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AN INVESTIGATION
INTO FORMAL AND FUNCTIONAL CHARACTERISTICS OF QUALIFICATIONS
IN LEGISLATIVE WRITING
AND ITS APPLICATION TO ENGLISH FOR ACADEMIC LEGAL PURPOSES

(TWO VOLUMES)

VOLUME ONE

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SUMMARY

The present investigation is based on a linguistic analysis of the 'Housing Act 1980' and attempts to examine the role of qualifications in the structuring of the legislative statement. The introductory chapter isolates legislative writing as a "sub-variety" of legal language and provides an overview of the controversies surrounding the way it is written and the problems it poses to its readers. Chapter two emphasizes the limitations of the available work on the description of language-varieties for the analysis of legislative writing and outlines the approach adopted for the present analysis. This chapter also gives some idea of the information-structuring of legislative provisions and establishes qualification as a key element in their textualisation. The next three chapters offer a detailed account of the ten major qualification-types identified in the corpus, concentrating on the surface form they take, the features of legislative statements they textualize and the syntactic positions to which they are generally assigned in the statement of legislative provisions. The emerging hypotheses in these chapters have often been verified through a specialist reaction from a Parliamentary Counsel, largely responsible for the writing of the 'Housing Act 1980'. The findings suggest useful correlations between a number of qualificational initiators and the various aspects of the legislative statement. They also reveal that many of these qualifications typically occur in those clause-medial syntactic positions which are sparingly used in other specialist discourse, thus creating syntactic discontinuity in the legislative sentence. Such syntactic discontinuities, on the evidence from psycholinguistic experiments reported in chapter six, create special problems in the processing and comprehension of legislative statements. The final chapter converts the main linguistic findings into a series of pedagogical generalizations, offers indications of how this may be applied in EALP situations and concludes with other considerations of possible applications.

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1.0 The practice of law embraces much more than the conduct of litigation. In fact, the greater, the more responsible and the more delicate part of a lawyer's work involves drafting instruments, creating trusts, formulating contracts, drawing wills and negotiations, all of which require not only legal knowledge but also mastery of written language. Which of the two has traditionally taken precedence is indicated in the words of Erasmus, "Cognito Verborum prior est, Cognito Rerum posterior est" - "If the knowledge of law is more 'potent', the knowledge of language is 'prior'."

Unfortunately, however, the place of language skills has rarely been adequately prioritized in legal education with the result that law teachers have consistently been "rudely jolted ... at the inability of so many law students to write or express themselves in clear, concise and elegant prose". (Mehler : 1960-61 : 201). Such a lack of full competence in the language tends to reveal deficiencies not only in legal composition but also in the students' capacity to process and understand legal texts, and this tendency is certainly more crucial when it comes to the language of legislation. In this kind of writing, all learners of law, native speakers of English as well as those whose first language is other than English have problems, although in the case of the latter, they may assume rather more dangerous proportions.

Language training in legal education has long been considered the responsibility of the law teacher who, pre-occupied as he always is with imparting the knowledge of law, rarely finds the time or has the means to treat it with even half the seriousness he attaches to his first

pre-occupation. The result of this apathy to the learning and teaching of language skills is that learners are generally left to learn these skills in the school of experience, which although possible, is costly to the learner and the profession alike. Linguists, applied linguists and language teachers also are partly to blame, as there has been no more than scattered, sporadic and half-hearted attempts to research and understand the nature of legal writing, in general, and legislative writing, in particular. The present investigation is intended to be an attempt to fill this gap.

1.1 Legislative Writing

The term 'legal writing', as generally understood, consists of so many different kinds of writing that it becomes insufficiently precise and specific for the kind of applied linguistic purposes that is the focus of the present investigation. Of the many subvarieties which can be included in general legal writing one could distinguish at least three, all of which seem to be markedly different in terms of their overall communicative function and their use of syntactic resources:

- (1) Academic Legal Writing: One may consider the language of academic research journals as well as that of legal text-books under this category. However, it is possible to make a further distinction between pedagogic legal writing that one may find in law text-books, which have a strong instructional orientation and academic legal writing that one finds in research journals, which have an informational orientation.

- (2) Juridical Writing: Under juridical writing one could find the language of court-judgements, case-books and law-reports, where the primary purpose of writing is to report the proceedings of the court. Occasionally, in some parts of the report, one may find traces of legislative writing, especially where the judge discusses a piece of relevant legislation or lays down the principle of law (*ratio decidendi*) which he thinks should be applicable to similar cases in future.
- (3) Legislative Writing: Legislative or statutory writing consists of typical legal documents like the Acts of Parliament, Statutory instruments, contracts, agreements, treaties etc., where the main function is to legislate by creating a unique world of obligations, permissions and prohibitions.

[See Bhatia : 1982a]

Our concern in the present investigation is essentially with the last of these subvarieties, i.e. legislative writing, particularly that found in Acts of Parliament. This writing is highly impersonal and decontextualised, in the sense that its illocutionary force holds independently of whoever is the 'speaker' (originator) or the 'hearer' (reader) of the document. The general function of this writing is directive, i.e. to impose obligations and to confer rights. As legal draftsmen are well aware of the age-old human capacity to wriggle out of obligations and to stretch rights to unexpected limits, in order to guard against such eventualities, they attempt to define their model world of obligations and rights, permissions and prohibitions as precisely,

clearly and unambiguously as linguistic resources permit. Another factor which further complicates their task is the fact that they deal with a universe of human behaviour, which is unrestricted, in the sense that it is impossible to predict exactly what may happen within it. Nevertheless, they attempt to refer to every conceivable contingency within their model world and this gives their writing its second key characteristic of being all-inclusive.

1.2 Controversies about Legislative Writing

The incessant effort on the part of the legal draftsman to achieve the dual aim of being (a) clear, precise and unambiguous, and (b) all-inclusive in his legislative writing makes his documents complex and obscure to laymen and professionals alike. Ever since the 16th and 17th centuries, there have been many expressions of dissatisfaction with this kind of legislative writing both from within the profession and outside. One of the early critics of legislative writing was Edward VI who wished that 'the superfluous and tedious statutes were brought into one sum together, and made more plain and short, to the intent that men might better understand them'. Several commissions (Statute Law Commissions of 1810 and 1828; The Law Commission 1965) and Committees (The Statute Law Committee 1868; The Select Committee 1875) were subsequently appointed by various governments to introduce reforms in the statute book. Legislative writing has, however, changed little either in terms of its syntactic complexity or rhetorical organisation.

In recent years criticism of the legislative writing has mounted significantly. The Statute Law Society has produced two important studies in this direction : 'Statute Law Deficiencies' in 1970 and

'Statute Law : the key to clarity' in 1972. The society has criticized the language of the statutes as "legalistic, often obscure and circumlocutions, requiring a certain type of expertise in order to gauge its meaning." "Sentences", it said, "are long and involved, the grammar is obscure and archaisms, legally meaningless words and phrases, tortuous language, the preference for the double negative over the simple positive abound". Indeed, given the increasing power of the 'reforming lobby', some of the other recent governmental and private efforts for reform in legislative writing are worth specific mention.

(i) The Renton Committee Report

In May 1973, the government set up a committee under the chairmanship of Sir David Renton to study the question of 'preparation of legislation' and to suggest reforms aimed at achieving greater simplicity and clarity in statute law. The committee received evidence from judges, bodies representing the legal and other professions, from non-professional bodies, and from prominent members of the public. The evidence overwhelmingly indicated that much of statute law lacked simplicity and clarity. Sir Robert Micklethwait, Q.C., the Chief National Insurance Commissioner, one of the witnesses before the Renton Committee, said that "a statute should not only be clear and unambiguous, but readable. It ought not to call for the exercise of a cross-word/acrostic mentality which is able to ferret out the meaning from a number of sections, schedules and

regulations." Similar views were also expressed by people from within the legal profession. The Master of Rolls, Lord Denning said : "If you were seeking to see what different principles should be applied, the first would be to recommend simple language and shorter sentences Simplicity and clarity of language are essential."

The committee grouped the complaints in four main categories:

- (a) Language: It was said that the language used was obscure and complex, its meaning elusive and its effect uncertain.
- (b) Over-elaboration: It was said that the desire for 'certainty' in the application of legislation led to over-elaboration.
- (c) Structure: The internal structure of, and sequence of clauses within individual statutes was considered to be often illogical and unhelpful to the reader.
- (d) Arrangement and Amendment: The chronological arrangement of statutes and the lack of clear connection between various Acts bearing on related subjects were said to cause confusion and make it difficult to ascertain the current state of the law on any given matter. This confusion is increased by the practice of amending an existing Act, not by altering its

text (and reprinting it as a new Act) but by passing a new Act which the reader has to apply to the existing Act and work out the meaning of the relevant sections for himself.

The Committee, while appreciating the skill and dedication of the Parliamentary draftsman, could not help concluding that there was a real 'cause for concern' with regard to the difficulty that was being encountered by the ultimate users of the statutes, professionals as well as laymen, and that this difficulty was likely to increase with the growing volume of the statute book. Among its many recommendations, the Renton Committee put forward a proposal for a continuous review of the condition of the statute book especially with regard to its structure and language to be undertaken by the Statute Law Society. The committee also recommended a proposal for the provision of a training course for legislative drafting, and for the recruitment of more draftsmen as a matter of high priority. Three years after the presentation of the report to the Parliament, Sir David Renton, speaking to the Statute Law Society in April 1978, admitted that 'little had been done' to implement the recommendations of the Renton Committee.

(ii) Drafting Manuals

Apart from these governmental efforts for legislative reform, a considerable amount of literature has appeared in protest against the inadequacy of the present-day legislative writing, particularly from within the legal profession . Many of these critics have come up with useful studies of legislative writing and have even suggested practical hints through drafting manuals for the benefit of the practising and prospective draftsmen. Of the many contributions in this field the most significant are usually thought to be of Bentham (1839), Symonds (1835), Coode (1848), Driedger (1957), Dickerson (1965), Thornton (1979), Dale (1977) and Bennion (1980). Bentham believed that legislative writing was ambiguous, obscure, overbulky, unsteady in expression and meaning, redundant, long-winded, entangled, unhelpful and disorderly. His recommendations on the rhetorical organization, grammar and sentence structure of the legislative sentence date back to 1811 but were published posthumously in 1839. Although his prime concern was with the comprehensibility of legislative expression, unfortunately, his own advice is written in a most difficult, capricious and wordy style and hence is almost unreadable.

In 'The Mechanics of Law-Making', the longest and most detailed manual of the 19th century, Arthur Symonds

proposed a number of rules and principles to achieve clarity, plainness and uniformity in legislative writing. The third, and perhaps, the most significant individual contribution of the 19th century came from George Coode (1848) whose appendix to the 1843 Report of the Poor Law Commission was a notable landmark in the study of the structure of the legislative sentence. The centre of Coode's interest was the legislative sentence, which he thought consisted of four elements: the legal subject, the legal action, the case to which the legal action is confined, and the conditions on the fulfilment of which the legal action becomes operative. He also advised that these four elements should be placed in the following order:

(Case)	Where any Quaker refuses to pay any church rates,
(Condition)	if any church warden complains thereof,
(Subject)	one of the next Justices of the Peace,
(Action)	may summon such Quaker.

Although Coode's analysis of the legislative sentence may well turn out to be insufficiently developed for application to all legislative sentences especially those with multiple and complex modifications, it certainly is of considerable value, particularly for the attention it pays to the sentence structure and to the arrangement of modifying clauses in the "best" position.

Some of the more recent recommendations from the members of the legal profession like Driedger (1957), Dickerson (1965), Thornton (1970) and Bennion (1980) include detailed and elaborate advice on the mechanics of drafting legislation in the form of "do's and don'ts" in the use of words and phrases. Some of them have also recommended the use of 'paragraphing' (Driedger: 1957) and 'tabulation' (Dickerson: 1965) as excellent organizational devices for effective legal communication. Bennion (1980), following Coode's analysis of the legislative sentence improves upon it by including another element in the final position which he calls 'exception' and which indicates a kind of modification of the case. Dale (1977) ascribes the tendency to prolixity and obscurity in the drafting style to the British Legal System itself. On the other hand, he praises the continental system of drafting, which he maintains, results in clarity and simplicity. Whatever the force of Dale's arguments, they are ultimately of limited constructive value, as there is no evidence that the British Legal System with its history of development over centuries could make a radical break with its traditions and transfer itself into a continental "code" format.

(iii) The Plain English Campaign

Social pressure for reform in legislative writing has also been increasing in recent years in the United Kingdom but more particularly in the U.S.A. 'The Plain English

Campaign' is perhaps the largest pressure group fighting for such reforms. As defined by one State's legislation in the U.S.A., 'plain English' is language "written in a clear and coherent manner using words with common everyday meaning". Obviously, the definition lacks precision and so far there have been no specific and detailed guidelines either to achieve such clarity and coherence or any criteria to assess the readability of such simplified documents. It is hardly surprising that many plain English revisions adopted recently in the U.S.A. have come under attack as inadequate and even insensitive to the needs of lay readers' difficulties of legal interpretation (Sacks and Cayer: 1981).

The situation in the U.K. is even more difficult where 'The Plain English Campaign' is still in its infancy and the law is more firmly based on the doctrine of 'stare decisis'; and "legislation", in the words of Sir Charles Davis (1975), "is drafted with almost mathematical precision, the object (not always attained) being, in effect, to provide a complete answer to virtually every question that can arise". These factors make the use of ordinary language for legislative purposes even more difficult. This aspect of the problem has also been emphasized by the Renton Committee in their report:

"Ordinary language relies upon the good offices of the reader to fill in omissions and give the sense intended to words or expressions capable of more than one meaning. It can afford to do this. In legal writing, on the other hand, not least in statutory writing, a primary objective is certainty of legal effect, and the United Kingdom legislature

tends to prize this objective exceptionally highly Parliament seeks to leave as little as possible to inference, and to use words which are capable of one meaning only. Where, therefore, it is necessary to express in language bound by these requirements it is not surprising that simplicity is hard to achieve."

Legislative writing, thus, is designed to avoid litigation rather than to communicate the law of the land to the general public.

(iv) Behavioural Research Findings

Some very severe criticism of legislative writing, especially of the design of 'public documents' has come from those applied psychologists who have been involved in various aspects of behavioural research leading to the design of effective technical communication, particularly from the works of Wright (1971, 1978, 1979a, 1979b), Wright and Barnard (1975), Wright and Reid (1973), Wasan (1968), Lewis, Horabin and Gane (1967).

There is no doubt that the style of legal documents itself reduces the proportion of the general public who can read government communications and undermines confidence in the capacity for full comprehension of those who have reasonable educational and intellectual expectations of being able to know "where they stand" in regard to a particular piece of legislation. To improve the quality of public documents in the U.S.A., research is being carried out at The Document Design Center, Washington. The emphasis

in this kind of research is not only on the improvement of document design but also on the reader's characteristics and behaviour. Similar work in the United Kingdom is being carried out at the Medical Research Council, Applied Psychology Unit, Cambridge, where Patricia Wright and her associates have been working on alternative ways of presenting information for better and more effective government communication. Wright (1971, 1978) and Wright and Reid (1973) working on alternatives to prose for expressing complex contingencies maintain that written information does not always have to be flowing prose. They show that abandoning the prose format for alternatives such as logical trees and tabulated presentations can often improve comprehension. Wright (1978 : 3,20) also gives an illustration of how legal rules and regulations could be alternatively presented in the form of short sentences to display more obviously the internal structure of the intended text. Lewis, Horabin and Gane (1967) have also illustrated how instructions from an income tax form for Capital Gains Tax could be presented alternatively with the help of a flow-chart. Wasan (1968) too has pointed out the utility of logical trees (visual graphs and list structures) for the interpretation and drafting of rules and regulations. Useful as these alternatives might seem to be, it is doubtful whether they could be used for all kinds of legislative writing. However, the findings of behavioural research can be used to alert lawyers and legal draftsmen to the difficulties of clear communication with the general

public and also to indicate ways of avoiding comprehension problems by informing those concerned of the principles underlying successful presentation of complex legislation.

1.3 Aim of the Present Research

The aim of most of the investigations and pieces of research referred to in the preceding section has been to recommend reforms in legislative drafting and to achieve, if possible, simplicity and coherence in public documents. The concern has largely derived from the inaccessibility of legal documents to the general public and occasionally to the members of legal and other professional bodies. The present investigation, although it shares the underlying concern for a greater comprehensibility of legal documents, does not propose to recommend any reforms in legislative writing.

The present concern for a better comprehensibility of legislative writing derives from an attempt to provide the most useful and most economical English support courses for law students and aspiring practitioners of law who are not native speakers of English but are required in their law studies to have at least a competence in reading law in English and may be, some competence in writing it. In order to provide suitable courses to meet these requirements, one needs to investigate not only the linguistic and rhetorical features of legal documents themselves but also to consider why these documents have the forms they do. Is it because of tradition and convention or, is it because there is no other way of maintaining the clarity, unambiguity and specification of scope required? It is only by understanding these matters that one could provide a reading course that would have a

principled methodological base, offer the right reading materials, and most importantly, give insights to the learners of the thinking underlying the language used in such documents.

2.0 The growing interest in the description of language varieties in educational and professional contexts derives from a concern on the part of applied linguists to study and establish the selective nature of specialist discourse in the teaching of English for specific purposes. Any applied linguistic exercise in the description of a specialist discourse variety will necessarily be based on the assumption that discourse processes (both of encoding and understanding or interpreting) across various specialist discourse-types vary depending upon the contextual and situational factors that are associated with a particular discourse variety, and the communicative purpose it needs to fulfil. It is further assumed that this variation will be largely reflected in the selection and use of features of language (which may be lexical, syntactic, and discoursal) in that discourse variety. Since a variation in discourse process, especially that of discourse creation, constrains the selection and use of linguistic realizations in specialist areas, it is more than likely that it will also have important repercussions on the methodological approach that may be employed to analyse and describe that particular discourse variety. In other words, an efficient and successful application of a particular approach to the analysis of a particular discourse variety may not ensure the success of a parallel application to another discourse variety.

As we shall see, legislative writing, which we have selected for analysis for our present purposes, differs significantly from most other varieties of English, not only in the way it is created and structured but also in terms of the communicative purpose it is designed to fulfil. In most other written varieties, the author is

both the originator and the writer of what he creates, whereas in legislative acts, the parliamentary draftsman is only the writer of the act which originates from the deliberations of a parliament in which he is never present. Secondly, in most varieties the discourse strategies are designed and used to help the intended readership towards, what Candlin (1978) refers to as "the equalising of interpretative opportunity". In legislative writing, on the other hand, the discourse strategies are designed primarily to do justice to the source rather than to facilitate comprehension of the unfolding text by any particular readership. Moreover, unlike many other varieties in which the communicative purpose of a piece of discourse is to inform the reader or to impart knowledge, the purpose of legislative writing is to regulate behaviour. We shall consider some of these factors in greater detail in subsequent sections but at this stage we would like to point out that the nature of the creative process underlying legislative writing is such that most of the available approaches to the analysis and description of language varieties do not seem to be directly relevant to our present purpose. Therefore, we shall not attempt a detailed review of all the available literature on the description of language varieties. Instead we shall consider only those studies which have either dealt with legislative writing or those approaches that, prima facie, would appear to be utilizable in this special area.

