TAX LAW REVIEW COMMITTEE

PARLIAMENTARY PROCEDURES FOR THE ENACTMENT OF REWRITTEN TAX LAW

Report of a Working Party

NOVEMBER 1996

Published by

The Tax Law Review Committee
3rd Floor, 7 Ridgmount Street
London WC1E 7AE
(Tel: +44 (0)171-636 3784)
(Fax: +44 (0)171-323 4780)
(e-mail: mailbox@ifs.org.uk)
(Internet: http://www.ifs.org.uk/)

ISBN 1-873357-61-3

Printed by

KKS Printing
Stanway Street
London N1 6RZ

Parliamentary procedures for the enactment of rewritten tax law

Report of a working party of the Tax Law Review Committee

Members of the working party

The Rt Hon. the Lord Howe of Aberavon, CH, QC (chairman)

Graham Aaronson QC

Clive Betts MP

The Rt Hon. the Lord Brightman

Quentin Davies MP

Michael Ryle Esq.

The Lord Taverne QC

Chris Davidson (Secretary)

Terms of reference

To identify possible Parliamentary procedures for proper scrutiny of a Bill or Bills to re-enact existing tax legislation in more user-friendly form, which allows due consideration of the quality of each whole Bill and of its accuracy in achieving its intended effect, and which allows full debate and amendment where the Bill changes the effect of the existing legislation, but which does not give scope for diversions into wider tax policy issues or matters outside the general scope of the 'rewrite'.

SPONSORS OF THE TAX LAW REVIEW COMMITTEE

3i Group plc
Abbey National plc
Allen & Overy
Arjo Wiggins Appleton plc
Arthur Andersen
Associated British Foods plc
Bank of England
Bank of Scotland plc
Barclays Bank plc
BAT Industries plc
The Boots Company plc
The British Petroleum Company plc
British Telecommunications plc
Burges Salmon
Chartered Institute of Taxation
Commercial Union plc
Deutsche Morgan Grenfell
Ernst & Young
General Accident plc
Glaxo Wellcome plc
Grand Metropolitan plc
The Great Universal Stores plc
Guinness plc
Halifax Building Society
HSBC Holdings plc
ICAEW Faculty of Taxation
ICI plc
KPMG
Linklaters & Paines
Lloyds Bank plc
Marks & Spencer plc
National Westminster Bank plc
Nationwide Building Society
Norton Rose
Price Waterhouse
Prudential Corporation plc
Simmons & Simmons
Speechly Bircham
Unilever plc
Zeneca plc
Individuals (2)

Executive Summary

The Inland Revenue has, with Ministers' approval, embarked upon a project to rewrite the entire body of direct tax law. The rewrite project aims to rewrite existing direct tax legislation in a radically clearer, more user-friendly form. But although the main purpose is to make the existing law easier to understand, the opportunity will be taken to modify the law at the margins both to facilitate simplification and to codify some existing non-statutory practices.

One crucial issue this raises is how Parliament will handle a series of tax simplification Bills intended to enact the rewritten legislation. (We do not believe the project could be enacted in a single Bill.) These tax simplification Bills will not, in the technical sense, be consolidation Bills. But neither will it be realistically possible for Parliament to handle them under the ordinary Public Bill procedure. Consequently, a new, tailor-made procedure will be needed to enable Parliament to scrutinise the rewritten legislation properly but without opening up debate on the full range of fiscal policy matters.

This is, of course, a matter which the Procedure Committees of the two Houses of Parliament will wish to consider in due course, and one or both Houses may wish to debate it either before or after the forthcoming Election. However, the Tax Law Review Committee established this working party and asked us to study the issues involved and to make some recommendations in the hope that Parliament would find this helpful. Hence this Report.

Closely linked with the search for appropriate Parliamentary procedures for handling tax simplification Bills is the issue of the pre-Parliamentary drafting of those Bills. It is only where fully satisfactory arrangements have been put in place for pre-Parliamentary scrutiny of proposed legislation – so that the Bills when presented command wide acceptance – that Parliament has historically been prepared to expedite its procedures.

This Report is therefore divided into the following Parts —

Our deliberations have been greatly helped by the discussions we have held with, and the written comments we have received from, a number of individuals –

Parliamentarians and others – and by others with whom we have spoken more informally. We are grateful to all these people for their constructive advice – and above all we give thanks to our secretary, Chris Davidson, for the meticulous skill and enthusiasm, well beyond the call of duty, with which he has steered this project to completion.

Summary of Conclusions

Our findings and conclusions, as explained in detail in Parts 1 to 5 of this Report, are summarised below.

Historical Perspective

From our review of the historical precedents, it is clear to us that the closest analogy to the proposed tax simplification Bills is the Customs & Excise Act 1952. This Act was designed to consolidate customs and excise law – which at the time was spread across 200 separate Acts enacted over more than 150 years – with amendments to simplify it and bring it into conformity with modern practice. Amendments which it was thought should more properly be enacted separately by Parliament were excluded, ensuring that the Bill was widely welcomed and non-controversial.

The Customs & Excise Bill was drafted on behalf of H M Customs & Excise. It was then examined by an independent committee – chaired by a peer, the first Lord Kennet, and including users of customs & excise legislation – which consulted very widely and made various changes to it. An ad hoc Parliamentary procedure was adopted under which the Bill was referred – exceptionally for a tax Bill, but with impressive success – to a joint committee of both Houses which heard evidence and made further amendments. Thereafter, the Bill passed through its remaining Parliamentary stages with minimal debate and amendment.

Pre-Parliamentary Procedures

The Revenue has outlined the pre-Parliamentary procedures it proposes in a consultative document[1] published in July 1996. These include: (a) a consultative committee of (mainly) tax professionals to examine the rewritten provisions line by line, and (b) a steering committee with a balance of individuals from the public and private sectors to address higher level issues and to confirm that the tax simplification Bills do not unintentionally alter the law.

In the light of these proposals, we see no need to replicate the Kennet Committee, but it will be worth incorporating its best features. Kennet was successful because of the eminence of its members, the thoroughness of its approach, and its avoidance of controversy. Applying these factors to the Revenue's proposals for the pre-Parliamentary stage, we believe that few changes will be necessary. But it is in our

[1] *Tax Law Rewrite - The Way Forward*, © Crown, available from Inland Revenue Library.

view important that the steering committee should include appropriately qualified representation from the House of Commons, and that its chairman should be independent of the Inland Revenue.

Parliamentary Procedures

The tax simplification Bills should be introduced in the House of Commons. We believe they should be accompanied by explanatory memoranda to help Parliament understand their nature and direct its attention.

We have taken note of a proposal that the Commons' Second Reading of the Bill might be conducted not on the floor of the House but in a Second Reading Committee. It would be for the business managers, in consultation with the Commons' Procedure Committee, to consider this possibility: they would need to balance the relatively policy-free nature of the debate which would most probably arise on a largely technical simplification Bill with the importance of allowing the whole House the opportunity for consideration of such a Bill – itself an important innovation – before it makes its way into committee.

