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# Statute Law: the key to clarity

***First Report of the Committee appointed to propose solutions to the deficiencies of the Statute Law System in the United Kingdom***

**Published on behalf of the**
**Statute Law Society by**
**sweet & maxwell**

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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:


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The following are the members of the Committee appointed by the Society to propose solutions to the deficiencies of the present statute law system.

Rt. Hon. Lord Stow Hill, P.C, Q.C. *{Chairman)*
F. A. R. Bennion *(Vice-Chairman)*
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B. S. Russell
Rt. Hon. Lord Shawcross, P.C, Q.C. Professor W. L.
Twining

Mr. J. M. Edwards and Mr. H. Major Allen, Q.c, were also members of the Committee and we were extremely indebted to them for their help, but both felt as the work of the Committee proceeded, that with their many other commitments it would be impossible for them to continue to take a full part in its work, and accordingly tendered their resignations, which we very reluctantly accepted.

We owe a special debt of gratitude to Mr. D. A. Singer who gave us quite invaluable help not only as a member of the Committee, but also as its secretary, until he was obliged to tender his resignation, on taking up an appointment overseas. We were most indebted to him.

## PART I

## INTRODUCTORY

1. In 1968 the Council of the Statute Law Society appointed a Committee under the chairmanship of Sir (then Mr.) Desmond Heap. The terms of reference were " 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 Committee's Report entitled " Statute Law Deficiencies " (generally known as " The Heap Report") was published on behalf of the Society by Sweet and Maxwell in March 1970.

2. As the terms of reference suggest, the Heap Report was intended only to state how, in the opinion of those who have to apply it, the present statute law system fails to match up to requirements, and to form the basis of detailed proposals for reform. The Council appointed us as a further Committee in January 1970 "to consider the Report of the Heap Committee and to make recommendations."

3. Having met on several occasions and arranged bur working methods, we addressed our minds to devising a list of the main priorities of our task.

At the outset we concluded that, if real progress is to be made towards achieving a system of statute law which really will adequately meet the need of contemporary and future users, two considerations are of great importance:

(a) That there must be in operation an effective process of continual consolidation of statute law which so far as practicable will ensure that all or virtually all statute law is contained in consolidation statutes within a reasonably short period of years in the future.

(b) That as and when amendments and changes are made in those laws, the procedure and form of the amendments and changes adopted is such as to keep that body of consolidated law tidy, well arranged and ordered so as to be easily accessible to and ascertainable by users of all kinds.

We have aimed in this first report to indicate our views as to the steps necessary to achieve these two objectives.

## PART II

## DEFICIENCIES IN THE PRESENT STATUTE LAW SYSTEM

4. The defects in the present system of making and communicating statute law formed the subject-matter of the Heap Report, which we take

as read. The summary of the findings in the report is for convenience set out again in Appendix A of this Report.

5. Statute law as a whole single entity has never been systematically organised into principal Acts each dealing with an individual subject. Acts are still classified chronologically rather than by subject-matter so that a single Act may deal with several different subjects and conversely a single subject may be, and usually is, dealt with in a multiplicity of different statutes. Moreover the system of amending legislation is not geared to maintaining the structure of the consolidated or codified Act as a unit. The amendment system in general use here is what is known as the referential system.

6. The referential system of amendment makes it difficult, if not impossible, for the law on a particular subject to be contained in a single text in one volume. The user may consequently require to have several volumes of statutes open in front of him at any one time. He then requires to reconcile the texts of two or more statutes which bear on the same topic. It is not possible to ascertain except by extensive research (which may involve individual users in substantial expense) whether or not the provision of a particular statute represents the current law.

7. We think our approach should be two-fold to deal effectively with this situation, as follows: in the first place we should explore and make recommendations with regard to the process of consolidation with a view to making it as comprehensive as possible so as to be capable of embracing the whole field of statute law within a not too extended period of years in the future; in the second place we should propose changes in the system by which changes and amendments are made in the existing law so that it will be possible to maintain the law as initially consolidated perpetually up to date and accessible in its up-to-date text in a convenient form to the user, and for this purpose our proposal will be that in so far as practicable changes and amendments should be made by the textual method of amendment in preference to the referential method. We now proceed to elaborate and explain these recommendations.

## PART III

## CONSOLIDATION

### A. THE NATURE OF CONSOLIDATION

8. The Law Commissions are entrusted with responsibility both for codification and consolidation as part of their functions under the Law Commissions Act 1965. In the present context " consolidation " means the re-enactment in a single Act of existing provisions which were formerly to be found in several Acts, without significant changes in the substance of the law. " Codification," which is not a precise term, connotes something much wider. Sir Leslie Scarman elucidated the concept as follows: " a code is a species of enacted law which purports so to formulate the law that

it becomes within its field the authoritative, comprehensive, and exclusive source of the law" (42 *Indiana Law Journal* 355 (1967)). Codification may involve amendment of the existing law, consolidation in general does not; a code may supersede case law as well as statute law, a consolidating act merely repeals and re-enacts statutory law; and we are here confining ourselves to the process of consolidation in this strict sense.

9. The process of consolidation, in its strict sense at least, involves the enactment of legislation which does not alter the meaning or effect of existing legislation. In practice, however, more is involved than a mere putting together of provisions. The process entails several different types of clearing-up process, some facilitated by recent legislation. The nature of these processes may be gleaned from the terms of reference of the Select Committee on Consolidation Bills, which include dealing *inter alia* with:

(1) Public and private consolidation Bills.

(2) Statute Law Revision Bills, namely bills designed to repeal statutes which are wholly obsolete.

(3) Bills prepared pursuant to the Consolidation of Enactments (Procedure) Act 1949. This provides a special procedure for including in consolidation Bills provisions dealing with " corrections and minor improvements," which expression comprises " the removal of doubts, the resolution of ambiguities, bringing obsolete provisions into conformity with modern practice, or removing unnecessary provisions or anomalies which are not of substantial importance, and amendments designed to facilitate improvement in the form or manner in which the law is stated and includes any provisions which may be necessary in consequence of such amendments."

(4) Consolidation Bills giving effect to recommendations by one or both of the Law Commissions.

(5) Bills prepared by and in accordance with the recommendations of one or both of the Law Commissions to promote the reform of statute law by repeal of enactments which are no longer of practical utility and by making any other provisions in connection with their repeal.

## B. RECENT HISTORY

10. These recent extensions in the organisation and procedure for " cleaning-up " our statute law are obviously most valuable, and have led to great savings in Parliamentary time. Over recent years a considerable measure of consolidation has taken place and the record has been very creditable. But in spite of this the consolidation of the Statute Book has in our view not been sufficiently comprehensive adequately to keep pace with the output of new statutes. We are informed by the Law Commission that the pace of consolidation in recent years may be gauged by the following figures:

| | *Consolidation Acts* (No. of pages) | *Current Legislation* (No, of pages) |
|---|---|---|
| 1935-39 (excluding Vol. II of 1939 which is emergency legislation) | 1558 | 4347 |
| 1950-54 | 1843 | 2658 |
| 1964-68 | 2234 | 5774 |
| *Exceptional years* | | |
| 1936 | 918 | 1414 |
| 1952 | 923 | 510 |
| 1965 | 615 | 667 |
| 1967 | 662 | 716 |

11. On the assumption that most if not all legislation in force ought ideally to be embodied in consolidation: Acts we have considered whether this ideal is likely to be achieved under the existing arrangements. To gauge the magnitude of the problem, we have looked at the volumes of the *Statutes Revised* for 1870-1948 and the volumes of Public General Acts and Measures for 1949-69. The number of pages in the first set (including Schedules, which have been included in all calculations) is .20,147. The number of pages in the second set (after deducting an allowance for the statement of Arrangements of Sections) is 28,002. The page sizes for the two sets are not equivalent: on a sample count, one page of the 1949-69 set equals 1-1 page of the 1870-1948 set. The total in terms of standardised 1870-1948 pages is therefore 45,603.

12. From a 20 per cent, sample of years (using the *Chronological Table of Statutes* 1235-1969) it is estimated that the volume of the 1870-1948 Acts remaining in force is about 55 per cent, of the original total, *i.e.* about 11,000 pages. A sample of similar extent (20 per cent, or 1 year in 5) for the period 1949-69 gives an estimate of 67 per cent, (or 17,000 standard pages) for the amount remaining for that period. However, as would be expected, the volume of the later years remaining appears higher than that of the earlier years. A trend line fitted through the sample observations was used to produce another estimate (which though cruder seems likely to be more accurate) which resulted in the slightly higher figure of 19,000 standard pages remaining to be dealt with.

13. Consolidating Acts passed in 1964-70 consolidated about 700 pages from the 1870-1948 period and about 3,000 pages from the period 1949-69. This is equivalent to 3,500 standard pages over seven years, an annual rate of 500 pages.

14. At this rate, and assuming all the unconsolidated Acts from 1870 need consolidating, it would take approximately sixty years (that is, 30,000 divided by 500) to complete consolidating legislation in force at the present time if work is carried on at the rate of the last few years. This ignores the additional problem posed by new legislation.

15. These figures show that the process of consolidation is in danger of falling behind the volume of annual new statutory legislation, and if the process continues on this scale the gap between the statutes enacted and those included in consolidation measures will gradually widen instead of being closed. It would thus be unlikely that in the foreseeable future

an inclusion of virtually the whole corpus of statute law in the consolidation measures would be achieved. With the growing strain and pace of contemporary life and the increasing need for Parliamentary intervention by statute it may be that the gap could widen considerably and become virtually impossible to overtake. Moreover it is always possible that we may live through another crisis period such as 1945-50 when there is an enormous output of legislation; in which case the growing gap might become almost unbridgeable.

## C. A "Crash" Programme

16. This being the existing situation we consider it of great importance that, in so far as this is feasible, a programme should as soon as possible be formulated of large-scale consolidation over a measurable period of years, in other words, a crash programme. This would be designed to produce the result that the entire statute law (excluding the relatively few provisions that are incapable of consolidation) would be contained in principal Acts, each dealing comprehensively with one major topic. It would, we think, be sensible to contemplate progress upon the basis that we use and build upon the work of existing institutions and of course the foremost among them is the valuable work being undertaken by the Law Commissions. This being so we took up with the Law Commission the question whether they would contemplate the formulation of a crash programme of consolidation, with a view to determining what it would involve. The Law Commission in response to our inquiry pointed to the fact that there exist very considerable difficulties in the way of undertaking any such general crash programme. Those difficulties we think could be broadly coalesced into two major categories. The first consists in the fact that in the case of every proposed principal Act included in the initial programme of consolidation it is to be anticipated that in the coming years major changes in that field of legislation would take place which would hopelessly distort the programme, thus making it unattainable in the sense of following out the successive steps envisaged for its completion. The second difficulty consists in shortage of draftsmen. Our correspondence with the Law Commission on this head is with their permission reproduced in Appendix B to this Report. It would, in our opinion, be of great value if a major effort could be made, in the first place, to work out a comprehensive programme for consolidation and then to carry this programme into effect, and if the result of such an operation could be that within a reasonable period of years, virtually the whole body of statute law or a very substantial part of it could be included in consolidation statutes. It would be particularly advantageous if this process of consolidation could be so managed that individual broad categories of subjects could be included in single consolidation statutes. Each subject would be identified by the title of the Act. We fully appreciate the practical difficulties involved in including in single consolidation measures what may normally be regarded as single branches of our legislation system. The question of classification is however a separate one and should be considered in the full context of the proposals of the Statute Law Committee with regard to the new edition

of the *Statutes in Force.* (The Heap Report (para. 25) outlines these proposals.)

17. Before formulating our proposals for the preparation of the " crash " programme we will digress to deal shortly with the question of the grouping of subjects for the purpose of consolidation. The words " legislative enactments on a single topic " presuppose widely agreed headings for classifying the law. No problems of classification exist where the consolidation involves the combining together of a series of Acts amending one principal statute only. However, most major consolidation involves much more than a principal Act and a set of amending statutes. In such cases the problem becomes one of reorganisation of the statute law and the selection of an appropriate category for the reorganisation. On what basis should the selection of headings for the consolidation of statutes be made? In our view the approach can only be on a pragmatic basis. In particular, attention should be given to the purpose for which one is classifying, and too much should not be expected of single schemes of classification. Problems of classification affecting consolidation of existing legislation may be different from those affecting the classification of the law generally. This is because in existing statutes one already has subject headings. In these circumstances, any scheme of classification which would involve a large degree of " chopping up" of statutes and their distribution under different headings would be unrealistic and would make the task of the consolidator difficult. The nature of legislation already on the Statute Book ought, as far as possible, to dictate the choice of subject-matter. In some cases this may lead to wide sub-divisions, as for example would be the case with Corporations or Road Traffic; in others they will be fairly narrow, for example, the legislation on the White Fish Industry.

18. In the approach to classification for the purposes of consolidation too much attention should not be paid to the attainment of theoretical perfection. It is not a matter of reducing the number of statutes on the statute book to a small number of highly structured consolidation Acts. It is a matter of rationalisation of the Statute Book. We shall deal more fully with the problems of classification at a later stage. We now return to our proposals for a " crash " programme.

19. We think it would be highly desirable to draw up an initial scheme containing the following particulars:

(a) A list of titles of future consolidating Acts, indicating which existing Acts would be included in each title. This would be the essence of the whole scheme and, with minor exceptions, would cover the whole of the statute law passed since, say, 1870. Legislation passed before that date is often not capable of consolidation without changing the law, and forms a very small proportion of the whole. The exceptions would cover Acts, such as the annual Consolidated Fund Acts, which it would be unnecessary to consolidate. This process would settle the number of consolidation Acts which would be required to consolidate the existing Statute Book. But the initial listing would not preclude new titles being added as a result of fresh topics being legislated about or even a rearrangement of existing categories taking into account supervening

developments. The fact that the titles for a consolidation programme lasting perhaps ten or fifteen years might need adjustment from time to time does not prevent their being formulated. A main purpose of their formulation would be to determine the exact scope of the problem.

(b) A time-table which would indicate the priorities for consolidation and the period within which each stage and ultimately the whole exercise might be expected to be accomplished.

(c)An indication of manpower and other requirements with suggestions as to how these might be met.

(d) An estimate of the financial implications, that is the direct costs and the expected savings which might result from the greater efficiency of a fully consolidated Statute Book.

### D. " PERPETUAL " CONSOLIDATION

20. If it be assumed that by the process above indicated a large-scale measure of consolidation could be achieved over a period of years it would be of the greatest importance if possible to bring it about that this consolidation would be kept up to date and to use a phrase sometimes employed, made "perpetual." If, however, the existing methods of enactment are followed each consolidation measure in a short period becomes encrusted with new amending statutes which impair its utility as a consolidation measure. We therefore turn our attention to the problem of how the state of consolidation, once attained, may be permanently secured.

## PART IV

## THE TEXTUAL AMENDMENT SYSTEM

### A. THE PRINCIPAL ACT

21. The Statute Book may be altered in any of the following ways:

(1) by amendment of existing legislation;
(2) by repeal;
(3) by consolidation;
(4) by codification; or
(5) by enactment of an Act dealing with a new subject.

Acts in the last three categories are termed principal Acts. They deal comprehensively with a single subject arranged in logical order. It is with principal Acts mainly that the textual amendment system is concerned. For the system to operate effectively not only must the Acts be principal ones, they must also be what we might call " clean." In other words they must have been amended (if at all) according to the textual amendment system. The use of this system enables the logical arrangement of the principal Act to remain unimpaired by amendments. Amendments must at some stage be physically incorporated in the users copy of the Act,

but assuming this to have been done the law with which it purports to deal continues to be incorporated in the one Act, logically arranged.

## B. THE REFERENTIAL SYSTEM OF AMENDMENT DISTINGUISHED

22. As we have seen, one of the ways of altering the law is by amendment of the existing Act, whether it be a principal or an amending one. One method of amending statute law is the referential system which is described and illustrated in the Heap Report (paras. 91 *et seg.).* The process consists in the amendment of an existing principal or amending Act by mere reference to the provisions affected without directly altering their wording. Each later Act forms as it were a gloss on its predecessors, and they must all be read together to ascertain the law. If one assumes the existence of a principal Act in the first place (which is not necessarily so under this system) a series of amendments renders further consolidation necessary—perhaps after only a short time. This is so, because the original principal Act, when the referential system is used, becomes gradually so overlaid with fresh statutes introducing legislative changes, otherwise than by making the appropriate alteration in the actual text of the principal Act, that it is in effect replaced by a whole corpus of fresh laws all of which have to be read together with the original principal Act which accordingly loses its purpose. If, however, the textual system of amendment is used, the principal Act remains, with its altered wording the whole source of the existing law, and is thus in effect maintained in a state of "perpetual" consolidation.

## C. AMENDMENT BY MAINTAINING THE " CLEAN " ACT

23. Assuming that we have an unamended principal Act in force the question then arises how to amend it in such a way as to maintain the coherence of its structure and arrangement. It is submitted that this can be done by the use of the textual system of amendment. Basically there are three ways of so amending a principal Act:

(a) by repeal of a provision in the Act;
(b) by insertion of a new provision in the appropriate place in the arrangement of the Act; or
(c) by alteration of the wording of a provision.

Insertions are made in the appropriate place in the Act. Where new sections or subsections are inserted the original number may require to be supplemented as for example by letters of the alphabet, so that there may be section numbers 50A, 50B, 50C and so on. The arrangement is thus left unimpaired.

24. Alterations are made either by detailed changes in the wording of a provision or by deleting the provision and inserting a revised version of it. Where the latter method is followed it seems best to give the revised version a different number, rather than (as is usually done) allowing it to retain the number of the superseded provision.

25. If the number of the superseded provision is given to the new provision which supersedes it, confusion may be caused because when one

refers to that number it may be difficult to ascertain whether the old or the new provision is being referred to. We recommend therefore that provisions should not be directly substituted, so that if, for example, more than purely minor amendments are to be made to section 50 the answer is not to substitute a new section 50 but to repeal section 50 altogether and to insert a new section 50A. We realise that this is a departure from normal practice but we consider that the avoidance of confusion which would result justifies it. We recognise however that there may be two views on this point.

26. We turn to the mechanics of the textual process. In essence, the amending Act comprises a list of directions to the user of legislation. These directions instruct him to read the principal Act subject to specified amendments.

Typical directions may read as follows:

"Section 28 of the principal Act is amended by the deletion from subsection (3) of paragraph *(b)"*; or

" Section 10 of the principal Act is amended by the substitution for the words ' twenty pounds' occurring immediately after the words 'fine of' of the words 'forty pounds or a term of imprisonment not exceeding three months.'"

The amending Act is therefore no more than a piece of machinery for enacting changes to the principal Act. In practice most users will wish to alter their text of the principal Act so as to give effect to the directions and then discard the amending Act.