2.1 Approaches to the Description of Language Varieties

It is possible to identify three broad traditions in the description of language varieties. The earlier work on the description of

scientific English (Barber : 1962, Huddleston : 1971, Gopnik : 1972) and some on legal English (Crystal and Davy : 1969, Gustaffsson : 1975a) could be seen as belonging to what Halliday, McIntosh and Stevens (1964) described as the description of a language variety as a register. The second major tradition emerged in the 70s taking inspiration largely from the works of Austin (1962) and Searle (1969) on Speech Act Theory, Gumperz and Hymes (1964, 1972) on ethnography of speaking and from the ethnomethodological tradition in sociolinguistic studies of spoken interaction. The works of Widdowson (1973, 1979); Candlin, Bruton and Leather (1974, 1976) ; Candlin, Burton and Coleman (1980); Sinclair and Coulthard (1975); Sinclair (1980); Tadros (1981); Winter (1977) etc. could be seen to have been influenced by what may be called an interactional analysis of discourse. One may notice here the two traditions of speech and writing merging into one another, as writing in interactional analysis is viewed essentially as interaction, though, of a special kind. And, finally, the third major tradition in the analysis of scientific and technological writing has been the North American one represented in the works of Selinker, Trimble, Lackstrom and others (1972, 1973, 1976, 1977) which takes the name of grammatical-rhetorical analysis of discourse, particularly Scientific discourse.

2.1.1 Description of Language-Varieties as Registers

One of the earliest approaches to the description of language-varieties was characterized in terms of 'register', first used by Reid (1956) in the sense of 'text' variety and later developed by Halliday et al (1964) within the 'institutional

linguistics' framework of Hill (1958). Halliday et al (1964) distinguished two kinds of language variation: language variation in terms of 'social dialect', which they described as variation 'distinguished according to user'; and language variation in terms of 'register', which they 'distinguished according to use'. It was this second kind of variation which became the focus of widespread attention in the sixties and of fierce controversy in the seventies in applied linguistic literature.

Halliday and his associates (1964 : 87) postulated that 'language varies as its function varies; it differs in different situations. The name given to a variety of a language distinguished according to use is register'. They further claimed that registers could be differentiable as sub-codes of a particular language on the basis of the frequency of lexico-grammatical features of a particular text. They also proposed three situational and contextual dimensions in terms of 'field', 'mode', and 'style' of discourse to identify various registral characteristics. Although these situational and contextual categories have been variously refined and redefined in Gregory (1967), Crystal and Davy (1969), Ellis and Ure (1969), Hasan (1973) etc., registers are defined essentially in terms of lexico-grammatical features.

Two significant analyses of legal language which belong to this tradition are those of Crystal and Davy (1969) and Gustaffsson (1975). Under the name of general stylistics, Crystal and Davy proposed their own situational and contextual categories to capture some of the features of language variation which they

thought were not adequately handled within the system proposed by Halliday and his associates. In fact they do not propose new categories but rather refine those of Halliday et al, especially that of 'mode'. Under the name of general stylistic analysis they also draw quite interesting conclusions about the stylistic variation in the language of legal documents. Some of their conclusions are:

"It is a characteristic legal habit to conflate, by means of an array of subordinating devices, sections of language which would elsewhere be much more likely to appear as separate sentences."

- or "Legal English contains only complete major sentences. ... Most of these complete sentences are in the form of statements, with no questions and only an occasional command ...".
- or "One of the most striking characteristic of written Legal English is that it is highly nominal".
- or "Another source of oddity is the insertion of post-modifying elements at precisely those points in a group at which they will most clearly give the required sense".

Although these are perceptive observations about the surface features of legislative writing, they fall some way short of offering an explanation of why legislative language takes the form that it does, and it is reasonable to suppose that specialized language courses will be the more effective (Ceteris Paribus) for being informed by insights into the rationale underlying selection and distribution of surface linguistic features.

Another significant attempt to study the English Legislative writing has been that of Gustaffsson (1975c) who presents statistical evidence for some of the findings that

Crystal and Davy (1969) seemed to have reached by perceptive, but apparently incidental, motivation. She found that the average length of a sentence in her sample was much higher than those of other varieties of English represented in the Brown Corpus, especially that of science. The comparative figures she found, were 55.11 for law and 23.19 for science. Her findings about the clausal structure in legislative writing indicated that only 21% of the sentences in law were simple whereas the corresponding figures for science (from Barber 1962) were 41%. The average number of finite clauses per sentence in law was 2.86 with a maximum of 11 (2 independent and 9 dependent) clauses in a sentence. In terms of the type of dependent clause, she found that relative clauses (47%) and adverbial clauses (31%) far outnumbered the other types (that-clauses 10% and comparative clauses 11%). She also found that many of these clauses were inserted at sentence-medial positions - a position rare in other varieties of English. She also confirmed some of the statements found in Crystal and Davy (1969) about legal English, especially those regarding the high incidence of nominalization and the complex sequences of prepositional phrases.

Gustaffsson's study and those of others on the frequency of syntactic properties of different varieties of English are interesting and useful in the sense that they provide necessary empirical evidence to confirm or disprove some of the intuitive and impressionistic statements that we all tend to make about the high or low incidence of certain syntactic features of various

varieties of languages. However, such studies tell us very little about how these elements of syntax textualize in that variety or why and to what purpose such features are markedly present or absent in those varieties. The findings remain severally constrained by their emphasis on surface features and do not provide adequate information about the way information is structured in a particular subvariety. Commenting on the inadequacy of a language variety description in terms of its predominant lexico-grammatical features, Widdowson (1979 : 57) rightly observes that the selection of specific textual features in a given text may not be constrained by the field of discourse at all; it may be the result of specific conventions of the genre which the text represents - an observation, as we shall see, of particular pertinence to legislative writing.

2.1.2 Analysis of Discourse as Interaction

At the heart of all interactional analysis whether best described as "applied discourse analyses" of written texts (Widdowson : 1973), or in terms of "Speech functions" as in Candlin et al (1974, 1980) or "analysis of interactive discourse" (Sinclair and Coulthard : 1975 and Sinclair : 1980), or analysis of "predictive structures" (Tadros : 1981) or analysis in terms of "clause relations" (Winter : 1977), lies the notion of interpretation by the reader/listener. Discourse meaning, it is claimed, is not present in a piece of text ready to be consumed by the reader but is negotiated by the 'interactive' endeavour on the part of its participants engaged in an encounter and so giving

particular and individual appropriate values to utterances. In interactional analysis whether one characterizes discourse in terms of rhetorical acts (Widdowson : 1973) or in terms of "speech functions" Candlin et al (1974, 1980), or in terms of other communicative units like initiation, response, elicitation etc. (Sinclair and Coulthard : 1975), or in terms of "clause-relations" (Winter : 1977), or in terms of "predictive structures" (Tadros : 1981), the discourse is viewed as essentially interactive in nature, being created as it were, as a result of the reader's interpretation of the text.

This view of discourse rests on the assumption that "the same interpretative procedures are brought into play whether one is involved in actual production of discourse or not" (Widdowson : 1979 : 147), and that in written discourse, the writer assumes a hypothetical reader for whom he is supposed to be writing and anticipates his reactions and adjusts his writing accordingly so as to facilitate communication. In doing so he follows what Grice (1975) has termed as "the co-operative principle". Although this approach appears to be reasonably workable in most communicative situations, such a view of discourse simplifies the relationship between the production and the interpretation of discourse, which may be crucial in certain communicative situations, such as in the creation and interpretation of legislative documents. Such are the constraints under which legislative documents are created that the legal draftsman finds it difficult to fulfil all the maxims that Grice (1975) posits under "The co-operative principle". In particular, he often seems to opt out of the

maxim of quantity in order to incorporate in his legislative provisions every conceivable contingency that may arise in that provision, thus making his legislative provisions in Gricean terms "over-informative". Similarly, the attempt to avoid obscurity and ambiguity in his writing often generates sufficient prolixity to transgress the maxim of manner at least as far as its "brevity" aspect is concerned.

Many of these oddities in legislative writing could be attributable to a very different set of priorities and commitments on the part of the parliamentary draftsman. For him, his commitment to do justice to the intent of the parliament is much more important than to any reader requirements. Besides, it seems difficult for draftsmen to address their writing to a particular readership as it is meant for specialists (judges, lawyers etc.) and non-specialists (general public, public institutions, law students, etc.) alike. Furthermore, the relationship between those who write such documents and those who are most likely to interpret them in the court of law is rarely in the best traditions of co-operative behaviour. On the contrary, it is very close to what one might characterize as non-co-operative behaviour. The parliamentary draftsman's primary aim in writing a legislative document is to give a very precise and unambiguous expression to the will and intent of the parliament, even at the cost of producing a document which may be regarded by the reader as pompous, tedious and unnecessarily complex, and hence unreadable. As one parliamentary counsel put it,

"... there's always the problem that at the end of the day there's a system of courts and judges who interpret what the draftsmen has done. It is very difficult to box the judge firmly into a corner from which he cannot escape ... given enough time and given enough length and complexity you can end up with precision but in practice there comes a point when you can't go on cramming detail after detail into a Bin ... you have got to rely on the court getting the message and deducing from what you have said or, it may be often from what you haven't said as much from what you have said, what implications they are to draw in such and such a case ...".

(Caldwell : 1980)

In spite of the seeming impossibility of the task no effort is spared in legislative writing "to box" the reader firmly into a corner. On the other hand legislative provisions are meant to apply to real life situations and they are invariably interpreted in the context of a particular dispute and a professional's interpretation of a particular provision is likely to be conditioned and constrained by the facts of the case that provides the context for its interpretation. It is also likely that a particular interpretation taken in a particular case may not necessarily be the same as the one intended by the parliament.

Therefore, because of a very different and complex nature of the creative and interpretive procedures associated with legislative writing, any model of discourse analysis which views discourse from the vantage point of the reader is not likely to be suitable for the analysis of legislative provisions. Instead, a rather different perspective is required - one that places the reader requirements (in its normal sense of facilitating

comprehension) in an essentially and decidedly secondary position.

2.1.3 Grammatical-Rhetorical Analysis of Discourse

From an interactional analysis which studies discourse from a reader's vantage point, we now turn to the grammatical-rhetorical analysis of scientific discourse pioneered by Selinker, Lackstrom, Trimble and others (1970, 1972, 1974). As indicated in Lackstrom, Selinker and Trimble (1973 : 1) grammatical-rhetorical analysis aims "to investigate the relationship between grammatical choice and rhetorical function in the Written English for Science and Technology (EST)". They began by isolating two areas of grammar i.e. tense and articles, which they thought were typical sources of difficulty for students, and also the areas difficult to teach. Choices in these two areas of grammar, they discovered, were not solely dependent on syntax and semantics, but involved rhetorical judgements, including the knowledge of the subject matter and its conventions. Substantiating their claim with real examples from scientific discourse, Lackstrom, Selinker and Trimble (1970 : 109) conclude that whereas tense choices in general grammar of English are dependent on the notion of time, they are typically dependent on the notion of "degree of generality" in EST. Thus the present tense, they claim is used to express generalization in EST and is used only where technical rhetoric requires the expression of this meaning. Investigating on similar lines the function of attributive -en participles in Chemistry texts, Swales (1974) discovered that 'a given' in

phrases like 'a given experiment' and 'a given temperature' "has two principal functions : one for clarifying the 'status' of the sentence, the other for specifying the 'determiner range' of the NP ". Which of these functions operates is itself determined by whether the author is 'exemplifying' or 'generalising'.

The most interesting aspect of these two studies of the analysis of scientific writing is not their attempt to discover which linguistic items are more frequent in such writing, but their attempt to discover how specific linguistic features take on restricted values in the structuring of scientific communication. And, insights such as these are gained by reference to subject specific conventions and rhetorical considerations rather than to semantic specifications or pragmatic inferences. Unlike interactional analysts, grammatical-rhetorical analysts tend to investigate discourse from the writer's vantage point to consider how a scientist-communicator makes certain grammatical choices as he writes. However, the level of analysis in many of these studies of scientific writing is limited to only certain specific syntactic features of these texts. In spite of the significant individual explanations discovered for the use of these features, the analysis yields only limited information on the cognitive and information structuring in scientific discourse. Inadequate information on these aspects of text structuring may often lead to misleading generalizations as has been the classic case of definitions in scientific discourse which have long been regarded as belonging

to the rhetorical structure of scientific writing (Lackstrom : 1977, Selinker, Trimble and Trimble : 1976). In a recent study Swales (1981a) points out that definitions are by no means always part of the scientific competence of the scientist but rather a part of his communicative and pedagogic competence as a text-book writer. In more recent studies (see Tarone et al : 1981, Swales : 1981b and Pettinori : 1982), however, attempts have been made to raise the level of analysis by concentrating on larger stretches of discourse.

Secondly, and this applies equally well to the findings of interactional analysis too, the results of analysis must necessarily remain tentative until they are verified by someone who is either an informed reader or the writer of the text under consideration. Disputing many of the interpretations taken in Selinker et al (1976) in their analysis of scientific discourse, Widdowson and Urquhart (1976) demonstrate the need of a specialist validation of the analytical findings by applied linguists on specialist discourse. Selinker (1979) also probably realizing the difficulties that a non-specialist may have to face, argues in favour of the use of subject-specialist informants in discourse analysis and in further applied EST/EAP work. Working on genetics texts, he uses a trained geneticist as informant to help him formulate valid interpretations of the text he uses for analysis. Huckin and Olsen (1982) analysing the same genetics text and using the author of the text as their specialist informant discovered a number of significant discrepancies between the two interpretations, the ones reached by Selinker with the help of an informed reader

and the others reached by Huckin and Olsen with the help of the author of the Article. This raises two interesting issues rather crucial for our present purposes. Firstly, without under-emphasizing the role of a specialist informant in discourse analysis, it raises the question of the right choice of the informant and the most appropriate methodology that a researcher should employ in order to obtain satisfactory results. Further, if informed readers can - and they often do - take various interpretations of a text, none of which may be the one intended by the author, how far can a discourse analyst make safe and reasonable pedagogical statements for ESP teaching on the basis of an analytical model which relies not only on a view of text that implies that comprehension is recreation but also on a non-specialist analyst's interpretation of the text as generally is the case in all interactional analysis? Secondly, it raises the issue of the right kind of perspective on discourse, which an analyst must adopt to get useful insights from his analysis. Therefore, before outlining the approach adopted for the present investigation, it will be in order to consider in more detail the two issues raised in the discussion so far.

2.2 Legislative Writing and the Question of Perspective

In any communicative situation there are at least two participants involved : the writer/speaker/encoder and the reader/hearer/decoder. These two participants communicate through the mediation of a text (spoken or written). Among the many factors that make the communication possible is the assumption that the two participants share not only the

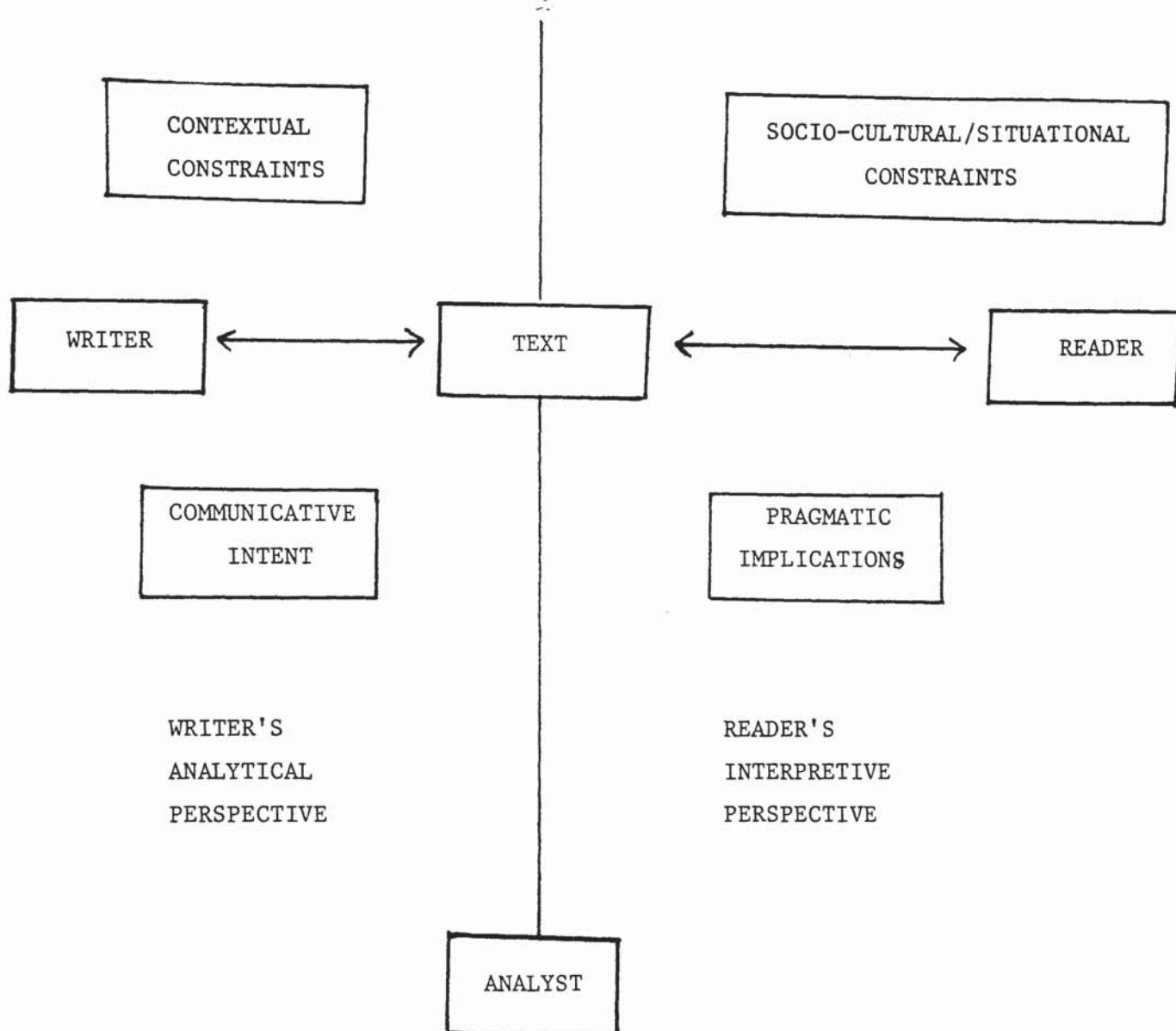
rules of the code but also the rules of language use and subject specific conventions and so on. In other words, the knowledge of the code and its use for technical communication which is invoked by the writer/speaker in encoding the text is assumed to be equally accessible to its intended reader. In the event of any mismatch in this regard, the text is likely to be misunderstood by its reader. In an oral face-to-face communication any such misunderstanding may be rectified when the listener seeks clarification, explanation etc, whereas in a written communication such opportunities are less easily available. The chances of miscommunication are further enhanced in the case of a technical communication where the writer tends to give restricted values to linguistic features in the structuring of technical communication. Candlin (1978 : 1) seems to emphasize this aspect of (mis)-communication when he says :

"Writings in the area of mutual intelligibility have almost certainly underestimated potential misunderstanding by under emphasizing or failing to take account of variability in discorsal value, as between speaker's (or writer's) intent and hearer's (or reader's) uptake".

Miscommunication therefore can either result from the fact that the writer and the reader do not share the same background knowledge, which can be social, cultural or academic, or it can be due to the fact that the writer has intentionally left certain aspects of the text vague, imprecise or ambiguous, or it may be because the reader does not have the same access to the subject/genre specific conventions or requirements which the writer uses to assign restricted values to specific linguistic and discorsal features of the text. In either case, the task of the analyst is not only to study "how we understand discourse" as has been emphasized by Labov (1972) and taken up in interactional analysis but also to study how the writer assigns specific rhetorical values to

various linguistic and discorsal features in the structuring of a particular text. Diagram 1 (on the following page) illustrates the differences between the two perspectives on discourse that may be available to the analyst. The "writer's analytical perspective" provides a focus on the encoding-situation by taking into account the factors such as the contextual constraints, including any subject/genre specific conventions, and the communicative intent of the writer etc. The "reader's interpretive perspective" on the other hand, tends to concentrate on the reading situation by investigating those factors which seem to have some influence on the reader's interpretation of the text, such as the socio-cultural and other situational constraints and pragmatic implications etc. Although it is not possible to keep the two perspectives entirely exclusive of each other and most approaches to discourse analysis adopt a certain combination of the two, it is more than likely that a particular approach will emphasize one or the other aspect of a communicative situation.