The most important issue for consideration is the choice of the appropriate form of Committee Stage. In normal Parliamentary practice, it is axiomatic that Finance Bills are dealt with primarily – if not exclusively – by the House of Commons. The central question in this is whether a tax simplification Bill should best be regarded as a Finance Bill or as a consolidation Bill. It is on just this issue that the Customs & Excise Act 1952 points the way to a very practical compromise. For that Bill was introduced, like a Finance Bill, in the House of Commons but was also examined, like a consolidation Bill, by a joint committee of both Houses. This very clear precedent does, therefore, suggest that for a tax simplification Bill – the predominant purpose of which will be to consolidate and clarify the language of existing law – the most appropriate form for detailed examination in committee is that which has been proven to work so well in practice for mainstream consolidation Bills.

Given the need to hear evidence from Parliamentary Counsel, Revenue officials, the consultative and steering committees and possibly other witnesses, and also the useful role peers customarily play in the consolidation Bill procedure, we believe there would likewise be real advantage in enabling them to play an active part in the consideration of tax simplification Bills. Our fundamental proposal is therefore that each tax simplification Bill should be referred, after Second Reading in the House of Commons, to a joint committee of both Houses.

The new joint committee on simplification Bills should be established along similar lines to the Joint Committee on Consolidation Bills. Its terms of reference should oblige it to consider whether the Bill accurately reproduces the effect of the existing law, other than where deliberate departures have been identified. We believe that this joint committee could also usefully draw upon the procedural experience of Special Public Bill Committees[2] in the Lords and Special Standing Committees in the

[2] Sometimes known as Jellicoe Committees.

Commons, especially in their handling of evidence. The joint committee would examine the Bill, hear evidence about it and amend it as appropriate, and report the Bill to the Commons. It would also make a report to both Houses confirming that the Bill was confined to a re-write and simplification of the law with no changes which ought to be made separately by Parliament.

There are two options following a tax simplification Bill's immediate return to the Commons:

- committal to a Standing Committee; or
- committal to a Committee of the whole House.

Experience with consolidation Bills and also the Customs & Excise Act 1952 strongly suggests that a further Standing Committee should be unnecessary. Our preference, therefore, is a Committee of the whole House. However, we recognise that today's Parliamentary attitudes and conventions are not necessarily identical to those which prevailed in 1952, and the suitability of this procedure will need to be considered by the business managers in the next Parliament.

The Bill would then go on to its Report Stage (which is likely to be largely formal and would be dispensed with altogether if a Committee of the whole House had made no amendments) and Third Reading and then on to the House of Lords where it would probably be treated in the same way as a Finance Bill.

Throughout their Parliamentary stages, the extent to which the simplification Bills can be debated and amended will be a critical issue. Parliament must scrutinise them fully, but being very substantially consolidation measures, they will need protection from the buffeting of conventional political debate. The aim should be to ensure that Parliament debates only:

- whether or not the Bill improves the clarity of the law, and whether further improvements could be made to that end; and whether or not the Bill accurately reproduces the effect of the existing law, other than where (with a view to simplification) departures are intentional, as disclosed by the explanatory memorandum. Amendments under this head should only be permissible to the extent that they seek to improve clarity or remove unintentional departures from the effect of the existing law.
- intentional departures from the existing law, as disclosed by the explanatory memorandum. We do not believe there should be any restriction on amendments which may be tabled under this head within the scope of these departures.

Establishing the Parliamentary Procedures

Parliament will need to identify ways to (i) establish the joint committee and set out its powers and procedures and, to the extent that these depart from the norm, establish the other stages of the Bill's progress; and (ii) establish the limits on Parliamentary debate of the tax simplification Bills.

The following are the options, in ascending order of formality and hence also of difficulty of implementation and rigidity once implemented, for (i).

Firstly, *Orders* could be used, and these take various forms:

- There could be a *specific and discrete Order* at each stage for each Bill;
- There could be a single *omnibus Order* in each House in respect of each Bill;
- A *Sessional Order* in each House could apply to any tax simplification Bill introduced in that Session.

Secondly, *Standing Orders* could be introduced in each House.

Thirdly, *primary legislation* would be the weightiest authority for the treatment of tax simplification Bills, but it would also be unhelpfully rigid.

We hope that the scope of the tax simplification Bills will be sufficiently clear to establish the extent to which the tax simplification Bills can be debated and amended. The Chair would, in our view, be greatly assisted if a satisfactory definition of the nature, scope and terms of reference of the tax simplification exercise could be drawn up, and if this was reflected in the terms of reference of both the joint committee itself and of the steering committee. However, if the scope of debate and amendment could not be established in this way, other means would be required and the options outlined above would be available.

The judgement will be for Ministers to make, no doubt in consultation with Opposition Parties and the Procedure Committees, at the time the first Bill is introduced. We see considerable advantages in retaining flexibility on the earlier simplification Bills so that lessons can be learned and corrections made for later Bills. We therefore recommend that for the first tax simplification Bill, the joint committee should be established by means of a single Order in each House applying to that Bill only, and, in the light of this experience, Standing Orders should then be passed by both Houses to establish the position for subsequent tax simplification Bills. If, contrary to our hope and preference, the scope of the tax simplification Bills could not be determined in the traditional manner, this Order and these Standing Orders should also set out all the additional procedures to be used.

Concluding comments

Whatever Parliamentary and pre-Parliamentary procedure is designed for the passage of the tax simplification Bills, the utmost commitment of the Government – and, no less important, of the Opposition – to the project is essential. History shows the very considerable extent to which simplification of the law can be frustrated where such commitment is absent.

There have been three basic reasons for this: lack of the necessary political will in the face of other pressing objectives; reluctance to try out and make regular use of

significant procedural innovations; and sustained shortage of human and other resources, especially in Parliamentary Counsel's Office.

We conclude, therefore, by echoing our chairman's emphasis on "the huge political will which will be essential if we are to effect the fundamental changes that are needed"[3]. It is democracy itself that will suffer most if decisive action is not now taken, with support from all parties in both Houses, to improve the quality of our fiscal legislation.

[3] H of L Hansard [27 March 1996, Col 1717]

Part 1 – Introduction

Background to establishment of working party

1. The Tax Law Review Committee (TLRC) published its *Interim Report on Tax Legislation* in November 1995 and its *Final Report on Tax Legislation* in June 1996. One of the main recommendations of these reports was that a pilot project should be established for rewriting existing tax legislation in plain English.

2. The Chancellor took up this recommendation in his 1995 Budget speech when he said that "We will propose that the revenue tax code is rewritten in plain English – a major task". The Inland Revenue published a report, *The Path to Tax Simplification*, the following month giving details. And in July 1996 the Revenue published a consultative document, *Tax Law Rewrite – The Way Forward*, inviting comments on the way the rewrite project should be taken forward. So the Government is committed to rewriting existing direct tax legislation.

