

*Introductory Note by Francis Bennion*

The following article by me describes the system of promulgating statutory laws in the British Empire. After it was published I came across an interesting article by Ruth Sullivan which bears on the subject as it affects Canada ('Some Implications of Plain Language Drafting' (2002) 22(3) *Statute Law Review* 145). I am grateful to Jeffrey Barnes of La Trobe University Australia for drawing this to my attention.

Ruth Sullivan points out that this type of law reform, though it has its uses, affects statutory interpretation by use of legislative history.

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## **Publishing the Laws: What we can Learn from the Colonial System<sup>1</sup>**

*Francis Bennion*

### **Introductory**

The duty to act in accordance with law requires for its observance that the law should be readily available in its most up to date form. This raises the question of how laws are promulgated and published. By a curious paradox, Britain arranged these matters much better for its colonies than it did for the home country. In the former, the system of publication was changed on the inauguration of the republic which usually followed independence but, since many pre-republican laws remain in force in the territories in question, the system developed in Colonial days is of present importance there as well as historical interest. It also has some lessons for Britain itself, which still does not have a satisfactory system.

### **The Colonial system**

Throughout the Colonial period primary laws took the form of Ordinances, and a threefold system was developed to make the Ordinances available to those who needed to refer to them (such as the district officer on his rounds). The first stage was the publication in the *Gazette* of the text of each Ordinance as it was made. The second stage was the publication soon after the end of each year of a bound volume containing the Ordinances made in that year. The third stage was the publication every few years of a collected edition, usually printed in England, of the Ordinances currently in force. Subsidiary legislation, Imperial Acts applying to the territory, Imperial Orders in Council, Letters Patent and other relevant instruments were treated in much the same way, the collected editions including these as well as the Ordinances.

The method was much the same throughout the British Empire. The present article describes the system prevailing in the Gold Coast Colony of West Africa, together with Ashanti, the Northern Territories and British Togoland. All these became comprised in the territory of Ghana on the attainment of independence in 1957.

### **The Gold Coast**

Ten collected editions were published in the century preceding the attainment of Ghana's independence, the years of publication being 1860, 1874, 1887, 1898, 1903, 1910, 1920, 1928, 1937 and

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<sup>1</sup> The material for this article is largely derived from the author's book *Constitutional Law of Ghana* (London, Butterworths African Law Series No. 5, 1962). The book, which has been out of print for many years, aimed to explain Dr Nkrumah's constitution enacted when Ghana became a republic in 1960. The constitution, together with other constitutional enactments, was drafted by the author under the superintendence of the Ghana Attorney-General Geoffrey Bing, formerly a Labour MP in the Westminster Parliament.

1954-1956. As the number of volumes required grew from one in 1860 to eleven in 1954-1956 so the method of treatment grew more elaborate, and special Ordinances were passed to enable the form of the law to be revised and to make the resulting edition the authorised statute book.<sup>2</sup>

The accompanying table gives an outline of the position. Factors such as the humidity of the climate and the voraciousness of paper-loving insects mean a short life for books in Ghana, and not even the National Archives in Accra possess a complete set of editions of Gold Coast laws. The table was compiled by the present author from the materials available and is believed to be complete, although it is possible that further collected editions were published in the nineteenth century and have since been lost sight of.

The editions of 1860 and 1874 were merely collections in chronological order of the Ordinances and other laws in the form in which they were made, the 1874 edition containing also the texts of various treaties made with local Chiefs. In the 1887 edition, the first of the three prepared by Sir William Brandford Griffith, certain improvements were made. An Ordinance was passed which repealed a number of spent and obsolete enactments and thus enabled them to be omitted from the collected edition.<sup>3</sup> Although the remaining Ordinances were printed in chronological order as passed, footnotes were included to show where amendments had been made.

It must have been apparent that this was not enough, and before work was begun on the next edition an Ordinance was passed appointing Sir William Brandford Griffith a Commissioner for the purpose of preparing a revised edition and authorising him to do anything relating to form and method which might be necessary for the perfecting of the new edition.<sup>4</sup> In particular he was authorised to omit spent enactments, to consolidate Ordinances *in pari materia*, to alter the arrangement of Ordinances, and to add short titles and marginal notes. On being approved by the Governor the edition so prepared was to constitute 'the sole and only proper Statute Book of the Gold Coast Colony up to the date of the latest of the Ordinances contained therein'.

The 1898 edition, which was prepared under this Ordinance, did not perhaps exploit the powers given as fully as it might have done. Apart from the incorporation of amending Ordinances in the principal Ordinances affected by them, the method remained

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<sup>2</sup> Between 1894 and 1954 no less than twenty-eight Ordinances were passed in what is now Ghana with respect to these collected editions, as well as a number of others which repealed spent Ordinances or otherwise provided for statute law revision.

