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# Communicating the Law:

An analysis of a proposal to reduce the perception of disproportionate complexity associated with UK primary legislation

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## INTRODUCTION

A primary quest in recent years has been to improve the accessibility of legislation for all users. In 2013 Richard Heaton (First Parliamentary Counsel) launched the Good Law Initiative, designed to develop methods of improving content and accessibility of UK primary legislation<sup>1</sup>. Initial research identified three main features contributing to the complexity of legislation: volume of legislation; quality of legislation; and the ‘perception of disproportionate complexity’<sup>2</sup>.

Significant work has been undertaken to reduce volume<sup>3</sup> and improve quality<sup>4</sup>. This is certainly to be commended and encouraged. However there has been less focus on the perception of disproportionate complexity. This relates to the low user confidence in utilising legislation based on the content and architecture of legislation.

The Initiative identified that the causes of complexity in legislation related to the (often conflicting) requirements of the different user types, although not only do (non-qualified) citizen users find statutes ‘difficult and intimidating’, but equally legally qualified users ‘frequently complain about the excessive complexity of legislation’<sup>5</sup>.

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<sup>1</sup> See <https://www.gov.uk/good-law> (last accessed 1st September 2014).

<sup>2</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 6.

<sup>3</sup> See for example the Red Tape Challenge (<http://www.redtapechallenge.cabinetoffice.gov.uk/home/index/>, last accessed 1<sup>st</sup> September 2014) and the Government’s ‘One in, Two Out’ approach to new business regulation

(<https://www.gov.uk/government/policies/reducing-the-impact-of-regulation-on-business/supporting-pages/operating-a-one-in-two-out-rule-for-business-regulation>, last accessed 1<sup>st</sup> September 2014).

<sup>4</sup> For example, increased use of pre-legislative consultation on proposed bills – see Cabinet Office, *Consultation Principles: Guidance*, (last updated Nov 2013, available at <https://www.gov.uk/government/publications/consultation-principles-guidance>, last accessed 1<sup>st</sup> September 2014).

<sup>5</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 14.

Given that there is a presumption that a citizen knows the law (and therefore cannot claim ignorance of it as a defence), it is only equitable that they can easily access and comprehend legislation<sup>6</sup>. Therefore complexity and the associated perception is a barrier to this goal, and creates economic burden on the business sector, with a greater cost arising from interpreting complex legislation.

Work to address the perception within the Initiative has not progressed as quickly as on the other two features, and has focussed (understandably so) on improvements to the originating legislative document. This is also a worthy endeavour, but is likely to be slow and difficult because (firstly) in making any changes to the architecture or style of legislation a balance is required between the interests and needs of different users; and (secondly) because there is not a settled view on the correct approach as to how legislation is presented and prepared.

Take for example the debate regarding plain language in legislative drafting<sup>7</sup>. There is a wealth of academic support for either side in the (ongoing) debate between the pursuit of clarity through plain language<sup>8</sup> and ensuring the precision and effectiveness of that legislation<sup>9</sup>. There has been a general acceptance that plain language is important to improving quality of legislation and its use has increased. However it is still a balancing exercise, and where necessary precision/effectiveness will prevail.

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<sup>6</sup> Edward Donelan, *European Approaches to Improving Access to and Managing the Stock of Legislation*, (2009) 30(3) Statute Law Review 147.

<sup>7</sup> A review of relevant literature can be found in Jeffrey Barnes: *The Continuing Debate About 'Plain Language' Legislation: A Law Reform Conundrum*, (2006) 27(2) Statute Law Review 83.

<sup>8</sup> Euan Sutherland, *Clearer Drafting and the Timeshare Act 1992: A Response from Parliamentary Counsel to Mr Cutts*, (1993) 14 Statute Law Review 163.

<sup>9</sup> For example, Jack Stark, *Should the Main Goal of Statutory Drafting Be Accuracy or Clarity?* (1994) 15(3) Statute Law Review 207.

This example represents the continuing tension between legislation that achieves a particular legal outcome and which can be accessed and comprehended by all. While ongoing initiatives are to be encouraged and may lead to some improvements, I suggest that, in continuing to seek two potentially conflicting outcomes from the legislative document, the tension will always exist; and in seeking to maintain the balance adopted compromises will still give rise to the perception amongst some users.

In order to more effectively make progress towards achieving the design of effective legislation and the reduction of complexity (and the associated perception) I suggest that a fundamentally different approach is required. At the heart of my proposal are two key factors:

- 1) a recognition that the interface by which legislation is presented to and accessed by users (the “user interface”) should be conceptually separated from the original legislative document, allowing both to remain suitably connected but allowing each to perform different but necessary functions to achieve different outcomes; and
- 2) the user interface should be tailored through the implementation of a number of general complexity-reducing principles to take advantage of opportunities provided by technology to reduce complexity, rather than being rigidly limited to the traditional paper-based format of legislation.

My hypothesis therefore is that **by wholly separating the concepts of the originating legislative document of UK primary legislation from the user interface by which it is presented and accessed, and by suitably tailoring the**

**user interface through the implementation of a number of general complexity-reducing principles which fully utilise technology, the reduction of the perception of disproportionate complexity can be achieved more effectively and efficiently.**

To test my hypothesis, my dissertation is structured as follows:

Chapter 1 contains a breakdown of my proposal for a separate user interface, and a number of general complexity-reducing principles for tailoring it's design;

Chapter 2 contains my analysis of the legislation.gov.uk website against my proposal and general complexity-reducing principles to establish to what extent this interface reduces the perception of disproportionate complexity;

Chapter 3 outlines a demonstration of my proposal in creating a separate user interface for the Marine and Coastal Access Act 2009, and its evaluation;

Chapter 4 contains an analysis of the overall benefits and the consequential implications of adopting my proposal.



## **CHAPTER 1: A PROPOSAL TO REDUCE THE PERCEPTION OF DISPROPORTIONATE COMPLEXITY ASSOCIATED WITH UK PRIMARY LEGISLATION**

*A Bill's sole reason for existence is to change the law ... A consequence of this unique function is that a Bill cannot set about communicating with the reader in the same way in which other forms of writing do. It cannot use the same range of tools. In particular, it cannot repeat the important points simply to emphasise their importance or safely explain itself by restating a proposition in different words. To do so would risk creating doubts and ambiguities that would fuel litigation. As a result, legislation speaks in a monotone and its language is compressed. It is less easy for readers to get their bearings and to assimilate quickly what they are being told than it would be if conventional methods of helping the reader were freely available to the drafter.<sup>10</sup>*

Whether it is accepted that it is impossible for legislation to ever change the law and successfully communicate its intent to all reading it, it is more widely acknowledged that UK primary legislation doesn't currently achieve both, due to the continuing

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<sup>10</sup> Sir Christopher Jenkins, First Parliamentary Counsel, UK, in a submission *The Legislative Process*, in Report of the House of Commons Select Committee on the Modernisation of the House of Commons, First Report, Session 1997/98, 23 July 1997, (Cmnd. 190).

tension between them. Each requires the legislative text to perform particular functions, and movement towards one undermines the other.

The above quote represents the traditional view: achieving effective and efficient change of the law is the primary focus of legislation, even at the expense of communication. After all, legally qualified users are trained specifically to be able to interpret legislative texts, and other users can always consult them for assistance<sup>11</sup>. More recently, that view has changed to a renewed focus on improving the communication of legislative intent (for example the 'plain language' movement), recognising, the benefits of citizen comprehensibility in terms of the efficacy of the legislation.

Research has studied communication improvements but progress has been slow, due to the continued tension between the two outcomes sought. In particular, the complexity of legislation can be a major obstacle in successful communication. What is meant by complexity here? As outlined in my Introduction, the Good Law Initiative identified three main features: the volume of legislation; the quality of legislation created; and the perception of disproportionate complexity.

While the first two clearly impact upon complexity, it is the third feature which has the greatest influence over whether communication of underlying legislative intent is successful. This explains some Good Law Initiative research findings: most users interviewed said that they expect legislation to be hard to read, even legally qualified

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<sup>11</sup> Francis Bennion, *The Times*, 1<sup>st</sup> February 1994.

users. Further (and somewhat predictably) lack of familiarity with legislation exacerbated problems with usability and perpetuated misconceptions associated with the law<sup>12</sup>.

Despite the relative significance of this perception, progress on reducing it has been slower, representing the difficulty in overcoming the continuing tension. In trying to find methods which can operate within the legislative document and best meet both outcomes, compromises utilised will not dispel the perception for some users.

Consequently, if there is to be an increased focus on reducing this perception to successfully communicate legislative meaning to the user, a swifter and more efficient alternative solution is required. The first step of my proposal is therefore the creation of a separate user interface for legislation whose primary focus is the reduction of complexity and the associated perception. However, before considering this first step, it is necessary to consider what is meant by 'user' in the context of my proposal.

#### *What is meant by 'user'?*

Part of the difficulty previously in identifying suitable improvements to allow better communication is in identifying exactly who the 'users' are. The ongoing debate about plain language in drafting has this issue at its heart<sup>13</sup>: should legislation be accessible and comprehensible to all, or just parliamentarians and legal professionals?

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<sup>12</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 20.

<sup>13</sup> Ruth Sullivan, *Some Implications of Plain Language drafting*, (2001) 22(3) Statute Law Review 145 at 158.

To guide my proposal I focussed on available empirical evidence as to actual users. Research undertaken for the legislation.gov.uk website indicates that the majority of users are non-legal professionals accessing legislation for work purposes who are unlikely to have access to commercial online services available to legal professionals<sup>14</sup>. I suggest that such persons should be the default target audience of measures to reduce the complexity of legislation and associated perception (whilst acknowledging the benefit to other 'user' categories<sup>15</sup>. I use the term 'user' in relation to my proposal on this basis.

*Step 1: The separation of the user interface from the originating legislative document*

A user interface conceptually separate from the originating legislative document allows freedom to design and implement a suitable delivery method to communicate the legislative meaning users. It has been recognised that the traditional structure, format and style of content of legislation are factors of significance in the user's perception of disproportionate complexity<sup>16</sup>: therefore this freedom is of vital importance in reducing complexity.

