Acknowledgments

I am grateful to Tony Thurnham and Tim Cox (solicitors with Linklaters & Paines) for their advice throughout the project on general questions of law; the Joseph Rowntree Reform Trust Limited for helping to fund the first stage of the work; the Nuffield Foundation for helping to fund later stages including the publication of this report and the programme of testing; and Monica Sowash, who arranged and conducted the testing.

Five leading law firms – Clyde & Co, Edge & Ellison, Freshfields, Clifford Chance, and Linklaters & Paines – generously provided access to their summer placement students and this enabled much of the testing to take place. Thanks also go to the students and everyone else who took part in the testing.

Many people offered detailed comments, encouragement, criticism and information. They include David C Elliott, Professor Peter Lown, Professor Michael Zander, Professor Robert Eagleson, Mark Adler, Kevin Cutts, John Ward, Peter Pagano, Richard Thomas, Sara Mason, Alison Black, Professor Peter Butt, Brian Bowcock, Philip Circus, James Hartley, Celia Hampton, Michael Ryle, Tim Goldingham, Mike Foers, Francis Bennion, Lawrence McNulty, Ken Sloan and Lord Renton. Thanks go to all.

Words at Work began the project in 1992 and published early results as a discussion paper, ‘Unspeakable Acts?’, in 1993. The project has been completed by the Plain Language Commission.

About the author

Martin Cutts –
• is a writer and typographer who has worked in the plain language field since 1975 when he left Liverpool University with a degree in English, Italian and Psychology;
• has led more than 700 courses in writing skills for government departments, local authorities, lawyers and companies;
• has written, edited and designed plain language insurance policies, bye laws, rule books, instruction manuals, direct debit forms, government forms and leaflets, tenancy agreements and housing benefit forms;
• conceived and co-founded Plain English Campaign in 1979, remaining a partner there until 1988;
• is author of ‘Making Sense of English in the Law’, published by Chambers;
• is director of Words at Work and the Plain Language Commission.

© Martin Cutts. The moral rights of the author have been asserted. All rights reserved. This report represents original work: no part of it may be reproduced in any way without the author’s written permission.
British Library Cataloguing in Publication Data.
A catalogue record for this book is available from the British Library.
# Contents

Foreword

Centre pages: Text and layout of the Clearer Timeshare Act 1993

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>General summary</td>
<td>7</td>
</tr>
<tr>
<td>2</td>
<td>Summary of ‘before’ and ‘after’ examples</td>
<td>11</td>
</tr>
<tr>
<td>3</td>
<td>Introduction</td>
<td>13</td>
</tr>
<tr>
<td>4</td>
<td>Origins of the project</td>
<td>14</td>
</tr>
<tr>
<td>5</td>
<td>Why revise an Act of Parliament?</td>
<td>15</td>
</tr>
<tr>
<td>6</td>
<td>Why revise the Timeshare Act in particular?</td>
<td>19</td>
</tr>
<tr>
<td>7</td>
<td>Activity elsewhere</td>
<td>20</td>
</tr>
<tr>
<td>8</td>
<td>Testing users’ performance</td>
<td>22</td>
</tr>
<tr>
<td>9</td>
<td>Inclusion of the Citizen’s Summary</td>
<td>29</td>
</tr>
<tr>
<td>10</td>
<td>Language comparison of original Timeshare Act and Clearer Timeshare Act</td>
<td>30</td>
</tr>
<tr>
<td>11</td>
<td>Structural comparison of the two Acts</td>
<td>36</td>
</tr>
<tr>
<td>12</td>
<td>Typographical comparison of the two Acts</td>
<td>39</td>
</tr>
<tr>
<td>13</td>
<td>Response from the parliamentary counsel’s office and the Government</td>
<td>44</td>
</tr>
</tbody>
</table>

References 47

Appendices

A Text of first questionnaire to law students 48
B Text of second questionnaire to law students 49
C Text of third questionnaire to law students 50
D Text of first questionnaire to the public 51
E Text of second questionnaire to the public 52
F Text and layout of original Timeshare Act 53
Foreword

by The Rt Hon Sir Thomas Bingham, Master of the Rolls

A recent case in the County Court turned on a section in the 1980 Housing Act. The judge, who was very experienced and was herself a former Member of Parliament, said she couldn't make head or tail of it. The Court of Appeal sympathized with her. They said:

'It is unfortunate that legislation directly affecting the lives of so many citizens should not be more readily intelligible.'

The point could be made more strongly. Ten years ago a Law Lord said:

'But what the law is . . . ought to be plain. It should be expressed in terms that can be easily understood by those who have to apply it . . . Absence of clarity is destructive of the rule of law; it is unfair to those who wish to preserve the rule of law; it encourages those who wish to undermine it . . .'

Other judges have spoken to the same effect.

Martin Cutts believes that Acts of Parliament can be drafted in simple, readily intelligible language without loss of clarity, certainty or comprehensiveness. The parliamentary draftsmen were sceptical. They challenged him: if he thought he could do the job better, let him try.

He accepted the challenge. He took as his example the Timeshare Act 1992. He drafted a Clearer Timeshare Act 1993. He claims that nothing has been lost from the original except its obscurity.

Presentation of this draft has taken time – longer than the parliamentary draftsmen were able to spend on the original Act. But the challenge raises very significant issues. Is the Clearer Timeshare Act clearer? Is it ambiguous or uncertain? Does it leave out anything of importance from the original?

This invaluable report invites readers to make their own comparison and decide: who has won the challenge? If the vote goes for the Clearer Timeshare Act an important point has been made.

Royal Courts of Justice
21 February 1994
1 General summary

Purpose of the report

1.1 The report examines the clarity of parliamentary drafting in the United Kingdom with particular reference to a recent piece of consumer law, the Timeshare Act 1992. The report seeks to stimulate interest and debate among statute users, writers and typographers. To provide a vision of what statutes could be like, the centre pages of the report show a transformation of the Timeshare Act using plainer language and clearer design – the Clearer Timeshare Act 1993. The reason for choosing the timeshare law for this exercise is that it is recent, brief and gives new rights to many thousands of timeshare owners.

1.2 The report does not enter into the controversy about whether European-style drafting (which tends to set out the general principles of a law, together with rights and remedies) is preferable to UK-style drafting (which tends to be very detailed and prescriptive). Nor does it examine the parliamentary procedures which may militate against clear drafting.

Response to a challenge

1.3 The report responds to a challenge to the author in 1987 from the then first parliamentary counsel – the head of the Government’s law-writing office – to put a statute into plainer language without losing significant meaning. The report shows that this can be done and that readers find the result easier to follow and use. The challenge is therefore returned to the present first parliamentary counsel with four requests:

- To say whether the Clearer Timeshare Act has fulfilled the challenge thrown down by his predecessor.
- To justify the obscurity, long-windedness and poor structure of the original Act.
- To say which version of the Act you yourself would prefer to work with if you were a judge, MP or ordinary citizen.
- To put the two versions of the Act before an independent panel of lawyers, judges and user representatives and let them decide which one best meets the criteria of certainty and intelligibility which all regard as desirable.

Need for a government initiative

1.4 Government is responsible for a swelling torrent of legislation – over 2,000 pages of new statutes in 1991. Yet it has done nothing to make the law more understandable. No government department has ever tested the comprehensibility of a Bill with the people likely to be most affected by it. Relying on MPs to check whether legislation is understandable does not seem to work – perhaps because many MPs are lawyers and all MPs are provided with easy-to-read guidance about what a Bill means. MPs simply do not start from the same point in the race as ordinary citizens and other users of statutes. There should be a government initiative to clarify the language and typography of new statutes. This would complement the work of the 1980s, when many government forms – including legal ones – were put into plainer language, made more informal, and improved in their typography.
Need for a Citizen’s Summary

1.5 To help all who read the law, a Citizen’s Summary should be added to every Act. It would not have the force of law but would spell out the main points of the legislation and its rationale. The Citizen’s Summary could be published at the same time as the Bill. There would be little extra work in this and, for government measures, the summary could be drafted by the same civil servants who presently draft guidance for MPs on the meaning of Bills. Given the amount of exposure civil servants have had to ideas about plain language in recent years, I am confident they could make a good job of it. Failing that, the work could be contracted out.

Main results of testing with law students

1.6 No document can safely be regarded as clearer until users’ performance proves it. Therefore the revised and original Act were tested with 91 students on placement with leading law firms, most of them studying law. The students’ response to the revision was overwhelming: 87% preferred it.

- On the wording, 56% rated the revision ‘much clearer’ and 32% said it was ‘clearer’. Only 1% rated the original ‘much clearer’ and 3% said it was ‘clearer’.
- On the navigational aids (running heads, headings, footnotes etc), 37% rated those in the revision ‘much more helpful’. Only 1% gave the same rating for the original.
- On general design and appearance, the revision was rated ‘far better’ by 44%. Again, only 1% gave this rating for the original.

1.7 When answering questions on the Act, the students using the revision performed better on 9 out of 12 questions. Generally the improvement was slight but on one question, central to understanding the scope of the Act, students using the revision scored 94% correct while those using the original Act scored only 48% correct.

1.8 Of those using the revised Act, 32% said it was ‘very easy’ to get a general picture of it, while only 7% gave this response for the original. Just 2% of those using the revised Act said it was ‘fairly difficult’ to get a general picture, while 34% said this for the original.

Main results of testing with the public

1.9 The two versions of the Act were also tested with 40 ordinary citizens. There were three groups: advisers from London citizens advice bureaux; volunteers in an ecology centre; and staff from a plant research centre. They overwhelmingly preferred the revised version. About 80% said they found the revision ‘much easier’ to read and find their way around, while another 12% found it ‘easier’. Asked to rate the clarity of wording of the revision, they gave it an average mark of 82% while the original scored only 32%. They gave similar results for the design and layout of the two versions. About 90% said the Citizen’s Summary would have helped them when reading the revised version, and all of them judged the summary easy to understand. Almost all said a Citizen’s Summary should accompany every Act.
Bills should be pre-tested

1.10 Even lawyers and other highly literate citizens find statutes difficult, despite improvements in clarity over the last 30 years for which the parliamentary counsel can take much credit. The report suggests that Bills which most directly affect the public should be tested for comprehensibility with their intended audience. The results could be fed back into the parliamentary process or at least used to inform future drafting decisions on other Acts.

Language of the two Acts

1.11 One chunk of the original Act must, according to statutory instrument, be reproduced in its entirety on right-to-cancel notices issued to customers by timeshare sellers. This belies the notion that ordinary people never need to read Acts of Parliament. Unfortunately, the extract includes a sentence of 102 words which uses terms like ‘offeror’ and ‘offeree’ without explanation. The Act has other 70-word and 100-word sentences, helping to create an average sentence length of 36 words. An average of 15-25 words is usually achievable even in most legal documents, and readability research suggests it is desirable. [1] The report suggests ways of chopping up the long sentences; in particular, it advocates using full stops within subsections, contrary to current parliamentary counsel practice. The Renton Committee on the preparation of legislation called for this change as long ago as 1975.

1.12 In the revision, average sentence length is one-third shorter (24 words). The whole Act has over 1,000 fewer words (a cut of 25%). Where possible, everyday language has been used, for example ‘if’ instead of ‘where’ to begin conditional sentences, and ‘must’ instead of ‘shall’ to express obligation. ‘Offeror’ and ‘offeree’ have been replaced by ‘seller’ and ‘customer’ respectively. Definitions are shorter and simpler. The aim has been to get as close to the meaning of the original as possible despite the occasional fogginess of the original.

Structure of the two Acts

1.13 The report suggests that the structure of the original Act leads to confusion. Two particular points emerged from the testing. First, it was shown to be poor practice in this Act to provide complex definitions in section 1 before the reader had any framework in which to understand how they operated. Second, sections on timeshare agreements and timeshare credit agreements had not been properly grouped.

1.14 The revision puts all the definitions in one place and groups them alphabetically. Sections on timeshare agreements are grouped, as are those on timeshare credit agreements. The testing showed that readers tended to use the new structure successfully to help organize their reading.

Typography of the Act

1.15 The typography of the original Act – shown in full in Appendix F – makes the information less accessible than it could be, wasting readers’ time. For example, the running heads (small-print lines of type at the top of pages) fail to say what section the reader will find on the page. Sidenotes, which are the only
forms of section headings in this Act, are in smaller type than the main text and, as
they share a side column with cross-references to other Acts, they fail to stand
out well. The result is that, on some pages, the reader must contend with a fea-
tureless sea of print without the benefit of navigational aids. The left-hand edge
of the main column is heavily broken by indents.

1.16 The revision – see centre pages for the full-size version – tries to avoid
these negative features:

- Running heads reveal chapter numbers and section numbers so that readers
  flicking through the Act can quickly locate the section they want.
- Section headings (equivalent to the original Act's sidenotes) are in the same
  size of type as the main text, but picked out in bold to make them more
  obvious.
- Higher-level headings are in a bigger, sans-serif face, to add impact.
- Defined terms are shown in italics when first used in the main text.
- The numbering means that readers always know what section and subsec-
  tion they are in. Numbers stand out as they occupy an area of their own.
2 Summary of ‘before’ and ‘after’ examples

2.1 Rewriting the Timeshare Act involved restructuring it and altering all the definitions. It is impossible, therefore, to give ‘before’ and ‘after’ examples which are exactly in parallel and which make complete sense out of context. Here, however, the differences in language between several subsections are shown.

(a) Before (section 5(4) of the original Act)

The offeree’s giving, within the time allowed under this section, notice of cancellation of the agreement to the offeror at a time when the agreement has been entered into shall have the effect of cancelling the agreement.

After (section 3.4 of the revised Act)

An agreement is cancelled if the customer gives the seller notice of cancellation within the time this section allows.

(b) Before (s4(3))

An agreement is not invalidated by reason of a contravention of section 2 or 3.

After (s7.3)

Contravening this section does not make the agreement void.

(c) Before (s6(2) and 6(3))

(2) Subject to subsection (3) below, where a person who enters into a timeshare credit agreement to which this Act applies as offeree has not received the notice required under section 3 of this Act before entering into the agreement, he may give notice of cancellation of the agreement to the creditor at any time.

(3) If in a case falling within subsection (2) above the offeree affirms the agreement at any time after the expiry of the period of fourteen days beginning with the day on which the agreement is entered into, he may not at any subsequent time give notice of cancellation of the agreement to the creditor.

After (s8.2)

If a customer does not receive the right-to-cancel notice before entering into the agreement, he or she may give the lender notice of cancellation of the agreement at any time. But the customer loses this right on showing, by taking some significant action after the expiry of a 14-day period starting on the date the agreement was entered into, that he or she considers the agreement to be in force.

(d) Before (s12(4))

This Act shall have effect in relation to any timeshare agreement or timeshare credit agreement notwithstanding any agreement or notice.

After (s1.3)

No agreement or notice can prevent this Act from applying.
(e) Before (s13(2))

This Act shall come into force on such a day as may be prescribed.

