Orders" comprises a cumulative index to the existing rule-making powers and all exercises thereunder which are still in operation. It also excludes local Instruments, but shows the relevant rule-making powers. The "S.I. Effects" lists all general Instruments from 1890 (and earlier) onwards which have since been revoked, amended or otherwise affected.

24. Instruments do not necessarily mention their enabling provision in the text, but they are followed by notes which are explanatory of their effect. These notes are carefully circumscribed and are stated to be "for guidance only".

25. The Statute Law Committee has recently approved the publication of a new official edition of the Statute Book. Statutes are to be arranged according to subject-matter on a modified loose-leaf basis. The Committee have made provisional proposals as to the new form of the Statute Book. According to these proposals the new edition, to be called "Statutes in Force - Official Revised Edition" will comprise a number of separate booklets or sheets, one for each statute generally (although two or more Acts may be printed in a single booklet). The booklets will not be loose-leaf in themselves but will be capable of insertion in loose-leaf binders enabling a card to be inserted in the spine and giving the subjects to which the Acts relate. The booklet will contain amendments made since the enactment of the Statute and as and when the booklet becomes difficult to read because of the multiplicity of amendments a revised replacement edition of the Act will be published. The booklets (or groups of them) will be published by instalments grouped according to subject-matter, and the user will be able to buy them individually.

26. Subsidiary subjects will be included in main subjects and where these relate also to other subjects they will often be reprinted under those other subjects. In cases where such reprinting is thought unnecessary, cross-references will be made. Acts will be prefaced by an arrangements of sections wherever this is thought helpful. Preambles will generally be included, but where they are purely formal a note of their effect only may be included.

C. A GRIEVANCE OF LONG STANDING

27. Great dissatisfaction is currently being expressed in the United Kingdom with the way in which enacted law is made and officially presented to those who have to apply it. These, however, arc not new problems; they have been apparent for some time. Criticisms of the form in which legislation is presented and of the standards of draftmanship have been mounting since the early eighth century:

> "The imperfections in the statute law arising from mere generality, laxity or ambiguity of expression, are too numerous and too well known to require particular specification. They are the natural result of negligent, desultory, and inartificial legislation; the statutes have been framed, not as parts of a system, but to answer particular

exigencies as they occurred" (The First Report of the Statute Law Commissioners, 1835).

"Now I have carefully gone through this Act of Parliament, and to say that it might have been made more clear and precise than it is, or even to say that there is at least one passage in it which is absolute nonsense, is only to say of this Act what I am afraid may be predicated of nine out of ten Acts of Parliament which come before courts of justice for consideration. Out of the terms of it, however, I have to collect as well as I can what the meaning of the legislature was" (per Kindersley V.C. in *Trevillian v. Exeter Corporation*, (1854) 15 De G.M. & G. 828).

"The more I have considered this case the more difficult it appears to me to be, but I have come to the conclusion, though with great doubt, that the legislature intended this Act of Parliament to be verbose and tautologous and intended to express itself twice over" (per Brett M.R. (re Bankruptcy Act 1883) in *Hough v. Windus* (1884) 12 Q.B.D. 224).

"I regret that I cannot order the costs to be paid by the draftsmen of the Rent Restriction Acts, and the members of the Legislature who passed them, who bear responsibility for the obscurity of the Acts" (per Lord Justice Scrutton in *Roe v. Russell* [1928] 2 K.B. 117).

"He must be a bold, if not a conceited man who can feel confidence in forming, or expressing, an opinion on any one of the innumerable problems that arise out of what may be cited together as 'the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939', but having once more groped my way about that chaos of verbal darkness, I have come to the conclusion, with all becoming diffidence, that the county court judge was wrong in this case. My diffidence is increased by finding that my brother Luxmoore has groped his way to the contrary conclusion" (per Mackinnon L.J. in *Winchester Court Ltd. v. Miller* [1944] K.B. 734).

"I think it regrettable that when, in 1940, opportunity was found to wipe out the old sections and to erect a new set of provisions, opportunity was not at the same time found to make those provisions more readily intelligible" (*per* Lord Radclifle in *St. Aubyn v. A.G.* [1952] A.C. 15).

"A judge in these circumstances is confronted with a familiar dilemma: how far may he go in modifying the terms of a statute in order to make it conform to what he is convinced must have been the intention of the legislature? ... As Maxwell pungently has it ... The difficulty lies in deciding between words that are plain but absurd, and words that are so absurd as not to be deemed plain. I have come to the conclusion that I am entitled to ignore the

> words . . . because I am convinced that Parliament, in laying down rules for ascertaining next-of-kin, cannot have intended to promote those more remote over those nearer in blood. I decline to come to a conclusion which would necessitate holding that first cousins twice removed might be preferred to nephews and nieces" (per Harman J. in re Lockwood [1958] Ch. 231).

The criticisms continue unabated.

28. A Select Committee in 1875 declared the principal objections to the style and structure of public legislation to be:

> (i) The way in which Bills were prepared and the extent to which they varied or dealt with previous Acts;
>
> (ii) The uncertainty caused by inconsistent and insufficiently considered amendments;
>
> (iii) The lack of consolidation where many statutes on similar subject-matter were left in a state of perplexity; and
>
> (iv) The lack of proper classification of public statutes.

29. It was with defects such as these in mind that the Statute Law Committee had been constituted in 1868, the initial outcome of which was the issue of the Revised Statutes in 1886. This broadly based Committee, as presently constituted under the chairmanship of the Lord Chancellor, has the terms of reference

> "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".

The White Paper foreshadowing the Law Commissions Act 1965 declared that:

> "It is today extremely difficult for anyone without special training to discover what the law is on any given topic; and when the law is finally ascertained it is found in many cases to be obsolete and in some cases to be unjust . . . English Jaw should be capable of being re-cast in a form which is accessible, intelligible and in accordance with modern needs."

The Law Commissions, charged with the broad function of taking and keeping under constant review the whole of the law with a view to its systematic development and reform, are to achieve this by such processes as codification, the elimination of anomalies, the repeal of obsolete and unnecessary' enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law. Strong emphasis ,. repeatedly placed

on the unfortunate state of Statute Law in the United Kingdom and on the importance of modernising this.

30. The problem now is greater than it has ever been. The bulk and the complexity of Statute Law are ever growing and professional users of all descriptions are finding it increasingly difficult to cope with the task of advising their clients as to where exactly they stand in relation to the law. It was with a view to analysing these problems and proposing solutions that the Statute Law Society was founded.

PART III

GRIEVANCES OF THE STATUTE LAW USER

A. PRELIMINARY

31. It may seem unfair that the ignorantia juris neminem excusat principle should operate in any legal system, as it must inevitably be based on an assumption totally divorced from reality. Used judiciously however it is a highly efficient safeguard in any legal system which largely follows the underlying mores of the society. Objections to the principle only begin to achieve relevance where the system becomes so complex in its minute attention to detail that it lays down myriads of rules not foreseeable by the light of nature. The legal system in the United Kingdom has reached such a stage, and in places the maxim has completely broken down under the weight, and is no longer adhered to. (This fact has been admitted not only judicially but also in legislation; section 27 (3) (b] of the Companies Act 1967, for example, where lack of knowledge of the particular offence would appear to be a good defence.)

32. The reasons for the complexity of the legal system must be analysed, for it does not necessarily follow that a complex society must have complicated laws. The latter may be the result purely of defects and inadequacies in the structures and the methods of the system. This may well be the case in the United Kingdom and this Part of the Report seeks to analyse those defects and inadequacies which relate to Statute Law, the main source of our law. Before legislation is enacted the ideas behind it must be conceived; the basic principles discussed and then formulated; the detailed provisions must be thought out; a Bill must be drafted; all the requisite procedure must be gone through, and finally the finished product must be suitably presented to the user in a convenient form of publication. All these steps in the law-making process will now be considered in turn.

B. THE INCEPTION OF LAWS

33. Most public legislation which receives the Royal Assent is that of the Government. The majority of this is conceived within its own agencies, principally in the Departments. The Law Commissions since 1965 have existed to provide an initiative in the process of reform. They are permanent bodies and for practical purposes politically independent. Their terms of reference are almost unlimited. Doubtless they have a great potentiality for up-dating

the system of Statute Law, but their capacity for achieving real progress is limited by sheer lack of resources.

34. Very few bodies which are not sponsored by the Government have the resources and the expertise even to contemplate the drafting of new laws. This is largely because of the complex state of modern statute law and law-making processes. There is a strong case for allowing outside bodies to make use of the services of the draftsmen, as happens in the United States of America. But the stimulus for new legislation must come generally from within the Government itself. This does not however mean to say that outside bodies cannot provide thoroughly expert services of a secondary nature such as digesting, commenting on, criticising and making recommendations on proposed legislation and resolving and pointing out practical difficulties right at the outset, all of which might have the effect of improving the end product. Some trade, industrial and professional (particularly legal) associations such as the National Chamber of Trade, the Bar Association for Commerce, Finance and Industry, the Bar Council and the Law Society have committees which specialise in the subject of law reform and which invite the opportunity to comment on and make representations relating to proposed legislation. Comparatively little use is made by the Government of this free, highly valuable service, and it often seems that the advice given is disregarded. "This Parliament has a bad record of social legislation without the benefit of preparatory inquiry commensurate with the importance of the issues involved" (leading article in "The Times", i6th January 1970, entitled "The Right to Good Laws"). Greater use of these facilities would probably have the effect of considerably reducing the amount of errors in legislation, and also possibly the work-load of members of the Civil Service. These effects could be achieved by the advance submission of a draft set of sufficiently detailed proposals, or a draft Bill with explanatory notes with requests for views either generally or on particular points. These would provide a basis for fruitful consultations which would materially assist Parliament and the draftsmen in their comprehension of the problems involved.