As legislative writing is a conventionalized communicative event where the emphasis is on "product value" rather than on "sales appeal", it is more appropriate for applied analytical purposes to capture the thinking underlying this writing as a first requirement by adopting what we have described above as the "writer's analytical perspective". This does not mean that legislative sentences do not give rise to more than one arguable interpretation and that an ability to extract variability in interpretation is considered a lesser virtue on the part of a lawyer. In fact, legislative sentences display a greater potentiality for variability in interpretation than sentences in most other written varieties but the sincerity and validity of any such variable inter-



How the writer makes
his decision as he writes

How a reader makes
sense as he reads a text.

Legislative
writing

DIAGRAM 2.1
Differences between the two
'PERSPECTIVES'

Creative
literature

pretation largely depends on the degree to which the interpreter understands the thinking underlying legislative documents.

Thus, it follows that, if the ultimate aim of the analytical task is to make legislative acts more readily accessible to EALP students, it is more appropriate to view these documents from the vantage point of the author rather than that of the reader. A reader's interpretive perspective may be more suitable for those communicative situations where variability in interpretation is considered a desirable virtue as in the case of literary writings.

2.3 The Role of a Specialist Informant

The use of informants in fieldwork is part of an established research methodology in ethnographic studies (Agar : 1980). However, its use in discourse analysis has been of a fairly recent origin. Also, in ethnographic research, the informant is used to gather primary data for analysis, whereas, in discourse analysis, an informant is invariably a subject-specialist who is generally used for hypothesis confirmation and specialist reaction. Two kinds of specialist informants are reported to have been used in available literature : an informed reader and the author of the text that is analysed. In section 2.1.3. above we briefly referred to two studies (Selinker : 1979, and Huckin and Olsen : 1982) which used these two types of specialist informants. It was also indicated that their specialist reactions on different aspects of the same text were not always similar, pointing to the importance of choosing a suitable specialist informant and deciding upon an appropriate methodology for getting the best out of him.

In our experience, there seem to be obvious advantages in selecting a specialist informant -

- (i) who is the native speaker of the language in which the text is written;
- (ii) who is a trained subject specialist, preferably the author of the text to be analysed;
- (iii) with whom it is possible to establish, what in ethnographic research is called "a rapport with the informant";
- (iv) who shares not only a common interest in the analytical work but also a common language with the researcher; and
- (v) who is likely to receive some benefit from the analytical research, in that it either helps him in his work or enhances his reputation as a professional.

We also found it useful to conduct discussion-sessions with the specialist informant in an informal fashion although we always worked out beforehand a set of hypotheses on which we needed a specialist reaction. We discovered that it was helpful to have an open mind about these hypotheses and be prepared to change our frame of thinking if we did not get the required reaction, rather than 'forcing' the specialist informant to give the answers that we so desperately required. There may be advantages in transcribing the data in detail, particularly after the first session, and sending a copy to the specialist informant for his opinion and comments. In our experience, it was of considerable benefit to both the specialist informant and to us. The specialist informant got an opportunity to evaluate his reactions and rephrase or

change them, if necessary, for better effect. This also served as an indication to him that his contribution to the research was being adequately valued by us. On our part, we, from the transcribed script, were able to see the emerging pattern of discussion, which helped us organize our subsequent sessions better. We were also able to see if there were any points which had been dealt with at more than one place and if so, to relate them adequately.

We also discovered that the role of the specialist informant may not necessarily be confined to the validation of analytical findings alone, it could also significantly contribute to the formation and modification of hypotheses. Sometimes he can provide insights which are not available from the study of textual data at all. Let us take an example from our own analysis.

In legislative writing some of the complex-prepositional phrases like '... in pursuance of section 4 of the 1960 Act ...', '... in accordance with the following provisions ...', 'by virtue of section 26 of this Act ...' and a prepositional phrase '... under the provisions of this section ...' are very commonly used to refer to textual authority laid down in a section or an act other than the one in which it is used. To a non-specialist who tries to differentiate between the use of one or the other on the basis of linguistic clues, these may appear to be interchangeable. The syntactic environments in which they occur do not always help a non-specialist to decide if the difference in their use is merely stylistic or a more fundamental one. The following example will make this clear.

(1) The Secretary-General of the Council of Europe shall notify the member States of the Council of :

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or approval;
- (c) any date of entry into force of this Convention in accordance with Article 11 thereof;
- (d) any declaration or notification received in pursuance of the provisions of Article 12;

.....

(The Extradition (Suppression of Terrorism) Order 1978

In both the examples underlined above reference is made to earlier sections of the order but the expressions used to refer to them are different in each case. Our first impression was that perhaps, 'in pursuance of' was used where the reference was to 'the provisions' of a particular section or article whereas 'in accordance with' was used to refer to 'acts' or 'articles' as such. However, such an impression was soon proved wrong when we came across several examples where 'provisions' collocated with 'in accordance with' and 'in pursuance of' with 'article '. At this stage we discovered that the study of this textual data was not very helpful and that we needed to look at the 'cross-textual' data i.e. Articles 11 and 12 to which the two qualifications in (1) referred to. So our next move was to study the nature of these two articles and see if there was anything in the nature of these two articles which required the use of two different complex-prepositional phrases to refer to them. The two articles were:

Article 11

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the Council of Europe.
2. The Convention shall enter into force three months after the date of the third instrument of ratification, acceptance or approval.
3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 12

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Convention shall apply.
2. Any State may, when depositing its instrument of ratification, acceptance or approval or at any later date, by declaration addressed to the Secretary-General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.
3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration,

be withdrawn by means of a notification addressed to the Secretary-General of the Council of Europe. Such withdrawal shall take effect immediately or at such later date as may be specified in the notification.

(The Extradition (Suppression of Terrorism) Order 1978)

On studying the two Articles 11 and 12 we discovered that in addition to its primary rhetorical function of referring to legal authority laid down in Article 11, in accordance with in example (1)(c) also specified the manner in which 'any date of entry into force' of this Convention was to be worked out. The obligation seemed to be of a stringent nature especially in the way it laid down the procedural steps in Article 11 which were to be followed. On the other hand, in pursuance of in the same example (1)(d) carried a kind of resultative meaning which implied that a 'declaration or notification' could take effect only if the provisions of Article 12 were pursued and following such a course of action was a matter of voluntary adoption. The two interpretations received further support from the reading of the two Articles. The typical use of 'may' in all the three subsections of Article 12 made the provisions a matter of voluntary adoption and this seemed to justify the use of in pursuance of in (1)(d). As against this, the mandatory use of 'shall' in Article 11 gave strength to the claim that the nature of reference to legal authority in the use of two complex-prepositional phrases was not the same. In other words, the two instances of complex prepositional phrases in (1) indicated specific legal relationships which this particular section of the document had with Articles 11 and 12 to which they referred back. The two expressions were assigned restricted values - an ascription

justified by the different nature of legal authority in Articles 11 and 12. This hypothesis was confirmed by a specialist reaction from a Parliamentary Counsel (Caldwell ; 1980) who, when asked about the kind of requirements he would expect in Articles 11 and 12 from the reading of example (1) said :

"I guess you'll find that Article 11 refers to the method by which the Convention is brought into force ... it will be ratified State by State and perhaps only when a certain number of States have signed it will come into force. These are, in other words, procedural steps to be complied with under Article 11 So, the coming into force 'in accordance with' Article 11 means that all the requirements of Article 11 have been met ... it is not just that Article 11 tells you that the treaty will come into force ... it tells you when and how precisely ... and the Convention does not come into force unless events have accorded with those requirements ... but a declaration or notification received 'in pursuance of' does not tell you anything more than that a declaration or notification has been received because section so and so obliged you to declare or notify strictly speaking the difference here is that one Article requires the meeting of certain procedural requirements whereas the other is just giving the authority under which something is done"

Obviously, by studying 'cross-textual' data we were able to discover what restricted values were assigned to these two complex-prepositional phrases in the structuring of example (1). However, we also found that there were at least two instances where 'in pursuance of' and 'in accordance with' were used in contradiction to our hypothesis, indicating as though the two expressions were interchangeable. This prevented us from making any generalization with any degree of certainty. In the course of our discussion with the specialist informant we pointed it out and asked how far the use of these two complex-prepositional phrases in their restricted sense was a general feature of legislative writing. His reaction was :

" ... Obviously there's pretty general consensus about what these complex-prepositional phrases mean ... some of them are in a sense similar, with perhaps shades of meaning. If you've got a spectrum at one end of which 'in pursuance of' will clearly be right and 'in accordance with' clearly wrong; but then, somewhere, in the middle they might be interchangeable ..."

(Caldwell : 1980)

Insights such as these are not easily available from the study of textual and 'cross-textual' data and thus the role of the specialist informant becomes all the more valuable.

2.4 The Present Approach

The procedure adopted for the present investigation could be considered eclectic in the sense that it builds on what is already available and considered relevant, keeping in mind the nature of legislative writing and the ultimate purpose of the analytical task. As mentioned earlier, the primary aim of legislative writing is to give a clear, precise and unambiguous expression to the intent of the Parliament and to achieve this the draftsman uses an array of linguistic and rhetorical devices which have been tried and tested over a long period of time. Most legislative sentences display a complex interplay between the main provisionary statement and a variety of qualifications which surround it. This reflects the typical cognitive structuring underlying this kind of writing. Since the aim of the analytical task is to understand this system of linguistic and rhetorical structure, giving it a typical legislative character, the perspective adopted for analysis is the one we have termed as the writer's analytical perspective. Through this an attempt has been made to study the factors that affect the draftsman's choice of such key syntactic and rhetorical

features; or to put it more simply, to capture the thinking underlying this writing. Although the present methodological approach draws to some extent on the methodology of register analysis to identify some of the predominant lexico-grammatical features of legislative documents as a preliminary step, it is not restricted in its findings to surface features alone. Further, there are certain superficial similarities between the approach adopted here and the one used in grammatical-rhetorical analysis, especially the way both the approaches adopt the writer's analytical perspective on discourse and the way both study specific features of textualisation. However, the present attempt differs from those of Lackstrom et al (1970, 1972, 1974) in two important aspects. Firstly, unlike grammatical-rhetorical analysis where the level of analysis has largely been restricted to certain specific features of syntax, in the present analysis an attempt has been made to understand the rationale of legislative statements concentrating on issues like how and why legislative documents are written the way they are. Secondly, unlike grammatical-rhetorical analysis the findings of the present investigation have been constantly checked and verified at various stages throughout the whole period of investigation by obtaining a specialist reaction from a Parliamentary Counsel who was also a prominent member of the team that wrote the 'Housing Act 1980', the object of analysis in the present investigation.

The investigation, therefore, consisted of a selection of a suitable and manageable corpus out of the massive statute book; the preparation of an inventory of statistically significant surface features, often relying on earlier studies and on a partial frequency analysis; the selection of those surface features which were considered problematic for EALP learners (relying on empirical evidence

gathered during the investigation) and which played the most significant role in the rhetorical and cognitive structuring of legislative writing; investigation of the function, role and distribution of these features in the corpus especially the study of how these features textualized various aspects of legislative writing in the communication of legal rights and obligations, permissions and prohibitions etc., formulation of emerging hypotheses; verification of the findings by obtaining a specialist reaction at various points of investigation; and study of the pedagogical relevance of these findings for EALP situations.

2.5 Corpus

2.5.1 Selection

The corpus selected for the present investigation consisted of the 'Housing Act 1980'. The length of the Act is about 100,000 running words and contains 155 sections and 26 schedules. There were several reasons for choosing this particular Act out of the massive statute book. Firstly, this was one of the most recent Acts of Parliament. Secondly, its length was considered reasonably adequate for making meaningful generalizations and yet manageable for manual analytical investigations. Thirdly, its subject matter was of general and current interest. Finally, and perhaps most importantly, one of the Parliamentary Counsel who was largely responsible for its drafting had agreed to act as a specialist informant and this was a piece of serendipity that could not be lightly ignored.

2.5.2 Information Structuring

The 'Housing Act 1980' (Chapter 51 : 1980) forms a part of the body of law known as the 'Housing Act' under which the Parliament has passed a number of individual 'Housing Acts' such as 'The Housing Act 1957', 'The Housing Act 1961', 'The Housing Act 1964' etc.

'The Housing Act 1980' consists of nine parts and 26 schedules. Each part contains a number of sections and each section is further subdivided into several subsections. Each section and subsection is numbered thus making cross-referencing both simple and explicit. All sections carry a heading in the margin and no subsection contains more than one orthographic sentence defined as beginning with a capital letter and ending with a full stop. Each section encodes at least one major provision, often signalled through the heading, and one or more minor provisions which are thematically connected with the major provision. Occasionally, one comes across a major provision split into two sub-provisions encoded in two different subsections of the same section. The rest of the subsections state various conditions and qualifications which either explain or further define various aspects of the provision(s) or specify their restricted scope or state various other circumstances under which the provision(s) operates or does not operate. The following example will make the picture more explicit :

(2)

(1) The price payable for a dwelling house on a conveyance or grant in pursuance of this Chapter is -

- (a) the amount which, under this section, is to be taken as its value at the relevant time; less
- (b) the discount to which the purchaser is entitled under this Chapter.

(2) The value of a dwelling-house at the relevant time shall be taken to be the price which, at that time, it would realise if sold on the open market by a willing vendor on the assumptions stated, for a conveyance, in subsection (3) below and, for a grant, in subsection (4) below, and disregarding any improvements made by any of the persons specified in subsection (5) below and any failure by any of those persons to keep the dwelling-house in good internal repair.

(3) For a conveyance the assumptions are that -

- (a) the vendor was selling for an estate in fee simple with vacant possession;
- (b) neither the tenant nor a member of his family residing with him wanted to buy; and
- (c) the dwelling-house was to be conveyed with the same rights and subject to the same burdens as it would be in pursuance of this Chapter.

(4) For the grant of a lease the assumptions are that -

- (a) the vendor was granting a lease for 125 years with vacant possession (subject to paragraph 11(2) of Schedule 2 to this Act;
- (b) neither the tenant nor a member of his family residing with him wanted to take the lease;
- (c) the ground rent would not exceed £10 per annum; and
- (d) the grant was to be made with the same rights and subject to the same burdens as it would be in pursuance of this Chapter.

(5) The persons mentioned in subsection (2) above are -

- (a) the secure tenant;
- (b) any person who under the same tenancy was a secure tenant before him; and

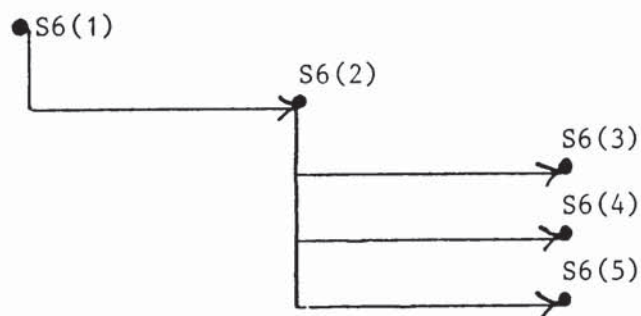
- (c) any member of his family who, immediately before the secure tenancy was granted, was a secure tenant of the same dwelling-house under another tenancy.

(Section 6)

In the above example, subsection (6.1) makes a major provision for the calculation of the price of a dwelling-house payable on a conveyance or grant, which is the value of the dwelling-house minus the discount to which the purchaser may be entitled to. The following subsections i.e. 6(2), 6(3), 6(4) and 6(5) make no further provision but rather elaborate on the various aspects of this main provision. 6(2) defines the concept of 'value' mentioned in 6(1). The 'value' of a dwelling-house is defined in terms of the price it would realise in the open market under two separate sets of assumptions, one for conveyance and the other for grant, disregarding any improvements made by certain people. Subsections 6(3), 6(4) and 6(5) are not directly connected with 6(1) but with 6(2) in that they elaborate on 'assumptions for a conveyance', 'assumptions for a grant' and 'persons mentioned in 6(2)' respectively all of which are mentioned in 6(2). The connections are also signalled in (6.1) by under this Section meaning subsequent subsections only, and by 'in subsection 3 below', 'in subsection 4 below', and 'in subsection 5 below' in 6(2). The theme of each subsection i.e. 6(2), 6(3), 6(4) and 6(5) is also signalled by making key aspects of the provision thematically focussed in each subsection. The lexical repetition of 'The value', 'for a conveyance the assumptions', 'For the grant of a lease the assumptions' and

'The persons mentioned in subsection (2) above' not only makes the theme of each subsection explicit but also provides for topic continuity. So, although the section is split into various subsections, each containing one and only one self-contained sentence, the subsections are thematically and rhetorically connected and the connections are signalled very explicitly. The concept of 'discount', although mentioned in 6(1), is not taken up in section 6 for further elaboration and this is again signalled by the phrase 'under this Chapter', implying that the elaboration could be found somewhere else in the Chapter.

The elaboration of information in Section 6 seems to take place along a horizontal plane in the sense that there is only one provision and various aspects of this very provision are picked up in subsequent subsection for further elaboration, giving it a structure like the following :



As against this "horizontal" elaboration of information in Section 6, one can also find sections where a "vertical" elaboration is preferred. In such vertical elaborations, each subsection of the section contains complete information within itself; this generally occurs in sections in which each subsection carries a separate but related subprovision. This seems

to be the case in Section 2 below :

(3)

(1) The right to buy does not arise if the landlord is a housing trust which is a charity within the meaning of the Charities Act 1960.

(2) The right to buy does not arise if the landlord is a housing association which either -

(a) is a charity (within the meaning of the Charities Act 1960); or

(b) falls within paragraph (d) of section 15(3) of the 1977 Act (certain societies registered under the Industrial and Provident Societies Act 1965); or

(c) has at no time received a grant under section 119(3) of the 1957 Act, section 29, 31, 32 or 33 of the 1974 Act or under any enactment mentioned in paragraph 2 of Schedule 2 to that Act.

(3) The right to buy does not arise unless the landlord owns the freehold.

(4) Subject to subsection (5) below, the right to buy -

(a) does not arise in any of the circumstances mentioned in Part I of Schedule 1 to this Act, and

(b) cannot be exercised in any of the circumstances mentioned in Part II of that Schedule.

(5) The Secretary of State may by order enable the right to buy to be exercised in relation to dwelling-houses held by local authorities otherwise than under Part V of the 1957 Act or such descriptions of such dwelling-houses as may be specified in the order; and any such order may contain such supplementary provisions, including provisions modifying the following provisions of this Chapter, as appear to the Secretary of State necessary or expedient.

(Section 2)

In this section the five subprovisions are listed, as it were, on a vertical plane. Qualifications, conditions, elaboration etc.,

necessary for each subprovision (if any) are contained in that very subsection, so that the information organization in it looks like this:

Section 2 (1)•
 ↓
 (2)•
 ↓
 (3)•
 ↓
 (4)•
 ↓
 (5)•

Not surprisingly, the Act also contains sections which display elaboration process along both the planes simultaneously, as in the following example :

(4)

(1) The amount which a secure tenant exercising the right to a mortgage is entitled to leave outstanding, or have advanced to him, on the security of the dwelling-house is, subject to the limit imposed by this section, the aggregate of -

(a) the purchase price;

(b) so much of the costs incurred by the landlord or the Housing Corporation as is chargeable to the tenant under section 21; and

(c) any costs incurred by the tenant and defrayed on his behalf by the landlord or the Housing Corporation.

(2) The amount mentioned in subsection (1) above is subject to the limit that it does not exceed the amount to be taken into account, in accordance with regulations under this section, as the tenant's available annual income multiplied by such factor as, under the regulations, is appropriate to it.