<sup>3</sup> Statute Law Revision Ordinance, 1886 (No. 1).

<sup>4</sup> Reprint of Statutes Ordinance, 1896 (No. 14).

## Collected Editions of Gold Coast Laws

<i>No. of volumes</i>	<i>Title</i>	<i>Containing law in force at</i>	<i>Published</i>	<i>Extent</i>	<i>Statutory authority</i>	<i>Prepared by</i>
1	Ordinances of the Forts and Settlements on the Gold Coast	31st Dec., 1859	1860	H.M.'s jurisdiction	—	—
1	Ordinances of the Gold Coast Colony	31st Dec., 1870	1874	Colony	—	Algernon Montagu
1	Laws of the Gold Coast Colony	7th April, 1887	1887	Colony	—	Sir William Brandford Griffith, <i>Chief Justice of The Gold Coast Colony</i>
2	Ordinances of the Gold Coast Colony	June, 1898	1898	Colony	Reprint of Statutes Ordinance, 1896 (No. 14) <sup>5</sup>	
2	Ordinances of the Gold Coast Colony	31st March, 1903	1903	Gold Coast	Reprint of Statutes Ordinance, 1903 (No. 4)	
3	Ordinances of the Gold Coast Colony	31st Dec., 1909	1910	Gold Coast	Reprint of Statutes Ordinance, 1909 (No. 16)	F. H. Gough, <i>a Puisne Judge of the Colony</i>
1	Ordinances of Ashanti/Ordinances of the Northern Territories					
3	Laws of the Gold Coast Colony 1920	31st Dec., 1919	1920	Gold Coast	Revised Edition of the Laws Ordinance, 1920 (No. 16) <sup>6</sup>	Sir Donald Kingdon, <i>Attorney-General of the Colony</i>
1	Laws of Ashanti 1920					
1	Laws of the Northern Territories of the Gold Coast 1920					
3	Laws of the Gold Coast Colony 1928	1st Jan., 1928	1928	Gold Coast and British Togoland	Revised Edition of the Laws Ordinance, 1928 (No. 12) <sup>7</sup>	E. G. Smith, <i>a Puisne Judge of the Colony</i>
2	Laws of Ashanti, British Togoland and Northern Territories 1928					
4	Laws of the Gold Coast (including Togoland under British Mandate) 1936	1st Sept., 1936	1937	Gold Coast and British Togoland	Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24) <sup>8</sup>	Sir Leslie M'Carthy, <i>Solicitor-General of the Gold Coast</i>
5	Laws of the Gold Coast (1951) <sup>9</sup>	31st Dec., 1951	1954	Gold Coast and British Togoland	Revised Edition of the Laws Ordinance 1951 (No. 36) <sup>12</sup>	Sir Percy McElwaine
4	Laws of the Gold Coast (1954) <sup>10</sup>	31st Dec., 1954	1956			Sir Patrick Branigan, <i>Attorney-General of the Gold Coast</i>
			1955			

<sup>5</sup> As amended by Ordinances No. 17 of 1897 and No. 13 of 1898.

<sup>6</sup> This was the Colony Ordinance; similar Ordinances were passed for Ashanti (No. 8 of 1920) and the Northern Territories (No. 5 of 1920).

<sup>7</sup> As amended by Ordinance No. 26 of 1929. This was the Colony Ordinance; similar Ordinances were passed for Ashanti (No. 2 of 1928 as amended by No. 21 of 1929, British Togoland No. 1 of 1928) and the Northern Territories (No. 1 of 1928).

<sup>8</sup> As amended by Ordinances Nos 8 and 29 of 1937. The Togoland Ordinance was No. 30 of 1936, as amended by Ordinance No. 16 of 1937.

<sup>9</sup> Volumes I to V of the 1951-1954, Edition, containing Ordinances only.

<sup>10</sup> Volumes VI to IX of the 1951-54 Edition, containing subsidiary legislation, etc.

<sup>11</sup> Containing the Ordinances of 1952-1954, The Income Tax Ordinance, 1943 and a chronological table of Ordinances from 1852 onwards.

