



10 DOWNING STREET

THE PRIME MINISTER

8 August 1984

Dear David,

Thank you for your letter of 9 July.

I am grateful to you for letting me know of your concern, and for setting out your thoughts with such care. I know that the quality of legislative drafting is something to which you have given much attention, and indeed made a significant contribution to improving in your 1975 report.

I have to say that, for the sort of reasons given in my predecessor's letter to you of 11 September 1975, I doubt whether the right answer is to put the Parliamentary Counsel under the direct control of the Lord Chancellor. Nor am I clear that we can remove all the things which contribute to distancing legal drafting from the simple direct language of ordinary correspondence. The need for precision, the language and structure of existing law, the often unreasonable timetable we impose on draftsmen, all make for difficulties here.

Something can certainly be done, and is being done, to give the user more help in cases where drafting is necessarily complex. You may perhaps have noticed that the Lord Chancellor's Department have made a considerable effort to provide more explanatory material on the detail of the bills for which they have been responsible this session - particularly the Matrimonial and Family Proceedings legislation.

But I entirely agree with you that we should do all we can to avoid adding new legislation to the Statute Book which is unnecessarily complex and obscure. I have taken careful note of your suggestions here, and I shall be considering what can be done to improve matters.

Yours
L. Renton

Raymond

The Rt. Hon. Lord Renton, QC.



FILE

RM

10 DOWNING STREET

From the Private Secretary

MR. HATFIELD
CABINET OFFICE

The Prime Minister has now seen Sir Robert Armstrong's minute of 3 August with which was enclosed a draft reply to Lord Renton about the quality of legislative drafting. Mrs. Thatcher signed the proposed draft reply to Lord Renton, a copy of which is attached. She did not, however, consider that there was sufficient justification for the proposals for further action set out in paragraph 10 of Sir Robert's minute. She does not, therefore, consider that the draft minutes proposed need to be prepared.

(Timothy Flesher)

8 August, 1984

CONFIDENTIAL

SC

Prime Minister.

1

Ref. A084/2238

PRIME MINISTER

This minute proposes
 i) a reply to Lord Renton,
 a draft of which is attached

ii) two personal minutes on
 the quality of legislation, as set out
 in para 10. You would need to

No need to draft minutes - consider his suggestion with the business managers.

Lord Renton wrote to you on 9 July suggesting that the business quality of legislative drafting would be improved if you managers were to give the Lord Chancellor responsibility for the Office of Parliamentary Counsel and turn Legislation Committee into a scrutiny, rather than business, Committee under his chairmanship.

2. This is a battle in an old war. Lord Renton's present proposal is a variation of one his Committee (the Renton Committee on the preparation of legislation) made to the then Prime Minister in 1975. Copies of the correspondence, which was made public, are attached. Lord Renton suggested that the Lord Chancellor be given specific responsibility for the general structure and language of legislation, and that the Statute Law Committee (which is chaired by the Lord Chancellor and whose members include a number of Law Lords and legal members of both Houses as well as First Parliamentary Counsel) should help him in this task by reviewing legislation as it came along and providing periodic reports on trends and tendencies in drafting. Both suggestions were rejected on the grounds that the Lord Chancellor and other Law Ministers already had a general responsibility for the quality of legislation, that changes might weaken the responsibility of Parliamentary Counsel to departmental Ministers and their own responsibility to Parliament for the legislation they introduced, and that the Statute Law Committee's mixed membership made it an unsuitable body for reviewing current Government legislation. These arguments have lost ~~more~~ ^{none} of their force since 1975.

3. There are two basic questions. One is whether it is possible for legislative drafting entirely to avoid the 'verbose, complex and obscure'. The second is whether arrangements can be devised, as Lord Renton believes, which would produce simpler drafting.