27. It has been proposed that when a principal Act is amended this should be done by one single amending Act and that the system followed at present of including amendments to two or more Acts in a single amendment Act should be discontinued. It has been possible to adopt such a system in most Commonwealth countries. The practical problem this involves of the multiplicity of Bills required to implement consequential amendments has been dealt with in Australia by the suspension of Standing Orders under the rules governing Parliamentary procedure, with all the Bills then being considered together. We do not consider it necessary that this " one Act one Bill" system be adopted in the United Kingdom. Indeed, the exigencies of Parliamentary legislation here would probably make it impracticable. The original reason for its use in the Commonwealth Parliament appears to have been to avoid the practice of " tacking-on" provisions to amending Acts relating to other subjects of such importance that they would not be disallowed by the British Government. Obviously, this no longer applies, and so long as the textual system is adhered to we see no reason why one amending Act should not amend any number of principal Acts.

28. It may be that an Act requires such a high degree of amendment that it becomes easier to repeal the principal Act and to enact a new one. Except where the degree of amendment is very great we do not consider such a system has any advantage over the orthodox textual amendment system, and it suffers from the disadvantage of obscuring the changes made by the amending Act. The same applies to the repeal and re-enactment (with modifications) of a portion of an Act.

29. The adoption by Parliament of the textual amendment system as a general practice must not of course be allowed to derogate from Parliament's power to legislate as it thinks fit. There may arise some emergency where the textual system is required to be dispensed with in the interest of speed. Bills have sometimes been drafted and become law on the same day. In such cases referential amendment may be not only excusable but absolutely necessary. Where this is so, we would recommend that amending Acts be enacted as soon as possible to replace such referential amendments with textual ones, thus reverting to the " clean Act" principle at the first practical opportunity. This could only be done of course if Members were prepared to accept a convention under which such amending Bills were treated as in general not debatable, as in the case of consolidation Bills.

## D. EXPLAINING TO MEMBERS

30. The examples of textual amendment given in paragraph 26 show that the amendment considered in isolation may be incomprehensible to the statute user. It may be difficult to gauge the effect of it unless the user has before him the text of the Act as proposed to be amended. It is obvious that during the Parliamentary stage the system demands some kind of explanation in order to make the meaning and effect of each direction in the amending Bill comprehensible to members of Parliament.

31. One system which is currently used on occasions is the Keeling Schedule. This forms a schedule to the amending Bill and sets out the principal Act as amended in accordance with the list of directions. The main drawback is that the Schedule remains part of the law and since the amendment will already have been made in textual form in the main body of the Act there is a duplication—an unnecessary cluttering up of the law itself. The theory behind the Keeling Schedule is sound, but its contents would more satisfactorily be dealt with if the explanation of the effect of the amendment were contained in some document which were not part of the text of the amending statute itself.

32. Each Government Bill on its introduction into Parliament is accompanied by an explanatory memorandum which is drafted by Parliamentary Counsel or the Departmental lawyers on behalf of the appropriate Minister. On its introduction into the House it thenceforth belongs not to the Minister but to the House. The Minister no longer has any power to alter it in any way. As the Heap Report states (para. 52) the memorandum is not sufficient for the purpose of explaining to Members the meaning and effect of the whole Bill or the individual provisions of it, and in fact it make no real attempt to do so. Furthermore since, after introduction, the Minister no longer has any responsibility for it, no steps are taken to alter it to take account of any amendments during the passage of the Bill through the House. It follows therefore that the present type of explanatory memorandum is an unsuitable medium for the explanation of textual amendments.

33. What is needed is a document which explains the effect of each textual amendment and is kept up to date by being reissued with suitable modifications every time the Bill is reprinted in amended form. Such a

document which we call the "textual memorandum," would be entirely separate from the usual explanatory memorandum. It would explain on an entirely factual and non-controversial manner the effect in the existing law of each amendment to be made by the Bill. This would normally (but not necessarily or exclusively) be done by giving the text of each provision of the principal Act sought to be amended and how it would appear with the amendment incorporated.

34. We propose that, like the present explanatory memorandum, the textual memorandum should initially be prepared by the Minister or private member responsible for the Bill. (In the case of a Government Bill the actual work would no doubt be done by departmental civil servants advised by the draftsman.) The clerks in the Public Bill Office would, as in the case of the present explanatory or financial memoranda to the Bills, scrutinise the text of the memorandum to see it was in order. Once the Bill had been introduced, however, the duty of revising the textual memorandum to fit amendments made by Parliament to the Bill would be likely to fall upon the clerks in the Public Bill Office, though we would expect them, in accordance with usual practice, to receive the ready advice of Parliamentary Counsel. Since the Bill is now in the possession of the House it would not be proper for the member in charge of it to make amendments to the memorandum, and the only alternative seems to be to regard this as part of the service to be rendered by officials of the House to those whom they are appointed to assist.

35. A further problem of the textual amendment system arises in connection with amendments put down on the order paper during the passage of a Bill through Parliament. Let it be supposed that an amending Bill as introduced into the House of Commons contains ten different textual amendments to the principal Act. Each of these is explained in the textual memorandum which accompanies the Bill when introduced. The Bill receives a second reading and is then committed to a standing committee. In standing committee, two amendments to the Bill are put down on the Order Paper. The first of these (" amendment A") proposes to insert in the Bill an eleventh textual amendment to the principal Act. The other (" amendment B ") proposes to alter the wording of one of the ten textual amendments to the principal Act already contained in the Bill as introduced. Just as members require and are given, information on the meaning and effect of the ten amendments in the original Bill so, it can be argued, they should have similar information about amendment A and should be told what difference amendment B makes. On the other hand, amendments to a Bill are often prepared in great haste and tabled at short notice. They may be extremely numerous, and, many of them may have little chance of being adopted. It seems impracticable to suggest that every amendment put down on the order paper should be accompanied by an explanatory memorandum. Moreover, many amendments to Bills put down under the present system are far from being self-explanatory, yet no rule compels any explanation of them to be given until they are debated. We conclude, therefore, that no rule should be adopted to *compel* a textual memorandum to be attached to amendments to Bills—indeed, we think that the textual memorandum to a Bill itself should, like the present explanatory or finan-

cial memorandum, be in theory optional, though it is probable that it would be almost universally adopted. We see no reason, however, why machinery should not be devised whereby it is possible for a member putting down an amendment to cause there to be circulated with it a textual memorandum in cases where he wishes to do so. Whereas in the case of Government amendments, it is likely that the amendment will be accepted this would, where time permits, seem to be a convenient practice, facilitating the task of the clerks in later revising the textual memorandum to the Bill, and shortening the time spent by the House in debate. The form in which a textual memorandum to an amendment would be circulated would be a matter for Parliament to decide. One possibility is to adopt the system used in Canada for Bills and keep the left-hand pages of the order paper for the amendments themselves, while on the right-hand page, opposite the relevant amendment, is set out the textual memorandum.

### E. THE TRANSITIONAL AND COMMENCEMENT PROBLEM

36. Where the referential system of amendment is used a feature of the legislation is that the texts of statutes tend to embody a large number of commencement and transitional provisions. These indicate the time factors involved and the provisions which apply pending the coming into operation of permanent provisions. Most statute users are not concerned with this temporary matter and it clutters up the legislation unnecessarily. Commonwealth countries which use the textual amendment system have generally made no significant attempt to solve this problem. They normally use the system whereby in published versions of the statute law an asterisk marks the provision affected and refers the user to a footnote which gives the commencement date. Temporary matter still, however, appears in the main body of the Act. So the problem still exists where a principal Act has, or acquires a large number of commencement dates and transitional provisions.

37. A new solution to the problem has been adopted for tax legislation in Jamaica. Since 1970 the system has been there used whereby all commencement and transitional provisions and repeals in the income tax law are dealt with in a special schedule. The " Jamaica " Schedule is part of the principal Act and is correspondingly altered whenever the principal Act is amended. It contains the following component parts:

(A) A preliminary paragraph dealing with overall commencement of the principal Act. It informs the user when, subject to the remainder of the schedule, the Act comes into force;

(B) Column headings as follows:

- (a) "Section" (or "Schedule")—this indicates the number of the section of the principal Act being referred to;
- (b) " Subsection " (or " Paragraph ")—this indicates the number of the subsection of that section (or the number of the paragraph where the Jamaica Schedule refers to a schedule of the principal Act);
- (c) " Provision "—this indicates any one of the following:
  - (i) The commencement date of a section, etc., where this differs from the overall date in the preliminary paragraph;
  - (ii) The repeal of a provision and the date from which it is repealed;

(iii) Transitional and commencement provisions and their commencement date and date of lapse;

(iv) Provisions (if any) formerly in the principal Act but subsequently repealed, with relevant dates, where circumstances require their continued publication for some special reason: for example former rates of income tax;

(d) " No. of amending Act"—this indicates the chapter number and year of the amending Act.

38. The Jamaica Schedule is used in the following way. There is nothing in the body of the principal Act to indicate the date when the principal Act or any amendments came into force. The user, therefore, has to consult the Jamaica Schedule under the appropriate section. If, however, there is nothing mentioned under the appropriate section, the relevant commencement date is that mentioned in the preliminary paragraph of the Schedule. Every principal Act has a Jamaica Schedule, although a completely new Act with a single commencement date may contain only the preliminary paragraph and it would be left to the first amending Act to insert the headings and other matter. Where there is a consolidation Act there are two alternatives:

(a) to insert a Jamaica Schedule containing all the historical commencement dates, etc., of the Acts consolidated, or

(b) to adopt the simpler procedure of bringing all the consolidated provisions into force on the passing of the Act leaving pre-Act situations to be dealt with under the previous law. It would, therefore, depend on the relevant date at which the particular law applied as to whether the new consolidation Act or the old consolidated Acts were consulted.

There may be advantages in using either of the methods depending on the circumstances. The first method may be modified by including only historical material relevant to a limited period, say, the preceding five years.

An illustration of new proposed Textual Amendment System is given in Appendix D.

## F. PROMULGATION OF THE LAW

39. It is inherent in the textual system that there be available to users the text of the principal Act fully updated with all amendments incorporated. But in addition to this, all amending Acts should continue to be available in the Annual Volumes of Statutes issued as at present on a chronological basis. It would always be possible, therefore, as it is now, to ascertain the law on a past date by referring to the principal Act as originally enacted, together with each amending Act passed before the date in question, and working out the state of the law on that date.

## PART V

## THE ADVANTAGES OF THE TEXTUAL AMENDMENT SYSTEM PROPOSED

40. The textual amendment system, if widely adopted, would, we believe, greatly conduce to keeping the Statute Book in a form that is logical and coherent. It would also obviate much of the physical and intellectual difficulty involved in finding the appropriate law and then applying it efficiently once found. A great advantage to be derived from the textual method of amendment is that no matter at what period, short or long, the Government decides to reprint any particular Act with its amendments incorporated, every user of that Act can in the intervening years make his own reprint by inserting the textual amendments in his own copy of the Act. Each owner of a set of statutes can, by a simple process, whether by pasting in amendments as they are made or by substituting a loose-leaf page incorporating amendments as they are reprinted, keep his own set of statutes up to date year by year. So the user has as his disposal at any time a copy of the statute right up to date on the particular branch of the law in which he is interested. This exemplifies the difference between the system whereby periodic reprints are necessary and that whereby periodic consolidations are necessary. This in turn is of importance because the consolidation process requires the services of administrators, departmental lawyers and draftsmen, and the use of Parliamentary time, whereas the reprint process does not. Reprints 6f a statute can easily be made as soon as a sufficient number of amendments have been made to make it worthwhile to bring the statutes up to date with all the amendments. Reprints of whole Acts can, in fact, be made without reference back to Parliament, either by the Stationery Office or the commercial publishers. It follows that an official edition such as the Statutes in Force (now in preparation) could be in a much more useful form than is possible under the present system.

41. The simplification and reduction in the bulk of statute law which would result from adoption of the textual amendment system would, in our opinion, have a significant effect in facilitating the ascertainment of legal relationships and might even reduce the need for and cost of litigation. The greater intelligibility of the law would have advantageous results in spheres such as the instruction of students, its appreciation by foreign lawyers and in the adaptation to systems which might be imposed by entry into the European Economic Community. It would also facilitate the task of the legislator, since he would more easily understand the law and how it would be affected by changes.

42. The textual amendment system has been adopted by almost all Commonwealth countries with a large measure of success. Britain is the only major country in the Commonwealth which does not use the system extensively. In fact, the system has been used here in a limited number of cases, although its use in conjunction with the referential system has reduced its effectiveness. By contrast Canada, for instance has, by the

full use of the textual amendment system coupled with complete revision of the statutes every ten years, equipped itself with a far more satisfactory Statute Book than our own despite the twin handicaps of having to enact every statute in two languages and the federal system which divides legislative power between the provinces and the centre.

Sample extracts from a Canadian Bill are included in Appendix E.

## PART VI

## OBJECTIONS TO THE TEXTUAL AMENDMENT SYSTEM

43. Several objections have been raised to the use of the textual amendment system by persons closely associated with legislation in this country. In the following paragraphs we attempt to synthesise these objections, and to state our views on each of them.

### (a) *Objections*

It is not feasible to expect Members of Parliament to accept the textual amendment system, because it is not easily understood and it would be difficult to form any judgment on the basis of such amendment. Members have neither the time nor the facilities to see what is the effect of the amendment. On the other hand, the referential amendment can be broadly understood; it enables the effect of the statute to be seen at a glance and sets out in one section the general effect of the amendment on all related legislation, whereas the textual method does not. Moreover, it is not only Members of Parliament who are concerned. Bills introduced are sent to a large number of persons and organisations outside Parliament, constituency committees, interested organisations, pressure groups of all sorts outside Westminster, the press (not only the daily or week-end press but trade papers, scientific journals and provincial newspapers). All may wish to comment on and discuss bills affecting either the national interest or their particular sphere of interest. It is unrealistic to expect them to apprehend the effect of a textual change. In a great many cases it is often difficult enough to understand the effect of a referential amendment, but in most cases a good deal easier.

*Answer*

The textual amendment system operates only in the context of explanations being given by an explanatory memorandum (we suggest the textual memorandum referred to in para. 33). This would explain the meaning and effect of each provision and show the provisions sought to be amended and how they would appear with the amendments incorporated.

### (b) *Objections*

Parliament and Ministers must be seen by the public to act quickly and effectively to deal with current situations as they arise. Obstacles

should not be put in the way of a quick legislative process merely in the interests of better drafting. The textual amendment system makes it more difficult and more time-consuming for the draftsmen to draft legislation.

*Answer*

The textual amendment system proposed may very slightly slow down the initial preparation of a Bill, but this is only because the draftsman would require to do a thorough job of integrating the new law with the old, and the textual memorandum would have to be prepared. Otherwise, however, it is very doubtful whether the passage of the Bill through Parliament would be made any slower provided that the textual amendment is always accompanied by the explanatory matter contained in the memoranda which we have earlier proposed. In the case of very many proposed Bills there is not such a very great need for haste in their preparation, and no great harm will be done if a little more time is taken in Parliamentary Counsel's office. Furthermore, Parliament's power to legislate in the way it chooses would not be removed and any urgent amending legislation would, if necessary, be done referentially with textual amendments replacing the referential ones as soon as practicable thereafter when that branch of statute law was in due course consolidated.

(c) *Objection*

The problem of the law being covered in a multiplicity of Acts is met by having a good index system.

*Answer*

Even if this were so it would be an answer only in so far as it involved the finding of the appropriate law to cover the situation. It would not solve the physical and intellectual difficulties of using many different overlapping statutes to resolve a point and collating them on each occasion in a way that the draftsman might originally have done once and for all.

(d) *Objection*

There is an acute shortage of Parliamentary draftsmen. The textual system requires more work in drafting and cannot be adopted until the complement of draftsmen is greatly increased.

*Answer*

The true function of the legislative draftsman is to do his work in a way which produces a Statute Book which is as clearly and logically arranged as is possible. If a system has hitherto been in use which falls short of this ideal the answer is first to recognise its shortcomings and then to make a serious effort to cure them. Every means must be sought to enlarge the drafting force by devising training courses and offering attractive rates of pay and career conditions. The saving in the efforts needed to understand the law will, we expect, be found greatly to outweigh the direct cost of our proposals, especially in the case of professional users, such as accountants, businessmen, and so on.

### (e) *Objection*

It would be difficult for backbenchers and the official Opposition to frame correct amendments under a textual system. Last-minute amendments ("manuscript amendments") would be especially difficult.

*Answer*

We believe that all M.P.S and Peers should have drafting services and advice freely available as part of the tools of their job. Even under the existing arrangements, however, textual amendments, at least where they are designed merely to raise a point for debate, are not necessarily difficult to draft. Where there is difficulty in framing a correct set of amendments, an amendment drawn in the referential style could be allowed for debating purposes. Some latitude might well be allowed in applying the rules of order in this respect since it is now the almost invariable practice, where the Government accepts the principle of an amendment, for effect to be given to that principle by a properly drawn amendment put down at the next stage of the Bill's progress through Parliament.

## PART VII

## CONCLUSIONS ON THE TEXTUAL AMENDMENT SYSTEM

44. We have carefully weighed against each other the advantages and disadvantages and we have come to the following conclusions with regard to the two alternative methods of amendment. In our view, there are two public interests to be considered, which might appear to compete but do not necessarily do so. The first is that both Houses of Parliament should be able unimpeded to proceed to place upon the Statute Book those measures which are necessary. It is impossible at any given moment of time to foresee and anticipate what situations may arise and what measures may be necessary to deal with them. The interests not only of Ministers asking for Parliamentary approval for their proposals but also of backbenchers and the Opposition must be taken into account and they should be able to act for this purpose expeditiously with the minimum degree of interference in their freedom of choice. Not only must the Minister's task be allowed for but the Opposition amendment and the backbench amendment must equally be had in mind, and not only amendment on the Order Paper but last minute manuscript ones which are at present permissible under the rules of both Houses of Parliament. The second public interest is that of having a logical tidy Statute Book capable of affording to the user the advantages set out in Part V. We have no hesitation in saying that if these two interests were really incompatible the first should prevail. We think, however, that they can, in fact, operate harmoniously together. We do not suggest the invariable use of the textual amendment system, because to do so would be a challenge to Parliament's sovereignty which would unnecessarily fetter the legislator's choice and speed of action.

45. On the contrary, we suggest that under the system which we recommend the legislator will be no more fettered in his actions than he is to-day. He will use the referential amendment system if the situation requires it, but not otherwise. The Member of Parliament will be better served than he is to-day because he will have the benefit of a full memorandum which will explain the purport of such amendment, and will be able to follow the exact effect of the amendment proposed. Furthermore, the easier comprehension of statute law will help all persons involved in the legislation process at all levels.

Our recommendation is, therefore, on this aspect of the matters we are considering, that in principle wherever possible the existing referential method of the amendment of statutes should be replaced by the textual method, supported by the system of explanatory memoranda we have proposed. A simple illustration of how this system would work is given in Appendix C. A possible variant would be to follow the practice of the Canadian House of Commons and print textual memoranda on the right-hand pages of Bills opposite the provisions referred to, the text of the Bill itself being printed only on the left-hand page. We have reproduced in Appendix E part of a Canadian Bill illustrating this.