(3) Where the right to a mortgage belongs to more than one person the limit is the aggregate of the amounts to be taken into account in accordance with the regulations as the available annual income of each of them, after multiplying each of those amounts by the factor appropriate to it under the regulations.

(4) The Secretary of State may by regulations make provision for calculating the amount which is to be taken into account

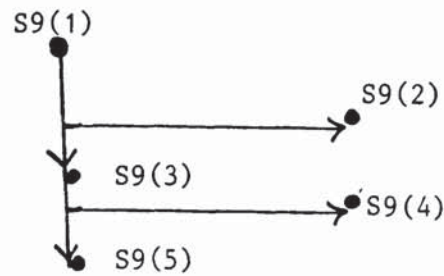
under this section as a person's available annual income and for specifying a factor appropriate to it; and the regulations-

- (a) may provide for arriving at a person's available annual income by deducting from the sums taken into account as his annual income sums related to his needs and commitments, and may exclude sums from those to be taken into account as a person's annual income; and
- (b) May (without prejudice to the generality of section 151(3) of this Act) specify different amounts and different factors for different circumstances.

(5) Where the amount which a secure tenant is entitled to leave outstanding on the security of the dwelling-house is reduced by the limit imposed by this section, the landlord may, if it thinks fit and the tenant agrees, treat him as entitled to leave outstanding on that security such amount exceeding the limit but not exceeding the aggregate mentioned in subsection (1) above as the landlord may determine.

(Section 9)

In example (4) Section 9, we have a major provision regarding the amount to be secured while exercising the right to a mortgage in subsection 1. Subsection 2 is an elaboration of the concept of 'amount' as mentioned in the main provision along the horizontal plane. Subsection 3 states a subprovision under the major provision in 1 along the vertical plane and subsection 4 elaborates on the notion of regulations mentioned in subsection 3. Subsection 5 again states a subprovision under subsection 1 along the vertical plane, making the connections explicit by the repetition of lexical items like 'the amount', 'the limit' and 'the aggregate mentioned in subsection 1'. The structuring of information proceeds along both the dimensions in this case, giving a structure like this :



The three examples discussed above may seem at first sight complicated in terms of information structuring, but by dividing a section into various subsections, and by structuring subprovisions along the vertical plane and qualifications along the horizontal plane, and by explicitly signalling the rhetorical as well as thematic connections either by lexical repetition or prepositional phrases or by both, the task of reconstructing the legal provision is considerably facilitated in such sections. However, the task of reconstruction becomes considerably more difficult where the legal provision and all its attendant qualifications are enclosed within a single sentence. And, it is sections like these that specialists and non-specialists alike find difficult to process and interpret. The task is further complicated in some sections where within a single orthographic sentence two or more provisions are incorporated each appropriately "festooned" with its attendant qualifications.

2.5.3 Qualifications and Rhetorical/Cognitive Structuring in Legislative Writing

The use of qualifying expressions in English is such a pervasive phenomenon that "it is possible at all levels of language : it may be a matter merely of adding a derivational

morpheme (poor-poorish), inserting a word or phrase (e.g. perhaps or probably), replacing an expression by another (e.g. substituting might for may, as an implicit qualification), adding a subordinate clause and, in more complex cases, elaborating by means of a separate sentence, or even a paragraph" (Nyyssonen : 1981).

They serve a variety of linguistic and pragmatic functions in discourse such as tentativeness and tact (Leech and Svartvik : 1975), avoidance of overstatement (Miller and Nilsen : 1966: 151-52) and, cancellation, suspension and reinforcement of certain pragmatic presuppositions and implications (Lakoff : 1972: 572-73: Lyons : 1977 : 595-96; Sadock : 1978: 292-94). Qualifying expressions, thus, are generally used to make the listener or reader aware of the implications of utterances. In legislative writing, however, qualifications are more central to the rhetorical structuring of legislative provision and form the basis of the underlying cognitive structuring. They seem to provide the essential flesh to the main proposition in the legal provision without which it will be nothing more than a mere skeleton, of very little legal significance. As our specialist informant put it,

"if you extract the bare bones what you end up with is a proposition which is so untrue because the qualifications actually negative it all it's so far from the truth It's like saying that all red-headed people are to be executed on Monday, but when you actually read all the qualifications, you find that only one per cent of them are"

(Caldwell : 1982)

Qualifications form an important part of the linguistic repertoire of the legal draftsman. This may be due to the fact

that qualifications, particularly (complex) prepositional phrases and subordinate clauses, are syntactically mobile and the legal draftsman tends to take full advantage of their mobility to insert them at various syntactic positions to achieve, on the one hand, clarity, unambiguity and precision and, on the other hand, all-inclusiveness.

As we shall see in the subsequent chapters of the present study, qualifications in legislative statements

- (i) are statistically significant (Chapter 3,4,5);
- (ii) are of an above-average length and have typical linguistic realizations (Chapter 3,4,5);
- (iii) are functionally characterizable, in that they serve a variety of legal and discoursal functions and textualize significant aspects of legislative provisions (Chapter 3,4,5);
- (iv) occur in a variety of clause and phrase-medial syntactic positions, thereby creating syntactic discontinuity in legislative sentences (Chapter 3,4,5 and 6); and, thus
- (v) have significant psycholinguistic implications for the processing and understanding of the provision in which they occur (Chapter 6).

Finally,

- (vi) these qualifications contribute significantly to the development of an EALP methodology which is helpful not only in the presentation of reading material but also in making it more accessible to uninitiated student-readers of legal documents.

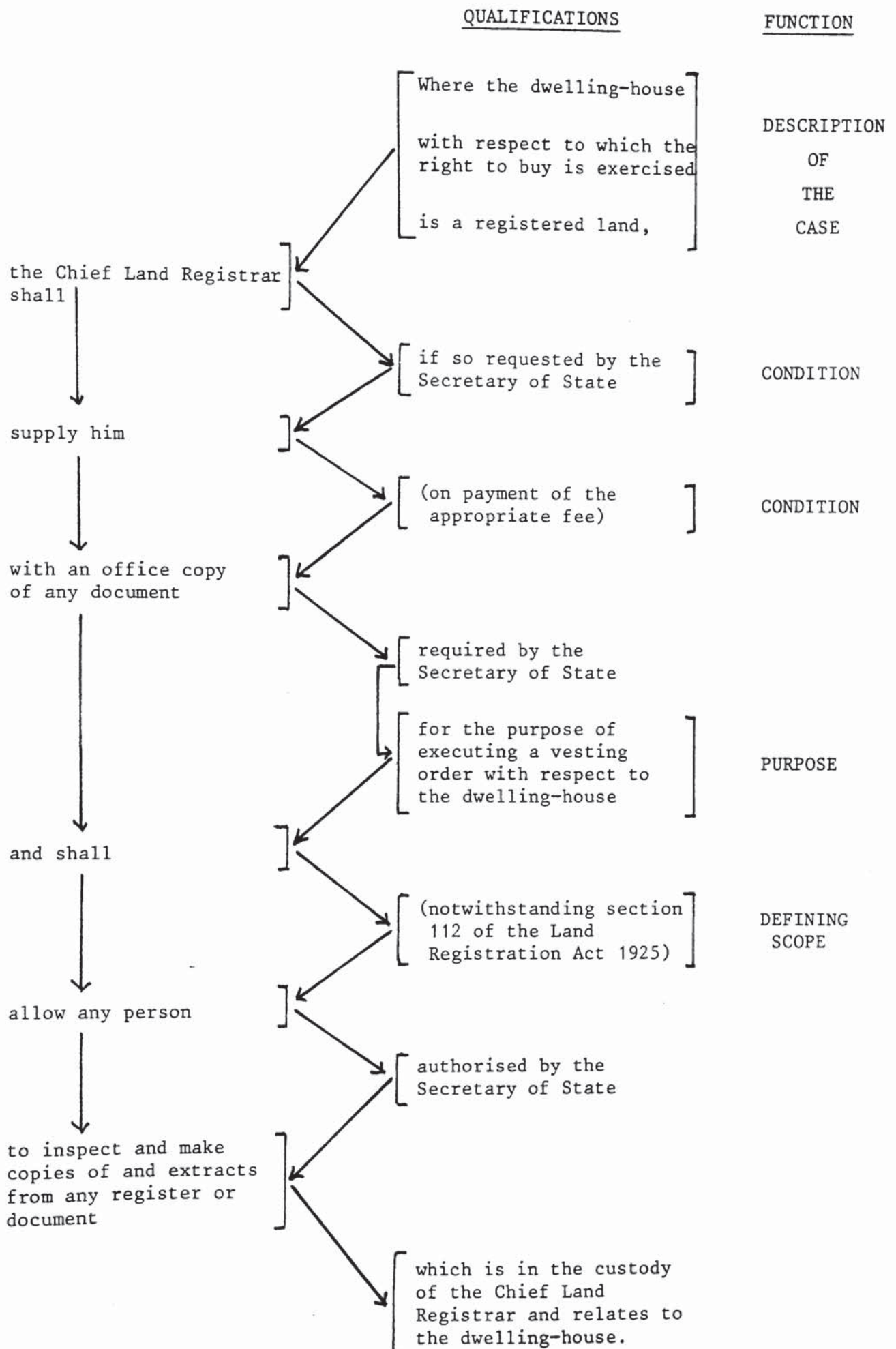
We shall have an opportunity to study in detail the various aspects of legal qualifications in subsequent chapters. However, at this stage we would like to take an example from the 'Housing Act 1980' and see how some of the qualifications manifest themselves in the structuring of legislative provisions.

(5)

Where the dwelling-house with respect to which the right to buy is exercised is a registered land the Chief Land Registrar shall, if so requested by the Secretary of State, supply him (on payment of the appropriate fee) with an office copy of any document required by the Secretary of State for the purpose of executing a vesting order with respect to the dwelling-house and shall (notwithstanding section 112 of the Land Registration Act 1925) allow any person authorised by the Secretary of State to inspect and make copies of and extracts from any register or document which is in the custody of the Chief Land Registrar and relates to the dwelling-house.

(Section 24 subsection 5)

The example above gives not only a clear indication of the complexity of individual qualificational insertions in legislative writing but also an indication of the variety of such qualifications. Another version (5a) of the same example on the following page gives a more explicit display of such qualifications on the horizontal dimension. Apart from the qualificational insertions like the relative or reduced relative clauses like 'with respect to which the right to buy is exercised', 'required by the Secretary of State', 'authorised by the Secretary of State' etc., that one may find in ordinary writing, there are some which specifically seem to belong to this kind of writing not only because of their linguistic form, especially some of the key



complex-prepositional phrases (See Swales and Bhatia : 1980), but also because of their typical legal function. Their function seems to be typically legal because they are meant to answer legal questions and doubts that might be legitimately raised in the context of the legal provision that the sentence is meant to encode.

Earlier studies (Coode : 1848, Driedger : 1957, Crystal and Davy : 1969, and Dickerson : 1965) of this aspect of legislative writing had a tendency to oversimplify the multiple complexity of qualifications in this variety. Coode identified two of these qualifications i.e. the description of the case to which the provision applies and the statement of 'conditions' on the fulfilment of which the legal action becomes operative (See Chapter 1 section 1.2 of this study). In (5a) we find two more types of qualifications which are relevant to the provision in that example :

- (A) that which states the purpose for which the legal action is being provided (which is, to enable the Secretary of State to execute a vesting order with respect to the dwelling-house); and
- (B) that which defines the legal scope of the action (which is, to resolve the conflict between this new provision and the one in section 112 of the Land Registration Act 1925).

Since all these qualifications seem to be essential for a clear and unambiguous statement of the legal action, they must

all be incorporated within the same provision. Sometimes it is possible to include these qualifications under separate subsections as was done in examples (2) and (4) in section 2.6.2. of this study but in a number of cases these are considered more appropriately as part of the same subsection. And it is legislative sentences like these, which contain all their relevant qualifications in the same sentence, some of them at very unusual clause-medial positions, that create specific psycholinguistic problems for readers, specialists and non-specialists alike, in the processing and construing of such sentences by imposing excessive strain on short-term memory. Qualifications in such provisions by their typical and yet manifold surface realizations give a complex patterning to the legislative sentence, and such complex patterning would appear to require certain specific reading and processing strategies on the part of the apprentice-reader of such documents, whether native or non-native speaker of English who needs to be able to cope with it. We shall take up in more detail the problem of textual processing and the kind of reading strategies essential for it in Chapters 6 & 7. However, it is important to note here that the notion of qualification has been considered the most significant aspect of the structuring of the legislative sentence because it is statistically significant, functionally characterizable, psycholinguistically problematic and pedagogically relevant. And, it is for these reasons that qualifications in legislative writing have been chosen for intensive investigation for the purposes of the present study.

2.6 Qualifications in Legislative Writing : a functional classification

Although some legislative sentences can be regarded as 'non-provisionary' in that they do not encode separate provisions but only qualifications, terminological explanations, definitions etc. which elaborate on certain aspects of the provisions they refer to, a great majority of them are 'provisionary' in the sense that they encode legal provisions which specify rights and obligations of individuals and those of the executive responsible for implementing them. In example 4 quoted earlier in this Chapter, subsection 9(1) is 'provisionary' whereas subsection 9(2) can be considered as 'non-provisionary' because it simply elaborates on the limit imposed on the amount to be secured while exercising the right to a mortgage.

All 'provisionary' sentences have two essential elements and a number of optional elements. Essential elements are the legal subject (LS) which refers to a particular person who is either given a right or who is expected to fulfil certain obligations, and the legal action (LA) which is the statement of that particular right or obligation. These two elements of the legal provision correspond fairly well to the linguistic categories of subject and predicate in a sentence and we shall refer to them as elements of the main provisionary clause. Optional elements [Q] in a legal provision consist of a variety of qualifications which elaborate on the various aspects of the legal provision as in the following case:

(6)

(Q₁) : Where a body which is registered -
[Case-
Description] (a) has not at any time received a
grant under section 29 or section
32 below or any such payment or
loan as is specified in paragraph
2 or paragraph 3 of Schedule 2 to
this Act; and

(Q₂) : (b) requests the Corporation to remove
[condition] it from the register; .

LS : the Corporation
[Legal
Subject]

LA : may, remove it from the register
[Legal
Action]

(Q₃) : if they think fit.
[Volitional]
Control

[Subsection 2 of Section 128]

In the example above, apart from the obligatory elements (LS and LA), there are three optional elements, Q₁ indicates that the provision is not universally applicable but only to a certain description of cases, Q₂ specifies the condition on the fulfilment of which the provision becomes operative and Q₃ indicates that LS has a certain degree of volitional control over LA.

Of all the typical legal qualifications that have been used in 'Housing Act 1980', it has been possible to identify ten major functional types, each of which serves one or the other of the following functions:

- (1) DESCRIBING CASE(S) to which the legal action applies,
- (2) SPECIFYING CONDITION(S) on the fulfilment of which the legal action becomes operative,
- (3) ASSIGNING VOLITIONAL CONTROL which indicates who initiates or controls the legal action,
- (4) SPECIFYING LEGAL MEANS which are required to be used in order to accomplish the legal action,
- (5) ASCRIBING LEGAL PURPOSE which the legal action is meant to fulfil,
- (6) EXPRESSING TEMPORAL RELATIONS,
- (7) INDICATING TEXTUAL AUTHORITY for various actions,
- (8) REFERRING TO TERMINOLOGICAL EXPLANATIONS,
- (9) PROVIDING TEXTUAL MAPPINGS,
- (10) DEFINING LEGAL SCOPE of the legal provision.

If a legal draftsman has to incorporate such qualifications in his legislative statements in order to achieve to an adequate degree the dual objectives of preciseness and completeness, it is clear that the 'contextual' legal constraints have a powerful repercussive effect on both the rhetorical structure and the linguistic form, in that the legal requirement of expressing something by means of feature 'A' would predispose the use of feature 'B' and that 'A' and 'B' would predispose feature 'C' and so on. This is particularly noticeable in the tendency to rely heavily on prepositional and nominal phrases in legislative sentences. Obviously, the requirements underlying the processes of composing legislative statements are not immediately jettisonable in order to satisfy the populist demand for 'plain language' law. Legal sentences have reasons for taking the forms they do. They reflect a

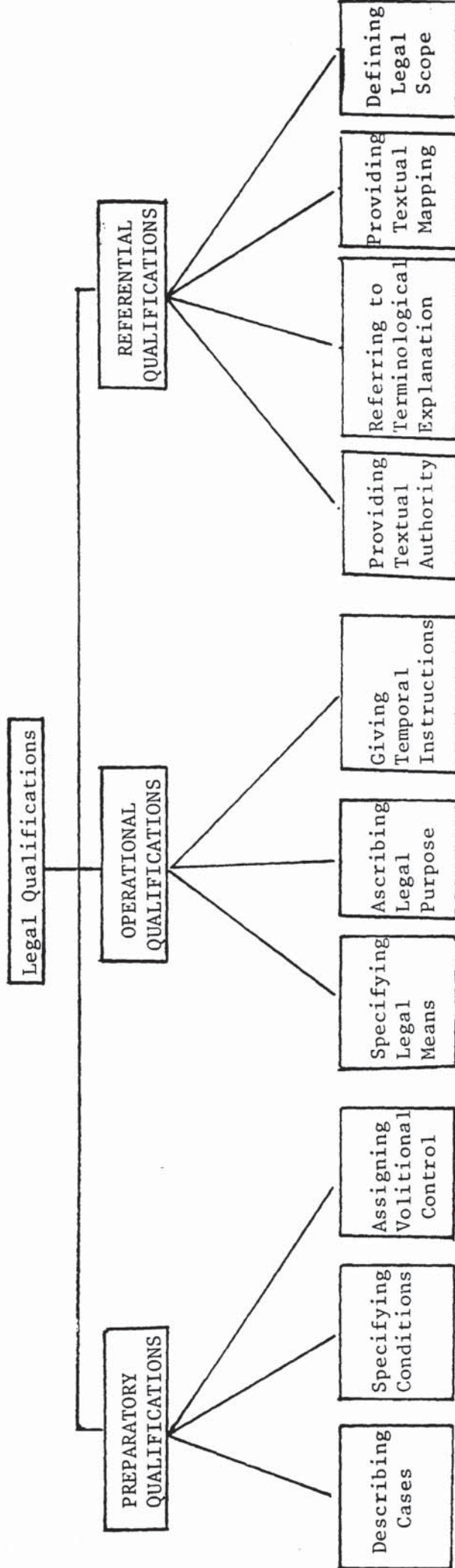
sphere of "practical reasoning" which needs to be understood in its own terms. Therefore, in studying the role, function and distribution of legal qualifications in legislative statements, their preferred surface realizations and syntactic positions in which they generally occur and also in studying the aspects of legislative provisions they textualise, an attempt has been made to understand the thinking underlying these legislative statements. If we were to understand these matters we could provide an EALP reading course that would have a principled methodological base, offer the right reading materials, and most importantly, give insights to the learners of the rationale underlying the language used in legislative documents.

3.0 As we have already seen, qualifications in legislative sentences provide the essential flesh to the legislative provision which, otherwise, would be essentially skeletal, lacking any legally-communicative shape. They not only bring precision and completeness to the legislative provision by answering the manifold legal questions that might legitimately be raised in the context of the provision in question but also give a typical cognitive structuring to legislative statements which is reflected in the surface structure in the interplay between these qualifications and the main provisionary clause. Therefore, any in-depth study of legislative statements must take adequate account of the role of such qualifications in the expression of a clear, precise, unambiguous and all-inclusive legislative provision. In what follows, we shall have an opportunity to look into the role of these qualifications more closely and to see how they give a typical cognitive structuring to legislative statements and what kind of implication they have for the processing and understanding of these statements.