Those previously against plain language in drafting legislation concede that there remains a need for a 'vehicle of communication' to explain the nature and effect of

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<sup>14</sup> Carol Tullo, *Legislation.gov.uk – Essential for the Law Business*, Legal Information Management, 13, 218 at 220.

<sup>15</sup> Alison Bertlin, *What works best for the reader? A study on drafting and presenting legislation*, (2014) *The Loophole* 25 at 47.

<sup>16</sup> **"Negative perception of legislation** - *The architecture and heterogeneity of the statute book can make legislation difficult. Users perceive legislation as more complex and burdensome than it actually is because of the barriers to accessing and using it. Navigation between pieces of legislation is often a problem.*" - Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 28.

legislation to the general public in a way that the legislation simply cannot provide<sup>17</sup>. A separate user interface is therefore the solution perceived to address inherent failure to adequately communicate the substance of legislation<sup>18</sup>.

The best format for this separate user interface is an online interface, representing the best opportunity for flexible design via a format which is the 'access of choice' for modern users of legislation, and which has the capacity to utilise unique communication tools. A number of 'official' online legislative interfaces already exist – in the UK, the legislation.gov.uk website.

Making legislation available online has provided a new type of improved user interface. Even with the most basic, users can access legislation with a minimum of geographic movement, and internet search engines can simplify the retrieval of relevant legislative text. However, on closer inspection existing interfaces are not sufficiently 'separate' from the originating legislative documents<sup>19</sup>. The ethos behind this approach appears to be that the display of the text in exactly the same way as originating from the paper-based legislation is sacrosanct to maintain the authenticity of the interface<sup>20</sup>. The responsibility for improving comprehensibility thus remains solely with the original drafters.

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<sup>17</sup> Hunt, Brian: *Plain Language in Legislative Drafting: Is it Really the Answer?* (2002) 23(1) Statute Law Review 24 at 45.

<sup>18</sup> Barnes, Jeffrey: *The Continuing Debate About 'Plain Language' Legislation: A Law Reform Conundrum* (2006) 27(2) Statute Law Review 83 at 98.

<sup>19</sup> Discussed in Chapter 2 in relation to legislation.gov.uk.

<sup>20</sup> See for example the commitment to 'the official version': Michael Cuttoli and Eric McCreath, *Enhancing the Visualisation of Law*, (2012) Law via the Internet Twentieth Anniversary Conference, Cornell University, at page 2.

This is a somewhat narrow view. Provided an authentic version exists (in the form of the original legislative document), and it is made clear to users that the separate user interface has modified it to aid comprehensibility, both authenticity and improved comprehensibility can be achieved. Consequently, a separate user interface focussed on user comprehensibility allows the original legislative document to remain focussed on a primary purpose of ensuring precision in how the new law is stated or how the overall body of statute law is changed.

Having determined that a separate user interface can improve communication of the meaning of the legislation, the second step of my proposal involves designing that interface to provide an optimum level of user comprehensibility and benefit.

*Step 2: Tailoring the separate user interface to reduce the perception of disproportionate complexity*

In order to provide significant improvements in accessibility and comprehensibility, the interface must fully capitalise on best available functionality. Currently, online interfaces predominately utilised functionality to improve accessibility for users, (dedicated search engines, indexing of legislation collections to improve navigation, or interactive tables of content to improve navigation within of legislation.)

Outside of official interfaces, there have been efforts to create more radical methods of improving access. For example, experimentation with document-centric visualisations of US federal legislation involving displaying legislation as a section-

by-section chain (with colour coordinated subject matter) appears to have had success in facilitating access for users<sup>21</sup>.

But with the overriding focus on accessibility, the potential for interface improvements focused on comprehensibility has been overlooked. These are at the heart of reducing complexity from legislation for users. Therefore in tailoring a user interface it is important to identify general complexity-reducing principles to provide the optimum reduction of complexity.

### *Identifying general complexity-reducing principles for designing a user interface*

I have identified complexity-reducing principles which I believe are of significant benefit in designing the separate user interface, based in part relevant academic opinion. This tends to be in the context of making suitable changes to the design of legislative documents, but is equally relevant to a separate user interface (and given the tension identified earlier, can be more swiftly and efficiently introduced this way).

The three primary impacts on the complexity of legislation have previously been identified by Katz and Bommarito as structure, language and interdependence<sup>22</sup>. I have therefore identified and categorised complexity-reducing principles based upon each.

#### *1: Complexity-reducing principles related to Structure*

##### *Principle 1A: Display explanatory material and legislation side-by-side*

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<sup>21</sup> Yannick Assogba et al, Many bills: engaging citizens through visualizations of congressional legislation, *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems*, ACM, 2011.

<sup>22</sup> Katz, D and Bonmarito, M, *Measuring the Complexity of the Law: The United States Code* published Aug 2013 at page 15

Including explanatory material within legislation has previously been identified as a way of assisting users. However, difficulties arise in trying to determine whether it constitutes an operative or authoritative part of the legislation, and the risk that, unintentionally, a later interpretation it operative, particularly where in wider terms than the legislative provision<sup>23</sup>. Also, whether operative or not, specific care is required when subsequently amending the legislation that the material is also amended, in order to avoid ambiguity.

Given the above, in the UK explanatory material is located outside of the legislation. From the 1998-99 UK parliamentary session onwards, Explanatory Notes were published alongside Acts of Parliament to provide background information to the Act in a more user-friendly summary of the legal effect (including where appropriate examples) in a non-authoritative way, side-stepping the legal difficulties of locating it within the body of the Act<sup>24</sup>.

However, feedback indicates that finding this explanatory information causes users difficulty<sup>25</sup>. This may relate to the way in which Explanatory Notes are published and/or signposted to potential users. Logically, rather than read the whole Explanatory Notes document, a user is more likely to want to access it at the same time as accessing a particular 'incomprehensible' provision.

Therefore the optimum solution is a user interface structured so that explanatory material is displayed alongside each provision, so a user can directly cross-refer between texts with minimum effort, improving comprehensibility. This approach has

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<sup>23</sup> Geoffrey Bowman, *Legislation and Explanation*, (Jun 2000) *The Loophole*, 5 at 8.

<sup>24</sup> Christopher Jenkins, *Helping the reader of Bills and Acts*, (1999) 149 *NLJ* 798.

<sup>25</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 28.



the same accessibility benefit as including the material within the body of the legislation, but without the potential legal difficulties.

*Principle 1B: Don't display provisions ancillary to the function of the Act*

Others have previously identified that certain elements in legislation (described as 'administrative instruction to government departments'), would be better located outside of the legislation, perhaps in departmental circulars, to reduce the amount of detail included<sup>26</sup>. A separate user interface means that a number of ancillary or administrative elements do not need to be reproduced.

For example, each Act generally has a 'short title' provision. Whether, objectively speaking, there is still an actual need for this type of provision in each Act it is an ancillary provision and there is no identifiable benefit to the user in displaying via the separate user interface. Further, additional information which has no positive benefit only serves to lengthen the displayed legislation and add to the perception of disproportionate complexity, therefore this type of provision shouldn't be displayed.

There are other types of ancillary provision, for example:

- commencement and legal extent provisions: a user needs to know the outcome of these, but doesn't necessarily need to see the method by which the outcome is arrived at (see further below);

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<sup>26</sup> Lord Renton, *Current Drafting Practices and Problems in the United Kingdom*, (1990) 11 Statute Law Review 11 at 14.

- the instructional part of provisions which incorporate other legislation with/without modifications: again the outcome (i.e. the text as incorporated) is of interest to the user, rather than how it was achieved (see further below);
- the instructional part of provisions containing textual amendments or repeals: once amendments/repeals have been physically made, the instructions perform no function and therefore don't need to be displayed (see further below);
- the text of definitions where it can be displayed/provided in a more comprehensible and user friendly way: utilising the potential that exists in an online interface by displaying the information contained within definitions in a more user-friendly way (see further below) means it is no longer necessary to display the original legislative provision containing the definition.

As these provisions are the most 'technical' in nature it is likely they add disproportionately to the perception of complexity and not only should they not be displayed within a separate user interface, but by not displaying them a significant proportion of the overall perception will be reduced.

*Principle 1C: Display 'in force' date and legal extent per provision, rather than the determining mechanism for each; and clearly indicate where a provision is not yet in force*

The Good Law Initiative research highlighted that users' understanding of what happens to legislation after it has been enacted is poor, with many participants assuming all

legislation appearing on legislation.gov.uk is necessarily in force<sup>27</sup>. This is concerning, because it suggests a real risk that users may change behaviours on the basis of what they perceive to be the law when it is not yet in force.

The commencement date for provisions, and the legal extent, is provided indirectly within legislation by a statutory mechanism. What is not provided is a clear expression of the outcome of that mechanism in respect of each provision. But it is what users will need to know, and provided this outcome is successfully communicated, the mechanism need not be displayed separately.

Therefore my proposal is to design the interface so that the 'in force' date and legal extent are clearly displayed per provision, and that the mechanisms are not displayed. This will have the net effect of communicating the necessary information to the user in a more beneficial way, while reducing the overall amount of legislation that needs to be displayed via the interface. In addition, where a provision is not yet in force, this fact needs to be clearly signposted to the user by means of a visual indicator (such as 'greying out' the text), to prevent an assumption by the user that all text/provisions displayed are current.

*Principle 1D: Modify the internal structure of displayed legislation where necessary to aid navigation and accessibility*

Again, an important consideration in making legislation more user-friendly is that users are unlikely to want to read a whole Act from beginning to end, or to be necessarily interested in each and every part of the legislation. They are more likely to be interested in those parts relevant to the issue which they are seeking to

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<sup>27</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 20.

resolve. They will want to access these parts quickly without progressing through other less relevant parts<sup>28</sup>.