4. Much legal drafting is inevitably a long way from the simple language of ordinary communication. This is partly because legal drafting must be unambiguous, precise and comprehensive, partly because new legislation has to fit in with the language of existing statute, partly because drafting is usually done at impossible speed, and partly because bills are constantly amended and the present system does not allow bills to be rewritten and restructured at the end of the Parliamentary process. None of this should prevent Governments setting simplicity and clarity of draftings as an objective, but all of it materially affects the end result. The present First Parliamentary Counsel, Sir George Engle, believes that, to the extent that legislation which emerges is complex, the right approach is to help the user by providing more explanatory material. The Lord Chancellor's own Department for example have this year made a conscious effort to make available more detailed explanation of their bills. A considerable amount of material has been circulated on the Matrimonial and Family Proceedings legislation.

5. Lord Renton and other critics might accept some of these arguments. But they also clearly feel that Parliamentary Counsel will not even try to move towards a plainer style as long as he is free from direct challenge from a Minister or Ministers who argue with him on the basis of legal knowledge and if necessary overrule him. Transfer of responsibility to the Lord Chancellor and a scrutiny role for Legislation Committee would technically achieve both these things.

6. The machinery of Government arguments are fairly well balanced. Parliamentary Counsel provides a common service to all Ministers. The Office of Parliamentary Counsel has always been attached to a central Department (until 1968, the Treasury; from 1968 to 1981 the Civil Service Department; since 1983 the Cabinet Office). It is helpful to have its manpower and staffing control settled centrally and close to those who manage the Government's legislative programme. It would look

odd to give these responsibilities to a Minister who was simply one of Parliamentary Counsel's customers. On the other hand such an arrangement is not unknown (for example the Secretary of State for the Environment's responsibility for the Property Services Agency) and the Lord Chancellor's general responsibilities for the law, and his involvement with the Statute Law Committee and Law Commission, would give an identity of interest. There is certainly something in the argument that a departmental Minister who is dissatisfied with the drafting of one of his bills has, as matters now stand, little option but to accept Counsel's judgment.

7. The key arguments seem to me however to be practical. The quality of Government legislation depends primarily on the ability and commitment of its draftsmen. They have to work under considerable pressures to deliver the Government's legislative programme. Arrangements for quality controls would inevitably involve some form of second-guessing, whether by a single Minister or by a group of them on a revamped Legislation Committee. That would certainly antagonise Counsel, and I believe it would be counter-productive in the end, perhaps putting at risk our ability to attract Parliamentary Counsel of high calibre. In practical terms too it would often be difficult to send many of the major and controversial bills to Legislation Committee in time for their comments to be properly reflected in a redrafting.

8. For these reasons neither the Lord Chancellor's Permanent Secretary nor I believe that responsibility for Parliamentary Counsel (and therefore for the drafting of legislation) should be transferred to the Lord Chancellor.

9. As part of the Cabinet Office family, the Office of the Parliamentary Counsel are in the end answerable to you as Prime Minister and Minister for the Civil Service. This is as it should be for an important central source. If a transfer of



responsibility is excluded, you may like to consider, subject to further discussion with the Lord Chancellor and others, two pieces of action.

10. One would be a minute to colleagues when business resumes in September, reminding them of the importance of allowing adequate time for the drafting and redrafting of bills, and also reminding them of the Lord Chancellor's and other Law Officers' general responsibilities for the quality of the legislation. Something on these lines might subsequently be incorporated into Questions of Procedures. The other might be a personal instruction to Parliamentary Counsel reminding him of the Government's general objective of producing clarity and simplicity in new legislation - subject to the inevitable ^{constraints} ~~complaints~~ - and asking him to draw to your attention and that of the Law Ministers any case in which lack of time or other factors had, in his judgement, led to the appearance on the Statute Book of legislation which could, had those factors not operated, have been drafted in simpler and clearer form.

11. Such a course would give departmental Ministers and Law Ministers a little more leverage than they have now, and at the same time leave the basic judgment to those whose responsibility it is to draft the legislation.

12. If you agree, I will prepare draft minutes accordingly.

--- In the meantime, I attach a draft reply to Lord Renton.

