

Lucid Law

Second edition (2000), incorporating the first edition (1994)

Martin Cutts

Foreword to the second edition by Professor Michael Zander

Foreword to the first edition by The Rt Hon Sir Thomas Bingham,
Master of the Rolls (now Lord Bingham of Cornhill, Lord Chief Justice)



**PLAIN
LANGUAGE
COMMISSION**

Helping you clarify

Why a second edition?

The first edition of *Lucid Law* came out in 1994. Many developments have taken place in the intervening six years – and the first edition has sold out – so it seems opportune to offer a second and final edition.

The new material in this edition is on pages C–T. The reprinted first edition then follows, with some minor factual and typographical corrections, particularly in paragraphs 7.3 and 10.34. The advertisement for our services on page 64 did not appear in the first edition.

I remain grateful to all those who gave their time to comment on the various early drafts of *Lucid Law* and the rewritten statute that is its centrepiece. That includes the parliamentary counsel's office, which not only accepted my brickbats with stoicism and good grace but has paid *Lucid Law* the compliment of heeding several of its main messages.

Readers' comments on this edition are, as ever, welcome.

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Foreword to the second edition

by Michael Zander QC, Emeritus Professor of Law, London School of Economics

In the past decade the official attitude to the drafting of statutory materials in this country has been transformed. Martin Cutts says that the pressure for change has come from many people and organisations and that is so. But he has been the single most important source of that pressure. In *Lucid Law* he took on the challenge from parliamentary counsel to show concretely what could be done to make statute law more accessible. He chose as his demonstration project the Timeshare Act 1992. The proof of the pudding, in his cheekily titled Clearer Timeshare Act 1993, was there for anyone to see. And testing established that the Cutts draft was a better quality job than the official Act. Point made. The rest is history, the first tranche of which is being written in the form of the massive Tax Law Rewrite. It is a remarkable achievement.

I warmly commend this second edition of *Lucid Law*.

London, May 2000

Straws in the wind

Within a few years of a change in the landscape, the original features often become hard to recall. A sprawl of houses obliterates a much-loved meadow, a bulldozer erases a woodland path, and memory can be deluded that what exists now was always there.

So it is when looking back at the attitudes behind UK parliamentary drafting in 1994, from the vantage point of today. They were encapsulated in a few sentences from the then first parliamentary counsel to the author, quoted in the first edition of *Lucid Law*:

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 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...I think we need now to be allowed to get on with our job as best we can.

Where has all that complacency, certainty and immobility gone? Quite simply, it has been blown away by outside pressure for change. The unthinkable has happened: parliamentary counsel have openly espoused plainer language in legislation and have co-operated in projects to produce it; one government department, using a 40-strong team including parliamentary counsel, has spent some £20m redrafting most of the laws it enforces; and a new page layout for statute law has been approved by parliamentary committees.

Before 1994, increasing pressure for change had come from many people and organizations. Some of their pleas and comments are set out in the first edition. Subsequently the pressure intensified with weighty contributions from the tax and accountancy professions, which in effect told the chancellor of the exchequer that they could no longer advise their clients properly because tax law had become incomprehensible, even to them.

Lucid Law did not change everything on its own, or overnight, but its influence was powerful. First, it shattered the mystique of the parliamentary counsel's office because it showed that even its most recent statutes were in a bad way – both structurally and linguistically – and could be substantially clarified without significant loss of meaning.

Second, *Lucid Law* focused attention on readers' difficulties in comprehending statute law. It reported some user-testing that showed beyond doubt that even short and relatively free-standing law like the Timeshare Act 1992 could be seriously misunderstood by those for whom it was mainly intended, such as lawyers. In pointing this out, it also implied that MPs were sometimes in the dark about the real meaning and significance of the laws they were making.

Third, *Lucid Law* acted as that small voice at the back of the meeting, piping up to say that the law belongs to all of us, that it ought not to be a private mystery composed and interpreted only by the chosen few, and that those who are ruled by the law should have every chance of understanding it for themselves without professional mediation.

Fourth, *Lucid Law* persuaded the parliamentary counsel's office to look about itself and realize how rapidly and radically the practice of statute law drafting had

changed or was changing in other jurisdictions. An office in Whitehall had ceased to be the lodestar for good practice elsewhere in the world. It was clear that legislative counsel in Australia, New Zealand, Canada and the US were often far more forward-looking and innovative in their use of plain-language techniques. The UK had slipped at least a decade behind the game.

Within months of *Lucid Law's* publication, the first parliamentary counsel had retired and been succeeded by Christopher Jenkins, QC. He soon became a member of Clarity – the group of, mainly, lawyers in favour of plain language. This was the first sign of a change in attitude.

The next was the creation of the Tax Law Review Committee in October 1994 under the presidency of Lord Howe of Aberavon, a former chancellor of the exchequer and deputy prime minister. It was set up to examine the ineffectiveness and complexity of tax law that was everywhere acknowledged. Financed by the Bank of England, two clearing banks, leading public and industrial companies, and prominent legal and accountancy firms, the committee was encouraged by the Inland Revenue and HM Treasury, had all-party support and was chaired by a leading tax barrister, Graham Aaronson. He was quoted in *The Times* (28.10.94) as saying:

The perception that matters cannot go on as they have has brought together a strong committee, which ensures that note will be taken of its recommendations.