In the last chapter we identified ten qualification-types which have been used frequently in the 'Housing Act 1980' to add precision and completeness to the legislative statements. Although these qualifications have specific legal and discoursal functions to perform, they can be grouped under three major categories (see Diagram 3.1 on the following page) :

- (A) Preparatory Qualifications, which include a variety of qualification-types that specify circumstances to which the provision is meant to apply.

DIAGRAM 3.1 : Legal Qualifications - a functional classification



- (B) Operational Qualifications, which include qualification-types that specify the manner in which the provision is required to operate.
- (C) Referential Qualifications, which include those qualification-types that tend to establish and specify a legal relationship between the provision in which they occur and some other which may have legal bearing on it.

In this chapter we shall attempt to study in more detail what we have termed above as the preparatory qualifications.

3.1 Preparatory Qualifications

As we have already indicated preparatory qualifications are meant to specify circumstances, including cases and conditions which trigger off a particular provision making it legally operative. As the specialist informant put it, these preparatory qualifications seem to be 'hurdles' which one must jump over in order to reach the rule.

" one of the ways to break down the kind of legislative proposition which you are looking at is that at the end of the day you end up with the statement of a rule and the rest of the section or subsection is concerned with circumstances in which the rule applies and you quite often find a series of qualifications you have to meet, as though they were 'hurdles' you will have to jump if you can satisfy that qualifier that qualifier and that qualifier then the rule is this."

[Caldwell : 1982]

At another point he compared these preparatory qualifications with 'obstacles' that one has to overcome while playing a game :

"Its quite a good analogy, I think to think of Acts of Parliament as though they were rules for playing a game. If you think of the 'Rent Act', the game you are playing is to protect yourself from an avaricious landlord, or if you are a landlord, getting rid of the tenants who are abusing their rights In each case you are given a set of rules for playing the game and at every point obstacles are placed in front of either the landlord or the tenant and they have to jump over them and if they can jump over them, they can progress through the game "

And then, referring to the preparatory qualification-types, he said :

".... It seems to me these are concerned with erecting obstacles in the way of people who want to play the game."

[Caldwell: 1982]

The following example from the 'Housing Act 1980' will illustrate the role of preparatory qualifications in a legal provision:

(7)

Where a body which is registered -

- (a) has not at any time received a grant under section 29 or section 32 below or any such payment or loan as is specified in paragraph 2 or paragraph 3 of Schedule 2 to this Act; and
- (b) requests the Corporation to remove it from the register;

The Corporation may, if they think fit, remove it from the register.

[Section 128(2)]

The game being played here is to get the name of the body removed from the register of the Corporation. The three obstacles in the way are:

- (i) The registered body has not at any time received a grant under section 29 or section 32 below or any such payment or loan as is specified in paragraph 2 or paragraph 3 of Schedule 2 to this Act.
- (ii) The registered body requests the Corporation to remove its name from the register.
- (iii) The Corporation think it fit.

And if three obstacles are successfully jumped over, the rule is :

PROVISION The Corporation may remove it
from the register.

In the above example, (i) describes the case to which the provision applies, (ii) specifies the condition on the fulfilment of which the provision becomes operative, and (iii) assigns volitional control to the Corporation over the legal action, which is removing the name of a registered body from the register. This was rather a simple illustration of the process of encoding circumstances in which a legal provision takes effect. In the following sections we shall have a closer look at the way these preparatory qualifications textualize circumstances which make a provision situationally relevant and legally operative.

3.2. Describing Cases

A legal provision is rarely of universal application. It applies only to a particular description of cases and incorporating such case descriptions within the provision is an important aspect of a draftsman's job. Case-descriptions, in a way, provide an essential background or situational context which helps to make a provision legally operative. The following is a good illustration of this process:

(8)

Where a secure tenant has claimed to exercise the right to buy and that right has been established the landlord shall serve on the tenant a notice describing the dwelling-house and stating -

(a) the price at which the tenant is entitled to have the freehold conveyed...

(b)

[Section 10(1)]

The provision in (8) creates an obligation on the part of the landlord to serve a notice on the tenant describing the dwelling-house and stating the price at which the tenant is entitled to have the freehold conveyed. But the obligation is created only in a case where a secure tenant has claimed to exercise such a right and that right has been established. The following version of example (8) states this relationship between the case-description and the legal provision more explicitly.

(8a)

Case-description: Where a secure tenant has claimed to exercise the right to buy and that right has been established

Legal Subject: The landlord

Legal Action: Shall serve on the tenant a notice describing the dwelling-house and stating -

(a)

(b)

In some provisions the necessary background information entails case-descriptions of such an elaboration and complexity that they seem to obscure the other essential aspects of the provision as in the following example:

(9)

Where a conveyance or grant executed in pursuance of this Chapter is of a dwelling-house situated in a National Park, or an area designated under section 87 of the National Parks and Access to the Countryside Act 1949 as an area of outstanding natural beauty, or an area designated by order of the Secretary of State as a rural area, and it is executed by a local authority (as defined in section 50 of this Act), a county council, the Development Board for Rural Wales or a housing Association ("the landlord") the conveyance or grant may contain a covenant limiting the freedom of the tenant and his successors in title to dispose of the dwelling-house in the manner specified below.

[Section 19(1)]

On the other hand, although occasionally one may come across a sub-provision without a case-description (probably because it forms a part of a set of provisions the case-description for which has already been specified in the main provision), it is rare to find a provision that may be of universal application. At the most one may hope to find a provision applicable to a model universe defined in the form of an act of parliament or a government order, as in the following example:

(10)

"A landlord, the Housing Corporation or the Secretary of State may, if the landlord, Corporation or Secretary of State thinks fit, accept any statutory declaration made for the purposes of this Chapter as sufficient evidence of the matters declared in it".

[Section 25]

The provision in (10) above, seems to be of 'universal application within the limited universe created by the Chapter of which it forms a part, although, there again, the scope of application is defined by the qualification 'for the purposes of this Chapter', a



type of qualification which we shall study in detail in Chapter 5.

3.2.1 Criteria for Identification and Typical Examples

In order to identify the qualification-types which describe the cases to which the provision in question applies, the following two-part criterion has been considered as a necessary and sufficient condition.

- (i) The qualification occurs in the same sentence in which the main provisionary clause occurs.
- (ii) It specifies static circumstances, state of affairs, changes in states and closed conditions which are assumed to have been fulfilled or completed.

In the light of this criterion we shall consider the following four examples and see which of these could be the typical examples of case-descriptions.

- (11) "Where proceedings are brought for possession of a dwelling-house let under a secure tenancy on any of grounds 1 to 6 or 10 to 13 in Part I of Schedule 4 to this Act, the court may adjourn the proceedings for such period or periods as it thinks fit."

[Section 87(1)]

- (12) "The right to buy does not arise if the landlord is a housing trust which is a charity"

[Section 2(1)]

(13)

"If any person fails without reasonable cause to comply with any notice served on him he shall be liable to a fine not exceeding £200."

[Schedule 22, Para.7(22)]

(14)

"This section applies where a secure tenant has made an improvement and -

- (a) the landlord has given its written consent to the improvement; and
- (b) work on the improvement was begun not earlier than the commencement of this Chapter; and
- (c) the improvement has added to the price"

[Section 38(1)]

The underlined qualifications in example (11) refer to a state of affairs in the context of which the court is given powers to adjourn proceedings. It meets criteria (i) and (ii) set out above and hence may be taken as a typical example of a case-description. The qualification in (12) also, although it specifies the circumstances to which the provision (i.e the right to buy) does not apply, meets criteria (i) and (ii) and hence is a typical example of a case-description. However, the underlined qualifications in (13), although it meets criterion (i) in that the qualification as well as the main provisional clause occur in the same sentence, fails to meet criterion (ii). It does not refer to a closed condition, the fulfilment of which is assumed to have been completed. In fact, it refers to an open condition the fulfilment of which is still left open.

Therefore, it cannot be taken as an example of a case-description.

The qualification in (14) describes changes in state which are assumed to have been completed, thus satisfying criterion (ii) but it fails on criterion (i) because the main provisional clause does not occur in this sentence. This is generally the case with "stipulation clauses", which do not encode a legislative provision. Thus it cannot be considered a typical case-description.

3.2.2 Formal Realization

Qualifications describing cases thus typically refer to static circumstances, states of affairs, changes in states which are assumed to have taken place, or to closed conditions which are assumed to have been fulfilled. Descriptions such as these are generally realized in terms of subordinate clauses introduced by the subordinator 'where':

(15)

"Where a secure tenancy is a periodic tenancy and on the death of the tenant, there is a person qualified to succeed him, the tenancy vests in that person who is to be preferred in accordance with subsection (3) below"

[Section 30(1)]

Section 30(1) provides a rule for the succession on the death of a tenant and the initial where-clause describes the case to which the rule may apply. It is characteristically realized by the use of a linking verb 'be' in the initial clause, followed by an existential use of 'there' in the following clause

again containing stative 'be', thus reaffirming the static nature of the circumstances. Changes in the state of affairs are also typically realized by the use of present simple, present perfect tenses and the passives, signalling the fulfilment or completion of the changes :

(16)

"Where a local authority have served an overcrowding notice on any person and that notice includes the requirement referred to in subsection (5) above, the local authority may, at any time, withdraw that overcrowding notice and serve on that person, in its place, an overcrowding notice which includes the requirement referred to in subsection (4) above."

[Section 146(1)]

(17)

"Where any members of the tenant's family are validly required to share the right to buy with the tenant, both the right to buy and the right to a mortgage belong to the tenant and those members jointly"

[Section 4(3)]

Sometimes where-clauses such as those in (16) and (17) are also attached as post-modifications to prepositional phrases as in the following example :

(18)

"In any case where a housing project has not required the approval of the Secretary of State, the Secretary of State may impose conditions before first making payment of housing association grant in respect of that project."

[Schedule 18 Para.5]

Occasionally, case descriptions are also explicitly realized in terms of prepositional phrases like the following:

(19)

"In the case of houses the construction of which was promoted by the Greater London Council the reference to the local authority shall be construed as a reference to the Greater London Council."

[Schedule 25 Para.52(5)]

However, it should not be pre-supposed that 'where' or a nominal phrase equivalent, such as 'In the case of houses where' has any exclusive correlation with case-descriptions. 'If-clauses', although they have other uses too, are also very frequently used to specify case-descriptions.

(20)

"If the dwelling-house in respect of which a vesting order is made is not a registered land the vesting order shall contain a certificate stating"

[Section 24(3)]

Here a case-description is realized in terms of an 'if-clause' instead of a 'where-clause'. In fact, in a number of case-descriptions the two subordinators seem to be interchangeable.

It also comes as little surprise to find that unless-clauses are also sometimes used to specify and more often to modify case-descriptions. The following 'unless-clause' in example (21), modifies the earlier case-description specified

by the initial 'where-clause'.

(21)

"Where a secure tenancy is a tenancy for a term certain and comes to end by effluxion of time, a periodic tenancy of the same dwelling-house arises by virtue of this section, unless the tenant is granted another secure tenancy of the same dwelling-house to begin on the coming to an end of the first tenancy."

[Section 29(1)]

Example (21) provides for a periodic tenancy following a fixed term secure tenancy. However, the final 'unless-clause' modifies the case-description by specifying a pre-requisite that the tenant has not already been granted another secure tenancy of the same dwelling-house.

3.2.3 Textual Patterns

We have established a category of qualification-type in legislative statements which describes cases to which the provision applies. We have also made some preliminary remarks about the linguistic exponents of this qualification-type. It is now time to look at it a little more closely and see what kind of structuring does this qualification-type give to the legislative sentences.

The corpus contains 398 instances of case descriptions, which can be distinguished further in terms of the following three sub-types:

- (A) Open case-descriptions (354)
 - (i) Where-clauses (139)
 - (ii) If-clauses (153)
 - (iii) Unless-clauses (14)
 - (iv) Prep-phrases (48)
- (B) Qualified case-descriptions (15)
 - (i) While-clauses (3)
 - (ii) (If and) (only)
if-clauses (6)
 - (iii) So far as-clauses (6)
- (C) Modifications of case-descriptions (29)
 - (i) Unless-clauses (17)
 - (ii) If-clauses (7)
 - (iii) Except where-clauses(2)
 - (iv) Provided that-
clauses (1)
 - (v) Except that-clauses (1)
 - (vi) But not where-
clauses (1)

3.2.3.1 Open Case-Descriptions

Open case descriptions are those instances of qualifications describing cases where background circumstances are fully described without any further restrictions or qualified interpretations, as in the following examples:

- (22) "Where a secure tenancy is a tenancy for a term certain but with a provision for re-entry or forfeiture, the court shall not order possession of the dwelling-house in pursuance of that provision "

[Section 32(2)]

(23)

"A tenancy is not a secure tenancy if the dwelling-house consists of or comprises premises licensed for the sale of intoxicating liquor for consumption on the premises."

[Schedule 3 Para.10]

(24)

"The right to buy does not arise, unless the landlord owns the freehold."

[Section 2(3)]

In all the three examples above, case-descriptions consist of descriptions of states or circumstances to which the provision is meant to apply. These descriptions of states are characteristically realized in terms of the stative use of verbs like 'be', 'consists of', 'comprises', 'owns', etc., emphasizing the static, circumstantial aspect of the situation. However, it is not hard to find some examples of case-descriptions where one may discover the use of verb forms other than the stative.

(25)

"Where proceedings are brought for possession of a dwelling-house, the court may adjourn the proceedings for such period as it thinks fit."

[Section 87(1)]

(26)

"In any case where housing project has not required the approval of the Secretary of State the Secretary of State may impose such conditions as are mentioned in subsection (2) above before first making payment of housing association grant in respect of that project."

[Schedule 18 Para.5]

(27)

"The Court shall not make an order for the possession of a dwelling-house except on one or more of the grounds set out in Part I of Schedule 4 to this Act and shall not make such an order on any of those grounds unless the ground is specified in the notice in pursuance of which proceedings for possession are begun"

[Section 34(1)]

The lexical and semantic features of the verbs in the underlined qualifications in (25) - (27) above do not indicate their stative use as was the case in those in examples (22) - (24). However, their tense forms do emphasize the static, circumstantial nature of the situation the qualifications refer to. They refer to events (25) and states (26) the completion of which is already assumed. The qualification in (27) typically refers to a closed condition. This interpretation is further reflected in the use of the passive-stative forms of the verbs in (25) and (27) and the present perfect form in (26), all of which highlight the completion or fulfilment of the event or the condition. The interesting thing about case-descriptions is that although they incorporate events or closed conditions which are assumed to have been completed or fulfilled, they rarely use the past tense form of the verb to indicate their completion. It may be due to the fact that case-descriptions mostly refer to hypothetical events assumed to have been completed and rarely, if ever, to events actually completed in the past. One of the very few examples of such a use of the past tense form is the following :

(28)

"Where the tenant enjoyed, during the secure tenancy, the use in common with others, of any premises, the lease shall include rights to the like enjoyment"

[Schedule 2 Para.12]

On the other hand, one is likely to come across at least a few instances of case-descriptions in the corpus where not only the lexical and semantic features of the verbs but also their tense forms will indicate that the qualification encodes an open condition rather than a closed one.

(29)

"Where a secure tenant serves on the landlord a written notice claiming to exercise the right to buy, the landlord shall serve on the tenant, either -

- (a) a written notice admitting the tenant's right, or
- (b) a written notice denying the tenant's right and stating the reasons"

[Section 5(1)]

In the underlined qualification in (29), it might appear at first that the use of a non-stative verb like 'serve' in its simple present active form indicates a reference to an open condition rather than a closed one as in (27). However, its appearance in a subordinate 'where-clause' strongly points to the fact that the reference is to a case-description and not to an open condition. This interpretation was also confirmed in our discussion with the specialist informant, who, referring to the distinction between case-descriptions in the

sense of scene-setting static circumstances and open conditions in the sense of the conduct of one of the parties in the dispute, said :

S.I. : ".... I think that the indicators of the
(Special kind of distinction you are looking for
Informant) is very simply the use of words 'where'
and 'if' quite precisely."

R. : "Yes, in a majority of cases. But in
(Researcher) some cases 'if' is used in the sense of
'where', although 'where' is rarely used
in the sense of 'if'."

S.I. : "Sometimes, yes. I try myself not to do
that but I'm aware we occasionally
slip from grace I'm conscious that
we do sometimes slip perhaps into using
'if' where perhaps 'where' would be a
little more accurate but the
happy thing is that you don't go wrong
if you say 'if' I've never known
anyone drifting the courts intro-
ducing nonsense because you have used
'if' rather than 'where' But I
think the distinction is helpful. I'm
always on the lookout for devices to
help the reader and if there is in
a provision a sense of temporal pro-
gression you first of all set the
scene and then having set the scene,
you say, let us look at the kind of
events they unfold."

[Caldwell : 1982]

This sense of 'temporal progression', that the specialist informant referred to is better illustrated in the following example :

(30)

"If, in pursuance of a notice under subsection (4)
(C) above, the tenant deposits the sum of £100 with
the landlord, then -

- (a) if he completes the transaction, that sum
shall be treated as having been paid towards
the purchase price;"

[Section 16(7)]

Like the qualification in (29), the one underlined in (30) also described the case to which the provision applies. Both qualifications use the present active form of a non-stative verb to refer to what has been described as a closed condition, the fulfilment of which is already assumed. In (29) 'where' as introductory subordinator reinforced the status of the qualification as a scene-setter. In (30), however, the use of 'if' prevents us from taking a similar interpretation to the one in (29), although a sense of 'temporal progression' is very obvious in this case, in which the initial depositing of £100 is assumed to have been completed. The use of 'then' in legislative writing is often used to mark this sense of temporal progression where the following conditional 'if he completes the transaction' constitutes an open condition focussing on the conduct of the secure tenant. The initial use of 'if' in (30) however, remained a cause of concern. When this was brought up in our discussion with the specialist informant, he agreed with our conclusion and said :

"Personally I would have started with 'where' i.e. 'where in pursuance of' that's really setting the main case and then, (a)'s and (b)'s"

[Caldwell ; 1982]

It appears that the use of 'where' as a subordinator in legislative statements has a restrictive use. In ordinary everyday grammar of English 'where' has an existential implication but in legislative statements, it has a hypothetical implication because of the qualificatory conventions. It invariably marks the introduction of a case-description. It is because of its hypothetical implication that it is replaced by 'if' in case-descriptions, causing confusion between case-descriptions and open conditions. The distinction is crucial for the identification and use of these two types of preparatory qualifications, namely, the case-description and condition-specification. We shall take up this question in greater detail in section 3.3.1.

3.2.3.2 Qualified Case-Descriptions

This small subgroup of 15 case-descriptions differs from open case descriptions in that the members of this subgroup first describe cases as in open case descriptions and then with an additional qualificational clause give them a restricted meaning. In the examples below, this additional qualificational clause is underlined with a broken line and the original case-descriptions are underlined as usual.

(31)

"Where a landlord becomes a mortgagee of a dwelling-house whilst a notice is in force in relation to the landlord and to the dwelling-house, then while the notice remains in force -

- (a) the Secretary of State may receive any sums due to it"

[Section 23(4)]

(32)

"In any case to which this subsection applies, the spouse or former spouse shall, so long as he or she remains in occupation, have the same rights in relation to or in connection with any such adjournment as is referred to in subsection (2A) above"

[Section 75(7)]

In (31) above, the original case-description in the initial 'where' clause has been given a restricted interpretation by imposing a temporal qualification 'while the notice remains in force', so that the original case-description ceases to be an open case-description to which the provision may apply at all times. The powers to receive dues are transferred to the Secretary of State only in the period 'while the notice remains in force'. Similarly, in (32) the original case-description (though not fully stated in this subsection) is further qualified by yet another temporal qualification to give it a restricted interpretation.