*I see no need for
the minutes to issue
not*

RA

ROBERT ARMSTRONG

3 August 1984

TERMS OF EXCHANGE OF CORRESPONDENCE BETWEEN THE PRIME MINISTER AND
SIR DAVID RENTON MP FOLLOWING THE REPORT OF THE COMMITTEE ON THE
PREPARATION OF LEGISLATION

COMMITTEE ON THE PREPARATION OF LEGISLATION

26 March 1975

Dear Prime Minister,

1. I have today submitted to the Lord President of the Council the Report of the Committee on the Preparation of Legislation of which I have had the honour to be Chairman. I enclose a copy of our Report for your information. In September 1973 your predecessor and I discussed the terms of reference of our Committee following my request that they should be extended to allow us to consider the organisation, training and answerability to Ministers of the Parliamentary draftsmen. He asked that our Report should not deal with matters which, though they might come to our notice in the course of our work, were not clearly within our terms of reference. He agreed, however, that I, as Chairman, could write to him privately about such matters. My agreement with Mr. Heath was confirmed by the present Government in April 1974.

Ministerial responsibility

2. The present allocation of Ministerial responsibilities in this field as we understand the matter, is that you as Prime Minister and Minister for the Civil Service are responsible for the administration of the Office of the Parliamentary Counsel. The Lord Advocate is similarly responsible for the Scottish Parliamentary Draftsmen. The Leader of the House of Commons is responsible for the legislative programme. The departmental Minister concerned with each Bill is responsible for the drafting of that Bill in relation to all parts of the United Kingdom to which it applies. In discharging their responsibilities for particular Bills, departmental Ministers can call upon the advice of the Law Officers for England and Wales and for Scotland as they may require. The Law Officers are also consulted by the Parliamentary draftsmen when necessary.

3. Most members of our Committee feel strongly that there should also be a Cabinet Minister responsible for the general structure and language of legislation, as distinct from the drafting of particular Bills. We emphasise that this responsibility must not diminish the responsibility of other Ministers for the drafting of particular Bills of which they may be in charge.

4. We have recommended in paragraph 18.40 of our Report that the Statute Law Committee should have certain new duties placed upon them. We consider that they should be required to keep the structure and language of the statutes under continuous review and that they should publish reports from time to time (at least triennially), dealing with trends and tendencies in drafting and reporting on progress made in implementing our recommendations, to the extent to which these are accepted.

The question arises which Minister should be responsible for the structure and language of legislation in general. We do not feel that Prime Minister should be required to answer Questions and debates about the sometimes technical matters involved, whatever his responsibilities be for the administration of the Office of the Parliamentary Counsel as Minister for the Civil Service.

6. The Lord Chancellor is the senior legal member of the Government and is Chairman of the Statute Law Committee. So far as England and Wales are concerned, we think he should be the Minister responsible. The Lord Chancellor is however an English lawyer and cannot be expected to be familiar either with Scottish law or with the difficulties that arise in relation to combined Anglo-Scottish legislation. We therefore think he should act jointly with the Lord Advocate, for whom the Scottish legal Minister whose appointment we recommend in paragraph 18.7 of our Report would answer on Scottish points in the Lords. A precedent for the joint exercise of functions by the Lord Chancellor and the Lord Advocate can be found in the powers now available to them under the provisions of the Tribunals and Inquiries Act 1971. The question as to which Minister should be answerable to the House of Commons on behalf of the Lord Chancellor in this important matter we must leave to you as Prime Minister.

Recruitment and training of Parliamentary draftsmen

7. As you know, the present shortage of Parliamentary draftsmen, which has existed for many years, has serious implications. It causes difficulties for the Government in carrying through their legislative program. It imposes a tremendous burden on the relatively small band of skilled and dedicated draftsmen available to do the work. It limits progress with consolidation, which in our Report we emphasise should be expedited. In short, this is a crucial and overriding problem, and we have reached the conclusion in paragraph 7.21 of our Report that an important defect of the legislative process is the shortage of draftsmen which aggravates the pressures upon the Parliamentary Counsel. We would ask you to give all possible encouragement to the efforts which are being made to recruit more draftsmen.