3. But this raises a number of issues, one of the most important of which is how Parliament will handle a Bill or Bills to enact the rewritten legislation.

4. It will not be possible to present a tax simplification Bill to Parliament as a normal consolidation Bill. Such Bills must be certified not to change the law, but the substantial changes in language which this project is designed to achieve will mean that the risk of minor, inadvertent changes in the effect of the legislation cannot be entirely excluded. Moreover, it is likely to introduce some deliberate, though limited, modifications in some areas. Therefore it will not be possible to give the necessary certificate.

5. Neither will it be realistically possible to apply the ordinary Public Bill Procedure. There are two aspects to this.

- Firstly, the Inland Revenue estimates that there are 6,000 pages of primary direct tax legislation. The rewritten law is unlikely to be materially shorter and could be significantly longer. Since the full project is expected to take around five years, Parliament can expect to receive several thousand pages of tax Bills spread, at the longest, over four or five years. Using the ordinary Bill procedure would require a prohibitively large time commitment from the normal legislative machinery and from MPs themselves.

- Secondly, it would be quite inappropriate to treat the rewritten legislation in the same way as ordinary Public Bills, including Finance Bills, since this could, and almost certainly would, reopen debate on tax policy issues which had already been enacted and established.

6. Consequently, what is needed is an intermediate, tailor-made procedure, which will enable Parliament to scrutinise the rewritten legislation properly but without opening up debate on policy matters which have already been approved by Parliament and which are not intended to change. Finding an appropriate Parliamentary procedure for enactment of the rewritten legislation is a crucially important prerequisite if the enterprise is to be efficiently and constitutionally completed. That is why the Tax Law Review Committee invited Lord Howe to establish this working party, and why the Government offered its support.

Nature of the rewrite

7. As our terms of reference indicate, the Revenue's simplification project aims to rewrite and re-enact existing direct tax legislation in more user-friendly form. The Revenue's consultative document, *Tax Law Rewrite – The Way Forward*, indicates that the language and layout of the legislation will be radically different, with attention being paid to sentence length, word choice, use of definitions, typography and other design issues as well as the structure and numbering system. Furthermore, we understand that the opportunity will be taken to codify at least some existing non-statutory practices. Other changes in the way the law operates may also be made to facilitate simplification, but these will generally be minor and at the margins of the tax code. More substantial or contentious changes will not be made as part of the simplification project but will continue to be dealt with as part of the annual Budget/Finance Bill process.

8. The Revenue's consultative document also records that the rewritten legislation may be enacted either in a single Bill or in a series of Bills. No decision has yet been taken on this. As our terms of reference require, we have considered whether it is possible to devise a Parliamentary procedure to re-enact the entire body of direct tax law in a single Bill. We have concluded that no procedure we can contemplate would be capable of handling such a Bill. It could be 6,000 or more pages long and for this reason alone would be wholly unmanageable. Moreover, its very length would attract political controversy, which would be inconsistent with the intention – and with such a lengthy Bill, the need – to expedite Parliamentary consideration of the rewritten law. In view of this, we have assumed that the rewritten law will be enacted by means of a series of Bills, and have concentrated on identifying appropriate procedures for such Bills.

Part 2 – Historical Perspective

9. When we began this task, some of us at least anticipated a need to design a brand new Parliamentary procedure to accommodate one or more tax simplification Bills. But looking at past precedents has enabled us to distil a reasonable range of options.

10. The rewrite project is, as noted at paragraphs 4-6 above, in an intermediate category between new law and consolidation. There have in the past been four different categories of consolidation or quasi-consolidation:

- *straight consolidations* *Bennion on Statute Law* records that straight consolidations were discussed as early as the 16th century but that it was not until the 19th century that these began to be enacted[4]. We have been told these consolidations faced two problems:
  - they were not permitted to make any change in the law and so had to reproduce existing doubts and ambiguities; and
  - at times Parliament was prevented from enacting even straight consolidations by the view, which has at times held sway, that any consolidation must, by definition, change the law.

- *consolidation with amendments* The Consolidation of Enactments (Procedure) Act 1949 was enacted to resolve these difficulties. In order to facilitate consolidation, it allowed "corrections and minor improvements" to be made to the existing law. These are "amendments of which the effect is confined to resolving ambiguities, removing doubts, 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". But they must not "effect changes ... of such importance that they ought ... to be separately enacted by Parliament".

- *consolidation with Law Commission amendments* The changes in the existing law permitted under the 1949 Act are quite limited. More significant amendments can now be made on consolidation where the Law Commission submits a report to the Joint Committee on Consolidation Bills, after due consultation, recommending that the existing law be amended and explaining the reasons for the proposed amendment. This procedure has now very largely superseded the 1949 Act.

- *ad hoc consolidation* On a few occasions, ad hoc consolidations have been enacted. The most relevant to our terms of reference was the Customs & Excise Act 1952, but others are the Local Government Act 1933, the Public Health Act

---

4 *Statute Law* by Francis Bennion, Third Edition 1990, pages 66/7.

1936 and the Highways Act 1959. The Customs & Excise Act was designed to consolidate the law with amendments to simplify it and bring it into conformity with modern practice, but any amendments which, it was thought, ought to be separately enacted by Parliament were excluded. (See the terms of reference reproduced at paragraph 16.)

11. Each of these categories of consolidation uses its own Parliamentary procedure. A Bill within one of the first three categories is generally introduced in the House of Lords and after a formal Second Reading is referred to a joint committee of both Houses. Under the Consolidation of Enactments (Procedure) Act 1949, the "corrections and minor improvements" must be set out in a memorandum and comments invited. A similar procedure is followed in relation to both straight consolidation Bills and consolidation Bills containing Law Commission amendments. Under Standing Orders (no. 123 in the Commons and 49 in the Lords), such Bills are referred to a joint committee of both Houses. The procedure of the joint committee is based on practice.

12. The 1952 Customs & Excise Bill (the fourth category above) was dealt with throughout – as were the other Bills cited at paragraph 10 above – under a non-statutory procedure, with the successive stages established broadly along the lines appropriate for a straight consolidation Bill. Immediately after its Second Reading in the House of Commons, the Bill was referred to a joint committee of both Houses, comprising four peers and five MPs, chaired by Sir Patrick Spens MP. The joint committee sat three times (18, 20 and 25 March 1952) and then made a Report to both Houses, in addition to reporting the Bill itself to the House of Commons. Its Report records that

> "the Committee have made a number of amendments ... which seemed to them to be desirable".

It adds that

> "further reforms in the customs & excise law may be desirable" but that "it would not be desirable for [the committee] to discuss at length proposals for substantial and controversial changes in the law and that the Committee's amendments should not go beyond amendments calculated to simplify or clarify the law".