This issue can partly be resolved through more informative and user-friendly titling of sections/parts within legislation and hyperlinked cross-referencing (see below). However an additional approach fully utilising the separate user interface is to (where necessary) re-arrange the structure of legislation so parts which are more operational in nature and therefore more likely to be accessed regularly are displayed before those parts which are more ancillary and less likely to be regularly accessed. Equally, within each part, provisions may need to be re-ordered or re-organised for the same reason.

This may not be the same structure as the originating legislation, but reflects the fact that (a) the structure utilised within legislation for the presentation of the various concepts may not provide accessibility for non-legally qualified users; and (b) the factors determining the best structure for an electronic interface are not necessarily the same as those for a paper-based interface for legislation.

Ordinarily, re-organising the internal structure of a piece of legislation would be impossible on the basis that the numerical identifiers would be out of numerical order, resulting in potential confusion for users. However, in combination with Principle 2A (see below), numerical identifiers would no longer be utilised in the separate user interface, consequently facilitating such re-organisation or re-ordering.

## *2: Complexity reducing principles related to Language*

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<sup>28</sup> Ruth Sullivan, *Some Implications of Plain Language Drafting*, (2001) 22(3) Statute Law Review 145 at 161.

*Principle 2A: Where necessary, change section/part titles to be more informative/user-friendly*

Historically, section headings evolved from margin notes, whose primary purpose was to offer the user a short description of the subject matter of the provision so that a determination could quickly be made as to whether the provision needed to be read in full or whether the user could move on to other provisions<sup>29</sup>. However, such short descriptions have evolved so that they can be easily interpreted by those users who are legally qualified. For other users, they are not always as useful. Therefore for this interface, titles should be altered to improve user comprehensibility and navigation.

A good way of providing this is to draft them in the form of questions, as:

*“Readers of legislation often approach an Act with specific problems or questions in mind. . . . Headings help the reader to find the provisions that need to be read to answer their questions more quickly. . . . Since readers often have questions in mind when approaching an Act, drafters should consider writing headings in the form of questions . . .”<sup>30</sup>*

Stewart has provided empirical data from testing undertaken into the improvement potential for accessibility to legislation from question-form headings which indicates

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<sup>29</sup> An overview of the evolution of margin notes/section headings can be found in: Gordon Stewart, *Legislative Drafting and the Marginal Note*, (1995) 16(1) *Statute Law Review* 21 at pages 23 to 27.

<sup>30</sup> S. Krongold, *Writing Laws: Making Them Easier to Understand*, [1992] 24:2 *Ottawa Law Review* 495 at 501-2.

that their use increases the chance of a user finding the correct section and consequently the answer to the problem that they face<sup>31</sup>.

Providing a truly user friendly section heading may mean that the heading is longer than it was in the originating legislation, but this is not a significant issue if it leads to a clearer indication about a section's content<sup>32</sup>. Additionally, the use of numerical identifiers in legislation evolved as part of breaking up legislative text into individual provisions to ease cross-reference and navigation. However in respect of the separate user interface, I suggest that by utilising more informative/user-friendly section/part titles in combination with hyperlinked cross-references, the legislative provisions can be more easily cross-referenced and navigated by the user than can be achieved in the originating legislative document. Consequently numerical identifiers do not perform a viable function within the separate user interface and do not need to be displayed. This has the benefit of supporting Principle 1D (see above).

*Principle 2B: Modify non-critical text within the legislation to aid comprehensibility*

As outlined earlier in this Chapter, a separate user interface provides more freedom to manipulate the legislation in order to best communicate the legislative intent and reduce associated complexity. To supplement some of the other complexity-reducing principles, it may be necessary to make some relatively minor modifications to non-critical areas of the text of a provision in order to aid comprehensibility.

In particular, such modifications include:

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<sup>31</sup> Gordon Stewart, *Legislative Drafting and the Marginal Note*, (1995) 16(1) Statute Law Review 21 pages 49 – 62.

<sup>32</sup> *Ibid.*, page 32.

- removing numerical indicators from Parts/sections and re-wording numerical cross-references within the same Act: in support of Principles 1A and 2A (see above), numerical indicators can be removed as unnecessary. A consequence of this is that all cross-references operating by numerical indicators within the same Act need to be replaced with a hyperlinked cross-reference to the title of the Part/section instead in accordance with Principle 3A (see below);
- renumber subsections to take account of parts of provisions not displayed: where as a result of the application of other complexity-reducing principles a subsection within a provision is omitted from display via the separate user interface, the other subsections may need to be renumbered consecutively in order to maintain a sensible structure;
- utilise a standard 'unit' of provision: one conclusion from the Good Law Initiative research was that several users did not know what 'sections' or 'schedules' were<sup>33</sup>. Therefore within the separate user interface the nomenclature surrounding provisions can be modified to simplify and unify the structure of the displayed legislation into: ACT-PART-SECTION-SUBSECTION, avoiding the variety that can occur in legislation below the 'Part' level;
- show actual dates instead of the method of calculation: On occasion legislative text will refer to a method of calculating a date where not all of the factors forming part of that calculation are known at the time of drafting. For obvious reasons this is often the only way that such a date can be stated in

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<sup>33</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 20

the original legislative document. However, once all of the calculation factors become known, the date can be expressed more simply. The separate user interface allows the date to be updated in the text once known to aid user comprehensibility.

*Principle 2C: Don't display textual amendments or instructions to repeal – simply action the amendments or repeals in the relevant legislation*

Cormacain has previously identified that an amendment acts in two dimensions: it sets out the changes being made to the old law, and it sets out what the old law will be after these changes are made<sup>34</sup>. Textual amendments within legislation are drafted to focus on the first dimension in order to ensure that members of the legislature and legally qualified users can accurately identify the operation of the amendment.

The second dimension tends to be less of a priority. Rarely is the new provision displayed within the legislation as amended: generally the user is left to determine the outcome by applying the amendments and looking at the text of the amended provision. In some cases, some form of explanation as to the intent behind the amendment will be provided by contextual information within the same provision, within the title of the provision or occasionally from the surrounding provisions within the legislation. There may also be information in the explanatory notes of the legislation containing the amendment provision.

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<sup>34</sup> Ronan Cormacain, *Keeling Schedules and Clarity in Amending Legislation*, (2013) 15 Eur. J. L. Reform 96 at 97.



Understanding the nature of textual amendment provisions against this background can be difficult for legally-qualified users: for non-legally qualified users, the perception is likely to be that what is being asked is so complex and disjointed that it is simply unachievable. Cormacain concludes that an attached Keeling Schedule is a useful way of improving clarity across both directions. However he also acknowledges that, provided it was properly operated, a technological solution would be 'the most optimum'<sup>35</sup>.

With a separate user interface, a suitable technological solution can be achieved to resolve this issue. In terms of achieving comprehensibility for non-legally qualified users, all that is required is to display the provision as amended – the instructions of the textual amendment are not conducive to comprehensibility and do not fulfil a useful function in the successful communication of the legislation. Additionally as an amended provision is designed to operate within the context of the legislation within which it is located, there is no purpose to displaying the amended text in place of the amendment instructions within the new legislation. Therefore for amendments my proposal is as follows:

- 1) don't display the details of any textual amendments of older legislation within the part of the interface which relates to the new legislation;
- 2) amend the older legislation accordingly and display as amended, adopting a suitable 'version' indicator so that users can identify and navigate by time period to the relevant version of the provision;

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<sup>35</sup> Ibid. at 108.

3) explanatory material related to the nature of the amendment can be displayed by revising the content of the explanatory material associated with the amended provision within the older legislation.

Similar considerations apply to provisions containing instructions to repeal provisions in other legislation: once in force and the relevant legislation is removed, the instructions no longer fulfil a useful function. Therefore my proposal is that a repeal should be actioned but the instructions should not be displayed via the separate user interface.

### *3: Complexity reducing principles related to Interdependence*

#### *Principle 3A: Hyperlink all cross-references*

Part of the findings of the research undertaken as part of the Good Law Initiative is that users found that legislation is '*convoluted and involves a lot of going back and forward*'<sup>36</sup>. While other complexity reducing principles I have identified may operate to reduce such navigation, some will always be required within legislation. Therefore there exists a clear potential in utilising the benefits of an electronic interface by hyperlinking all cross-references within the legislation. This allows users to jump directly to referenced legislation or text via their internet browser. Using hyperlinks in this way will improve navigation and also minimise any arising complexity.

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<sup>36</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 20

*Principle 3B: For provisions incorporating other legislation by reference, display (or provide a hyperlink to) the text as incorporated (with necessary modifications), instead of the original incorporating text*

Where a provision incorporates other legislation by reference, the relevant wording will either consist of a short instruction incorporating that other legislation or, where modifications are required, a set of instructions explaining to the user what they have to do to the incorporated legislation in order to understand how it applies in this new context. Aside for the practical difficulties arising from consulting two or more different pieces of legislation simultaneously to ascertain overall meaning the intelligibility of the legislation decreases as the level of modifications required as part of the incorporation increases<sup>37</sup>, because it becomes harder to conceptualise (even for those who are legally qualified) the true nature and effect of the incorporation.

When legislation is produced as a paper document, it is easy to see why incorporation by reference occurs: it is a balancing exercise between intelligibility and the reduction of the text of the new legislation as well as harmonising legislation by using the same provision to do the same thing in the same general situation<sup>38</sup>. However, where legislation is accessed via a separate electronic user interface alternatives are available. Instead of showing the original incorporation instruction, a better option is to display the outcome showing the text as incorporated (with modifications where necessary). Comprehensibility is improved by showing the 'finished product' rather than displaying the instructions and relying upon a user successful implementation by the user.

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<sup>37</sup> John Mark Keyes, 'Incorporation by Reference in Legislation', (2004) 25(3) Statute Law Review 180 at 191.

<sup>38</sup> The two primary advantages of incorporation by reference identified by Keyes, *ibid.*

Displaying text as incorporated can be easily achieved, either by displaying directly in place of the incorporation instructions, or by removing the incorporating instructions and displaying the text via a hyperlink if the incorporated text is lengthy. In this way the main disadvantages of incorporation can be avoided via the user interface without compromising the advantages of incorporation by reference used in the preparation and enactment of the originating legislation.