8. There is no school of legislative drafting in this country of the kind which is to be found in Ottawa where in 1970 Professor Elmer Driedge (who gave evidence to us) started a new school of legislative drafting at which a twelve-month course is provided for a carefully selected band of qualified lawyers. Here I should disclose that I myself happen to be a former Vice-Chairman of the Council of Legal Education, and that with the consent of my colleagues on our Committee I have explored the possibility that such a course might be provided here by the CLE, the present Chairman of which is Lord Justice Scarman who welcomes the suggestion. We do not feel that it is for us to pursue the matter in depth, but we hope that full consideration will be given by the Government to this possibility.

Pam Leg P+12

The "Grey Area": Scrutiny of Bills before Presentation

9. It was inevitable that several of our witnesses, some of whom had held Ministerial office, would make various suggestions for improving the scrutiny of Bills before they are presented. Also, some members of our Committee have of course had experience of preparing Bills either as members of the Government, as draftsmen or as officials, and are familiar with the work done in the Departments and by the Legislation Committee of the Cabinet. However, we do not feel that any of the particular suggestions made to us for improving the scrutiny which takes place before presentation need to be specifically drawn to your attention. I therefore refrain from further comment on this topic.

The Parliamentary Draftsmen for Scotland

10. On behalf of the Committee Lord Stewart is sending to the Lord Advocate a suggestion for the separation from the Parliamentary Draftsmen for Scotland of certain non-drafting functions for which they are at present responsible. This matter is touched on in paragraph 8.20 of the Report, but as it concerns organisation I thought it right to keep our suggestion for communication to the Lord Advocate by letter. I do not trouble you with the details of the suggested alteration (which, though important, would be internal to the Lord Advocate's Department) except to say that the suggestion is made in the interests of clarity and simplicity in the statute law of Scotland, and to emphasise that the alteration would obviously need to be achieved without depriving the Lord Advocate's Department of a Legal Secretary and other legal staff of the right calibre for the performance of the separated non-drafting work which is as important for the care of the law of Scotland as is the work of the Lord Chancellor's Office for the care of English law. We hope that you will feel able in due course to give this suggestion your support both as Minister for the Civil Service and as Prime Minister.

11. I conclude by expressing the real and deep gratitude of the members of our Committee for the splendid work so ably done for us by our Secretary, Mr. Angus Macpherson, and our Assistant Secretary, Mr. Robert Cumming, of the Cabinet Office. Also I would like to pay tribute to the forthcoming and generous way in which First Parliamentary Counsel, Sir Anthony Stainton, has placed himself at our disposal and has without reservation given us the benefit of his valuable help and advice.

12. Sir Samuel Cooke and Sir Noel Hutton have asked me to add this:

"We associate ourselves most warmly with the well deserved tribute which is paid in this letter to our Secretary, Mr. Angus Macpherson, to our Assistant Secretary, Mr. Robert Cumming, and to Sir Anthony Stainton, First Parliamentary Counsel.

"For the rest, the letter deals with matters which in our view are sufficiently dealt with in the Report itself or have not

adequately explored in our discussions. In particular, we are reluctant to make recommendations touching on Ministerial responsibility without fuller study. We recognise the public spirited motives which have led our colleagues to a contrary conclusion and we are delighted that this is one of the few matters on which it has been necessary to record a difference of opinion."

Yours sincerely,

(Sgd) David Renton

10 DOWNING STREET

11 September 1975

Dear Sir David,

REPORT OF THE COMMITTEE ON THE PREPARATION OF LEGISLATION

When I wrote to you on 7 April in reply to your letter of 26 March, I said that I would consider carefully the points falling outside the terms of reference of your Committee which you raised with me.