35. Question 3 of the Questionnaire (set out in Appendix B) asked the user on the supposition that his knowledge of proposed Statute Law derived from a governmental source, whether it is:

(a) obtained before the Bill is published;

(b) obtained in time to make satisfactory representation before the proposal becomes law;

(c) sufficiently detailed; and

(d) otherwise adequate for his purpose.

> Reference is made to Appendix A for the number of affirmative replies in relation to each question. A consistently low total (22-23 %) replied affirmatively in relation to statutes and also in relation to statutory instruments (where the total percentages ranged from 14 to 19%). Local authority officials and Parliamentarians appeared consistently to be more satisfied in these respects than the average, and lawyers and accountants to be less so.

36. The current practice of the Government is generally to leave proposed legislation in a state of complete secrecy until the introduction of the Bill. This subsequently creates problems for the user and for the member of Parliament as the Bill then takes its normal course under the shadow of the strict Parliamentary time-table. Little time is left between publication and the detailed consideration in Parliament, and subsequently there is a comparative lack of opportunity for outside bodies to digest the proposed legislation and to make their views felt. A greater degree of advance publicity and consultation with appropriate bodies would obviate this situation, although in relation to certain types of legislation (for example fiscal) there may exceptionally be a special need for secrecy.

C. THE DRAFTING OF LAWS

37. If the ideas for the proposed legislation germinate in a Ministry they become crystallised in the draftsman's office. What is his relationship with the Department? This is briefly outlined in the Memorandum submitted on behalf of the Association of First Division Civil Servants to the Estimates Committee in the 1968/69 Session.

> "The normal practice in Government Departments is for administrative officers concerned with new legislation to set out the principles and policy underlying that legislation; it is then for the departmental legal advisers to translate principles and policy into detailed instructions for Parliamentary Counsel."

Inland Revenue practice differs somewhat. There

> "it is the Assistant Secretary under the general authority of the Board who prepares these detailed instructions for Parliamentary Counsel and who subsequently, during the preparation of the first published print of the Bill and its subsequent passage through the House, negotiates the terms of the draft with Parliamentary Counsel, the assumption being that Assistant Secretaries are sufficiently expert in the law and practice of that aspect of taxation with which they are individually concerned not to need the intervention of departmental

> lawyers. Of course, the departmental lawyers are consulted in the course of preparation of the Finance Bill legislation".

38. In large measure the function of the Parliamentary Counsel is divorced from any direct responsibility arising from the implementation or consequences of his work. Having received his instructions from the departmental lawyers he has a large degree of sovereignty over the course of his work until he produces the end result within the appointed period. On legal points he is responsible to the Attorney-General, but he retains a real control over the style of drafting, the amount of detail inserted, the use of referential legislation, the degree to which statutory powers are to be delegated and indeed to most aspects of statute law. In large degree statute law is the draftsman's creation, and insofar as it is out of hand it is his doing.

39. But this state of sovereignty has its corresponding disadvantage whereby he is not in a position to challenge the Department on the fundamentals underlying his instructions.

> "Too often in practice, the Parliamentary draftsman is not in a position to recommend basic simplification or radical revision of the scheme which he is instructed to carry out, but simply has to follow his instructions even if the result is a very complicated and difficult piece of drafting" (The Law Reform Committee of the Council of the Law Society).

40. Although, like the plumber or the electrician the draftsman provides a necessary service for the user, he is not employed, as they are by the consumer. He serves the Government and Parliament and the interests of the user may be completely subordinated to the prevailing political motivations. These may necessitate, for example:

> "more or less intentional obscurities, perplexities, or imperfections, inserted or permitted with a view to facilitate the passage of the Bill through Parliament" (Craies on "Statute Law").

One example of this type of legislation is section 39 of the Leasehold Reform Act 1967; this is not relevant to the main provisions (for enfranchisement and extension) but is tucked away towards the end of a measure dealing primarily with other matters. For this reason Parliament passed it with very little comment, although its repercussions on the scalability of long leasehold flats and houses with an accepted capital value have been serious, and new legislation has been accepted as necessary to solve these problems. It may be doubted whether section 39 would have been passed in its present form if there had been proper consultations beforehand. This is not the kind of relationship in which the consumer obtains the best possible service. There is a strong case

for strengthening the position of the Parliamentary Counsel in relation to the Departments, as also for strengthening the position of the private member by allowing him, like his American counterpart, to utilise the services of the draftsmen in drafting Bills as a matter of right. This right would, of course, require to be regulated by such factors as having secured a place in the ballot.

41. Perhaps the crux of the present problems relating to unsatisfactory drafting lies in the amount of time allotted to the draftsman in which to complete his assignment. (The lack of time factor also reflects the lack of draftsmen and ancillary staff engaged in this important work.) As a key servant of a Government whose duration is necessarily limited his work must be performed according to a strict time-table. A Government stands or falls in the history books in large measure according to the amount of successful legislation enacted during its period of office, and it appears to be the current vogue for Ministers to vie with one another in attempts to push as many and as bulky statutes through Parliament as possible.

42. The effects which these attitudes have on draftsmen are also reproduced in relation to other Government agencies, with the same unfortunate consequences. The Estimates Committee in their Fifth Report in the 1968/69 Session maintain that the Inland Revenue is under-staffed and overworked, and that the errors and delays which result from this situation cause widespread distress and hardship for which there is no legal right of redress. They consider that the fundamental cause of the Inland Revenue's present plight is the growth of tax legislation over the last few years, and that this is the fruit of Government policy. The Committee make a plea that when future policy is under consideration the closest attention be paid to the capacity of the Inland Revenue for handling new work.

> "Such considerations should not only embrace possible tax proposals in the form in which they are drafted but should anticipate alterations to them which may result from their consideration by the House of Commons. (Here your Committee are thinking in particular of the six new Clauses added to the Finance Bill on the Report stage in connection with the disallowance of interest as a deduction, which increased enormously the complexity of the original proposal.)"

The Chief Inspector of Taxes maintained in evidence to the Committee (who agreed), that if the Department had two or three years without major new jobs the present form of recruitment, turnover and training would enable it to restore equilibrium. The

Committee add that even if the Department is successful in obtaining this essential breathing space positive action will still be required to prevent a possible recurrence of the present unsatisfactory position. There should be an independent inquiry,

> "to suggest ways of simplifying and remodelling the national tax structure so that it can be fully understood and' respected by the general public".

43. These views are endorsed by the Memorandum submitted to the Committee by the Association of H.M. Inspector of Taxes. Corporation Tax, the Association maintain, can in its basic, theoretical concept be regarded as a simplification, but as enacted with the very special and extremely complex provisions relating to close companies it is in practice at least as complicated as its predecessors. The Finance Acts of 1965 to 1968 ran to rather more than Goo pages of closely detailed and complex legislation and "laid on the Chief Inspector's Branch additional and permanent responsibilities which can rarely have been imposed on any government department". Accountants in particular who answered the Questionnaire expressed dissatisfaction with the complexity of legislation (presumably of a revenue nature); they did not appear to obtain sufficient assistance from the legislation itself and a large proportion resorted to the commercial editions of Statutes - which contain annotations and cross-references - as opposed to the Queen's Printer's edition.

44. To add to these problems a great deal of modern legislation has a political significance which creates a likelihood that it will be subjected to frequent alteration on account of the changes in the political complexion of the Government. Such changes often follow a General Election and their implementation is often required at short notice. (Some Bills are even drafted before the Government are in power - while they are still in opposition.) Instructions are consequently passed to the Parliamentary Counsel to complete the task within extremely tight schedules, and this in turn inevitably reduces the quality of the drafting.

> "There is for each Bill an irreducible period for preparation ... as the time is cut down the quality deteriorates so that ultimately the point is reached where no Bill fit for introduction can be produced" (E. Driedger in the Preface of "The Composition of Legislation").

45. A further restriction on the draftsman's freedom of expression is the necessity for compliance with the Standing Orders of Parliament. The form of his draft is likely to be heavily influenced by these, insofar as, being a Government servant, he must have the utmost regard to the conserving of Parliamentary time and the

practicability of ensuring that the Bill goes through with the least possible difficulty. For example Standing Orders require a decision to be taken on each clause of a Bill, and this in turn encourages long-winded sections and sub-divisions. A number of sub-sections and paragraphs, which would more properly be contained in separate sections, are often inserted in a single section. An example of an offending statute is the Law Reform (Married Women and Tortfeasors) Act 1935.

46. The drafting process must in the first place have a secure base. If (like the house built on sand) this is lacking, the end product cannot fail to be unsatisfactory. Much of the recent legislation has comprised attempts to remedy in piece-meal fashion bodies of case and statute law which themselves lack any firm structure; the political masters themselves too often do not know exactly what they require of the draftsman.