## PART VIII

## CRITICAL AND OTHER VIEWS OF OUR PROPOSALS

We have thought that, in addition to setting out the general objections which we are aware have been raised and our suggested answers to such objections it might be of help to set out some views which we have obtained in an appendix to this Report, in order that anybody who may have occasion to examine our Report may be in a position to weigh them against our arguments.

A draft of our Report was placed before the Select Committee on Procedure of the House of Commons which in Session 1970-71 considered it and heard evidence upon it. The draft was substantially in the form of the present Report, minor changes having since been made to it. On page 345 onwards in Appendix 18 of the Second Report of the Select Committee are set out extracts from Parts IV, V and VI of our Draft Report which were considered by the Select Committee. We set out in Appendix F the following extracts from the Second Report of the Select Committee,* as follows:

(a) Memorandum submitted to the Select Committee by Sir John Fiennes, K.C.B., Q.C., First Parliamentary Counsel to H.M. Treasury.
(b) A reprint of the evidence given by Sir John Fiennes before the Select Committee on June 23, 1971, dealing *inter alia* with our Draft Report.

* " Second Report of the Select Committee on Procedure," Session 1970-71, H.C. 538, and the *Minutes of Evidence to the Select Committee,* H.C. 297.

(c) A reprint of the evidence given before the Select Committee on July 7, 1971, by the Vice-Chairman of our Committee, Mr. Francis Bennion, entirely in a personal capacity.
(d) A letter dated October 30, 1971, written by Sir Noel Hutton, G.C.B., Q.C., formerly First Parliamentary Counsel to H.M. Treasury.
(e) A further letter dated July 28, 1971, to the Chairman of our Committee by Sir Leslie Scarman, Chairman of the Law Commission.
(f) A letter dated July 20, 1971, to the Chairman of our Committee written by the Right Honourable Francis Pym, P.C., M.P., M.C., Chief Government Whip.

The above are reproduced with the consent of their authors to whom we would like to express our deep indebtedness, as also to the Select Committee which has kindly consented to our reproducing extracts from their Second Report. We have carefully examined the various adverse arguments advanced in these documents in making our proposals. We are, however, considerably encouraged by the recommendation since accepted by the Government contained in paragraphs 67, 68 and 70 (28) of the Select Committee's Second Report that a Committee should be appointed to review the form, drafting and amendment of legislation, including the system of textual amendment, and the practice in the preparation of legislation for presentation to Parliament.

## APPENDIX A

## HEAP REPORT: SUMMARY OF MAIN CONCLUSIONS

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.

## APPENDIX B

## CORRESPONDENCE BETWEEN LAW COMMISSION AND STATUTE LAW SOCIETY

LETTER FROM THE STATUTE LAW SOCIETY TO SIR LESLIE SCARMAN DATED OCTOBER 15, 1969

As you know, the Statute Law Society has set up a Committee to enquire into the deficiencies of the present system of preparing, amending and publishing Statute Law of the United Kingdom Parliament. The task of the Committee is a large one, and will not be complete for some time. It is already apparent, however, that one of the major grievances of statute users is the fragmented state of the law, in which most topics are dealt with by a number of unrelated Acts passed at different times.

Naturally, we do not wish to anticipate the report of the Committee, or the recommendations we might make as a result of this. We nevertheless feel that in view of the urgency of the problem, and its relationship with the way in which the projected new edition of Statutes Revised is prepared, we should without delay submit to the Law Commission our views as to the need for a comprehensive programme of consolidation of Statute Law.

We take as our starting point the duty imposed by section 3 of the Law Commissions Act 1965 to prepare comprehensive programmes for consolidation. This reinforces our own view that the needs of statute users will not be adequately met until Statute Law has been fully consolidated. We do not feel it necessary in this submission to argue the case for full consolidation as a desirable objective as we understand it is the view of the Law Commission that ideally there should be a single consolidated Act for each subject about

which Parliament has legislated. The only question, therefore, is how this desirable objective is to be attained.

The history of consolidation since the War shows that it has not kept pace with the output of new statutes. In other words, far from progressing gradually towards our objective, we are, in fact, falling behind. It seems to the Society that this deficiency can only be reversed by steps along the lines indicated in the remainder of this submission.

We suggest that the Law Commission should seek authority from the Lord Chancellor to draw up a scheme for comprehensive consolidation. This scheme would comprise the following particulars: '■—

(a) A list of titles of future consolidating Acts, indicating which existing Acts would be included in each title.

(b) A time-table, indicating the priorities for consolidation and the period within which each stage might be expected to be accomplished.

(c) An indication of the manpower requirements and other resources

required, together with suggestions as to how these might be met, *e.g.* by recruitment and training of draftsmen.

(d) Some estimate of the financial implications, in which the direct cost would be set off against the expected sayings through the greater efficiency of the new system.

We appreciate that there are many difficulties involved in the achievement of comprehensive consolidation. Unless, however, a determined effort is made there is no hope of attaining any substantial improvement of the present unsatisfactory conditions. While the carrying out of a consolidation programme may be difficult, there seems no great difficulty about drawing up a programme and seeing what it involves. We suggest that this could be done within a period of twelve months or so, and we would like to suggest that the aim should be to complete it by the end of 1970. The actual programme of consolidation might, of course, take a period of something like twenty years, but the important thing is to make a start.

We are aware that the main difficulty will be in the supply of draftsmen and we know that recruitment of these even on the present scale of activity is a serious problem. The techniques required for consolidation are, however, less demanding than those needed for current work and we feel that the manpower problem can be met by giving most of the work to practising barristers after a brief training course. While the result might not be completely perfect, we feel sure it would be vastly superior to the present state of the Statute Book.

## LETTER FROM SIR LESLIE SCARMAN TO THE STATUTE LAW SOCIETY

DATED FEBRUARY 9, 1970

Please accept my apologies for not replying sooner to your thoughtful and stimulating letter of last October. It required careful consideration on our part at a time when all of us here have been working under exceptionally heavy pressure.

1. Let me turn first to what we consider to be your principal suggestion, *i.e.* that we should draw up a single programme of consolidation covering a period of something like twenty years.

You take the view that there can be no great difficulty about drawing up such a programme within the next twelve months or so. We think that the difficulties would be considerable; but even if it were possible to draw up such a programme within twelve months, we are more than doubtful about

the practical utility of such an exercise. Our experience over the past few years has shown that it is extremely difficult to predict the amount of supervening legislation by which the consolidation of any given branch of the statute law will be affected. If it is so difficult to make reliable forecasts even in the short run, it follows that it is quite impossible to make reliable predictions in the long run. Twenty years is a long time, and we are satisfied that a programme covering such a long period would not be realistic.

Nor is it exclusively the question of supervening legislation. There are other factors beyond our control that may throw a long-term programme out of gear. Suffice it to mention one of these factors: the availability of Parliamentary Counsel for consolidation is by no means constant and, similarly, it is quite unpredictable when and to what extent the time of the departmental lawyers concerned with any given Consolidation Bill will be occupied by more pressing business.

We must also bear it in mind that any prearranged order of priorities might be upset by the publication of the new Official Edition of the Statutes in Force. This can affect consolidation in one of two ways. The issue of a new Title may necessitate an earlier consolidation of the statutes falling within that Title. On the other hand, where it is possible to reprint statutes in a Title with all or most amendments slotted-in to a principal Act, the need for consolidation is considerably reduced and may even disappear. For instance, the Representation of the People Act 1969 has now made it possible to reprint the Representation of the People Act 1949 in one document with all subsequent amendments slotted-in.

2. It seems to us that these considerations militate against the Law Commission preparing a long-term programme such as you indicate in paragraphs (a)-(d) on page 2 of your letter, and speak in favour of the preparation instead of a policy document of a somewhat different character.

The document we have in mind would indicate those areas of the statute law where consolidation appears to be most urgently needed, having regard to the requirements of the public and of professional users. You will recall that this approach was already outlined in our First Programme on Consolidation (notably in para. 11), and we continue to regard the needs of the public and the professions as criteria which are to be applied without regard to the Government's intentions about future legislation or the preferences of particular Departments.

We would include in the same policy document our assessment of these limiting factors which may make it impossible to proceed, within a short time and in a precise order of urgency, with the consolidation of all the statutes which exist at the present time in the areas concerned.

It seems to us that it might be useful for our policy document also to indicate areas where there appeared to be a prima facie case for consolidation, but where consolidation was not warranted by the degree of public and professional interest and demand. And perhaps attention should also be drawn to the likely effect of the new Official Edition of the Statutes in Force. In cases where amending legislation has been slotted-in to existing Acts and bound up with them, consolidation may well be unnecessary for quite a long time.

3. Let me turn now to your proposition that since the war consolidation has not kept pace with the output of new statutes, and that we are falling behind. Whether this proposition is wholly justifiable depends on the precise manner in which you measure output. One of the several ways of measuring it is to compare the number of pages of Consolidation Acts with the number

of pages of current legislation. Looking at the annual volumes of statutes in three periods, each of five years, chosen at random, this is what you find: —

| | | *Consolidation Acts* | *Current Legislation* |
|---|---|---|---|
| 1935-39 | (excluding Vol. II of 1939 which is emergency legislation) | 1,558 | 4,347 |
| 1950-54 | | 1,843 | 2,658 |
| 1964-68 | | 2234 | 5774 |

Not included in these numbers are the Consolidated Fund and Appropriation Acts: nor, in the year 1936, the reprinted Government of India Act and Government of Burma Act. On the other hand, some statutes which re-wrote the law, like the Factories Act 1937 and the Mines and Quarries Act 1954, have been treated as current legislation, although they might well have been treated as consolidation.

You will observe that in the 1930s the proportion of consolidation to current legislation was something like 1:3, whereas in the early 1950s it was about 2: 3. Admittedly, in the 1960s the ratio dropped to 2: 5, but it should be borne in mind that the consolidation in 1965 of the Rules of the Supreme Court was a considerable undertaking and achievement. During the years 1966-68 the Law Commission maintained the proportion of 2: 5 (1,947: 3,508), despite the fact that the available draftsmen had been engaged not only in consolidation but also on law reform and statute law revision.

Yet another way of measuring output is to establish what can be achieved in a single year. Taking the best years since 1936, the picture (still in terms of pages) is as follows: —

| | *Consolidation Acts* | *Current Legislation* |
|---|---|---|
| 1936 | 918 | 1,414 |
| 1952 | 923 | 510 |
| 1965 | 615 | 667 |
| 1967 | 662 | 716 |

It seems to us that no matter whether you look at the first or the second set of numbers, the record of consolidation since the war is a fairly respectable one.

I ought to add that the year which has just ended was a lean one because the draftsmen had been doing law reform work and, at the same time, preparing big consolidations for 1970, in which year we hope to produce some 1,400 pages of Consolidation Acts. If we do, the output will represent an all-time record in terms of pages and a considerable achievement also in terms of subjects, for the list will, if all goes well, include the following: Income and Corporation Taxes; - Taxes Management; Town and Country Planning; Magistrates' Courts; Guardianship of Minors; a further instalment of Road Traffic; and Vehicles Excise.

4. This picture would not be complete if I did not point out that, as we go on, we are learning more and more about the possibilities of consolidation by virtue of a practice which is now established. What I am referring to is the practice whereby the draftsmen concerned with current legislation who, of course, acquire a very good knowledge of all the statute law related to their respective Bills* do, about the time these Bills receive the Royal Assent, report to us whether, in their opinion, there is a need for the consolidation

of the statute law concerned. We find that this practice is of considerable help to us in locating, in the light of current legislation, areas where consolidation is both desirable and possible.

5. Finally, let me say a few words about your suggestion that most of the consolidation work should be entrusted to practising barristers after a brief training course.

On this we cannot go with you all the way. It may well be that the skills required for consolidation are on the whole less demanding than those needed for current legislation; but it is equally true that even consolidation requires the mastery of certain techniques which are not easily or quickly acquired— *e.g.* the art of piloting Consolidation Bills through the Joint Select Committee; the ability of spotting amendments which are capable of being put through under the Consolidation of Enactments (Procedure) Act 1949; and the special technique of operating a more recent procedure of " consolidation with Law Commission amendments." Equally, one must bear it in mind that large consolidations may take a year and sometimes more than a year to prepare, and it is difficult to see how practising members of the Bar could meet the demands that work of this kind would make on their time.

For these reasons, it would be too optimistic for us to plan ahead on your assumption that *most* of the consolidation work can be farmed out to practising barristers, but we are quite ready to explore how Consolidation Bills of a modest size would fare at the hands of practitioners, and we propose to try this out experimentally by handing over a suitable Consolidation Bill or two to a practitioner. The cost of the experiment will not be insignificant. The practitioner will want to be paid for the considerable amount of time that he will have to devote to the work, often on days which do not suit the requirements of his practice; and there enters into the costing also the time that a professional draftsman will have to spend on training and supervising the work of the practitioner.

Be that as it may, we will embark upon this experiment as soon as opportunity offers.

Please do not hesitate to let me know if you find yourself in disagreement with the line of arguments put forward in this letter. On the ultimate objective of consolidating as rapidly as possible everything that merits consolidation there is, of course, no disagreement between your Society and the Law Commission. But I have felt it incumbent upon me to speak to you quite frankly about the severe limitations that the realities of the situation impose upon our choice of ways and means.

Our very sincere thanks once more for your most helpful and stimulating letter.

## LETTER FROM THE STATUTE LAW SOCIETY TO SIR LESLIE SCARMAN

DATED JULY 31, 1970

The Council of the Statute Law Society have asked me to thank you for your letter of February 9, 1970, which I acknowledged in February. They have also asked me to say how much they appreciate the care and thought which the Commission have so evidently given to our letter to you of October 1969.

The Council would like to take advantage of your kind invitation to let you know if they had any disagreement with the line of argument put forward in your letter. In doing so, we hope you will not think this reflects any lack of appreciation of your reply but rather the reverse. I am sorry to be so long in replying but you will understand that it necessarily takes us some time to

collect the opinions of Council members who have heavy commitments and can give only a small part of their time to the Society's work.

The Council are disappointed to see that your letter does not explicitly accept the statement in the third paragraph of my letter of last October that "We understand that it is the view of the Law Commission that ideally there should be a single consolidated Act for each subject about which Parliament has legislated." It would be helpful to us if you can say whether this statement is correct. If it is not, the Council would like to have the opportunity to take up the discussion at an earlier point, since this issue is bound to be of direct relevance to the work of the Stow Hill Committee. For the moment, the rest of my letter is written on the assumption that the quotation does represent the Law Commission's view and examines the difficulties mentioned in your letter.

Paragraph I of your letter deals with our suggestion that a scheme for comprehensive legislation should be drawn up, with a list of future consolidated Acts, indicating which existing Acts would be included in each title. We appreciate and understand the difficulties which face the Commission but we very much hope it will prove practicable to draw up such a scheme before long. As you know, we had hoped that this could have been done in conjunction with the new Edition of Statutes in Force. Your letter seems to suggest that any prearranged order or priorities might be upset by the publication of this new edition. The Council believe that any such difficulty could be Overcome by co-ordination of the Law Commission's work with that of the editors of the new edition. We feel sure that all those concerned in the official production and publication of our statute law would wish to look on themselves and no doubt the public to look upon them as a team acting together in all respects.

The Council recognise that supervening legislation will call for modifications in a long term consolidation programme. They hope, however, that the Law Commission may agree on reconsideration that this should not be a reason for dismissing the idea of such a programme. We believe that such difficulties can be met and would be glad to examine or discuss this point further if the Law Commission are not persuaded of our view. We consider very much the same can be said about the possible lack of Parliamentary Counsel. Indeed, it seems to us that if such an objection were to prevail it would be seen to be treating the limitations of bur present position as permanent limitations. Rather we think and urge that such a limitation should be viewed as calling for a remedy in which the powers and capacity of the Law Commission can be all important. You will, I am sure, have noticed in this context that our proposals specifically referred to the inclusion in our scheme of an indication of the manpower requirements and other resources required, together with suggestions as to how this might be met, *e.g.* by recruitment and training of draftsmen.

We understand your suggestion that the time of departmental lawyers will often be occupied "by more pressing business." This Council is acutely aware that this kind of comment is often made by Departments. Once again we would like to suggest that this situation will never be improved (and we believe it can and should be improved) unless the Law Commission is willing to press the proposition that there can rarely be more pressing business at this time than the production of a new Statute Book on satisfactory and scientific lines. If necessary, should not more departmental lawyers be recruited for this work? We suggest that the cost would be met many times over by consequential savings in time, and improvements in the efficiency of, statute users including, no doubt, that of the Departments themselves.

You will gather from the foregoing that, in response to your paragraph 2, the Council would wish most strongly to urge on the Law Commission that the limiting factors, whose nature we fully realise, should not be regarded as so insuperable as to make it impossible to proceed. The experience of both the members of this Society and Council and the response so far to the work of the Heap and Stow Hill Committees leads us to challenge the view that consolidation may in some cases be made unnecessary by lack of public and professional interest and demand. We consider this view will become increasingly unfounded. We believe that there is a growing body of opinion that considers it vital that a nation of this importance and advancement should have its laws in a tidy and coherent state.

On your paragraph 3, we readily accept that the record of consolidation is fairly respectable. We would, however, like to urge on the Law Commission the view that it is important to seek a dramatic improvement in that position.

Your paragraph 4 leads us to wish that draftsmen who have become familiar with a branch of statute law, while preparing current legislation, could go ahead and prepare consolidation while the material was fresh in their minds. To this, no doubt, the answer of lack of draftsmen will be advanced. Again, we would wish to urge the need for an ambitious programme of training and recruitment.

In your paragraph 5 you again postulate the limiting factors. We do not want to repeat what we have said already but we would like to assert in this context that if there were a steady flow of work from the Law Commission the Bar would soon adapt to this and the necessary number of practitioners would adjust their practices accordingly. The Bar has often shown its capacity to adapt in this way in the past and we believe it would again in this regard. We believe, too, that if the Bar Council were approached they might well respond to a request for help in building up a speciality Bar practice in this way. There are many barristers who wish to retain their independence and would not, therefore, be willing to become civil servants but who would be interested in drafting work. By bringing people like this in to reinforce Parliamentary Counsel there could probably in the medium term, and certainly in the long term, be a solution to the shortage of draftsmen.

We very much hope in the light of the views expressed above the Law Commission will reconsider this matter. In making these further comments, we are fully conscious of the problems involved and, as T hope you will accept, the Council make these comments as experienced practical men. They firmly believe that the lead which the Law Commission can give in solving several of the most important problems is of great importance. Most important of all, the Council believe that it is of paramount importance that the Law Commission should make it clear that those responsible for statute law in this country should aim at an ultimate embodiment of law (with the sole exception of certain historic Statutes) in an orderly and carefully worked out set of titles with one Act for each title.

### LETTER FROM SIR LESLIE SCARMAN TO THE STATUTE LAW SOCIETY DATED FEBRUARY 10, 1971

The Law Commission have now had an opportunity of studying and discussing your letter of July 31, and they have asked me to say how grateful they are to you for setting out with such clarity the points on which we are not yet in agreement. In carrying out our function of deciding what statutes should be consolidated and when, we should like, of course, to take advantage

of an exchange of views with a body whose objects so closely resemble our own. I am only sorry that it has taken so long to let you have an answer; the reason for the delay has been a series of more urgent matters calling for decisions by the Law Commission at a time when most of my own time has had to be given to my Tribunal in Ulster.