Principle 3C: Use 'pop-up' windows for definitions, rather than displaying in their original location within the legislation

Definitions fulfil a number of important functions in legislation<sup>39</sup>, and as such are regularly used. However, in terms of user comprehensibility there are two main issues. Firstly it is not easy to identify which particular terms are 'defined': they are not highlighted in UK legislation. Unless a defined term is located within the same provision, a casual user may overlook the existence of a definition altogether and consequently miscomprehend what is actually intended by the provision. Secondly definitions often cross-refer to other parts of the same legislation, or even externally, in order to ensure that similar meanings are maintained within and across legislation<sup>40</sup>. However as stated above (under Principle 3B), incorporation of legislation by reference is problematic in terms of comprehensibility of.

My proposal is therefore, wherever possible, to display the content of definitions in 'pop-up' text boxes. A defined term would be highlighted appropriately and, upon the user selecting the highlighted term, the pop-up box would be activated, displaying

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<sup>39</sup> For a summary of these functions, see Bilika Simamba, *The Placing and Other Handling of Definitions*, (2006) 27(2) Statute Law Review 73 at 75-76.

<sup>40</sup> Ruth Sullivan, *Some Implications of Plain Language drafting*, (2001) 22(3) Statute Law Review 145 at 185.

the additional content. This gives a clear indication of which terms are defined while also allowing a user to view the meaning without navigating away from the provision. Although recognised as a method of improving accessibility in legislation, there would be few actual examples of this being used in practice in current online interfaces around the world<sup>41</sup>.

Additionally, and in keeping with Principle 3B, where a definition consists, in full or in part, of text incorporated by reference, the pop-up text box should wherever possible show the text as incorporated. This will minimise the need for the user to navigate to external content and therefore reduce complexity whilst improving comprehensibility. I say 'wherever possible' because there may be some situations where the text in question is so large that it would be wholly impractical and objectively defeating to display all of it in a pop-up text box. In these circumstances it may be more appropriate to provide a hyperlink or signpost to the defining text instead.

Where the legislative content of a definition can be successfully contained within such a pop-up text box, there is no longer a need (Principle 1B above) to display the originating legislative text containing that via the separate user interface. Complexity can thus be reduced by reducing the overall amount of legislation displayed.

### Summary

A tension exists between the achievement by UK primary legislation of two different purposes: a precision in the legal effect of the legislation (whether in creating new law or in amending the existing body of law), and the communication and

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<sup>41</sup> See the discussion regarding the Virginia Code for Humans website in Michael Cuttoli and Eric McCreath, *Enhancing the Visualisation of Law*, (2012) Law via the Internet Twentieth Anniversary Conference, Cornell University at page 13.

understanding of the legislation's meaning to users. The latter has increasingly become the focus of law reform, but progress has been slow due to the tension. Recent research indicates that complexity arising from legislation still exists amongst users (particularly the non-legally qualified majority).

In order to address this issue of complexity and its associated perception, my proposal envisages a separate online user interface to access legislation which is not constrained by a rigid adherence to the structure and form of the origination legislative document. Consequently there is freedom to tailor this interface to a primary purpose of communication of legislative meaning to the user in accordance with a number of complexity-reducing principles drawn in part from previous academic research. The tension is effectively side-stepped by providing this separate user interface focussed on communication, while the originating legislative document remains focussed on precision of legal effect.

## **Chapter 2: AN ANALYSIS OF THE CURRENT ONLINE USER INTERFACE FOR ACCESSING UK PRIMARY LEGISLATION**

In Chapter 1 I considered the nature of the current difficulties in resolving the issue of complexity associated with UK primary legislation, and outlined a proposal for resolution via the creation and redesign of a separate user interface. Whether there is a need for this type of proposal will depend on the degree to which the innovations proposed are already being performed by the current primary online interface for UK primary legislation (legislation.gov.uk). Therefore in this Chapter I will analyse the legislation.gov.uk interface against my proposal to determine how well it meets the criteria of the proposal.

Analysis needs to focus on the degree of accessibility/comprehensibility provided to those who use the interface. As stated in Chapter 1, the majority of users are non-legal professionals accessing legislation for work purposes who are unlikely to have access to the same commercial subscription based online services available to legal professionals<sup>42</sup>. I will therefore analyse with these users in mind. To provide a basis for my analysis I will consider the above matters in the context of a particular piece of UK primary legislation, specifically the Marine and Coastal Access Act 2009 (“the 2009 Act”) which I am personally familiar with.

### *The current legislation.gov.uk interface: an overview*

Since its creation in July 2010, the legislation.gov.uk website has become a key online portal for free access to UK primary and secondary legislation. Estimates

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<sup>42</sup> Carol Tullo, *Legislation.gov.uk – Essential for the Law Business*, Legal Information Management, 13, 218 at 220.

indicate that the site receives between 2 and 3 million visits per month, with 450 million page views in 2012 and 500 million page views predicted in 2013<sup>43</sup>. I suggest that, given this, the prevalence of electronic devices allowing personal internet access, and the accessibility provided by internet search engines legislation.gov.uk is the primary interface by which users access UK legislation. Therefore the degree of accessibility and comprehensibility of legislative content provided by and designed into this interface can have a significant consequential impact on the ability of all users to fully understand the provisions of UK legislation.

*To what extent is the legislation.gov.uk interface conceptually separate from the originating content of the legislation?*

Looking firstly at how the interface organises legislation that it holds, UK primary legislation is organised in a manner which is the direct electronic equivalent of how paper-based copies of primary legislation would be stored on a shelf or filing system. Thus, Acts of Parliament are organised by year and chapter number, or (at the choice of the user) alphabetically by title. Additionally a search engine is provided allowing users to search for a particular Act rather than navigate through lists. A similar system exists on the website for subordinate legislation.

Looking within a single Act, users can access legislation either via a downloadable copy of the Act as originally enacted (and thus this option for the user is only as accessible as the original paper based version of the Act); or via a navigable table of contents in the form of an expandable and collapsible tree diagram displaying individual sections and schedule paragraphs. Although the layout and structure of

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<sup>43</sup> Ibid. at 219.



the tree diagram is taken directly from the paper-based version, this additional functionality allows users to jump straight to individual parts of the legislation as required. The interface also allows direct textual updating of parts of the legislation as and when amendments/repeals are made to it (albeit currently, given difficulties in keeping the website fully updated with legislative changes, in the case of the 2009 Act this is more likely to be an indication that there is a change and the location in other legislation of that change rather than an actual amended version of the text being presented: this in itself however is still a potential additional benefit to the user compared to paper-based legislation).

Additional functionality is provided by the ability to toggle additional features, such as a visual indicator of geographical legal extent of a section within the UK; and a 'timeline of changes' - visually displaying the different versions of the section over time and allowing the user to select versions as required. Further relevant material is accessible by selecting tabs above the legislation – in the case of the 2009 Act copies of the accompanying explanatory notes.

However, the above is the full extent of the conceptual separation of the legislation.gov.uk interface from the originating legislative documents. This additional functionality affects peripheral elements of the legislation: aside from the way in which the body of UK primary legislation is organised, the actual legislation itself remains rigidly fixed to the structure and content of the underlying original legislation.

*To what extent does the legislation.gov.uk interface fully utilise technology to reduce complexity and aid accessibility?*

In order to properly analyse the degree to which the legislation.gov.uk interface has been tailored to the needs of users I considered the 2009 Act as displayed against the complexity-reducing principles identified in Chapter 1.

*Principle 1A*

As indicated above, legislation.gov.uk provides the explanatory notes which accompany the original legislative document, via a navigation tab. The notes can be viewed either as a downloadable pdf version of the original paper-based document, or via a separate navigable table of contents which provides hyperlinks to excerpts down to the section level. Further, each excerpt provides a hyperlink on the numerical section number indicator, taking a user to the equivalent legislative provision.

Legislation.gov.uk clearly provides more navigation functionality in relation to explanatory material than a paper copy does. However, the interface does not display the provision-specific explanatory material text alongside each provision, and neither is there a toggle option to select this. For a user faced with a particular provision where supporting explanatory material would assist comprehensibility, it means selecting the 'explanatory materials' tab, navigating through the table of contents to the right provision and then opening.

It does not lend itself therefore to a side by side comparison. This may cause difficulties in user comprehension where both the complex provision and the accompanying explanatory material are lengthy. For example, section 60 of the 2009 Act deals with identifying the meaning of 'retained functions' in relation to functions of devolved administrations and marine planning. Not only is the provision lengthy

(1,132 words) but involves a number of interlocking definitions and involves the application of multi-stage tests. The explanatory material for section 60 is also relatively lengthy (approx. 570 words). Therefore a user may have to navigate back and forth a number of times in order to apply the explanatory material to the provision. This is not ideal and will dissuade users from persevering to comprehend the meaning of the legislation.

### *Principle 1B*

As stated in Chapter 1, an overriding aim of existing online interfaces is to display the legislation 'as enacted' to maintain authenticity<sup>44</sup>. This is reflected in the design of the legislation.gov.uk interface. In the 2009 Act, every single section is displayed and is accessible from the main table of contents via hyperlink. The only modifications are in the form of 'official' amendments or repeals instigated in other legislation. Therefore ancillary functions of the 2009 Act are displayed, which is unlikely to be of much practical use to non-legally qualified users and may only add unnecessary complexity.

As Principle 1B supports the operation of other complexity-reducing principles, I will consider some of the potentially unnecessarily displayed ancillary functions of the 2009 Act under each of the relevant headings below. However, in Chapter 1 I discussed the issue of the relevance of the short title citation section. In the 2009 Act this is section 325, and is displayed via the legislation.gov.uk interface.

### *Principle 1C*

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<sup>44</sup> See page 11.

The legislation.gov.uk interface does provide additional functionality in line with this principle. When viewing a section, a panel on the left side of the interface (entitled 'Advanced Features') which allows users to display additional information: a 'timeline of changes' and/or the geographical extent of the section. The 'timeline of changes' displays a version history from the date that the section comes into force. Also, where the section has been amended, different versions appear, allowing a user to select and display historical versions. Where a provision has yet to come into force, the section is highlighted as 'prospective'.