> "The draftsman is not to be blamed if the results of his labours are sometimes unintelligible. Quite part from the complexity of the subject-matter that besets him ... he acts only on instructions. If neither Parliament nor the society which it represents has formulated any consistent policy as to what it wants from the Statute Book, and if - as must reluctantly be conceded - drafting statutes has become largely an attempt to restrain these 'hydra-headed presumptions of the courts in favour of the common law', piecemeal, ill adjusted, and at times unintelligible legislation is bound to be the result" (Mr. Justice Scarman in "Law Reform" p. 51).

47. It is highly desirable that the draftsman should be knowledgeable about the background conditions relating to the particular sphere which is the subject-matter of the proposed legislation. It is unlikely that he will have detailed knowledge about these conditions, particularly when, even as a legal expert, his knowledge of law is demonstrated to be faulty.

> "It is, however, a very serious matter to hold, that where the main object of a statute is clear, it shall be reduced to a nullity by the draftsman's unskilfulness or ignorance of law" (per Lord Hobhouse in ***Salmon v. Duncombe***, (1886) 11 App. Gas. 627 at 634).

Ignorance of these conditions or of a specific branch of the law can often lead to bad legislation. This is a further reason why the draftsman should have detailed initial consultations before pen has been put to paper and thereafter should retain close liaison and a continuing relationship with the instructing Department, and also (if appropriate) with experts in the particular sphere. Lack of such consultations or ignorance of the law or background conditions gives rise to the danger that the draftsman will, as a result, attempt

to produce his own solution by installing a completely new form of structure which will invariably be unsatisfactory. The continuing relationship is also vital because it is a familiar fact in the drafting process that problems arise at different stages which were quite unforeseeable at the time that the original instructions were read and digested.

D. THE MAKING OF LAWS

48. The procedures involved in making legislation and the form which a Bill takes have been briefly outlined in Part II of this Report. The structural quality of Bills generally suffers by reason of defects in the procedural system by which they become law.

49. The nature of a Bill itself is likely to be influenced by the fact that as well as having to satisfy the user, it also requires in the first place to satisfy the Parliamentary audience - mostly comprising laymen - and also to have regard to the instructions imposed by Standing Orders.

> "The same document has to be designed to satisfy two distinct legislative audiences,"

Sir Noel Hutton has said (Modern Law Review, January 1961, p. 21),

> "first (in point of time) the Parliamentary audience, mainly composed of laymen, whose primary need is to ascertain, with the minimum of labour and preferably no reference to any document other than the Bill itself, what is the general purpose and effect of each clause or section which they are asked to pass; and secondly, the expert lawyers and other professionals who will seek to find in the Act as passed a specific answer to each specific question upon which they have to advise or decide. One customer wants a picture and the other wants a Bradshaw."

50. It would be impractical to present a Bill in a structurally perfect form but which would provoke so much Parliamentary upheaval that members would refuse to accept its provisions. Such considerations have in the past prevented Bills from being arranged in the best possible way and have, for instance, necessitated controversial provisions being placed near the end and the subject-matter being arranged in as few clauses as possible. The users interests have tended to be subordinated to the need to secure that the proposed legislation became law.

51. The quality of Bills further suffers by reason of the inclusion of certain material required only for purposes of Parliamentary procedure. This includes expenditure clauses, for instance which require to be printed in italics and which might be dealt with

satisfactorily in an accompanying memorandum. Such a situation might be remedied by the modification of the rules of Parliamentary procedure to exclude any requirement which leads to the form of a Bill being other than what is required for it to carry out its function efficiently after it has become enacted law. A full explanatory memorandum could accompany each Bill explaining its effect to members of the House. Its contents would be unnecessary as part of the text of the Bill. The present system of attempting to marry the text with commentaries and explanations produces confusion and additional bulk. In several ways a Bill is an inadequate vehicle for debate of the principles behind it.

52. The Parliamentary audience is given little information about the nature and effect of a Bill. The explanatory and financial memoranda are not sufficient for the purpose; these should be considerably more informative. Greater clarity has been afforded by the use of the Keeling Schedule in Bills, and this device could be more extensively used. On the other hand, legislation at the instance of back-bench members can also complicate the law. Modern Finance Bills, for example, complicated enough in themselves accumulate in the course of their progress through Parliament, modifications by back-benchers to deal with what they regard as anomalies in the tax system. These in turn create anomalies to deal with special cases and merely serve to create a need (and a demand) for further such anomalies. So private members' legislation (including whole Acts) often deals in a piece-meal manner with a body of existing law which may make a vicious circle in creating a need for new legislation. An example of this was the Infant Life Preservation Act, an ad hoc measure creating the offence of child destruction and introduced in 1929 in the House of Lords by Lord Darling as a result of a trial where a defendant had been acquitted on account of a loophole in the law. No attempt was made to integrate the Act with the Offences against the Person Act 1861 or any other statute relating to homicide. This situation is now alleviated to some extent by the principle that no private member's Bill becomes law unless it has received the attention of Parliamentary Counsel.

53. Reference has been made to the short interval which often takes place between the publication of a Bill and its detailed discussion in Parliament. Particularly if there is no advance publicity this gives little time for the user or the member to assemble all the facts and to give adequate consideration to the provisions. The highly complex Finance Bill of 1965, for example, was debated in the House only two weeks after it was first published. If greater use were made of the system of laying a White Paper with detailed proposals well

in advance and with a draft Bill attached the quality of the legislation would improve. Even at the best of times, the Parliamentary time-table allows insufficient time for the debating of a Bill.

54. The inadequacies of Parliamentary procedure hamper the detailed consideration of proposed legislation in other ways. Standing Orders require a decision to be taken on each clause of a Bill, and this in turn necessitates minimising the amount of sections as far as possible. Debating devices such as the "guillotine" and the "kangaroo" may be used to set time-limits for the discussion of successive stages of a Bill or to exclude the discussion of certain amendments, and this often precludes the possibility of full and proper consideration being given to important provisions. The guillotine can make nonsense of the Committee and Report Stages. Parts of the Transport Bill (now the Transport Act 1969) were not discussed in Committee or on Report, and parts of the Iron and Steel Act have passed through Parliament twice - the 1967 Act largely repeating that of 1949 - without being considered in Committee. At the Report stage there is no discussion of each clause in Finance Bills, and the debate is dependent on the Speaker's selection of amendments. The Committee Stage provides an inadequate vehicle for the debating of committee points. There is generally a lack of facilities for the full consideration of amendments by back-bench or Opposition members, whereas on the other hand, those amendments which are accepted often take up valuable debating time and create anomalies in the legislation.

55. No procedure exists in the United Kingdom whereby the proposed legislation is vetted by experts for such purposes as consistency with prior legislation and adequacy of form. Lord O'Hagan as early as 1877 recommended the institution of

> "a Department by which Bills, after they have passed Committee, might be supervised and put into intelligible and working order, and then submitted for final revision to Parliament before they passed into law".

Latterly, Lord MacDermott, Chief Justice of Northern Ireland, has suggested a team of "clause-tasters" without any prior knowledge of the draftsman's instructions, to scrutinise draft Bills. Also Mr. Justice Scarman has proposed the institution of a Department of Justice; this would examine the quality of proposed legislation at its formative stage. Other countries such as Sweden have adopted systems whereby Judges or special Ministers peruse the legislation beforehand for such purposes. This goes some way towards providing that logical continuity in drafting which is lacking in United Kingdom legislation.

56. Even though the legislation has received the Royal Assent, its coming into effect is often delayed in one of several different ways. There is no logical system underlying this delaying effect in Acts. Sometimes the date is mentioned in the Statute or later in an Instrument made under it. Often it is dependent on a string of Commencement Orders, different parts of an Act coming into effect at different times. Of this practice, the Law Reform Committee of the Council of the Law Society say:

> "It is hardly necessary to stress the problems which are caused for practitioners by a multitude of different commencement dates for different parts of statutes. The confusion which often results is amply attested by the continuous flow of enquiries ... on whether various recently enacted statutory provisions are yet in operation."

By the time these orders become available the operation of the Act is often in practical terms retrospective. It becomes a matter of some considerable research to determine whether or not a particular Act or particular provisions have come into force. This situation is not improved by the Stationery Office's failure at times to provide an adequate service. We were informed by one respondent in relation to his own experience that the Companies Act 1967 had been in force about three weeks before copies could be purchased. Often Statutory Instruments and prescribed forms are found to be out of print. Question 12 (g) of the Questionnaire asked whether the official publications were readily available in the user's district; only 34% and 20% replied affirmatively in relation to Acts and Instruments respectively.

57. Further difficulty may be created by the effect which private legislation has in repealing public and general statutes. Private Acts may be of a purely local or personal nature and this may have the effect of creating anomalies in the law in favour of particular localities or legal persons; but it must not be too readily assumed that they do not also alter the general law. Furthermore, they arc not easily accessible since they are not published among the public and general Acts. The indexing system is also out of date: the last edition of the Private Acts Index was in respect of the year 1801-1957 and was even then inadequate for purposes of current use or historical research. The same problem of lack of availability arises in relation to many Statutory Instruments, particularly those of a less important nature - such as local Instruments.

58. The Stationery Office often fails to publish the relevant Instruments containing detailed regulations under an Act until immediately prior to the Act's coming into operation. These regulations may be the most important part of the legislation for the

practitioner and he should be given ample time to digest them before having to apply the provisions. For example the Leasehold Reform and the Matrimonial Homes legislation of 1967 came into force only a short time after the regulations were published. Great confusion was caused to practitioners who had almost immediately to acquaint themselves with the forms and other material which had to be used under the Acts. In reply to Question 11 of the Questionnaire which asked whether the official system of publishing Instruments suited the user and his work, only 39% of respondents replied affirmatively, the proportions for solicitors and local authority officials being 31 % and 50 % respectively.