After (s1.4)

This Act comes into force on a day to be prescribed.

(f) Before (s2(1))

A person must not in the course of a business enter into a timeshare agreement to which this Act applies as offeror unless the offeree has received, together with a document setting out the terms of the agreement or the substance of those terms, notice of his right to cancel the agreement.

After (s2.1)

Before a seller enters into a timeshare agreement, he must give the customer a right-to-cancel notice and a document setting out the terms of the agreement or the substance of its terms.
3 Introduction

3.1 Publication of this report completes an independent research project about the clarity of Acts of Parliament. In particular, it provides a revision of the Timeshare Act 1992 to show how its language and typography might be clarified. The revision (see centre pages), is called the Clearer Timeshare Act 1993.

3.2 The project has been in three phases:
- Revising the wording and typography of the original Act. An initial revision was published in January 1993 as part of a discussion paper, 'Unspeakable Acts?'. [2]
- Consultation, in which interested parties in the UK and abroad have given their views on the revision. Consultees have included parliamentary counsel, other lawyers, and lay people.
- Further revision, followed by a programme of testing in which users' responses to the original and the revision have been assessed.

3.3 The project does not seek to belittle the skills of the parliamentary counsel, and it is appreciated that editing and revising an Act is in some ways easier than writing it from scratch. But the parliamentary counsel's work is paid for by public funds, so taxpayers have the right to question whether they are producing what the country needs. Experience in many parts of the English-speaking world shows that lawyers, including parliamentary counsel, continue to write in unnecessarily complicated ways until public and parliamentary pressure persuades them to stop. Time and again, lawyers have told plain language exponents that certain kinds of document could not be clarified without loss of certainty and precision. Yet in the last 15 years countless insurance policies, tenancy agreements, contracts and legal forms have been put into plain language without causing problems in the courts. By clarifying the language and layout of an Act, the project seeks to discover whether similar improvements are possible in Acts of Parliament.

3.4 Government could take a lead by getting bodies such as the Law Commission and the newly created Advisory Committee on Statute Law to consider how future legislation could be clarified, perhaps drawing on recent good work in Australia and Canada. High-level political commitment is needed. As the Attorney-General of Victoria, Australia, said when announcing a policy for plain language in legislation in 1985:

What needs to happen now is to have a process whereby Parliamentary Counsel draft Bills and legislation officers draft subordinate legislation from the outset in plain English. This requires a radical departure from tradition and a break with the thinking of the past. It requires imagination, a spirit of adventure and a boldness not normally associated with the practice of law or with the drafting of legislation or subordinate legislation. [3]

3.5 Much depends on government departments and their own lawyers. Departments sponsor most new legislation and say what they want it to achieve. They should start saying that they would like it to be expressed in plain language. They should stop being in awe of the parliamentary counsel.
4 Origins of the project

4.1 In the early 1980s I had a meeting with the first parliamentary counsel, Sir George Engle, and then in 1987 with his successor, Mr (now Sir) Henry de Waal, to discuss the prospects for plain language in Acts of Parliament. Both draftsmen considered that their work was already in the plainest language they could muster, given the pressure of deadlines, MPs’ last-minute amendments, the interventions of ministers and civil servants, and the way courts interpreted wording.

4.2 Mr de Waal said some MPs loved complexity and grandiloquence; this led to undue obscurity in some Acts. But he said that if I thought I could do any better, I should go ahead and redraft an Act. He would then consider it. This project has responded, albeit belatedly, to his challenge.

4.3 Sir George denied that many recent Acts were written in arcane language and asked for evidence that over-long sentences were still being written. (Incidentally, the Timeshare Act 1992 provides ample proof of this, but perhaps the rot has only set in recently.) Sir George quoted Professor Elmer Driedger with enthusiasm:

> I deny that any special rules of grammar or composition are needed for statutes or that any mysterious incantations are required to clothe a policy with legal validity. [4]

So here is a strange situation. Two of the first parliamentary counsel of the 1980s wanted plain language in their Bills and felt they were doing as much as they could to achieve it. Yet many professionals who have to read and work with laws – and the regulations made under them – still complain bitterly. Are all these people being unreasonable in expecting the law to be comprehensible? Are they the people Professor Driedger had in mind when he said that those who would not study statutes properly had no right to criticize them? [5] Having read the Timeshare Act and many other recent laws during this project, I reckon that the critics have at least an arguable case. And having helped to rewrite and redesign many legal documents, I know that great improvements are often possible when the cause at first seems hopeless.
5 Why revise an Act of Parliament?

5.1 Acts of Parliament are important documents: they are the law. It is in everyone's interest that they be made as clear and understandable as possible. It is in the interest of the Commons and the Lords, as they need to know exactly what law they are making. It is in the legal profession's interest, so that time and money are not wasted trying to root out the hidden meaning of an Act. It is in the interests of civil servants, local authority staff and business people, many of whom must work closely with Acts. And it is in the interest of citizens, for several reasons: they pay the MPs' and parliamentary counsel's salaries; they pay for the administration of justice in the courts, which relies heavily on Acts; they ultimately pay for every minute that a lawyer wastes trying to understand a complicated Act or locate a relevant point in an Act; and they sometimes need to read the exact words of an Act themselves – rather than a leaflet interpreting it – to find out precisely what the law says.

5.2 Baffling legislation reduces respect for the law, just as the gobbledygook sometimes written and spoken by lawyers diminishes respect for them. Citizens are deemed to know the laws which govern them; they cannot, for example, plead ignorance of a law in order to escape its effects. The fiction of perfect knowledge is even more difficult to uphold when laws are incomprehensible. Francis Bennion, a proponent of statute law reform, put the problem succinctly:

> It is strange that free societies should thus arrive at a situation where their members are governed from cradle to grave by texts they cannot comprehend. The democratic origins are impeccable, the result far from satisfactory. [6]

5.3 Savings from better Acts could be considerable. Assume that statutes are consulted, say, four million times a year by judges, other lawyers and the public. Assume also that improvements in language and layout could save those readers six minutes every consultation. Finally assume that readers' time is worth £90 an hour (less than most solicitors charge). The saving would be £36 million a year. Pie in the statistical sky, of course, but in the 1980s government departments regularly costed inefficiencies in their forms by similar methods and boasted of the savings made by improving them.

5.4 Under pressure from consumers, the pace of clarification of many legal documents has quickened in the last 15 years. Now, unnecessary legal flavouring (words like 'notwithstanding', 'aforesaid' and 'hereinafter') and other characteristics of legalese such as long, rambling and incoherent sentences are less common in consumer contracts. More lawyers realise that change must come, and, slowly, it is coming. The Bar Council and the Crown Prosecution Service have called for clearer language in the courtroom. The Lord Chancellor's Department has started producing plain language leaflets to help people through the maze of court proceedings. The Law Society's standard conveyancing documents have been 'plain Englished', even going so far as to use 'buyer' and 'seller' instead of 'purchaser' and 'vendor'. The Law Society has also published a drafting manual called 'Clarity for Lawyers'. [7] The Master of the Rolls, Lord Justice Bingham, has become a member of Clarity, the movement for the simplification of legal language. The Inland Revenue has issued a booklet to its staff telling them to remove legalese from tax forms and notices. [8]
5.5 Clearer Acts would help to create a climate in which other clear legal documents would flourish; lawyers with the example of clear Acts in front of them would have less excuse for writing gobbledygook. Further, all the leaflets, notices and forms which spring from Acts might be simpler if the Acts themselves were clear. This is shown by the Timeshare Act itself: right-to-cancel notices include a 102-word sentence lifted straight from the Act, whilst the department responsible cowers before the sacred text of the law, congratulating itself on the absence of loopholes:

I would agree that they [the right-to-cancel notices] are not particularly user friendly. But we [the DTI] wanted to be sure that we did not leave any loopholes whereby unscrupulous time-share sellers might evade their obligations under the Act. In this, incidentally, we appear to have been largely successful. [9]

5.6 Remarks by a local authority chief, replying to criticisms of a document it had issued, illustrate perfectly the influence of statutory gobbledygook:

I agree that the notice is in rather legalistic language, but then so is the statute on which the notice is based. It seems to me what you are attacking, or should be attacking, is the tendency for Acts of Parliament and legal documents generally to be written in legalistic, instead of plain, English. In that I wish you well, but you have a long row to hoe. [10]

5.7 Modern Acts of Parliament are not as obscure as many mortgage deeds, wills, commercial contracts and pension scheme policies. Laws are clearer in their language and layout than those of 30 years ago and the parliamentary counsel can take credit for stripping away some of the worst archaisms. But still the view persists that parliamentary drafting is much less clear than it could be.

5.8 It would be Utopian to believe that all Acts could be written and structured in a way that every adult of average intelligence would readily be able to understand. (This should still be the goal, however.) But legislators and parliamentary counsel ought to do much more to keep the language and ideas as straightforward as possible, given that citizens sometimes need to read and make sense of Acts in order to take knowledge into their own hands rather than have it filtered for them by professionals. Legislators should also bear in mind the business person who may need to discuss an Act with his or her lawyer, perhaps to get to grips with a planning permission problem or a legal case.

5.9 In other words, the interests of users should be more fully considered, and for this there needs to be more dialogue with them. Among the ways this could be achieved are (a) the comprehensibility of Bills and draft regulations could be tested with typical users; and (b) plain-language specialists and others representing users’ interests could assist parliamentary counsel and the departments which instruct them.

5.10 The most neglected recommendation of the Renton Committee, which reported to Parliament in 1975, has been:

In principle the interests of the ultimate users should always have priority over those of the legislators. [11]

The parliamentary counsel’s office has pointed out that this is balanced by another recommendation in the report:

... the draftsman must never be forced to sacrifice certainty for simplicity, since the result may be to frustrate the legislative intention. An unfortunate subject may be driven to litigation because the meaning of an Act was obscure which could, by the use of a few extra
words, have been made plain. [12]

But it is not the ‘few extra words’ that are the problem. As this report shows, the problem is that a statute of about 4,000 words is over 1,000 words longer than it should have been, that complex words and sentence structures are being chosen when simple ones would do, and that the structure of the statute hinders access to its key points.

5.11 Who, though, are the users? Courts, judges, administrators, of course. But these should not be seen as the law’s primary audience. I believe that legislators and the parliamentary counsel should hold, as an article of faith, that when an Act affects millions of people – and most Acts do – citizens of average intelligence and literacy should be regarded as the primary audience, and that as much new law as possible should be written and designed with their abilities in mind. MPs themselves may jib at this – though Parliament is full of lawyers, so the test is not entirely fair – but they ought to share in the responsibility for creating intelligible legislation.

What statute users say

5.12 In 1979 Lord Renton, who had chaired a parliamentary committee on the preparation of legislation, wrote:

In Britain the drafting of legislation remains an arcane subject. Those responsible do not admit that any problem of obscurity exists. They resolutely reject any dialogue with statute law users. There is resistance to change, and to the adoption (or even investigation) of new methods. The economic cost of statute law is enormous, yet official interest has been lacking. [13]

That could easily have been written today.

5.13 Lawyers are among those who have appealed for change. In a talk to the Statute Law Society in 1985, Richard Thomas, then legal officer of the National Consumer Council, said:

Having said that we cannot expect all statutes to read like an Office of Fair Trading leaflet, let me stress my conviction that there remains an overwhelming need to achieve much greater clarity and simplicity and overwhelming scope to do just that. The need is manifest: complexity and obscurity cause massive waste – unnecessary expense for commerce, for professionals, for government and for the public; complex detail brings its own uncertainty before the courts . . . . . complexity means uncertainty and ignorance in the daily disputes which will never be litigated, where bureaucracies and the economically dominant will usually prevail; complexity brings contempt for the law, for Parliament and for democracy itself. [14]

5.14 Giving evidence to the Renton Committee, Sir Robert Micklethwait QC, the Chief National Insurance Commissioner, said:

A statute should not only be clear and unambiguous, but readable. It ought not to call out for the exercise of a crossword/acrostic mentality which is able to ferret out the meaning from a number of sections, schedules and regulations. [15]

5.15 Social Security law and the accompanying regulations are often complicated, resulting in costly and futile litigation. One claim for an extra £25 a week board-and-lodging payment by Mr S E C Pearce, a 66-year-old living in a residential care home, took three years to reach the Court of Appeal; the complexity of the regulations meant that only when his appeal was being prepared for hearing did barristers realise that he might have a better case under a different regulation. Dismissing his appeal, Lord Justice Bingham said:

So one comes back to the language of Regulation 9(4A) which, after close scrutiny and
semantic analysis, still conveys to me the meaning it conveyed to the Commissioner. I have every sympathy with Mr Pearce in his most unhappy predicament, and I hope that Regulation 13(A) may avail him. But I feel bound, in agreement with my Lords, to dismiss the appeal. It is nonetheless a sombre commentary on this legislation that it was not until the papers were before counsel and solicitors for the Chief Adjudication Officer for purposes of this appeal that Mr Pearce’s potential claims under Regulation 13A were perceived. It is hard to think anyone capable of understanding this legislation could ever need its protection. [16]

That final sentence – a curiously moving one – should be engraved on every parliamentary counsel’s desk.

5.16 Other judges have complained. In a Housing Acts case reported in 1964, Lord Justice Harman remarked:

To reach a conclusion on this matter involved the court in wading through a monstrous legislative morass, staggering from stone to stone and ignoring the marsh gas exhaling from the forest of schedules lining the way on each side. I regarded it at one time, I must confess, as a Slough of Despond through which the court would never drag its feet but I have, by leaping from tussock to tussock as best I might, eventually, pale and exhausted, reached the other side. [17]

Lord Denning made similar comments in the same case:

I must say that rarely have I come across such a mass of obscurity, even in a statute. I cannot conceive how any ordinary person can be expected to understand it. So deep is the thicket that . . . both of the very experienced counsel lost their way. Each of them missed the last 20 words of subsection 8 of section 9 of the Act of 1959. So did this expert tribunal itself. I do not blame them for this. It might happen to anyone in this jungle.

When ‘very experienced counsel’ and some of the best judicial brains lose their way, they do so at a cost of thousands of pounds a day to their clients or the taxpayer.

5.17 Lord Renton’s committee provided ten pages of court cases from the 1950s and 1960s where judges had found the statutes on which they were to base their decisions too difficult to understand.

5.18 Of course, it is not all the parliamentary counsel’s fault. They are often vilified for ‘bad drafting’ which is actually the result of political bungling or panic law-making (the Dangerous Dogs Act 1990 is becoming the classic text in this area). But it is absurd to take the view that all is well and that, in the present first parliamentary counsel’s words, ‘we need now to be allowed to get on with our job as best we can.’ (See part 13.) Such complacency is not shared at the European Commission. Its Secretary General, Mr D F Williamson, commented on ‘Unspeakable Acts?’:

I was very interested to see the work you have done in order to show how United Kingdom legislation could be clearer and easier for the citizen to understand. I have worked half a lifetime in the British civil service and I still find most United Kingdom legislation almost impossible to understand! I do not think that our problems are as bad in the European Community. The number of legislative proposals we put forward to the Council and the European Parliament is falling very steeply and generally I find the texts (leaving aside the ‘whereas’ clauses) rather clear.