This is in keeping with Principle 1B, and embracing of the potential offered by an online interface. The main difficulty currently however is that (as was highlighted during the Good Law Initiative<sup>45</sup>) the legislation.gov.uk is not maintained as fully up to date, and consequently some information is out of date. For example, section 65 of the 2009 Act (which sets out the requirement to hold a marine licence) is shown on the legislation.gov.uk interface as 'prospective' despite being brought into force on 6<sup>th</sup> April 2011. The 'timeline of changes' is therefore only as useful as it is accurate; otherwise it could cause additional difficulties to users.

Also, despite showing the 'outcome' of commencement and extent mechanisms, the mechanisms are still displayed via the legislation.gov.uk interface<sup>46</sup>. As identified above, for a user the display of these mechanisms is unnecessary given the alternative display of the outcome, and could potentially cause unnecessary complexity.

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<sup>45</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 15

<sup>46</sup> Section 324 (commencement), section 323 (extent).

*Principle 1D*

While the structure of the parts of the 2009 Act is relatively logical and suitable structure for access and navigation by those users who are legally qualified, as well as based upon established principles of legislative drafting relating to paper-based legislation, the same structure is not the best for non-legally qualified users attempting to access legislation for the first time via an electronic interface to resolve a specific query or issue. For example, Part 1 of the 2009 Act<sup>47</sup> contains provisions establishing the Marine Management Organisation ('MMO'), (a non-departmental public body established by the 2009 Act to undertake certain functions related to the marine environment on behalf of the UK government), and deals issues associated with that establishment, e.g. provisions related to the MMO's role, services, financial powers etc.<sup>48</sup>

Part 4 of the 2009 Act<sup>49</sup> relates to the UK marine licensing system, whereby certain activities ('licensable marine activities') taking place within the UK marine area must be licensed by an appropriate licensable authority: otherwise the activity is a criminal activity. Thus, Part 4 deals with the scope and operation of the marine licensing system<sup>50</sup>; enforcement options for non-compliance<sup>51</sup>; and further supplementary and consequential provisions related to the marine licensing system<sup>52</sup>.

For a legally-qualified person, it is logical for the provisions creating the MMO to come before those provisions creating the marine licensing function which is

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<sup>47</sup> Comprising sections 1 to 40 and schedules 1 to 3.

<sup>48</sup> Part 1 Chapter 4 and Schedule 3.

<sup>49</sup> Comprising sections 65 to 115 and Schedules 7 to 9.

<sup>50</sup> Sections 65 to 73.

<sup>51</sup> Sections 85 to 97 and Schedule 7.

<sup>52</sup> Sections 101 to 115 and Schedules 8 and 9.

delegated to the MMO, and when reading the whole Act from start to finish ('This is the MMO, and this is what the MMO does'). This traditional structure is utilised on the legislation.gov.uk website for the 2009 Act.

However, Part 4 is a more operational part of the 2009 Act and is therefore more likely to be of interest on a day to day basis. So a non-legally qualified user unfamiliar with traditional structure who has a query about a particular activity they are planning to undertake in the marine area, is unlikely to be interested, for example, in information relating to the MMO's borrowing powers<sup>53</sup>. Nevertheless a non-qualified user may end up trawling through the equivalent of 42 pages worth of irrelevant information before reaching Part 4. They may even reach their own personal tolerance for legislative incomprehensibility long before reaching Part 4 and give up.

### *Principle 2A*

The list of section/part titles of the 2009 Act displayed on the legislation.gov.uk interface have not been modified from the titles in the original legislative document, stemming from a desire to display an 'authentic' version of the legislation. There is, for example, no use of replacement question-form titles in the way envisaged by Krongold or Stewart<sup>54</sup>. While this is not a significant problem in respect of some

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<sup>53</sup> Section 33.

<sup>54</sup> See footnotes 33 and 34.

currently utilised titles<sup>55</sup>, there are other titles which might aid user comprehensibility if replaced when displayed with a question<sup>56</sup>.

### *Principle 2B*

Again, providing an ‘authentic’ version of the originating legislation, the legislation.gov.uk interface does not modify legislative text displayed to aid comprehensibility, even where this could improve user comprehensibility without changing the legal meaning of the legislation. For example, section 235 of the 2009 Act governs the appointment of Marine Enforcement Officers. Subsection (3) states:

*(3) Until the coming into force of section 1, any power conferred on the MMO by this section is exercisable by the Secretary of State.*

For a user approaching this provision and attempting to determine the meaning, it involves mentally undertaking the calculation required for the first part of the statement, i.e. searching for the relevant commencement provision for section 1 to find the coming into force date, and then determine based on that date whether the power is exercisable by the MMO or Secretary of State.

Until the date is known, undertaking that process is inevitable. However, once the date is known, such a process on the part of the user can be avoided by replacing the first part with the date (*‘Until 12<sup>th</sup> January 2010, ...’*). This may even highlight the fact that the subsection is of a transitional nature which is no longer operative and may not need to be displayed, thus helping to reduce complexity for the user.

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<sup>55</sup> For example, section 125 is entitled ‘*General duties of public authorities in relation to MCZs*’ is (relatively) self-explanatory.

<sup>56</sup> For example, Part 4 of the Act is titled ‘Marine Licensing’, whereas a user might be more greatly encouraged to research further if title was ‘Do I need a marine licence?’

### *Principle 2C*

Although legislation.gov.uk interface updates (or at least has the intention of updating) legislation to reflect amendments and repeals introduced by subsequent legislation, the interface still displays the instructions of those amendments/repeals. These instructions take up a significant amount of space within the legislation and are likely to appear the most 'technical' to a non-legally qualified user<sup>57</sup>. Given that once instructions have been actioned they are of no practical benefit<sup>58</sup>, their continued display will significantly add to the perception of disproportionate complexity amongst users.

### *Principle 3A*

Despite some use as part of the navigable table of contents, the legislation.gov.uk interface does not regularly use hyperlinks for cross-references within a provision. For example, in the first 20 sections of the Marine and Coastal Access Act 2009 there are 8 references to other provisions within the same Act and 41 references to provisions in other legislation. None are hyperlinked, meaning that a user will need to navigate forwards and backwards between different provisions using a multi-step process which is more complex and time consuming than it needs to be.

### *Principle 3B*

As elsewhere, the focus here is on the exact reproduction of the originating legislative document without modification or adaptation. Unsurprisingly, where the

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<sup>57</sup> See for example Schedule 16 of the 2009 Act.

<sup>58</sup> I accept that this is on the basis that the interface is kept up-to-date: until such time as this occurs there may still be a benefit to displaying the instructions.



legislation incorporates other provisions by reference, the legislation.gov.uk interface does not display those provisions as incorporated – it simply display the incorporating instructions and leaves it to the user to work through the incorporation mechanism and determine the outcome for themselves.

For example, the 2009 Act transfers responsibility for regulating consents for offshore electricity generators to the Marine Management Organisation<sup>59</sup>. In addition to the main consent provision, there is supporting legislation governing the consent application process. As this also needs to be applied to those areas of consent which the MMO now regulate, provision is made to apply relevant legislation to the MMO as if references to the Secretary of State are references to the MMO<sup>60</sup>. This is the extent of the instructions, and the legislation.gov.uk interface goes no further than this. It does not provide an option to view the relevant legislation as modified, either here or at the location of the legislation listed. It does not even provide hyperlinks to the legislation in question.

Therefore a user who wants to understand the full effect of this provision needs to navigate away from the provision to find the referenced legislation and correctly apply the modifications. This undoubtedly adds complexity to the communication of the legislative intent, and doesn't utilise the full potential of the legislation.gov.uk interface.

### Principle 3C

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<sup>59</sup> Section 12.

<sup>60</sup> Section 12(5).

As I outlined in Chapter 1, the use of ‘pop-up’ windows for definitions is not used on current interfaces, including legislation.gov.uk. The scale of the potential complexity this causes for the user is one of fact and degree depending upon the location of the definition text in question. For example, if the definition text is shown within the same provision as the defined term, this is unlikely to cause a significant comprehensibility problem<sup>61</sup> and a non-legally qualified user is unlikely to miss the existence of the definition.

User comprehensibility is reduced (and the risk of not detecting the existence of a relevant definition significantly increases) where the text of the definition is in a separate provision, whether at the end of the same Part<sup>62</sup> or the general interpretation section at the end of the Act<sup>63</sup>. While experienced and qualified users will know where to look for definitions, casual non-qualified users are likely to fail in finding a definition or even appreciate that a specific meaning is outlined elsewhere<sup>64</sup>.

At the far end of the scale there are some extremely complex definitions; for example the definition of ‘public authority’ in section 322 of the 2009 Act. The text of this definition is made up of 3 other defined terms, which themselves contain a further four defined terms. Three of these further definitions are defined by reference to other legislation (a total of 5 such references). It is accepted that on occasion the need to precisely state the effect of the law may lead to very complex linguistic

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<sup>61</sup> See for example the definition of ‘dredging’ in section 66(2) which is used within section 66(1).

<sup>62</sup> See for example the definitions in section 64 which apply to the sections in Part 3 (Marine Planning).

<sup>63</sup> Section 322.

<sup>64</sup> Bilika Simamba, *The Placing and Other Handling of Definitions*, (2006) 27(2) Statute Law Review 73 at 76.

constructs which (even with the benefit of legal qualification) will take time and effort to fully comprehend.

However, the interface doesn't make any effort to make this process easier: there are no hyperlinked cross-references, and a user is likely to have to navigate across numerous provisions and many different pieces of legislation to determine the meaning. The interface doesn't even employ visual signposting to highlight that a particular term is specifically defined or the location of the definition. This is in stark contrast to the AusLII interface for Australian legislation<sup>65</sup>.

### *Summary of Analysis*

It appears that the legislation.gov.uk interface has embraced some inherent aspects of its online status by providing limited additional functionality to aid accessibility and navigation. The best examples are in line with some of the complexity-reducing principles outlined in Chapter 1, for example the provision-by-provision 'geographical extent' toggle and the 'timeline of changes' toggle. Also the interface provides search engine features and hyperlinked lists of legislation and, inside individual pieces of legislation, hyperlinked tables of contents.