The Bill returned to a Committee Stage of the whole House, Report Stage and Third Reading on 15 July 1952, a continuous process which lasted barely more than quarter of an hour. It then went to the House of Lords where the Second Reading debate on 21 July 1952 lasted less than half an hour and the subsequent stages were purely formal.

13. A further illustration of procedural flexibility (albeit not in the field of consolidation and by no means a suitable precedent) is provided by the Deregulation and Contracting Out Act 1994. This enables Ministers to use Statutory Instruments to repeal primary legislation. It may be used where an enactment imposes a burden on business which can be removed or reduced without removing any necessary protection. But before this Act can be used, Ministers must consult widely. And a draft of the Statutory Instrument must be laid by the Government together with a statement detailing representations received. Parliament has no formal power to

amend the draft Statutory Instrument although the committees in both Houses which consider proposals for deregulation orders can propose amendments and the draft must be approved by a Resolution of each House before the Statutory Instrument is made.

14. The variations in Parliamentary procedures used for each of the purposes outlined above, and in particular the different degrees of formality involved, seem broadly to reflect a desire to focus greater scrutiny according to the extent to which the law is being changed. So there is relatively light scrutiny of straight consolidations but the Executive's use of the Deregulation and Contracting Out Act 1994 is tightly controlled. However, these variations do not fully correspond in this way. The consolidation with amendments route created by the 1949 Act is considerably more formal than the ad hoc arrangements adopted to deal with the Customs & Excise Act 1952 and other such Acts, even though the changes it permits are less significant. There is thus room for flexibility in approaching the task in hand.

Part 3 – Pre-Parliamentary Procedure

15. All Bills are produced outside Parliament. But it is particularly important that Bills produced by an extra-Parliamentary body which aim to consolidate or otherwise improve the law without substantially altering it should enjoy the benefits of clear and firm leadership and full and widespread consultation. Over time, this function has been performed by different bodies:

- by the Statute Law Committee from the mid-19th century to the mid-20th;
- (as distinct from its function as a law reforming body) by the Law Commission from its inception in 1965; and
- on occasions by ad hoc committees such as the Kennet Committee which produced the Bill which became the Customs & Excise Act 1952.

16. The Customs & Excise Bill is probably the closest and most helpful precedent for the task now under consideration. Most notably, it was a Bill concerned solely with fiscal legislation, normally regarded as appropriate for consideration only in the House of Commons. It thus deserves the closest attention. In the first place, the Bill was subjected to extensive pre-Parliamentary scrutiny. A draft Bill prepared on behalf of Customs & Excise was submitted to an independent committee established by the Chancellor. This committee was chaired by Lord Kennet (a distinguished former Minister in both Liberal and Conservative Governments) and comprised representatives from eight business organisations as well as a retired Deputy-Chairman of Customs & Excise, two MPs and another peer. Its terms of reference were:

> "To consider a draft Bill ... designed to consolidate the enactments relating to the management of Customs & Excise with such amendments as are desirable for the purpose of simplifying them and bringing them into conformity with the requirements of modern practice and conditions; and to report whether the draft Bill, either as submitted to the committee or with such alterations as they think proper to suggest, reproduces the existing law subject only to alterations of the description mentioned above, and in particular whether the committee consider that any such alterations are of such importance that they ought, in their opinion, to be separately enacted by Parliament."

The declared purpose of simplification and modernisation is close to the object of the present exercise.

17. The Kennet Committee sat 17 times, examining the Bill clause by clause. It received written and oral evidence from Parliamentary Counsel and Customs & Excise. It also sent a draft of the Bill to 140 trade associations and other

organisations and invited them to comment; 32 did so. The committee revised the Bill in response to some of these representations and presented its report to the Chancellor in December 1951. This pre-Parliamentary procedure clearly played a major role in enabling a Bill of 321 clauses and 12 schedules to pass through Parliament – as noted at paragraph 12 above – very smoothly as a non-controversial measure.

Inland Revenue Consultative Document

18. The Inland Revenue's consultative document, *Tax Law Rewrite – The Way Forward*, notes that "an exceptionally high degree of user involvement is essential, making the rewrite, in effect, a joint venture". The Revenue intends this pre-Parliamentary involvement to be at three levels:

- The rewrite project team will include members drawn from the private sector.

- There will be a broadly-based consultative committee to provide expert private sector comment on the rewritten material as it is developed, and before draft clauses are exposed to wider public scrutiny. We understand this committee is likely to consist mainly of tax professionals nominated by their representative bodies plus representatives of taxpayers and the plain language movement.

- Ministers will establish a small steering committee comprising both private sector and Government members, chaired by whomever seemed best qualified. It will provide the Financial Secretary with strategic guidance on the project, keeping an eye on the big picture, considering whether the rewritten legislation is sufficiently clear and user-friendly, and satisfying itself that no changes of policy or law have crept in inadvertently. The members will be eminent individuals, serving in a personal (i.e. not representative) capacity.

In addition to this, the Revenue intends to publish draft clauses for public comment before they are presented to Parliament in a Bill.

19. There is no single correct way in which to run the pre-Parliamentary stages of a project of this kind. Full and vigorous Government backing is clearly essential. The arrangements the Revenue proposes seem to us to fulfil the basic requirements:

- a multi-partite approach, involving the private sector fully and at an early stage, which should enable controversial aspects of the rewrite to be kept to a minimum;

- with a sufficient degree of flexibility;

- but emphasising the leading role of the department;

- and maintaining firm Ministerial oversight and commitment during these pre-Parliamentary stages.

Options for bolstering pre-Parliamentary stage

20. The details of these pre-Parliamentary arrangements are at the very heart of the matter which we are required to address. The reason for this is that a balance needs to be struck between the Parliamentary and the pre-Parliamentary procedures. In cases where the pre-Parliamentary arrangements are ill-defined – as with many programme Bills, including the annual Finance Bill – Parliament rightly exercises very close supervision before the Bill receives Royal Assent. By contrast, where a thorough and objective pre-Parliamentary procedure is in place, Parliament has shown itself willing to expedite its procedures in order to maintain an appropriate balance. Examples are the Customs & Excise Act 1952 on which we have already commented in some detail and the consolidation Bills brought forward from time to time by the Law Commission following extensive consultation.

21. So the critical question, when the tax simplification Bills are presented to Parliament, will be this: Do the proposed arrangements for pre-Parliamentary consultation, summarised at paragraph 18 above, give people full confidence in their objectivity and thoroughness and thereby allow the Parliamentary procedures to be expedited?

22. We do not advocate an attempt to replicate the Kennet Committee which undertook the pre-Parliamentary consultation on the Customs & Excise Act 1952. Such an attempt is neither necessary – given the developments since 1952 in Parliament's ability to adapt its own procedures, as discussed in Part 4 of this Report – nor likely to be possible in modern political conditions. Nevertheless, it is worth recalling the success of the Kennet Committee and seeking to incorporate its best features. Kennet was successful because:

- it was a very thorough, objective study of all the issues by a highly eminent and respected committee,

- it canvassed and gave full weight to the views of all interested parties, and

- it did not attempt to involve itself in potentially controversial policy reform but limited its scope to the changes necessary to consolidate the law in coherent, modern form.