It seems to us that what you are really urging us to do is to undertake a general review here and now of all the statutes and rearrange their contents under a list of " subjects," for each of which we should declare it to be our intention to produce a single Consolidation Bill. We cannot agree that this would be a useful way of proceeding. At any given time you can discern a number of subjects, for each of which it is for practical importance to have all the relevant statutory provisions set out in one statute (or sometimes in a few consolidating statutes). But even if a series of statutes on a particular subject seems to call for consolidation in this way, you have also to ask whether the subject in question is likely in the near future to undergo major statutory change; if this is likely to happen, your work may be frustrated and, in so far as it has taken up time which might have been devoted to other consolidations, you have only succeeded in slowing down the ultimate attainment of a Statute Book consolidated according to its subject-matter.

It is true that we agree that " ideally there should be a single consolidated Act for each subject about which Parliament has legislated," but in our view this proposition is so vague as to be not very meaningful. It is like disapproval of sin; everyone can subscribe to it without necessarily being in agreement with each other about anything else. The trouble is that there is nothing to decide what constitutes a subject. Is the Supreme Court of Judicature a subject? We should certainly not wish to be understood as wanting to perpetuate such a union of different topics in a single Act as you find in the 1925 Consolidation Act. In cases of this kind classification is an essential step. The scope of your topic should be decided by the convenience of the consumer. And the convenience of the consumer will be in a large part catered for anyhow when the new edition of the statutes arranged under subject headings is published, since all the Acts on one subject will be in the same cover.

This is a policy that will guide us in framing our Second Programme on consolidation, which was foreshadowed in my last letter and which we hope to produce in the course of the coming months. We think that this document will perform a more useful function then the comprehensive scheme suggested at the bottom of page 2 of your letter.

I now turn to deal with some of the specific points raised in your letter. On page 3 at the top you suggest that there should be closer co-operation with those preparing the new edition of the Statutes in Force. In fact, I think that this co-operation is already satisfactory. I am the Chairman of the Editorial Board which meets regularly in Conquest House; the Editorial Director, Mr.-Michael Dunlop, has his office here and is in constant touch with the Commissioners and with the legal staff. From him we receive a constant flow of suggestions for consolidation and statute law revision.

At the top of the fourth page of your letter, you call upon the Law Commission to exert its powers to secure an increase in the number of Parliamentary Counsel (and on the next page for an increase in the number of departmental lawyers). You will appreciate, of course, that the Law Commission have no powers though they can on occasions seek to persuade, but they are generally in sympathy with your call for an increase in the number of draftsmen and departmental lawyers. Nevertheless, the problem is very complex and not limited to considerations of money only.

You go on to say that there can “ rarely be more pressing business at this time than the production of a new Statute Book on satisfactory lines.” We should have difficulty, however, in persuading the Government that departmental lawyers should be diverted from work on the Courts Bill, the Industrial Relations Bill and the many other activities of Government in order to assist the process of consolidation. On a realistic assessment we doubt whether, by any exertions, we could achieve much more than we now do towards the speeding up of the preparation of a satisfactory Statute Book. We do not regard the limiting factors, whose nature you say you fully recognise, as rendering progress impossible; but we are only too well aware that they cannot be wished out of existence.

Later in your letter you say that “ if there were a steady flow of work from the Law Commission the Bar would soon adapt to this and the necessary number of practitioners would adjust their practices accordingly.” Frankly, I feel that remuneration for this work should be linked equitably to the rates paid to newly recruited members of the Office of the Parliamentary Counsel and this would probably not be such as to attract the brightest young members of the Bar. Moreover, a good deal of disruption of a practitioner’s engagements would be inevitable; for those with Court commitments it would be particularly inconvenient to give priority to appearances before the Joint Select Committee and other essential meetings. But the most important factor is the time that would be taken in learning the craft. One could not expect the Treasury to agree to pay a practitioner for his training unless they could be assured that that practitioner would continue for a considerable period to be available to draft. It would be clearly uneconomic to train him to produce no more than one Bill or a number of small Bills over a short period. Even more important is the consideration that the time of the existing Parliamentary draftsmen would be diverted from drafting Bills to giving instruction. It might be possible to find a teacher of law to whom the terms of remuneration would be more attractive and who would have more time to give both during training and for a number of years thereafter. This is a possibility that is being explored but we realise it is unlikely to produce the “ dramatic improvement “ which you have called for and which we would wish to see. It must be remembered that junior members of the Office of Parliamentary Counsel are not entrusted with large consolidations where difficult questions of structure arise and one would have to wait for a considerable time before recruits from outside the Office, working part-time, could handle any but small consolidations or perhaps occasionally medium-sized ones. As they advanced in their profession many of them would feel constrained to abandon this work.

We should like to express our gratitude for the interest that you are taking in this difficult and complex matter, and to wish the Statute Law Society well in its work.

## APPENDIX C

## ILLUSTRATION OF THE PROPOSED TEXTUAL AMENDMENT SYSTEM

The following is a simple illustration of how the textual amendment system we propose would work. Part A gives the provisions of the principal Act which are to be amended. Part B gives the text of the amending Bill. Part C is the type of Explanatory Memorandum in use at present, which states

the broad effect of the Bill. Part D is the new type of Textual Memorandum which we propose as an additional aid and which could be printed after the Explanatory Memorandum on the front of the Bill or as a separate document.

## PART A—THE PRINCIPAL ACT

The principal Act is the Betting, Gaming and Lotteries Act 1963. It is a consolidation measure actually in the U.K. Statute Book. The model Bill seeks to amend the Act for the first time and in particular section 47 (1). In addition to section 47 (1) the principal Act would, under the system proposed, also contain the provisions reproduced below as section 57 and Schedule 8 (in place of the actual section 57 and Schedule 8).

### BETTING, GAMING AND LOTTERIES ACT 1963

*Restriction of certain prize competitions*

47.—(1) It shall be unlawful to conduct in or through any newspaper, or in connection with any trade or business or the sale of any article to the public—

(a) any competition in which prizes are offered for forecasts of the result either—

(i) of a future event; or

(ii) of a past event the result of which is not yet ascertained or not yet generally known;

*(b)* any other competition success in which does not depend to a substantial degree upon the exercise of skill;

Provided that nothing in this subsection with respect to the conducting of competitions in connection with a trade or business shall apply in relation to sponsored pool betting or in relation to pool betting operations carried on by a person whose only trade or business is that of a bookmaker.

. . . .

*Commencement, etc., provisions*

57. This Act shall have effect subject to the provisions contained in Schedule 8.

. . . .

### SCHEDULE 8

*Commencement and Transitional Provisions and Repeals*

Subject to the provisions of this Schedule, this Act has effect from 1st January, 1964.

## PART B—THE AMENDING BILL

### *BETTING, GAMING AND LOTTERIES (AMENDMENT) BILL*

A BILL TO amend the Betting, Gaming and Lotteries Act 1963 so as to legalise the running in or through any newspaper of the prize competition described as " spot the ball" and by similar names.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the

advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: —

*Amendment of s. 47* (1) *of Act* 1963 c. 2

1. Section 47 (1) of the Betting, Gaming and Lotteries Act 1963 (hereinafter referred to as " the principal Act") is hereby amended—

*(a)* by inserting after the words "Provided that" a dash, followed on the next line by the words

*"(a)* nothing in this subsection with respect to the conducting of competitions in or through any newspaper shall apply in relation to any ' spot the ball' competition, that is to say a competition (by whatever name known) where, in connection with the publication of a photograph of part of a football match from which the ball has been deleted, prizes are offered for indicating whereabouts on the photograph the ball was, or was most likely to have been, whether success is determined by reference to its actual position on the original photograph or the opinion, as to that position, of a group of persons having skill in football; and ";

*(b)* by inserting immediately after the words inserted by paragraph (a) above and on the following line the letter " *(b)."*

*Amendment of Sched.* 8 *of* 1963 *Act*

*2.* Schedule 8 to the principal Act is hereby amended in the manner specified in the Schedule to this Act.

*Short title*

3. This Act may be cited as the Betting, Gaming and Lotteries (Amendment) Act 1971.

## SCHEDULE

### *COMMENCEMENT PROVISION*

In Schedule 8 to the principal Act the following shall be inserted at the end—

| *Section of this Act* | *Subsection* | *Provision* | *No. of Amending Act* |
|---|---|---|---|
| 47 | (1) | Proviso *(a)* applies from 1st January, 1972 | 1971 c. 48 |

## PART C—EXPLANATORY MEMORANDUM

This Bill reverses the decision of the Queen's Bench Divisional Court in *Ladbrokes (Football) Ltd. and Others* v. *Perrett* on November 4 1970 when " Spot the Ball" competitions in newspapers were held to be illegal as contravening section 47 (1) (a) of the Betting, Gaming and Lotteries Act 1963. The Divisional Court held that since section 47 (1) *(a)* covered forecasts of future events of *any* description it applied just as much where there was a substantial

exercise of skill as where the forecast depended on pure chance. " Spot the Ball" competitions have been run by many national and local newspapers for at least thirty-six years, and this bill would enable such competitions to continue in the future.

*Clause* 1 amends the proviso to section 47 (1) by inserting an exception for " spot the ball" competitions. It gives a definition of these competitions. The exception only applies to newspapers (defined by section 55 of the 1963 Act as also including journals, magazines and other periodical publications). Competitions run in any other way for the profit of a trade or business are not legalised by the Bill.

*Clause* 2 amends Schedule 8 to the 1963 Act by providing for the amendment made by the Bill to come into operation on January 1, 1972.

## PART D—TEXTUAL MEMORANDUM

The following is the text of section 47 (1) of the Betting, Gaming and Lotteries Act 1963: —

"It shall be unlawful to conduct in or through any newspaper, or in connection with any trade or business or the sale of any article to the public—

*(a)* any competition in which prizes are offered for forecasts of the result either—

(i) of a future event; or

(ii) of a past event the result of which is not yet ascertained or not yet generally known;

*(b)* any other competition success in which does not depend to a substantial degree upon the exercise of skill;

Provided that nothing in this subsection with respect to the conducting of competitions in connection with a trade or business shall apply in relation to sponsored pool betting or in relation to pool betting operations carried on by a person whose only trade or business is that of a bookmaker."

As proposed to be amended by Clause 1 of the Bill, the proviso to section 47 (1) of the Act would read as follows, the additional matter being italicised— "Provided that—

*(a) nothing in this subsection with respect to the conducting of competitions in or through any newspaper shall apply in relation to any 'spot the ball' competition, that is to say a competition (by whatever name known) where, in connection with the publication of a photograph of part of a football match from which the ball has been deleted, prizes are offered for indicating whereabouts on the photograph the ball was, or was most likely to have been, whether success is determined by reference to its actual position on the original photograph or the opinion, as to that position, of a group Of persons having skill in football; and*

*(b)* nothing in this subsection with respect to the conducting of competitions in connection with a trade or business shall apply in relation to sponsored pool betting or in relation to pool betting operations carried on by a person whose only trade or business is that of a bookmaker."

*(Note:* The amendment to Schedule 8 is not mentioned in the Textual Memorandum because it is self-explanatory, and is in any case explained in the Explanatory Memorandum.)

## APPENDIX D

## EXAMPLE OF JAMAICA SCHEDULE

The following example is taken from the Income Tax Law, 1954 (59 of 1954) of Jamaica as amended.

(Section 81) SIXTH SCHEDULE

*Transitional and Commencement Provisions and Repeals*

*Note*

This Schedule includes amendments and repeals made to this Law after 31st December, 1964, but not those made earlier. It does not include amendments the commencement date of which is indicated in the amendment itself, or is immaterial.

| Section of this Law | Sub-section | Provision | No. of amending Act |
|---|---|---|---|
| 2 | (1) | The definitions of " agricultural company "," beneficiary ", " body corporate subject to company profits tax", "close company", " close investment company ", " connected persons ", " control ", " director ", " distri- bution ", " immediate relative ", " intermediate company", " intermediate investment com¬pany ", " investment company ", " investment income ", " Jamaica Stock Exchange ", " new consideration ", " open company ", " preference capital", " preference dividend ", " principal member", " qualified unit trust scheme", " recognised stock exchange ", " relative ", " security ", " shares", " trading and estate income ", " unit holder " and " voting power " apply from 1st January, 1970. The definition of " earned income " applies from 1st January, 1972. The definition of " statutory income" applies from 1st January, 1971. The definition of " Appeal Board " is repealed from the date of commencement of the Judicature (Revenue Court) Act, 1971. | 30 of 1970<br>34 of 1970<br>18 of 1971<br>29 of 1971<br>37 of 1971 |
| | (3) | The subsection applies from 1st January, 1970. | 30 of 1970 |
| | (4) | The subsection applies from 1st January, 1970 | 34 of 1970 |
| 3 | (1) | The power to appoint more than one Deputy Commissioner applies from 1st April, 1967. | 4 of 1968 |
| | (1A) | The subsection shall be deemed always to have had effect. | 18 of 1971 |
| | (1B) | The subsection shall be deemed always to have had effect. | 18 of 1971 |
| 5 | (1) | In paragraph *(a)* (iii), the words from " or from the provision" to the end apply from 1st January, 1970. | 30 of 1970 |

| Section of this Law | Sub-section | Provision | No. of amending Act |
|---|---|---|---|
| | | In sub-paragraph *(b)* (i) the words in parenthesis after the word " dividends" apply for the year 1970 and subsequent years.<br>Sub-paragraph *(b)* (iv) applies for the year 1970 34 of 1970 and subsequent years.<br>In paragraph (c), the words from " whether 30 of 1970 legally due or voluntary" to " the recipient thereof)" and paragraph (iv) of the proviso apply to payments made on or after 11th June, 1970. | 34of 1970 |
| | (2) | The subsection applies from 1st January, 1970. | 30 of 1970 |
| | (3) | The subsection applies from 1st January, 1970. | 30 of 1970 |
| 6 | | The section (except subsection (2A)) applies for the year 1968 and subsequent years. | 29 of 1969 |
| | (2A) | The subsection applies from 1st January, 1970. | 30 of 1970 |
| 6A | | The section applies to a cessation occurring after 31st December, 1968. | 29 of 1969 |
| 6B | | The section applies to a cessation occurring after 31st December, 1968. | 29 of 1969 |
| 6C | | The section applies to a cessation occurring after 31st December, 1968. | 29 of 1969 |
| | (3) | The subsection is repealed. | 18 of 1971 |
| 6D | | The section applies to a cessation occurring after 31st December, 1968. | 29 of 1969 |
| | (2) | The subsection is repealed. | 18 of 1971 |
| 6E | | The section applies to a cessation occurring after 31st December, 1968. | 29 of 1969 |
| 7 | | Paragraph (*a*) applies from 28th June, 1965.<br>The proviso to paragraph (1) applies from 1st January , 1970<br>Paragraph (*q*), in relation to the United Kingdom or Canada shall be deemed always to have had an effect, and in relation to any other country applies for the year 1971 and subsequent years.<br>Paragraph (*u*) applies to income from an approved hotel enterprise or approved extension of a hotel from 21st March, 1968.<br>Paragraph (*v*) applies from 1st January, 1971.<br>Paragraph (*w*) applies from 1st January, 1970. | 23 of 1965<br>30 of 1970<br>18 of 1971<br>16 of 1968<br>18 of 1971<br>30 of 1970 |

## APPENDIX E

## EXAMPLE OF CANADIAN BILL[1]

| | |
|---|---|
| 3rd Session, 28th Parliament, 19-20 | 3e Session, 28e Legislature, 19-20 |
| Elizabeth II, 1970-71 | Elizabeth II, 1970-71 |
| THE HOUSE OF COMMONS OF CANADA | CHAMBRE DES COMMUNES DU CANADA |
| BILL C-243 | BILL C-243 |
| An Act to amend the Judges Act and the Financial Administration Act | Loi modifiant la Loi sur les juges et la Loi sur Padministration financiere |
| Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows: | Sa Majeste, sur l'avis et du con-sentement du Senat et de la Chambre des communes du Canada, decrete: |
| JUDGES ACT | LOI SUR LES JUGES |
| *R.S., c.* 159[2] | *S.R., c.* 159 |
| 1. Paragraph *(b)* of section 2 of the *Judges Act* is repealed and the following substituted therefor: | 1. L'alinea *b)* de l'article 2 de la *Loi sur les juges* est abroge et remplace' par ce qui suit: |
| *" Judge"* | *"juge"* |
| *"(b)* "judge" includes a chief justice, president, supernumerary judge, senior judge, chief judge and junior judge; and " | *" b) "* juge " comprend un juge en chef, un president, un juge sur-numeraire, un juge doyen, un premier juge et un juge *junior;* et" |
| 2. Sections 4 and 5 of the said Act are repealed and the following substituted therefor: | **2.** Les articles 4 et 5 de ladite loi sont abroges et remplaces par ce qui suit: |
| *Salaries of judges of Supreme Court of Canada* | *Traitements des juges de la Cour supreme du Canada* |
| "4. The salaries of the judges of the Supreme Court of Canada are as follows: | **"4.** Les traitements des juges de la Cour supreme du Canada sont les suivants: |
| Per annum | Par amide |
| *(a)* The Chief Justice of Canada ........................ $47,000.00 | *a)* Le juge en chef du Canada............................ $47,000.00 |
| *(b)* Eight puisne judges, Each....................................42,000.00 | *b)* Huit juges puinds, Chacun................................42,000.00 |

[1] These extracts from a Canadian Bill are included solely to demonstrate the Canadian method of textual drafting, and do not purport to set out the substance of the Bill completely or in any detail.
[2] The shoulder headings in this version appear in the original as side-notes.