However, we certainly can improve our performance and make the texts better. We are determined to do this. [18]
6 Why revise the Timeshare Act in particular?

6.1 The Act is brief and relatively free-standing, making it ideal for a project of this kind. It is also recent, so it is fair to regard it as exemplifying the current quality of UK parliamentary drafting.

6.2 All timeshare companies need to read the Act, while some customers and their lawyers may also be interested in its precise wording. Indeed, a chunk of section 7 (including one sentence of 102 words in subsection 3), must appear on right-to-cancel notices sent to customers, belying the notion that ordinary people never have to read legislation in its raw state:

(1) This section applies following -
(a) the giving of notice of cancellation of a timeshare agreement in accordance with section 5 of this Act in a case where subsection (9) of that section applies, or
(b) the giving of notice of cancellation of a timeshare credit agreement in accordance with section 6 of this Act.

(2) If the offeree repays the whole or a portion of the credit -
(a) before the expiry of one month following the giving of the notice, or
(b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,
no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2)(b) above, the offeree shall not be liable to repay any of the credit except on receipt of a request in writing in such form as may be prescribed, signed by or on behalf of the offeror or (as the case may be) creditor, stating the amounts of the remaining instalments (recalculated by the offeror or creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

Note that technical terms like ‘offeror’, ‘offeree’ and ‘prescribed’ are unexplained. There are references to sections and subsections which readers cannot explore unless they happen to have a copy of the Act. This wording is appearing on documents which non-lawyers are being encouraged to read before deciding whether to cancel – ‘Please read carefully’, say both the right-to-cancel notices which have been prescribed in statutory instruments. The notices use several other phrases, taken straight from the Act, which might be difficult for readers to understand such as ‘provisions for credit’ and ‘under or in contemplation of the agreement’. Apart from these problems, the notices are clear and helpful, sharpening the contrast with the extract from the Act itself. The DTI, like other departments, demands plain language in its own public forms. The same commitment should be made to prescribed wordings in statutory notices.
7 Activity elsewhere

7.1 The Hansard Society has reported the findings of its commission on parliamentary procedure in ‘Making the Law’. The report includes an excellent submission from Clarity called ‘Using Plain English in Statutes.’[19] The Law Society, representing solicitors, also made a telling contribution on the need for clearer laws:

... the Law Society would wish to see legislation that is ‘user friendly’; clearly drafted in plain English and intelligible both to the lawyer and layman ... The law of the land must be easy to find, easy to read and easy to understand, otherwise the law makers are guilty of a serious failure of communication ... It is particularly important that the law is accessible and intelligible in fields where those governed by it have no right to legal aid, for example tribunal claims. In extreme cases bad law could have a subversive effect on the rule of law. [20]

7.2 The Bar Council agrees. It set out several central principles which guided its case to the Hansard commission:

Statute law should be as certain as possible and as intelligible and clear as possible, for the benefit of the citizens to whom it applies ... Ignorance of the law is no excuse, therefore the current statute law must be as accessible as possible to all who need to know it ... The Government needs to be able to secure the passage of its legislation, but to get the law right and intelligible, for the benefit of citizens, is as important as to get it passed quickly. [21]

7.3 In Canada and Australia there has been great interest among legislative counsel in producing plainer language statutes. At ‘Just Language’, an international conference on plain legal language staged in Canada in October 1992, legislative counsel attended from six Canadian states and from Australia. None of their UK counterparts attended.

7.3 In Victoria, Australia, where it is government policy to write laws in plain language, the now-defunct Law Reform Commission completed a major project on plain language in legislation. This included preparing a drafting guide, ‘The Plain English Manual’, for parliamentary counsel in Canberra and providing training courses. The manual says:

The Office policy is to draft in plain English, but to do more than that. It is to develop a whole art of making laws easy to understand ... We must always be open to new ways of improving our style ... In this Office, the ability to draft simply is now regarded as one of the essential qualities of a good drafter. [22]

The Centre for Plain Legal Language, funded by the Law Foundation of New South Wales and the University of Sydney, is working with the parliamentary counsel’s office in New South Wales to improve the layout of legislation. [23]

7.5 In Sweden, language experts in the Prime Minister’s office help to put legislation into plainer language after it has gone through the parliamentary process but before it is published. Things, however, are simpler there. Sweden’s entire body of law is several hundred pages shorter than the official index to the statute book of the UK. [24]

7.6 In June 1993 the Council of the European Communities adopted a resolution that the wording of its legislation should be ‘clear, simple, concise and unambiguous ... Unnecessary abbreviations, “Community jargon” and excessively long sentences should be avoided.’ [25]

7.7 The European Policy Forum, a cross-party think tank based in London
and Brussels, has called for UK parliamentary drafting to be privatized. Departments would be allowed to choose whether to use their own officials, existing parliamentary counsel or independent barristers or solicitors to draft legislation. [26]

7.8 Protests about the complexity and scale of the Finance Bill 1994, which at 417 pages is the longest ever, have cut across the Government's claims to be igniting a bonfire of red tape and regulation. In a letter to The Times, Michael Chamberlain, president of the Institute of Chartered Accountants, wryly covered both points:

The 1994 Finance Bill . . . is . . . a timely example of how poor draftsmanship can deaden the most benign official measure . . . Here we have a Bill, one of the aims of which is to reduce the considerable burden on the self-employed. This laudable aim is suffocated under 41 clauses on self-assessment, expressed in language that would have gladdened counsel in the case of Jarndyce vs Jarndyce . . . Could not the procedures for drafting legislation include some check on the clarity and precision of the language used in a Bill by persons other than the officials who are directly responsible? It would surely not be difficult for the Government to require departments to test whether the wording of a draft Bill or regulation was likely to cause problems of comprehension and interpretation. [27]

7.9 Speaking of the same Bill and other recent tax law, Malcolm Gammie, president of the Institute of Taxation, said:

I recognize the words as I turn the pages. But in many parts these words are barely comprehensible when read one after the other. The style and language are recognizable only to the draftsman; not to the consumers of legislation. If the Citizen's Charter means anything, it should mean intelligible legislation. But at this pace and with this quantity what hope is there for any draftsman? [28]
8 Testing users’ performance

8.1 Revised documents cannot safely be regarded as clearer until users’ performance proves it. To assess performance, documents can be tested with users and, if necessary, amended in the light of their comments. The parliamentary counsel’s office says that it already uses a form of in-house testing in that Bills drafted by one member of staff are given to another for vigorous checking and editing. [29] Useful though this may be, it is not the same as finding out how successfully users can work with Acts. I decided, therefore, to test the original and revised Timeshare Acts with groups of aspiring lawyers and members of the public.

Testing the two versions of the Act with aspiring lawyers

8.2 The first stage of testing took place in the summer of 1993 with 91 students on placement with leading law firms. They are among the brightest of the next generation of lawyers. Most were university law students taking first-year or second-year courses, the others were seriously considering a law career.

8.3 There were several reasons for using aspiring lawyers in the testing. First, they were readily available through the good will of the firms concerned – getting groups of qualified lawyers for one-and-a-half hours is difficult and costly. Second, the students attended the sessions as a normal part of their training, so they did not introduce the bias that comes from volunteering. Third, the students came to the sessions with some legal experience but were halfway between being members of the public and being lawyers. Though there can be no certainty that qualified lawyers would respond in the same way as law students, there was no equally practicable way of testing the Act with large groups of non-volunteer lawyers.

Method of testing

8.4 Details of the students’ age, sex and legal experience were obtained and the students were assigned to two groups as closely matched as possible. The sessions began with a general briefing which gave a neutral description of the research. Students were not informed that the research sought to compare two Acts. During the testing both versions of the Act were given the same name, the Timeshare Act 1992. The Clearer Timeshare Act 1993 was otherwise similar to that shown in this report. The main differences were that (a) it lacked the Citizen’s Summary, and (b) the defined terms were not italicized the first time they appeared.

8.5 The groups went into separate rooms. Individuals in one group received copies of the original Act, those in the other received the revision. They had 15 minutes for reading. Members of both groups then received the first questionnaire (Appendix A). This asked such questions as how easily they grasped the main points of the Act, where they found them, how clear they thought the wording, and how well they could navigate through the Act. Individuals gave a rating for clarity of wording, helpfulness of navigational aids, and general design and appearance.

8.6 They then received a second, longer questionnaire (Appendix B) to test
their ability to find answers to questions that readers of the Act might want to
know. Questionnaires in the two groups were identical, except that the one for
the original Act used the terms ‘offeror’ and ‘offeree’, while that for the revision
used ‘seller’ and ‘customer’. (These are the terms used and defined in the two
versions.) After answering these questions, individuals again rated clarity of
wording, helpfulness of navigational aids, and general design and appearance to
see if their perceptions had changed after using the Act.

8.7 The students then learned that an alternative version of the Act existed,
and received copies to read. Thus the first group were now receiving the revised
version, the second group the original. After a time they were given a final, short
questionnaire to assess reactions to the alternative and to say whether they pre-
ferred it to the one they had read before (Appendix C). Finally, both groups
linked up for a discussion in which their views were sought.

Main results

8.8 The final question asked: ‘On the whole, which version [of the Act] would
you prefer to read and use?’. Of those who had read the original first, 84% pre-
ferred the revision. Of those who had read the revision first, 89% preferred the
revision. The combined result was 87% preferring the revision, 13% the original.

8.9 On the wording:
• 56% rated the revision ‘much clearer’ and 32% said it was ‘clearer’.
• Only 1% rated the original ‘much clearer’ and 3% said it was ‘clearer’.

8.10 On the navigational aids:
• 37% rated those in the revision ‘much more helpful’ and 36% rated them
‘more helpful’.
• Only 1% rated the original’s navigational aids ‘much more helpful’ and 6%
rated them ‘more helpful’.

8.11 The pattern of strong preference for the revision was repeated in assess-
ments of general design and appearance.
• The revision was rated ‘far better’ by 44% and ‘better’ by 42%.
• The original received ratings of only 1% and 10% respectively.

8.12 The students’ preference was, therefore, overwhelmingly for the revision.
Assigning 4 points to each student’s major preference (such as ‘far better’) and 2
points to each student’s minor preference (such as ‘better’):
• The wording of the revision scored 262 points, against 10 for the original.
• The navigation aids of the revision scored 202 points, against 14 for the
original.
• The general design and appearance of the revision scored 236 points, against
22 for the original.

The total score was therefore 700 points for the revision, 46 for the original.

8.13 Of those who preferred the original, a few stated that although the revi-
sion’s wording was clearer, they doubted it could be as precise as the original.
Several said that if all Acts were written like the revision, lawyers’ interests would
be harmed as it would cut their workload.
Views on the Act after use

8.14 The students were asked to rate each Act after they had worked with it. Their ratings changed very little from their initial opinion.

Frequency with which the sample consulted Acts

8.15 Of those who read the original Act first, 9% consulted Acts ‘often’ and 61% did so ‘quite often’. The figures for those who read the revised Act first were 23% and 51%. This might indicate that the ‘revised’ sample comprised slightly more experienced users of statutes who were more accustomed to dealing with current conventions of wording and presentation. This might have predisposed them against a revision that broke the conventions they were used to, or, if their experience of conventional Acts had been bad, it might have biased them towards the revision. Either way, I consider that the small difference between the two groups is unlikely to have introduced a significant degree of bias.

Ease of getting a general picture of the Act

8.16 Writers may think that readers start at the front of a document and work through it, but observation during the testing showed that this was an unusual strategy when faced with this Act. Most readers preferred to get an overview first by having a quick look through everything: they wanted to see how the material was organized.

8.17 The testing sought to discover how easily the student lawyers obtained a general picture of the Act. The results showed that a similar number (about 60%) in each group found the Acts ‘fairly easy’ on this count. But there was a marked difference in favour of the revision on the ‘very easy’ and ‘fairly difficult’ ratings:

- 32% said it was ‘very easy’ to get a general picture from the revision, while only 7% gave this response for the original.
- Only 2% said it was ‘fairly difficult’ to get a general picture from the revision, while 34% gave this response for the original.

8.18 Several experienced statute users have told me they prefer their definitions at the front of an Act (as in the original) and dislike them at the end (as in the revision). But the research suggests that the revision gave a general picture of the Act much more readily.

Getting the main points of the Act

8.19 The testing sought to discover where people obtained information about the main points of the Act.

8.20 Of those who saw the original Act first, 32% mentioned the sidenotes as a chief source. Only 5 out of 44 (11%) specifically mentioned section 1 – which is headed ‘Application of the Act’ – where most of the key definitions are to be found. This figure includes several who said they had to read the whole Act. Four (8%) mentioned the contents page as a source of main points. Section 2 was mentioned as a source by 24 people (54%), section 3 by 21 people (48%), section 4 by 15 people (34%), section 5 by 22 people (50%), and section 6 by 19 people (43%) but they tended not to mention all these five sections as one bundle.
8.21 Of those who saw the revised Act first, 19 out of 47 (40%) mentioned section 1 (headed ‘What this Act does; when and where it applies’) as a source of main points; 23 (49%) mentioned sections 2, 3, 7 and 8 as one bundle; and 8 (17%) mentioned the contents page.

8.22 Only 2% mentioned the headings – equivalent to the original Act’s sidenotes – although these are much fuller than in the original Act. This is to be expected as headings do not usually reveal main points.

8.23 When using the revised Act, therefore, a great number obtained the main points from the first section and from a bundle of four other sections. With the original they were trying to pick up clues from very weak signals (the cryptic sidenotes), then plunging into a reading of six, seven or eight sections.

8.24 With the revision, the fact that 49% mentioned sections 2, 3, 7, and 8 together suggests that they were getting a strong feel for the Act’s organization, as these four sections represent the two pairs of key sections on timeshare agreements and timeshare credit agreements.

8.25 Overall it seems that those who read the revised Act first used its structure to help organize their reading, while those who read the original Act first got little assistance from the structure.

8.26 The results also suggest that an introductory section, giving an overview of the main purpose of the Act, is a great asset to readers (40% cited it as a source of main points). This may also help to explain why so many more people found it ‘very easy’ to get a general picture of the revision. This finding strongly accords with Lord Renton’s oft-stated view that a clear and early statement of main purposes is of great benefit to users.

Time taken to answer specific questions about the Act

8.27 The students were asked to note down how long they took to complete a series of questions on their understanding of the version of the Act they read first. Unfortunately, three of the ten groups failed to do this properly so the data is weaker than it should have been. On average, those using the original Act took 10.3 minutes to complete, those using the revision 9.8 minutes. I cannot draw any useful conclusions from this.

Performance in answering specific questions on the Act

8.28 For those using the original Act, the percentage of correct answers was 87%, while for the revision it was 91% – an insignificant difference. The revision performed better on 9 out of 12 questions, but the differences were small in most cases. Only on one question was there a marked difference. It asked those in the original Act group to indicate their answer by deleting one option from the following statement:

For a timeshare agreement to fall within the scope of the Act: The offeror must/must not be acting in the course of a business.

