

Language and Law

A resource book for students

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First published 2016

ISBN: 978-1-138-02558-5 (hbk)

ISBN: 978-1-138-02557-8 (pbk)

ISBN: 978-1-315-43625-8 (ebk)

Chapter C3

Reading a Statute

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DOI: 10.4324/9781315436258-26

the text's authority and may create inconsistency of interpretation and application. He will also have to add notes that can themselves be challenged, and which in any case will add to, rather than decrease, the barrier of legal style – and the specialised education necessary to deal with such style – that stands between citizen and law.

- ❑ Consider Ruffhead's editorial dilemma as a hypothetical case study that has similarities with, as well as differences from, contemporary challenges in rewriting law *without changing it*. Work through his challenges, as you see them, identifying benefits and problems associated with different strategies that a modern legal editor (or legislator involved in 'codifying', or consolidating, previous law) might adopt.
- ❑ Does this activity suggest anything about what consequences might follow from adopting a strategy of leaving existing laws as currently written but introducing new laws in a more accessible, plainer English style?

Activity 

A case for reforming legal language?

As we saw in a quotation above, Crystal urges caution in advocating wholesale reform of legal language. The practical question arises, for instance, whether reforms should be applied only to new legislation and related documents, or whether one implication of opting for such reforms is a need to review all earlier legal sources (especially as these are likely to present the most acute problems of understanding). Given the daunting scale of redrafting all earlier legislation, another issue arises: whether, if modified legal style is only introduced gradually, inconsistency between legal documents dealing with the same matters but written in different periods will be increased. Such issues have been extensively discussed, and appear to call for pragmatic responses that may vary between different legal settings and purposes.

READING A STATUTE

C3

In Unit B3, we have explored how understanding the concept of genre can illuminate both the historical development and current functioning of legal text types. In this unit, we look at an extract from perhaps the most recognisable legal genre: the statute. Statutes state what the law is. But the present division of labour between legal professionals and the general public is reflected in the fact that statutes are rarely read outside the legal profession. Reading a statute, we show, calls for familiarity with basic genre features even in order to find information let alone understand legal import and

consequences. In particular, we explore the statute's text-mapping features and strategies adopted for directing readers towards information they will need.

Reading an extract

Using one text – in fact, only part of one text – to illustrate a genre consisting of many different pieces of legislation, produced in different areas of law (criminal law, maritime law, family law, etc.) and over a number of centuries, calls for comment.

We have chosen to present one particular piece of legislation (otherwise referred to as a law, enactment, statute or Act of Parliament): a relatively minor piece of legislation called the Riding Establishments Act 1964 from the UK. For additional comment, we refer to an amending act that changed some provisions of that Act six years later: the Riding Establishments Act 1970. These two pieces of legislation were no doubt highly important to interested parties, but they have been chosen here because their content is unlikely to distract readers from questions to do with 'reading' onto issues of law and policy that many pieces of legislation quickly raise (e.g. Acts of Parliament concerned with official secrets, assisted suicide, terrorism, education or public health).

For presentational reasons, we have also chosen a statute considerably shorter than most. Length and degree of detail of provisions are two historically varying characteristics of the statute as a text type. In the UK, so is the number of statutes enacted each year (an upward trend). Because of such variation, choosing which period to take an illustrative statute from is a further consideration. It is potentially interesting, for example, to compare statutes from successive periods, as well as between different common-law jurisdictions. In looking at the extracts below, keep in mind that our aim is to illustrate features of legislation as a text type: what Finch and Fafinski, in their skills training for law students, call 'the anatomy' of a statute (Finch and Fafinski 2011: 65–73); other aspects, including many legal specifics, would call for a more detailed and different kind of discussion.

We cannot reproduce a whole Act here. Instead, we present preliminary material in REA 1964, followed by an abbreviated Section 1 (abbreviated from now on as s. 1). With brief comment, we then omit ss. 2–5 (because in formal terms they resemble s. 1), and resume at s. 6 (which carries the added sidebar heading 'Interpretation'). We indicate omitted material by ellipses, and continue from s. 6 through to s. 9. We then omit the final, appended 'Table of Statutes referred to in this Act', which lists (by 'Session and Chapter') the short titles of nine pieces of legislation referred to in the Act. With REA 1970, we reproduce only preliminary material that differs from REA 1964, plus selected and abbreviated material from ss. 5–8.

To strengthen your sense of the two statutes as whole documents, we urge you to look at PDFs of them freely available online (for layout, typography, etc.). You can do this through a portal such as Westlaw, Lexis Library or JustCite, or at www.legislation.gov.uk (where for other UK statutes, since 1998, you can also find 'Explanatory Notes').

Read through the first extract and consider the questions and tasks that follow.

The Riding Establishments Act 1964

An Act to regulate the keeping of riding establishments; and for purposes connected therewith. [31st July 1964]

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:-

1.-(1) No person shall keep a riding establishment except under the authority of a licence granted in accordance with the provisions of this Act.