| RECOMMENDATION | RECOMMENDATION |
|---|---|
| His Excellency the Governor General has recommended to the House of Commons the present measure to amend the Judges Act | Son Excellence le Gouverneur general a recommandi a la Chambre des communes la presente mesure modifiant la Loi sur les juges |
| *(a)* to increase the salaries of judges of the Supreme Court of Canada, the Federal Court of Canada, the superior and district and county courts of the provinces, and the judges' of the Territorial Courts of the Yukon Territory and of the Northwest Territories; | *a)* pour augmenter les tfaitements des juges de la Cour supreme du Canada, de la Cour f6derale du Canada, des cours superieures et des cours de district et de comti des provinces, ainsi que des juges des cours territoriales du tefritoire du Yukon et des territoires du Nord-Ouest; |
| (6) to provide salaries for five additional judges of the High Court of Ontario, three additional judges of the Court of Queen's Bench of Quebec, three additional judges of the Supreme Court of British Columbia, and one additional judge of the county courts of Nova Scotia; | *b)* pour prevoir les traitements de cinq nouveaux juges de la Haute Cour de l'Ontario, de trois nouveaux juges da la Cour du Banc de la Reine du Quebec, de trois nouveaux juges de la Cour supreme de la Colornbie-Britannique et d'un nouveau juge des cours de comtd de la Nouvelle-Ecosse; |
| *(c)* to provide for supernumerary judges and for their salaries; | *c)* pour prevoir la nomination de juges surnumeraires ainsi que les traitements qui leur seront verses; |
| *(d)* to provide for every judge in receipt of a salary under this Act, increase in the additional salary paid as compensation for extra-judicial services performed at the request of the Government of Canada or the government of a province, and for incidental expenditures required in the execution of his office; | *d)* pour prevoir une augmentation du traitement supplementaire payable a chaque juge qui recoit un traitement en vertu de la preserite loi, a titre d'indem-nit6 pour les services extra-judiciaires ac-complis a la demande du gouvernement du Canada ou du gouvernement d'une province, et pour les frais accessoires in-herents a l'exercice des fonctions de ces juges; |
| (d) to provide for the payment to every judge of the Federal Court of Canada and of the Territorial Courts of the Yukon Territory and the Northwest Territories, an additional allowance as compensation for special incidental expenditures inherent in the exercise of his office as judge; | *d)* pour prevoir le versement a chaque juge de la Cour federate du Canada et des cours territoriales du territoire du Yukon et des territoires du Nord-Ouest, d'une indemnity supplementaire en declommage-ment des frais accessoires particuliers in-herents a l'exercice des fonctions de ces juges; |
| (/) to reduce the age at which a judge may be granted an annuity; | *e)* pour abaisser l'age auquel jl peut 6tre accorde une pension *h.* un juge; |
| *(g)* to provide for the annuity to be payable to a supernumerary judge where prior to becoming a supernumerary judge he held the office of Chief Justice or Associate Chief Justice; | *f)* pour prevoir l'octroi d'une pension a un juge surnumeraire si, avant de devenir juge surnumeraire, il exercait les fonctions de juge en chef ou juge en chef adjoint; |
| *(h)* to reduce the age at which a judge of the county court shall be compulsorily retired; | *g)* pour abaisser l'age auquel un juge d'une cour de comt6 doit Stre mis a sa retraite d'office; |
| *(i)* to provide for an annuity to the widower of a judge and to the children of a judge who dies while holding office; | 0 pour prevoir une pension au veuf d'une femme juge et a chaque enfant d'un juge qui decede pendant qu'il occupe ses fonctions; |
| *(j)* to establish the Canadian Judicial Council and to provide that it may engage counsel and other persons, | *f)* pour creer le Conseil canadien de la magistrature et retenir les services d'un conseiller juridique et d'autres personnes, |
| and to amend the Financial Administration Act to increase the salary of the Auditor General. | et, en outre, pour modifier la Loi sur l'ad-ministration financiere et augmenter le traitement de l'auditeur general. |

| | |
|---|---|
| *Salaries of judges of Federal Court of Canada* | *Traitements des juges de la Cour federate du Canada* |
| 5. The salaries of the judges of the Federal Court of Canada are as follows: | 5. Les traitements des juges de la Cour federale du Canada sont les suivants: |
| Per annum | Par annee |
| (a) The Chief Justice of the Federal Court of Canada ......................$39,000.00 | *a)* Le juge en chef de la Cour federale du Canada ............. .......................$39,000.00 |
| *(b)* Three other judges of the Federal Court of Appeal, each .. ..................35,000.00 | b) Trois autres juges de la Cour d'appel federale, chacun........................ 35,000.00 |
| (c) The Associate Chief Justice of the Federal Court of Canada...........39,000.00 | c) Le juge en chef adjoint de la Cour federale du Canada ...................39,000.00 |
| (d) Seven other judges of the Trial Division..................................35,000.00" | d) Sept autres juges de la Division de premiere instance, chacun.......35,000.00' |
| 3. Section 7 of the said Act is repealed and the following substituted therefor: | 3. L'article 7 de ladite loi est abrog£ et remplace par ce qui suit: |
| *Salaries of judges of Supreme Court of Ontario* | *Traitements des juges de la Cour supreme de I'Ontario* |
| " 7. The salaries of the judges of the Supreme Court of Ontario are as follows: | " 7. Les traitements des juges de la Cour supreme de l'Ontario sont les suivants: |
| Per annum | Par annee |
| *(a)* The Chief Justice of Ontario .... $39,000.00 | *a)* Le juge en chef de l'Ontario .. $39,000.00 |
| *(b)* Nine Justices of Appeal, each .. 35,000.00 | *b)* Neuf juges d'ap-pel, chacun . ..35,000.00 |
| (c) The Chief Justice of The High Court ............. 39,000.00 | *c)* Le juge en chef de la Haute Cour.................39,00000 |
| *(d)* Thirty-one other judges of the High Court, each__ ......... 35,000.00" | d) Trente et un autres juges de la Haute Cour, chacun........... 35,000.00 " |
| 4. Sections 9 to 19 of the said Act are repealed and the following substituted therefor: | 4. Les articles 9 a 19 de ladite loi sont abroges et remplaces par ce qui suit: |

| EXPLANATORY NOTES | NOTES EXPLICATIVES |
|---|---|
| *Clause* 1: This amendment, which adds the underlined words, is consequential on the amendments proposed in clause 6.<br><br>*Clauses* 2 *to* 5: The purpose of these amendments is to revise judicial salaries and to provide salaries for<br><br>(a) five additional judges of the High Court of Ontario;<br>(6) three additional judges of the Court of Queen's Bench of Quebec;<br>(c) three additional judges of the Supreme Court of British Columbia; and<br>(rf) one additional judge of the county courts of Nova Scotia.<br><br>At the present time the salaries of the judges are as follows:<br><br>(1) Chief Justice of Canada ............... $40,000.00<br>(2) Puisne Judges of the Supreme Court 35,000.00<br>(3) President of the Exchequer Court 32,000.00<br>(4) Puisne Judges of the Exchequer Court ................. 28,000.00<br>(5) Chief Justices of superior trial courts and courts of appeal in the provinces ............ 30,000.00<br>(6) Puisne judges of superior trial courts and courts of appeal in the provinces ............ 26,000.00<br>(7) District and county court judges ...... 19,000.00<br><br>The salaries revised by these clauses would be paid on and after January 1, 1972. During the year 1971 the salaries would be revised in the manner set out in Schedule A. | *Article* 1 *du bill:* Cette modification, qui ajoute les mots soulignes, decoule des modifications proposees a l'article 6 du bill.<br><br>*Articles 2 a 5 du bill:* Ces modifications ont pour objet de reviser les traitements des juges et de prevoir les traitements<br><br>*a)* de cinq nouveaux juges de la Haute Cour de l'Ontario,<br>*b)* de trois nouveaux juges de la Cour du Banc de la Reine de Quebec,<br>c) de trois nouveaux juges de la Cour supreme de la Colombie-Britannique, et<br>*d)* d'un nouveau juge des cours de comte de la Nouvelle-Ecosse.<br><br>Actuellement, les traitements des juges sont les suivants:<br><br>(1) Juge en chef du Canada ................ $40,000.00<br>(2) Juges puines de la Cour supreme .. 35,000.00<br>(3) President de la Cour de l'Echiquier .................... 32,000.00<br>(4) Juges puines de la Courdel'Echiquier 28,000.00<br>(5) Juges en chef des cours superieures d'instruction et d'appel des provinces ................. 30,000.00<br>(6) Juges puines des cours superieures d'instruction et d'appel des provinces ................. 26,000.00<br>(7) Juges des cours de district et de comte 19,000.00<br><br>Les traitements que revisent ces articles du bill seraient verses a partir du 1er Janvier 1972. Pour l'an-nee 1971, les traitements seraient revises de la maniere indiqu6e *k* l'annexe A. |
| *Salaries of judges of Court of Queen's Bench* | *Traitements des juges de la Cour du Banc de* |

| | |
|---|---|
| *and Superior Court of Quebec* | *la Reine et de la Cour superieure du Quebec* |
| "9. The salaries of the judges of the Court of Queen's Bench and of the Superior Court in and for the Province of Quebec are as follows: | "9. Les traitements des juges de la Cour du Banc de la Reine et de la Cour supe'rieure dans la province de Quebec et pour ladite province sont les suivants: |
| Per annum | Par annee |
| (a) The Chief Justice of Quebec __ $39,000.00 | *a)* Le juge en chef du Quebec..... $39,000.00 |
| *it>)* Fourteen puisne the 35,000.00 judges of Court of Queen's Bench, each .. | *b)* Quatorze juges puines de la Cour du Banc de la Reine, chacun......... 35,000.00 |
| (c) The Chief Justice of the Superior Court ............ 39,000.00 | c) Le juge en chef de la Cour superieure..... 39,000.00 |
| (d) The Associate Chief Justice of the Superior Court ............ 39,000.00 | *d)* Le juge en chef adjoint de la Cour superieure 39,000.00 |

*[Note: A* portion of Clause 4 has been omitted.]

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| 5. (1) Sections 2 to 4 of this Act shall come into force on the 1st day of January, 1972. | 5. (1) Les articles 2 a 4 de la presente loi entreront en vigueur le 1er Janvier 1972. |
| (2) For the year 1971, sections 4, 5 and 7 and sections 9 to 19 of the *Judges Act* shall be read in the manner set out in Schedule A. | (2) Pour Pannee 1971, les articles 4, 5 et 7 et les articles 9 a 19 de la *Loi sur les juges* se liront de la maniere indiqu^e a l'annexe A. |
| (3) On the coming into force of the *Federal Court Act,* or of this section, whichever is the later, section 5 of the *Judges Act,* as amended by Schedule B to the *Federal Court Act,* shall be read as follows: | (3) Lors de Pentree en vigueur de la *Loi sur la Cour federale* ou de celle du present article si elle lui est posterieure, Particle 5 de la *Loi sur les juges* modifle par Pannexe B de la *Loi sur la Cour federale* se lira comme suit: |
| " 5. The salaries of the judges of the Federal Court of Canada are as follows: | " 5. Les traitements des juges de la Cour federale du Canada sont les suivants: |
| Per annum | Par annee |
| *(a)* The Chief Justice of the Federal Court of Canada $35,500.00 | *a)* Le juge en chef de la Cour federate du Canada $35,500.00. |

| (b) Three other judges of the Federal Court of Appeal, each .. 31,500.00 | b) Trois autres juges de la Cour d’ap-pel federate,chacun 31,500.00 |
|---|---|
| (c) The Associate Chief Justice of the Federal Court of Canada 35,500.00 | c) Le juge en chef adjoint de la Cour federate du Canada 35,500.00 |
| (d) Seven other judges of the Trial Division, each 31,500.00” | d) Sept autres jugesde la Division de premiere instance, chacun .. 31,500.00” |
| 6. (1) Section 20 of the said Act is repealed and the following substituted therefor: | 6. (1) L’article 20 de ladite loi est abroge et remplace par ce qui suit: |
| *Additional salary* | *Traitement supplementaire* |
| “20. (1) There shall be paid to every judge who is in receipt of a salary under this Act an additional salary of $3,000.00 per annum as compensation for any extra-judicial services that he may be called upon to perform by the Government of Canada or the government of a province, and for the incidental expenditures that the fit and proper execution of his office as judge may require. | “20. (1) II doit etre paye a chaque juge qui reeoit un traitement en vertu de la presente loi un traitement supplementaire de $3,000.00 par annee a titre d’indemnite pour les services extra-judiciaires qu’il peut etre appele a accomplir par le gouvernement du Canada ou le gouvernement d’une province, et en dedommagement des frais acces-soires que peut necessiter la bonne execution de ses fonctions de juge. |
| *Additional allowance* | *Indemnite supplementaire* |
| (2) There shall be paid to every judge of the Federal Court of Canada, the Territorial Court of the Yukon Territory and the Territorial Court of the North-west Territories an additional allowance of $2,000.00 per annum as compensation for special incidental expenditures inherent in the exercise of his office as judge. | (2) II doit etre paye a chaque juge de la Cour federate du Canada, de la Cour territoriale du territoire du Yukon et de la Cour territoriale des territoires du Nord-Ouest une indemnite suppl&nentaire de $2,000.00 par annee en dedommagement des frais accessoires particu-liers inherents a l’exercice des fonctions de ce juge. |
| *Idem* | *Idem* |
| (3) The additional allowance described in subsection (2) shall be deemed not to be a travelling or personal or living expense allowance expressly fixed by this Act. | (3) L’indemnite supplementaire visee au paragraphe (2) est censee ne pas etre une indemnite pour frais de voyage, frais personnels ou frais de subsistance etablie par la presente loi. |

*Clause* 6: Section 20 at present reads as follows:

" 20. (1) There shall be paid to every judge who is in receipt of a salary under this Act, *other than a judge of the Territorial. Court of the Yukon Territory or the Northwest Territories,* an additional salary of $2,000.00 per annum as com-

: pensation for any extra-judicial services that tie may be called upon to perform by the Government of Canada or the government of a province, and for the incidental expenditures that the fit and proper

. execution of his office as judge may

~ require.

(2) Subsection (1) does not apply to

*(a)* a judge who receives from a province any annual or other periodic compensation as judge of a superior or county ■ court, o r - Cfe) a District judge in Admiralty of the Exchequer Court who is not in receipt of a salary under this Act except as such . judge.

(3) There shall be paid to every judge of the Territorial Court of the Yukon Territory or the Northwest Territories an additional salary of $2,000.00 per annum

. *by way of a northern allowance and* as compensation for incidental expenditures *as described in subsection* (1).

(4) This section shall come into force on the 1st day of June, 1967."

The purpose of the amendment to subsection (1) is to increase from $2,000.00 to $3,000.00 the additional salary, payable to every judge who is in receipt of a salary under the *Judges Act.* Subsection (2) would provide for the payment to each judge of the Federal Court of Canada and of the Territorial Courts of the Yukon and Northwest Territories of an additional allowance of $2,000.00 per annum as compensation for special incidental expenditures inherent in the exercise of his office of judge.

*Article* 6 *du bill:* L'article 20 se lit actuellement comme suit:

" 20. (1) II doit etre pay6 a chaque juge qui recoit un traitement en vertu de la presente loi, *autre qu'un juge de la cour territoriale du lerritoire du Yukon ou des territoires du NordrOuest,* un traitement supplementaire de $2,000 par annee a titre d'indemnit£ pour les services extra-judiciaires qu'il peut Stre appete a ac-complir par le gouvemement du Canada ou le gouvernement d'une province, et en declommagement des frais accessoires que peut neeessiter la bonne execution de ses fonctions de juge.

(2) Le paragraphe (1) ne s'applique ni

*a)* a un juge qui recoit d'une province une indemnity annuelle ou autre indemnity periodique a titre de juge d'une cour superieure ou d'une cour de comtfi, ni

*b)* a un juge de district en amiraute' de la Cour de l'Echiquier qui ne recoit pas de traitement en vertu de la preserite loi sauf en cette qualite de juge.

(3) II doit etre paye a chaque juge de la Cour territoriale du territoire du Yukon ou des territoires du Nord-Ouest un traitement supplementaire de $2,000 par ann£e *a titre d'indemnite de residence et* ~ en dedommagement des frais accessoires *decrits au paragraphe* (1).

(4) Le present article entrera en vigueur le ler juin 1967."

La modification apportee au paragraphe (1) a pour objet de faire passer de $2,000 a $3,000 le traitement supplernentaire payable a chaque juge qui recoit un traitement en vertu de la *Loi sur les juges.* Le paragraphe (2) a pour objet de prevoir le verse-ment a chaque juge de la Cour federate du Canada et des cours territoriales du territoire du Yukon et des territoires du Nord-Ouest d'une indemnite supplementaire de $2,000 par annee en dedommagemerit des frais accessoires particuliers inherents a l'exercice des fonctions de ces juges.

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| *Supernumerary judges* 20A.<br><br>(1) Where<br><br>*(a)* the legislature of a province has enacted legislation establishing for each office of judge of the superior court or courts of the province the additional office of supernumerary judge of the court or courts, and<br><br>*(b)* a judge of a superior court of a province described in paragraph (a) has notified the Minister of Justice of Canada and the Attorney General of that province of his election to give up his regular judicial duties and hold office only as a supernumerary judge,<br><br>that judge shall thereupon hold only the office of supernumerary judge of that court and there shall be paid to him the salary annexed to that office until he reaches the age of seventy-five years, resigns, or is removed from or otherwise ceases to hold office.<br><br>*Restriction on election*<br><br>(2) (2) No judge of a superior court for which the office of supernumerary judge has been No judge of a superior court for which the office of supernumerary judge has been established may elect to hold office as a supernumerary judge of that court unless he has attained the age of seventy years and continued in judicial office for at least ten years.<br><br>*Duties of judge*<br><br>(3) A judge who has elected to hold the office of supernumerary judge shall hold himself available to perform such special judicial duties as may be assigned to him from time to time by the chief justice or associated chief justice of the court of which he is a member.<br><br>*Salary of supernumerary judge*<br><br>(4) The salary of each supernumerary judge is $35,000.00 per annum." | *Juges surnumeraires*<br><br>20A. (1) Lorsque<br><br>*a)* la legislature d'une province a edicte une loi creant pour chaque poste de juge de la cour supe-rieure ou des cours supeYieures de la province le poste supplemen-taire de juge surnumeraire de la cour ou des cours, et que<br><br>*b)* un juge d'une cour superieure d'une province mentionnee a Palinea *a)* a avise" le ministre de la Justice du Canada et le procureur general de cette province de sa decision d'abandonner ses fonctions judiciaires normales et d'occuper seulement le poste de juge surnumeraire,<br><br>ce juge doit alors occuper seulement le poste de juge surnumeraire de cette cour et il doit lui etre paye le traitement attache a ce poste jusqu'a ce qu'il atteigne Page de soixante-quinze ans, se demette de sa charge, soit revoque ou cesse autrement d'exercer ses fonctions.<br><br>*Decision restreinte*<br><br>(2) Nul juge d'une cour superi-eure pour laquelle le poste de juge surnumeraire a 6te *CT€6* ne peut decider d'occuper le poste de juge surnumeraire de cette cour sauf s'il a atteint Page de soixante-dix ans et a exerce une fonction judiciaire durant au moins dix ans.<br><br>*Fonctions d'un juge*<br><br>(3) Un juge qui a choisi d'exercer les fonctions de juge surnumeraire doit etre disponible pour exercer les fonctions judiciaires speciales qui peuvent lui etre assignees a. Poc-casion par le juge en chef ou le juge en chef adjoint de la cour dont il est membre.<br><br>*Traitement du juge surnumeraire*<br><br>(4) Le traitement de chaque juge surnumeraire est de $35,000.00 par annee." |

| Clause 20A is new and would provide for the payment of a salary to each supernumerary judge of the superior court of a province where the legislature of that province enacts legislation establishing such office. | L'article 20A du bill est nouveau et a pour objet de prevoir le versement d'un traitement a chaque juge sur-numeraire de la cour superieure d'une province oh la legislature de cette province edicte une loi creant un tel poste. |
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| (2) Subsection (4) of section 20A of the *Judges Act,* as enacted by subsection (1) of this section, shall come into force on the 1st day of January, 1972 and for the year 1971 the said subsection shall be read as follows:<br><br>" (4) The salary of each supernumerary judge is $31,500.00 per annum." | (2) Le paragraphe (4) de Particle 20A de la *Loi sur les juges,* tel qu'6dicte par le paragraphe (1) du present article, entrera en vigueur le 1er Janvier 1972 et, pour l'annee 1971, ledit paragraphe se lira comrne suit:<br><br>" (4) Le traitement de chaque juge surnumeraire est de $31,500.00 par annee." |
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*[Note:* Clauses 7 to 10 inclusive have been omitted.]