Another member, Malcolm Gammie (a tax partner with Linklaters & Paines), said the motivation for the new committee came from the sheer volume and complexity of new tax legislation, adding:

Parliament has enacted more and more tax legislation and less and less people can get to grips with it.

A second committee was already hard at work reviewing the state of tax law and pushing for change. The Special Committee of Tax Law Consultative Bodies asked Plain Language Commission to work with it in redrafting a short piece of tax law, with the aim of showing the Inland Revenue what improvements were possible. The choice fell on schedule 10 of the Finance (No. 2) Act 1992, which gives tax relief to individuals who earn rent from letting a room in their home.

Not that you would necessarily discern this purpose from the schedule, which might as well have been written in cuneiform with a key in ancient Greek. Our task was to convert it into comprehensible English that meant the same as before, allowing for some minor policy adjustments that had occurred since it took effect. The original and rewritten version are shown on pages L–P and Q–T respectively, with some details of what was done and why. During the work, it was noteworthy how often some of the finest tax and accountancy brains in the land differed in their interpretations of parts of the original text or were completely baffled on particular points. If you care to read it, you may see why.

Lord Howe's committee also produced an example of rewritten tax law. *Astonishingly, so did the parliamentary counsel's office.* In 1995 it took a chunk of its own drafting, the Enterprise Allowance Scheme (from the Income and Corporation Taxes Act 1988) and rewrote it using shorter sentences, shorter paragraphs, simpler words and more headings. It was better, far better, and that must have been painfully obvious to the parliamentary counsel's office itself.

The office produced its rewrite because something cataclysmic had happened. Like most cataclysms, it began quietly, in this case when Tim Smith, Conservative MP for Beaconsfield, tabled a 'new clause' to the 1995 Finance Bill. It eventually became section 160 of that year's Finance Act. The section says:

- (1) The Inland Revenue shall prepare and present to Treasury Ministers a report on tax simplification.
- (2) The report shall be laid before Parliament and published before 31st December 1995.
- (3) The report shall give:
 - (a) an account of recent tax legislation history;
 - (b) full details of recent annual additions to both primary and secondary legislation;
 - (c) a summary of recent criticism of both the complexity of tax legislation and of parliamentary procedure; and
 - (d) the advantages and disadvantages of possible solutions including a Royal Commission on taxation and a tax law commission.

On 16 February 1995 the financial secretary to the Treasury told the Chartered Institute of Taxation's technical conference on the Finance Bill:

...we should now examine thoroughly the scope for having legislation expressed in a simpler, more user-friendly way. The Government are following the work of the Tax Law Review Committee and the Special Committee with close interest and the Inland Revenue is giving that work its full, active and enthusiastic support.

These were more than straws in the wind: whole haystacks were starting to levitate and fly about. In his budget statement on 28 November 1995, the chancellor of the exchequer, Kenneth Clarke, announced a £25m project to rewrite 6,000 pages of tax law into plainer English – virtually the whole of the primary legislation on Inland Revenue taxes:

Tax law has become too long and complicated. Some experts have described it as incomprehensible. The Inland Revenue will shortly be publishing a report on tax simplification. We will propose that the Revenue tax code is rewritten in plain English – a major task. (*Daily Telegraph*, 29.11.95)

The financial secretary to the Treasury filled in some of the details in a foreword to *The path to tax simplification* (December 1995, ISBN 0-11-641-425-1):

I have been struck by the widespread and heartfelt feeling that tax law has become so lengthy, complex and impenetrable that something has to be done...I am convinced that the rewrite programme, when complete, will reduce the compliance costs which the tax system imposes, in one way or another, on every business and taxpayer in the country.

The booklet showed two 'before' and 'after' examples of tax law – our work with the Special Committee on the rent-a-room relief schedule, and the rewrite of the Enterprise Investment Scheme by the parliamentary counsel's office.

Yet opposition to these ideas continued from diehards throughout much of 1994 and 1995. The views of one eloquent spokesman for this 'leave-it-all-to-the-lawyers' tendency, Francis Bennion (a former parliamentary counsel), are worth quoting, especially as he has done much to further the cause of law reform:

No law can be directly comprehensible to non-experts because law is and has to be an expertise. It needs to be explained to the lay person, whether by officials or professionals in private practice. (*The Times*, 01.02.94)

...the man, or woman, in the street should not attempt to interpret legislation...What the lay person needs is explanations and summaries...do not look for savings by trying to make the law easier for lay persons to understand. Instead make it easier for lawyers to use. Plain English and reducing jargon have only a small part to play in this... ('Don't put the law into public hands', *The Times*, 24.01.95)

Reading David Daniell's biography of William Tyndale, martyred translator of the New Testament into English (Yale University Press, 1994), I am struck by how the same points were being advanced by vested interests in sixteenth-century England. The Bible was just too dangerous, too full of sentences needing the special interpretive powers of priests, to be put into the vernacular. Responding to Mr Bennion, Maurice Parry-Wingfield, tax partner of Touche Ross, remarked:

...shouldn't legislation be reasonably comprehensible at least to the professional? I have substantial experience...with the working of the tax laws...Yet, although I have spent very many hours poring over the criticized clauses, I am still not confident that I have understood them correctly or that they properly reflect what the Revenue (and in due course Parliament) intend...I do not see why I should look to 'others' - whoever they may be - to help to 'understand Parliament's necessarily complex handiwork' [Mr Bennion's phrases in quotes] (*The Times*, 05.02.94)