<sup>12</sup> As amended by Ordinance No. 35 of 1954.

much as before and the Ordinances continued to be arranged in chronological order. This was also true of the two following editions, made under similar

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powers. In 1920 however Sir Donald Kingdon introduced a new method, following a recommendation made in a circular from the Secretary of State for the Colonies.<sup>13</sup>

### **Arrangement under titles**

The Ordinances of the Gold Coast Colony were arranged under twenty-four Titles, each Ordinance being given a chapter number in place of its original number. The Titles were as follows, the figures in brackets indicating the number of chapters in each—

1. Legislation (4).
2. Abolition of Slavery (2).
3. Administration of Justice (11).
4. Public Officers (13).
5. Police and Prisons (6).
6. Political Prisoners (7).
7. Military Affairs (5).
8. Posts and Telegraphs (5).
9. Medical and Sanitary Affairs (12).
10. Local Government (1).
11. Religion and Education (4).
12. Marriage (6).
13. Labour (3).
14. Native Affairs (5).
15. Land (7).
16. Mines (3).
17. Forestry and Agriculture (4).
18. Animals (2).
19. Ways and Communications (11).
20. Finance (22).
21. Trade and Customs (24).
22. Regulation and Control of Various Matters (17).
23. Immigration (5).
24. War (18).

The arrangement of Titles, and of chapters within them, was designed to bring as close together as possible subjects of a similar nature and matters continually being dealt with by the same individuals. Another change made in this edition was the separation of the Colony subsidiary legislation from the Ordinances from which it derived. The first two volumes contained the Ordinances under chapter numbers from 1 to 197 and the third contained subsidiary legislation as well as Imperial statutes, Orders in Council, etc. Each item of subsidiary legislation was made easy to find by being grouped under the same chapter number as the Ordinance giving power to make it, a useful system which continued to be employed in the subsequent editions. In the volumes for Ashanti and the Northern Territories the Ordinances continued to be arranged in chronological order, since Sir Donald Kingdon

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<sup>13</sup> Circular Dispatch dated 18th September, 1915.

considered that the fact that a large part of the law in force consisted of applied Ordinances of the Colony precluded arrangement under Titles.<sup>14</sup>

In the 1928 edition the grouping of Ordinances under Titles was, 'by special request of His Excellency the Governor', abandoned in favour of an alphabetical order according to the short title of each Ordinance.<sup>15</sup> Short titles which began with a word which was not indicative of the subject-matter, and would thus have been difficult to find in the alphabetical arrangement, were suitably altered.<sup>16</sup> The alphabetical arrangement was not limited to the Colony, but applied to the three so-called dependencies as well, and the chronological order was finally abandoned. The number of chapters of the Colony Ordinances remained almost the same at 190. In addition there were 24 chapters of Ashanti Ordinances, four chapters of British Togoland Ordinances and 22 chapters of Northern Territories Ordinances.

The system of Titles was restored in the 1936 edition and the new power to legislate in one Ordinance for the Colony, Ashanti and the Northern Territories enabled the edition to take for the first time the form of a single statute-book covering all four territories.<sup>17</sup> The Titles were in the main similar to those used in the 1920 edition, although they appeared in a different order. The Titles Political Prisoners, Regulation and Control of Various Matters, and War disappeared. New Titles were Electricity and Water, Administration (relating only to the dependencies), Books and Publications, and Miscellaneous (ranging from Oaths to Girl Guides).

### **Other details**

Another change was the omission of certain Ordinances, which were listed in the Schedule to the Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24). These were described as being 'obsolescent or of a temporary nature or being under revision or being Ordinances the carrying into effect the provisions of which is doubtful'. Their omission did not affect whatever force and validity they had.<sup>18</sup>

Although the 1936 edition was thus able to be produced in only four volumes, the problem of obsolescence caused by the increasing bulk of current legislation was becoming more acute. It was little use having the revised laws in four volumes if within a few years as many more volumes had also to be handled in order to ascertain the state of the law. To meet this problem a system of cumulative annual supplements was embarked upon in 1938.<sup>19</sup> Ordinances enacted after

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1 September, 1936 which amended chapters of the 1936 edition were arranged in the supplement in the order of those chapter numbers. Other Ordinances so enacted were given in chronological order, incorporating any amendments subsequently made to them. Subsidiary legislation was treated in the same way. In order therefore to find out if an enactment included in the 1936 edition had been amended or repealed, it was only necessary to look in one place in the latest cumulative supplement. Unfortunately shortage of staff due to war conditions led to the suspension of the scheme in 1940 after only two annual supplements had been produced.<sup>20</sup> It was never revived.

When the last Gold Coast Colonial revision was undertaken in 1951 the bulk of statute law had greatly increased, and the task was the most formidable that had faced any editor of the Gold Coast laws. The Revised Edition of the Laws Ordinance, 1951 (No. 36) therefore authorised the editor, Sir Percy McElwaine (a former Chief Justice of the Straits Settlements), to omit a considerable number

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<sup>14</sup> See the preface to these volumes.