Your main suggestion relates to the question of Ministerial responsibility for legislation. The current Ministerial arrangements are as you describe them in your letter, the essential points being that the Lord President, as leader of the House, has general oversight of the Government's legislative programme and thus of the flow of work to the Parliamentary Counsel's Office, while the departmental Ministers concerned are responsible with the support of Parliamentary Counsel and the advice of the Law Ministers for the drafting of particular bills. The Government shares your concern that the general structure and language of legislation, as distinct from the content of particular bills, should be properly supervised by Ministers and I have considered your suggestion that a Cabinet Minister should be specifically charged with this. My conclusion is that no change in the existing Ministerial arrangements is called for: this general responsibility is already clearly placed on the Law Ministers, subject of course to the collective responsibility of Ministers generally, with the Lord Chancellor a member of the Cabinet. Moreover, while acknowledging the overall responsibility of Law Ministers for the quality of legislation, I would not wish in any way to weaken, or appear to weaken, the responsibility of Parliamentary Counsel to the departmental Ministers for the drafting of a public bill and the

Ministers' own responsibility to Parliament for the legislation which he introduces. As to your Committee's further recommendations on the role which the Statute Law Committee might play in relation to this question of structure and language of legislation, we are examining these proposals as part of our study of the Report as a whole.

On the recruitment and training of Parliamentary Counsel, the Government fully recognises the difficulties of recruitment in this highly specialised field and shares the Committee's concern. We are taking all possible steps to augment and strengthen the resources of the Parliamentary Counsel's Office and we shall continue to look for the first-class ability which is needed through the traditional methods of recruitment by the Civil Service Commission, by contacts in the universities and by all other means.

As you know, whenever the work is deemed appropriate we have been making use of Parliamentary agents. On training, there are, as you say, at present no formal courses of instruction in this field but First Parliamentary Counsel has been considering for some time a number of possibilities for improving the situation and, as I think you know, he is considering specifically your own idea.

You also refer to the suggestion sent to the Lord Advocate by Lord Stewart on behalf of the Committee, recommending the separation from the Parliamentary draftsmen for Scotland of certain non-drafting functions for which they are at present responsible. I have consulted the Lord Advocate and we are interested in your suggestions but we feel that these will have to be considered in the context of the Government's proposals for devolution.

Finally, I should like to acknowledge the generous tribute on behalf of yourself and your Committee to the assistance which you received from your Secretariat and for the help which you received from the First Parliamentary Counsel, Sir Anthony Stainton.

With your agreement I should like to publish at an appropriate time our exchange of correspondence which I think could usefully be placed on record.

Yours sincerely,

(Sgd) Harold Wilson

10 Downing Street,
Whitehall, S.W.1.

29 October 1975

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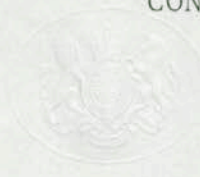
DRAFT LETTER FROM THE PRIME MINISTER TO
THE RT HON LORD RENTON QC

Thank you for your letter of 9 July.

I am grateful to you for letting me know of your concern, and for setting out your thoughts with such care. I know that the quality of legislative drafting is something to which you have given much attention, and indeed made a significant contribution to improving in your 1975 report.

I have to say that, for the sort of reasons given in my predecessor's letter to you of 11 September 1975, I doubt whether the right answer is to put the Parliamentary Counsel under the direct control of the Lord Chancellor. Nor am I clear that we can remove all the things which contribute to distancing legal drafting from the simple direct language of ordinary correspondence. The need for precision, the language and structure of existing law, the often unreasonable timetable we impose on draftsmen, all make for difficulties here.

Something can certainly be done, and is being done, to give the user more help



in cases where drafting is necessarily complex. You may perhaps have noticed that the Lord Chancellor's Department have made a considerable effort to provide more explanatory material on the detail of the bills for which they have been responsible this session - particularly the Matrimonial and Family Proceedings legislation.

