



LAW COMMISSION'S
FIRST PROGRAMME
ON CONSOLIDATION
AND STATUTE LAW
REVISION

(LAW COMMISSIONS ACT 1965)

*Laid before Parliament by the Lord High Chancellor
pursuant to Section 3(2) of the Law Commissions Act 1965*

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The Law Commission was set up by section 1 of the Law Commissions Act 1965 for the purpose of promoting the reform of the law. The Commissioners are—

The Honourable Mr. Justice Scarman, O.B.E., *Chairman*.

Mr. L. C. B. Gower, M.B.E.

Mr. Neil Lawson, Q.C.

Mr. N. S. Marsh.

Mr. Andrew Martin, Q.C.

Mr. Arthur Stapleton Cotton is a special consultant to the Commission. The Secretary of the Commission is Mr. H. Boggis-Rolfe, C.B.E., and its offices are at Lacon House, Theobald's Road, London, W.C.1.

NOTE BY THE COMMISSIONERS

1. In a letter of 7th July, 1965, we were formally requested by the Lord Chancellor to prepare a comprehensive programme of consolidation and statute law revision pursuant to section 3(1)(d) of the Law Commissions Act 1965.

2. As stated in the Note accompanying our First Programme of proposals for Law Reform, we regard consolidation and statute law revision as urgently needed means of simplifying the law. By "consolidation" we mean the process of combining the legislative provisions on a single topic into one coherent enactment. This in itself will render the law more easily accessible and may usefully precede in some cases a complete codification of that branch of the law including not only previous legislation but also former judge-made law. By "statute law revision" we mean the process of pruning the dead wood from the statute-book, another process which itself makes the law easier to ascertain and which facilitates the later process of consolidation and, when appropriate, codification.

3. In drawing up a comprehensive programme, we have, therefore, thought of these two processes as techniques complementary of each other and of the wider process of reforming the law so that it is more just, rational, simple and modern. We have taken into account plans we have for codification which might supersede consolidation and for law reform which might make consolidation or revision premature. We have also taken into account any known intention of government departments to promote amending legislation.

CONSOLIDATION

4. To some extent we have had to operate in the dark since we cannot predict when amendments that are in prospect will be made, or even foresee all the points at which amendments will be made. But it is clear that in devising a *programme* of consolidation the usefulness of one consolidation as compared with another has to be assessed not only in terms of the immediate gain in the form of our Statute Book, but also in terms of the durability of the result: the fact that a body of statutes is in need of extensive amendment, though it may not make consolidation impossible or be a conclusive reason against consolidation, is at the lowest an argument for giving preference to some other consolidation. Useful as it might be to reproduce the Merchant Shipping Acts in a single modern statute, it would call for an expenditure of effort (necessarily diverted from other things), which could not be justified when the Acts are at many points, in the view of the Board of Trade and ourselves, in need of modernisation in substance. Similar arguments apply to the Acts about burials and cremations where the only solution is a completely new code.

5. We were not surprised to be told by members of the Parliamentary Counsel Office that they have found, in the course of their work on consolidation, that, as one gets back to Victorian and earlier statutes, there are many statutes which cannot be satisfactorily consolidated without first being amended; and that consolidation is not infrequently impeded by provisions which are completely obsolete, or of no practical value, but which, for one

reason or another, have to be reproduced and cannot merely be repealed as unnecessary. In the past, in cases of this sort, resort was often had to consolidation with amendment, even on a large scale. The Acts consolidating the criminal law in 1861 remain an outstanding monument of this technique, even if in some respects they are also a monument of ineptitude. The technique has been less freely used in more recent times for Parliamentary reasons; a Bill consolidating a branch of the statute law with amendments is open to amendment on any point, even if the effect of the amendment is to produce a complete change in the law, and the Parliamentary time which it may take for this reason can result in the Bill not passing at all. A partial remedy for this difficulty was found in the Consolidation of Enactments (Procedure) Act 1949, which provides a means for making minor and technical amendments in order to facilitate consolidation while allowing the Bill to proceed in Parliament as if it were in other respects a strict consolidation of the existing law. But the Act is narrowly framed—and perhaps necessarily so, if it has to describe in advance and in general terms the class of amendment which Parliament is prepared to accept as being of a more or less trivial nature. It certainly has been found in practice that all amendments which are desirable and uncontroversial cannot fairly be brought within the terms of the 1949 Act.