Those in the revision group were asked:

For a timeshare agreement to fall within the scope of the Act: The seller must/must not be acting in the course of a business.
(These questions reflect the differing language of the two versions.) For the original Act, only 48% answered correctly, compared to 94% on the revision.

The difference was rather less marked in a companion pair of questions:

For a timeshare credit agreement to fall within the scope of the Act: The offeree must/must not be acting in the course of a business.

For a timeshare credit agreement to fall within the scope of the Act: The customer must/must not be acting in the course of a business.

Here 75% answered correctly for the original Act, 85% for the revision.

Since these matters are central to the business of the Act, it is surprising that so many of this highly talented group of students failed to get the right answers when reading the original Act. Two explanations suggest themselves: (a) the answer to the first question is at the bottom of a left-hand page in section 2(1), whose sidenote gives no clue to the answer; and (b) people were muddled by the similarity of ‘offeror’ and ‘offeree’. In the revision, the fact that the seller must be operating in the course of a business and the offeree acting as a private individual is stated in what might be thought a relatively inaccessible position – in the definitions in section 13. The success of the revision in this respect shows again that positioning the definitions at the end of the Act did not cause difficulties for readers.

Testing the two versions of the Act with members of the public

8.29 Next the two Acts were tested with groups of citizens who were not lawyers. There were three groups, totalling 40 people: advisers who worked for citizens advice bureaux in London; volunteers who worked for a London ecology group; and scientists, technicians, supervisors, gardeners and support staff who worked for a plant research centre in London. (The latter group were chosen for their general indifference to politics and law; on the whole, they preferred plants.) Ages ranged from 21 to 69, with men and women equally represented. About 50% said they never read Acts of Parliament; 47% read them occasionally; and 3% read them often. I do not claim that the sample is representative of the population.

8.30 Participants had a week to read through the two Acts and then attended a discussion session where they completed the questionnaires shown in appendices D and E. The revised Act was not referred to as the Clearer Timeshare Act and the participants were not told which Act came first. The revised Act lacked its Citizen’s Summary at this stage but was otherwise very similar to that shown in the centre pages.

8.31 As the results from the three groups were similar, I have bundled them together for the sake of simplicity.

8.32 Overwhelmingly the citizens preferred the revised version, with 80% saying it was ‘much easier to read and find my way around’ and 12% saying it was ‘easier to find my way around’. Only one person out of 40 said the original was ‘much easier’ and, judging by his later answers, this was probably a mistake. Only one person said there was no appreciable difference between the two versions. Assigning 4 points to each person’s major preference (such as ‘much clearer’) and 2 points to their minor preference (such as ‘easier’), the original version
scored only 4 points, the revision 140.

8.33 On clarity of wording, participants gave a mark out of ten for each version. Expressed as a percentage, the original Act scored 32, the revision 82. Seven people gave the revision 10 marks out of 10.

8.34 On general layout and design, the original scored 36%, the revision 82%.

8.35 Participants gave their opinion of how much effort had gone into making the two versions understandable to ordinary citizens. The original scored 5% for ‘great effort’, 30% for ‘some effort’, and 65% for ‘no effort’. The revision scored 82% for ‘great effort’ and 18% for ‘some effort’.

8.36 The view is often put forward that it doesn’t matter if Acts are hard to understand because people can always get help from lawyers if they want an explanation. Only one person out of 40 ‘agreed’ with this view, and one ‘tended to agree’. About 70% ‘disagreed’ and 20% ‘tended to disagree’. Although the question was not as clearly worded as it might have been, I take the result to mean that citizens consider that it does matter if Acts are hard for the ordinary person to understand.

8.37 After they had finished scoring the two versions of the Act comparatively, participants were given the Citizen’s Summary and were asked three questions:

- First: would the summary have helped them if they had read it before reading the revised version of the Act. About 7% said it would have made no difference, but 52% said it would have helped them and 40% said it would have helped them a lot.
- Second, they were asked their opinion of the clarity of wording. About 67% said it was very easy to understand and the rest said it was easy to understand. No-one described it as difficult or very difficult.
- Third, they were asked to say whether a Citizen’s Summary should be provided with every Act of Parliament. Only one person said no and one other person did not express a view; in all, 97% said a Citizen’s Summary should be provided.

8.38 Participants were asked to offer any comments they wanted on the revised version and the Citizen’s Summary. Some commented specifically on points of wording and I have tried to improve the documents where possible as a result. Here is a selection of the points made:

- Since CAB funding is being cut, it would help CAB advisers if the public were more educated about their rights. Clearer Acts would help.
- Section 13.13 is difficult because of my lack of knowledge of the Acts quoted.
- Section 11.1: confusing and legalistic . . . Section 12.1: What is Schedule 1? . . . Sections 12.3 and 12.5 are confusing . . . Sections 13.1 and 13.2 are no help . . . Generally it gets more legalistic as it goes on . . . Paragraph 8 of the Citizen’s Summary has too many ideas compressed in too few words: brevity is not always best!
- It is totally unnecessary to continue using ‘he’ meaning either he or she. It is generally understood these days that using the generic ‘he’ is discriminatory, exclusive and unacceptable. Using plainer English gives a good opportunity to do this now.
• The Citizen’s Summary – I think it’s a brilliant idea. It would definitely make Acts more accessible to the people who have to live by them.
• It doesn’t define ‘timeshare’, ie what this term means and covers, even though this is included under ‘background’ in the Citizen’s Summary.
• What does ‘pretend’ mean in section 13? [Now altered to ‘profess’.]
• Version B [the Clearer Timeshare Act] I found very easy to read with no particular area too troublesome.
• Section 12.5: I do not understand the term ’statutory instrument’.
• I didn’t find the Citizen’s Summary difficult at all. It seemed to be directed at me as an ordinary citizen (which was very refreshing). The aim of this seemed to be to have me understand and solve things, whereas the aim of [both versions of] the Acts seemed to be to produce the proper paperwork; and [the fact] that I didn’t understand or that the issue took a long time and many people (lawyers, judges etc) to solve, seemed to be a matter of course.
• It is more important that an Act should be watertight in law than that it should be easily understood by the ordinary citizen . . . Clause 12.1: what does it mean? . . . The main section headings are confusing and unnecessary.
• [The revised version] was so much clearer that I would only need the Citizen’s Summary to help me remember the key points.
• Technical terminology such as ‘defence of diligence’ and ‘privilege against self-incrimination’ make the document more obscure but perhaps they have to be used.
• Section 5 had to be read twice to pick up full meaning.

Lessons learned from testing

8.39 Testing is valuable. Even when done with a small sample, it provides clues to what readers do and don’t understand and how they use documents. While most experienced writers think they know this already, there are always surprises. It’s always salutary to find that readers aren’t tiptoeing gently behind one’s rushing pen, following every twist and turn of the argument with close interest and deep thought. Parliamentary counsel would benefit in a similar way if they tested Bills for comprehensibility with their intended audience. The results could be fed back into the drafting process or at least used to inform future drafting decisions on other Acts.
9 Inclusion of the Citizen’s Summary

9.1 In the final version of the Clearer Timeshare Act I have included a Citizen’s Summary as an explanatory note (without intending that it should have the force of law), because I believe non-lawyers should be enabled to grasp the background to an Act and its key points without having to read the Act itself. If they want to graduate to the Act, so much the better. Probably lawyers would also find the summary useful and turn to it first.

9.2 Lawyers and information officers from within a Bill’s sponsoring department could readily compile citizen’s summaries at little extra cost. Most of the text could be drawn from the briefing papers already prepared for MPs and ministers. The main extra cost would arise from testing the citizen’s summary with members of the public. Summaries would be published at the same time as the Bills.

9.3 The testing (see part 8) showed that a Citizen’s Summary would be welcomed by the public. I believe that such summaries would help all who read the law. They should be added to every Act.
10 Language comparison of original Timeshare Act and Clearer Timeshare Act

10.1 In redrafting the original Act, I have assumed that what the parliamentary counsel included in it should have been included and that nothing material was omitted. Ideally in any rewrite, one should return to the original sources and start afresh. This was not practicable because access to the sources – papers and briefing meetings – is not available to outsiders.

10.2 When Einstein said that he wanted his writings to be as simple as possible, but not simpler, he was drawing attention to a problem that also besets the would-be simplifier of statutes: that significant meaning may be lost in the rewrite. The Clearer Timeshare Act aims to get as close to the meaning of the original as possible despite the occasional fogginess of the original. Some may cry that unless exact equivalence has been achieved, the project has failed. But this would be missing the point. The project is trying to indicate where the promised land might lie, not the layout of the streets when we all get there.

Enacting words

10.3 Original The Act begins with the usual enacting words that make it law:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows

Here ‘the same’ could refer to the Queen, the Lords, the Commons, the present Parliament assembled, or all of those people at the same time. Constitutional experts say it means the latter, but this is far from clear to other people. Perhaps the meaning is irrelevant and the sentence merely has a ritual significance – one of Professor Driedger’s ‘mysterious incantations’. Whatever the explanation, surely this most basic of messages in the law should be in understandable language instead of mumbo-jumbo? And is it relevant anyway? ‘Be it enacted’ turns the sentence into a command or prayer to make the Bill into law. But since the Bill has become law, what is the point of including the prayer?

10.4 Revision The revision says:

This Act is law by the authority of the House of Commons and the House of Lords, and by the assent of Her Majesty the Queen acting with their advice and consent

which tries to explain the roles of the Queen and Parliament. It may be possible to go further. One state in Australia now says simply:

The Legislature of New South Wales enacts.

Long title and Royal Assent

10.5 Original Acts are used primarily for reference so there is a case for putting early those points which give an overview of the Act and set out its main points. In a way, the ‘long title’ does this, but so vaguely (‘An Act to provide for rights to cancel certain agreements about timeshare accommodation’) as to be scarcely worth saying. It might be better if long titles are removed when Parliament finishes amending a Bill. By then they have served their main purpose, which is to set out the scope of the Bill and thus limit amendments. This would be a simple administrative change. As Clarity’s submission to the Hansard Society says: ‘[long
titles] serve no useful purpose that cannot be achieved in other ways.’
Immediately after the long title, a date is shown in square brackets. This is the
date of the Royal Assent, but there is nothing to explain this. Constitutional
novices will imagine, wrongly, that it is the date the Act came into force.

10.6 Revision The long title has been removed. The main scope and purpose of
the Act are set out in section 1. The date of the Royal Assent is spelled out.

Defined words

10.7 Original For greater clarity and fluency, most Acts make use of defined
words. In this Act, most of the definitions come in section 1 but they share the
section with other bits of information. Divorced from these definitions by eleven
intervening sections, several others are included in section 12(6). The definitions
themselves are complicated; the first would stretch most readers’ understanding:

“timeshare accommodation” means any living accommodation, in the United Kingdom or
elsewhere, used or intended to be used, wholly or partly, for leisure purposes by a class of
persons (referred to below in this section as “timeshare users”) all of whom have rights to use,
or participate in arrangements under which they may use, that accommodation, or accom-
modation within a pool of accommodation to which that accommodation belongs, for inter-
mittent periods of short duration

This sentence of 75 words (and eight commas) seems almost designed to create
confusion and litigation. It requires the careful reader to refer to three other defi-

citions, two of which – ‘timeshare users’ and ‘period of short duration’ – are diffi-
cult to locate as definitions, being submerged in sections 1(1)(b) and 1(2)(b)
respectively without the inverted commas which reveal other terms in the Act as
defined. Also it is unclear whether ‘that accommodation’ refers to ‘timeshare
accommodation’ or ‘living accommodation in the United Kingdom or else-
where . . . [etc].’ I assume it must mean the latter, but when ‘accommodation’ is
used four times in 12 words, the mind begins to go numb. It is hard to imagine
how such a sentence could have passed the internal testing procedures of which
the parliamentary counsel boasts (see part 13) or how it survived the scrutiny of
ministers and MPs.

10.8 Any readers who manage to shin up the greasy pole of this definition –
the very first subsection of the Act, remember – will find it curious that time-
share accommodation is never referred to again. Its only other appearance is in
the long title. The parliamentary counsel has explained how this came about:

The Timeshare Bill was a Private Member’s Bill. Andrew Hunter came fourth in the ballot and
unexpectedly picked this topic. He was offered a Bill to be drafted by us. This was a few days
before the date for presenting the Bill. Under the procedure of the House of Commons,
members may initially hand in the long and short titles of the Bill, which is all that is needed
for a First Reading. The text is published later. When we draft ballot Bills this often means
that we have to draft the long and short titles before we have any clear idea what the text will
say. This was the case with the Timeshare Bill.

The eventual text must fall within the long title, or the House of Commons authorities will
not print it . . . As the long title printed in December 1992 referred to ‘timeshare accommo-
dation’, in the belief that this would be the target of the Bill, the text published on 31 January
could not avoid saying what that expression meant – as it does not have an ordinary meaning
– even though it had become apparent by then that the thread that held the Bill together was
‘timeshare rights’ rather than timeshare accommodation. [30]

This provides another reason for removing long titles when an Act becomes law.
Had the reference to timeshare accommodation not been part of the long title,
the draftsman would not have felt obliged to embark on such a serpentine definition.

10.9 Revision All the definitions are grouped under one section. They are shorter. They use shorter sentences and more lists.

References within the Act to the Act itself

10.10 Original When referring to one of its own sections, the Act uses ‘of this Act’ or speaks of ‘subsection x below’ or ‘subsection y above’. These terms seek to eliminate confusion with other Acts, but they lead to long-windedness. (Australia abandoned them years ago.) As references to the present Act are likely to be more common than references to other Acts, a new rule of interpretation would aid conciseness. It could perhaps say: ‘References in an Act to a part, chapter, section or subsection are references to the same Act in which they appear, unless the contrary is stated.’ Similarly, references to schedules could be treated as references to schedules of the present Act unless the contrary were made clear; the Interpretation Act 1978 would need changing to accommodate these ideas.

10.11 Revision I have written the Act as if such rules were in force.

Unusual words and phrases

10.12 Original The definitions include ‘offeror’ and ‘offeree’, words which lawyers use to distinguish the two sides to a bargain. These are unusual words for most other people, and their similarity to each other is disconcerting and irritating for the reader. The same problem has been evident for years in terms such as insurer/insured, mortgagor/mortgagee and lessor/lessee, which are all to be found in insurance policies, loan documents etc.

10.13 The notion of ‘entering into an agreement’ may be difficult for many readers though it is hard to see a better alternative, given that it means different things in different circumstances. Normally it would mean that both sides have signed the agreement, but agreements can also be spoken. I consider that the use of ‘entering into an agreement’ is acceptable in the circumstances.

10.14 ‘Purported’ is used on a few occasions. This is a highly unusual word among non-lawyers though it is hard to find a precise alternative. ‘Pretends’, ‘professes’ or ‘appears’ might do the same job in some circumstances.

