

*of Chris Monkton*



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7th November 1983

Dear Barclay

*DMB  
7/11 Please be for meeting.*

TAX LEGISLATION: MR ROWLAND

In case what is said in paragraph 9 of the Treasury note leads anyone to suppose that there is any future in Renton Recommendation No (107), I enclose a note on it.

I am sending copies of this letter and the enclosure to those to whom you sent copies of the papers for the meeting on 14th December.

*Yours sincerely  
George Engle*

GEORGE ENGLE

Enc.

TAX LEGISLATION: MR PETER ROWLAND  
RENTON COMMITTEE RECOMMENDATION NO. (107)

Note by First Parliamentary Counsel

Paragraph 9 of the Treasury note mentions the procedure - suggested in 1975 by the Renton Committee in paragraph 18.38 and Recommendation No. (107) of their Report - under which any Act found to be obscure or otherwise defective in form could be rewritten after Royal Assent in clearer language and re-enacted without using much Parliamentary time under a procedure similar to that used for consolidation Bills. It adds that the Treasury do not know why this has never been implemented.

2. As a matter of history, Recommendation No. (107) was one of a number of Renton recommendations which in the first quarter of 1976 the Government were minded to refer to a Joint Committee for further consideration as involving changes in Parliamentary procedure. In the event, the idea of a Joint Committee seems to have been dropped in the Spring of 1976, though I have been unable to trace any record of a formal decision to this effect. Since then nothing more has been heard of Recommendation No. (107).

3. There were and are substantial reasons for not accepting Recommendation No. (107). Stated very briefly, they are as follows.

(1) The Recommendation is addressed to Bills that "are found to be obscure or otherwise defective in point of form" - but is silent as to when and by whom a Bill might be so found.

(2) It would be intolerable if an Act (Act A) were to come into force, only to be overtaken within a matter of weeks or months by another Act (Act B) intended to have the same effect but expressed in different terms. So commencement of Act A would somehow have to be delayed if a proposal to re-write it were made.

(3) This postponement would be impossible in the case of the Finance Bill since budget resolutions given temporary statutory effect under section 1 of the Provisional Collection of Taxes Act 1968 lapse on 5th August at the latest, and the Finance Bill is normally passed at the end of July with only a few days to spare.

(4) The revising procedure is envisaged as involving the Joint Committee or a similar Committee. For an Act passed at the end of July this would make it impracticable for it to be overtaken by an "improved" Act until the following November or December at the earliest.

(5) Parliamentary Counsel are normally absent on leave in August, and from September onwards are fully occupied in preparing Government Bills for introduction early in the new Session. They would have no time to spare for further work on Acts already passed, even if there were no "spillover" to add to their burdens.

(6) Practicalities of this kind apart, there would be the difficulty of deciding what constitutes a "formal improvement". For example, one source of defectively drafted provisions in Acts is the carrying against the Government of an Opposition or back-bench amendment such as the well-known "Rooker-Wise amendment" in s.22(2) of the Finance Act 1977 (which, to say the least, was ambiguous). Would it be regarded as permissible to replace s.22(2) by provisions like s.24(5) to (8) of the Finance Act 1980 (which substituted a workable, but in several respects different scheme)? The removal of obscurities in a provision involves taking a view of what the provision is intended to mean, and that cannot always be certain, at any rate where the provision was not produced by the sponsors of the Bill. Would the revising Committee be allowed to take responsibility for resolving such points - a process which inevitably means changing the law?

4. The opposition likely to be encountered by any form of foreshortened Parliamentary procedure for making drafting improvements in Acts after Royal Assent can to some extent be judged the fate in 1977 of the Labour Government's Acts of Parliament (Correction of Mistakes) Bill. The Bill was suggested by the Clerk of the Parliaments as a means of correcting a very limited class of mistakes, namely mistakes made by the House authorities (usually undetected printing errors) of the sort that cannot be put right by the Clerk of the Parliaments as simple printing errors. His suggestion was explicitly made on the basis of Renton Recommendations (106) and (107). The Bill had a bad press, and the Times in a leader headed "A Bill to promote slipshod legislation" said: "If Parliament, by reason of its legislative incontinence and hugger-mugger proceedings, is no longer capable of ensuring that it legislates with care and precision, the remedy for that sad degeneration is not to lighten the procedural penalties for carelessness, but to increase them". The (Conservative) Opposition Chief Whip had earlier agreed to treat the Bill as non-contentious, but in the event the Shadow Cabinet decided to oppose the Bill on the ground that it would provide an easy way out for any government that might find itself with a defective Act on its hands as a result of rushing legislation through under a guillotine. It is true that the Bill was generally taken to apply to a wider range of "mistakes" than was in fact the case; but Recommendation (107) would cover "formal" or "drafting" improvements of all sorts, and would thus cover at least some of the ground that the 1977 Bill was believed to cover.

GE

Parliamentary Counsel Office

7th November 1983