But while a week may be a long time in politics, a few months must be an eternity in statutory drafting. Because by October 1995, it was good to see that Mr Bennion had joined the Tax Law Review Committee on whose behalf Lord Howe was soon declaring:

[The committee] have proved beyond doubt that it is [Lord Howe's italics] possible for tax legislation to be drafted in a form the citizen and his or her advisers can actually understand. (Foreword to *Interim report on tax legislation*, November 1995, ISBN 1-873357-50-8)

Five years have now passed in which some 40 members of the Revenue's tax law rewrite team - including draftsmen from the parliamentary counsel's office - have devoted themselves to redrafting the income tax code. Presentation to Parliament of the first parts of the code, rewritten into plainer English, is due around the time this book is published.

Rewriting tax law - a plain-language approach

The director of the tax law rewrite project, Neil Munro, explained its approach to readers of *Taxation Practitioner* (July 1999):

The task of rewriting tax law can be broken down into a number of stages:

- research and analysis of existing legislation;
- instructions to our drafters to draft rewritten clauses;
- the drafting process;
- consultation; and
- publication of a rewrite Bill...

We see the high level objectives in drafting rewritten legislation as:

- saying one thing once;
- putting the propositions in a logical order;
- preserving technical accuracy; and
- achieving a general tone of quiet confidence, using good colloquial English...

Much of the improvement we can make to statute comes from breaking the provisions down to their constituent propositions, and putting these back together in the most logical order. So the key to producing legislation which people can follow is to get the structure right. This is both on a large scale - the organization of material between Acts and within Parts and Chapters - and at the section and subsection level.

We then try to make the statutory language more accessible to the reader by doing away with all those archaic expressions we are so familiar with - 'hereinafter' and 'in pursuance of' and the rest - and bringing it into line with modern usage...We try to harmonise definitions across

the Acts where this is possible without changing the law, so that the same concept is always described in the same words. And we are trying to avoid colourless labels and to use defined terms which give the reader more information of what they are about. For example, we have replaced the uninformative expression 'relevant licence' in section 91A & B Income and Corporation Taxes Act 1988 with the more helpful 'waste disposal licence'.

In addition to plainer language, we use various drafting techniques. These include:

- the use of short sentences;
- active constructions for sentences (subject-verb-object);
- explanation of cross-references;
- notes showing defined expressions;
- use of method statements, formulae and - where appropriate - tables;
- overviews and notes; and
- a new and better format.

Readers of the first edition of *Lucid Law*, and other texts on plain language, will be familiar with most of these tactics. It is very good news that they have been at the heart of the tax law rewrite. The team concerned has had a tough job, not least because it has been required to produce exact equivalence between its versions and the originals, with only minimal policy simplification. Achieving exact equivalence is, I believe, an impossibility in all but the most obvious legal texts. There are bound to be gains and losses in meaning, so the key is to know what they are and whether they matter. In the case of current tax law, of course, there must be a good chance that few people will be able to make such an acute comparison between alternative versions to judge exact equivalence.

Inevitably, the results of the project will disappoint some people. The rewritten versions issued for consultation are by no means an easy read. But they give a diligent reader a reasonable chance of making sense of substantial chunks of tax law. And they have undoubtedly benefited from wide-ranging consultation with tax practitioners and others. It is a pity that no-one on the project's steering committee is a dedicated plain-language practitioner (as far as I am aware), though Plain Language Commission has at least been among the consultees.

The major force militating against plain tax law remains complex policy from successive governments. The situation seems to worsen with each new finance bill, often because government rightly seeks to close off loopholes. Government neither seems to know or care that complex policy tends to make for complex law, no matter how skilful the drafting. The effects are then felt in subordinate documents. An example from social security springs to mind: successive 'simplifications' and 'clarifications' of the housing benefit rules have meant that the four-page and six-page application forms of the late 1980s have been superseded by 12-page and 16-page monsters today.

Effects on other law

There is some evidence that other recent UK legislation is being drafted with plainer English in mind. Examples of relatively comprehensible texts are Part III of the Finance Act 1996 about landfill tax (kindly sent to me by its main author), and the Arbitration Act 1996. The latter has been hailed as 'refreshingly lucid and open [in its] style', 'readable and intelligible to the layman', 'user-friendly for

lawyers and businessmen outside the jurisdiction’, ‘clear and simple language’, ‘plain English’, ‘beautifully drafted in terms of clarity’, ‘magnificent’, and ‘a joy to read’. (Quoted from unnamed sources by Alec Samuels in ‘How to do it properly’, *Statute Law Review*, vol 18, no. 1, pp58-64, 1997.) Samuels attributes this happy outcome to wide consultation, including with overseas interests, the close involvement of the commercial Bar, academic lawyers and commercial lawyers. The Department of Trade’s advisory committee handled the project and requested that the Bill be set out in a logical order and expressed in language clear enough and free of technicalities to be readily comprehensible to the layman, not just lawyers learned in this branch of the law. The fact that such instructions are worthy of comment is very revealing.