10.15 Revision I have used ‘seller’, ‘customer’ and ‘lender’ instead of ‘offeror’, ‘offeree’ and ‘creditor’ respectively. These changes make the writing more concrete and require the reader to turn to the definitions only if some complicated point has to be resolved. In place of ‘purport’ I have used ‘profess’.

10.16 During the testing with aspiring lawyers, the only term that was confusing was ‘taking some significant action’, which occurs in sections 3.3 and 8.2. What is significant, though, would have to be left to the courts to decide, so it is difficult to be more exact. The Citizen’s Summary sheds some light on its meaning.

10.17 I have used the jargon terms ‘summary conviction’ and ‘conviction on indictment’ because there are no crisp alternatives. Their meaning would be evident from a search in any good dictionary, but I accept that this is not ideal.
10.18 A similar point applies to the phrases ‘a fine of level 5 or lower on the standard scale’ (schedule, paragraph 3.2) and ‘statutory maximum’ (schedule, paragraph 3.4). It is impossible to be more specific as these fines are varied from year to year by Government decision.

Section 5

10.19 Original Most of section 5 is very heavy going, with its network of cross-references between subsections. One of its grammatical structures is especially interesting in the light of the first parliamentary counsel’s claim that ‘we do not needlessly make things complicated’ (see part 13). Two subsections begin: ‘The offeree’s giving notice of cancellation of the agreement to the offeror . . .’. Why use such an unusual construction as the gerund, when the sentence could more simply begin: ‘If the offeree gives . . .’ or ‘When the offeree gives . . .’?

10.20 Revision The section (now section 3) has been shortened and some of the cross-references deleted to give the readers a smoother ride. All the gerunds have disappeared. The fact that ‘offeror’ and ‘offeree’ have been replaced by ‘seller’ and ‘customer’ respectively has also simplified the section considerably.

Sentence length

10.21 Original The average sentence length in the Act is 36 words, with the longest being 103 words. (In calculating the average, I have ignored headings, footnotes, running heads and contents lists. Items in tabulated sentences have been treated as whole sentences. Part-sentences which precede or follow a tabulated item have been treated as part of that item, i.e. not as separate sentences.) Readability research has regularly suggested that an average sentence length of 15-20 is desirable for ease of understanding. Even in complex legal documents, an average sentence length of 15-25 words is usually achievable. The parliamentary counsel handicapped themselves by rarely using full stops within a subsection.

10.22 Revision The average sentence length is 24 words, the longest being 61 words. Sections 3.7 and 5.2 use sentences beginning ‘It may happen . . .’ or ‘It may be . . .’ as a way of stating a circumstance in a single sentence without having to include the consequence – thus avoiding such long sentences as those occurring in the original Act’s sections 5(9) and 9(2), which measure 71 and 103 words respectively. In section 3.2 I have used the construction ‘If . . . then . . . [list]’ to break up a long sentence. This replaces the long sentence in section 5.2 of the original.

10.23 The Renton Committee preferred single-sentence subsections but said:

We recognise nevertheless that there are cases where it is natural for a full stop to occur in the middle of a numbered provision, and we do not think there should be any rule or convention precluding this. [31]

It reiterated this in its main conclusions:

There should be no rule or convention precluding the use of a full stop in the middle of a subsection or in a section without subsections. [32]

The Treaty on European Union of 1992 (‘the Maastricht treaty’) regularly splits its provisions into several sentences. [33] Examples of this are rare in home-grown law but they do exist. Sections 81(4)(b) and 241(2) of the Copyright,
Designs and Patents Act 1988 are split into two sentences. Its sections 190(4) and 235(5) of that Act a semicolon does the same job as a full stop. Section 54(2) is unusual in beginning 'However', forming a bridge between that and a previous subsection; I have used this device in section 13.13 of the Clearer Timeshare Act.

**Negative to positive**

10.24 Original Section 7(3) of the original Act, quoted in part 6.2 of this report, is a sentence of 102 words which is phrased as a double negative – making it even harder to understand.

10.25 Revision In the new section 10.3, one negative has disappeared and the sentence has been split into a list of points.

**Sidenotes**

10.26 Original Sidenotes to most of the sections are much vaguer than they need be: ‘Obligation to give notice of right to cancel timeshare agreement’ (whose obligation?); ‘Obligation to give notice of right to cancel timeshare credit agreement’ (whose obligation?); ‘Provisions supplementary to sections 2 and 3’; and ‘Right to cancel timeshare agreement’ (whose right?). To people who already understand the Act, the answers to these questions are obvious: to the first-time reader, they would provide vital clues. Other statutes helpfully employ crossheads as well as sidenotes, but perhaps the Timeshare Act was thought too short to warrant them.

10.27 Revision Sidenotes have gone but there are now two levels of heading: division headings and section headings.

**‘Must’ and ‘shall’**

10.28 Original Occasionally ‘must’ and the present tense are used together to signify obligation. ‘Shall’ is also used for this purpose but its other use as a future tense makes it potentially ambiguous, as it is in section 5(5):

> The offeree’s giving notice of cancellation of the agreement to the offeror before the agreement has been entered into shall have the effect of withdrawing any offer to enter into the agreement.

To most people, ‘shall’ no longer signifies obligation. Since Acts are regarded as ‘always speaking’, the use of a term with future-tense connotations is unhelpful. It would be a good idea to standardize on ‘must’ and use the present tense. This has happened already in the state of Victoria, Australia, where the Attorney-General has directed that ‘must’ will replace ‘shall’ in its obligatory sense. [34]

10.29 Revision ‘Must’ is used instead of ‘shall’. (The Old English root of ‘shall’ is ‘sceal’, meaning ‘I owe’ or ‘I must’.)

**‘Where’ and ‘if’**

10.30 Original ‘Where’ is used to introduce most of the conditional sentences in the Act. The simpler and shorter ‘if’ is only used for this purpose in sections 5(3), 6(3), 7(3) and the schedule. Outside legal circles, ‘if’ is the most common introduction to spoken and written conditional sentences.

10.31 One parliamentary draftsman says he uses ‘where’ (short for ‘in a case where’) to describe the circumstances ‘which bring a case within the ambit of the provision in question’
and ‘if’ ‘to introduce consequences which flow from an event or to introduce conditions which have to be met.’ [35] I feel I ought to understand the need for this fine distinction to be rigorously upheld, but I do not. I wonder how many judges and other readers of statutes understand it. Parliamentary counsel themselves flout the convention, if such it is, almost as often as they honour it. In addition, they regularly use ‘in a case where’ as a synonym for ‘where’ (see Drug Trafficking Offences Act 1986, s9(6)). The Maastricht treaty has countless examples of ‘if’ and ‘where’ being used synonymously and in similar sentence structures:

If the Court of Justice finds that a Member State has failed to fulfil an obligation under this Treaty, the State shall be required to take the necessary measures to comply with the judgment of the Court of Justice. (Article 171)

Where, in pursuance of the Treaty, the Council acts on a proposal from the Commission, unanimity shall be required for an act constituting an amendment to that proposal . . . (Article 189a).

It would be better if ‘if’ were used wherever possible and there is no reason, except habit, why it should not be. In Victoria the Attorney-General has directed that ‘if’ replace ‘where’ in state legislation.

10.32 Revision I have used ‘if’ wherever possible.

‘He or she’

10.33 Original The pronoun ‘he’ is used throughout to refer to people. ‘She’ is included in this term by the Interpretation Act 1978, which also defines ‘person’ as including ‘a body of persons corporate or unincorporate’.

10.34 Revision I cannot imagine that men would be happy if the dominant pronoun were ‘she’, but there is no acceptable gender-neutral range of pronouns. As the Clearer Timeshare Act defines ‘customers’ as private individuals, who cannot be corporate or unincorporate bodies, I have used an individual’s title (eg ‘customer’) as the first-choice term, then ‘he or she’ in appropriate places. Elsewhere I have stuck with ‘person’ and ‘he’ as in the original Act..

10.35 There is need for a review of sexist language in laws. In Ontario, gender-neutral language has been used in laws since 1985. Indeed, the chief legislative counsel has been in the vanguard of reform. In 1993, the Uniform Law Conference of Canada adopted a policy in favour of the gender-neutral style. This should mean that such language will become the norm in most of Canada. [36]

Number of words

10.36 Original The Act is about 4,100 words long, ignoring footnotes and running heads.

10.37 Revision The revision is about 3,020 words long (discounting the Citizen’s Summary), some 1,080 (or 26%) fewer than the original. It was not a deliberate plan to save so many words. It arose from simpler sentence structures and from the complete restructuring of the Act, which eliminated much repetition.

Headings as aids to interpretation

10.38 Normally headings are not used when interpreting Acts. Since headings are self-evidently part of every Act, it would seem sensible to go to them for help whenever meaning is in doubt. This could be written into the Interpretation Act.
11 Structural comparison of the two Acts

11.1 The original Act’s structure is shown on Appendix F. The revision’s structure is shown in the centre pages. If you wish to cross-check between the Acts, the table gives details.

<table>
<thead>
<tr>
<th>Original</th>
<th>Revised</th>
<th>Original</th>
<th>Revised</th>
<th>Original</th>
<th>Revised</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(1)</td>
<td>13.12/13.13</td>
<td>5(8)</td>
<td>3.6</td>
<td>12(5)</td>
<td>12.3</td>
</tr>
<tr>
<td>1(2)</td>
<td>13.2</td>
<td>5(9)</td>
<td>3.7</td>
<td>12(6)</td>
<td>13.3/13.6/13.7/13.8</td>
</tr>
<tr>
<td>1(3)</td>
<td>13.13</td>
<td>6(1)</td>
<td>8.1</td>
<td>12(7)</td>
<td>12.4</td>
</tr>
<tr>
<td>1(4)</td>
<td>13.10/13.4/13.9</td>
<td>6(2)</td>
<td>8.2</td>
<td>12(8)</td>
<td>12.5</td>
</tr>
<tr>
<td>1(5)</td>
<td>13.5/13.11</td>
<td>6(3)</td>
<td>8.2</td>
<td>13(1)</td>
<td>none</td>
</tr>
<tr>
<td>1(6)</td>
<td>13.11</td>
<td>6(4)</td>
<td>8.3</td>
<td>13(2)</td>
<td>1.4</td>
</tr>
<tr>
<td>1(7)</td>
<td>1.2</td>
<td>6(5)</td>
<td>8.3</td>
<td>13(3)</td>
<td>1.5</td>
</tr>
<tr>
<td>1(8)(a)</td>
<td>13.2</td>
<td>7(1)</td>
<td>10.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1(8)(b)</td>
<td>13.13</td>
<td>7(2)</td>
<td>10.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2(1)</td>
<td>1.1/2.1/13.9</td>
<td>7(3)</td>
<td>10.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2(1)</td>
<td>1.1/2.1/13.9</td>
<td>8(1)</td>
<td>4.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2(2)</td>
<td>2.2</td>
<td>8(2)</td>
<td>4.1/4.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2(3)</td>
<td>2.2</td>
<td>8(3)</td>
<td>4.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3(1)</td>
<td>7.1</td>
<td>9(1)</td>
<td>5.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3(2)</td>
<td>7.2</td>
<td>9(2)</td>
<td>5.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4(1)</td>
<td>13.4</td>
<td>9(3)</td>
<td>5.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4(2)</td>
<td>9.1</td>
<td>9(4)</td>
<td>5.4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4(3)</td>
<td>2.4/7.3</td>
<td>10</td>
<td>12.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(1)</td>
<td>3.1</td>
<td>11(1)</td>
<td>6.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(2)</td>
<td>3.2</td>
<td>11(2)</td>
<td>6.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(3)</td>
<td>3.3</td>
<td>11(3)</td>
<td>6.1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(4)</td>
<td>3.4</td>
<td>12(1)</td>
<td>9.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(5)</td>
<td>3.5</td>
<td>12(2)</td>
<td>12.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(6)</td>
<td>3.6</td>
<td>12(3)</td>
<td>9.3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5(7)</td>
<td>3.6</td>
<td>12(4)</td>
<td>1.3</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule: p = para, s = section

<table>
<thead>
<tr>
<th>Original</th>
<th>Revised</th>
<th>Original</th>
<th>Revised</th>
<th>Original</th>
<th>Revised</th>
</tr>
</thead>
<tbody>
<tr>
<td>p1(1)</td>
<td>p1.1</td>
<td>p1(2)</td>
<td>p1.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>p2</td>
<td>s11.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p3(1)</td>
<td>p2.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p3(2)</td>
<td>p2.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p3(3)</td>
<td>p2.4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p3(4)</td>
<td>p2.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p4(1)</td>
<td>p3.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p4(2)</td>
<td>p3.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p4(3)</td>
<td>p3.3</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p4(4)</td>
<td>p3.4</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p5(1)</td>
<td>p4.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p5(2)</td>
<td>p4.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>p5(3)</td>
<td>p5.1</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Grouping of sections

11.2 Original The Act deals with timeshare agreements and timeshare credit agreements but most of the Act, including the sections on penalties and defences, deals with timeshare agreements only. The first eleven sections of the Acts switch repeatedly between both types of agreement:

- Section 2 deals with notices relevant to timeshare agreements.
- Section 3 deals with notices relevant to timeshare credit agreements.
- Section 4 adds provisions relevant to both types of agreement.
- Section 5 covers the right to cancel timeshare agreements.
- Section 6 covers the right to cancel timeshare credit agreements.
- Section 7 deals with provisions relevant to both types of agreement.
- Sections 8, 9, 10 and 11 refer only to timeshare agreements.

This arrangement increases the risk of confusion in the reader’s mind between timeshare agreements and timeshare credit agreements – especially since the Act governs those timeshare agreements which include credit provisions but which are not actually timeshare credit agreements. In particular, the arrangement could suggest that breach of the laws on timeshare credit agreements could lead to prosecution, whereas, despite the use of mandatory words like ‘must’, there is no criminal offence. Readers need their wits about them at all times.
Provisions about timeshare agreements have been grouped (sections 2 to 6) as have those about timeshare credit agreements (sections 7 and 8). Then follow, in sections 9 and 10, provisions common to both.

Scope of the Act

At first reading, it is not clear that the Act applies only to sellers acting in the course of business, and to customers acting as private individuals. These vital facts are revealed by close examination of sections 2(1), 3(1) and 4(1).

Section 4(1) poses another interesting problem. It says:

Sections 2 and 3 of this Act do not apply where, in entering into the agreement, the offeree is acting in the course of a business.

This implies that the other sections do apply if the offeree ('customer') is acting in the course of a business. But this cannot be true as all the other sections relate to sections 2 and 3. It is odd that the draftsman did not write:

This Act does not apply where, in entering into the agreement, the offeree is acting in the course of a business.

