

Statute law reform

As a former parliamentary draftsman, and author of two current textbooks on statute law, I welcome James Goudie QC's article (*Counsel*, June 1991). Before looking at the positive side, it is necessary however to consider four difficulties that stand in the way of reform.

First, it is no use suggesting changes that would hinder the effective carrying out of the Government's legislative programme. So we must put up with some of the things Goudie complains about, such as too-rapid amendments to new Acts, Henry VIII clauses, fleshing out of Acts by statutory instruments, delayed commencement dates, and complicated transitional provisions.

Second, we need to recognise that a Bill has to be in a form suitable for debate, and usually is heavily amended at various stages of its progress. This hinders the achievement of what Goudie demands, namely 'clear and simple language' and 'a logical, sequential pattern that allows for most convenient reference by the user'.

Thirdly, there are reasons for including a great deal of detail. If it is omitted, too much is left to judicial and administrative (rather than legislative) decision and no one knows what the law on a point is until it has been before the courts. Goudie suggests putting detail in Schedules, but this does not help people who need to understand it.

Fourthly, it must be remembered that modern legislation regulates huge areas of life. Since the facts it deals with are complex, it too must be complex. For example Goudie says that legislation should expressly state whether it is intended to be retrospective, but this is too simplistic. Often, an enactment is retrospective as respects some matters but not others.

Having said that, I support many of Goudie's suggestions. There should, as he says, be a body charged with the exclusive function of looking after the statute book. (I suggest the setting up of a Statute Law Commission in my book *Statute Law*). There should be more consolidation and codification. Amendments should be textual rather than indirect.

Above all, as Goudie so rightly says, all legislation on a particular subject, including statutory instruments, 'should be contained in its latest form and comprehensively in one place'. Could this be done? I have proved that it could, by post-enactment processing. It is now fifteen years since I devised the system known as composite restatement and tested it successfully in a loose-leaf textbook on consumer credit law.

Goudie says that the Bar 'should identify and promote a series of proposals'. I am sure he is right. Only if legal practitioners themselves *resolutely* and *continuously* press for realistic reforms will this soluble problem actually be solved.