| 11. The heading preceding section 31 and sections 31 to 33 of the said Act are repealed and the following substituted therefor:<br><br>" CANADIAN JUDICIAL COUNCIL<br><br>*Council established*<br><br>31. (1) A Council is hereby established to be known as the Canadian Judicial Council, (hereinafter referred to as " the Council") consisting of the Chief Justice of Canada, who shall be the chairman of the Council, and the chief justice and associate chief justice of each superior court. | 11. Les articles 31 a 33 de ladite loi31 et la rubrique qui les precede sont abroges et remplaces par ce qui suit:<br><br>" CONSEIL CANADIEN DE LA MAGISTRATURE "<br><br>*Creation du Conseil*<br><br>31. (1) Est par les presentes cree un Conseil connu sous le nom de Conseil canadien de la magistra-ture (ci-apres appele " le Conseil"), compost du juge en chef du Canada, qui en est le president, et des juges en chef et juges en chef adjoints des cours sup6rieures. |
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| *Object of Council*<br><br>(2) The objects of the Council are to promote efficiency and uniformity, and to improve the quality of judicial service, in the superior, district and county courts, including, without limiting the generality of the foregoing<br><br>(a) the establishing from time to time of a conference of chief justices;<br><br>*(b)*the establishing from time to time of seminars for the continuing education of judges; and<br><br>subject to section 32, the making of the inquiries and the investigating of any complaint or allegation described in that section. | *Objets du Conseil*<br><br>(2) Le Conseil a pour objets de favoriser l'efficacite et Puniformite dans les cours superieures, les cours de district et les cours de comte, d'y ameliorer la qualite" du service judiciaire et notamment, sans restreindre la portee generate, de ce qui precede,<br><br>*a)* de tenir, a l'occasion, une conference des juges en chef;<br><br>*b)* de tenir, *h* l'occasion, des seminaires en vue de parfaire la formation des juges; et,<br><br>c) sous reserve de Particle 32, de proceder aux enquetes et investi- gations de toute plainte ou allegation visee a cet article. |

*Clause* 11: New in part. The purpose of this amendment is to establish a Canadian Judicial Council consisting of the persons and having the objects set out therein and to provide for the establishing from time to time of an Inquiry, Committee, consisting of members of the Council and members designated by ..the Minister of Justice of Canada, to investigate allegations and complaints made against members of the judiciary. Sections 31 to 33 at present read as follows:

" 31. (1) A judge who is found by the Governor in Council, upon report of the Minister of Justice, to. have become incapacitated or disabled from the due "execution of his office by reason of age or infirmity shall, notwithstanding anything in this Act, cease to be paid or to receive or to be entitled to receive any further salary, if the facts respecting the incapacity or disability, are first made the subject of inquiry and report as provided in section 33, and the judge is given reasonable notice of the time and place appointed for the inquiry and is afforded an opportunity by himself or his counsel of being heard thereat and of cross-examining witnesses and adducing evidence on his own behalf.

(2)The Governor in Council may. grant to any judge found, pursuant to subsec tion (1), to be incapacitated or disabled, if he resigns his office, the annuity that the Governor in Council might have granted him if he had resigned *at the time when he ceased to be entitled to receive any further salary.*

(3) Notwithstanding anything in this section, the Governor in Council may grant leave of absence to any judge found, pursuant to subsection (1), to be inca- pacitated or disabled, for such -period as the Governor in Council, in view of all the circumstances of the case, may consider just or appropriate, and if leave of absence is granted the salary of the judge shall continue to be paid during the period of leave of absence so granted.

*Article* 11 *du bill:* Nouveau en partie. Cette modification a pour objet de creer un Conseil canadien de la magistrature compose des personnes et ayant les objets y indiques et de prevoir la creation, a Poccasion, d'un oomite d'enquete compose de mem-bres du Conseil et de membres designes par,le ministre de la Justice, eh vue de proceder aux enquetes .et investigations des allegations et plain-tes faites contre des membres de la magistrature. Les articles 31 a 33 se lisent actuellement comme suit:

" 31. (1) Un juge qui, d'apres la con-statation du gouverneur en conseil, sur un rapport du ministre de la Justice, est frapp£ d'incapacite ou devenu empeche de remplir utilement ses fonctions pour cause d'age ou d'infirmite, cesse, non-obstant toute disposition de la pre'sente loi, de toucher ou recevoir ou d'avoir droit de recevoir tout autre traitement, si les faits concernant l'incapacite ou 1'invali-dit£ font, au prealable, l'objet d'une enquete et d'un rapport prevus a l'article 33, et s'il est fourni au juge un avis raisonnable du temps et du lieu fixes pour l'enquete ainsi qu'une occasion, pour lui-meme ou pour son procureur, d'y etre entendu, d'interroger des temoins contra-dictoirement et de produire une preuve pour son propre compte.

(2) Le gouverneur en conseil peut accorder a un juge dont l'incapacM ou l'invalidite a ete constatee en conformity du paragraphe (1), s'il se demet de sa charge, la pension que le gouverneur en conseil aurait pu lui octroyer s'il eut deinissionne *a Vepoque ou il a cesse d'avoir droit de recevoir tout autre traitement.*

(3) Par derogation aux dispositions du present article, le gouverneur en conseil peut accorder un conge[1] a tout juge dont 1'incapacite ou l'invalidite a ete constatee en conformity du paragraphe (1), pour la periode que le gouverneur en conseil, vu toutes les circonstances de 1'espece, peut estimer juste ou appropriee, et si un tel conge est accord^, le traitement du juge continue a etre vers£ durant la periode du conge ainsi accorde

*[Note:* The remainder of this Explanatory Note has been omitted.]

| *Meetings of Council* | *Reunions du Conseil* |
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| (3) The Council shall meet at least once a year. | (3)Le Conseil se reunit au moins une fois par an. |
| *Work of Council* | *Travaux du Conseil* |
| (4) Subject to this Act, the work of the Council shall be carried on in such manner as the Council may direct. | (4)Sous reserve de la presente loi, le Conseil peut determiner la facon de conduire ses travaux. |
| *By-laws* | *Reglements administratifs* |
| (5) The Council may make by-, laws | (5) Le Conseil peut £tablir des reglements administratifs |
| *(a)* respecting the calling of meetings of the Council; | *a)* concernant la convocation des reunions du Conseil; |
| *(b)* respecting the conduct of business at meetings of the Council, including the fixing of quorums for such meetings, the establishment of committees of the Council and the delegation of duties to any such committees; and | *b)* concernant la procedure a suivre lors des reunions du Conseil, notamment la fixation des quorums de ces reunions, l'etablissement de comites du Conseil ainsi que la delegation de pouvoirs a ces comites; et |
| *(c)* respecting the conduct of inquiries and investigations described in section 32. | c) concernant la conduite des enquetes et investigations visees a l'article 32. |
| *Substitute member* | *Membre substitut* |
| (6) Each member of the Council may appoint a judge of his court to be a substitute member of the Council and such substitute member shall act as a member of the Council during any period in which the member for whom he is a substitute is not in attendance. | (6) Chaque membre du Conseil peut nommer a titre de membre substitut du Conseil un juge de la cour dont il fait partie; ce membre substitut doit remplir les fonctions de membre du Conseil durant toute periode oil le membre dont il est le substitut n'est pas present. |
| *Employment of counsel and assistants* | *Emploi de personnel* |
| (7) The Council may engage the services of such persons as it deems necessary for carrying out its objects and duties, and also the services of counsel to aid and assist the Council in the conduct of any inquiry or investigation described in section 32. | (7) Le Conseil peut retenir les services des personnes qu'il juge neces-saires a la poursuite de ses objets et a l'exercice de ses fonctions, ainsi que les services d'un conseiller juridique pour l'aider a conduire toute enquete ou investigation vis£e a l'article 32. |

[*Note:* The remainder of Clause 11 and of the Bill has been omitted.]

## APPENDIX F

## VIEWS ON OUR PROPOSALS

### A. MEMORANDUM BY SIR JOHN FIENNES, FIRST PARLIAMENTARY COUNSEL

(a) *General Observations*

1. The Select Committee has invited me to submit a memorandum on points related in particular to the clarity of legislation, and on a number of suggestions that have been made in the evidence they have had. It is not possible to deal adequately with all this within the limits of a memorandum of this sort; and I have concluded that I must confine myself to some general observations on the subject as a whole, but that there are two things on which it may be useful to put something more detailed in writing.

2. In general I agree with those who have said that the root cause of much of the obscurity of modern legislation is the complexity of the proposals, and that it is part of the draftsman's function to try and simplify them. But this over-simplifies. The conception, in the planning field, of " development" is in a broad sense readily intelligible and simple enough; the complexity emerges when one comes to work it out in detail. In effect one is being asked to define the indefinable, by drawing a line in law where none exists in fact. There is nothing new in this, except that with the growth of legislation the problems are extended (and they are unavoidable in cases where people want to know the detailed effect of the Act before taking decisions). Over the centuries the judges wrestled with something of the same sort in trying to say, in the law about burglary, what did or did not count as a dwelling house.

3. At all times, and more particularly when one has a problem of this sort, there are two great enemies of clarity and simplicity. One is compromise. The other is the desire for clarity. Prior consultation leads inevitably to compromise, and (where it is consultation on a draft) to requests for changes to clear up suggested doubts—changes which, besides complicating the text, may raise more doubts than they quiet.[1] And prior consultation usually deprives the draftsman of much of his freedom to discharge his proper functions, including that of seeing if an alternative approach would not achieve the same end more simply. It is not uncommon for him to be presented with an " agreed formula," settled with the interested parties—and later on to be asked what it means.

4. The advantage of prior consultation is that the firmer the proposals are at the beginning, the easier it is to arrive at an acceptable and intelligible structure. Most Bills are subject to a continuous process of textual amendment from the 2nd to the final (perhaps 20th) draft, as well as in the two Houses; radical changes are naturally easier before introduction, but even then there is too little opportunity to re-consider the whole with a fresh eye after the substance is settled. Sometimes the whole concept is altered: the Registration of Business Names Act 1916 can be seen to have begun as a Bill merely to let Mr. Spenlow's clients know that he was Mr. Jorkins, and to have ended as a Bill to tell them that he was really a Dutchman of the name of Jurgens.

5. Even without that there is nothing so destructive of any logical and coherent arrangement as a continued process of textual amendment. If the

[1] One of the examples given by Mr. Percival (Q 484) in arguing for a vetting committee perhaps illustrates the difficulties rather than the advantages of his proposal: the provision he refers to of the Criminal Law Bill had been discussed and accepted by the Criminal Law Revision Committee.

arrangement is not disturbed, (as it usually cannot be after introduction), it is often at the cost of compressing new matter unduly and lengthening unduly the clause or subsection into which it has to be fitted. In my view this is, in these days, a more potent cause of long clauses than the influence of the debate on " clause stand part" (a contributory factor being the obligation to start a new paragraph with a new number each time one reaches a full stop— a practice that, if applied to any ordinary document, makes it incomprehensible[2]).

6. Another outstanding cause of difficulty in producing intelligible legislation is the practice of having conglomerate Bills, dealing with more or less unrelated subjects. The chief example is the Finance Bill. If this has to be divided into separate Parts for customs duties, income tax, etc., and there are seventeen distinct proposals about income tax, it is not easy to arrive at a coherent arrangement unless one tries to gives each income tax proposal a clause to itself and, if that bursts its seams, an attendant Schedule.

7. The historical reasons for having a conglomerate Finance Bill have long disappeared, and did not apply to other Bills. But there is no hope of getting rid of conglomerate Bills unless the Government can reasonably rely on short, innocuous Bills not taking time on the floor of the House. In 1871 there were 117 public general Acts, and 81 Bills were passed without reported debate at any stage in either House. These figures, partly because of differences in the reporting, are not directly comparable with the present situation; the main difference is that the committee stage was seldom, if ever reported, but the figures do seem to show a different attitude. One difficulty about the Second Reading Committee is the delay, before and after introduction (and in a specially summoned committee somebody has to make a speech, whether or not one would otherwise be thought necessary). I do not believe there is any answer to this unless the House is prepared to allow the second reading of any Government Bill to be taken (at the option of the Government) without debate. If there were a minimum interval between introduction and committee, there would be little inducement to avoid a second reading debate on major Bills at the beginning of the Session—the sanction being, in practice, an extended third reading debate.

8. On the question whether to deal with detail in Schedules or in subordinate legislation, I agree with the Law Society that for overall clarity it is better to keep the whole in one instrument, unless there is some reason for doing otherwise. But apart from trying to secure consistency (e.g. in seeing that matters of procedure are not dealt with partly in Acts and partly in rules of court), I do not see this as primarily the concern of the draftsman. I am, however, unhappy about suggestions that a Bill which is only a shell should be debated with the proposed regulations containing the meat. There is no point in this unless the draft regulations carry an implied undertaking about the use to be made of the powers given by the Bill. And it is undesirable that an Act giving in law sweeping powers should have another meaning by convention. I remember one case before now where, in a situation of this sort, the Government felt bound to promote a Bill in order to get rid of a parliamentary pledge—*i.e.* to make the law what it already was (not an easy thing to draft).

9. The same objection applies to the regular use of explanatory material of a detailed kind—re-inforced by the extreme difficulty of saying the same

[2] Para. 26 of the Heap Report begins with the sentence: " 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." But it did not have to be given a paragraph to itself.

thing twice in different words. There is also here a vital question about the time needed to produce the material (which might well mean, particularly in a new Parliament, that legislation wanted in one session had to wait for the next). There would also be side-effects on the drafting of the Bill, both in distracting the attention of those concerned with it and in inhibiting anything but the smallest changes in the final stages: I have known one case at least in which an explanatory White Paper went to press before the last draft but two of the Bill.

10. Still less do I see any future in keeping any memorandum on the Bill alive as a memorandum on the Act—quite apart from the temptation to legislate in the memorandum instead of in the Bill, and apart also from the delays to the passage of the Bill. House officials and the draftsman could not reasonably be given the responsibility for revising the memorandum—a responsibility that, apart from anything else, could be made impossible to discharge by things said in debate; and any member disliking what was in the memorandum would seek to amend the Bill so as to override it. On the other hand if it is to be debated and amended in the House, it becomes in effect a second Bill, and (as used at least to happen in the French Assembly) debate might well centre on the memorandum rather than the Bill: there would also be insuperable difficulty in keeping the two in line—an amendment in either might need a matching amendment in the other.

*(b) The Heap and Stow Hill Reports*

11. The gist of the general observations above was already on paper before I was warned that the Committee would want to question me about the Stow Hill and Heap Reports of the Statute Law Society. What is said in paragraphs 5, 8 and 9 is relevant to these reports; and I append in an Annex the text of the operative clause in the Stow Hill committee's model Bill (which is in fact taken, with some frills added, from the Betting, Gaming and Lotteries Bill now in the House), together with a re-draft to show how it might be done by straightforward enactment instead of by textual amendment. I have added some notes, partly to explain some differences; but I would draw particular attention to notes (2) and (3) in connection with explanatory material.

12. The comparison between the two drafts in my Annex illustrates the point made in paragraph 5 above that textual amendment tends to a vicious degree of compression. More important it brings out a basic fallacy (in addition to that stated in paragraph 5) in the textual amendment theory. It will be seen that the difficulty of deciding what effect the new provision produces on section 47 (1) of the 1963 Act is in no way lessened by a direction that it is to be inserted in that Act.

13. It is worth adding that the " textual memorandum " is likely in many cases to be useless. Many years ago, when substituting two new subsections for the existing ones in order to make a number of unrelated changes in them, I tried setting out both the new and the old text in parallel columns (see the National Insurance (Industrial Injuries) Act 1953, Schedule 1): even in this simple case the result was so unilluminating, that I have not been tempted to do it again. Many variants of this system are, I understand, in use in America, with different type used to show omissions, insertions, substitutions, etc. In one State four different types are required, and it is said that it takes three years to train a typist to handle the material. And when the suggestion has been made that a Keeling Schedule should show words omitted as well as words inserted, the mere sight of an American precedent was enough to kill it.

14. The statement in the Stow Hill Report (para. 5) that " the amendment system in general use here is what is known as the referential system" is inaccurate and tendentious, and likely to be misleading as putting a false meaning on what is said elsewhere. Originally and properly " referential legislation" means legislation which applies for its own purposes previously existing legislation: it may be an Act which attracts the Lands Clauses Acts, or for instance the Act which produced a new and distinct code of air force discipline by applying the Army Act with modifications. But the phrase is also applied to amending legislation of whatever sort. It was in this general sense that it was used in the passages cited in paragraphs 91 and 92 of the Heap Report from Craies on Statute Law, and Craies' condemnation of referential legislation extends as much to textual amendment as to anything else. So did that of Sir William Graham Harrison in the paper he read to the Society of Public Teachers of Law nearly forty years ago: the example he gave of the evils of referential legislation was a case in which nine tenths or more of the amendments had been made textually.

15. It is wholly untrue, as this goes to show, that either system is " in general use " here, if this means that the way in which a particular amendment is done is decided otherwise than on the merits, and with an attempt to balance the often conflicting interests of Parliament and of present and future users of the statute book. When I first joined the Parliamentary Counsel, the complaint was of too much textual amendment; and it was said, as the Stow Hill Committee now say for the opposite purpose, that we should take the trouble to tell people what we are doing.

16. The misuse of Craies noted above is not untypical of the Heap Committee's report. Much of their material is secondhand, and uncritically used. One of the more amusing examples is the following quotation (on p. 11) from Brett M.R. in *Hough* v. *Windus* (1884) 12 Q.B.D. 224: —

> " 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."

The verbosity and tautology consisted in having a repeal schedule (in those days a novel device) to spell out in the form of textual deletion in previous Acts the effect of the things said in the body of the Act. It may be that Sir Desmond Heap and his fellows want us to revert to the old practice of leaving everyone to work out the repeals for himself; it seems more likely that none of them took the trouble to see what so obviously useful a quotation was in fact about.

*(c) Private Members' Bills*

16. It is suggested that Parliamentary Counsel should be assigned to help a Member introducing a Bill on one or both of two systems:

(a) with the ballot held in July, the first ten Members could claim to have one of us draft their Bills and presumably carry on through later stages if the Bill got a second reading;

(b) any Member whose Bill received a second reading could call on one of us" for the remaining stages.

17. If we are to operate on a Bill (otherwise than by merely filling in the missing pieces such as the commencement and transitionals), it is certainly better that we should be in on it from the start. Some Bills are incurable after introduction, or even after the long title has been handed in. And it is always difficult to re-shape a Bill by amendment in committee. But as things

are, a Member whose proposals are acceptable to the Government can often get his Bill drafted by us, or vetted in committee. If one is thinking of Bills that are not acceptable to the Government, and are therefore not likely to pass, or not without radical change in committee, there seems little to gain from having them drafted by us in the first place, or having us act in committee for the Member in charge as well as for the Government. And I cannot think it would be possible for us to run with the hare and hunt with the hounds in this way.