(2) Every local authority may, on application being made to them for that purpose by a person who is an individual over the age of eighteen years or a body corporate, being a person who is not for the time being disqualified,-

(a) under this Act from keeping a riding establishment; or

(b) under the Protection of Animals (Cruelty to Dogs) Act 1933, from keeping a dog; or

(c) under the protection of Animals (Cruelty to Dogs) (Scotland) Act 1934, from keeping a dog; or

(d) under the Pet Animals Act 1951. from keeping a pet shop; or

(e) under the Protection of Animals (Amendment) Act 1954, from having the custody of animals; or

(j) under the Animal Boarding Establishments Act 1963, from keeping a boarding establishment for animals;

and on payment of a fee of ten shillings, grant a licence to that person to keep a riding establishment at such premises in their area as may be specified in the application and subject to compliance with such conditions as may be specified in the licence.

(3) Where an application for the grant of a licence for the keeping of a riding establishment at any premises is made to a [. . .]

[. . .]

6.-(1) References in this Act to the keeping of a riding establishment shall, subject to the provisions of this section, be construed as references to the carrying on of a business of keeping horses [. . .], but as not including a reference to the carrying on of such a business –

(a) in a case where [. . .]; or

(b) solely for [. . .]; or

(c) by [. . .]; or

(d) by [. . .].

(2) [. . .]

(3) [. . .]

(4) In this Act the following expressions have the meanings respectively assigned to them, that is to say-

“horse” includes any mare, gelding, pony, foal, colt, filly or stallion and also any ass, mule or jennet;

“local authority” means the council of [. . .];

“premises” includes land;

“veterinary practitioner” means a person who is for the time being registered in the Supplementary Veterinary Register in pursuance of the Veterinary Surgeons Act 1948;

[. . .].

7. Notwithstanding anything in this Act, a person who, immediately before the date of commencement of this Act, was keeping a riding establishment at any premises, and who is not disqualified as mentioned in section 1 (2) of this Act, shall be entitled to keep such an establishment at those premises without a licence under this Act –

(a) for the period of one month beginning with that date; and

(b) if before the expiration of that period he applies for a licence under this Act in respect of those premises, until the licence is granted or finally refused or the application is withdrawn

8. The Riding Establishments Act 1939 is hereby repealed.

9.-(1) This Act may be cited as the Riding Establishments Act 1964.

(2.) This Act shall not extend to Northern Ireland.

(3) This Act shall come into operation on 1st April 1965.

Table of Statutes referred to in this Act

[list]

Questions and tasks 1: on REA 1964

A statute, or (in the UK) an Act of Parliament, ‘enacts’ law. It is performative in bringing law into being after parliamentary debate, being passed by the legislature, and legal drafting. The statute’s ‘preliminary’ materials, before anything about riding establishments is mentioned, bootstrap the document into being as a piece of law. Each Act has two titles: a short title and a long title (the first two blocks of text in the abstract above).

- 1 Titles are generally used to refer to a document you are not at the time looking at. No one tells you how you should refer to a novel or film; you choose, for instance, whether to abbreviate or use a personalised shorthand. Now read s. 9(1).

Why should a section of this kind be needed for a legal text, but not with non-legal text types?

- 2 The long title of REA 1964 (ask yourself why it seems permissible here to use an abbreviation rather than referring to the Act in accordance with the instruction in s. 9(1)) begins ‘An Act to regulate . . .’. Is this wording the same as the long title of the Riding Establishments Act 1970 (below)? If not, what is the difference between the two?
- 3 The year of the Act is clear: 1964. With books, year means year of publication. With a statute, however, there are at least two important dates; and s. 9(3) refers to 1965 rather than 1964. What in the preliminary material tells us what 31 July 1964 refers to? (*Answer at the end of the unit.*)
- 4 What does ‘Chapter 70’ mean? UK statutes are divided into ‘sections’ (sometimes grouped as ‘Parts’); and ‘sections’ are divided into ‘subsections’. But ‘chapter’ is a less self-evident term, especially for people used to books. (*Answer at the end of the unit.*)
- 5 Now read what is called the ‘enacting formula’ closely: ‘Be it enacted . . .’. Note a range of register features described in Threads 1 and 2. But remember that genre is performative rather than textural: the enacting words do a job. Who are the bodies who give ‘advice and consent’? And advice and consent to whom? (*Answer at the end of the unit.*)
- 6 In the published layout of the statute, there is a rolling sidebar of abbreviated headings: s. 1 is called ‘Licensing of riding establishments’; s. 6 is ‘Interpretation’; s. 7 is ‘Transitional provision’; s. 8 is ‘Repeal’; and s. 9 ‘Short title, commencement and extent’. How similar do you think these short titles or headings are to entries in the sidebar used in other Acts? Look online to compare. What does the extent of similarity or difference suggest about the genre structure of statutes?
- 7 The long sentences that make up the provisions of any Act combine register (e.g. we can comment on grammatical and vocabulary choices) and genre (the sentences serve purposes within an unfolding logical construction). In order to make sense of each sentence, practice is generally needed in looking for underlying grammatical and logical structure. Once you have grasped the main structure, however, you can add in each dependent clause and phrases that specify additional detail, qualifications and exemptions.