The Arbitration Act begins, unusually, with a statement of the three general principles on which it is written, and then sets out its scope. The statute has 110 sections but most of them are short. Remarkably, numerous subsections contain two or more sentences – that is, they have more than one full stop. If this sounds a pretty obvious idea, pages 33-34 of the first edition of *Lucid Law* show the rarity of such split sections; so at last a change that the Renton Committee called for in 1975 has come to pass, and the sky has not fallen in. Helpfully, the Act provides a key to defined terms so that readers can locate where they are defined. Minor defined terms are grouped and expressed in one place.

Not all is rosy, though. The Act still uses many wordy constructions that would benefit from plain-language editing. Everywhere there is *shall* instead of *must*, *where* instead of *if* and *during the course of* instead of *during*. Events occur in *pur-suance of* instead of *under*, and *commence* instead of *begin*. Double negatives that should be simple positives abound. Here are some examples from the first few pages:

Section 4(1):

The mandatory provisions of this Part are listed in Schedule 1 and have effect notwithstanding any agreement to the contrary.

Try:

The mandatory provisions of this Part are listed in Schedule 1 and ~~have effect notwithstanding~~ **override** any agreement to the contrary.

Section 31:

A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.

Try:

A party ~~is not precluded from raising~~ **may raise** such an objection ~~by the fact that~~ **even though** he has appointed or ~~participated in the appointment of~~ **taken part in appointing** an arbitrator.

Section 32:

The decision of the court on the question of jurisdiction shall be treated as a judgment of the court for the purposes of an appeal. But no appeal lies without the leave of the court which shall not be given unless the court considers that the question involves a point of law which is one of general importance or is one which for some other special reason should be considered by the Court of Appeal.

Try:

The decision of the court ~~on the question of~~ **about** jurisdiction ~~shall~~ **is to** be treated as a judgment of the court for the purposes of an appeal. But ~~no~~ **an** appeal ~~lies~~ **may be made only** without the leave of the court, **and the court may give leave only if it** ~~which shall not be given unless the court~~ considers that the question involves a point of law which is ~~one~~ of general importance or ~~is one~~ which for some other special reason should be considered by the Court of Appeal.

But one must not be curmudgeonly. The Act uses far clearer language and structure than most. My feeling remains, though, that some process of linguistic clarification should occur after Parliament has made a law, perhaps following the example of Sweden.

The proposal in *Lucid Law* for a Citizen's Summary to be included in every Act has not been adopted. Instead, the usually brief and unhelpful 'explanatory and financial memoranda' that used to preface most government Bills when they were introduced to Parliament were replaced in the 1998-99 session by more detailed 'explanatory notes' prepared by departmental officials. These are not part of the Bill, but are meant to help lay people understand what the provisions will achieve. The problem remains that when a Bill becomes law, the explanatory notes will not be printed with it, so lay people will not get the benefit.

The dreadful enactment clause (see page 54) has not yet been pitched into the oblivion it deserves. In finance bills, incidentally, it is even more bizarre:

We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and 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:-

For such forelock-tugging diction to survive into the twenty-first century shows something of the power of legal tradition. It looks even more anachronistic as the rest of legislation begins to change.

The Inland Revenue has led the way in reforming the language of Acts. Clearly, though, there is now a job to do on the legislation enforced by other departments. If tax law can be rewritten, what about the rest?

There is also an enormous task to transform the increasingly important body of secondary legislation - regulations made under Acts and EC directives - which are usually prepared outside the parliamentary counsel's office. Often these are unbelievably foggy, with 'Brussels' sometimes cited conveniently as the culprit. In fact, the fog is nearly always home-produced by lawyers steeped in traditional, British writing practices. EC directive 88/378 on toy safety provides an apposite example. It uses short sentences like this:

Where the toy which does not comply with the requirements bears the EC mark, the competent Member State shall take appropriate measures and inform the Commission, which shall inform the Member States. (Article 7(3))

But the British regulations, which came into effect in 1995, transpose Article 7(3) and related provisions into national law like this:

PART 2

INCOME TAX, CORPORATION TAX AND CAPITAL GAINS TAX

CHAPTER 1

INCOME TAX AND CORPORATION TAX

Income tax charge, rates and reliefs

5

8 Charge and rates for 1998-99

Income tax shall be charged for the year 1998-99, and for that year –

- (a) the lower rate shall be 20 per cent.;
- (b) the basic rate shall be 23 per cent.; and
- (c) the higher rate shall be 40 per cent.

10

9 Relief for a woman with a child and an incapacitated husband

(1) In subsection (1)(c) of section 259 of the Taxes Act 1988 (additional relief for children in the case of a man with an incapacitated wife), for “man” and “wife” there shall be substituted, respectively, “individual” and “spouse”.

(2) In subsection (4) of that section (woman not entitled to relief in a case where a child is resident with her only while she is married and living with her husband), after “relief under this section” there shall be inserted “by virtue of subsection (1)(a) above”.

15

(3) In section 261A(3) of that Act (rule in the year of a separation for man who is entitled to relief by virtue of section 259(1)(c)), for “a man” there shall be substituted “an individual”.

20

(4) This section has effect for the year 1998-99 and subsequent years of assessment and shall be deemed to have had effect for the year 1997-98.