59. Question 21 asked those users who bought complete services instead of the official ones to state why they did so. The reasons given by the 61 % who replied to this question fell into the following categories (with the percentages given):

1. the annotations provided; (20%)
2. the references given to other authorities; (13%)
3. convenience and clarity of presentation; (10%)
4. the material being kept up to date; (6%)
5. the well-developed indexing system; (3%)
6. the inclusion of amended legislation; (3 %)
7. force of habit; (2%)
8. the comprehensive nature of the system: (2 %)
9. prompt, ready availability; (i%)
10. expressed dissatisfaction with the Stationery Office; (i %)
11. other reasons of a less important nature.

60. Question 12 asked the user if he considered the official publications to be too slow in being published. 41 % replied affirmatively in relation to Statutes (52 % of the accountants and 60% of local authority officials, but only 12% of the Parliamentary users). The figure for Instruments was 22% (32% for accountants, 40% for local authority officials, 14% for undifferentiated users and none for Parliamentary members).

61. Instruments do not necessarily mention the particular enabling Act or provision under which they purport to have been made, and thus it becomes difficult to determine whether the exercise of the power was lawful or whether the executive agency was acting outwith the scope of its authority (***ultra vires***}. Clearly the user would be greatly aided if it were made compulsory for the executive authority to state which specific provision of which Statute it were acting under in making the regulation, even though this might be an added inconvenience to the Government.

E. THE FORM OF THE STATUTE BOOK

62. It has now been widely mooted in the United Kingdom that there has not been enough consolidation of statutes, and that codification is the inevitable end of the creative legal process.

Consolidation is the process whereby the provisions of many statutes dealing with one branch of the law arc reduced into the compass of one statutory statement of the law. Codification on the other hand is the process whereby all statute and common law on a subject are reduced into statutory form. There are, for example, some 179 national Acts impinging on building operations and at least 220 local Acts imposing some measure of control on the construction of buildings. It has been strongly argued that these 4oo-odd statutes could be successfully consolidated into one National Building Act. Consolidation, and further still, codification are regarded as primary tasks of the Law Commissions and, once completed, must, to hi effective, be continually kept up to date.

63. When consolidation or codification does take place they require to be comprehensive in their inclusion of all the relevant law. There have been many instances of recent consolidations which have not been comprehensive (for instance the Rent Act 1968, which perpetuates instead of replaces the statute law it is supposed to consolidate and leaves unresolved doubts and uncertainties inherent in the prior legislation). Professor Gower has said of the Companies Act 1948: I

> "One of the reasons for the complication and difficulty of the English Act is its lack of completeness. No one by reading it could glean any real understanding of company law. Nowhere are the fundamental principles enunciated. Exceptions are laid down to rules which are never stated and which have to be found from a study of the decided cases. The true position emerges, if at all, only when the Act is read against the background of a vast number of decisions, some of which are virtually irreconcilable. All this makes for complication and confusion, not for simplicity and certainty."

64. Codifying Acts should incorporate all the law on which they purport to legislate and clarify and make as certain as possible the meaning of prior legislation, and if necessary reconcile conflicting judicial decisions. They should deal with one specific subject under a suitable title and should contain all the law on that subject. Conversely one subject only should be included in each Act. This is the practice in most Commonwealth countries and in most American states. For example, Australian amending statutes contain only amendments of the principal Act to which the amending Act relates, and where consequential amendments are required to

other Acts these are effected by separate Acts. The practice of including in one Act amendments that are relevant to another is thus obviated, and the problems arising from the multiplicity of Bills are dealt with by suspending Standing Orders to enable the related Bills to be dealt with together. The situation would be avoided whereby in this country amendments to the Customs and Excise Act were included in the Dangerous Drugs Act 1967.

65. The subject itself must be one which is easily susceptible to codification in one statute. A classic example of a misuse of the whole concept was the so-called "Children's Charter" (Children Act) of 1908. Political motivations lay behind its inclusion of almost all the law relating to children. Clearly "children" is an inappropriate title for a codifying Act since, (as well as being too wide in scope) children form exceptions to the general laws applicable to full legal persons; logically legislation in respect of them should have been inserted as provisos or qualifications in the various Acts dealing with the many subjects concerned as they were applicable to adults. The Liberal Government wished to show dramatically the comprehensive nature of the reforms which they were introducing to improve the lot of children. It would have been less confusing had these reforms been made by amending and consolidating the various statutes relating to such matters as licensed premises, variation of trusts, criminal procedure and public health. This experiment illustrates the way in which politicians may use the Statute Book to wave their political banners. A statute is a working tool for the enforcement of laws and should be prepared in as convenient; form as possible for the use of the general public and lawyers alike. If anything is to be flourished as political propaganda it should perhaps be the White Paper which is now sometimes prepared as an adjunct to a Bill and was in fact prepared in connection with the Children Bill. A statute should not be prepared in this way, and the whole incident shows clearly the extent to which political expediency can form or malform the shape of legislation.

66. What is the proper machinery for codification ? Clearly some subjects are far more complex than others. Some parts of the law attract only a few decided cases and in these exceptional cases it may be sufficient for the draftsman, in consultation with other specialised bodies, to take on the responsibility of codifying the law m that particular area. But generally an analysis of sufficient comprehensiveness would require to be undertaken by a commission of experts such as the Criminal Law Revision Committee whose study of the law of theft resulted in the passing of the Theft Act 1968-3 model for illustrating the efficient use of the processes of consolidation, codification and law revision.

67. Statutes are arranged chronologically, according to the date on which the Act received the Royal Assent. The chronological system creates difficulties in finding all the laws applicable to a specific topic and in using these laws after they have been found. Alternative systems suggested include one based on an alphabetical classification of the laws and another based on classification by titles, both according to the subject-matter of the statutes. The former involves placing the short titles of the statutes in alphabetical order and giving them chapter numbers in numerical order. It has the effect of splitting into different volumes statutes which are closely related to each other in subject-matter. However, the great advantage of this system is that the titles are easy to find. The latter involves the grouping together of statutes alleged to be related to one another or belonging to a common category under a general title to which sub-titles may be added. The titles are usually placed in order of alleged importance or, more rarely, alphabetically. This system is probably the best for the purpose of using the laws after they have been found.

68. Question 14 of the Questionnaire asked users whether they would prefer Acts and Statutory Instruments to be arranger! chronologically, alphabetically or under titles. 15% favoured tin first (in relation to statutes), 30% the second and 49% the third method. The "titles" system was favoured by all groups. In relation to Instruments 9% favoured the first system, 14% the second and 32% the third. The "titles" system was the favourite in all sections except among the Parliamentary users, who favoured the status quo.

69. Complaints against the complexity and the amount of detail which is included in modern statutes arc commonplace. United Kingdom law-making is based on the pre-supposition that as little area of discretion as possible should be left to officials and to the courts. It is arguable to what degree a legislature should assert it will. The United Kingdom has tended, particularly in recent times to confine administrative discretion within narrow limits. Although it may be true, as Sir Courtnay Ilbert said, that "Englishmen prefer to be governed (if they must be governed) by fixed rules rather than by official discretion", he also thought that "enacted law is most useful if confined to the statement of general principles and . . . the more it descends into details, the more likely it is to commit blunders, to hamper action, and to cramp development" ("Legislative Methods and Forms", pp. 209 and 125). Continental legal systems do not generally share the British attitude and in consequence their laws tend to be more general, less detailed and more readily comprehensible. A move towards the Continental attitude to legislation would be welcomed by many in this country. A less detailed

statute book does entail a more creative role on the part of the courts although their comparative freedom does not mean allowing their discretion to be absolutely unfettered. The choice is not between complete arbitrariness and absolutely binding rules; the exercise of discretion falls in the middle of these two extremes, and in this exercise principles act as "guide posts" and not as "hitch-posts".

70. The Statutes Revised system has been briefly described in Part II of this Report. The Third Annual Report of the Law Commission held the official edition to be in "a sad state"; it was no longer obtainable in its entirety as one volume was out of print. "It is not too much to say that this official edition is now in disarray", the Report concluded. The statute books comprise bound volumes and these may be kept up to date by using the "Annotations to Acts". Mr. Justice Scarman describes this process:

> "If you have the time, the staff and the patience, you may in theory keep this formidable quantity of published material up to date by buying annually from the Stationery Office a volume produced by the Statutory Publications Office and happily entitled 'Annotations to Acts'. Under the guidance and with the paper provided by that Office, you or your staff may insert into your collection of statutes, written amendments, text cancellations, and gummed slips of paper as additions to the text. The resultant mess has to be used to believed. Up to 31st December 1965, 9,603 pages out of a total of 26,087 of the 32 volumes of the Statutes Revised had been cancelled, i.e. 36.8 per cent of the published material in those volumes. I have done a similar analysis of the twenty annual volumes from 1949 to 1965. Some 4,360 pages out of 21,250 of those volumes had been cancelled when I did my sums a few months ago, i.e. 20.5 per cent. The overall total of cancellations for the fifty-two volumes of our collected statutes in force is a figure of 29.6 per cent. The 70 per cent or so of pages which remain in force are, many of them, physically disfigured by amendments, annotation slips and erasures. This is a disgrace, which no amount of commercial compilations can cure"
> ("Law Reform", pp. 50-1).