However, beyond this the design of the legislation.gov.uk interface has been significantly influenced by a desire to 'authentically' display as originating in the paper-based legislative document. This deeply engrained influence has meant that the interface currently falls short of fully utilising the functionality potential of an online interface to improve accessibility and comprehensibility.

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<sup>65</sup> Michael Cuttoli and Eric McCreath, *Enhancing the Visualisation of Law*, (2012) Law via the Internet Twentieth Anniversary Conference, Cornell University.

It is surprising that less has been done in terms of improving comprehensibility for non-legally qualified users – particularly given the results of studies described earlier<sup>66</sup>. The current focus for improvement to legislation.gov.uk is in finding ways to keep the ever-expanding database of UK legislation up-to-date in order to ensure the best quality of service<sup>67</sup>. Indeed, this is the main focus of the Good Law Initiative on the issue of complexity<sup>68</sup>, and in seeking suitable methods by which this problem can be successfully resolved<sup>69</sup>. This is understandable, and clearly an important endeavour: but will not alone reduce complexity and improve comprehensibility for users.

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<sup>66</sup> See footnote 14.

<sup>67</sup> Carol Tullo, *Legislation.gov.uk – Essential for the Law Business*, Legal Information Management, 13, 218 at pages 220 – 222.

<sup>68</sup> Office of Parliamentary Counsel, *When Laws Become Too Complex: A review into the causes of complex legislation*, March 2013, page 14.

<sup>69</sup> See for example the Expert Participation Programme, *ibid.* page 17.

### **CHAPTER 3: APPLYING THE PROPOSAL TO AN EXISTING ACT**

Having outlined my proposal in Chapter 1, and having established in Chapter 2 that the legislation.gov.uk interface does not meet the scope of my proposal in f reducing complexity and improving comprehensibility, it is necessary to demonstrate that my proposal works in practice. Therefore I decided to apply the proposal to creating and tailoring a separate online user interface for a piece of UK primary legislation.

#### *Method of Interface Creation*

I chose the Marine and Coastal Access Act 2009 (“the 2009 Act”) for this purpose. Aside from aiding comparison by using the same legislation which formed the basis of my analysis of the legislation.gov.uk interface, it is an Act with which I am personally familiar and which contains provisions impacting upon a number of operational areas<sup>70</sup> which non-legally qualified users are likely to be interested in and therefore are more likely to consult it to solve arising issues. The textual content of the 2009 Act (and the accompanying explanatory material) was taken from the legislation.gov.uk in accordance with the Open Government Licence<sup>71</sup>.

My aim was to design a structure and layout which would aid navigation and comprehensibility for a non-legally qualified user, giving full exercise to the functionality potential of an online interface. However it quickly became apparent after initial experimentation that my design could not successfully be reproduced

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<sup>70</sup> For example, the marine licensing regime contained in Part 4 of the 2009 Act.

<sup>71</sup> Open government licence viewable at <http://www.nationalarchives.gov.uk/doc/open-government-licence/version/2/> .

within the confines of this document. Therefore I decided to create a website version of the interface, programmed in html language utilising an html editor found online. Once completed the html pages were uploaded to available web space. The finished interface can be viewed at [www.annotatedmacaa.x10.mx](http://www.annotatedmacaa.x10.mx)<sup>72</sup>.

### *Overview of design*

My interface for the 2009 Act has a relatively straightforward structure. The introduction page<sup>73</sup> provides a textual overview of the whole Act, and a list of different areas of content (each one broadly representing a 'Part' of the 2009 Act) consisting of a hyperlink and supporting explanatory text. A user selecting one of these hyperlinks is then taken to a 'Part' page<sup>74</sup>, which contains a further list of all of the section<sup>75</sup> pages within that Part, consisting of a hyperlink. The overall list of section pages is split into smaller categories of sections with an explanatory sub-title.

While the above structure is not wholly dissimilar from the legislation.gov.uk interface, the section page is a significant departure<sup>76</sup>. Each section page is split into 3 frames, with a separate html page supporting each frame. The top horizontal frame provides standard information relating to the section: the parent Part and section title, the current version of the section, the in force date(s) of the section, the legal extent of the section and (where there has been more than one version of that section) hyperlinks to any previous version.

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<sup>72</sup> I will refer to individual pages by hyperlinked web address during the rest of this Chapter to provide suitable examples.

<sup>73</sup> <http://www.annotatedmacaa.x10.mx/MACAA%20Introduction%20Page.html> .

<sup>74</sup> For example see the Part 4 page at:

<http://www.annotatedmacaa.x10.mx/MACAA%20Part%204%20Overview.html> .

<sup>75</sup> 'Section' here can also include Schedules – see page 54 below under Principle 2B.

<sup>76</sup> For example see the section 1 page at:

<http://www.annotatedmacaa.x10.mx/MACAA%20section%20%1%20final.html> .

Below the horizontal frame are two vertical and parallel frames. The left hand frame (the 'commentary' frame) displays the explanatory notes text for that section. It also contains hyperlinks to aid navigation. The right hand frame (the 'legislation' frame) contains the legislative text. Each frame can be moved independently of the other frame. Separate frames also mean that, where necessary, the content of one frame can be changed without affecting the other.

There is one exception to this general structure of the interface for the 2009 Act. Section 60 of the 2009 Act contains provision explaining which functions of public authorities are 'retained functions' for marine planning under Part 3 of the Act. As I have previously identified<sup>77</sup>, this section is particularly lengthy and complex, the standard structure that I had adopted for my interface did not significantly increase its comprehensibility.

Therefore I adopted a different design<sup>78</sup>. On the section 60 page, the commentary frame provides the user with a step by step process for assessing particular functions to determine whether it is a 'retained function'. Particular terms are highlighted and, upon a user selecting a highlighted term, explanatory text appears in the legislation frame. In this way a user can practically apply each step of the process to arrive at a desired answer. The legislative intent is retained, but the communication of that intent is vastly improved.

Further detail about the design of the interface is outlined below.

### *Applying the general complexity-reducing principles*

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<sup>77</sup> See above at page 26

<sup>78</sup> See <http://www.annotatedmacaa.10x.mx/MACAA%20section%2060%20final.html>

*Principle 1A*

The three-frame design for each section allows explanatory material from the Explanatory Notes to be displayed alongside the legislative text of each section so that a user can view and consider both at the same time, aiding user reference.

*Principle 1B*

By designing the interface with the needs of the user in mind, any legislative text which did not have an identifiable benefit for the user was omitted from the display. Such material included: the short title citation provision<sup>79</sup>; the extent and commencement provisions<sup>80</sup>; and provisions solely containing the instructions for textual amendments/repeals of other legislation<sup>81</sup>. Additionally many sections had some subsections omitted where, for example, the sole purpose of that subsection was to provide a definition.

*Principle 1C*

The horizontal frame on each section page displays whether the provision is in force and the in force date, as well as its legal extent. As stated above, this meant that the determining mechanism for each could be omitted. Additionally, for each amendment or alteration of the section a separate 'version' page of the section is created<sup>82</sup>, with hyperlinked navigation provided. Each version has its own three-frame format web

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<sup>79</sup> Section 325.

<sup>80</sup> Sections 323 and 324.

<sup>81</sup> For example, Schedule 22 (repeals).

<sup>82</sup> See, for example the page for section 69 at

<http://www.annotatedmacaa.x10.mx/MACAA%20section%2069%20final%20v2.html> .



page. The commentary for each version is suitably updated to include an explanation as to changes made.

### *Principle 1D*

To aid navigation and accessibility within the introduction page I modified the structure by re-ordering the Parts of the 2009 Act so that provisions of a more operational nature appear higher on the list than less operational provisions. For example Part 4 relating to the marine licensing regime appears at the top of the list, whereas the provisions in Part 1 relating to the establishment of the Marine Management Organisation are farther down the list. A user is more likely to be looking for Part 4 of the 2009 Act and so is more likely to find the provisions first without trawling through irrelevant and unrelated provisions.

Additionally some Parts have had their sections reordered. For example, Part 4 has been re-ordered so that it follows a logical progression of questions which a user is likely to consider, namely:

- Which activities generally require a licence?
- Are there any exceptions to this requirement?
- If I need a licence, what is the procedure for getting one?
- What might be included within the licence (i.e. licence conditions);
- What happens if activity is undertaken without a licence or not in accordance with a licence and its conditions (i.e. enforcement provisions).

### *Principle 2A*

With two exceptions, all Part titles were replaced with question-based titles designed to match the type of question that a user might seek to answer<sup>83</sup> and thus encourage further reading. A number of section titles were also replaced with questions or titles which better reflected their content.

### *Principle 2B*

Non-critical elements of the legislative text have been modified to aid comprehensibility, primarily by supporting other complexity-reducing principles. For example, to aid re-structuring, all of the numerical indicators have been removed from the titles of Parts/sections, and numerical indicators references within legislation replaced by hyperlinked references to the Part/section title<sup>84</sup>. Also, where subsections have been removed from a section, the remaining subsections have been renumbered consecutively to aid user comprehensibility.

A significant modification is that those Schedules which are displayed via the interface have been 're-branded' as sections in order to avoid confusion arising from the separate nomenclature of Schedules<sup>85</sup>. Finally text which explains how a relevant date is to be calculated has been replaced where possible with the actual outcome<sup>86</sup>.

### *Principle 2C*

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<sup>83</sup> So for example 'Part 4 Marine Licensing' has become 'Do I need a marine licence?': See further at the Introduction page: <http://www.annotatedmacaa.x10.mx/MACAA%20Introduction%20Page.html> .

<sup>84</sup> For example, see the hyperlinked reference to 'Exemptions for certain dredging activities etc. (section 75) in the commentary frame at page:

<http://www.annotatedmacaa.x10.mx/MACAA%20section%2066%20final.html>

<sup>85</sup> See for example schedule 8 at

<http://www.annotatedmacaa.x10.mx/MACAA%20schedule%208%20final.html>

<sup>86</sup> See for example section 235(3) displayed at

<http://www.annotatedmacaa.x10.mx/MACAA%20section%20235%20final.html>.