Note the following patterns in s. 1, for example:

s. 1(1) No person shall A except B.

s. 1(2) Every A may B, so long as a, b, c, d, e, f and may also C, subject to g.

Read s. 1 and s. 2 closely. Divide them into chunks using whatever grammatical categories and basic logical relations you know. Restate what the legislation is saying, keeping as close to the original as possible without simply repeating it. Now elaborate on your version, as if you are explaining what the section says to someone who wants to know what it ‘means’ in a wider sense. It can be helpful to write more than one version and compare the alternative versions you produce. The challenges you face in doing this can offer important insights into the relationship between language style and using language to think with.

- 8 Now read s. 6(4). ‘Horse’ is not defined exactly (check one or more dictionary definitions to see differences). Rather the scope, or extension, of the category that the word ‘horse’ can refer to is prescribed. Do you find it odd that we need interpretive help in understanding ‘horse’, but not with the much rarer word ‘jennet’, also in s. 6(4)?
- 9 In common parlance, ‘premises’ (typically buildings) contrast with ‘land’ (much of which is not built on). Given the subject matter of this Act, any vagueness in that relationship seems likely to be important. But what about ‘veterinary practitioner’? A basic dictionary definition might start ‘person who treats animal health; animal doctor’, or something like that. Here, however, the subsection focuses on professional registration. How would you characterise the approach adopted in the statute to definition and interpretation?
- 10 Why are ss. 8–9 important in the genre of the statute?

‘Further powers’: the Riding Establishments Act 1970

Now read the following extract:

1970 CHAPTER 32

An Act to confer further powers on local authorities with respect to the licensing of riding establishments and to amend the Riding Establishments Act 1964.

[29th May 1970]

[. . .]

5. Section 6 (Interpretation) of the principal Act shall be read and have effect as if in subsection (4) thereof after the words “that is to say” there were inserted the following definitions (namely)-

“approved certificate” means-

(a) any one of the following certificates issued by the British Horse Society, namely, Assistant Instructor’s Certificate, Instructor’s Certificate and Fellowship;

(b) Fellowship of the Institute of the Horse; or

(c) any other certificate for the time being prescribed by order by the Secretary of State;

“authorised officer” means a person authorised by a local authority in pursuance of section 2 of this Act;

6. The principal Act shall be read and have effect as if after section 6 thereof there were inserted the following section-

“6A. Any order made under this Act shall be made by statutory instrument and may be varied or revoked by a subsequent order made in the like manner.”

7. In this Act the “principal Act” means the Riding Establishments Act 1964.

8.-(1) This Act may be cited as the Riding Establishments Act 1970 and the principal Act and this Act may be cited together as the Riding Establishments Acts 1964 and 1970.

(2) This Act shall not extend to Northern Ireland.

(3) This Act shall come into operation on 1st January 1971.

Questions and tasks 2: on REA 1970

- 11 ss. 5–6 ('Interpretation') differ from the 1964 Act. The 1970 sections do not explain the scope of terms. Instead, they do something different that nevertheless also affects interpretation. Describe how these sections, and their use of the words 'as if', bring about a correction to or alteration of the law.
- 12 s. 8 of REA 1964 repealed an earlier Act: the Riding Establishments Act 1939. By contrast, ss. 7–8 of REA 1970 do *not* repeal REA 1964 in order to introduce the changes stated in ss. 5–6. Rather, ss. 7–8 are concerned with preserving a clear distinction between the 1964 and 1970 Acts. Readers unfamiliar with the statute as a text type are often surprised that a specific section is needed to instruct users how to refer to the statute they are reading. But notice that the phrase used in the statute is not 'referred to', but 'cited as'. Why do you think arrangements such as specifying citation forms should be important in relation to legal documents when such arrangements are not usually needed for other text types?
- 13 Sometimes when amendments and case law become complicated, a drafting solution is sought in the form of 'codifying legislation' (Bennion 2001; Butt 2013). Such legislation brings together cumulative developments and replaces the existing law. Based on your reading of these statute extracts, how easy or difficult do you think it is to use language to formulate a precise and detailed system of rules? (For further discussion, see Thread 7; and for general discussion, see Twining and Miers 2010.)

Further information related to questions above

- Q2 The long title matters in some circumstances because a court may refer to it as contextual indication of what parliament intended, since it clarifies the purpose of what the Act says.
- Q3 Date of royal assent; and date of commencement (i.e. coming into force).
- Q4 'Chapter' is an archaic name assigning a number to each statute enacted in a given calendar year: so, 70th during 1964.
- Q5 See Unit B7 for discussion of the grammar and performative effect of the enacting formula. The authority of the UK legislature (effectively here, the authority to enact laws) is known as 'the Queen in Parliament', and is composed of the Monarch, the House of Lords and House of Commons. The enacting formula is standard on UK legislation (except where reference to the 'advice and consent of the Lords Spiritual and Temporal' is removed because parliamentary measures have been used to force legislation through parliament against the wishes of the House of Lords).