Moreover, the comprehensive quality of this process, conducted by a body which included members of the House of Commons, no doubt paved the way towards the joint committee procedure which was subsequently adopted for the Parliamentary stage.

23. Our conclusion in answer to the question we identified at paragraph 21 is that few changes will be necessary. Parliament will, of course, have the opportunity to consider the simplification Bills at a later stage. Nevertheless, it would in our view help to build a bridge between the pre-Parliamentary and the Parliamentary stages of the process, as well as following the example set by Kennet, if the steering committee were to include appropriately qualified representation from the House of Commons. And the selection of a chairman independent of the Inland Revenue would help to reinforce perceptions of the steering committee's impartiality.

24. A steering committee established along these lines would, as noted above, form the bridge between the pre-Parliamentary and Parliamentary stages of the rewrite project. In particular, if the Government were to obtain the approval of the steering committee for the text of each tax simplification Bill, Parliament, taxpayers and tax professionals could be assured that the drafting and content were as non-controversial as possible on a re-write. A balance would be maintained between the Government and the taxpayer, ensuring that both were content with any modifications to the effect of the existing law.

Part 4 – Parliamentary Procedure

Information

25. The pre-Parliamentary procedure discussed in Part 3 of this Report will give rise to a series of Bills for presentation to Parliament. However, it will assist Parliament if additional information is made available to accompany each Bill.

26. The Bill will be a Government Bill, designed principally to simplify and clarify the law. As happens with consolidation Bills, we believe the Government should publish an explanatory memorandum including:

- Tables of Derivations and Destinations showing where each provision of the rewritten law originates from and how each provision of the existing law has been included (or if it is not included, saying why not);

- a comprehensive list of matters which are thought not to change the existing law but which proceed on a particular view of the law; and

- a comprehensive list of changes from the effect of the existing law which the Bill introduces.

This information should enable Parliament to understand the nature of the Bill and help it to direct its attention towards the areas which most require it.

Introduction and Second Reading

27. The simplification Bills should be introduced in the House of Commons.

28. We have taken note of the proposal put to us from one quarter that the Commons' Second Reading of the Bill might be conducted not on the floor of the House but in a Second Reading Committee. It would be for the business managers, in consultation with the Commons' Procedure Committee, to consider this possibility: they would need to balance the relatively policy-free nature of the debate which would most probably arise on a largely technical simplification Bill with the importance of allowing the whole House the opportunity for consideration of such a Bill – itself an important innovation – before it makes its way into committee.

Committee Stage

29. Public Bills travel a familiar route through Parliament from First Reading and Second Reading to Committee Stage, Report Stage and Third Reading in one House followed by the same procedure in the other House (and back again for further consideration in the first House of any amendments made in the second House, and so on) and eventually Royal Assent. It is at the Committee Stage that variations on this basic procedure are sometimes made, for example:

- In both Houses, Bills may be considered by a Committee of the whole House (usual in the Lords) or sent to a smaller Standing Committee (usual in the Commons), or (rarely) committed to a joint committee of members of both Houses.

- Under the *Consolidation Bill Procedure*, consolidation Bills are introduced in the Lords and referred after Second Reading to a joint committee of both Houses, before proceeding through the further stages in both Houses in the normal way, including committal to a Committee of the whole House. This procedure is governed by Standing Orders Nos. 123 (Commons) and 49 (Lords).

- Both Houses have developed similar procedures for dealing with Bills where evidence needs to be taken. The *Special Standing Committee Procedure* in the House of Commons (Standing Order No. 91) has been used only once since 1984. The *Special Public Bill Procedure* – conveniently abbreviated as the Jellicoe procedure[5] – in the House of Lords has been established and used several times more recently and is therefore more up to date. Under this procedure, the Committee Stage is divided into two distinct phases: in the first phase, evidence is invited and considered and amendments are discussed in private; and in the second phase, amendments are formally tabled, debated and voted on. A note expanding on this procedure is at Annex 1.

- Occasionally (though rarely on Government Bills today) an *Ad Hoc Select Committee Procedure* (or a *Joint Select Committee Procedure*) may take place, as noted at paragraphs 10 and 12 above. Such a committee may take evidence and amend the Bill. Alternatively, such a committee in the Lords (but not in the Commons) may, as has happened recently with some Private Members' Bills, reject the Bill and recommend its own Bill.

30. In our view, the appropriate Parliamentary procedure for scrutiny of the tax simplification Bills will, again, involve a variation in the Committee Stage procedure. Apart from this important variation, we do not, however, think that any wider change in the ordinary Bill route through Parliament, as described above, is likely to be required.

31. The most important issue for consideration is, therefore, the choice of the appropriate form of committee consideration of a tax simplification Bill. In normal

[5] Named after the chairman of the committee which first suggested the procedure.

Parliamentary practice, it is axiomatic that Finance Bills are dealt with primarily – if not exclusively – by the House of Commons, either by convention or, where the Finance Bill is certified as a Money Bill, under the Parliament Act 1911. A tax simplification Bill would, thus, in the ordinary way be introduced in the House of Commons and be given its Second Reading there before proceeding to a Committee Stage. This is distinctly different, of course, from the procedure for ordinary consolidation Bills which are routinely introduced in the House of Lords.

32. The central question is whether a tax simplification Bill should best be regarded as a Finance Bill, routed primarily through the Commons, or as a consolidation Bill considered first in the House of Lords and then by a joint committee of both Houses. It is on just this issue that the Customs & Excise Act 1952 points the way to a very practical compromise. For that Bill was introduced, like a Finance Bill, in the House of Commons but was also examined, like a consolidation Bill, by a joint committee of both Houses. In introducing the Bill, the then Financial Secretary, Mr John Boyd-Carpenter (as he then was) explained that the main purpose was to consolidate the law but that it also amended the law in some respects.[6] The extent of these amendments is apparent from the Second Reading debate in which it was noted that "at the same time [the Bill] makes a number of changes, many of which are not small unimportant changes but changes of substance, in the existing law".[7] For example, changes were made in the pre-1952 penalty provisions, including the creation of some "additional penalties".[8]

33. This very clear precedent from 1952 does, therefore, suggest that for a tax simplification Bill – the predominant purpose of which will be to consolidate and clarify the language of existing law – the most appropriate form for detailed examination in committee is that which has been proven to work so well in practice for mainstream consolidation Bills.