However, occasionally the two sections of qualified case-descriptions (i.e. the original case and the additional qualification) are not explicitly marked, as in the following example :

(33)

"Any agreement between a tenant exercising the right to buy and the landlord shall be void in so far as it purports to oblige the tenant to bear any part of the costs incurred by the landlord in connection with the tenant's exercise of that right"

[Section 21(1)]

Here the original case-description is not explicitly stated but is presupposed in the expression of the subject of the main provisional clause. The whole provision can be rewritten as follows to make it explicit.

(33a)

"Where there is any agreement between a tenant exercising the right to buy and the landlord, it shall be void in so far as it purports to oblige the tenant to bear any part of the costs incurred by the landlord in connection with the tenant's exercise of that right,..."

In (33) and also in (33a) it is not the whole of case-description i.e. 'any agreement' which is made void but only a specific aspect of it; that which obliges the tenant to bear any part of the costs incurred by the landlord in connection with the tenant's exercise of that right. Apart from these qualified case-descriptions there is a small number of case-descriptions which are qualified by clauses introduced by co-ordinate subordinators like 'if and so long as' and 'if and only if', which sometimes make it difficult to classify the qualification either as a qualified case-description or as an attendant qualification in its own right. The following example typifies the difficulty :

(34)

'The surviving spouse (if any) of the original tenant, if residing in the dwelling-house immediately before the death of the original tenant, shall after the death be the statutory tenant if and so long as he or she occupies the dwelling-house as his or her residence.'

[Section 76(1)]

In the above example the original case-description 'if residing in the dwelling-house immediately before the death of the original tenant' is qualified further by the second underlined qualification 'so long as he or she occupies the dwelling-house as his or her residence' in the one beginning with 'if and so long as' The only indication that one gets for its being a qualified case-description is the semantic implication of the verb 'occupy' in the sense of 'remains in occupation' and not in the sense of 'begins occupation'. Or maybe, it is one of those qualifications which performs a dual role and the second qualification contains in fact two separate qualifications. One stating a condition i.e. 'if he or she occupies the dwelling-house as his or her residence', which is possible that he or she may not be occupying that dwelling-house as his or her residence, although he or she may have been residing with the original tenant before his death. And the other, 'so long as he or she occupies the dwelling-house as his or her residence' stating a further qualification for the case-description. Either of these classifications seems possible.

3.2.3.3 Modifications of Case-Description

This is another small subgroup under case-descriptions consisting of only 29 instances. On the face of it, the modifications of case-descriptions might appear to be similar to qualified case-descriptions discussed in section 3.2.3.2. insofar as they tend to restrict the openness of case-descriptions. However, unlike a qualified case-description which tends to give a restricted interpretation to an otherwise open case-description, a modification of

a case-description tends to lay down a pre-requisite to the fulfilment of the provision or to specify exceptional circumstances to which the provision does not apply. In other words, a modification of case-description occurs where an open case description is supplemented with a pre-requisite for the legal provision to be operative or, where exceptional circumstances are specified to which the provision is not applicable. The following examples will make the distinction clear.

(35)

"Where a secure tenancy is a joint tenancy
the right to buy and the right to a mortgage
belong jointly to all of them or to such one or
more of them as may be validly agreed between
them; and the agreement is not valid unless
the person or at least one of the persons to
whom the right to buy is to belong occupies
the dwelling-house as his only or principal
home."

[Section 4(1)]

In (35) above the original case-description in the initial 'where-clause' has been modified by the final 'unless-clause', which adds a pre-requisite for the legal provision to become operative. In (36) below, on the other hand, the underlined qualification specifies the exceptional case to which the provision does not apply. The original case-description is not described in this paragraph but forms a part of an earlier subsection.

(36).

"The price payable for a minor superior tenancy shall be calculated (except where it has been determined by agreement or otherwise before this paragraph comes into force) by applying the formula set out in subprovision (5) instead of in accordance with section 9."

[Schedule 21, Para.(6)]

Exceptions to case-descriptions can also be expressed by the traditional legal device of a "proviso clause" (See Bennion : 1980: 43). However, some drafting manuals (Thornton : 1979: 67) prohibit the use of the "proviso clause" on the ground that they can be ambiguous in that they can refer to exceptional cases as well as an additional pre-requisite for the legal action. The only example of the use of the "proviso clause" in the corpus is the following.

(37)

"Section 16(3) of the Restrictive Trade Practices Act shall not apply to recommendations made to building societies
provided that the recommendations are made with the approval of the Secretary of State...."

[Section 111(8)]

The use of the "proviso clause" in (37) seems to be for the specification of a pre-requisite for the application of the provision (or, alternatively for the non-application of the 'recommendations to building societies', as the provision is in the negative). This solitary use of the "proviso clause" in the corpus, probably, indicates that this particular device is losing favour with the modern draftsman.

3.2.3.4 Syntactic Positioning

It has already been mentioned that one of the most difficult tasks of the legal draftsman is to incorporate a wide variety of qualifications within the structure of a legislative

statement. These qualifications make the legislative sentence very complex even where the main provisional clause is a relatively simple statement. In many cases a number of qualifications seem to compete for the relatively few syntactic positions available within and around the syntactic structure of the main provisional clause, and placing or, more appropriately, inserting all the necessary qualifications in the most appropriate positions requires not only knowledge of the subject matter but also linguistic skill of a high order. An attempt is made not to position a qualification at a place where it might seem vulnerable to any kind of misinterpretation. Stylistic elegance, smooth rhetorical progression, readability - none of these factors are considered too great a sacrifice for the achievement of precision, unambiguity and clarity. Cautious draftsmen not only use tried and tested words and expressions but also assign them fairly well-established syntactic positions from which they are most likely to qualify one and only one expression. A great majority of case-descriptions occur initially in legal provisions i.e. at a position preceding the legal subject in the main provisional clause. As many as 226 out of a total of 398 instances are assigned initial position. This seems to be in keeping with the recommendations made by Coode (See Section 1.2) who strongly favoured the initial position for case-descriptions. This recommendation seems to have been rarely ignored in the case of 'where-clauses'. Of the total number of 139 instances of the use of 'where-clauses' in open case-descriptions, as many as 122 are assigned the initial position. Of the remaining 17, 2 appear medially and 15 finally (see Table 3.2 on the following page) :

TABLE 3.2 Syntactic Positioning - Case-Descriptions

S.No.	Qualification-type	Initial (Pre- Main Provisionary Clause) Position	Medial (Intra- Main Provisionary Clause) Position	Final (Post- Main Provisionary Clause) Position	Total
(A)	<u>OPEN CASE-DESCRIPTIONS</u> ... where-clauses if-clauses unless-clauses prepositional phrases ...	122 57 2 38	2 34 - 5	15 62 12 5	139 153 14 48
(B)	<u>QUALIFIED CASE-DESCRIPTIONS</u> ... while-clauses (if and) only if-clauses so far as-clauses ...	3 - 2	- - 1	- 6 3	3 6 6
(C)	<u>MODIFICATIONS OF CASE-DESCRIPTIONS</u> ... if-clauses unless-clauses except where-clauses provided that-clause except that-clause but not where-clause ...	- 1 - 1 1 -	- 1 1 - - -	7 15 1 - - 1	7 17 2 1 1 1
<u>TOTAL</u>		226	44	128	398

The two case-descriptions, which appear medially in the main provisional clause are assigned positions immediately after the modal in the main verb phrase.

(38)

"The agreement may also, where the mortgager is made party to it, enable or require the authority or the Corporation in specified circumstances to take a transfer of the mortgage and assume rights and liabilities under it, the building society being then discharged in respect of them."

[Section 111(3)]

In (38) the case-description has been relegated to a medial position in order to provide a more prominent position to the noun phrase 'The agreement' which provides a necessary link with section 111(1) (which gives powers to the local authority or the Housing Corporation to enter into agreement with building societies to bind itself to indemnify the building society in case of any default on the part of the mortgager) and, of which it is a sub-provision. This technique of providing link by lexical repetition is very common in the corpus (See section 2.6.2. in the present study). Thus, in exceptional circumstances, the draftsman can break the convention of initial where-clauses if wider textual considerations such as maintaining topic continuity between sections or subsections are thought to be of sufficient importance. The remaining 15 instances of where-clauses occurring finally are confined to "stipulation clauses" only, which provide for the applicability or inapplicability of a particular provision in certain specified circumstances. The following is a typical example of such a use.

(39)

"Subsection (1) above does not apply in any case where, on the determination or confirmation of a rent by the rent officer, the rent determined by him is registered, or his confirmation is noted in the register, before the commencement of this section."

[Section 60(2)]

'If-clauses', as compared with 'where-clauses', seem to provide a much higher degree of mobility within the legislative sentence structure. Of the 160 instances of 'if-clauses' describing cases, 57 occur initially (i.e. at pre-main provisional clause positions), 34 medially (i.e. at intra-main provisional clause positions), and 69 finally (i.e. at post-main provisional clause positions). Whereas, 'where-clauses' seem to be unusual in medial and final position (except in "stipulation clauses"), 'if-clauses' occur in all the three positions very frequently. This mobility in the case of 'if-clauses' might be one of the reasons why some drafting manuals favour the use of 'if-clauses' instead of the more traditional 'where-clauses' in legislative provisions (see Thornton : 1979: 25). However, as we have seen, 'where-clauses' to describe cases are more 'formulaic' and hence easy for the reader to interpret whereas 'if-clauses' to describe cases could be problematic and even misleading particularly when they are also used to specify open conditions. Therefore keeping the two subordinators distinct by using 'where' to introduce case-descriptions and 'if' to introduce 'conditions' could be helpful to the reader.

Apart from these rather simple instances of case-descriptions, we find a few complex examples also where a case-description

incorporates additional circumstances or requirements apart from the original case-description. The following is a good example of this phenomenon :

(40)

'Where a secure tenant has claimed to exercise the right to buy and that right has been established, the landlord shall be bound to make the tenant -

- (a) if the dwelling-house is a house, a grant of the dwelling-house for an estate in fee simple absolute; and
- (b) if the dwelling-house is a flat, a grant of a lease of the dwelling-house for a term of not less than 125 years'

[Section 16(1)]

In (40) the case-description runs into four parts of which the first two are introduced by the subordinator 'where' in initial position. The remaining two are introduced by 'if' under (a) and (b), perhaps to bring in some variety. But the practice of using 'where' in the initial case-description is by no means consistent.

(41)

'If the rent for the time being registered is confirmed, the confirmation takes effect -

- (a) if it is made by the rent officer, from the date when it is noted in the register, and
- (b) if it is made by a rent assessment committee, from the date when the committee make their decision.'

[Section 61(1)]

In (41), which is a parallel example to the one in (40), the initial case-description is introduced by 'if' instead of a more conventional subordinator 'where' - perhaps an indication of individual variation. The specialist reaction from the Parliamentary Counsel agreed with this conclusion and favoured the keeping of the two subordinators distinct, particularly in initial position.

This general trend of placing case-descriptions initially is also maintained where prepositional phrases are used. As many as 38 out of a total of 48 instances are used initially in open case-descriptions. However, in the case of qualified case-descriptions and modifications of case-description there seems to be a distinct tendency to relegate qualifying sections to final positions generally and to medial positions occasionally. 9 of the 15 qualified case-descriptions and 25 of the 29 modifications of case-descriptions occur finally. This may be either due to the fact that initial positions in these two sub-types of case-descriptions are already assigned to original/initial case-descriptions as in (42) below :

(42)

'Where a secure tenancy is a joint tenancy then, whether or not each of the joint tenants occupies the dwelling-house as his only or principal home, the right to buy and the right to a mortgage belong jointly to all of them or to such one or more of them as may be validly agreed between them; and the agreement is not valid unless the person or at least one of the persons to whom the right to buy is to belong occupies the dwelling-house as his only or principal home.'

[Section 4(1)]

or, where initial case-descriptions are not included (this happens mostly in subprovisions which represent special cases of the main provision) part of the main provisionary clause provides a direct thematic link with the main provision and hence is generally made prominent by assigning it the initial position. The modification of the case-description, in such cases, has to be postponed to a more suitable opening in the main provision. This was the case in example (38) above. Moreover, it is not always easy to put a modification before what it modifies. As a result of this tendency to use medial or final position for modifications of case-descriptions and qualified case-description, the draftsman finds it more suitable to use 'unless-clauses' or clauses introduced by 'provided that', 'but not where' etc. instead of the traditional 'where' or 'if' clauses.

3.3 Specifying Conditions

Qualifications specifying conditions generally refer to an act or omission on the part of at least one of the participants involved in the dispute which triggers off the legal action mentioned in the provision. Unlike case-descriptions, which refer to a closed condition which is assumed to have been fulfilled, conditions in this category refer to an open condition which leaves the question of fulfilment or non-fulfilment unresolved. Hence the role of an actor in the conditional assumes a greater importance than in a closed condition.

(43)

"Where the tenant has applied in writing for a consent then -

- (a) if the landlord refuses to give the consent it shall give to the tenant a written statement of the reasons why the consent was refused; and
- (b) if the landlord neither gives nor refuses to give the consent within a reasonable time the consent shall be taken to have been withheld."

[Section 36(4)]

In (43) the two participants involved in the dispute are the tenant and the landlord. The provision is regarding the consent for subletting a dwelling-house by the tenant, which is not to be unreasonably withheld by the landlord, as the earlier section of the Act provides. An important aspect of the provision is the case-description which requires that "the tenant has applied in writing for a consent." But a mere fulfilment of the case-description by itself is not enough for the provision in (43) to become operative. It is triggered off only "if the landlord refuses to give the consent", in which case it shall give to the tenant a written statement of the reasons why the consent was refused or alternatively, "if he neither gives nor refuses to give the consent within a reasonable time", the consent shall be taken to have been withheld. The important thing about this and other such examples is that case-descriptions do not by themselves fully characterize the circumstances in which the provision becomes operative. They require additional specifications of conditions on the fulfilment or non-fulfilment of which the provision takes effect.

3.3.1 Criteria for Identification and Typical Examples

There might appear to be some degree of overlap between case-descriptions and condition-specifications, especially due to the fact that certain aspects of linguistic realizations in both the qualification-types tend to be similar in form. This is particularly true of 'if-clauses' which are used both in case-descriptions as well as in condition-specifications. However, as already discussed earlier, in case-descriptions it is the static aspect of circumstances which is emphasized, whereas in condition-specifications, it is the dynamic aspect of participant involvement, i.e. his conduct, which is highlighted. In the former, one finds closed conditions the fulfilment of which is already assumed, whereas in the latter, one finds open conditions, the fulfilment of which is still unresolved. Therefore, to identify condition-specifications and to distinguish them from case-descriptions we propose the following four-part criterion :

- (i) The condition-specification qualification occurs in the same sentence in which the main provisional clause occurs.
- (ii) It refers to an act or omission on the part of one of the participants mentioned in the provision.
- (iii) The reference is in the form of an open condition the fulfilment of which is left unresolved.
- (iv) It marks a temporal progression over the events or scene-setting case-description which is either explicitly stated or implied.

To illustrate these criteria we shall consider the following examples and see which of them can be regarded as typical instances of condition-specifications :

(44)

"Where a body which is registered -

(a) has not received a grant or
any payment; and

(b) requests the Corporation to remove it
from the register;

the Corporation may,, remove it from
the register."

[Section 128(2)]

(45)

"Where there are reasonable grounds for
doing so, the landlord shall
extend the period within which the
tenant's notice claiming to exercise his
right to a mortgage must be served; and
if it fails to do so the County Court
may extend that period"

[Section 12(2)]

(46)

"If a notice has been served on the
former tenant, the landlord shall serve on
the new tenant a further form for his use
in exercising the right to a mortgage"

[Section 13(2)]

The underlined qualification in (44) meets all the four criteria above. It occurs in the same sentence in which the provision occurs i.e. it is not listed separately in a different sentence. It refers to the act of requesting the

Corporation, the fulfilment of which is left unresolved. And, it marks a temporal progression in the sense that the qualification under (a) sets the scene (i.e. describes the case) and then this condition states the possibility of an act on the part of one of the participants, here a registered body. Although, the same subordinator 'where' introduces case-description in (a) and condition-specification in (b), and there is no 'if' subordinator to introduce the condition, the qualification still satisfies all the criteria and is a typical example of condition-specification. In fact, this is the only example in the corpus in which the subordinator 'where' has been used to introduce a condition-specifying qualification.

In (45) an obligation is put on the landlord to extend the period within which the tenant is expected to exercise his right to a mortgage. The underlined qualification satisfies criteria (i), (ii) and (iii). It refers to an omission on the part of the landlord and the condition is an open condition. However, it may seem difficult to determine if the qualification marks any temporal progression because the scene-setting case-description is stated in the earlier part of the provision where the landlord is required to extend 'the period'. So, although the case-description is not explicitly stated in the latter part of the provision in which the condition-specification occurs, it is implied here, and stated earlier. Hence it satisfies criterion (iv) also.

Coming to example (46), we find that the provision obligates the landlord to serve a further form to the new tenant

which he may use to exercise his right to a mortgage. The qualification satisfies criteria (i) and (ii), but fails on criteria (iii) and (iv). Although it refers to an act of the landlord (i.e. serving of a notice), the reference is to a closed condition, the fulfilment of which is already assumed. Moreover, since the qualification itself sets the scene for the provision, there cannot be any temporal progression in the events. So, the qualification in (46) cannot be considered as a typical example of condition-specification. It is an example of a case-description.

3.3.2 Textual Patterns

Qualifications which specify conditions as compared with those which describe cases form a rather small category consisting of only 38 instances, all of which use two different, although related, linguistic forms :

- (A) 'if-clauses' expressing open conditions (30)
- (B) 'unless-clauses' expressing open conditions (8)

The two forms are used in the corpus in the same way as they are generally used in ordinary English to refer to positive open condition (if-clauses) and negative open condition (unless-clauses).

- (47) "If any person fails to perform any duty imposed on him by this Schedule he shall be guilty of an offence and liable to a fine not exceeding £500."

[Schedule 19, Para.13(1)]

(48)

"Where a notice of variation is served on the tenant and the tenant gives a valid notice to quit, the notice of variation does not take effect unless the tenant withdraws his notice to quit before that date."

[Section 40(8)]

However, the two expressions are not interchangeable in most legal provisions. Any attempt to replace the 'if-clause' in (47) by an 'unless-clause' makes it absurd as in (47a) below :

(47a)

"Unless a person fails to perform a duty imposed on him by this Schedule he shall not be guilty of an offence and liable to a fine not exceeding £500."

[a rewrite of (47)]

Similarly, an attempt to substitute an 'if-clause' for an 'unless-clause' in (42) above reduces the force of the conditional and makes it less powerful as in (42a) below :

(48a)

"Where a notice of variation is served on the tenant and the tenant gives a valid notice to quit, the notice of variation takes effect if the tenant does not withdraw his notice to quit before that date."

[a rewrite of (48)]

(48a) does not seem to be an exact alternative to (48) in that the force of the conditional in the rewrite version is considerably

weakened by the substitution of an 'if-clause'. Perhaps, a more appropriate alternative could be achieved by substituting '(if and) only if' in place of a simple 'if' in (48a). The choice of the conditional in the above examples is not stylistic but more fundamental. It depends on the nature of the provision in question and depending upon that the draftsman opts either for a positive condition or a negative one.