18. There are doubtless some Bills on which the Government is broadly neutral. How much these Bills, or the Members in charge of them, suffer from the Members not being able to employ us, I have no means of telling. Just occasionally a Bill does get through in a defective state. This is probably because committee has been unexpectedly taken on the nod: in that case, if the Bill were held up for the required amendment, it would not get through at all.

19. I am quite clear that we could not undertake to draft whatever ten Bills the Members first in the ballot chose. It could represent an addition of some 10 per cent, or more to the year's work, to be fitted into the busiest months in the year—or more probably the busiest month because, with Members out of London, there would be an inevitable tendency for the work to be concentrated in October. There are seven teams of draftsmen normally available for programme work: each of them would have to take on an additional Bill, and three would have to take two. The work needed for some Bills is no doubt trifling (though even there the disruption to other work is out of proportion to the time actually spent on the Bill): other Bills, particularly with the draftsman operating without the support of the department, would be a whole-time job for a month or two; and with a draftsman available, Members would be likely to go for more rather than less.

20. Whether we could take on all Bills that reached Committee, I do not know because it is not clear how much more we should be doing for the Member in charge than we now do for the Government. But it could hardly save time in committee if our job was to correct or improve the Bill at points where it would otherwise be left alone. And if Members could rely even more than now on their Bills being " put right" for them in committee, the addition both to our work and to the time taken in committee might be formidable. On Bills that were going to be lost later it would be work thrown away.

*Annex*

(a) *Main Clause of Stow Hill Committee's " Model" Bill*

1. Section 4 (1) of the Betting, Gaming and Lotteries Act 1963 (hereinafter referred to as " the principal Act") is hereby amended—

(a) by inserting after the words " Provided that" a dash, followed on the next line by the words

*"(a)* nothing in this subsection with respect to the conducting of competitions in or through any newspaper shall apply in relation to any " spot the ball " competition, that is to say a competition (by whatever name known) where, in connection with the publication of a photograph of part of a football match from which the ball has been deleted, prizes are offered for indicating whereabouts on the photograph the ball was, or was most likely to have been, whether success is determined by reference

to its actual position on the original photograph or the opinion, as to that position, of a group of persons having skill in football; and “;

*(b)* by inserting immediately after the words inserted by paragraph (a) above and on the following line the letter “ *(b).”*

(b) *The same done by direct enactment*

(1) Section 47 (1) of the Betting, Gaming and Lotteries Act 1963 (restriction of certain prize competitions) shall not apply to the conducting of a spot the ball competition otherwise than in connection with a trade or business or the sale of any article to the public.

(2) In this section “ spot the ball competition” means a competition in which prizes are offered for indicating the position of the ball on a photograph (from which the ball has been deleted) of part of a football match.

(3) This section applies to a spot the ball competition whether success is determined by reference to the position in which the ball actually was or the position in which it is thought to have been by a person or persons having skill in football.

(c) *Notes*

(1) The redraft is meant to reproduce the effect of the Stow Hill committee’s draft. Subsection (1) departs from that draft in excepting competitions run in connection with a trade or business etc., instead of excluding the operation of section 47 (1) with respect to competitions in or through a newspaper. This is, it is submitted, clearer; and it avoids raising the question whether it is necessary to attract the definition of “ newspaper “ in section 55 of the 1963 Act.

(2) The decision in the *Ladbroke* case turned on the competition being about a future event, *viz-:* the place where the panel would put the ball: subsection (3) in the redraft, by making use of the extra space to distinguish this case from the case where the competition is about the actual position of the ball, brings out the point that, so far as the *Ladbroke* decision goes, it is unnecessary to deal with the latter case. If the Stow Hill committee, or the promoters of the Bill, thought otherwise, the reason is not given in any of the explanatory material.

(3) The Stow Hill committee’s explanatory memorandum (in Part C of their Appendix C) follows that on the published Bill in implying, in the note on Clause 1, that the effect of their draft is to legalise a competition run for the profit of a trade or business so long as it is run in or through a newspaper. In my view (and on the authorities) this is not the result, since section 47 (1) of the 1963 Act appears to create a double illegality in running a competition in a newspaper for the profit of a trade, and the draft only removes one illegality. Whether I am right or wrong about that, the point shows how easy it is, even in what the Stow Hill committee themselves put forward as “ a simple illustration,” for doubt to be created and debate to arise from explanatory material. My redraft is on this point unambiguous, and follows the apparent effect of the Stow Hill committee’s draft in preference to the intention to be deduced from their memorandum. The result possibly is that the whole Bill has missed the ball if the intention was to enable Ladbroke’s and others to go on with their Spot the Ball competitions: there is nothing in the explanatory material to suggest that these, when run for the benefit of a

trade or business, get the benefit of the existing exemption for "pool betting operations," and on the facts like those in the *Ladbroke* case I do not see how they could. It is a question whether the main principle and object of the Bill is or is not adequately stated in the opening paragraph of the Explanatory Memorandum on the published Bill or of the expanded version put forward by the Stow Hill committee.

*June* 15, 1971

## B. EVIDENCE GIVEN BY SIR JOHN FIENNES BEFORE THE SELECT COMMITTEE

*Chairman*

1001.Sir John, we owe you a great debt for the very clear and full memorandum which you have submitted to us on this problem.[3] I would like to ask you a few questions first on the pre-legislation study. From your experience, is the draftsman's task made easier where a Bill is based on a report of a Royal Commission or committee of inquiry, or, indeed of a pre-legislation Committee, as in the case of the Theatres Bill?—I have no experience, of a pre-legislation Committee of the House. I used to hate having a Bill founded on the report of a Royal Commission or similar body. They had so seldom approached it from a proper legislative angle. Obviously, this might not be true of a House Committee.

1002.I gave you the instance of the Theatres Bill. The proposed legislation was suggested in the report of the Select Committee, was it not?—Yes, indeed, but I did not do that Bill.

1003.The only other one of which I know was in the. case of the Obscene Publications Bill. I do not say that the actual final draft was what was recommended by the Select Committee, but it was that form of inquiry— Yes, directed—

1004.Directed to drafting legislation?—directed to producing the Bill. If this is done by an experienced body, of course it can help a great deal as long as that is the Bill which the Government introduce. If, however, the Government accept it with modification, you are in a position where you have the main structure prefabricated and with very little room to go back and change it, and you have to fit on to it something that probably does not fit. This cuts both ways.

1005.Have you considered this possibility? There has been great talk of pre-legislation Committees generally among the comments on the work of Parliament. Do you think that this would be a help to you or would hinder you in your work?—In the fields in which they operate, I think that, on the whole, it would be a help, because one would know more nearly when one started what the complete answer would be. But when it comes to the question of the draftsman going behind the instructions and trying to look for a different, simpler and—anyway, in his view—better way of doing things, if he has a pre-legislation Committee, that one is ruled out.

1006.Turning to paragraph 4 of your paper, what are the remedies for the lack of " opportunity to reconsider the whole with a fresh eye after the substance is settled "? I do not know whether you have read the evidence given by Mr. Ian Percival, who talked about a vetting committee between the penultimate and ultimate stages of drafting. Would you consider that to be the right way of getting round this difficulty?—It was not the sort of

[3] Appendix 11.

thing I thought he had in mind for his vetting committee. I do not really know how his proposal was meant to work, but I thought that such a committee would look through isolated sections and say " This is obscure. It would be better done another way" or " This is not clear. It wants supplementing with something." Taking the whole Bill to pieces and rewriting it from beginning to end, if done with a vetting committee of that sort, would take months if it were at all a complex Bill.

1007.In paragraph 5 of your memorandum, you make what is, to me, the novel and extremely interesting point that you have " to start a new paragraph with a new number each time one reaches a full stop " and that this makes the clauses unnecessarily long. Is this a convention or Standing Order, or what is the reason for your obligation to obey this rule?—It was one of the great reforms introduced to clarify statutes roughly 100 years ago. If you look at what is said on Acts of Parliament by your predecessors, the Committee of 1875, you will find that this division of a Bill into clauses and subsections was one of the many improvements of the drafting which they noticed. To some extent it had been given statutory force by Lord Brougham's Interpretation Act of 1850, which said that every Act containing more than one enactment should be divided into sections, and it grew up from there. I think that it is unavoidable because of the nature of what you are doing. One of the main differences between a Bill and an Act is that a Bill is designed to be read from the beginning by Members who want to see what is happening, whereas an Act, in practice, is virtually never read through from beginning to end. People are referred to a particular subsection, and they look up that subsection. If you are lucky, they actually read the whole section, but it has happened to me, even on a Bill in the House, when I have started a clause with an opening subsection defining the ambit of the clause and later I have had to refer to subsection (5), it has said something totally different from what I thought it was going to say because I had forgotten that its scope was limited by what came before. Each subsection must be, up to a point, self-contained, or else the reader must be warned that it is not self-contained. This is a reason why, when you start breaking up the longer sentences, you very often double the overall length, because you have to put into each separate short sentence express words to indicate its link with the rest. This is why, again, when one is trying to make something self-contained, one tends to pack into a subsection parenthetical phrases to indicate the meaning or to indicate where you have to refer to get the rest of the meaning, and this blows the sentence up to such an extent.

1008.Is this a common rule which applies to legislation in other countries? —I think it is a common rule in all Commonwealth countries. Their practice on this is largely founded on ours. But I think it is inherent in the nature of the thing. You cannot have a discursive paragraph of the sort one puts into a letter, where each sentence supports the one before and the one after, and rely on people to read the whole thing and spell the meaning out from the overall effect.

1009.Really, therefore, there is nothing to be done about it?—I do not believe that there is an answer to this.

1010.And Bills will remain incomprehensible?—May I have leave not to answer that question?

1011.There is one other suggestion. I do not know whether you read Sir David Renton's evidence. He was talking about what we call the Keeling schedules. Do you think that there is something in the suggestion that we should make more use of Keeling schedules?—Conceivably, we might have Keeling schedules in cases where we do not at the moment do so; but it is not a

panacea. Even where you are doing it by textual amendment, it very often does not help anybody, partly because the thing you are amending is not itself self-contained. To get the meaning of it, you have to look at a whole lot else which is not amended, and you cannot set out in every Bill the whole of every Act that you are amending. They are a nuisance afterwards. They are, I think, of immediate value, but afterwards, when a further amendment comes along, they either become misleading or they have to be taken away.

1012.If a further amendment comes along, presumably you produce a new schedule?—You may or you may not. It may be a case where it will not be helpful.

1013.I found your paragraphs 6 and 7 of outstanding interest, because they seem to me to support our recommendations regarding the Finance Bill. Is the Finance Bill the only conglomerate Bill you are thinking of?—By no means. A recent case was the last Companies Act, which had a whole part about insurance companies, which are a quite different branch of the law. If I may say so, this is not quite your recommendation. Your recommendation was to get out of the Finance Bill the administrative detail. My suggestion is that one could go back to the time, 100 years ago, when you had a Customs Bill and an Income Tax Bill, separate Bills by separate subjects.

1014.We suggested a Revenue Bill, did we not?—Yes, something on the lines of a Revenue Bill, with the merely administrative and routine matters.

1015.And in the Spring to have a taxing Bill?—Yes.

1016.But the Finance Bill is more conglomerate than that?—I am thinking of conglomeration by subject matter. You are thinking of conglomeration by function.

1017.What is the remedy for the difficulties caused by conglomerate Bills? —The cause of it, which would have to be removed in order to provide a remedy, is the time taken on the Floor of the House by Second and Third Readings. From the Government's point of view, if you want to pass a certain amount of legislation and there is time only for 50 Second Readings, that has to get into 50 Bills. Within limits, you can enlarge a Bill to take in related subjects but still things not on the same subject, things which, legally speaking, would be better in different Bills. The case cited for this, of course, is the Law Reform (Married Women and Tortfeasors) Act. The legal crack on this was that the married women, having started life by being classed with infants and lunatics, have now found their home with tortfeasors.

1018.And you do not think that they should be divorced?—FrOm the tortfeasors, yes.

1019.There is no remedy really?—Not unless you can devise a remedy whereby Members will not debate Second Readings of innocuous Bills. ,

1020.I was coming next to that, because I did not quite appreciate the extent to which there is delay in the Second Reading Committees. A very small amount of time is now taken by Second Reading Committees, is it not? —It is not the time in the Committee. It is the time before you get to the Committee. The rule is, I think, that you have to give a fortnight's notice of a motion that the Bill be taken in a Second Reading Committee.: Then, you have to set up the Second Reading Committee and get its report back to the House. On the other hand, if the Second Reading were being taken on the Floor of the House, it might well be taken within a week of the Bill being presented.

1021.It is ten days' notice that has to be given?—I think that the ordinary reckoning is that it takes a fortnight longer to get a Bill through if it is going to Second Reading Committee.

*Mr. Maude*

1022.Time has to be found to come back on a convenient day for a division, if there is to be one?—Yes, ex hypothesi, one does not expect a division, but it can happen. There is also the delay beforehand, because the Government do not like introducing a Bill to be passed under the Second Reading Committee procedure unless they have first secured the agreement of the Opposition, for obvious reasons. If the Government introduces a Bill and the Opposition then do not like it, it simply lies there or else they have to find time on the Floor. So you have perhaps three or four days' delay before the introduction and a fortnight afterwards. If you ask me how serious this is, I do not know how many Bills it has stultified. It means, however, that we have to try to get Second Reading Bills ready early and, at the same time, from their nature, they have rather less than no priority, and so a certain number of them just do not get done.

*Chairman*

1023.If they were not having a Second Reading debate, probably their chances of arriving at a certain time at a Third Reading stage is very much less than if they had the Second Reading procedure?—If the Second Reading debate could be taken " on the nod," and if the Second Reading could go " on the nod " on the Floor of the House, it would save that much time.

1024.Surely, that is a very rare occurrence, is it not?—It is indeed. If one divided Bills into little innocuous bits, either by a rule of procedure or by a convention in the House, the House could let them go through.

1025.I personally took objection to your suggestion that the Second Reading of any Government Bill should be taken, at the option of the Government, without debate. This offended my democratic sense?—I have no doubt it will. There is a difference. The reason why I limited it to Government Bills, however, is that there is a presumption that they will get a Second Reading. If you leave it at the option of the Government, the ones which they think the House will let through "on the nod" can be taken like that. If they did it for the Industrial Relations Bill, I should expect Mr. Speaker to give four days on Third Reading.

1026.In the previous Parliament, I think that the Government selected one Bill for a Second Reading debate which had a very hotly contested passage?—Indeed. That one, I think, they left to a free vote, too, if I have identified it correctly.

1027.I move on to explanatory statements. If there were an expansion of the present type of explanatory memorandum, could time be saved on Second Reading by obviating the need for a clause by clause explanation by the Minister?—I should have thought this was a matter for the House.

1028.We are faced by the trouble that the front-bench opening speech takes a long time. A Minister has often to explain a Bill clause by clause. Would it be difficult for you to have drafted a clause-by-clause explanation, which Members could have, without any legal sanction in it?—The Minister does explain the Bill clause by clause. My own complaint about the ordinary explanatory memorandum on the front of the Bill is that it does this, and in such a compressed way that it really does not help anybody, whereas a more discursive and general approach would tell people a great deal more about the Bill. The explanatory memorandum which one gets from the Department tends to end up with " Clause 78 gives the Short Title." I always strike that one out. I do not know who prepares Ministers' briefs for them.

1029.I have never heard a Minister saying that Clause 78 gave the Short Title, but I have known a great deal of time taken by explanation of what each clause does, which I should have thought could have been read by Members and, therefore, have saved the Minister that amount of time?— The suggestion I was trying to make was that it is very often unnecessary anyway for Ministers to do this. The House/would be just as pleased not to have it done. Ministers feel that they must make a speech on the Bill, and this is what their Department has given them.

*Mr. Wingfield Dig by*

1030.Is it not usually the position that just two or three key clauses need explanation?— Yes.

1031.The great bulk of a Bill is simply machinery for carrying out its purpose?— Certainly. I think that on some short Bills an explanatory memorandum would do just as well, but whether it would stop the Minister making the same speech is a question on which I have doubts.

*Chairman*

1032.You have rather come down against having an explanatory memorandum in a Statutory Instrument, but would you except from that objection an explanatory statement for each Law Commission and Law Reform Bill, as we have been advised?—I find this one very difficult. Such a Statutory Instrument, I suppose, would have to be laid sometime afterwards. Before it is approved by the House, the Bill has one meaning. After it is approved by the House, it has another meaning, possibly.

1033.The Instrument would be reported on by a Joint Committee of both Houses, would it?—The typical explanatory material which the Law Commission and others would like to see is a series of examples which are within the Act and a series of examples which are not within the Act. There can be endless argument about that kind of thing.

1034.I noted with interest and some amusement your observations on the Heap and Stow Hill Reports?—My rather partial observations, partial in two senses.

1035.I wonder whether you can tell us what criteria you use to decide the way in which a referential or textual amendment is drafted, taking the two ways. How do you choose which way you deal with it?—In many cases, we do it both ways, of course: “ The amount which such-and-such a body may borrow from the Secretary of State is hereby increased to £X million, and accordingly, in such-and-such a section . . . ,” both telling the reader immediately what the effect is and also bringing the pre-existing text up to date. My belief is that the main reason for having a textual amendment is that it is very much easier to get accuracy in a simple case without too many words, and accuracy has to come first before clarity; particularly in amending an Act which has a string of definitions, savings and provisos, to state by direct enactment precisely the effect of what one is doing *(e.g.* reducing the voting age from twenty-one to eighteen in words which will be precisely accurate) may become very complicated. In these cases, it may be very much easier to do it simply by leaving out the word “twenty-one” and putting in the word “ eighteen “. On the other band, it may not be easier because that amendment done textually may have to get spread over seven separate amendments.

1036.You point out that there is a conflict of interest between Parliament and the user of the Statute Book?—Yes. . I do not believe that there is this

conflict of interest; that was not what I meant. Parliament wants to know how the law is being changed and this, on the whole, is what the present user of the statute law wants to know also. The future user wants to know what the law now is in the future. This is the great argument about consolidation. Any new consolidation is greatly disliked by the present practitioners. They have to remember that rule 19 has now become section 169 and things of that sort. On the other hand, for the newcomer to the law, it is very much easier to learn the law from a clean consolidation.

1037.But if you have a textual amendment, does not that help the user? —The lack of clarity in a textual amendment does not help Parliament. It does not help the present user, in the first place, unless he is so au fait with the present law that he can identify it at once. There is another difference here. If we are leaving out the word "twenty-one" in a particular section and putting in the word "eighteen," we normally include explanatory words to say what the section is about so as to give broadly the overall effect anyway of the textual amendment. The first thing that the man who really knows that Act—the accountant, the expert in income tax—does is to strike out all the explanatory words. They merely mislead him. He knows what section 428 is about without your telling him. One simply cannot satisfy everybody on this. We have to arrive at a compromise, and we do our best. As a result, we are kicked from all sides. We do not do what really satisfies any of them.