Joint Committee of both Houses

34. We know of no one who takes the view that the ordinary Standing Committee procedure would be appropriate for tax simplification Bills. On the contrary, it is common ground that evidence will need to be taken. We do not believe that this need be an onerous task. The objective should be to break its back at the pre-Parliamentary stage – this underlines the crucial importance of ensuring that the consultation at that earlier stage is thorough and comprehensive. Nevertheless, evidence will be required from Parliamentary Counsel responsible for drafting the Bill, officials of the Inland Revenue, the chairman or other members of the steering committee, the consultative committee referred to at paragraph 18 above, and possibly from other witnesses (such as any taxpayers or representative bodies who believe a provision unduly disadvantages them or their members). We suggest that

---

6 H of C Hansard [19 February 1952, Col 82]
7 H of C Hansard [19 February 1952, Col 86]
8 H of C Hansard [19 February 1952, Col 92]

the committee (like a Special Public Bill Committee) should, therefore, have a wide power to invite evidence at its sole discretion.

35. The need to be able to hear evidence, and particularly the need for dialogue with those who have had responsibility for preparing the Bill, points towards a joint committee of both Houses, otherwise the evidence-taking process may need to be duplicated. A joint committee would also have the additional advantage that it would spread the workload amongst members of both Houses, taking at least some of the pressure off MPs – peers have fewer other duties and find themselves undertaking the bulk of the work on consolidation Bills.

36. We have been encouraged by the extent to which the practicalities of the 1952 situation overcame any reluctance on the part of the then House of Commons to break new ground by the use of a joint committee on a tax Bill of such importance as the Customs & Excise Bill. And as we have explained, such joint committees are used successfully as part of the consolidation Bill procedure. Our fundamental proposal is therefore that each tax simplification Bill should be referred, after Second Reading in the House of Commons, to a joint committee of both Houses.

Operation of the Joint Committee

37. The Joint Committee on Consolidation Bills is set up to consider all such Bills. It has well-defined and detailed terms of reference. The new joint committee on Simplification Bills should, in due course, be established along similar lines. Its terms of reference should oblige it to consider whether the Bill accurately reproduces the effect of the existing law, other than where departures are deliberate as disclosed by the explanatory memorandum referred to at paragraph 26 above.

38. We believe that this joint committee would represent a development from the Consolidation Bill Committees referred to at paragraph 29 above. It could also usefully draw upon the procedural experience of Special Public Bill Committees in the Lords and Special Standing Committees in the Commons. Although we recognise that these procedures are best suited to shaping the policy content of Bills and that the simplification Bills will be of a different character, there are aspects of their handling of evidence which provide a helpful model.

39. This joint committee would be constituted from members nominated separately by each House. Following the precedent set by the Customs & Excise Act 1952 – and recognising the primary rôle of the House of Commons in fiscal matters – it is in our view clear that the joint committee should be chaired by a member of the House of Commons and that MPs should be in a majority. Treasury Ministers should be included.

40. The operation of the joint committee would, of course, be a matter for the committee itself to decide. The approach which we have in mind could permit the adoption of a three-part procedure:

- Firstly, the committee would consider, given the Bill and its own terms of reference, what evidence was needed and invite the submission of that evidence, orally or in writing. We envisage that it would certainly, at this stage, take evidence of a general character concerning the structure of the Bill, the drafting style, the layout and so on. Later, but perhaps exceptionally, it might also take more detailed evidence on particular clauses, as do Special Standing Committees and Special Public Bill Committees. (We see advantage in leaving flexibility for the committee, if it wished, to defer consideration of such matters until the clause-by-clause scrutiny of the Bill is undertaken.) At the first stage, Ministers would not need to be present unless they wished to be. This would differ from the procedure so far adopted in Special Public Bill Committees, but experience suggests that Ministers' attendance at that stage may not in practice be necessary.

- Secondly, the committee would deliberate in private, with Ministers present. This would be an opportunity to advise Ministers of the committee's emerging conclusions, before public positions had been struck. This is and always has been the practice of Special Public Bill Committees.

- Thirdly, the committee would move on to the clause-by-clause scrutiny of the Bill, with Ministers present. For this stage, we see merit in Parliamentary Counsel attending and assisting the committee – as happens on consolidation Bills – by answering questions as to the drafting. As noted above, we leave open the possibility that the committee might also decide to hear evidence from other witnesses during this stage. Amendments would be moved, debated and voted on, and each clause voted on in the usual way.

41. On the basis of the explanatory memorandum and evidence, the joint committee would examine the Bill and would be required to confirm that the Bill was confined to a re-write and simplification of the law with no changes which ought to be made separately by Parliament, or to amend the Bill to make it so comply. The joint committee would then make a report on the Bill to both Houses, and would report the Bill itself to the Commons.

Remaining Parliamentary stages

42. At the conclusion of the joint committee's proceedings, the Bill would return to the House of Commons to complete the remaining stages, then on to the House of Lords and eventually to Royal Assent. There are two options following the immediate return to the Commons:

- the Bill could be committed to a Committee of the whole House; or

- it could be committed to an ordinary Standing Committee.

43. The House of Commons would probably look for a final opportunity to debate points on which the Bill departed from the effect of the existing legislation and perhaps to raise further points. The most significant such departures are likely to be where existing Extra Statutory Concessions are enacted, but there may be other changes. Experience with consolidation Bills, as well as with the Customs & Excise Act of 1952, strongly suggests that it should be unnecessary to commit the Bill to a further Standing Committee. Our preference therefore, in light of the experience already cited, is for a Committee of the whole House. On completion of that Committee Stage, a Report Stage would be needed if the Bill had been amended, but this would not necessarily be burdensome; in 1952 the Customs & Excise Bill went through its Committee Stage, Report Stage and Third Reading in the Commons in less than twenty minutes, and if there were no amendments at the Committee Stage of a tax simplification Bill, the proceedings could be similarly swift.

44. Today's Parliamentary attitudes and conventions are not necessarily identical to those which prevailed in 1952. The suitability of this procedure would, therefore, depend upon the likely duration and volume of Committee Stage debate. It would need to be considered by the business managers and Procedure Committee who emerge on the far side of the forthcoming Election. For our part, we cherish the hope that the sensible, earlier precedent may still prevail.

45. On completion of its passage through the House of Commons, the simplification Bill would move to the House of Lords and on to Royal Assent. We envisage that it would there be treated in practice in the same way as a Finance Bill, with the House of Lords (recognising the primacy of the Commons in this fiscal field) debating the Bill but not amending it, thereby ensuring that the Bill proceeds smoothly to Royal Assent without needing a further reference back to the Commons. It has been put to us, though, that the possibility of the Lords amending the Bill – for example, if a glaring error came to light at a very late stage – should not be entirely dismissed. We are content to leave this proposed longstop for others to consider.

46. These arrangements would, in effect, be the mirror image of those which apply to consolidation Bills, where the House of Lords takes the leading role and the Bill passes through the Commons with maximum expedition. This reversal of roles will, we have no doubt, be considered appropriate because of the subject matter – finance – of the simplification Bills.