6. The technique of consolidation with amendment has never been wholly abandoned; and, in so far as the process of consolidation is impeded by the need for amendments, we think it would be more useful to revive it than to consider a widening of the powers given by the Consolidation of Enactments (Procedure) Act 1949. An outstanding example of consolidation with amendment is the Highways Act 1959. The amendments in this case were critically scrutinised in advance by an expert Committee, and the Bill was treated in Parliament very largely as if it were a strict consolidation. We should hope that Parliament would be prepared to give the same reception to a Bill intended to consolidate the law with only such amendments as, after due inquiry and consultation, appear to the Law Commission, as a body independent of the Executive, to be required not for the purpose of reforming the substance of the law but for the purpose of producing a satisfactory consolidation.

7. In the circumstances we have outlined it is clearly not possible to produce a comprehensive programme of consolidation in the sense of listing all the Acts which we propose to deal with by way of consolidation, the groups in which we propose to consolidate them and the order in which we propose to deal with the groups. We do not think that our instructions require us to attempt this. The need for constant review in the light of each year's legislation would from the start make such attempt little better than meaningless.

8. Moreover, the pace at which consolidation can proceed depends on various factors apart from the problem of amendment, with which we have dealt at length: we refer to—

- (a) the ability of the Joint Select Committee on Consolidation Bills to consider the Bills which come before them. We realise that this is a very heavy burden on the eminent and busy people who are concerned;

(b) the ability of lawyers and others in the departments concerned to collaborate in this work, when they may be heavily pressed with other business ; and

(c) the ability of the draftsmen to undertake the laborious task that is involved.

9. There are some large branches of the statute law which have long been in great need of consolidation, but it has hitherto been impossible to begin the work because the department concerned has been too pressed with other business to undertake the collaboration involved. Parliamentary Counsel are always busy and they, too, may not be able to undertake a large piece of consolidation, though well able to produce a more modest consolidation Bill. This has led us to consider the possibility of consolidating certain major branches of the statute law in parts, splitting the subject in a way that is not likely to be inconvenient to the user. We regard this "splitting technique", as we call it, as one to be adopted where an urgently needed consolidation could not otherwise be embarked upon immediately.

10. Consolidation Bills on the following subjects are at present being drafted under programmes which preceded the establishment of the Law Commission. They are in various stages of preparation, but we hope that with the exception of items (k) and (l), on which work has had to be deferred pending proposed amending Bills, they will be ready for the 1965-66 Session.

- (a) Development of Inventions
- (b) Firearms
- (c) Fisheries (Conservation)
- (d) Forestry
- (e) Hire Purchase Advertisements
- (f) Industrial Injuries and Diseases (pre-1948 cases)
- (g) Inshore Fishing
- (h) Mines (Working Facilities and Support)
- (j) Ships (Transfer Restrictions)
- (k) Children and Young Persons
- (l) Rating

11. The above list represents the work in progress which we have inherited. We propose in considering our future programme to concentrate in the first instance on topics in which the needs of the public and the legal profession are most acute.

12. Our first proposals for consolidation are set out in Part A of the sub-joined Programme. Section 1 lists the major topics which we regard as in urgent need of consolidation. It will be seen that three of these are in the field of Revenue Law. We give these high priority because of the appalling complication of the relevant legislation. On principle the taxpayer should be able to ascertain his position without inordinate trouble and expense ; consolidation could make a major contribution to this.

13. In section 2 of Part A of the Programme we list additional topics which might be embarked upon as the programme referred to in paragraph 12 permits. Experience has shown that it is often possible to dispose of modest consolidations in the inevitable gaps in work on major items.

STATUTE LAW REVISION

14. As originally understood, statute law revision was designed merely to facilitate the production of a revised edition of the statutes by striking out unrepealed provisions which had become inoperative. There was a great deal of this to be done, since early statutes often contained no express provision for repeal at all or merely repealed "all previous Acts so far as inconsistent with this Act". This type of statute law revision is now done concurrently with the amendments by the Repeal Schedule in the amending Act. There is still room for it, for instance where temporary provisions have expired or where there has been some change of circumstances such that the facts on which an Act operates can no longer occur, and it is still the practice to have Statute Law Revision Bills at intervals to deal with matters of this sort, as well as with oversights in Repeal Schedules or in previous Statute Law Revision Acts. The scope of statute law revision has of recent years been somewhat extended, but we think there is room for a still more forceful approach; we propose to work systematically through the existing statutes with a view to recommending the repeal not only of matter which can be treated as inoperative, but also of matter that no longer serves a substantial purpose.

15. We hope that this new approach to statute law revision will not only reduce appreciably the number of Acts remaining to be consolidated, but also facilitate consolidation by getting rid of these unnecessary provisions which tend as things now are to make consolidation difficult. To do the task thoroughly may not be easy. If our aim is to get rid not only of those provisions which are obviously unnecessary, but also of those which upon examination are found to fulfil no useful purpose, we must be prepared to devote to the task the time and labour needed for consultation and research; and it may well be that some new provision is needed to preserve the residual effect of an existing Act before the Act can be repealed. Here, as with consolidation, we shall, of course, bear in mind our other plans for law reform, and not attempt to duplicate our efforts in tackling by way of statute law revision Acts which in any case seem likely to be superseded by our proposals for amendment or codification.