But I entirely agree with you that we should do all we can to avoid adding new legislation to the Statute book which is unnecessarily complex and obscure. I have taken careful note of your suggestions here, and I shall be considering what can be done to improve matters.



ale

SK

10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

I enclose a letter to the Prime Minister from Lord Renton about reorganisation of responsibility for the Parliamentary Counsel's office. This came through the Prime Minister's Parliamentary Private Secretary, who has acknowledged it. Since this is a machinery of Government matter, I should be grateful if you could advise the Prime Minister on a draft reply.

BF1

FERS

19 July 1984

NR

Michael Alison

Many thanks. I think
we should get advice from
Sir Robert Armstrong's
machinery of government people.

Robin Butler

Lord Renton's suggestion is not a new one and
we shall no doubt get the book answer, but it
Lord Renton handed the attached letter to me last week. I have shown it to the Prime Minister, and I have acknowledged it in writing.

would be
something for
the PM to
consider.

However, I would be very grateful
for your views on how we should
reply to him.

Shall I
get that
advice?

MA

FEB

17.7.

MICHAEL ALISON
16.7.84

Yes, pl
MA 18/7

From: The Rt. Hon. Lord Renton, Q.C.



House of Lords Westminster

PERSONAL AND CONFIDENTIAL

9th July 1984

The Rt. Hon. Mrs. Margaret Thatcher, M.P.
10 Downing Street,
Whitehall.

Dear Prime Minister,

The Need to Improve legislative Drafting

I am, as you know, an enthusiastic supporter of your main policies and greatly admire your style of government.

There is, however, one respect in which matters have worsened in recent years, and that is in the quality of legislative drafting.

There are various causes of this. One is the vast amount of legislation, which undoubtedly places heavy burdens on Parliamentary Counsel, but this is not in itself, an explanation or excuse for the verbose, complex and obscure phraseology which appears too often.

Other and more direct causes are

1. continued refusal of Parliamentary Counsel to pay regard to the needs of the users of statutes, to draft in more general terms and to use more simple language; and
2. the fact that the Legislation Committee of the Cabinet is no longer presided over by the Lord Chancellor and has become mainly a business committee, rather than the scrutiny committee which it was and should be.

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House of Lords · Westminster

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- 2 -

Among those peers who are worried about the drafting is Jack Simon of Glaisdale, who has tabled a motion, "To call attention to the advantages of incorporating the Office of the Parliamentary Counsel into the Lord Chancellor's Department; and to move for papers." This can only be debated if he is successful in a ballot.

I agree with him and so do others. It is anomalous that the Lord Chancellor is responsible for the Law Commission (which, among other things, promotes the consolidation of statutes with the assistance of Parliamentary Counsel,) but has no responsibility for the work of the Parliamentary Counsel Office.

By contrast, the Lord Advocate is responsible for the Scottish Parliamentary Draftsmen, with the result that Scottish legislation is better drafted.

Parliamentary Counsel have always enjoyed being independent of ministerial influence. It seems that no Minister for the Civil Service, who is the one nominally responsible for them, has ever sought to question their methods. Although ministers are each responsible for the contents of their own bills, it is invariably their practice to accept both the draftsman's advice and his often tortuous explanations of his drafts. I am marking this letter "Personal and Confidential" because First Parliamentary Counsel (now our fellow bencher, Sir George Engel) will no doubt try to mobilise opposition to the suggestion that the

continued/.....



House of Lords · Westminster

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- 3 -

Lord Chancellor should be made responsible for that office.

Of Course, if the Lord Chancellor were to become responsible for it and to preside over the Legislation Committee as a scrutiny committee, it would be essential to have a Lord Chancellor who was determined and competent to concern himself with the quality of drafting. Although we would be sorry to lose Quintin, he cannot go on for ever, and some of those eligible to succeed him would in that respect be more suitable than others! He is a good ally in this matter and still alert mentally, but I am sure that he feels frustrated and powerless to deal with it. His intellect still shines and you may care to discuss it with him.

Yours ever,
David.