The draftsman who wrote the Act has in part acknowledged this problem:

I agree with you that this [section1] might also have been the point for making it clear that the offeror [seller] must be acting in the course of a business and the offeree must not. [37]

Although section 1 is headed ‘Application of the Act’, this is largely a misnomer. Its subsections 1 and 2 provide definitions; subsection 3 limits the meaning of a defined term in subsection 1; subsections 4 and 5 provide more definitions; subsection 6 limits the meaning of defined terms in subsections 4 and 5; subsection 7 at last concerns application; finally subsection 8 alters the meaning of definitions in subsections 2 and 3 as far as Northern Ireland is concerned. So, in fact, the section on application is mainly definitional.

The scope of the Act and its main purpose are revealed in section 1. ‘Seller’ is defined by cross-reference to section 13 as a person acting in the course of a business and ‘customer’ as someone acting as a private individual.

Defined terms

Defined terms are not listed alphabetically and are split between sections 1 and 12.

In long Acts it is often difficult to know whether a word has been defined. Suppose you open the Copyright, Designs and Patents Act 1988 at random. Section 90(1) uses the term ‘testamentary disposition’. You want to know whether this term means the same as the word ‘will’ in section 93 on the next page, so you look around for a definition of either or both terms. Definitions are strewn all over the place, some within chapters and some at the start of the part in which the words appear. You search and search, and even when you've found nothing you can’t be sure that your quarry isn’t lurking somewhere. For busy people, the failure to provide a coherent grouping of definitions is frustrating, time-wasting, and likely to lead to errors. Surely it is time the parliamentary counsel’s office got this problem sorted out?

As the defined terms are used primarily for reference, there is a
case for putting them in a reference position, say as a separate section early or late in the Act where they can easily be found, or in a schedule. In the revision, I have grouped the definitions in alphabetical order in the final section. Each definition is uniquely numbered. To alert the reader to defined words, every page carries a full list of them in the marginal column. In a long Act, this column could be reserved for defined words from the part or chapter concerned. (See also parts 12.22 to 12.25 of this report.)
12 Typographical comparison of the two Acts

Type size

12.1 Original The type in the main body of the Act is big enough for people with normal eyesight to read easily. The type in the schedule is smaller but still readable; this change in type size occurs in all Acts as an economy measure.

12.2 Revision The type size in the main body of the Act is similar to that in the original. The schedule takes the same size. The main text is typeset in 11.5 point, which has an x-height (height of the lower-case ‘x’) of about 1.8 mm. A sensible minimum for people with normal eyesight is 1.5 mm. Footnotes are set in 7.5 point. Section headings are in the same size as the main text. Division headings are in 13.5 point.

Type face

12.3 Original The type face is a serif, the ubiquitous Times. Its narrow character width is perhaps more suited to the narrow columns of newspapers (for which it was designed), but it is legible enough in the roman and italic weights. It benefits from good italics and small capitals, which are used extensively in the contents lists and headings of longer Acts. Times seems to be used for all government Bills, Acts, White Papers and regulations.

12.4 Revision If HMSO were ever to consider a major typographical re-think – and many consider that it is badly needed – perhaps Plantin would be a clearer and more elegant alternative. Plantin is used in the revision. Its characters are slightly wider than those of Times, while its italics, bold and small capitals are superior in elegance and legibility; Plantin also looks more pleasing in large sizes, as on the front of the revised Act.

Justified type

12.5 Original Text is right justified (lines of type filling the full column width), leading to some irregular word spaces. This does not significantly diminish legibility as the justification is well done.

12.6 Revision I have used unjustified type as I consider it slightly easier to read. The overall look remains formal.

Sidenotes

12.7 Original Sidenotes are in very small type. They are positioned in a column along with references to other Acts mentioned in the text, so they do not stand out sufficiently. Also, the narrowness of the column leaves little scope for fully explanatory headings, which may explain why several of them are vague.

12.8 Revision The sidenotes have disappeared, replaced by section headings in the same size as the main text but in bold to make them stand out. This might add to the length of Acts but it would increase their clarity.

12.9 The revision does not have parts or chapters (levels of heading superior to sections). Had there been any, their position in the hierarchy would need to have been made clear typographically – as it is in current Acts.
Section and subsection numbers

12.10 Original  In Acts it is conventional to typeset section numbers in Times bold (which is a fairly weak device when intensifying a single character or pair of characters), while subsections are in roman type, bracketed. As with any such convention, readers need to know what it signifies. In this case there are several drawbacks which reduce the effectiveness of the signal: on some pages, readers cannot immediately see what section they are studying (this happens in section 5 of the Act); sections begin with a messy juxtaposition of indent, section number, full point, em dash and bracketed subsection number; and subsection numbers do not stand out well from the rest of the text when unaccompanied by a section number, even though they are indented.

12.11 Revision  The proposed Act uses a decimal numbering system (eg, ‘3.3’), in which the figure before the decimal point refers to the section and the figure after to the subsection. Current conventions would continue to apply to further subdivisions (eg, ’3.3(a)(ii)’ etc). The proposed system would show readers at all times which section they were studying and would be typographically clearer and simpler. An expanded decimal system (eg, 3.1.1.2) might facilitate electronic text retrieval and could be tested with users. It seems, however, an ugly solution.

12.12 Readers need to be able to find the start of sections easily. The section numbers are therefore in bold type (same type face as the section headings). The use of decimal numbering would probably mean that the term ‘subsection’ would never need to be used in an Act.

12.13 Numbers are presented on a hanging indent so they are clearly visible and distinguished from the main text. There is room for four numerals plus a decimal point – enough for 99 sections each with 99 subsections – longer Acts would need more space.

12.14 Objections are likely to be raised to decimal numbering, though no-one did so during the testing programme. One objection is that, if introduced, there would be two systems of numbering running in parallel for many years. This is true but at least the systems are different enough not to cause confusion. Another objection is that careless copyists might occasionally omit the decimal point. Perhaps; but decimal numbering is widely used in business and consumer contracts without any difficulties of this sort.

Indents

12.15 Original  Indents are used for lists in Acts, so one of the most important sources of typographical coherence – the left-hand edge of the column of type – becomes very fragmented. This is why pages 2 and 3 of the Timeshare Act 1992 look such a mess.

12.16 In each list the first line overhangs the rest of the list by a small amount (less than a word space), a quirk which serves no apparent purpose.

12.17 Revision  The indents are quieter and more disciplined. Only one level of indent is necessary, but further levels of listing could have been dealt with by further indents. I have used semicolons at the end of each listed item, rather than the commas of current Acts. Semicolons provide a more positive signal that
a listed item has ended and they are in keeping with the conventional punctuation of vertical lists in other texts.

Running heads

12.18 Original The running heads lack section numbers, so they are virtually useless until the Act is bound into a volume of other Acts, when the name of the Act and the chapter number become helpful references. When sections run to several pages, readers can quickly become confused as to which section they are reading. The Renton Report recommended that section numbers be included in shoulder notes on every page. [38] Strange, that 17 years on, this simple and beneficial change has not yet happened, though in long Acts ‘part’ numbers are now shown in shoulder notes.

12.19 Revision Running heads appear on all text pages, showing the name of the Act, the chapter number and (where appropriate) the section number. In left-hand-page running heads I have promoted the section number which first appears in the main text on that page, while in right-hand pages I have promoted the section number which appears last in the main text on the page. If no section number at all were to appear in the main text of a page, the running head would take the last section number of the preceding page.

Leading (space between lines)

12.20 Original Leading should be generous for any type with a large x-height relative to its body size, like Times, which appears under-leded in current Acts when subsections are long and dense. Fortunately this does not happen too often and the leading in the Timeshare Act 1992 is acceptable.

12.21 Revision The leading for the main text is 1.5 points. This is not generous but is adequate for the line length and is compensated for by a substantial space between subsections.

Presentation of defined terms

12.22 Original Defined terms appear in sections 1 and 12 where some of them (not all of them, confusingly) are signalled by inverted commas. Readers have to remember which terms are defined, as there is no further signalling.

12.23 Revision There are several possible ways of identifying defined words typographically: (a) using an asterisk and referring readers via a footnote to a set of definitions; (b) highlighting them in bold or italic type whenever they are used, after warning readers what this signal means; and (c) highlighting them in bold or italic type the first time they are used in a section or in an Act. There are problems with all these methods: (a) and (b) are visually intrusive and the use of defined words in an undefined sense becomes a little risky – if a defined word is not printed in italics, say, does that mean it is being used in an undefined sense or has the compositor just forgotten to italicize it? Forgetfulness could perhaps be overcome with the aid of a computerised concordance which would highlight all uses of defined words. Writers could then choose an alternative for any word used in an undefined sense. [39] This solution seems likely to lead to the second-best word being chosen, just for the sake of variation, and would certain-
ly take the parliamentary counsel some time to accomplish; common words like ‘order’ and ‘notice’, if defined as nouns, might confuse when used as verbs. Method (c) assumes that readers will take an orderly route through the Act and pick up the appropriate signals as they go, whereas many will dodge from place to place.

12.24 In the final revision of the Act, I have chosen a three-part solution: (a) the first time a defined term is used it is printed in italics; (b) all defined words are listed in the marginal column on all pages, which also says where the definitions can be found; and (c) the definitions are grouped alphabetically in a single section of the Act. This means that readers can tell whether a word is defined the first time they see it, and can easily check which words are defined by looking in the marginal column.

12.25 I had earlier used italics (the least obtrusive type weight apart from the roman or ‘book’ weight), for all defined words wherever they appeared. About 160 words – including, for example, ‘notice’ 45 times – were italicized. The effect was visually acceptable despite the cluster of italicized words at the start. But there were anomalies where defined words were used in undefined senses and where two defined words ran together so that they looked like a new defined term. I therefore abandoned that experiment.

Footnotes

12.26 Original Cross-references to other Acts and regulations occupy the same column as sidenotes; this seems a pity because they reduce the prominence of the sidenotes and clutter that column.

12.27 Revision The footnotes occupy the same marginal column as the defined terms but they are separated by appropriate headings.

Space between sections and subsections

12.28 There should be plenty of white space at the end of a section and a subsection. The revision gives about 2 mm more than current Acts.

Line width

12.29 A rule of thumb for good legibility is 50-70 characters and spaces to the line.

12.30 Original In the main part of the Act there are about 70 characters and spaces to the line. In the schedule this rises to nearer 80 because the type size is smaller.

12.31 Revision The main column, disregarding section numbers, gives about 68 characters and spaces to the line.

Number of pages

12.32 Original The Act has the semblance of a 12-page booklet although, bizarrely, it includes two single leaves. Eleven of the pages carry text but, piling quirk upon oddity, page 8 bears only a single line of type (section 13(3)). ‘Triumph’ is not, therefore, the word that springs to mind when assessing
HMSO’s pagination.

12.33 Revision I did not aim to save paper. The revision is a 12-page booklet, of which 10 pages carry the text of the Act and one the Citizen’s Summary.

Margins

12.34 The inside margin needs to be about 30 mm so that the Act can be easily read at the spine when bound into volumes.

12.35 Original The inside margin is about 30 mm. The outside margin is about 35 mm.

12.36 Revision The inside margin is about 30 mm. The outside margin is only 10-12 mm, if the marginal column is treated as part of the page area. Thus the layout allows less room for judicial doodling – but the purpose of an Act is not to provide scrap paper.

Colour

12.37 A second colour is not used in the original Act or the revision. At least one extra colour is used in most other government publications. Although a second colour would add about 8% to the cost of printing there would be advantages if it made Acts easier to navigate through. The second colour would have to be dark enough to retain its weight in the hierarchy of headings when photocopied, a fate often suffered by Acts.
13. **Response from the parliamentary counsel’s office and the Government**

13.1 A very early draft of the Clearer Timeshare Act was sent to the first parliamentary counsel, Peter Graham, in 1992. I mentioned that the Act had been prepared in response to a challenge from his predecessor and wondered if he would care to offer any comments and perhaps meet to discuss it. Mr Graham (now Sir Peter) responded:

Thank you for your letter of 2 November and the enclosures.

I have passed a copy of the draft Bill to the draftsman who was responsible for the Timeshare Act 1992 and have asked him if he will let me have his comments. I should, explain, however, that the draftsman concerned is very busy and also, having just completed a mammoth Bill against the clock, tired. When I have them, I will write to you again.

As to your last paragraph, I really do not think there is any purpose in another meeting after the meeting you had with my predecessor. Over a number of years many of us have received revised drafts from persons such as yourself seeking to improve upon our works (which we certainly would not claim to be perfect). We have spent hours which we could ill afford pointing out discrepancies, explaining the logic of our structures etc. But there is a wide gulf and, from a very long experience of this work, I can see no hope of it being bridged.

My function is to ensure that this Office produces, usually in a very short time span, the best Bills we can for the Government of the day. We do not needlessly make things complicated: we have as great a love of the English language as the next man: we do draft against a background of judicial decisions, rules of interpretation, the basic premise that statute law is an intrusion into the common law and, perhaps most important, the salutary rule that all enactments are construed against the Crown (using that expression in its widest sense) and in favour of the subject. The Renton Committee spent a lot of time looking at what we do. The Hansard Commission...has just finished doing the same thing. We await their report. No doubt in the future other bodies will also look into what we do.

I think we need now to be allowed to get on with our job as best we can. But, as I have said above, I will come back to you on your draft Bill even though commenting on it will mean that one of my colleagues has to spend time which, as an Office, we can ill afford to spare.

13.2 In *Unspeakable Acts?* I offered four comments on this:

(a) Sir Peter appears to have decided, without receiving his draftsman’s comments or seeing any justification for the suggested Act, that there is nothing in its approach which might improve the results he produces.

(b) One thing that might help to bridge the ‘wide gulf’ between Sir Peter’s office and the amateurs who apparently beat such an irksome path to it would be publication of the drafting conventions his team follows. Some of the conventions apparent in the Timeshare Act seem sorely in need of modernising.

(c) The Renton Committee reported all of 17 years ago and many of its main recommendations on drafting have been ignored.

(d) Sir Peter says that he does not needlessly make things complicated. But the Timeshare Act does seem unnecessarily complicated, given the relative simplicity of its ideas compared to those of other Acts. Why?

13.3 A detailed response from the parliamentary counsel responsible for writing the original Timeshare Act reached me in January 1993. [40] It pointed out various errors in my first published redraft of the Act and thus proved extremely helpful in the preparation of the final version. Salient extracts from the letter are reproduced below because they shed light on the problems of the parliamentary counsel’s office and its draftsmen’s attitude to outside comment:
I am not going to take you up on matters over which we have no control, such as the form of the enactment formula, typography and layout, and the drafting of subordinate legislation (which is drafted here only exceptionally). We are responsible for drafting Government Bills, other than purely Scottish Bills. This letter is concerned with what you have to say about how we do that. The importance of Acts of Parliament makes it necessary for all of us engaged in legislation to listen to criticism and learn from it if it is well-founded. In work as exacting as the drafting of Bills one needs all the assistance one can get. But if criticism is to be useful it must take account of what our function is and the circumstances under which we perform it.

Our function is to give effect to Government policy. There are two aspects to this. The Bill must be designed to pass, for if Parliament does not like it it will not be enacted. Once passed, the Act must secure that the courts are compelled to give effect to the policy.