All of the legislative text relating to textual amendments/repeals of other legislation has been omitted<sup>87</sup>, on the basis that the relevant changes would have been actioned in the affected legislation, and the continued display of the instructions provides no practical benefit to the user. Similarly, explanatory note text relating to these instructions has also been omitted, as in a wider application of my proposal it would appear in the explanatory material displayed alongside the amended provision.

### *Principle 3A*

Hyperlinked references have been significantly utilised as a way of connecting the Introduction page to the Part pages and from those to the section pages. Additionally, all cross-references<sup>88</sup> have been hyperlinked. Where the reference is to another provision within the 2009 Act, the title of that provision is used for the reference. Where the reference is to a provision outside of the 2009 Act then, for the purpose of this demonstration, I have linked to the relevant web address of that provision as displayed on the legislation.gov.uk interface.

### *Principle 3B*

Where in a provision legislative text is incorporated by reference, the incorporation instructions are not displayed in the interface: instead, a link is provided which, when activated, opens within the legislation frame the incorporated text, with any

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<sup>87</sup> For example, Schedule 16 of the 2009 Act is not displayed on the separate user interface.

<sup>88</sup> The only references not hyperlinked are those provisions which are either not supported on the legislation.gov.uk interface, or have been repealed.

modifications displayed in red<sup>89</sup>. This allows the user to view the incorporated text as intended without having to follow and apply the incorporation instructions, thus reducing complexity.

### *Principle 3C*

In creating this interface it was necessary to create three types of definition:

- Category One: where the definition text did not cross-refer to other definitions and was sufficiently sized, the defined term is highlighted in green and underscored. A user moving the mouse cursor over the term causes a pop-up box to appear displaying the definition text<sup>90</sup>;
- Category Two: where the definition text cross-refers to at least one category one definition and/or where the text is too long for a pop-up box to be used, the defined term is instead highlighted as a hyperlink. Upon selecting a new html page opens in the commentary frame displaying the text of the definition. This text may include any highlighted green relevant category one definitions used within the definition text. This frame can be closed by link at the bottom to return to the 'commentary'<sup>91</sup>;
- Category Three: where the definition text contains too many complex definitions or where such text constitutes a central principle of the legislation,

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<sup>89</sup> See for example the hyperlinks contained in section 12 at <http://www.annotatedmacaa.x10.mx/MACAA%20section%2012%20final.html>.

<sup>90</sup> See for example the definition of 'vessel' at <http://www.annotatedmacaa.x10.mx/MACAA%20section%2066%20final.html>

<sup>91</sup> E.g. the definition of 'British vessel' on the above page.

the defined term is highlighted as per category one, but within the pop-up box is a signpost as to the location of the definition text<sup>92</sup>.

By using a combination of the above, a user is at least aware that a definition exists and (with category one and two definitions) is able to consider the nature of the definition without navigating away from the context of the legislative text.

### *Evaluation of the interface*

Having considered the finished interface, there are a number of main benefits provided by this interface in reducing complexity and aiding accessibility and comprehensibility for the user compared to the current legislation.gov.uk interface.

Firstly, this interface cuts down the volume of legislation displayed to and navigated by a user, omitting legislative text which is not of primary function of the Act. To put this into context, the 2009 Act as enacted consists of 325 sections and 22 Schedules: the pdf version of the Act has 347 pages. The legislation.gov.uk interface displays every provision. By comparison, my interface omits a significant proportion of whole sections and schedules, reducing the amount of unnecessary text that a user has to navigate.

Also, those provisions displayed within my interface are often simplified, shorter versions, as irrelevant text has been removed (whether because it duplicated definition text displayed elsewhere, or related to instructions for amendment etc.). Non-critical parts of the remaining text may have also been modified to aid

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<sup>92</sup> E.g. the definition of 'Appropriate licensing authority' on the above page.

comprehensibility. This allows a user to more easily focus on the remaining text, with a reduced risk of distraction and reduced perception of complexity.

Secondly, more assistance is provided to the user as to the correct interpretation of the meaning of the legislation in the same location as the legislation. Explanatory material is provided in the commentary frame; defined terms are highlighted to draw attention and (with the exception of category three definitions) to display the meaning of that defined term. Overall, it is this crucial information which aid comprehensibility: unlike the legislation.gov.uk interface, legislative text can be easily considered by viewing the explanatory information alongside the 'complex' text.

Thirdly, navigation is more straightforward via my interface for users. Re-ordered structure puts operational parts first, and more ancillary matters further down the list. User-friendly titling, particularly in the form of questions mirroring likely user questions, aids accessibility for the user and reduces navigating unnecessary legislative provisions by accident. The legislation.gov.uk interface, by strictly adhering to the structure and titles of the originating legislation, relies on that legislation to be inherently easy to navigate, and if it is not, the interface is equally impenetrable for the non-qualified user.

Finally, where a user needs to navigate to view other legislative provisions in the same Act or in other legislation, or to view a category three definition, hyperlinking allows quick and simple navigation. It allows a user to move quickly and efficiently back and forth, and is likely to be more accessible than the legislative.gov.uk alternative which requires (at the very least) a search via the search engine, adding

further navigational steps between the original legislative text being considered and the reference.

### *Summary*

This demonstration shows that my proposal for a separate user interface focussed on communicating legislative intent to a wide category of users and tailored in line with complexity-reducing principles is viable. Further, an evaluation of this interface compared to the existing legislation.gov.uk interface show superior benefits for user comprehensibility and reducing complexity, by omitting redundant text, improving internal structure, improving navigation and by providing explanatory information alongside legislative text.

## **CHAPTER 4: A REVIEW OF THE BENEFITS AND IMPLICATIONS OF THE PROPOSAL**

Having outlined the nature of my proposal in Chapter 1, analysed the existing legislation.gov.uk interface against that proposal in Chapter 2, and practically demonstrated the viability of my proposal in creating an interface for the Marine and Coastal Access Act 2009 in Chapter 3, it is necessary to consider what the overall benefits of my proposal are, and address any potential issues arising.

### Benefits of the Proposal

#### *Improving the quality of regulation*

There are clear benefits in this regard. There is a hierarchy of goals in relation to regulation within a legal system, each of which supports or is supported by other goals. At the top is the efficacy of the regulation (i.e. the achievement of the aims of the regulation in question), supported by the effectiveness of the regulation (i.e. the correlation of the prescribed attitudes and behaviours of the legislator with the observable attitudes and behaviours of the target population), and in turn by a number of factors, including clarity, precision and unambiguity<sup>93</sup>.

In drafting primary legislation there are occasions where one of these 'factors' trumps the others or where compromise is required between them, with the net result that the finalised legislation does not adequately embody one, more or even all of these factors. Consequently, where the interface by which users access legislation is

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<sup>93</sup> Helen Xanthaki, *Drafting manuals and quality in legislation: positive contribution towards certainty in the law or impediment to the necessity for dynamism of rules?* (2010) *Legisprudence* 4.2, 111-128 at page 111



strictly tied to the original format of that legislation, the same inadequacies and imbalances remains.

But, by utilising a sufficiently separated user interface, any ambiguity or lack of clarity present in that legislation can be re-packaged and communicated to the user with a primary purpose of providing clarity and removing ambiguity, leaving the format of the originating legislation to achieve a primary purpose of precision of effect and outcome. In turn, by accommodating both of these purposes simultaneously by separate but complimenting interfaces, the number of different semiotic groups who can successfully receive and understand the overarching message behind the legislation is increased because the level of functional legal literacy<sup>94</sup> required from the user is reduced. Consequently the observable attitudes and behaviours of a greater proportion of the target population are likely to correlate to the prescribed attitudes and behaviours of the legislator, facilitated by improved access and comprehensibility, improving the effectiveness of the legislation, and supporting greater efficacy.

*Keeping the communication of legislation modern and effective*

One of the main reasons for a reluctance to locate explanatory information within legislation is that out of date explanatory information contained within the legislation can cause difficulties for interpretation of the legislation<sup>95</sup>, and with subsequent amendment reliant upon the political will of the Executive, such difficulties may not

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<sup>94</sup> 'Functional legal literacy' is defined as the ability to read a law or other legal document not necessarily understanding all the details but certainly comprehending the main line of thought – Peter Blume, *The Communication of Legal Rules* (1990) 11 Statute Law Review 189.

<sup>95</sup> Editorial, *Explaining Yourself*, (2010) 31(3) Statute Law Review iii; Bowman, Geoffrey, *Legislation and Explanation*, *The Loophole*, Jun 2000, 5.

be swiftly or easily resolved. Equally, even where contained in accompanying Explanatory Notes, it is clear from the experience I have gained from my Chapter 3 demonstration that the Notes are predominately focussed on the legislation just before or at the point of initial implementation, and is not updated to reflect changes in experience and understanding of the legislation post-implementation, or subsequent amendment.

With a separate user interface, it is possible to ensure that where the explanatory material becomes outdated or inaccurate, it can be changed quickly and relatively easy without the intervention of the legislature. Where a provision is subsequently amended, specific information can be provided in the 'commentary' section of each provision explaining the amendment's effect.

An additional benefit of the separate user interface is that it is more adaptive to changes in our understanding of best communication methods. When a better method is discovered, the interface can simply be adapted to utilise the new method to better assist users. Where the interface is tied to the originating legislative document, the interface is less flexible and can only be changed if and when the legislation itself is amended.

Finally, a separate user interface can promote greater interactivity with users and as a consequence provide a basis for more feedback-driven audience analysis of the which, compared to more traditional classification-driven or intuition-driven forms of analysis, gives a more detailed view of how users use and access legislation<sup>96</sup>. For

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<sup>96</sup> A comparison of the different form of audience analysis can be found in Duncan Berry, *Audience Analysis in the Legislative Drafting Process*, The Loophole (June 2000) 61.

example, consider the structure of the 'Introduction' page of the interface of my annotated Marine and Coastal Access Act 2009. As described earlier, I prepared this structure so that the order of the various Parts was determined by my own intuition-driven assessment of which were more likely to be of interest to users, with these being placed higher on the page.