10 Married couple’s allowance etc. in and after 1999-00

(1) The Taxes Act 1988 shall have effect for the year 1999-00 and subsequent years of assessment with the following amendments –

25

(a) in section 256(2)(a) of that Act (rate of reliefs given by way of income tax reduction under Chapter I of Part VII), for “15 per cent.” there shall be substituted “10 per cent.”; and

(b) in section 347B(5A)(a) of that Act (rate of relief for qualifying maintenance payments), for “the appropriate percentage” there shall be substituted “10 per cent.”.

30

◀ Example of the new page layout for UK statutes, used from session 2000-2001 (size reduced).

Every manufacturer of toys established in the United Kingdom or, where the manufacturer is not established in the Community, the manufacturer’s authorised representative established in the United Kingdom or, where the manufacturer is established outside the Community and he has no authorised representative established in the Community, the person who supplies a toy on the first occasion on which it is supplied in the Community provided that he is established in the United Kingdom shall keep the following information available for inspection by an enforcement authority or any of its officers in respect of toys supplied in the Community by such manufacturer, authorised representative or first supplier which are not

The boxes on pages L-P show the original text and layout of schedule 10 of the Finance (No. 2) Act 1992.

One difficulty with the schedule is finding out what it aims to do. Section 59 of the Act introduces it merely by saying 'Schedule 10 to this Act (which makes provision about furnished accommodation) shall have effect.'

Even the deceptively simple paragraph 1 is mysterious. It probably means that paragraphs 2-8 are mainly definitional and that the definitions don't apply elsewhere in the Act.

With around 40 internal cross-references pointing forwards and backwards, the schedule is a tough read.

Over the years, I have asked many groups of lawyers to offer their comments on the schedule. Almost universally, they have found it impossible to understand.

SCHEDULE 10
FURNISHED ACCOMMODATION

Section 59.

Introduction

1. Paragraphs 2 to 8 below apply for the purposes of this Schedule.
- 2.—(1) An individual is a qualifying individual for a year of assessment if apart from this Schedule he would be chargeable for the year to income tax under Case I or Case VI of Schedule D (or both those Cases) in respect of all relevant sums accruing to him in respect of a qualifying residence or qualifying residences; and it is immaterial whether the sums are treated for income tax purposes as derived from one source or from two or more separate sources.
 - (2) Relevant sums are sums accruing in respect of the use of furnished accommodation in the residence or any of the residences or in respect of relevant goods or services supplied in connection with that use.
 - (3) In a case where—
 - (a) the individual is chargeable for the year to income tax in respect of sums falling within sub-paragraph (4) below, and
 - (b) any of those sums are treated for income tax purposes as derived from a source mentioned in sub-paragraph (1) above,the individual is not a qualifying individual for the year (if he would be apart from this sub-paragraph).
 - (4) Sums fall within this sub-paragraph if they are not relevant sums accruing to the individual in respect of the residence or residences.
3. As regards a year of assessment a period is a basis period for a source mentioned in paragraph 2(1) above if it is a period on whose profits or gains income tax for the year falls to be finally computed in respect of the source.
4. A residence is a qualifying residence if it is the individual's only or main residence at any time in any period which as regards the year of assessment concerned is a basis period for a source mentioned in paragraph 2(1) above.
- 5.—(1) This paragraph applies to determine an individual's limit for a year of assessment.
 - (2) Subject to the following provisions of this paragraph, the limit is the basic amount for the year.
 - (3) For the purposes of sub-paragraph (4) below a relevant period is—
 - (a) any period which as regards the year is a basis period for a source mentioned in paragraph 2(1) above;
 - (b) any period of one year which begins at the same time as any period which is less than one year and falls within paragraph (a) above;
 - (c) any period of one year which ends at the same time as any period which is less than one year and falls within paragraph (a) above.

manufactured, or which are manufactured only partly, in accordance with the relevant national standards applicable to that toy or for which no such standards exist or where the relevant national standards relate only to some of the matters covered by the essential safety requirements applicable to the toy and which bear the CE marking denoting conformity among other things of the toy with the approved model and shall give the information to an enforcement authority or any of its officers on his being required to give such information within a reasonable time... (SI1995/no. 204, regulation 11(2))

- SCH. 10 (4) In a case where—
- (a) at any time in a relevant period sums accrue to a person or persons other than the individual in respect of the use of residential accommodation in the residence or any of the residences, or in respect of relevant goods or services supplied in connection with that use, and
 - (b) at that time the residence concerned is the individual's only or main residence,

the limit is the amount equal to half the basic amount for the year.

6. The basic amount for a year of assessment is—
- (a) such sum as may be specified for the year by order made by the Treasury;
 - (b) £3,250 if no sum is so specified.

7. "Residence" means a building, or part of a building, occupied or intended to be occupied as a separate residence, or a caravan or house-boat; but a building, or part of a building, which is designed for permanent use as a single residence shall be treated as a single residence notwithstanding that it is temporarily divided into two or more parts which are occupied or intended to be occupied as separate residences.

8. Relevant goods and services are meals, cleaning, laundry and goods and services of a similar nature.

Exemption etc.

- 9.—(1) This paragraph applies if—
- (a) an individual is a qualifying individual for a year of assessment,
 - (b) the amount of the sums mentioned in paragraph 2(1) above does not exceed the individual's limit for the year, and
 - (c) no election that this paragraph shall not apply to the individual for the year has effect under paragraph 10 below.