We have a very good record in choosing words that give effect to the policy. When people talk of ‘loopholes’ and ‘bad drafting’ they usually turn out to be referring to issues of policy that were never considered while the Bill was in Parliament, or issues on which they disagree with Government policy. Speaking for myself, I welcome people addressing real drafting issues. It happens all too rarely. Very few academic courses include anything on drafting – Edinburgh University is an honourable exception.

Plainly, some Acts are not drafted as well as others. The material may not be arranged in the most logical way. The language may not be as simple as it might be, though in a technical field it is usually appropriate to use technical language. The chunks of text may be too long to take in (I do not think the length of sentences is nearly so significant). These faults do not arise for lack of interest on our part but because the circumstances under which we draft do not always give us the opportunity to produce the end result we would like . . .

I will mention two matters, by way of comparing what I do with what you are doing. The first is time. Most legislation is prepared under great pressure and I have observed with envy that your first draft was received here in November [1992] and that your final report will probably not be ready until 1994. I cannot tell you exactly how long I had to draft the Timeshare Bill, because I was also engaged on a much larger Bill at the same time, but it was not more than a few days. Secondly, the draftsman of a Bill, unless it is a consolidation Bill, hardly ever has the complete story in front of him before starting to draft, and the Timeshare Bill was no exception. A Bill goes on developing from the first draft until it gets the Royal Assent, with very little opportunity to restructure it before introduction and none afterwards.

In case you think that these are merely the excuses of people who do not have the capacity to draft in the best way, or do not trouble to do so, let me mention consolidation measures again. These are often praised in Parliament and the courts and by the public and new legislation is compared unfavourably with them, but it is not always appreciated that they too are drafted by the members of this office during periods of secondment to the Law Commission, but under rather different circumstances from those that govern the drafting of new legislation . . .

The core of the [drafting] problem was the need to identify contracts conferring what I called ‘timeshare rights’. These contracts might be made under any legal system in the world and the rights might also be rights under the law of another jurisdiction – indeed, those were the cases we were principally concerned with. We were not to prevent people proceeding with such contracts if they wanted to. But if the contract had a connection with this country there was to be an offence if the offeree was not allowed a cooling-off period under the contract and our courts were to be able to decline to enforce a contract that did not confer the required rights. What I want to emphasise is the variety of arrangements that needed to be caught and the variety of legal systems under which they might be made . . .

One of the things which I found particularly interesting about your draft was that it demonstrates some of the limitations of the exercise of clarifying and simplifying statutory material. In the enforcement Schedule, for example, there are a number of provisions which you have, for very sound reasons, only been able to clarify partially, with the result that the reader is still entirely in the dark as to their meaning without legal advice.

Paragraph 3.3 of your Schedule [now para 2.3] reproduces paragraph 3(4) of the Schedule to the Act with only minor variations. A lay reader could not possibly be expected to know which documents he could be compelled to produce in the High Court, nor would it be easy for him to find out this information without obtaining legal advice. Of course, you could not impart the effect of this provision in simple terms without taking up several pages (or at all, given that the law of evidence is constantly developing); but the effect of not doing so is that
no lay reader will know whether he or she is obliged to produce any given document under this Schedule, because it might be covered by this exemption. So I wonder whether the minor variations are of much help to the lay reader, given that the purport of the provision is still entirely obscure to him.

Similarly, the expression of the penalties in paragraph 4.2 of your Schedule [now 3.2] reproduces paragraph 4(4) of the Schedule to the Timeshare Act with only one minor alteration; but the lay reader cannot be expected to know what the statutory maximum is, or the difference between summary conviction and conviction on indictment. The result is that the clear English version still leaves the reader without any idea as to the magnitude of what might happen to him. That being so, turning 'not exceeding' into 'less' does not help him much.

Once again, I do not suggest that you could have done more. The references in the Schedule to the standard scale and the statutory maximum are the only way of avoiding periodic amendments to all Acts which impose penalties. The differences between summary trial and trial on indictment, including the circumstances in which each is appropriate, would occupy considerable space.

13.4 I offer two brief comments on this.
(a) The terms of the first parliamentary counsel’s challenge in 1987 were to take a statute and clarify it, if I could. He did not say: ‘You must do it by sunset’ or ‘You must work under our constraints.’
(b) It is true that scope for revising the wording of the original Schedule was limited. But if, as the draftsman says, some of the schedule paragraphs have only been clarified partially, surely this is better than their not being clarified at all.

13.5 For the Government, Baroness Denton, then the consumer affairs minister responsible for the Act, offered the following comment on ‘Unspeakable Acts’:

I am, I hope, as anxious to encourage the use of plain English in official and business communications as you are . . . But we are talking here not about the normal process of day to day communication but the drafting of an Act of Parliament. Legal English, as Sir Bruce Fraser, in updating Sir Ernest Gowers’ ‘[The Complete] Plain Words’ [1973] pointed out, has a special purpose to which the language has to be specially adapted. He explained that by normal standards of good writing legal drafting is usually both cumbersome and uncouth. But he explained why, and his words may be worth quoting: ‘Legal drafting must therefore be unambiguous, precise, comprehensive and largely conventional. If it is readily intelligible, so much the better; but it is far more important that it should yield its meaning accurately than it should yield it on first reading, and the legal draftsman cannot afford to give much attention, if any, to euphony or literary elegance.’ [41]

But notice that Gowers is speaking here of legal drafting as a whole, not just parliamentary drafting. During the 1980s innumerable legal documents, especially consumer contracts such as insurance policies and credit card conditions, were put into plain language, as were government documents like the television licence, court forms, and the standard conditions incorporated in government contracts. Gowers and his various revisers appear to have believed, without any evidence, that such changes would be impossible and therefore sought to exempt lawyers from making their drafting intelligible. [42] The exemption has now been discredited by experience and it is surprising that a consumer affairs minister, of all people, should be unaware of this. As to the drafting of Acts of Parliament, this report shows that clarification is possible without significant loss of meaning. Clarification may, of course, be difficult but it ought to be the business of parliamentary counsel to make complex things as simple as possible – and of government ministers to encourage them.
References

5 Driedger E A, as above.
8 Inland Revenue M2/6 (Form Design Unit), Is it legal?, 1988, London.
9 Letter to the author from the DTI, 15.11.93.
11 The preparation of legislation (Cmnd 6053), p149, May 1975, HMSO.
12 The preparation of legislation, as above, section 11.5.
13 Statute Law Society, Renton and the need for reform, quoted in Thomas.
15 The preparation of legislation, p28, as above.
16 Decision of the Commissioner R(SB) 11/91 (Court of Appeal), February 1992, HMSO.
17 Davy v Leeds Corporation [1964] 3 All ER 390, 394.
18 Letter to the author from D F Williamson, 06.08.93.
19 Clarity, Using plain English in statutes, published in Making the law, below.
21 Hansard Society for Parliamentary Government, p159, as above.
24 Hansard Society for Parliamentary Government, p271, as above.
25 European Council resolution 93/C 166/01, 08.06.93.
27 The Times 25.01.94.
28 Address to the Institute of Taxation’s Finance Bill conference, 03.02.94.
29 Letter to the author from the first parliamentary counsel’s office, 25.01.93.
30 Letter to the author from the first parliamentary counsel’s office, as above.
31 The preparation of legislation, as above.
32 The preparation of legislation, as above.
33 Treaty on European Union, 11.11.92.
37 Letter to the author from the first parliamentary counsel’s office, as above.
38 The preparation of legislation, as above.
41 Letter to the author from Baroness Denton, DTI, 19.01.93.
42 In fact the latest joint reviser of ‘The Complete Plain Words’, Professor Sidney Greenbaum, was told by the book’s publisher to exclude legal texts from consideration. (Letter to the author from Professor Greenbaum, 23.03.94.)
Please answer the questions as fully as you can, ticking correct boxes where necessary.

1 Please put your initials here

2 We want to know whether you are used to consulting Acts of Parliament. Please tick one box to show how familiar you are with Acts:

- [ ] Consult them often
- [ ] Consult them quite often
- [ ] Consult them rarely or never.

3 How easy did you find it to get a general picture of the main points of the Act?

- [ ] Very easy
- [ ] Fairly easy
- [ ] Fairly difficult
- [ ] Difficult

4 Whereabouts in the Act did you find these main points?

5 Please give a rating out of 10 for the Timeshare Act on each of the characteristics listed below. (Treat 0 as low and 10 as high.)

- [ ] The clarity of language
- [ ] The helpfulness of the ‘navigation aids’ (such as headings, running heads*, numbering, sidenotes and footnotes)
- [ ] The general design and appearance.

6 Please jot down brief details of anything in the Act which you do not fully understand — note form will do. Give any other brief views on whether you found the Act clear and easy to use. Go on to the back of the page if necessary.

* Notes at the top of the page indicating the name of the Act etc.
Please answer the questions as specifically as you can, giving the appropriate section and subsection numbers from the Act. If you cannot answer a question, please write ‘Don’t Know’.

Please put your initials here: and note down the time now (minutes and seconds):

1 If someone brought you a copy of a timeshare agreement, in which section or sections of the Act would you find out whether the Act applied to that agreement?

2 The Act says that an offeree must be given a notice about his right to cancel a timeshare agreement. Where does the Act say what must go into this notice?

3 The Act sets out some penalties if such a notice is not given. Where does it do this?

4 Someone accused of an offence under section 2 may seek to defend himself by showing that he took all reasonable steps to avoid the offence. Where does the Act say this?

5 Is there a time limit for prosecutions which are taken under section 2? □ No □ Yes. If Yes, where is the time limit stated?

6 The Act says that an offeree must be given a notice about his right to cancel a timeshare credit agreement. Where does the Act say what must go into this notice?

7 The term ‘timeshare agreement’ has a special meaning in the Act. Where is it given?

8a For a timeshare agreement to fall within the scope of the Act:
   The offeree must / must not be acting in the course of a business
   (please delete as necessary)
   The offeror must / must not be acting in the course of a business.

8b Where did you find these two pieces of information?

9 If an offeree cancels a timeshare credit agreement within the time allowed by the relevant section of the Act, where do you find out whether interest is repayable on the credit repaid?

10 If an offeree in a timeshare credit agreement does not get a right-to-cancel notice when the Act says he should, when can he give notice of cancellation?

11 Concerning the enforcement of the Act, officers of enforcement authorities have various powers. Where are they set out?

12 Please note down the time (minutes and seconds) when you finish answering questions 1-11 above:

13 Now that you have worked with the Act in answering the questions, please give a rating out of 10 on each of the characteristics listed below.
   (Treat 0 as low and 10 as high.)
   □ The overall clarity of language
   □ The helpfulness of the ‘navigation aids’ (such as headings, numbering, sidenotes and footnotes)
   □ The general layout and appearance.
Please put your initials here:

Now that you have seen this version, please give your views on it compared to the one you read before.

1. The wording of this version is:
   - [ ] Much clearer
   - [ ] Clearer
   - [ ] About the same
   - [ ] Less clear
   - [ ] Much less clear

2. The navigation aids in this version are:
   - [ ] Much more helpful
   - [ ] More helpful
   - [ ] About as helpful
   - [ ] Less helpful
   - [ ] Much less helpful

3. The general layout and appearance of this version are:
   - [ ] Far better
   - [ ] Better
   - [ ] About the same
   - [ ] Worse
   - [ ] Much worse

4. On the whole, which version would you prefer to read and use?
   - [ ] This version
   - [ ] The version I read before
1. Please tick one of these statements to show your overall point of view on the two versions of the Timeshare Act:

   Version A was much easier to read and find my way around ❌
   Version A was easier to read and find my way around ❌
   Version B was much easier to read and find my way around ❌
   Version B was easier to read and find my way around ❌
   There was no appreciable difference between them ❌

2. How clear do you think the wording is? Please give a score out of 10 for each version, treating 10 as very clear and 0 as very unclear.

   Version A ❌ Version B ❌

3. How good do you think the general layout and design is? Please give a score out of 10 for each version.

   Version A ❌ Version B ❌

4. How much effort do you think was put into making the Act understandable to the ordinary citizen? Please tick one box for each version.

   Version A ❌ Great effort ❌ Some effort ❌ No effort ❌
   Version B ❌ Great effort ❌ Some effort ❌ No effort ❌

5. How often do you read Acts of Parliament or parts of them?

   Never ❌ Occasionally ❌ Often ❌

6. Some people say it doesn’t matter if Acts are difficult for ordinary citizens to understand because they can always get help from an expert, such as a lawyer, if they want an explanation. What do you think of this statement?

   Agree ❌ Tend to agree ❌
   Tend to disagree ❌ Disagree ❌

7. Please give details here of any parts of Version B that you found difficult to understand, and say why.
8 Thinking back to your experience of reading Version B, if you had read the Citizen's Summary first, how much would it have helped you?
Would have helped me a lot □
Would have helped me □
Would have made no difference □
Would have been unhelpful □

9 In your opinion, is the wording of the Citizen's Summary
Very easy to understand □
Easy to understand □
Difficult to understand □
Very difficult to understand □

10 Please give details here of any parts of the Citizen's Summary that you found difficult to understand, and say why.

11 Do you think a Citizen's Summary should be provided with Acts of Parliament?
Yes □
No □
Timeshare Act 1992

CHAPTER 35

ARRANGEMENT OF SECTIONS

Section
2. Obligation to give notice of right to cancel timeshare agreement.
3. Obligation to give notice of right to cancel timeshare credit agreement.
4. Provisions supplementary to sections 2 and 3.
5. Right to cancel timeshare agreement.
6. Right to cancel timeshare credit agreement.
7. Repayment of credit and interest.
8. Defence of due diligence.
9. Liability of persons other than principal offender.
10. Enforcement.
11. Prosecution time limit.
13. Short title, etc.

SCHEDULE:

Enforcement.
ELIZABETH II

Timeshare Act 1992

1992 CHAPTER 35

An Act to provide for rights to cancel certain agreements about timeshare accommodation. [16th March 1992]

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

I.—(1) In this Act—

(a) "timeshare accommodation" means any living accommodation, in the United Kingdom or elsewhere, used or intended to be used, wholly or partly, for leisure purposes by a class of persons (referred to below in this section as "timeshare users") all of whom have rights to use, or participate in arrangements under which they may use, that accommodation, or accommodation within a pool of accommodation to which that accommodation belongs, for intermittent periods of short duration, and

(b) "timeshare rights" means rights by virtue of which a person becomes or will become a timeshare user, being rights exercisable during a period of not less than three years.

(2) For the purposes of subsection (1)(a) above—

(a) "accommodation" means accommodation in a building or in a caravan (as defined in section 29(1) of the Caravan Sites and Control of Development Act 1960), and

(b) a period of not more than one month, or such other period as may be prescribed, is a period of short duration.