71. Question 12 of the Questionnaire asked the user if he considered the official publications too difficult to keep up to date. 45% of respondents replied affirmatively in relation to statutes and 30% in respect of Instruments. Question 13 asked whether the text's not being up to date created difficulty; 37% and 23% were the percentages of affirmative replies for Acts and Instruments respectively.

72. The principal disadvantage of the present system is that r is impracticable to keep the statute law up to date, and that the practitioner may have to look to several different Acts and Statutory

Instruments in order to discover what the law is on any particular matter. The form in which legislation is promulgated should be governed according to the needs of the user, and this basically entails all statutes and Instruments on a particular subject being contained in the latest form in one place; reference should not have to be made to exterior amending or amended legislation, and there should be no necessity for periodical consolidations. Under the present system the courts are required to spend a great deal of time trying to correlate and reconcile the various statutory provisions relating to a particular topic, many of which are virtually irreconcilable and difficult to find. The draftsman should be so placed that he interprets legislation by integrating it with existing statute law as he drafts new Bills. At present statute law is largely declared ad hoc often without reference to existing law, leaving all courts to solve the puzzle as best they may. Again particular problems arise in relation to Scotland because of the peculiarities of her position within the United Kingdom. There is no separate Scottish Statute Book and this often creates difficulty in determining whether particular provisions apply there. The limited degree of law reform applying solely to Scotland causes rag-bag amending legislation dealing with several subjects such as the Law Reform (Miscellaneous Provisions) (Scotland) Acts and also the practice of amending Scots Law by tacking on inconspicuous provisions in predominantly English Acts.

73. Question 16 of the Questionnaire posed four possible ways of keeping the text of an Act up to date. 57% favoured a loose-leaf system with replacement pages issued as and when amendments are made: 5% a noting-up system with extensive amendments dealt with by printed inserts and the remainder by hand-written notes: 37 % a system of reprinting Acts in booklet form, incorporating amendments, and i % some other system. The views of members of both Houses diverged widely from those of other users; only 25” of them favoured the loose-leaf system, 13% favoured the noting-up system and 56% the booklet form.

74. The specific method under the present law-making system which particularly hampers efficiency is the “gloss” system of amendment. Under this system within each fresh series enactments on a particular point are not as a rule related verbally to what has gone before; they stand independently repealing by implication earlier inconsistent provisions without fitting into a pattern of enactments dealing with the subject in question. The separate texts of the amending and amended provisions must be reconciled. This system is haphazard and entails the loss to a great extent of the apprehensibility of the legislation. Section a (i) (c) of the Finance

Act 1894 must for example be read subject to some 19 subsequent amendments and itself refers to a repealed statute subject to amendment. Instead new enactments should be related verbally to a single prior Act in the sense of being produced as textual amendments of that earlier law.

75. Under the textual method sections, sub-sections, sentences and words are deleted from a statute and new equivalents added. This has the advantage of making available to the user a clear new section without his requiring to determine the law by reference to other sections in earlier Acts.

> "Amending statutes are sometimes very short, sometimes long and complex. They are never capable of proper understanding, save in the context of the statute they amend. They make intelligible law if drafted in a way which enables the amending section, or sections, to be substituted for the words whose place they take, or to be added in the appropriate place to the statute being amended. This process, which is far loo rarely used by Parliament, is known as textual amendment and must be increasingly used if we are to avoid chaos in the arrangement of statutes" (Mr. Justice Scarman in "Law Reform", pp. 53-4).

Section 12 of the London County Council General Powers) .V 1963 is an example of textual amendment:

> "In subsection (i) of section 12 (obligation to provide dustbins) r the London County Council (General Powers) Act 1954, for the words 'any house in this district is' there shall be substituted the words 'any premises in their district are', and for the words 'the house' there shall be substituted the words 'the premises'."

Question 18 of the Questionnaire was framed in the following terms: "When an Act is amended would you prefer incorporated in the Act the amendments so that there is produced a single consecutive text". 92 % of all users replied affirmatively. Interesting!-the lowest individual percentage was that of members of both Houses of Parliament (81 %). Question 13 (f) asked if the facto of the text of an amended Act not being in one place created difficulty. 69 % replied affirmatively (but only 37 % of Parliamentary members).

76. Members of Parliament are reputed to dislike the textual kind of amendment because it fails to tell them everything about tin true effect of the amendment. However, Australian and Canadian legislatures have dealt satisfactorily with this system for many years. Textual amendment also gives the added advantages that tin legislation can be wholly revised by a comparatively junior legal officer inserting all the amendments, without necessitating the

superior skills of the draftsman in the preparation of consolidation Bills, and that the process is generally less time-consuming than present methods.

77. Statutes Revised lack any system of annotation. This is provided in the publication of Statutory Instruments, although the notes are for guidance only and are often inadequate in explaining the effect of the measure. Annotation is provided in the commercial editions of Statutes and it is found to be of invaluable assistance to practitioners; many advocate that this system be adopted by the Stationery Office in Statutes Revised. It is felt that there is a lack of material explaining the general policy and purpose of legislation and also the detailed meaning of individual sections. As well as aiding the statute law user this would provide an additional justification for the refusal of British courts to "pierce the veil" and to look to the *travaux preparatoires* in order to determine the meaning of a statutory provision. Question 12 (d] of the Questionnaire asked the user if he felt that the official publications needed more explanatory material. 44% of persons replied affirmatively in relation to Statutes: this included 61 % of the accountants, 35% of local authority officials and 2 out of the 16 Parliamentarians. The proportion for Instruments was 28%.

78. The Statute Law Committee's proposals for a new format and method of publication of statutes is unlikely to cure the unfortunate situation. It fails basically to provide the required system of an arrangement whereby a single statute embraces each subject and amendments and additions are keyed to the single At by textual amendment with appropriate transitional provision The booklet system provides no advantage over the loose-lea page system. But it has serious disadvantages. One is that unless the content is heavily amended it will be uneconomic to reprint ii as amended. Amendments will still therefore have to be made b manuscript corrections and gummed slips, and the worst aspect of the present noter-up system will have been reproduced. (An annual cumulative supplement prepared for each loose-leaf binder would be more satisfactory.)

79. Another defect of the new proposals is the failure to recommend that new editions should employ any method of computer typesetting This is a particularly significant factor for the development of statute law. It would involve putting the texts into computer store and arrange indexing, retrieving and searching programmes. This would assist legal research in enabling advanced search and retrieval techniques to be used, and could form the basis for a national statutory searching and indexing service. As the Kingston (Ontario) conference on computers and the law confirmed in 1968,

the results would greatly facilitate the work of the draftsman and practitioner. In his paper "A Canadian contrast on 'Computers and the Law' " (Northern Ireland Legal Quarterly, September, 1969), W. A. Leitch outlines some of the advantages. The computer can be programmed to note every important word or phrase of the stored texts of statutes and to record automatically a list of such words or phrases and the location reference showing their precise positions in relation to each Act, section, sub-section and sentence. The practitioner or draftsman can then discover quickly and comprehensively which statutes deal with what, and if a problem of interpretation arises he can discover where such words or phrases (or even similar ones), have been used in other Acts. This would greatly facilitate the draftsman's work and also the user's appreciation of the current operation of legislation. The system can confirm whether or not any statute law exists in relation to a particular topic, and it enables the draftsman to check synonyms thus ensuring that the same words are used to convey the same meaning. Then

> "having revised the draft in consultation with departments, the draftsman arranges for amendments to be fed into the computer which can immediately produce a revised version of the Bill incorporating the changes. Amendment made on the passage of the Bill through the legislature can, of course, be dealt with in the same way and, if the Bill amends earlier legislation already stored in machine-readable form, revised prints of that legislation can also be made available without delay. Thus, it will become specially easy to produce loose-leaf editions of particular segments of the statute book and to keep these constantly up-dated and revised".

F. THE EXPRESSION OF LEGISLATION

80. The problems which emerge from the unsatisfactory expression of many statutes emanate largely from the excess of detail previously mentioned and from the use of time-honoured formulae in the process of drafting. In the first case this manifests itself in an attempt by the legislature to provide for all possible situations and eventualities (particularly in the field of anti-avoidance legislation). This in turn necessitates countless provisions, conditions, saving clauses, stipulations, rules, exceptions (including exceptions to exceptions), and in practice leads to excessive use of negatives and do 'c negatives and so on.

81. The second factor is illustrated by the custom of couching legislation in a literary style which eschews abbreviations and the use mechanistic obtrusions. References to the chapter number of Act thus thought unsuitable for incorporation into the text

and are untidily relegated to the margin. The role of tradition in the drafting process is strong and this manifests itself in hidebound, inbuilt attitudes towards hallowed ways of arranging and communicating particular types of provision. 50 % of Questionnaire respondents thought the arrangement of Acts to be "obscure", and 24% that of Statutory Instruments. Coupled with this is the draftsman's enjoyment of his esoteric art. This aspect is, of course, highly individual to each draftsman, and as such it may take many different forms. It is difficult to believe, reading through much of the modern legislation, that the draftsman has not at times obtained satisfaction (like the person who schemes cross-word puzzles), in knowing that the practitioner will require all his ingenuity and more in unravelling the results of his work.