Scope of debate

47. Throughout all their Parliamentary stages, the extent to which the tax simplification Bills can be debated and amended will be a critical issue.

48. The simplification Bills will very substantially be consolidation measures, re-enacting existing law in a more user-friendly form rather than enacting entirely fresh law. The procedure will need to protect them from most, if not all, of the buffeting of conventional political debate, while still exposing them to full Parliamentary

scrutiny, designed to ensure that the central task of simplification and clarification of the language – without controversial changes – is very properly accomplished. So throughout their Parliamentary passage there will need to be some constraint on MPs' and peers' ability to debate and amend them.

49. Constraining Parliamentary debate in this way would not be novel. Under the Consolidation of Enactments (Procedure) Act 1949, corrections and minor improvements approved by the joint committee are deemed to be enacted without further Parliamentary involvement. This enables such Bills to pass as consolidation Bills, again without full Parliamentary scrutiny. It is only the acceptance of such limitations on Parliamentary debate which makes it possible to enact consolidation Bills.

50. During the passage of the Customs & Excise Act 1952, the joint committee decided that "anything which is in the Bill and which is pure consolidation ought not to be taken out without due thought. Any new matter ought not to go in in this Committee, but where the Bill has departed from pure consolidation and the Committee does not like it, they should feel at liberty to do anything they like about it." It also decided that it could not try to remove existing controversies: "this is an attempt to find out the existing law, and the removal of these controversies should be done by a separate amending Bill afterwards ... not in this which is in substance a consolidation Act, though not in law." It seems that a similar spirit applied at the remaining Parliamentary stages. This was entirely due to the self-restraint exercised by MPs and peers, no Orders or other means of limiting debate having been adopted.

51. It may, therefore, be sufficient to rely on the scope of the simplification Bills to determine which amendments are in order. (We comment in Part 5 of this Report on the options for establishing the Parliamentary procedure.) For the avoidance of doubt, we set out as follows the position as we see it:

- Parliament should be able to debate:
  - whether or not the Bill achieves its objective of improving the clarity of the law, and whether further improvements could be made to that end; and
  - whether or not the Bill accurately reproduces the effect of the existing law, other than where – with a view to simplifying the law – modest departures are intentional, as disclosed by the explanatory memorandum.

  But amendments under this head should only be permissible to the extent that they seek to improve clarity or remove unintentional departures from the effect of the existing law.

- Parliament should also be able to debate in full all intentional departures from the existing law, without restriction on the amendments which may be tabled within the scope of those departures.

- But debate or amendment which sought to go beyond these limits should be precluded.

We note that this is in effect the same as the existing rules on amendments to consolidation Bills with Law Commission amendments, as set out in Erskine May[9].

52. We have considered, but rejected, the argument that paragraph 51 should be expanded to allow Parliamentary consideration of tax simplification Bills to go further. As we note in paragraph 7, the Bills will include at least some Extra Statutory Concessions and other non-statutory practices; some may press for the inclusion of others. They will argue that the making of such additional minor improvements should be provided for at this stage. Our view is that Parliamentary consideration of such essentially new material or potential controversy ought not to go beyond the limits suggested by the experience of the Kennet procedure. As with the Customs & Excise Act 1952, these Bills will have been subjected to thorough pre-Parliamentary consultation which will have identified the limit to which they are able to absorb such changes in the existing law, without attracting controversy. Accordingly, debate on this type of issue should not, in our view, go further than necessary to enable the joint committee to identify propositions that are or would be more appropriate for separate enactment by Parliament, probably in the context of an annual Finance Bill.

[9] 21st Edition at pages 494-5.

Part 5 – Establishing the Parliamentary Procedure

Limitation on debate and amendment

53. At paragraph 51 above we set out what we believe should be the limits on Parliamentary debate of tax simplification Bills, and we said that their scope may be sufficiently clear to establish which amendments are in order. ('Scope' is a concept with which Parliament is very familiar. It is set out in Erskine May[10] and regulates the admissibility of amendments.)

54. The chairmen of the joint committee and of any House of Commons committee may not always find it easy to rule on the scope of tax simplification Bills. Nevertheless, we believe that this should be the first recourse; only if it is found to be inadequate for the task should a more radical approach be considered.

55. The Chair would, in our view, be greatly assisted in this if a satisfactory definition of the nature, scope and terms of reference of the tax simplification exercise could be drawn up. We have not attempted to do so, at least partly because the Revenue's Simplification Project will firstly need to make further progress in refining its own approaches.

56. Such a definition will be crucial to Parliament in three ways:

- It will set the criteria by which Parliament can judge the success of the Bills which it is asked to pass.

- It will provide a basis for the terms of reference of the joint committee which we propose.

- And it will provide a secure basis for rulings by the Chair on the scope of debate and amendment.

57. We believe that the Chair would be further assisted if the terms of reference of the pre-Parliamentary steering committee could set out the nature and scope of the tax simplification exercise.

58. If, contrary to our preference, the scope of debate and amendment could not be sufficiently established in this way, other means of establishing their scope would be required. There are several options – of varying degrees of formality – which might be adopted. Each would have its advantages and disadvantages but,

---

[10] pp 490-5.

whichever course were preferred, the limitations on debate and amendments, as set out in paragraph 51 above, would need to be precisely defined.

Orders

59. Orders of the two Houses would be the first level of formality. However, there is no precedent for the House of Commons fettering the Chair's discretion in respect of debate and amendments in such a way except for Bills ordered in on Resolution[11], and this might therefore prove controversial.

60. Orders could take various forms. There could be a *specific and discrete Order* at each stage. This would entail moving several debatable and potentially time-consuming motions on each Bill in each House.

61. Alternatively, there could be a single *omnibus Order* in each House in respect of each Bill, but additional debates would be needed each time a new tax simplification Bill was introduced. This solution would have the advantage that any deficiencies which were identified in the drafting of the Orders could be remedied in drawing up the Orders for later Bills.

62. Another approach would be to pass a *Sessional Order* to apply to any tax simplification Bill that was introduced in that Session, so avoiding the need for new Orders to be moved for each Bill. But as simplification Bills are likely to be introduced in more than one Session, this would still entail the repetition of the Orders each Session.

Standing Orders

63. Standing Orders in each House may appear preferable. These would define the tax simplification Bills to which they applied, could require certification by the Speaker and Lord Chancellor in the two Houses respectively to identify these Bills. Standing Orders have the advantage that they only need to be passed once and would therefore reduce considerably the number of procedural motions on each Bill. They are, though, somewhat harder to amend in the light of experience than are specific and discrete, omnibus or Sessional Orders, and the separate Standing Orders in each House would need to be harmonised.

Primary legislation

64. The weightiest authority for the special treatment of these Bills would be given by statute law. The advantages of the statutory solution are that the position would be clear and firmly established. But time would be needed to pass the enabling legislation, which would be extremely rigid and difficult to change in the light of experience, and it is neither natural nor desirable to regulate the conduct of the separate Houses of Parliament by Acts passed by both Houses.