(2) Where this paragraph applies the following shall be treated as nil for the purposes of the Tax Acts—

- (a) the profits or gains of any period which as regards the year is a basis period for a source mentioned in paragraph 2(1) above;
- (b) the losses of any such period.

1990 c. 1.

(3) Where this paragraph applies no allowance or balancing charge shall be made for the year to or on the individual under section 24 of the Capital Allowances Act 1990 in respect of any machinery or plant provided for the purposes of any trade from which any of the sums mentioned in paragraph 2(1) above are derived.

- (4) In a case where—
- (a) apart from this sub-paragraph the preceding provisions of this paragraph would apply, and
 - (b) the amount of the sums mentioned in paragraph 2(1) above together with the amount of any relevant balancing charges would exceed the individual's limit for the year,

the preceding provisions of this paragraph shall not apply.

(5) For the purposes of sub-paragraph (4) above a relevant balancing charge is a balancing charge which (apart from this paragraph) would be made for the year on the individual under section 24 of the Capital Allowances Act 1990 in respect of any machinery or plant provided for the purposes of any trade from which any of the sums mentioned in paragraph 2(1) above are derived.

(6) In ascertaining the amount of sums for the purposes of this paragraph no deduction shall be made in respect of expenses or any other matter.

This 202-word preamble to a list of documents is meant to be read by toy makers and their representatives, lawyers, judges and, ultimately, lay people. Such monstrosities are blithely signed into effect by government ministers, who should, of course, rebel and require their translation into English. Indeed, it should be a primary task of the government's Better Regulation Unit to prevent over-complex drafts becoming law.

10.—(1) An individual may elect that paragraph 9 above shall not apply to him for a year of assessment, and (unless withdrawn) the election shall have effect accordingly.

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(2) An election under this paragraph shall have effect only for the year of assessment for which it is made.

(3) An individual who has made an election under this paragraph for a year of assessment may give a notice to withdraw the election, and if he does so the election shall not have effect for that year.

(4) An election, or notice of withdrawal, under this paragraph—

(a) must be made or given before the end of the period of one year beginning with the end of the year of assessment concerned or such longer period as the Board may in any particular case allow, and

(b) must be made or given in writing to the inspector.

(5) In a case where—

(a) an election is made, or a notice to withdraw an election is given, under this paragraph, and

(b) in order to give effect to the election or its withdrawal it is necessary to make an adjustment by way of an assessment,

the assessment shall not be out of time if it is made before the end of the period of one year beginning with the day when the election was made or (as the case may be) the notice to withdraw was given.

Adjusted profits etc.

11.—(1) This paragraph applies if—

(a) an individual is a qualifying individual for a year of assessment,

(b) the amount of the sums mentioned in paragraph 2(1) above exceeds the individual's limit for the year, and

(c) an election that this paragraph shall apply to the individual for the year has effect under paragraph 12 below.

(2) In a case where—

(a) this paragraph applies, and

(b) the sums mentioned in paragraph 2(1) above are treated for income tax purposes as derived from a single source,

the profits or gains of any period which as regards the year is a basis period for the source shall be treated for the purposes of the Tax Acts as equal to the amount found by deducting amount B from amount A.

(3) For the purposes of sub-paragraph (2) above—

(a) amount A is the amount of the sums mentioned in paragraph 2(1) above;

(b) amount B is the amount of the individual's limit for the year.

(4) In a case where—

(a) this paragraph applies, and

(b) the sums mentioned in paragraph 2(1) above are treated for income tax purposes as derived from two or more separate sources,

the profits or gains of any period which as regards the year is a basis period for a separate source shall be treated for the purposes of the Tax Acts as equal to the amount found by deducting amount D from amount C.

F

Changes to the typography of Acts of Parliament

The typography of Acts has been undergoing considerable change from a page layout that has remained largely unaltered for more than a century. The old layout is shown at Appendix F to the first edition, and I offer comments on it on pages 39-43. The new layout (see page K) is an improvement in several ways:

- SCH. 10 (5) For the purposes of sub-paragraph (4) above—
- (a) amount C is the amount of such of the sums mentioned in paragraph 2(1) above as are treated for income tax purposes as derived from the separate source, and
- (b) amount D is the amount found by multiplying the amount of the individual's limit for the year by the appropriate fraction;
- and the appropriate fraction is the fraction whose numerator is equal to the number of pounds in amount C and whose denominator is equal to the number of pounds in the sums mentioned in paragraph 2(1) above.
- 1990 c. 1. (6) Where this paragraph applies no allowance shall be made for the year to the individual under section 24 of the Capital Allowances Act 1990 in respect of any machinery or plant provided for the purposes of any trade from which any of the sums mentioned in paragraph 2(1) above are derived.
- (7) In ascertaining the amount of sums for the purposes of this paragraph no deduction shall be made in respect of expenses or any other matter.
- 12.—(1) An individual may elect that paragraph 11 above shall apply to him for a year of assessment.
- (2) An election under this paragraph—
- (a) shall (unless withdrawn) have effect for the year of assessment for which it is made and for subsequent years of assessment,
- (b) must be made before the end of the period of one year beginning with the end of the year of assessment for which it is made or such longer period as the Board may in any particular case allow, and
- (c) must be made in writing to the inspector.
- (3) An individual who has made an election under this paragraph may give a notice to withdraw the election, and if he does so the election shall not have effect for the year of assessment for which the notice is given or any subsequent year.
- (4) A notice of withdrawal under this paragraph—
- (a) must be given before the end of the period of one year beginning with the end of the year of assessment for which it is given or such longer period as the Board may in any particular case allow,
- (b) must be given in writing to the inspector, and
- (c) shall not prejudice the making of a fresh election for any subsequent year of assessment.
- (5) Sub-paragraph (6) below applies where—
- (a) an individual is a qualifying individual for a year of assessment,
- (b) the amount of the sums mentioned in paragraph 2(1) above does not exceed the individual's limit for the year, and
- (c) an election under this paragraph has effect (apart from sub-paragraph (6) below) for the year.
- (6) In such a case—
- (a) the individual shall be deemed to have given notice to withdraw the election for the year of assessment concerned,
- (b) the notice shall be deemed to have been given on the last day of the period of one year beginning with the end of the year of assessment concerned, and
- (c) sub-paragraphs (3) and (4)(c) above and (7) below shall apply accordingly.