CONCLUSION

16. We regard this programme as only one step in the process of reducing the statute book to manageable proportions and readily intelligible form. In its implementation consultation will be necessary with the Scottish Law Commission, as much of the legislation which we suggest should be consolidated or repealed relates to Scotland as well as to England and Wales.

17th November, 1965.

LAW COMMISSIONS'S FIRST PROGRAMME ON CONSOLIDATION AND STATUTE LAW REVISION

PART A. CONSOLIDATION

Major Topics

I

INCOME TAX

No programme of consolidation could be regarded as "comprehensive" unless it included Income Tax legislation. We have no doubt that this ranks as the top priority ahead even of the legislation relating to estate duty. The difficulties of undertaking it are formidable as the law has been amended at least once a year since it was last consolidated in 1952 and in some years the amendments have been very substantial. Having regard to the fact that the Chancellor of the Exchequer said in his last Budget speech that he proposed to carry out a systematic review of every aspect of the taxation system stretching over many years the present time may not appear to be opportune for undertaking this work. But if we wait until the time is opportune, we shall never start and the difficulties will multiply. Hence we propose that an immediate start shall be made even though it may not be possible to complete the whole operation for some time. We would like to look more closely at the possibility of "splitting" so as to start with some selected branch of the tax law if this could be shown to be satisfactory from the user's point of view.

Many of the considerations here mentioned in relation to income tax, in particular those arising from the proposed systematic review of the taxation system, apply also to the next two items in our list.

II

ESTATE DUTY

The need to consolidate the law relating to Estate Duty is almost as great as that relating to income tax; so are the difficulties. In some respects, indeed, both the need and the difficulties are greater, for consolidation has never been undertaken since estate duty was introduced in 1894, in legislation which incorporated by reference the law and practice relating to earlier types of death duty. The legislation—which is a blot on the statute book—cannot be omitted from a comprehensive programme of consolidation. Work on this topic was, we understand, begun; it should be resumed with the least possible delay.

III

STAMP DUTIES

The present law is to be found in a great many different Acts and there has been no consolidation since 1891. The work presents less difficulties than that relating to income tax and estate duty and could be disposed of more rapidly. But the present state of the legislation, though unsatisfactory, causes less general inconvenience and accordingly it is not recommended that it should be undertaken in priority to I and II.

IV

RENT ACTS

These Acts, which vitally affect the daily lives of many people in this country, have not been consolidated since 1920 and are in a most complicated and confused state. Though introduced as temporary measures, they have in fact been with us for nearly 50 years and it is now clear that there is no immediate prospect of their disappearance. In the light of the new Rent Act, the present seems to be as appropriate a time as is likely to occur to undertake consolidation which would undoubtedly be a major contribution to the reform of the Statute Book. We regard this as second in priority only to item I.

V

ROAD TRAFFIC ACTS

Though these were consolidated as recently as 1960, they have since been amended so often that we recommend that they be consolidated again. Unless this is done, this branch of the law, which affects the mass of the people in their daily lives, will become incomprehensible. We understand that the Department concerned is able to collaborate in the work, and it should be possible to make a start in the near future without interfering with items of even greater priority.

VI

PUBLIC HEALTH ACTS

This again is a subject on which we understand that the Department concerned is able to collaborate, and it should be possible to make a start in the near future. It is possible that we might decide to apply the "splitting" technique.

VII

LOCAL GOVERNMENT ACTS

These Acts are closely related to the Public Health legislation and are equally in need of consolidation. In view of the possibility of a reorganisation of Local Government and, in particular, of its finance, it might not be worthwhile immediately to consolidate the Acts as a whole. But any reorganisation is unlikely to affect certain reasonably well-defined branches of the subject ; accordingly there may be room for the use of the "splitting" technique.

Additional Topics

- (i) Criminal Appeals
- (ii) Habeas Corpus
- (iii) House of Commons Members' Fund
- (iv) Juries
- (v) Legal Aid in Criminal Cases
- (vi) Moneylenders and Pawnbrokers
- (vii) Pensions Increase Acts
- (viii) Pensions of judges and others discharging judicial functions
- (ix) Refreshment Houses
- (x) Water

These topics are among those which have recently been recommended as in need of consolidation and this might usefully be undertaken in conjunction with the major items. In many cases some amendments will be necessary either as a preliminary to, or as part of, the process of consolidation.

PART B. STATUTE LAW REVISION

It is proposed to embark immediately on a review of all statutes in chronological order with a view to recommending the repeal of all that cannot positively be shown to continue to perform a useful function.

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