82. The literary style is one of most frequent complaints about legislation, since it is one of the principal factors which affect comprehensibility. This style, legalistic, often obscure, and circumlocutious requires a certain type of expertise in order to gauge its proper meaning. Sentences are long and involved, the grammar is obscure, and archaisms, legally meaningless words and phrases, tortuous language, the preference for the double negative over the single positive, abound.

83. Question 13 of the Questionnaire asked the user whether the legalistic nature and the compression of the language in Acts and Statutory Instruments created difficulty. Reference is made to Appendix A for the figures. 43% replied that the language in statutes was too legalistic, the proportion of accountants being particularly high (77%) and that of solicitors being low (26%). Only 20% replied to the effect that the language used in Acts was too compressed, although the figure for accountants in particular was significantly higher than the average (29%).

84. Examples of defects in language which necessitate ever experienced practitioners having to read provisions over and over again in order to determine the meaning, could be given in their hundreds, if not thousands. But this is perhaps the best known problem of all in relation to adviser and client alike. Examples are given elsewhere in this Report which illustrates the difficulties. An instance of the kind of ambiguous, badly-framed legislation which must be avoided was provided by the Wills Act 1968. The object was to enable beneficiary who had witnessed a will to take under the will provided that there were two other witnesses not involved as beneficiaries. The relevant section reads:

> "The attestation of a will by a person to whom . . . there is ... made

(any testamentary disposition) shall be disregarded if the will is duly executed *without his attestation*",

As one respondent states:

> "The use of the word 'without' suggests that the attestation is not there, whereas the whole point of it is that it is there. Modern usage would call for 'apart from', and if these words had been substituted for 'without', it would not be necessary to read the section several times in order to find out what it is trying to say".

An instance of the unnecessarily archaic style involving tortuous language is provided by section 139 (2) of the Transport Act 1968:

> " 'direct access' means access otherwise than by means of a highway which is not a special road, and 'indirect access' means access by means of such a highway as aforesaid''.

The expression "otherwise than by moans of something that is not", presumably means "by means of something that is", and it would have been equally accurate but less confusing to say " 'direct access' means access by means of a highway which is a special road, and 'indirect access' means access by means of a highway which is not a special road".

85. A whole new field of study which has opened up as a result of the application of modern logic to law (jurimetrics) and the use of electronic methods of data retrieval for legal purposes, is that of syntactic ambiguity in statutes. This arises from the ambiguity of formal words, such as "or", "and" and "all". If, for example, an Act empowers a court to "fine or imprison", the question arises as to whether the court can do one or the other or both, that is whether the word "or" is used exclusively or inclusively. The same problem would have arisen had the words "fine and imprison" been used. The problem may also arise from the "unfortunate juxtaposition of words and phrases" (Professor P. J. Fitzgerald's Twelfth edition of Salmond's "Jurisprudence", p. i3(». where the nature of the problem is more fully discussed). Insufficient attention has hitherto been given to this aspect of expressing statute law.

86. Another significant factor which affects comprehensibility in the practice of preceding the important parts of Acts (or pan thereof), by comparatively insignificant details. Examples of the are found in sections 64 and 73 of the Land Commission Act 196; where the real points arc not arrived at until sub-section (4). In relation to the whole of the Act itself practitioners would be helped by a general statement of the purport of the provisions at the

beginning, but far from this, section i states that the Commission "shall perform the functions assigned to the Commission by this Act". It is therefore necessary to read the whole Act in order to discover what these functions are all about. The same criticism applies to the practice of preceding rules by exceptions to those rules.

87. Another by-product of the excess of detail in legislation which has become apparent is the increasing use of the schedule for incorporating rules and central matter, and also the multiplicity of the schedules themselves. Their use has become highly inconsistent in modern legislation. These were traditionally regarded as existing for informative or illustrative purposes only.

88. Sometimes the provisions in the schedules stand quite independently of the body of the Act. Cases of this can be found, for instance, in the Land Commission Act 1967 the body of which refers to "base value" without giving any indication as to how to ascertain it; for this one has to discover schedule 4 and there is no indication in any of the sections that there is an alternative to the schedule 4 base. This is only discovered by reading schedule 5. Furthermore the concept of "current use value", fundamental to the functioning of the Act, does not appear in the main body, not even in the interpretation sections; it is introduced for the first time in schedule 4.

89. Difficulties are also experienced with the use of definitions and interpretation sections; there is a profound lack of consistency about their use. Often these sections are found in different places as between different Acts, and also in several places within the same statute. The Land Commission Act has three separate interpretation sections, at the end of Parts II, III, and IV respectively. If all definition sections were incorporated as a glossary of the words and phrases which required definition in a specific place (at the beginning of the Act, for example), much confusion would be avoided. Definitions of words often vary as between different Acts and this is perhaps unavoidable; where this is so it is doubly necessary that a precise definition *vis-à-vis* the particular context be given. But the practice of using them to alter the plain meaning by, for instance, deeming X to be Y causes confusion. Definitions should (by definition) be comprehensive and it is not sufficient that they should merely "include" certain factors within their scope. In practice many definitions, as framed, arc tautological requiring extensive research in order to determine their meaning, and in the end depending on legislation by reference to exterior sources including Statutory Instruments. (This in itself is a dangerous practice if the meaning is important to the construction of the Act.) Again in the

Land Commission Act the definition of "current use value" depends on the meaning of "material development", the definition of which refers one back to current use. To determine the meanings it is necessary to consult the Town and Country Planning Acts 1962 (schedule 3), and 1963 (section i (4)), the Town and Country Planning General Development Order 1963 and the Material Development Regulations 1967 made under the 1967 Act itself.

90. There is a strong case to be made for printing "special definition" words - those having a technical meaning under a statute - in italics, as is done in Redgrave's "Factory Acts". This would obviate the position whereby in dealing with such a word it is sometimes difficult to ascertain whether the technical or the plain meaning is being applied. In this connection also there is a strong need for a new Interpretation Act - the current one has not been elaborated since last century. This has resulted in endless variations on the same theme (powers of entry and the procedure for the service of notices, for example), instead of a single uniform provision applying in all cases. One particular advantage of a new Interpretation Act is that it could embody a new corpus of prefabricated law in the form of common-form provisions which would not require to be restated each time they were needed. Prefabricated law has been neglected by legislators so far.

91. One of the biggest problems of all is referential legislation. This occurs where

> "an earlier enactment is amended, applied, etc. by a mere specific reference to the section or part affected without description of it-, subject-matter, necessitating in consequence, resort to the enactment cited to appreciate what the later enactment is effecting" (Craies on "Statute Law", p. 30).

An example of referential amendment of a principal Act contained in an amendment Act is provided by section 17 of the Agriculture (Miscellaneous Provisions) Act 1963:

> "The powers of the Minister . . . under section a (2) of the Improvement of Livestock (Licensing of Bulls) Act 1931, or under that section as applied to pigs by section 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 a 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."

Another example is provided by section 89 (2) of the Finance Act

1965. This defines "recognised stock exchange" by reference to another Act which is not even a taxation statute (and which might therefore not be in the possession of one specialising solely in tax matters). Paragraph 6 (i) of schedule 14 of the Finance Act 1969 adds to the definition, without elucidating any further what the definition is, and paragraph 6 (2) proceeds to gloss the words just added. An example of an amending Act making substantive referential amendments to a principal Act and also consequential referential amendments to a number of other Acts is the Licensing Act 1961. Having made substantive new provisions as to the power of a court to disqualify for restaurant and other licences on conviction of certain offences, section 3 goes on to provide:

> "(8) Any disqualification order made before the commencement of this Act under section 26 of the Licensing Act 1949, shall have effect in relation to restaurant licences, residential licences and residential and restaurant licences as it is expressed to have effect in relation to licences under the Refreshment Houses Act 1860; and subsection (5) and (6) above shall apply to any such order in place of section 27 of the Licensing Act 1949."

92. Referential legislation is usually the outcome, Craies contends

> "not of negligence, ignorance or incapacity in the draftsman, but of the foibles of Parliament, and is excused on the ground that it lessens political difficulties and simplifies the process of getting Bills through Committee by lessening the area for amendment. The same excuse is made for the practice of putting very long clauses, elaborately divided into many sub-divisions, in what are called fighting Bills . . . legislation by reference, which was increasing in 1875, was described by the Select Committee of that year as making an Act so ambiguous, so obscure, and so difficult, that the judges themselves can hardly assign a meaning to it ... with this parliamentary criticism judicial opinion coincides . . . (It) is also a source of much administrative inconvenience . . .".

The system prevents the practitioner's being able to read through a statute with reasonable ease and comprehension and at first impression, even though he may be well acquainted with the subject-matter. And it often leads to much time-consuming research and the missing of relevant parts of the law by the user.

93. Question 13 (g) of the Questionnaire asked if "too many-cross-references" created difficulty over Acts or Instruments. 67% replied affirmatively in relation to Acts (significantly only 5 of the 16 Parliamentary users): and 33 % in respect of Instruments (43 % °f solicitors, 26 % of "undifferentiated" users and 1 Parliamentary member).

94. Worse still is the inherent danger in the system that the reference may be to another piece of legislation which may have been expressly or impliedly superseded by subsequent provisions. An example of this situation is provided by section 10 of the Agriculture (Miscellaneous Provisions) Act 1968, which refers to the matters mentioned in sub-paragraphs (a] - (d) of section 25 (i) of the Agricultural Holdings Act 1948. The latter was in fact replaced by sub-paragraphs (a) - (d) of Section 3 (2) of the Agriculture Ad 1958, to which the reference should have been made.