- more informative running heads;
- a more obvious hierarchy of headings with sensible use of bold type;
- a better position for section and subsection numbers, making them easier to pick out;
- the removal of sidenotes and the introduction of line numbering; and
- slightly bigger type size and increased leading (space between lines).

(7) In a case where—

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(a) an election is made, or a notice to withdraw an election is given, under this paragraph, and

(b) in order to give effect to the election or its withdrawal it is necessary to make an adjustment by way of an assessment,

the assessment shall not be out of time if it is made before the end of the period of one year beginning with the day when the election was made or (as the case may be) the notice to withdraw was given.

Application of Schedule

13. This Schedule shall apply in relation to the year 1992-93 and subsequent years of assessment (whatever the basis period or periods for the source or sources mentioned in paragraph 2(1) above may be as regards the year of assessment concerned).

In addition, schedules are to be set in the same size of type as other pages; 'arrangement of clauses' pages will at last be properly headed 'Contents'; and footnotes will disappear, subsumed into the new explanatory notes mentioned earlier.

On the negative side, the new layout:

- continues the ancient Queen's Printer practice of wilfully misaligning sub-

Schedule 10¹

RENT-A-ROOM RELIEF

Introduction

- 1 The purpose of this schedule is to give individuals a tax relief for *rent* from a furnished *letting* or lettings in their only or main *residence*.
- 2 The tax relief is called rent-a-room relief.
- 3 The schedule applies in relation to the *tax year* 1995-96 onwards. Later paragraphs explain how it applies.
- 4 Definitions are shown in paragraph 24. The first time a defined word is used, it appears in italics.

Qualifying for rent-a-room relief

- 5 *You* are entitled to rent-a-room relief in respect of a tax year if:
 - (a) you charge rent for furnished letting in respect of the tax year;
 - (b) the rent would otherwise be assessable under Schedule A or Schedule D Case I or both of them;
 - (c) the furnished letting is in property which is your only or main residence at some time in the tax year or the *basis period* for that year;
 - (d) all your rent from furnished letting in your only or main residences in the tax year, from no matter how many sources, is included in the rent-a-room calculation; and
 - (e) the furnished letting is for residential use.
- 6 You are not entitled to rent-a-room relief for rent from furnished letting in a residence that is not your only or main residence.
- 7 You are not entitled to rent-a-room relief for income arising from unfurnished letting.
- 8 You are not entitled to rent-a-room relief for income arising from both furnished and unfurnished lettings in your only or main residence.

Limit for rent-a-room relief

- 9 If the rent is £3,250 or less in a tax year (or for a trader the basis period for that year), it is exempt from tax. If the rent comes from a trade or trades you carry on, you must add any *balancing charge* to the rent to see whether your limit of £3,250 has been exceeded. If it has, you are not entitled to the exemption but paragraph 18 may be relevant to you.
- 10 The limit for rent-a-room relief may be changed by Treasury order.

1996 c100
**Finance Act
1995**
Schedule 10
paragraph 1

Defined terms
(see paragraph 24)
balancing charge
basis period
letting
rent
residence
tax year
you
Footnote
¹s59, 1992c48

◀
The boxes on pages Q-T show schedule 10 as revised by Plain Language Commission and the Special Committee.

Its purpose is stated at the outset and the tax relief is named.

Definitions are grouped in paragraph 24. Defined terms are italicised on first use and listed alphabetically on each page.

Shoulder notes appear on each page and headings are more frequent and informative.

Paragraph 19 uses a formula to deal with a calculation.

There are few internal cross-references.

Some technical knowledge will still be needed, notably in paragraph 5(b).

UK laws will probably never use 'you' in the way it is used here, 'individual' being favoured.

Paragraphs 6-8 aren't strictly needed but add emphasis.

section numerals such as (1) and (2) when alignment under the subheads would be easier on the eye; and

- adopts some of the excessive indentation used in the previous layout.

It is a pity that defined words are not to be highlighted except in the old way of surrounding them by quotation marks. Type will continue to be fully justified, mainly to reassure readers – particularly those reading Acts on the internet – that

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**Finance Act
1995**
Schedule 10
paragraph 11

- 11 Your limit is halved if rent is also payable to another individual or individuals for furnished letting in your only or main residence at some time in:
- (a) the same tax year;
 - (b) the basis period for that year; or
 - (c) any other period of 12 months which includes such a letting for a shorter period.