An interesting aspect of condition-specifying qualifications in the corpus is that, apart from a majority of cases (30 out of a total of 38) in which either of the parties to the dispute (i.e. the landlord and the tenant in the present case) are required to fulfil these conditions and the legal action is required to be taken by the law-enforcing authorities (i.e. the Secretary of State, the Courts etc.), there are 2 cases in which the person who is required to fulfil the condition and the one who is required to take legal action are the same. He is either one of the parties to the dispute or even the law-enforcing authority. The following examples will illustrate the two positions :

(49)

"Where there are reasonable grounds for doing so the landlord shall extend the period within which a notice must be served and the sum of £100 deposited; and if it fails to do so the county court may extend that period"

[Section 16(5)]

In the example above, the underlined qualification refers to condition focussing on the omission on the part of the landlord

and the legal action is required to be taken by the county court, which is quite common in legislative provisions. However, in the example below, the defaulter, i.e. the one who is required to fulfil the condition, and the person who is required to take the legal action are the same, in this case the landlord :

(50)

"Where the tenant has applied in writing for a consent, then -

- (a) if the landlord refuses to give the consent it shall give to the tenant a written statement of the reasons why the consent was refused;"

[Section 36(4)]

In cases like these where the defaulter and the legal subject are one and the same, the provision is always legally binding and this is emphasized by the use of 'shall' in the main provisionary clause. This is also true in the case of a provision where the legal subject happens to be a law-enforcing authority, as in the following example :

(51)

"If the auditor fails to obtain all the information and explanation which are necessary for the purposes of his audit, he shall state that fact in his report."

[Schedule 16, Para.5(4)]

The explanation for the strange encoding of the provision in (51) lies in the fact that it is not the auditor who is required to fulfil the condition, it is the charity on which the

burden for providing all the relevant information and explanation lies. By implication, therefore, it is not the failure of the auditor but of the charity which triggers off the legal action. By making 'the auditor' the subject of the condition-specifying qualification and the legal subject of the main provisionary clause, the initiative for legal action remains with the law-enforcing authority, although the burden of fulfilling the condition still rests with the party involved in the dispute.

3.3.3 Syntactic Positioning

The emerging pattern of syntactic placement in the case of condition-specification also seems to correspond fairly closely with the recommendations made by Coode (see section 1.2) who favoured the placement of conditions immediately after the case-description but before the legal subject in the main provisionary clause. In the corpus, 27 out of a total of 38 instances of condition-specifications occur initially i.e. before the legal subject but after the case-description if there is one present.

(52)

"Where the tenant has applied in writing
for a consent then -

(a) if the landlord refuses to give the
consent it shall give to the tenant
a written statement of the reasons
why the consent was refused; and

(b) - - - - - '

[Section 36(4)]

The condition under (a) here occurs before the main provisional clause but after the initial case-description. In (53), however, there is no case-description at all, and hence the condition occupies initial position.

(53)

'If a person takes proceedings in the High Court which ... he could have taken in the county court he is not entitled to recover any costs.'

[Section 86(3)]

Of the remaining 11 instances, 8 occur finally and are realized in terms of unless-clauses.

(54)

'Where a notice of variation is served on the tenant and the tenant, before the date specified in it, gives a valid notice to quit, the notice of variation does not take effect unless the tenant withdraws his notice to quit before that date.'

[Section 40(8)]

In this case it would be inappropriate to place the final condition in the pre-subject position right after the initial case-description, hence the use of a more suitable unless-clause in the final position has been opted for.

The medial placement of conditions is again motivated by a desire to adjust maximum conditions in the same provision to achieve precision as in (55) below :

(55)

'The relevant notice is -

- (a) if the tenant exercises his right under section 11 the notice served under sub-section (5) of that section; and
- (b) if he does not exercise that right, the notice served under section 10 above.'

[Section 12(3)]

In cases like (55) where separate conditions are imposed on a variety of options under the same provision, conditions are fitted and properly adjusted as a craftsman fits various components of his creation to achieve a smooth finish.

3.4 Assigning Volitional Control

In addition to qualifications describing cases and specifying conditions, which seem to form two outer layers, as it were, of the preparatory qualifications, there is the third layer, and perhaps, the innermost which indicates whether the requirement of initiating legal action stated in the provision lies within or outside the discretion of the legal subject; in other words whether the legal subject has any volitional control over the legal action that he is required to take. The volitional control over legal action may be an absolute one, in which case, the legal subject is not only the person responsible for taking the legal action but he is the legal initiator also.

(56)

"On the disposal of any house under this section ... the local authority may, if they think fit, agree to the price being secured by a mortgage of the premises."

(Section 91(1))

The provision in (56) above gives powers to the local authority to agree to the price of a house being secured by a mortgage and they are given absolute volitional control over the action, which is reinforced in the use of 'may' in the mainprovisionary clause. In some provisions, however, the legal subject is not given such an absolute volitional control over the legal action as in (56) above.

(57)

"The Secretary of State may, with the consent of the Treasury, make such grants to the Housing Corporation as appear to him required to enable the corporation to meet the expenses incurred by it in the exercise of its functions"

[Section 121(1)]

In (57) above, although the Secretary of State remains the initiator of legal action, he is not assigned an absolute volitional control over the action. Perhaps, the involvement of the Treasury is only a matter of empty deference and in practice, the Secretary of State takes the consent of the Treasury for granted in most cases.

Apart from these two cases, there are certain provisions in which the volitional control is largely assigned to a person other than the legal subject, and the legal subject is no longer in a position to initiate the legal action. He is simply reduced to the status of a legal responder only.

(58)

"Where the dwelling-house with respect to which the right to buy is exercised is registered land, the Chief Land Registrar shall, if so requested by the Secretary of State, supply him with an office copy of any document required by the Secretary of State"

[Section 24(5)]

In this case the volitional control over the legal action has been transferred from the legal subject i.e. the Chief Land Registrar to the Secretary of State, so that if the Secretary of State requests him to supply him with an office copy of any document, he has no option but to do so. This is further reinforced by the use of 'shall' in the main provisional clause.

3.4.1 Criteria for Identification and Typical Examples

Just as there seemed to be some kind of an overlap (semantic as well as syntactic) between case-descriptions and condition-specifications in some borderline cases, there may seem to be a similar overlap between qualifications specifying conditions and those assigning volitional control. However, the distinctive feature of qualifications assigning volitional control is their use of a variety of linguistic devices to specify the discretionary elements in the initiation of legal action in the main provisional clause.

To identify typical instances of qualifications expressing volitional control, the following criteria have been used as a necessary and sufficient condition:

- (i) The qualification occurs in the same sentence in which the main provisional clause occurs.
- (ii) It assigns either to the legal subject or some other person in the provision at least some degree of volitional control over the legal action in the main provisional clause.

(iii) The volitional control in (ii) can either be over the initiation of legal action or over the extent or/and nature of the legal action.

In the light of the above criteria let us consider the following examples and see which of them have qualifications which assign volitional control.

(59)

"Where the amount which a secure tenant is entitled to leave outstanding on the security of the dwelling-house is reduced by the limit imposed by this section, the landlord may, if it thinks fit and the tenant agrees, treat him as entitled to leave outstanding on that security such amount exceeding the limit as the landlord may determine."

[Section 9(5)]

(60)

"Where a notice of variation is served on the tenant and the tenant gives a valid notice to quit, the notice of variation does not take effect, unless the tenant, with the written agreement of the landlord, withdraws his notice to quit before that date."

[Section 40(8)]

(61)

"Where a matter is referred to a leasehold valuation tribunal for determination, the tribunal may require him to give to the tribunal such information as the tribunal may reasonably require."

[Schedule 22 Para.7(1)]

The underlined qualifications in (59), (60) and (61) all satisfy criterion (i), as all of them appear in the same sentence in which their respective provisions appear. The qualification in (59) assigns volitional control for initiation of legal action to the legal subject i.e. the landlord, although he requires the agreement of the tenant as well. In (60) the position is reversed. It is not the landlord who is the legal initiator of the legal action but the tenant. In this case also the legal subject requires the written agreement of the landlord. Therefore, in both these cases the volitional control is shared by the two parties mentioned in the provision, although one of them is the legal initiator. In (61) on the other hand, no volitional control is assigned to the legal subject, (i.e. the tribunal, in this case) in the sense of initiation of the legal action, but the tribunal is assigned some kind of a discretionary control over the extent and nature of the legal action by using the correlative subordinator 'such as', which specifies the extent of the discretion the tribunal can exercise in the operation of the provision. So, all the underlined qualifications in the three examples above are typical instances of qualifications which assign volitional control.

3.4.2 Textual Patterns

Three kinds of volitional control are assigned by qualifications grouped under this category. 115 instances in this group can be further subgrouped in the following way :

- (A) Assigning Absolute Volitional Control (42)
 - (A1) Strong Cases (15)
 - (i) ... if they think fit ... (15)
 - (A2) Weak Cases (27)
 - (ii) ... if it appears that ... (9)
 - (iii) ... if the court is of the opinion that... (4)
 - (iv) ... if he is satisfied that ... (4)
 - (v) ... unless they are satisfied that ... (10)
- (B) Assigning Shared Volitional Control (45)
 - (i) ... with the consent of ... (26)
 - (ii) ... without the approval of ... (14)
 - (iii) ... except with the consent of ... (3)
 - (iv) ... except after consultation with ... (1)
 - (v) ... if the tenant consent ... (1)
- (C) Assigning and Specifying Extent/Nature of Volitional Control (28)
 - (i) ... such ... as he considers necessary ... (27)
 - (ii) ... to ... the extent they think fit ... (1)

3.4.2.1 Assigning Absolute Volitional Control

Of the 42 instances in this subcategory, 15 assign absolute volitional control to the legal subject in such a manner that he enjoys a free choice as to whether he takes the legal action or not. There are no further strings attached to it, apart from those indicated in case-descriptions, as in the following example:

- (62) "If such conditions as are referred to in subsection (3) above are complied with, the court may, if it thinks fit, discharge or rescind the order concerned.

[Section 87(4)]

Here in cases such as those in which conditions referred to in subsection (3) are complied with, the court has full volitional control over the question of 'discharging' or 'rescinding' the order concerned. Apart from 15 such cases, there are 27 weak cases where, although absolute volitional control is assigned to the legal subject, it is not entirely open. It indicates a particular direction specified in a that-clause subordinated to the qualification which assigns such a volitional control.

(63)

"If it appears to the local authority that the means of escape from fire would be adequate if part of the house were not used for human habitation, the local authority may secure that that part is not so used.

[Schedule 24. Para.3]

In (63) above, although the local authority is assigned absolute volitional control over whether to secure a part of a particular house from human habitation, it can exercise this right only in specific cases where it 'appears to the local authority' that such a course of action would provide adequate means of escape from fire. In spite of absolute volition, certain directions are specified in such cases. The notion of absolute volition/choice is reinforced by the use of 'may' in the main provisionary clause in both the cases, i.e. (62) and (63). The effect similar to that in (63) is also achieved in the following case, where an unless-clause has been used :

(64)

'A local authority shall not in any case approve an application for a repairs grant unless -

- (a) they are satisfied that the relevant works are of a substantial and structural character; or
- (b) the relevant works satisfy requirements prescribed (with the consent of the Treasury).'

[Schedule 12 Para.12(2)]

In these 27 instances, the legal subject can initiate and take the legal action only if he feels that certain conditions which are specified in the subordinated that-clause are fulfilled.

3.4.2.2 Assigning Shared Volitional Control

As against 42 instances of qualifications assigning absolute volitional control to the legal subject as discussed in the preceding section, the corpus also contains 45 instances of qualifications which assign shared volitional control to the legal subject, in that he is specifically required to consult, or get approval or consent of someone else before taking any legal action.

(65)

'The Secretary of State may with the consent of the Treasury make out of moneys provided by Parliament grants or loans towards the cost of arrangements for facilitating moves to and from homes by which -

- (a) a secure tenant becomes the secure tenant of a different landlord; or
- (b) - - - - -'

The Secretary of State has absolute right to make loans or grants for certain purposes specified in the provision but he is not assigned absolute volitional control over the exercise of this right. He is required to obtain the consent of the Treasury before exercising this right and yet it is he who is attributed the power to make such grants or loans. The volitional control assigned to him is not absolute as was the case in examples (62), (63) and (64) in the preceding section. Instead he shares such a volitional control with the Treasury. Permissions and powers attributed to legal subjects as in (65) can be assigned restricted volitional control by the use of 'if-clauses' also.

(66)

'If the authority as mortgagee has become entitled to exercise the power of sale, it may, if the county court gives it leave to do so, by deed vest the property in itself

[Section 112(2)]

These permissions and powers are characterized by the use of 'may' in the main provisionary clause. But in the case of provisions which express prohibitions, it is not the use of 'shall not' in the provisionary clause which alone characterizes them; it inevitably co-occurs with complex-prepositional phrases like 'without the approval of' 'except with the consent of' etc., which again assign restricted volitional control.

(67)

'The Corporation may sell or lease individual dwellings to persons for their own occupation; but where the dwelling concerned was occupied by the Corporation by compulsory purchase under section 3(3), it shall not be disposed of under this subsection without the written consent of the Secretary of State.'

[Schedule 25 Para.24]

(68)

'Where a contribution has been paid under this section towards any expenditure, neither the expenditure nor the contribution shall be carried to the authority's Housing Revenue Account except with the consent of the Secretary of State.'

[Schedule 13 Para.10(7)]

An interesting aspect of qualifications which assign shared volitional control is that the great majority of them (44 out of a total of 45) use complex-prepositional phrases like 'with/without the consent of ' or 'except with the approval of' etc., whereas all the 42 instances in the case of qualifications which assign absolute volitional control used 'if-clauses' or 'unless-clauses'.

3.4.2.3 Assigning and Specifying Extent/Nature of Volitional Control

This relatively smaller subgroup, as compared with the other two in the category of qualifications which assign volitional control, contains only 28 instances. These have been put under a separate subcategory because apart from assigning volitional control to the legal subject, they mostly specify the nature or

extent of volition and/or discretion that has been assigned to the legal subject in a given provision.

(69)

'Where application for leave under this section is made to the county court, the county court may adjourn the proceedings or postpone the date for the execution of the local authority's deed for such period or periods as the court thinks reasonable.'

[Section 112(6)]

In (69), the final qualification, apart from reinforcing the notion of volitional control inherent in the attribution of the power to the county court to adjourn the proceedings or postpone the date for the execution of the local authority's deed, also specifies the nature and extent of discretion that has been assigned to the county court. Sometimes qualifications like the one underlined in (69) do not assign any degree of volitional control as such, but they do specify the extent of discretion that is assigned to the legal subject. An example of this we find in (70) below :

(70)

'The Secretary of State may under subsection (1) approve particular agreements or give notice that particular forms of agreement have his approval; and

- (a) he may in either case make the approval subject to conditions;
- (b) he shall, before giving notice that a particular form has his approval, consult the Chief Registrar of Friendly Societies and such organizations, representative of building societies and local authorities as he thinks expedient.'

[Section 111(5)]

The Secretary of State in (70) is empowered to approve particular agreements or give notice of approval in this regard. He is also empowered to make such approvals subject to condition but before giving his notice of approval he is obliged to consult the Chief Registrar of Friendly Societies and a number of other organizations. He has been assigned no volitional control over this last obligation but he certainly has been assigned discretion in the choice of organizations that he shall consult and this specification of discretion is made explicit by the final qualificational element which has been underlined. There are in all 27 instances of qualifications which assign and specify volitional control and the nature and extent of discretion to the legal subject by using correlative subordinators like 'such as'. The 28th instance in this subcategory uses a more explicit prepositional phrase.

(71)

'A local authority may dispense, to the extent they think fit, with any of the conditions specified in paragraph (a) to (c) of subsection (3) '

[Schedule 12 Para.20(2)]

3.4.3 Syntactic Positioning

The general pattern of syntactic positioning of qualifications describing cases that we discovered in section 3.2.4. holds good, though to a lesser degree, for this category of qualifications also. Like open case-descriptions, qualifications assigning absolute volitional control also tend to occur in the

initial (i.e. pre-main provisional clause) positions, although the initial position here is generally after the case-descriptions and/or condition-specifications, if they happen to be present in the same provision. As we move from absolute volitional control to restricted volitional control and to those which specify the extent and nature of volitional control, the tendency to relegate these qualifications to either medial (i.e. intra-main provisional clause) positions or to final (i.e. post-main provisional clause) positions increases. A similar pattern of syntactic positioning was also discovered in the case of case-descriptions as we moved from open case-descriptions to qualified case-descriptions and to modifications of case descriptions.

Of the total number of 32 cases of 'if-clauses' assigning absolute volitional control, 17 occur at the pre-main provisional clause positions, 10 at the intra-main provisional clause positions, and 5 at the post-main provisional clause positions. This trend is reversed in the case of 'unless-clauses', where only 1 occurs at the pre-main provisional clause position, 2 at the intra-main provisional clause positions and 7 at the post-main provisional clause positions. (See Table 3.3 on the following page). Since, the pre-main provisional clause position in the case of qualifications assigning/specifying volitional control is generally after the case-descriptions and condition-specifications (if both are present), it encourages a tendency to relegate qualifications assigning volitional control, wherever possible, to the post-operator positions in the main provisional clause instead of overloading the three different qualification-types in a row before the legal subject in the main

TABLE 3.3

Syntactic Positioning-Assigning Volitional Control

		Initial (Pre-Main Provisionary Clause) Position.	Medial (Intra-Main Provisionary Clause) Position	Final (Post-Main Provisionary Clause) Position
(A)	<u>Assigning Absolute Volitional Control</u> (42)			
	(i) ... if clause ... (32)	17	10	5
	(ii)... unless clause ... (10)	1	2	7
(B)	<u>Assigning Shared Volitional Control</u> (45)			
		1	32	12
(C)	<u>Assigning and Specifying Extent/Nature of Volitional Control</u> (28)			
		0	5	23

provisionary clause. The following is a good example of this :

(72)

'Where a body which is registered -

(a) has not at any time received a grant under section 29 or section 32 below or any such payment or loan as is specified in paragraph 2 or paragraph 3 of Schedule 2 to this Act; and

(b) requests the Corporation to remove it from the register;

the Corporation may, if they think fit,
remove it from the register.'

[Section 128(2)]

Since the case-description under (a) and condition-specification under (b) has already been placed before the legal subject 'the Corporation', the last qualification assigning volitional control is relegated to the post-operator position. However, in cases where no case-descriptions or condition-specifications are necessary or where only one occurs initially, the qualification assigning volitional control is assigned the initial position.

(73)

'Where the application is made jointly by the landlord and the tenant and it appears to the rent officer that the rent specified in the application is a fair rent,
he may register that rent without further proceedings.'

[Schedule 6 Para.(2)]

Qualifications assigning shared volitional control display a tendency to occur in medial position. 32 out of a total of 45 occur medially and 12 finally. Their placement in medial position could be explained by the fact that these qualifications are realized in terms of prepositional phrases like 'with/without the approval/consent of', 'except with/without the approval of' etc., which are short and relatively more mobile than subordinate clauses, and hence convenient for medial insertions.

(74)

'The Secretary of State may, with the consent of the Treasury, by order substitute in subsection (2) above, another fraction for one-half and, in subsection (3) above, another amount for £400;'

[Schedule 13 Para.5(4)]

Similarly, in the last sub-category of qualifications assigning and specifying the content and nature of volitional control, an overwhelming majority (23 out of 28) of such qualifications occur finally, which is explained by the fact that they qualify the content of the main provisional clause and hence have to occur after it has been stated.

(75)

'Where application for leave under this section is made to the county court, the county court may adjourn the proceedings or postpone the date for the execution of the local authority's deed for such period or periods as the court thinks reasonable.'

[Section 112(6)]

In cases like (75) above, the qualification which assigns and at the same time specifies the nature and/or extent of volitional control, i.e. the period of postponement/adjournment in the present case, has to occur after the provision of postponement or adjournment has been specified. This seems to explain the increasing tendency to relegate the qualifications which assign and specify the nature/extent of volitional control to later positions in the statement of legislative provisions.