95. It seems to be the policy of the draftsman to refer in ne\v statute law to sections of old Acts as originally passed. These section ?-may have been amended many times or the whole Act may have been replaced. The Insurance Companies (Accounts and Forms) Regulations 1969 for instance refer throughout to sections of the Insurance Companies Act 1958; these sections are, however, found in the Companies Act 1967 which replaced the sections of the 1958 Act. The result is that the practitioner is referred to the wrong place, and his understanding of the law may therefore be erroneous, because, as in this instance, the subsequent replacements or amendments are not necessarily mentioned in the new legislation.

96. Another unfortunate practice is the repealing of statutes and incorporating their provisions (and possibly also the judicial decision thereunder) and making these part and parcel of the new Act. This practice occurs in several places in the Rent Act 1968 (for instance in sections 3 (2), 68 (i), 93 (2), and in schedules 12 (i) and (2 and 14). It entails the necessity that the old statutes must continue to be printed in any new edition of the Statutes even though they are no longer substantive law.

97. The extreme reluctance of legislators and draftsmen use any alternative to verbal formulation of legal rules such u* the shorthand formulae provided by some of the sciences, (mathematical symbols or concocted hieroglyphics - that is word or phrase symbols for example), entails a loss of opportunity to simplify the means o! expressing Statutes. Mathematicians, physicists and chemists have all had to invent vocabularies and means of communication of then own. Certain aids to comprehension such as flow-charts and algorithms (orderly sequences of instructions for step-by-step solution of problems) could greatly facilitate the work of the draftsman and practitioner. It is possible, for instance, to reduce the four hundred-odd words contained in schedule 4 (paragraphs 11-15) of the Land Commission Act 1967 to the simple formula:

$$B = \frac{T}{T+R} \times C \times \frac{11}{12}$$

To discover the meaning of this one would merely require to consult the key provided which would show that:

B = base value

T = consideration for grant of tenancy

R = reversionary value

C = current use value.

In reducing the four hundred odd words to a meaningful exposition of base value, many lawyers in any case would require to work out their own shorthand formula. In the case of building regulations, as another example, diagrams help to convey the general intention quickly and clearly. Others argue that rules involving an infinitely varying set of circumstances are best presented in the form of algorithms, which present a series of alternatives. The user can trace his own circumstances through to a conclusion by adopting the appropriate alternative in each case.

98. Similarly, the present system of numbering and lettering sections, sub-sections and paragraphs lacks efficiency. Sections and sub-sections are numbered in arabic numerals and paragraphs in Roman numerals and alphabetical letters. This system is unnecessarily complicated and could be simplified by the use of, for instance, decimals, whereby sub-divisions could be indicated by numbers following the section number. “Section 2 (4) (in)”, for instance, would be substituted by “Section 2.4.3”, and further sub-divisions of paragraph (iii) would become 2.4.3.1, 2.4.3.2, 2.4.3.3 and so on. This has the merits of simplicity, ease of reference, ease of communication and greater comprehensibility.

PART IV

SUMMARY

99. The root of the problem afflicting statute law users lies more in the system by which law is made and expressed than in the substantive law itself. Substantive law must have a secure base and this entails efficient and effective methods of producing and communicating it.

100. THE PROCEDURES BY WHICH STATUTE LAW IS MADE AND OFFICIALLY PROMULGATED SHOULD BE GOVERNED BY THE NEEDS OF THE USER.

101. The user's basic requirements are that:

(a) all legislation, including Statutory Instruments, on a particular subject be contained in its latest form in one place;

(b) the statute law be expressed in that place comprehensively; there should be one subject for each Act, and one Act for each subject; and

(c) a convenient method exists to enable him easily to find the particular subject-matter sought.

102. Legislation is not now found in its latest form in one place because:

(a) Acts and Statutory Instruments are published separately;

(b) apart from consolidation (which is infrequent, often out of date and not comprehensive), legislation is not arranged according to subject-matter;

(c) new enactments are not usually made according to verbal (textual) amendment, but by the gloss method; and

(d) the official system of publication only exceptionally supplies an adequate method of keeping texts in their latest form.

103. The comprehensibility of statute law is adversely affected by-

(a) the use of a literary style, arising from the role of tradition and the draftsman's enjoyment of an esoteric an ;

(b) the gloss method of amendment, and the corresponding failure to use the textual amendment system;

(c) the inclusion of matter required only by Parliamentary rules

(d) the inclusion of too much detail in an attempt to cover even eventuality, and the reluctance to leave anything to the discretion of officials or the courts;

(e) referential legislation and references to superseded law;

(f) politicians' insistence on haste, coupled with the lack of draftsmen and ancillary staff;

(g] ill-considered piecemeal amendments producing anomalies;

(h) frequent changes in laws of a "political" nature;

(i) neglect of "prefabricated" law;

(j) lack of precise instructions to the draftsman;

(k) the draftsman's ignorance of the conditions forming the background to the legislation;

(l) the necessity for compliance with Parliamentary rules of procedure;

(m) the failure to outline the purpose of Acts and parts of Acts at the initial stages;

(n) the misuse of the schedule;

(o) inconsistency in the use of definition and interpretation sections, and of definitions as such;

(p) the need for a new Interpretation Act; and

(q) the failure to use shorthand formulae.

104. The quality of statute law is further reduced by:

(a) the secrecy surrounding the initial stages of a Bill resulting in the lack of prior consultation with practitioners and specialists and the short interval between publication and detailed discussion in Parliament;

(b) the draftsman's inability to challenge the Department on the fundamentals underlying his instructions;

(c) the draftsman's "sovereignty", his relationship to Parliament and the Government and his lack of liaison with the user and affected interests;

(d) the lack of "vetting" of proposed legislation;

(e) the delayed operation of statute law and the bringing into effect of different parts of an Act at different times;

(f) the ability of private and local legislation to repeal public Acts;

(g) Governmental attitudes towards legislation as a "status symbol" or propaganda;

(h) procedural inadequacies in Parliament, denying full discussion of Bills;

(i) the failure of many Statutory Instruments to mention the enabling power under which they purport to have been made;

(j) the lack of codification;

(k) the subject-matter of consolidation Acts being unsuitable or too wide or narrow in scope; and

(l) the present system of numbering and lettering parts of an Act

105. The system of publishing statute law is inadequate because:

(a) Private legislation is not easily accessible, not being published with the public general Acts;

(b) the Private Acts Index is out of date;

(c) Statutory Instruments are often unavailable;

(d) official publications are often too slow in being published and are often temporarily out of print;

(e) it is classified chronologically and not alphabetically or according to titles; thus several different volumes may have to be consulted in order to discover the law;

(f) the noter-up system is difficult to keep up to date and is "messy"; this results from the bound volume system and the failure to use the single page loose-leaf system;

(g) the present system does not provide any facilities for a separate Scottish Statute Book;

(h) Statutes Revised fails to provide annotation; and

(i) there is no gearing of the system towards the use of a computer for search and retrieval of laws, or towards the use of aids to comprehension (such as algorithms and flow charts).

The Statute Law Society,
16 Lincoln's Inn Fields,

March 1970

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APPENDIX A

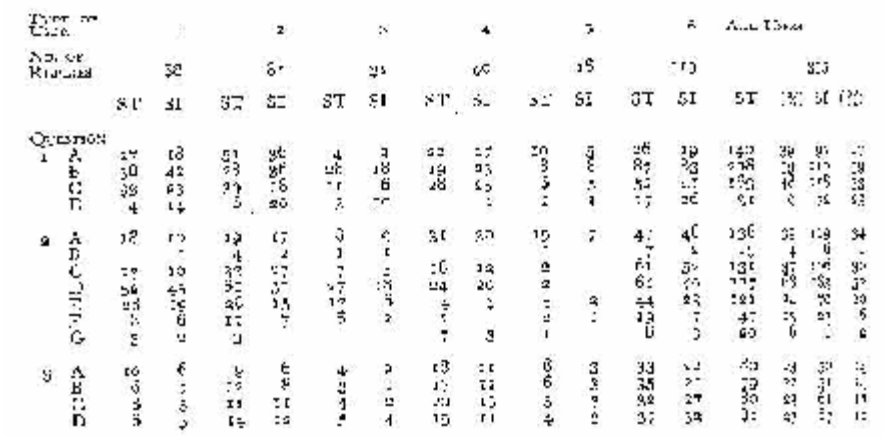
The form of the Questionnaire is reproduced in Appendix B. For the purposes of the computer statute law users were divided into six groups -

barristers, solicitors, accountants, local authority officials, members of both Houses of Parliament and other users, in that order. The following table shows the amount of questionnaires circulated to members of each group and the number and percentage in each group who replied in time for the analysis:

Number	***Type of User***	***Number of questionnaires sent out***	***Number of respondents***	***Percentage response***
1	Barristers	705	68	10
2	Solicitors	825	81	10
3	Accountants	500	31	6
4	Local authority officials	291	40	13
5	Members of both Houses of Parliament	966	16	2
1	Undifferentiated users	707	119	7
		4,994	**355**	

The total response to the Questionnaire was 7 %. The group showing the greatest readiness to reply was that of the local authority officials (13 %) but by far the most noticeable feature was the low rate of response b Parliamentarians (2%). Whether this indicates a lack of interest in the subject-matter of the Questionnaire or an expression of satisfaction with the *status quo* is, of course, open to conjecture.