Mr. Maude). One can get into quite a lot of difficulty on Statutory Instruments. One finds a Statutory Instrument which, in effect, says " For section so-and-so, subsection (2) of the previous order, there shall be substituted . . ." or words to that effect. One may suspect that it will be important, but in order to understand it one has then to get a copy of what may be a ten-year-old Statutory Instrument, of which, nine times out of ten, the Vote Office will not have a copy and it will take a week to get one. When one gets it and puts it in context, one finds that it is probably necessary to refer to a substantive Act before it is possible to make a speech on it. This can be a very time-consuming and difficult task. There simply is not enough given on most Statutory Instruments to tell one actually what is happening, because one does not know what it is being substituted for. I do not know what you can do about it without wasting a great deal of space and time.

*Mr. Wing field Digby*

1038.Members of Parliament are not like people working in a lawyer's office. There is nothing to hand. One has to go and chase every little bit of paper one wants, either asking the Library to look it up or trying to find it. Piecing it all together is the trouble?—This is one of the things that creates a bias towards a non-textual amendment: the direct statement for Members of Parliament of what we are aiming to do by a clause. The trouble on Statutory Instruments is not strictly my business. It obviously influences the choice between putting things into a Bill and putting things into Statutory Instruments that Statutory Instruments are much less accessible as a rule than the Act itself and are much less well noted up and indexed. On the other hand, they are very much easier to consolidate.

*Mr. Maude*

1039.They are generally much more difficult for the public to secure with reasonable speed, and very often professional people may need a Statutory Instrument quickly. With the Stationery Office as it is in the provinces, it is

very often impossible for them to get it for weeks?—Of course, there is much less publicity about them. They happen without people noticing, unless they take a good service which informs them.

*Chairman*

1040.If I may turn finally to your section on Private Members' Bills. I am not quite clear on the number of Private Members' Bills in each Session on which you give assistance after Second Reading. Do you have a rough idea of the number?—It varies very much, I think. I got somebody to look at the number of Private Members' Bills that we had actually looked at over the last three Sessions, one of which was a broken Session. The number came out at something from nine to 15. But this includes private Peers' Bills. The figures in that for ballot Bills varied from none to four. A fair percentage of those which got through were Standing Order No. 13 Bills or Standing Order No. 37 Bills.

1041.You have said that you could not manage to handle the first ten Bills in the ballot?—Acting as draftsman to the Private Member is very different from what we do to the nine to 15 Bills that I have been talking about. Running an eye down them and seeing that they have in them the words " shall not extend to Northern Ireland " is quite different from actually servicing the Bill through Committee, looking at amendments and drafting amendments.

1042.If you obtained more staff, could you get more staff to deal with this new burden?—No. We have been trying to get more staff. In the last ten years we have expanded by two, but it is a struggle as things are to keep numbers up. We are under perpetual pressure. I think that the first claim in the Government's eyes on more staff would be more consolidation.

1043.There is a feeling that Private Members are in a difficulty over the drafting of their measures at the present time. Have you any suggestions by which you could help?—This is something with which I sympathise very much, but we have never been able to see how we could, as Government servants, handle this work. It is partly a question of priorities, of course.

*Chairman.* Thank you very much, Sir John, for your evidence.

## C. EVIDENCE BY MR. F. A. R. BENNION BEFORE THE SELECT COMMITTEE

*Chairman*

1124. Mr. Bennion, we are very grateful to you for coming to put the views forward of the Statute Law Society on the First Report of the Stow Hill Committee. I gather you would like to make an introductory statement on the matter?—I think it might help the Committee if I made a short introductory statement. Although it is true that I am a member of the council of the Statute Law Society and also of both the Heap and Stow Hill committees, I am here really in an individual capacity. I can only claim experience as a draftsman of legislation over a period of about fifteen years. For most of that time—until 1965—I was in the Parliamentary Counsel Office here, but I have also drafted legislation in Pakistan, Ghana and currently in Jamaica. I feel my position is a little delicate because some of the views I hold on the subject under discussion tonight differ from the views of Sir John Fiennes who was a senior and very much respected colleague of mine in former days. But such is my zeal for the statute law that I feel such things should not prevent me making my views known. Could I say very shortly what the essence of the approach I make to this subject is. The Statute Law Society

was formed to represent the interests of users of the Statute Book itself. In other words, the main emphasis of the Society is on the finished product, but clearly Parliamentary procedure has an important and vital effect on that finished product. The Society is mainly concerned with what it feels to be the unsatisfactory state of the Statute Book from the point of view of the user, and its main remedy for that, I think it is true to say, is a great deal more consolidation of the statute law than we are getting. It believes that when the statute law is consolidated it should be kept in consolidated form by the use of the system of amendment which is generally known as textual amendment, whereby any amendments to the existing law are slotted in to the main Act rather than being piled one on top of the other, as often happens under the present system. We feel that if you could reduce the statute law into a consolidated form and then keep it that way by this system of textual amendment, a great many of our problems would be solved. That, Sir, is my preliminary observation.

1125.Sir John Fiennes in his memorandum told us "there is nothing so destructive of any logical and coherent arrangement as a continued process of textual amendment," saying that it resulted in the compression of new matter, and a vicious degree of compression, and lengthening unduly the clause or subsection into which the amendment has to be fitted. What would you say to those criticisms of Sir John Fiennes?—I think those remarks of Sir John were made in relation to Bills in their passage through Parliament. He is talking there about the effect on a Bill of its amendment in both Houses of Parliament. While he might feel that something of this criticism also applied to the system of amending Acts which I have referred to, I am not sure he would be as emphatic as that. The difference is that once a Bill has left the draftsman's hands and been introduced into Parliament he is up against the Parliamentary timetable and has very little time to work in, and it is not possible to take the Bill back if it is heavily amended and redraw and re-structure it. That does not apply where the draftsman is given the task of amending a consolidated Act and drawing up the amendments before his Bill is introduced into Parliament.[4]

1126.The Stow Hill Report's advocacy of textual amendment is really directed at Consolidation Bills?—Yes, or, rather, at the amendment of Consolidation Acts.

1127.Whereas Sir John Fiennes was talking about other Bills. Is that the position?—Sir John Fiennes, as I understand his memorandum, is talking about any Bill that is being amended in Parliament, whereas we are talking about a different matter. We are talking about taking a consolidated Act and amending it by the textual method—that is, by slotting the amendments in so that the whole of the law on that subject remains in one place.

1128.You would therefore have no objection to referential amendments to the ordinary Bills being introduced?—No, Sir, we have no objection to that and we see no advantage in textual amendment except where the law is already consolidated or one is amending a brand new Act on a special subject.

1129.The next point I wonder if you would help us over is that Sir John Fiennes said in his memorandum that the obligation to start a new paragraph with a new number each time one reaches a full stop contributes to making clauses longer, but when he came before us he said the practice was quite unavoidable and that it was a common rule in all Commonwealth countries.

[4] On the answers to this and the two following questions, Sir John Fiennes has commented that they do not represent his intention, and refers to paras. 11 and 12 of his Memorandum to the Select Committee.

You have been helping in a number of Commonwealth countries, Mr. Bennion, and I am wondering whether you can tell us whether this is a fact. There are three points here—(i) whether this is a drawback and something which lengthens legislation; (ii) whether it is unavoidable; and (iii) whether it is the rule in Commonwealth countries?—Yes, I think it does lengthen the sentences because under the practice in this country, as Sir John has said, one has to start a new paragraph, new section or new subsection every time one reaches a full stop. That leads to very long sentences. As to whether it is unavoidable, I am not aware of any statutory requirement which prevents a subsection being divided into several sentences. The language-shortening Act of 1850 to which Sir John referred had a provision in section 2 which required all Acts to be divided into sections " if there be more Enactments than one, which Sections shall be deemed to be substantive Enactments, without any introductory Words." That was a requirement to divide Acts into sections. However, that was dropped in the Interpretation Act 1889 which is the current Act. Section 8 of that Act only refers to " Every section of an Act shall have effect as a substantive enactment without introductory words." It does not therefore seem that there is any statutory requirement to have only one sentence in a subsection or a section. As for the practice overseas, I have made a further hasty search of some of my overseas statute books. I found, for example, an ordinance of the Gold Coast which had a section with three different sentences in it and which was not divided up into subsections or paragraphs. Then I found one in Jamaica. Both of these are rather old; they go back to the 1890s. As far as present practice is concerned, I found a New Zealand Act of 1967 called the Animal Remedies Act. In section 44 of that Act both subsection (1) and subsection (2) each contain two sentences, so it is clear that the inclusion of several sentences within one paragraph or section is or has been the practice in Commonwealth countries. I do not think it is very common, but I do feel it probably would aid comprehension. If one reads these sections, they flow on in a more readily understandable way. I still do draft in the way usual in this country; somehow it becomes ingrained and you feel that you have got to say everything that needs saying on one particular point in a single sentence. This can, however, spin out the length of it and make it difficult to understand.

1130.You have instanced Commonwealth countries. Do you know about European countries?—No, Sir, I am not competent to answer on that.

1131.You mentioned that you regard the people who are concerned with the Stow Hill Report as the users of legislation. Sir John divided those into present users and future users and suggested that usually their interests conflicted—in other words, that the interests of Parliament coincided with those of the present users and conflicted with the interests of future users. Would you accept that view?—Yes, I would accept it. I think it is the difference between the person who wants to know what changes in the law either a Bill proposes or a new Act makes and the person who wants to know the state of the law at a given moment. The interests both of Members of Parliament and of those who want to see what change a new Act makes are much the same in this respect, but we feel that primarily one has to look at the permanent state of the Statute Book. This is, after all, a procedure for legislating and the ultimate product is the permanent Statute Book, whereas it does seem that at the present time there is rather more emphasis on the processes of producing legislation than on the final product.

1132.Going on from that, Sir John says that conglomerate Bills are an outstanding cause of difficulty in producing intelligible legislation. Do you agree with this, and what is the remedy for it?—I do not think I do, with

respect, agree with that because it seems to me to illustrate a basic problem. That is that draftsmen in this country have come to regard every Bill they draft as a separate work of art, one might almost say—as a separate thing in itself which should in itself be well arranged and self-explanatory without recourse to the existing law. Then a conglomerate Bill is a monstrosity. You cannot arrange it properly, its various provisions are not connected with each other and it is inartistic. But if you take the other view—that you should look at the Statute Book as a permanent thing and the Statute Book as in a consolidated form—then it does not matter, if you are going to use textual amendments, what shape the Bill itself takes, provided, of course, there are sufficient explanations of its provisions for Members of Parliament to understand.

*Dame Irene Ward*

1133.You would choose the second method, would you?—Yes, we feel we ought. In the case of an amending Bill it does not really matter whether it is a work of art in itself, provided it achieves the result of amending the law and leaving the permanent law in a proper state. However, it is essential to make clear to Members of Parliament and to present users, as they are described, what the effect of the Bill is, but that does not, we feel, have to be done in the text of the Bill itself.

*Mr. Albu*

1134.Are you suggesting that the great majority of Bills are, in a sense, amending Bills owing to the fact that they are amending the Statute Book?— They are amending statutory provisions on a particular subject, unless it is a brand new subject like the first Atomic Energy Bill.

1135.In other words, most Bills are, in a sense, amending Bills. These are not very easy matters for laymen to follow. I am not sure I understood what you said about Sir John Fiennes' evidence on the question of textual amendment or referential amendment. I did not read his evidence as meaning that he was referring to amendment during the passage of a Bill through the House. The fact is that during the passage of a Bill through the House it is amended by textual amendment?—My point was that the passage which the Chairman quoted from Sir John Fiennes' memorandum related to the amendment of a Bill as it went through the House. If I may refer the Committee to paragraph 4 of his Memorandum[5] which leads into the passage quoted, that says, " Most Bills are subject to a continuous process of textual amendment from the second to the final (perhaps twentieth) draft, as well as in the two Houses; radical changes are naturally easier before introduction, but even then there is too little opportunity to reconsider the whole with a fresh eye after the substance is settled." Then Sir John goes on in paragraph 5 to say that " there is nothing so destructive of any logical and coherent arrangement as a continued process of textual amendment." I take that to relate to textual amendment of a Bill in the manner mentioned in the previous paragraph, because he says after that, " If the arrangement is not disturbed (as it usually cannot be after introduction) . . ."—that is, after introduction of a Bill.

*Chairman*

1136.I think Sir John Fiennes was not appreciating that the Stow Hill Report was dealing with Consolidation Bills and not Bills in general?—Yes.

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5 Appendix 11.

1137.That is a divergence between you which we perfectly understand. Finally, the Stow Hill Report is really advocating a crash programme of consolidating legislation and saying that at the present rate you would take sixty years to do your work of consolidation. Quite clearly from the evidence of Sir John Fiennes there is a great shortage of Parliamentary draftsmen, and I do not quite see how your programme can be fitted in with the work of the Law Commission on the law reform Bills which have got to take priority. Is there any way of getting over these rather difficult hurdles?— We would suggest first of all the adoption in principle of the desirability of more or less total consolidation of the Statute Book as an aim to be approached. That has not been adopted and the Law Commission itself has declined to adopt it as a principle. If it were adopted, we feel it is of such importance to get the Statute Book into proper shape that it should be given priority over technical law reform Bills. Then, we would say, again if that principle were adopted, that there should be a programme of training draftsmen and a serious attempt made to enlist more people into this profession. There is a world shortage of legislative draftsmen. In this country we did begin, and still continue, I believe, a training programme for Commonwealth draftsmen at Marlborough House. In fact, I was a lecturer at the first of those programmes. We are prepared to provide training for Commonwealth draftsmen here but we do not seem to have contemplated introducing a proper training system for our own draftsmen. If it were appreciated what an immense waste of time, money, effort and everything else is involved in the untidy state of our Statute Book, it would be seen to be a real priority to recruit and train more people for this work.

*Dame Irene Ward*

1138.Has there ever been a training scheme for Parliamentary draftsmen? —Not for draftsmen in the United Kingdom.

1139.Never?—I am sure there never has been. It is done in the old way by joining the Parliamentary Counsel Office and working one’s way up through it.

*Chairman*

1140.Are your views on this in line with the views of Sir Leslie Scarman of the Law Commission?—It is difficult for me to answer for Sir Leslie. I think he would like to see more or less total consolidation but he has, perhaps, a greater sense than I have myself of the difficulties of producing more draftsmen.

*Chairman.* Thank you very much, Mr. Bennion, for your very helpful evidence.

## D. LETTER FROM SIR NOEL HUTTON, DATED OCTOBER 30, 1971

We spoke on the telephone about your draft Report, now published in part as Appendix 18 to the Report of the Select Committee on Procedure 1970-71 (H.C. No. 538), and you invited me to repeat for publication with the final version one or two of the comments that I had made in private correspondence earlier this year. These are only a selection from those that I made or suppressed, and in recording them I hope I may make it clear without offence that the principle expressis verbis does not apply.

1. Employment of Practitioners to supplement the drafting corps. This might be made to work within limits, but I expect you have seen what

Graham Harrison had to say on the subject in his address to the Society of Public Teachers of Law—1935 J.S.P.T.L. at p. 23. Anyway I imagine it would be up-hill work to attempt this class of business from ordinary Chambers without the resources available in the Parliamentary Counsel Office such as proper sets of statutes in working order, instant shorthand writing, and immediate access to the Bill files on the enactments to be consolidated. Moreover it is not just a question of draftsmen's time. A greatly increased load of consolidation would put a greatly increased bite on the administrative and legal resources of the departments responsible for the relevant branch of the law. You don't consolidate in a vacuum. It would be no use (if it were possible and otherwise desirable) to increase the Departmental Staff accordingly. The men you need are those who have the expertise.

2. " Textual Memoranda." If we assume for the purposes of argument that amending Bills are operating wholly or mainly in the field of principal Acts which are either original or have been amended by carpentry only (and in the latter case, I suppose, reprinted as amended) the Textual Memorandum would apparently serve little purpose. Copies of at least the main Acts to be amended would be available in the Vote Office, and it should not be too hard for members to do their own work in reading the amendments into the text. But if there is to be an additional luxury of this kind to sweeten the pill, I suspect it would break the machine. These days the most important feature of any substantial Government Bill is the date of introduction. All other considerations apart, the proposal would double or treble the load on the Printers (who are already stretched to the limit) and probably create a bottle-neck there.

3. " Jamaica Schedules." I should be unalterably opposed to this suggestion.

## E. LETTER FROM SIR LESLIE SCARMAN, CHAIRMAN OF THE LAW COMMISSION, DATED JULY 28, 1971

Some time back you asked me to let you have comments on the First Report of your Committee of the Statute Law Society. I have now had an opportunity of discussing it with my colleagues on the Law Commission. Broadly our views are as follows:

(1) We should like to stick firmly by what is said in the earlier correspondence reproduced in the appendix to your Report. We remain entirely opposed to the idea of the comprehensive consolidation programme suggested. You will no doubt have seen our Second Programme on Consolidation and Statute Law Revision (Law Com. No. 44) which appeared in April. This sets out our approach to the whole problem of consolidation.

(2) We were interested to see what your draft Report says about textual amendment. We use it in draft Bills whenever we can, but we are bound to own that it is not always convenient or even possible to employ this technique, and we think that the difficulties and limitations of it are insufficiently emphasised in your Report.

It is true that more resort to textual amendment is likely to delay the need for re-consolidation, but we would certainly not agree that it will never be necessary. Amending legislation frequently plays havoc with the structure of the consolidated Act, and re-consolidation becomes strongly indicated when the attempt to cram a quart into a pint pot produces results too ungainly to be tolerated.

The new edition of Statutes in Force will, whenever possible, reprint Acts as textually amended and should, therefore, help to put off the day when re-consolidation becomes necessary.

(3) We have given some thought to the rest of the Report but do not think it necessary to comment in detail. The fact that we do not deal with it does not, however, mean that we agree—especially as some of the bright ideas like the Jamaica Schedule require to be placed in perspective; they have their use in some circumstances but are certainly not suitable for use in all Bills.

### F. LETTER FROM THE RIGHT HONOURABLE FRANCIS PYM, P.C, M.P., M.C, CHIEF GOVERNMENT WHIP, DATED JULY 20, 1971

May I refer again to your letter of June 17. I have now had an opportunity to consult about the Report which came with it. The subject is highly technical and I hope you will accept that it could best be considered by the Select Committee on Procedure. In fact, I believe that they have already had the benefit of copies of the REPORT.

One aspect of the proposals which is of immediate interest to me is the suggestion that we should go over to the textual system of amendments. I suppose the practical effect of this would take place *de facto,* not on the basis of the bill, but rather on the related memorandum. This would, I am advised, lead to a great deal of work for bill teams and for the staff of the House; it would be necessary to consider whether this price would be balanced by any resulting benefit to users of the statutes. No doubt this and the other points arising from the proposals will be reported on by the Select Committee, and I shall read with interest what they have to say.