Treatment of losses

- 12 Unless you opt out of rent-a-room relief (see paragraph 13), you are not entitled to relief for any losses arising from the letting.

Opting out of rent-a-room relief

- 13 If you are entitled to rent-a-room relief, you are also entitled to opt out of taking it, for instance if you have made losses from the letting. To opt out, you must notify your tax inspector in writing within a year of the end of the relevant tax year.
- 14 You are entitled to withdraw your opt-out for a particular tax year. To withdraw it, you must notify your tax inspector in writing within a year of the end of the relevant tax year.
- 15 Late notification of opt-out or withdrawal may be accepted at the discretion of the Board of Inland Revenue.
- 16 If you opt out for one tax year, the opt-out lasts only for that year. To opt out for any other tax year, again follow paragraph 13.
- 17 When you opt out or withdraw your opt-out for a tax year, the Board of Inland Revenue may need to assess you or adjust your existing assessment for that year. The Board may do so within one year of the date of the opt-out or its withdrawal as the case may be.

If rent plus balancing charge is over your limit for rent-a-room relief

- 18 If the rent plus any balancing charge in a basis period for the source is over your limit, you are entitled to:
- (a) opt for the alternative computation; or
 - (b) ignore this schedule and calculate your taxable profit as normal (rent less actual expenses).

**Defined terms
(see paragraph 24)**
balancing charge
basis period
letting
rent
residence
tax year
you

words have not been missed out. Professional typographers assisted with the revised layout, according to the clerk to the relevant committee, but other sources say their input was minimal. An opportunity seems to have been missed to take top-flight typographical advice. There has been progress – and perhaps it was hard even for insiders to achieve – but more could have been done.

Opting for the alternative computation: effect on your tax

- 19 If you opt for the alternative computation, then:
- (a) if the rent, including any balancing charge, is treated for income tax purposes as coming from a single source in the basis period for the source, you are taxed on the rent less your limit;
 - (b) if the rent is treated for income tax purposes as coming from two or more separate sources (for example, where you both cater for lodgers and provide furnished letting) in the basis period for those sources, your limit is split between those sources. The result is that, for each source, the taxable amount is given by the formula
$$A - (B \times A)/C$$
where
A is the total amount coming from that source in the relevant tax year;
B is the amount of your limit for the year;
C is the total of the sums coming from furnished letting for the relevant tax year;
 - (c) you may not make a deduction for expenses, capital allowances or anything else.

Opting for the alternative computation: procedure

- 20 To opt for the alternative computation, you must notify your tax inspector in writing within a year of the end of the relevant tax year. You are entitled to withdraw your option for a particular tax year. To do so, you must notify your tax inspector in writing by the same deadline. In either case, late notice may be accepted at the discretion of the Board of Inland Revenue.
- 21 Withdrawal of your option will not prevent you from opting for the alternative computation in respect of a future tax year.
- 22 Your option for the alternative computation lasts until:
- (a) you withdraw it; or
 - (b) the rent plus any balancing charge drops below your limit for any tax year. Paragraph 9 then applies.
- 23 When you opt for the alternative computation or withdraw that option for a tax year, the Board of Inland Revenue may assess you or adjust your existing tax assessment. The Board may do so within one year of the date of the option or its withdrawal.

1996 c100
**Finance Act
1995**
Schedule 10
paragraph 23

Defined terms
(see paragraph 24)
balancing charge
basis period
letting
rent
residence
tax year
you

Concluding remarks

The clarity of legislation will never capture the interest of most voters. Yet it remains important, not least because it affects the clarity of every document produced in explanation of the law. Legislation also sets a standard for legal documents. When lawyers see that law is clear, they have less excuse for producing

1996 c100
**Finance Act
1995**
Schedule 10
paragraph 24

Definitions

- 24 (a) 'Balancing charge' is any amount assessable on an individual under section 24(5) of the Capital Allowances Act 1990².
- (b) 'Basis period' means the accounting period or year of assessment, your income from which is assessed for a tax year.
- (c) 'Letting' includes a room occupied under licence or at will.
- (d) 'Rent' means amounts receivable from furnished letting. It includes amounts receivable from any provision of goods and services related to the letting (whether provided under a separate agreement or not) such as meals, laundry, cleaning, caring and other similar services. It excludes any adjustments for expenses, allowances or charges.
- (e) 'Residence' means a building, or part of a building, occupied or intended to be occupied as a separate residence; a caravan; or a houseboat. A building or part of a building, designed for permanent use as a single residence but temporarily divided into multiple residences is to be treated as a single residence.
- (f) 'Tax year' means a year of assessment from 6 April in a year to the following 5 April inclusive.
- (g) 'You' means an individual.

Defined terms
(see paragraph 24)
balancing charge
basis period
letting
rent
residence
tax year
you

Footnote
²1990c1

gobbledygook in their contracts and precedents. And increasingly, non-legal professionals are reading the law in its raw state during their daily work. They do not want to be continually running to lawyers for explanations. The same is true of ordinary citizens: if they face a knotty legal problem, they may wish to read the law itself, even if they are taking professional help. Parliament, while seeking certainty of application, has an equal duty to make the law as clear as it can. ■