<sup>15</sup> Preface to the 1928 Edition, p. vii. The Governor was Sir Alexander Slater, who had succeeded Guggisberg the year before.

<sup>16</sup> E.g. the short title 'British and Colonial Probates Ordinance' was changed to 'Probates (British and Colonial) Ordinance'.

<sup>17</sup> By virtue of the British Sphere of Togoland Order in Council, 1923 the laws of the Colony applied in general to the southern section of British Togoland, and the laws of the Northern Territories applied in general to the northern section of British Togoland.

<sup>18</sup> Revised Edition of the Laws (Gold Coast) Ordinance, 1936 (No. 24), s. 5.

<sup>19</sup> Revised Edition of the Laws (Annual Supplements) Ordinance, 1938 (No. 37).

<sup>20</sup> The suspension was imposed by Regulations, (No. 20 of 1940) and continued at the end of the war by Ordinance No. 3 of 1946.

of Ordinances, which nevertheless retained their validity.<sup>21</sup> Provision was also made for further omissions, and also amendments and additions, to be authorised by the legislature and reflected in the revised edition.<sup>22</sup>

These steps did not prevent the edition from reaching the unprecedented size of nine volumes, with two more being added by way of supplement.<sup>23</sup> The Ordinances themselves were contained in five volumes and were again arranged under Titles. The number of chapters increased from 221 to 272, and the number of Titles from 26 to 30. The new Titles were Town Planning and Housing, Liquor Trade, Enquiries, Statistics and Valuation, and Arms, Explosive (*sic*) and Inflammatory Substances. The order of the remaining Titles was virtually unchanged. The system of Titles was deprived of much of what value it possessed by the failure to follow the previous practice of listing all the Titles at the beginning of the first volume.

Although containing the law as in force at the end of 1951, the volumes containing the Ordinances were not published until 1954, by which time much of the law had been altered. To prevent the subsidiary legislation volumes from falling even further behind, an Ordinance was passed to enable these to include instruments made up to the end of 1954,<sup>24</sup> but even so they were not published until 1956. The work was completed by a two-volume supplement which contained the Ordinances passed in 1952-1954 and also the consolidated edition of the Income Tax Ordinance, 1943 which had been prepared under separate statutory authority.<sup>25</sup> Those Ordinances which amended chapters included in the five volumes published in 1954 were set out under the appropriate chapter numbers after the Income Tax Ordinance at the beginning of the supplement; the remainder were given in chronological order. Subsidiary legislation under Ordinances passed in 1952-1954 was included in Volume VI of the main work.

### **Indexing and noting-up**

In concluding this brief survey of the Colonial system of publishing laws some mention should be made of indexing and noting-up. The practice varied, but it was usual to supplement each collected edition by a full subject-matter index and also a chronological table showing every Ordinance and its subsequent fate: repeal, absorption into a chapter of a revised edition, omission or otherwise. Sometimes the index was published separately (this happened in the Gold Coast with the 1936 and 1951-1954 editions), and sometimes it was given at the end of a volume.

In the case of the 1951-1954 Gold Coast edition not only was a full index published separately, but an alphabetical list of Ordinances was given at the end of every volume. In each annual volume of Ordinances published thereafter a cumulative index arranged in alphabetical order of short titles was printed at the end of the volume.

Noting-up was provided for by the issue, at intervals of a few months, of noting-up instructions. These set out, in order of chapter numbers of the latest collected edition followed by subsequent legislation in chronological order, the textual amendments made to Ordinances and, after independence, to Acts of the territory's Parliament. The instructions enabled minor amendments to be noted in manuscript on the enactment affected, while larger amendments were cut out of the noting-up booklet and pasted in at the appropriate place in the bound volume. No noting-up service was provided for subsidiary legislation.

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<sup>21</sup> See the Schedule to the Ordinance which, as amended, is printed at pp. xv to xvii of Vol. I of the 1951 edition. Further entries were made by Ordinance No. 35 of 1954.

<sup>22</sup> Revised Edition of the Laws Ordinance, 1951, (No.36) s. 6. The procedure was used to effect a considerable tidying-up of the statute book — see the Revised Edition of the Laws (Miscellaneous Provisions) Ordinance, 1952 (No. 52).

<sup>23</sup> The figures exaggerate the real increase, since not only were the 1951 volumes smaller than those of 1936 but heavier paper was used.

<sup>24</sup> Revised Edition of the Laws (Amendment) Ordinance, 1954 (No. 35), s.2.

<sup>25</sup> Income Tax (Amendment) Ordinance, 1952 (No. 18), s. 50. The supplement itself was authorised by the Revised Edition of the Ordinances (1952-1954 Supplement) Ordinance, 1954 (No. 36).