The computer's analysis of the figures is reproduced below. Each question shows the amount of *affirmative* answers given in relation to statutes (ST) and statutory instruments (SI). Percentages are given in relation to the totals of all users (the last and the third from last columns).



Type of School		1		2		3		4		5		6		All Types			
No. of Ratings			66		61		37		40		16		119			351	
		ST	SI	ST	SI	ST	SI	ST	SI	ST	SI	ST	SI	ST	(%)	SI	(%)
Question																	
4	A		1	1								3	1	5	1	2	1
	B			1								3	1	2	1	1	
	C	1	1	1		1	1					2	1	6	1	3	1
	D			1								1	1	4	1	2	
5	A	4	2	11	4	2	3	1	2			11	6	37	9	17	5
	B	3	2	12	4		1					11	1	34	7	11	8
	C	9	2	12	6	1	1					13	11	37	10	27	8
	D	4	2	15	7	1	2	1	2			13	13	39	11	25	7
6	A	9	1	6	1	5	3					1		22	9	4	1
	B	6	3	8	2	5	6					7		32	7	9	4
	C	12	6	14	5	9	5	1	2			1		33	11	13	5
	D	10	8	13	8	3	2	1	1			3		23	11	10	5
7	A	2		1		1		1	1			1		6	1	1	
	B	1						1	1					2	1	1	
	C																
	D	1												1			
8	A																
	B																
	C																
	D																
9	A			3	7			1	1					4	1	1	1
	B			1	1									2	1	1	
	C			5	1			1	1					4	1	1	1
	D			3	1			1	1					4	1	1	1
10	A	45	4	45	8	22	8	30	5	7	2	85	17	233	76	93	9
	B	9	31	9	35	5	10	5	21	4	2	25	77	51	17	192	53
	C	27	21	45	22	15	12	10	19	5	2	57	51	148	22	132	53
	D	27	3	27	1	3		24	5	1		22	4	104	35	25	4
	E	5		7		2		8				14	6	95	12	5	1
	F	7	1	1	1			14	1			4	1	98	11	4	1
	G	0	2	13	5			16	3			4	1	16	12	8	1
	H	8	6	6	9			5	10			7	6	28	3	27	2
	I	1	1	3	5			2	10			3	5	16	3	35	7
	J	10	2	19	9	11	5	1				13	4	65	13	36	1
	K	19	13	73	29	14	8	90	15			44	16	218	61	101	23
	L	6		5	1	2	7	1				9	6	45	5	9	5
11		35	45	33	45	14	12	22	20	9	5	72	56	187	53	137	38
12	A	21	12	19	2	5	2	9	5	2		18	3	60	20	52	9
	B	77	14	33	22	15	10	44	16	2		42	12	140	41	79	32
	C	18	7	18	13	6	4	8	4	1		13	11	39	15	52	29
	D	20	21	20	27	10	13	12	10	2		57	23	123	41	92	28
	E	31	19	38	29	15	3	21	22	3	1	51	33	170	41	102	29
	F	25	16	26	21	10	3	15	15			42	15	122	32	95	31
	G	26	14	28	18	15	3	11	6	1	1	44	28	122	54	72	40
13	A	27	22	31	27	12	7	13	70	2	1	48	43	151	37	51	25
	B	25	24	21	13	24	12	14	7	7	4	63	17	151	44	55	16
	C	13	5	18	10	9	5	5	5	1		27	16	72	37	37	10
	D	23	17	36	16	19	9	17	12	7	4	64	39	178	32	36	51
	E	17	14	15	6	6	1	5	9	2		96	14	74	42	37	10
	F	27	26	65	33	20	10	28	19	5	1	73	41	244	65	152	32
	G	45	24	60	35	24	17	28	15	3	1	76	41	237	45	127	32
14	A	4	6	9	6	4	4	6	5	1	2	25	11	54	15	33	3
	B	23	10	43	6	6	1	14	9	7		41	32	125	25	42	14
	C	41	26	51	34	11	8	24	22	9	1	40	94	172	49	114	35
15	A	21	22	13	20	14	11	16	10	6	3	12	16	141	40	112	21
	B	27	21	63	36	2	2	36	25	5		52	14	176	20	107	40
	C	34	5	13	2	1		2		2		12	7	56	16	12	7
	D	21	3	65	10	2		26	4	1		51	6	86	13	29	8
16	A	31	23	23	29	20	11	27	21	4	3	64	51	202	57	108	30
	B	2	2	2		4	1	7	1	2	1	5	4	18	5	9	9
	C	27	12	23	12	12	3	22	3	9	2	43	21	132	57	35	12
	D	1	3	4	3									8	2	4	2
17	A	54	24	42	25	3	5	27	22	11	3	59	67	199	54	95	26
	B	10	5	33	11	13	10	12	1	5	4	90	13	166	40	30	12
	C	1	1	4	1			1				9	3	15	4	8	2
	D											3	2	2	1	2	1
18		62	39	79	37	39	34	33	26	12	4	135	99	357	83	112	35

APPENDIX B

QUESTIONNAIRE

SECTION ONE

Name of organisation or user: **Type of user (barrister, solicitor, accountant, etc.)**	**Statutes**		**Statutory Instruments**	
	Yes	**No**	**Yes**	**No**
1. Is your concern with Statutes and Statutory Instruments				
a) general				
b) selective				
a) extensive				
b) slight				
2. Is your first knowledge of proposed Statute Law and Statutory Instruments derived from :				
a) government sources				
b) your professional adviser				
c) your professional or trade organisation				
d) specialist publications				
a) general press				
f) broadcasting				
g) some other source (please data which)				
3 When the Information comas from a governmental source is it:				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
4. When the information comes from your professional adviser is it:				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
5. When the information comes from your professional or trade organisation is it:				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
6 When the information comes from Specialist Publication is it:				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				

	Statutes		Statutory Instruments	
	Yes	**No**	**Yes**	**No**
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
7. When the information comes from the General Press is it :				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
8. When the information comer from Broadcasting is it :				
a) Before the Bill is published				
b) In time to make satisfactory representation before the proposal becomes law				
c) Sufficiently detailed				
d) Otherwise adequate for your purpose				
9 When the information comes from the other source indicated 1 at 2 (f) above, is it:				
a) Before the Bill is published				
10. Do you regularly buy:				
a) Copies of individual Bills				
b) Copies of individual Statutory Instruments				
c) Copies of the amendments thereto				
d) The annual volume of public general Acts				
e) The official “Annotations to Acts”				
f) The official Index to the Statutes in Force				
g) Chronological table of the Statutes				
h) The annual volumes of statutory instruments				
i) The official index to statutory instruments				
j) Any of the official loose-leaf volumes of Revenue A” 1 (income tax. estate duty, etc.)				
l) Copies of foreign or Commonwealth legislation				
11. Does the official system of publishing Acts and S.I’s suit I you and your work ?				
12. Do you consider the official publications:				
a) too expensive				
b) too slow in being published				
c) based on wrong methods				
d) needing more explanatory material				

	Statutes		Statutory Instruments	
	Yes	**No**	**Yes**	**No**
e) too difficult to keep up to date				
f) badly indexed				
g) readily available in your district				
13. Do any of the following factors create difficulty over Acts or instruments :				
a) Text not up to date				
b) Language too legalistic				
c) Language too compressed				
d) Arrangement of Act obscure				
e) Too many details included				
f) Text of amended Act not in one place				
g) Too many cross references				
14. In official publications would you prefer Acts and Instruments arranged:				
a) Chronologically				
b) Alphabetically (by short titles)				
c) Under titles (like Halsbury)				
15. When you refer to the text of an Act or a Statutory Instrument not passed within the current year do you use :				
a) The Queen's Printer edition				
b) Halsbury's Statutes and Statutory Instruments				
c) Law Reports Statutes				
d) Current Law Statutes if.				
16. Is the text of an Act best kept up to date by:				
a) A loose leaf system with replacement pages issued as and when amendments are made				
b) A noting-up system, with extensive amendments dealt with by printed inserts and the remainder by hand written notes				
c) A system of reprinting Acts in booklet form, incorporating amendments				
d) Any other system, give brief details below:				
17. When looking up law which Is wholly or mainly contained in Acts of Parliament do you consult the actual text of the Act				
a) Always				
b) Frequently				
c) Seldom				
d) Never				
18. When an Act is amended would you prefer incorporated in the Act the amendments so that there is produced a single consecutive text				

SECTION TWO

(Requiring more detailed answers which please give on separate sheets, if possible)

19. Give details of any Statutes which have caused you special difficulty on account of obscure drafting. (If possible please identify the sections concerned).

20. Do you in practice encounter old statutes which are difficult to understand and which need to be brought up to date? If yes, give details.

21. If you buy complete services (e.g. Halsbury's Statutes. Current Law Statutes, etc.) instead of the official ones, please state why.

22. If you buy copies of foreign or Commonwealth legislation does the format or presentation show any advantage over the British one* and if so how?

23. Have you any general criticism of the method of drafting Acts?

24. Have you any general criticism of the method of drafting Statutory Instruments?

25. Have you any general criticism of the way in which the Statute Book is organised and arranged?

26 Any elaboration on the "Yes end No" answers in Section One or any other observation* which you think may help the Committee.