(3) Subsection (1)(b) above does not apply to a person's rights—

(a) as the owner of any shares or securities,

(b) under a contract of employment (as defined in section 153 of the Employment Protection (Consolidation) Act 1978) or a policy of insurance, or
(c) by virtue of his taking part in a collective investment scheme (as defined in section 75 of the Financial Services Act 1986), or to such rights as may be prescribed.

(4) In this Act “timeshare agreement” means, subject to subsection (6) below, an agreement under which timeshare rights are conferred or purport to be conferred on any person and in this Act, in relation to a timeshare agreement—

(a) references to the offeree are to the person on whom timeshare rights are conferred, or purport to be conferred, and

(b) references to the offeror are to the other party to the agreement, and, in relation to any time before the agreement is entered into, references in this Act to the offeree or the offeror are to the persons who become the offeree and offeror when it is entered into.

(5) In this Act “timeshare credit agreement” means, subject to subsection (6) below, an agreement, not being a timeshare agreement—

(a) under which a person (referred to in this Act as the “creditor”) provides or agrees to provide credit for or in respect of a person who is the offeree under a timeshare agreement, and

(b) when the credit agreement is entered into, the creditor knows or has reasonable cause to believe that the whole or part of the credit is to be used for the purpose of financing the offeree’s entering into a timeshare agreement.

(6) An agreement is not a timeshare agreement or a timeshare credit agreement if, when entered into, it may be cancelled by virtue of section 67 of the Consumer Credit Act 1974.

(7) This Act applies to any timeshare agreement or timeshare credit agreement if—

(a) the agreement is to any extent governed by the law of the United Kingdom or of a part of the United Kingdom, or

(b) when the agreement is entered into, one or both of the parties are in the United Kingdom.

(8) In the application of this section to Northern Ireland—

(a) for the reference in subsection (2)(a) above to section 29(1) of the Caravan Sites and Control of Development Act 1960 there is substituted a reference to section 25(1) of the Caravans Act (Northern Ireland) 1963, and

(b) for the reference in subsection (3)(b) above to section 153 of the Employment Protection (Consolidation) Act 1978 there is substituted a reference to article 2(2) of the Industrial Relations (Northern Ireland) Order 1976.

Obligation to give notice of right to cancel timeshare agreement.

2.—(1) A person must not in the course of a business enter into a timeshare agreement to which this Act applies as offeror unless the offeree has received, together with a document setting out the terms of the agreement or the substance of those terms, notice of his right to cancel the agreement.
(2) A notice under this section must state—
(a) that the offeree is entitled to give notice of cancellation of the agreement to the offeror at any time on or before the date specified in the notice, being a day falling not less than fourteen days after the day on which the agreement is entered into, and
(b) that if the offeree gives such a notice to the offeror on or before that date he will have no further rights or obligations under the agreement, but will have the right to recover any sums paid under or in contemplation of the agreement.

(3) A person who contravenes this section is guilty of an offence and liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

3.—(1) A person must not in the course of a business enter into a timeshare credit agreement to which this Act applies as creditor unless the offeree has received, together with a document setting out the terms of the agreement or the substance of those terms, notice of his right to cancel the agreement.

(2) A notice under this section must state—
(a) that the offeree is entitled to give notice of cancellation of the agreement to the creditor at any time on or before the date specified in the notice, being a day falling not less than fourteen days after the day on which the agreement is entered into, and
(b) that, if the offeree gives such a notice to the creditor on or before that date, then—
(i) so far as the agreement relates to repayment of credit and payment of interest, it shall have effect subject to section 7 of this Act, and
(ii) subject to sub-paragraph (i) above, the offeree will have no further rights or obligations under the agreement.

4.—(1) Sections 2 and 3 of this Act do not apply where, in entering into the agreement, the offeree is acting in the course of a business.

(2) A notice under section 2 or 3 must be accompanied by a blank notice of cancellation and any notice under section 2 or 3 of this Act or blank notice of cancellation must—
(a) be in such form as may be prescribed, and
(b) comply with such requirements (whether as to type, size, colour or disposition of lettering, quality or colour of paper, or otherwise) as may be prescribed for securing that the notice is prominent and easily legible.

(3) An agreement is not invalidated by reason of a contravention of section 2 or 3.

5.—(1) Where a person—
(a) has entered, or proposes to enter, into a timeshare agreement to which this Act applies as offeree, and
(b) has received the notice required under section 2 of this Act before entering into the agreement,

the agreement may not be enforced against him on or before the date specified in the notice in pursuance of subsection (2)(a) of that section and he may give notice of cancellation of the agreement to the offeror at any time on or before that date.

(2) Subject to subsection (3) below, where a person who enters into a timeshare agreement to which this Act applies as offeree has not received the notice required under section 2 of this Act before entering into the agreement, the agreement may not be enforced against him and he may give notice of cancellation of the agreement to the offeror at any time.

(3) If in a case falling within subsection (2) above the offeree affirms the agreement at any time after the expiry of the period of fourteen days beginning with the day on which the agreement is entered into—

(a) subsection (2) above does not prevent the agreement being enforced against him, and

(b) he may not at any subsequent time give notice of cancellation of the agreement to the offeror.

(4) The offeree's giving, within the time allowed under this section, notice of cancellation of the agreement to the offeror at a time when the agreement has been entered into shall have the effect of cancelling the agreement.

(5) The offeree's giving notice of cancellation of the agreement to the offeror before the agreement has been entered into shall have the effect of withdrawing any offer to enter into the agreement.

(6) Where a timeshare agreement is cancelled under this section, then, subject to subsection (9) below—

(a) the agreement shall cease to be enforceable, and

(b) subsection (8) below shall apply.

(7) Subsection (8) below shall also apply where giving a notice of cancellation has the effect of withdrawing an offer to enter into a timeshare agreement.

(8) Where this subsection applies—

(a) any sum which the offeree has paid under or in contemplation of the agreement to the offeror, or to any person who is the offeror's agent for the purpose of receiving that sum, shall be recoverable from the offeror by the offeree and shall be due and payable at the time the notice of cancellation is given, but

(b) no sum may be recovered by or on behalf of the offeror from the offeree in respect of the agreement.

(9) Where a timeshare agreement includes provision for providing credit for or in respect of the offeree, then, notwithstanding the giving of notice of cancellation under this section, so far as the agreement relates to repayment of the credit and payment of interest—

(a) it shall continue to be enforceable, subject to section 7 of this Act, and

(b) the notice required under section 2 of this Act must also state that fact.
6.—(1) Where a person—
   (a) has entered into a timeshare credit agreement to which this Act applies as offeree, and
   (b) has received the notice required under section 3 of this Act before entering into the agreement,
he may give notice of cancellation of the agreement to the creditor at any time on or before the date specified in the notice in pursuance of subsection (2)(a) of that section.

(2) Subject to subsection (3) below, where a person who enters into a timeshare credit agreement to which this Act applies as offeree has not received the notice required under section 3 of this Act before entering into the agreement, he may give notice of cancellation of the agreement to the creditor at any time.

(3) If in a case falling within subsection (2) above the offeree affirms the agreement at any time after the expiry of the period of fourteen days beginning with the day on which the agreement is entered into, he may not at any subsequent time give notice of cancellation of the agreement to the creditor.

(4) The offeree’s giving, within the time allowed under this section, notice of cancellation of the agreement to the creditor at a time when the agreement has been entered into shall have the effect of cancelling the agreement.

(5) Where a timeshare credit agreement is cancelled under this section—
   (a) the agreement shall continue in force, subject to section 7 of this Act, so far as it relates to repayment of the credit and payment of interest, and
   (b) subject to paragraph (a) above, the agreement shall cease to be enforceable.

7.—(1) This section applies following—
   (a) the giving of notice of cancellation of a timeshare agreement in accordance with section 5 of this Act in a case where subsection (9) of that section applies, or
   (b) the giving of notice of cancellation of a timeshare credit agreement in accordance with section 6 of this Act.

(2) If the offeree repays the whole or a portion of the credit—
   (a) before the expiry of one month following the giving of the notice, or
   (b) in the case of a credit repayable by instalments, before the date on which the first instalment is due,
no interest shall be payable on the amount repaid.

(3) If the whole of a credit repayable by instalments is not repaid on or before the date specified in subsection (2)(b) above, the offeree shall not be liable to repay any of the credit except on receipt of a request in writing in such form as may be prescribed, signed by or on behalf of the offeror or (as the case may be) creditor, stating the amounts of the remaining
instalments (recalculated by the offeror or creditor as nearly as may be in accordance with the agreement and without extending the repayment period), but excluding any sum other than principal and interest.

8.—(1) In proceedings against a person for an offence under section 2(3) of this Act it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in proceedings against a person for such an offence the defence provided by subsection (1) above involves an allegation that the commission of the offence was due—

(a) to the act or default of another, or

(b) to reliance on information given by another,

that person shall not, without the leave of the court, be entitled to rely on the defence unless he has served a notice under subsection (3) below on the person bringing the proceedings not less than seven clear days before the hearing of the proceedings or, in Scotland, the diet of trial.

(3) A notice under this subsection shall give such information identifying or assisting in the identification of the person who committed the act or default or gave the information as is in the possession of the person serving the notice at the time when he serves it.

9.—(1) Where the commission by a person of an offence under section 2(3) of this Act is due to the act or default of some other person, that other person is guilty of the offence and may be proceeded against and punished by virtue of this section whether or not proceedings are taken against the first-mentioned person.

(2) Where a body corporate is guilty of an offence under section 2(3) of this Act (including where it is so guilty by virtue of subsection (1) above) in respect of an act or default which is shown to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) above applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where an offence under section 2(3) of this Act committed in Scotland by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a partner, he (as well as the partnership) is guilty of the offence and liable to be proceeded against and punished accordingly.

10. The Schedule to this Act (which makes provision about enforcement) shall have effect.

11.—(1) No proceedings for an offence under section 2(3) of this Act or paragraph 4(3) or 5(1) of the Schedule to this Act shall be commenced after—


(a) the end of the period of three years beginning with the date of the commission of the offence, or
(b) the end of the period of one year beginning with the date of the discovery of the offence by the prosecutor,
whichever is the earlier.

(2) For the purposes of this section a certificate signed by or on behalf of the prosecutor and stating the date on which the offence was discovered by him shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be treated as so signed unless the contrary is proved.

(3) In relation to proceedings in Scotland, subsection (3) of section 331 of the Criminal Procedure (Scotland) Act 1975 (date of commencement of proceedings) shall apply for the purposes of this section as it applies for the purposes of that.

12.—(1) For the purposes of this Act, a notice of cancellation of an agreement is a notice (however expressed) showing that the offeree wishes unconditionally to cancel the agreement, whether or not it is in a prescribed form.

(2) The rights conferred and duties imposed by sections 2 to 7 of this Act are in addition to any rights conferred or duties imposed by or under any other Act.

(3) For the purposes of this Act, if the offeree sends a notice by post in a properly addressed and pre-paid letter the notice is to be treated as given at the time of posting.

(4) This Act shall have effect in relation to any timeshare agreement or timeshare credit agreement notwithstanding any agreement or notice.

(5) For the purposes of the Consumer Credit Act 1974, a transaction done under or for the purposes of a timeshare agreement is not, in relation to any regulated agreement (within the meaning of that Act), a linked transaction.

(6) In this Act—
“credit” includes a cash loan and any other form of financial accommodation,
“notice” means notice in writing,
“order” means an order made by the Secretary of State, and
“prescribed” means prescribed by an order.

(7) An order under this Act may make different provision for different cases or circumstances.

(8) Any power under this Act to make an order shall be exercisable by statutory instrument and a statutory instrument containing an order under this Act (other than an order made for the purposes of section 13(2) of this Act) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

13.—(1) This Act may be cited as the Timeshare Act 1992.

(2) This Act shall come into force on such day as may be prescribed.
(3) This Act extends to Northern Ireland.
SCHEDULE

ENFORCEMENT

Enforcement authority

1.—(1) Every local weights and measures authority in Great Britain shall be an enforcement authority for the purposes of this Schedule, and it shall be the duty of each such authority to enforce the provisions of this Act within their area.

(2) The Department of Economic Development in Northern Ireland shall be an enforcement authority for the purposes of this Schedule, and it shall be the duty of the Department to enforce the provisions of this Act within Northern Ireland.

Prosecutions

2.—(1) In section 130(1) of the Fair Trading Act 1973 (notice to Director General of Fair Trading of intended prosecution by local weights and measures authority in England and Wales), after “the Property Misdescriptions Act 1991” there is inserted “or for an offence under section 2 of the Timeshare Act 1992”.

(2) Nothing in paragraph 1 above shall authorise a local weights and measures authority to bring proceedings in Scotland for an offence.

Powers of officers of enforcement authority

3.—(1) If a duly authorised officer of an enforcement authority has reasonable grounds for suspecting that an offence under section 2 of this Act has been committed, he may—

(a) require a person carrying on or employed in a business to produce any book or document relating to the business, and take copies of it or any entry in it, or

(b) require such a person to produce in a visible and legible documentary form any information so relating which is contained in a computer, and take copies of it,

for the purposes of ascertaining whether such an offence has been committed.

(2) If such an officer has reasonable grounds for believing that any documents may be required as evidence in proceedings for such an offence, he may seize and detain them and shall, if he does so, inform the person from whom they are seized.

(3) The powers of an officer under this paragraph may be exercised by him only at a reasonable hour and on production (if required) of his credentials.

(4) Nothing in this paragraph requires a person to produce, or authorises the taking from a person of, a document which he could not be compelled to produce in civil proceedings before the High Court or (in Scotland) the Court of Session.

4.—(1) A person who—

(a) intentionally obstructs an officer of an enforcement authority acting in pursuance of this Schedule,

(b) without reasonable excuse fails to comply with a requirement made of him by such an officer under paragraph 3(1) above, or

c) without reasonable excuse fails to give an officer of an enforcement authority acting in pursuance of this Schedule any other assistance or information which the officer has reasonably required of him for the purpose of the performance of the officer’s functions under this Schedule,

is guilty of an offence.
(2) A person guilty of an offence under sub-paragraph (1) above is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) If a person, in giving information to an officer of an enforcement authority who is acting in pursuance of this Schedule—
(a) makes a statement which he knows is false in a material particular, or
(b) recklessly makes a statement which is false in a material particular,
he is guilty of an offence.

(4) A person guilty of an offence under sub-paragraph (3) above is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

Disclosure of information

5.—(1) If a person discloses to another any information obtained in the exercise of functions under this Schedule he is guilty of an offence unless the disclosure was made—
(a) in or for the purpose of the performance by him or any other person of any such function, or
(b) for a purpose specified in section 38(2)(a), (b) or (c) of the Consumer Protection Act 1987 (enforcement of various enactments; compliance with Community obligations; and civil or criminal proceedings).

(2) A person guilty of an offence under sub-paragraph (1) above is liable—
(a) on summary conviction, to a fine not exceeding the statutory maximum, and
(b) on conviction on indictment, to a fine.

Privilege against self-incrimination

6. Nothing in this Schedule requires a person to answer any question or give any information if to do so might incriminate him.