However, with some slight modification, the structure could operate so that the order of the Parts is determined by previous user activity in interacting with the page (i.e. the Part selected most frequently by previous users appearing first, and so on). Feedback-driven design in this way further improve the effectiveness of the interface in improving comprehensibility by directing users to the information they are seeking and reducing the amount of irrelevant information to be navigated.

*A speedier and more complete solution for the 'incomprehensibility' of UK legislation*

In my Introduction I gave an example of the use of plain language in drafting as a potential method for improving user comprehensibility which has, due in part to ongoing debate, a lack of consistent opinion as to its merits, and the tension between clarity and accuracy, not progressed in UK legislation as quickly as might have been desired. However, even assuming that future progress in improving comprehensibility of UK legislation itself is more rapid, this would not solve the perception of incomprehensibility associated by users with UK legislation.

This is because any improvements to drafting implemented will only apply to new legislation drafted following implementation. Thus the large body of existing legislation already in force would remain drafted in a style less conducive to comprehensibility until such time as the political will exists to consolidate, repeal or

replace it. It is likely to be a very lengthy period of time following implementation before the majority of the UK statute book consists of legislation drafted in an improved way.

The clear benefit of my proposal is that there need not be a similar issue: provided a suitable degree of resource is available, the user interface can be created for both new and existing legislation. Therefore a single improved style and method for the communication of legislation can be implemented for the whole of the UK statute book in a speedier and more complete way.

### Implications of the Proposal

*What is the status of the additional content of the interface in relation to the judicial interpretation of the legislation displayed?*

Some consideration may need to be given to this particular issue. Even if the initial intention in providing a separate user interface is that it is to be non-authoritative, it may be that, for the purposes of determining the correct interpretation of unclear or ambiguous legislation, the judiciary will assign a degree of authority to its contents of produced 'officially'.

For example, the original stated intent behind Explanatory Notes was that they were to help a wide range of different users determine the effect of new legislation but

were not intended to be authoritative<sup>97</sup>. However, Lord Steyn in the House of Lords decision in R (Westminster City Council) v NASS<sup>98</sup> stated (at paragraph 5):

*Insofar as the Explanatory Notes cast light on the objective setting or contextual scene of the statute, and the mischief at which it is aimed, such materials are therefore always admissible aids to construction. They may be admitted for what logical value they have. Used for this purpose Explanatory Notes will sometimes be more informative and valuable than reports of the Law Commission or advisory committees, Government green or white papers, and the like. After all, the connection of Explanatory Notes with the shape of the proposed legislation is closer than pre-parliamentary aids which in principle are already treated as admissible..*<sup>99</sup>

With the following caveat:

*What is impermissible is to treat the wishes and desires of the Government about the scope of the statutory language as reflecting the will of Parliament. The aims of the Government in respect of the meaning of clauses as revealed in Explanatory Notes cannot be attributed to Parliament. The object is to see what is the intention expressed by the words enacted.*<sup>100</sup>

Clearly, the degree of authority and reliance placed upon explanatory material provided within a redesigned user interface as an interpretation tool will depend on a number of factors, including the status and standing of those who are to provide the

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<sup>97</sup> Christopher Jenkins, *Helping the reader of Bills and Acts*, (1999) 149 NLJ 798 at 799.

<sup>98</sup> R (Westminster City Council) v NASS [2002] UKHL 38. This view was repeated in R (S) v Chief Constable of South Yorkshire Police [2004] UKHL 39 (see paragraph 4), and Tarlochan Singh Flora v Wakom (Heathrow) Ltd [2006] EWCA Civ 1103.

<sup>99</sup> *Ibid.* at paragraph 5.

<sup>100</sup> *Ibid.* at paragraph 6.

commentary and the degree of reliance placed on the content of the originating Explanatory Notes in producing the commentary. There is the potential for some reliance to be placed upon explanatory material within the user interface whether or not a suitable warning is provided as to reliability and intended user, given that it would be a (at least) quasi-official form of guidance as to the content of the legislation.

Rationally, I would suggest that even if this is the case there can be no objective concern about such use. The entire purpose of the explanatory material is to re-communicate the legislation without changing the legal meaning of the legislation, to the benefit of all users in improving comprehensibility and understanding. Therefore, provided the material is properly drafted and is periodically reviewed for accuracy, if it's use could assist in a particular interpretation query there is no reason why it should not. It should be left to the judiciary to determine how such material can assist and the weight to be attached.

*The quality of existing explanatory material to be used to annotate the legislation*

Although there is a benefit to my proposal in that it can be applied equally to both existing and forthcoming legislation, one potential issue is whether existing explanatory notes are of a suitable quality to provide the basis of such annotation. Recent findings suggest that the quality often falls short:

***Explanatory notes and other supporting materials and guidance***

*Recurrently, when commenting on the excessive complexity of legislation, critics refer to the poor quality of explanatory notes, often regarded as unhelpful and occasionally misleading. Explanatory notes could be a very valuable asset for*

*those interested in understanding the objectives, purpose and main effects of the bill. However, explanatory notes can frequently be mere summaries of the bill itself or revised versions of relevant policy papers.*

*The current template for explanatory notes ensures a consistent format, but the quality itself is variable. It may that a more flexible and innovative approach would be more helpful to readers within and beyond Parliament.<sup>101</sup>*

It is also notable that, during the creation of the demonstration interface (described in Chapter 3), there were a number of occasions where the content of the explanatory notes fell below what ideally would be, whether because the material was too short<sup>102</sup> or simply mirrored the content of the section.

On this basis, I suggest that there is a need for a general review of the use and content of Explanatory Notes to determine whether they represent value in assisting to improve comprehensibility. Nevertheless, even in the absence of this, there is no reason why the explanatory material provided within the separate user interface has to mirror exactly the content of the Explanatory Notes. If such material fall short, alternative material can be devised which is better suited to the task. Indeed, as stated above, it is envisaged that the content of explanatory material within the interface would be updated more frequently than the Explanatory Notes currently are.

*Are there enough available resources to provide this type of interface?*

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<sup>101</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 28.

<sup>102</sup> See commentary frame for section 65 at <http://www.annotatedmacaa.x10.mx/MACAA%20section%2065%20final.html>

It is fair to say that tailoring a separate user interface in the way I propose is likely to be more resource-intensive than the current legislation.gov.uk interface. This is because by requiring subjective designing by section there is less elements of the interface which can be suitably automated (one of the few benefits of having a user interface tied to the originating legislative document). Currently I suspect that the answer to my above question is 'no': an examination of the legislation.gov.uk website shows that much of the legislation displayed is not in its up-to-date form, and there is a backlog of amendments/repeals to action.

However, in many ways this makes it a more appropriate time to adopt my proposal. It has been indicated that the National Archives are currently seeking more expert contributors to perform this updating work<sup>103</sup>. These individuals are exactly the people to be designing a new user interface and, given that the current interface is largely out of date, the updating and the new design could be implemented simultaneously.

### Summary

Considering the nature of my proposal, there are a number of intrinsic benefits to its adoption. The proposal gets right to the heart of the hierarchy of goals of regulations, providing an important foundation for supporting the overarching efficacy. Further, in communicating legislative intent to users, it can be keep the method of communication modern and efficient by being readily alterable without the formal

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<sup>103</sup> Office of the Parliamentary Counsel, *When Laws Become Too Complex – A Review into the causes of complex legislation* (March 2013), page 17.



intervention of the legislature, and has the potential for interactivity and feedback-driven audience-analysis as part of any post-implementation review process. Finally, it can be introduced more swiftly and more completely than improvements targeted at the originating document.

Equally, there are some potential implications of the proposal. Consideration will need to be given as to the correct status of the material used within the interface in terms of judicial interpretation (although I do not believe that the use of such material in this way is a significant concern). More problematic is the quality of existing explanatory material and the availability of resources. While neither is ideal, both are resolvable and do not in my opinion outweigh the benefits gained by adoption of the proposal.

## CONCLUSION

I started by reflecting on the current Good Law Initiative's focus on complexity in legislation. While the overall initiative is a worthy endeavour, it does not in my opinion do enough to address user perception of disproportionate complexity. It is vital that in a society governed on an assumption that ignorance of the law is no defence to a citizen, citizens should be assisted wherever possible and utilising the latest and best methods of communicating legislative intent to understand legislation once accessed.

I am satisfied, on the basis of the contents of this dissertation, that a wider adoption of my proposal (outlined in Chapter 1) would more effectively and efficiently reduce the negative user perception associated with legislation and therefore best communicate legislative intent. The proposal (and associated complexity-reducing principles) are a logical solution to the existing dilemma arising from seeking two diverse outcomes from the same legislative document. A separate user interface can better achieve one without affecting the other.

It is also clear that the existing UK online interface does not fully meet the standards of the proposal. By being singularly focussed on displaying 'authentic' versions of legislation, it is tied too rigidly to that legislation and consequently does not fully utilise its 'online' status and potential functionality for the benefit of the user. My demonstration of a new interface for the Marine and Coastal Access Act shows the clear potential that a conceptually separate user interface can have in reducing complexity and improving user comprehensibility. There are also wider benefits and implications for the adoption of my proposal, but provided resolvable issues as to

resource and quality of explanatory material can be overcome, the benefits far outweigh the problems.

Finally, an observation: a response to my proposal may be 'If the user interface is separated from the underlying legislation, why does any of the legislation need to be displayed at all? Why not just provide explanation instead?'. This overlooks one key issue. The proposal displays the legislation as close to as originally drafted as possible, in order to allow users to develop their own ability to interpret legislation. By showing explanatory material alongside legislation, users may begin to understand the nature of legislation and even feel more comfortable in reading legislation that is not supported via such an interface. Only in this way can the perception of disproportionate complexity be dispelled – to do otherwise would only maintain the psychological barriers keeping users 'out'.

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