---

[11] These days, the only Government Bills ordered in on Resolution are Finance Bills and Consolidated Fund Bills.

Means of establishing other procedures

65. These same options – specific and discrete, omnibus or Sessional Orders, Standing Orders or primary legislation – are available for establishing:

- the procedure to be employed in both Houses for the various stages of each Bill, in so far as they depart from normal procedure; and

- the powers and the procedures of the proposed joint committee, in so far as they will differ from those of a normal committee.

Recommendation

66. Ministers, no doubt in consultation with Opposition Parties and the Procedure Committees, will have to decide which procedure is best suited to the legislation that is planned, as well as to the Parliamentary situation (and perhaps mood), at the time the first Bill is introduced. Our strong hope is that it will be possible to establish the Bill's scope – and hence the admissibility of amendments – in the traditional manner. If it is, the existing Parliamentary machinery should be capable of handling such matters as the creation of the joint committee, committal of the Bill and its subsequent consideration in the two Houses.

67. We attach great importance to getting the procedures right and broadly accepted by all concerned. This means that some flexibility is desirable on the earlier tax simplification Bills, so that lessons can be learned and corrections made in the light of experience. We therefore recommend that

- for the first simplification Bill, the joint committee should be established by means of a single Order in each House applying to that Bill only, and

- in the light of this experience, the Parliamentary procedures for subsequent simplification Bills could then be enshrined in Standing Orders passed by both Houses.

68. If, contrary to our hope and preference, the scope of the tax simplification Bills could not be determined in the traditional manner, alternative approaches would be needed. Given that regulation by statute would be unnecessarily heavy-handed and rigid, we believe the Parliamentary procedure on the tax simplification Bills would need to be established by formal decisions of the two Houses acting in harmony and in light of advice from their Procedure Committees. In our view, the Order and Standing Orders referred to in paragraph 67 above should, in these circumstances, also set out all the additional procedures to be used, in addition to those for the joint committee.

Concluding comments

69. Whatever Parliamentary and pre-Parliamentary procedure is designed for the passage of the tax simplification Bills, the utmost commitment of the Government – and, no less important, of the Opposition – to the project is essential. History shows the very considerable extent to which simplification of the law can be frustrated where such commitment is absent. This is well illustrated by the large backlog of Law Commission reports which had been allowed to build up by 1994. In the first seven years of the Law Commission's existence (1966-73) all but two of its reports were enacted with an average delay of no more than two years. But by 1994 a backlog of no fewer than 31 reports had accumulated. The position has improved dramatically since then, principally because of renewed determination on the part of the Government, led by the Lord Chancellor, and with full Opposition support.

70. There have been three basic reasons for this crucial and recurrent inability of Parliament and Government together to fulfil the best-laid plans for modernisation of our statute law:

- Inability to muster the necessary commitment of political will in the face of other objectives which appear to be equally pressing.

- Reluctance, usually on the part of the business managers (under Labour and Conservative Governments alike), to try out – and still less to make regular use of – significant procedural innovations. The fate of the Special Standing Committee is an example of this. It has been used just once since 1984, despite being warmly commended by Sir Patrick Mayhew who was the Minister who guided the Criminal Attempts Bill through the House of Commons in 1981. The joint committee route used for the Customs & Excise Act 1952 (and at least three other Bills) is another example of an apparently sensible procedure which has been allowed to gather dust.

- Consciously, if not deliberately, sustained shortage of human and other resources, especially in Parliamentary Counsel's Office. The Law Commission started work in 1965 with just four draftsmen and swiftly concluded that an increase was "clearly ... necessary". Yet even today there are only five.[12] So too with Parliamentary Counsel's Office. Between 1974 and 1996, when the average annual throughput of legislation increased by two-thirds, the number of qualified personnel in the office increased by well under one-half. This kind of Treasury-based obstacle – often the most intractable of all – will surely not be allowed to survive the Chancellor's powerful interest in this field.

71. In preparing this Report, we have not consciously set out in pursuit of "evidence". Yet one most relevant observation – and backed by high judicial authority – has come our way. Lord Hope of Craighead, at that time Lord President of the Court of Session, wrote in the context of the proposed rewrite of tax legislation as follows:

---

[12] The authorised complement is six, but only five are in post.

> "Responsibility for the present state of tax legislation lies with the Executive and Parliament. Unless their attitudes change, and their procedures are adapted to meet the challenge of reform, and in particular to facilitate systematic reform of the structure of the legislation ... the proposals will fail."

72. We conclude, therefore, by echoing our chairman's emphasis on "the huge political will which will be essential if we are to effect the fundamental changes that are needed"[13]. It is democracy itself that will suffer most if decisive action is not now taken, with support from all parties in both Houses, to improve the quality of our fiscal legislation.

[13] H of L Hansard [27 March 1996, Col 1717]

SPECIAL PUBLIC BILL COMMITTEES

The procedure, as it has developed, is as follows -

(1) Between First and Second Readings the Public Bill Office compiles a list of informed sources which might usefully be invited to give written evidence. These sources are asked whether they would like to submit written evidence if and when the Bill is committed. This practice gives sources a little longer to prepare their evidence.

(2) At the close of the Second Reading debate the Minister moves that the Bill be referred to a Special Public Bill Committee.

(3) The members of the Committee are then appointed by the House in the usual way (as recommended by the Committee of Selection).

(4) The Committee now has 28 days, reckoned from the date of the appointment of the members, within which to receive written and oral evidence.

(5) The Committee, which normally meets the day after appointment, considers the list of informed sources compiled by the Clerk, and adds to it as necessary.

(6) The Clerk communicates with sources (usually about 50) and requests their written evidence by a deadline. The deadline is fixed so as to allow sufficient time for oral evidence to be heard between the deadline and the expiry of the 28 days. In practice, written evidence received at any time before the expiry of the 28 days is accepted.

(7) As written evidence is received, an Index is prepared which briefly defines, clause by clause, the suggestions and issues raised by the written evidence.

(8) After the deadline for written evidence has passed, the Committee invites the Minister introducing the Bill, one or two of his officials, and a few selected contributors of written evidence to give oral evidence. The Minister's evidence deals shortly with any general questions arising on the written evidence. His officials deal with particular issues arising. Purely drafting amendments are referred to the draftsman, who makes a written reply after reference to the Minister.

(9) On the expiry of the 28 days the Committee deliberates and discusses draft amendments produced by the Minister and others.

(10) As soon as practical thereafter the Committee meets in the Moses Room and the normal procedure of a Public Bill Committee is followed - i.e. any Peer may speak, any Peer may move amendments, but only Members of the Committee may vote.

(11) The Bill as amended in Committee is reported to the House in the usual way and undergoes the normal final two stages.

BRIGHTMAN
18th January, 1996