3.5 Complex Preparatory Qualifications

In addition to the distinct examples of qualifications belonging to either of the three categories of preparatory qualifications discussed so far, there are at least 7 instances of preparatory qualifications which, though not difficult to identify, are difficult to classify as one or the other of the preparatory qualification. In fact, these isolated instances belong to more than one category at the same time. Six of these describe cases and assign volitional control at the same time. This is achieved by merging the semantic elements assigning volitional control within a case-description, as in (76) below,

(76)

'Where it appears to the Secretary of State that tenants generally, or a tenant or tenants of a particular landlord, or tenants of a description of landlords have or may have difficulty in exercising the right to buy effectively and expeditiously, he may use his powers under the following provisions of this section'

[Section 23(1)]

or by embedding one qualification within the syntactic structure of the other, as in (77) below.

(77)

'If it appears to a local authority, in the case of a house within their district which is occupied by persons who do not form a single household, that an excessive number of persons is being or is likely to be accommodated on the premises having regard to the rooms available, the local authority may serve on the occupier of the premises a notice complying with subsections (2) and (3) below
.... .'

[Section 146(1)]

In addition to these instances of complex preparatory qualifications, in one case, assigning of volition and case-description is subordinated to the same provisional clause by only one subordinator, i.e. 'only if'. The example is :

(78)

'A secure tenant may, require that not more than three members of his family who are not joint tenants but occupy the dwelling-house as their only or principal home should share the right to buy with him; but he may validly do so in the case of any such member only if -

(a) that member is his spouse or has been residing with him throughout the period of twelve months ending with the giving of the notice; or

(b) the landlord consents.

[Section 4(2)]

In the example above part (a) describes the case to which the

provision applies and (b) assigns shared volition to the secure tenant which he is required to share with the landlord, but for the sake of convenience in rhetorical arrangement the two are subordinated with the help of the same subordinator, 'only if'. The choice of 'only if' as subordinator here instead of the conventional 'where' or 'if', complicates the classification further. In ordinary everyday English usage, 'only if' introduces a forceful condition but in (78) the two parts (a) and (b) may be regarded as condition in its very general sense, they certainly are not conditions in the sense in which we have used the term here. The use of 'only if' to introduce case-descriptions and assign volitional control is rare in the corpus.

3.6 Preparatory Qualifications and the Main Provisionary Clause

The corpus contains 544 instances of preparatory qualifications, out of which 276 occur before the main provisional clause, 175 after it and 93 at various intermediate syntactic positions. The placement of these 544 preparatory qualifications around and within the main provisional clause display five major patterns of organization :

- (i) Initial heavy preparatory qualifications followed by a light main provisional clause:- This is a fairly recurrent pattern in the corpus in which initial preparatory qualifications may include one or more of all the three preparatory qualification types.

- (79) 'Where a local authority, or a representation made by an accompanying tenant, are satisfied that a house is in such a state of disrepair that, although it is not unfit for human

habitation, the condition of the house is such as to interfere materially with the personal comfort of its occupying tenant, they may serve upon the person having control of the house such a notice as is mentioned in subsection (1A) above.'

[Section 149]

The other typical instances of this pattern already cited in the study include examples (9), (51), (53) and (63).

- (ii) Final heavy preparatory qualifications preceded by a light main provisionary clause:- This is also a fairly recurrent pattern. Apart from examples (14), (23), (33) and (39) already cited earlier, a typical instance of this pattern is the following:

(80)

'No rebate from the rent for any dwelling shall be granted by virtue of this section to any person -

- (a) if he occupies the dwelling under a licence which was granted as a temporary expedient to a person who entered it, or any other land, as a trespasser (whether or not before the grant another licence of that or any other dwelling has been granted to him); or
- (b) if he occupies the dwelling in pursuance of a contract of service with the authority the terms of which require that he shall be provided with a dwelling at a rent specified in the contract; or
- (c) if Part II of the Landlord and Tenant Act 1954 (security of business tenants) applies to his tenancy.'

[Schedule 15 Para.2(18)]

- (iii) Medially placed main provisional clause with heavy preparatory qualifications on either side:- This is quite a regular pattern where initial case-descriptions are modified by final case-descriptions.

(81)

'Where, after the commencement of this subsection, a local authority -

- (a) advances money for any of the purposes mentioned in subsection (2) below; or
- (b) on the disposal of any dwelling-house, allows or has to allow any sum to be outstanding on the security of the dwelling-house; or
- (c) takes a transfer of a mortgage in pursuance of Section III of this Act;

the provision to be made by it with respect of interest on the sum advanced or remaining outstanding shall comply with the following provisions of this section, unless the advance, disposal or transfer is made in pursuance of a binding contract entered into before the commencement of this subsection or entered into by the acceptance of an offer made by the local authority which was capable of being accepted before the commencement of this subsection.'

[Section 110(1)]

The other typical instances of this pattern include examples (21), (35), (42) and (48) already cited in the Chapter.

- (iv) Interspersed preparatory qualifications with various subprovisions of the main provisional clause : This is a special syntactic arrangement primarily used in provisions where different preparatory qualifications apply to various sections of the

main provision. Some of the typical instances are examples (34), (40), (41) and (43) already cited before and (82) below :

(82)

'Where the tenant has applied in writing for a consent which is required by virtue of section 81 then -

- (a) if the landlord refuses to give the consent it shall give to the tenant a written statement of the reasons why the consent was refused; and
- (b) if the landlord neither gives nor refuses to give the consent within a reasonable time, the consent shall be taken to have been withheld, and if the landlord gives the consent but subject to an unreasonable condition, the consent shall be taken to have been unreasonably withheld.'

[Section 82(3)]

- (v) Preparatory qualification occurring at the main provisional clause- medial positions especially at the post-operator position : This again is a fairly recurrent pattern which seems quite useful especially when the initial and final positions are crowded or when prepositional phrases instead of the full clauses are to be accommodated.

(83)

'Where a local authority have acquired or appropriated any land for the purposes of this part of this Act they shall not, without the consent of the Minister, appropriate any part of that land which consists of a house or part of a house for any other purpose.'

[Section 95]

More instances of this could be found in examples (57), (58), (59) and (65) already cited before.

3.7 Summary

In this chapter we identified three types of preparatory qualifications. We also investigated their subtypes and the various surface realizations of each. We then studied how each type is used in the textualization of static as well as dynamic aspects of the circumstances in which a legal provision is likely to be operative. We also made an attempt to isolate recurring syntactic and organizational patterns in respect of the syntactic positioning of these qualifications vis a vis, the main provisional clause. The analytical findings seem to indicate some degree of regularity in the use of these preparatory qualifications, their functional and formal realizations and their distribution within and around the main provisional clause.

However, it will be unrealistic to look for a highly regular and conventionalized system underlying legislative provisions in the corpus. A certain degree of individual variation does occur, which is rarely detectable by non-specialists. Most Parliamentary Acts are written by a team of about eight draftsmen who generally work on different parts of the same Act under two or more 'master devils' - and this may bring in some variation in different parts of the same Act. In addition, there are a number of other factors which may account for the lack of regularity one may find in legislative provisions. Besides the complexity of existing law, a section itself may have been conceived, drafted and enacted in a great rush, or it may have been added much later as an amendment, or a particular expression may select itself as a result of

its use in an earlier statute with some bearing on the new section. And, above all, as the Parliamentary Counsel himself pointed out :

" you're analysing what we do and we don't do it according to any set manual you'll probably come up with analysis which holds good for 90% but there's always going to be a percentage of materials where your analysis will begin to break down"

(Caldwell : 1982)

4.0 Having looked at a set of qualifications which provide essential background information on the circumstances in which a legal provision is meant to apply, we shall now consider another set of qualifications which provide useful information on a rather more central aspect of the legal provision, i.e. on the legal action itself. Unlike preparatory qualifications which give additional information on the circumstances and conditions which trigger off a particular legal action, operational qualifications give instructions as to the manner in which the legal action is intended to take place, focussing primarily on three aspects of the legal action and providing answers to the following three specifications :

- (i) how is the legal action required to take place?
- (ii) what is it meant to achieve?
- (iii) when is it required to take place?

Depending upon the necessity to answer one or more of the above specifications in a particular provision, the legal draftsman uses one or more of the qualifications which :

- (i) specify legal means,
- (ii) ascribe legal purpose
- (iii) give temporal instructions.

4.1 Specifying Legal Means

Specification of legal means in the expression of a legislative provision is regarded as an important aspect of a legal action, so much

so that any legal action accomplished in a manner other than the one specified in the provision might be considered inappropriate and hence legally ineffective. Therefore, whenever a particular action needs to be accomplished in a specific manner, it is explicitly specified in the provision. In example (84) below, there seems to be a very clear indication of the legal means by which the action needs to be accomplished.

(89)

'Where there are reasonable grounds for doing so, the landlord or, the Housing Corporation, shall by notice in writing served on the tenant extend the period within which the tenant's notice must be served.'

[Section 12(2)]

In this example, the landlord (or, the Housing Corporation) is obliged not only to extend the period within which the tenant is required to serve a notice, but is also obliged to do so by means of a notice in writing served on the tenant. The requirement of legal means specified in terms of doing something 'by notice in writing served on the tenant' may not appear to be very significant to a layman but in legal contexts a 'notice' has to be in a particular form specified elsewhere in the Act, and it has to be 'served' in specified ways for it to be regarded as 'having been served'. Unless all these requirements are met, the extension of the period by the landlord or the Housing Corporation may not be considered as legally valid and hence it may be held responsible for non-compliance.

4.1.1 Criteria for Identification and Typical Examples

In order for any qualification to be regarded as an instance of means-specification, we propose the following three criteria.

- (i) It occurs within the same sentence in which the legislative provision occurs.
- (ii) It refers to the legal action in the main provision clause.
- (iii) It specifies and names the legal means by which the legal action is required to be accomplished.

These three criteria operate as a necessary and sufficient condition for identifying a typical instance of specifying legal means in legislative provisions. Let us now consider which of the following instances can be regarded as typical examples of means-specification.

- (85) 'A tenant's notice may be withdrawn at any time by notice in writing served on the landlord.'

[Section 5 (3)]

- (86) 'The Secretary of State may by regulations prescribe the form of any notice and the particulars to be contained in any such notice.'

[Section 22(1)]

- (87) 'A secure tenant cannot exercise his right to a mortgage unless he claims to exercise it by notice in writing served on the landlord or,.... on the Housing Corporation'

[Section 12(1)]

(88)

'Where a secure tenant serves on the landlord a written notice claiming to exercise the right to buy, the landlord shall serve on the tenant either -

- (a) a written notice admitting the tenant's right; or
- (b) a written notice denying the tenant's right'

[Section 5(1)]

(89)

'The power to make rules is exercisable by statutory instrument'

[Section 86(6)]

(90)

'Where it appears to the Secretary of State that tenants have difficulty in exercising the right to buy he may, after giving the landlord notice in writing of his intention to do so and while the notice is in force, use his powers under the following provisions of this section'

[Section 23(1)]

(91)

'An application under this section shall be in such form and shall be accompanied by such information as the Secretary of State may, either generally or in relation to a particular case, direct.'

[Section 45(2)]

Examples (85), (86) and (87) fulfil all the three criteria listed above. The underlined qualification in (85) occurs in the same sentence in which the provision for withdrawing a tenant's notice is made,

it refers to the action of withdrawal, and at the same time specifies and names the legal means required to accomplish it. Similarly, in (86) the underlined qualification occurs in the same sentence in which the provision for prescribing the form of a notice is made. It also refers to the legal action of prescribing the form of any notice. At the same time it specifies and names the legal means, i.e. by regulations, which must be used to put the provision into effect. In example (87), we have a qualification which occurs in the same sentence in which the provision for a secure tenant to exercise his right to a mortgage is made, and although it occurs within the preparatory conditional clause instead of the main provisional clause, it refers to the same legal action as the one in the main provisional clause. And, it specifies more forcefully than the ones in (85) and (86) the legal means and names it. As all the three i.e. (85), (86) and (87) examples fulfil all the three criteria listed above, they can be considered as typical instances of means specification.

Examples (88), (89), (90) and (91) seem to be more problematic. In (88) the provision has been written in such a way that means specification is not realized in terms of the qualification that we are considering here. A rewritten version of this provision will make the point.

(88a)

- 'Where a secure tenant claims to exercise the right to buy by a notice in writing served on the landlord, the landlord shall, by a notice in writing served on the tenant, either -

- (a) admit the tenant's right; or
- (b) deny the tenant's right '

[a rewrite of Section 5(1)]

In the original example (88) both the instances of means-specification are realized in terms of a preposed adjective 'written'. In (88a), although both the instances of qualifications specifying legal means meet criteria (i) and (iii), only the second instance in (88a) meet criteria (ii) i.e. it refers to the action of the landlord, which is the one in the main provisional clause. In terms, therefore, of the use of qualificatory expressions in legislative language, example (88) does not provide a typical instance of means-specification. Example (89) meets criteria (ii) and (iii) i.e. it refers to the action in the main provisional clause, and specifies and names the legal means required to accomplish it. However, it fails to meet criterion (i) because the main provisional clause to which it refers appears not in the same sentence but in the form of an earlier subsection which says:

(92)

"The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this part of this Act."

[Section 86(1)]

Example (90) seems to be even more problematic because it is difficult to decide if the means-specification function in the underlined temporal qualification is prominent enough to be regarded as an embedded qualification within the temporal one.

The underlined temporal qualification and hence the embedded means-specification qualification (if it is assigned such a status) satisfies all the criteria listed above except (iii), which, as already mentioned, is difficult to decide.

Example (91) assigns powers to the Secretary of State to prescribe any specific requirements for an application as to its form or any information to be accompanied by it. The provision specifies no legal means which he must use to exercise the power assigned to him. The underlined qualification, satisfies criteria (i) and (ii), but fails on criterion (iii), as it does not specify legal means, but it certainly specifies the manner in which the legal action is to be accomplished.

For our purposes, therefore, we shall consider examples (85), (86) and (87) as typical instances of qualifications which specify legal means, as they satisfy all the three criteria. Examples (88), (89), (90) and (91) fail on at least one of these criteria and hence will not be considered as instances of this qualification-type. Therefore, further discussion on this qualification-type will be based on instances of the type in (85), (86) and (87) only.

4.1.2 Formal Realization

Specifications of legal means in legislative provisions in the corpus seem to have been signalled by a small group of prepositional phrases like 'by order', 'by regulations' etc, the phrasal nature of which is indicated by the idiomatic omission of an article in them, so that instead of a normal expression like

'by an order' we have 'by order' as in the following example:

(92)

'The Secretary of State may by order repeal or amend any provision of the Local Act passed before this Act'

[Section 26(1)]

(93)

'The Secretary of State may by regulations prescribe the form of any notice under this Chapter'

[Section 22(1)]

(94)

'The Secretary of State may by notice in writing to a local authority direct it to treat a rate specified in the notice as being the higher of the rates mentioned in subsection (3) above'

[Section 110(10)]

In all the preposition phrases beginning with 'by' above, the following NP is a legal concept which characterizes the legal means. 'Order', 'regulations', 'notice' are all legal concepts having specific legal requirements. 'Order' and 'regulations' do not need any further specification but 'notice' needs to be specified further i.e. whether it is in writing or not, whether it needs to be addressed to and served on somebody or not. All examples of 'by notice' in the corpus have therefore been further qualified by a sequence of prepositional phrases.

Apart from these recurrent prepositional phrases, occasionally one finds the use of binomial¹, or more appropriately in this case, multinomial expressions especially in prohibitions.

(98)

'Where a court makes an order for possession of such a dwelling-house, the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later than 3 months after the making of the order.'

[Section 69(2)]

The most interesting observation about the formal realization of means-specification is its use of a potentially more ambiguous simple preposition 'by' in place of a more precise and less ambiguous complex-preposition 'by means of'. The tendency in other qualification-types is to prefer the use of a complex-preposition to any use of a simple preposition to avoid any possibility of a misreading of the provision. (See the use of 'for the purpose of' in place of a simple 'for' in section 4.2.2). The choice clearly in this case is in favour of a simple preposition 'by', since there is not even a single instance of the use of 'by means of', although in a majority of cases such a complex-preposition would appear to be equally acceptable.

1. A binomial sequence here is taken to be a sequence of two or more words or phrases belonging to the same grammatical category and joined by some syntactic device such as 'and' and 'or'. Typical examples include 'signed and delivered', 'the freehold conveyed or long lease granted', 'under and in accordance with', 'instrument of ratification, acceptance or approval', 'wholly and completely', 'made and entered into' etc.

4.1.3 Textual Patterns

Legal means in legislative writing seem to be generally specified in those provisions which assign specific powers to the members of the executive who are responsible for enforcing the law. The following is a typical example of this phenomenon.

(96)

'The Secretary of State may by order direct that subsection (1) above shall have effect, either generally or in relation to any registration area'

[Section 52(4)]

In the example above, the Secretary of State is given powers to make subsidiary laws to give varying effect to the subsection, thus paving way for subordinate legislation. It is a typical legal device to work out the details of specific elements of an Act of Parliament, which in the words of the specialist informant amounts to a 'continuation of the story elsewhere'. Of the total number of 33 qualifications which specify legal means in the corpus, 19 delegate such powers to the Secretary of State to make subordinate legislation and use phrases like 'by order', 'by regulations' etc.

In half of the remaining eight instances, the provisions assign some kind of a right to one of the parties in the dispute as in (97) below :

(97)

'A tenant may require that value to be determined by a notice in writing served on the landlord not later than three months after the service on him of the notice under section 10;

[Section 11(2)]

The tenant in (97) has been given a right to have the value of a dwelling-house determined, if he so chooses. But the right can only be exercised by and in accordance with a notice in writing served on the landlord, such being the obligatory force of the qualification.

Although in a majority of instances (29 out of a total number of 33) legal means are specified in provisions which either assign powers or rights, there are at least 4 cases where even obligations and prohibitions are required to be met by specific means. The following are two of the remaining four examples :

(98)

'Where there are reasonable grounds for doing so the landlord shall by notice in writing served on the new tenant extend the period within which his notice claiming to exercise the right to a mortgage may be served;.... .'

[Section 13(3)]

(99)

'Where a court makes an order for the possession of any land the giving up of possession shall not be postponed (whether by the order or any variation, suspension or stay of execution) to a date later than fourteen days after the making of the order'

[Section 89(1)]

In the preceding section we briefly mentioned the tendency on the part of the draftsman to prefer a potentially ambiguous simple preposition 'by' in place of a more specific complex-preposition 'by means of' to specify legal means. One of the reasons for such a preference might be that, unlike many other simple prepositions, 'by' as an expression of means-specification is less likely to be ambiguous. The other reason might be that 'by' on its own conveys more than a mere specification of legal means - a facility which might suit the draftsman's purposes in certain situations. Let us consider the following example :

(100)

'The Secretary of State may by regulations
make provision for calculating the amount
which is to be taken into account as
a person's available annual income'

[Section 9(4)]

The underlined qualification in (100) above seems to serve a dual function. Apart from specifying legal means, it also refers to a legal instrument which is most likely to contain procedural steps for carrying out the legal action, e.g. for calculating the amount to be taken into account as a person's available annual income. So the preposition 'by' not only specifies the notion of legal means which can also be specifically conveyed by the complex preposition 'by means of', but also implies the notion of instrumentality generally conveyed in legal English by 'in accordance with', so that 'by' in the above example may be

regarded as equivalent to a co-ordinate preposition 'by and in accordance with', an expression¹ which is not rare in legislative writing.

4.1.4 Syntactic Positioning

Since qualifications specifying legal means are inevitably meant to qualify the legal action in the provisionary clauses, they are generally placed either within or in close proximity to the verbal group, which indicates the legal action. This seems to be strictly in accordance with the linguistic principle that qualifications should, as far as possible, be placed next to the phrase or word they qualify. The legal drafting community, more than any other specialized and professional writers of the language, seem to follow this principle, albeit unconsciously, wherever possible. There seems to be a dual motivation on the part of the legal draftsman for this : a cautious determination to avoid any ambiguity, and a necessity to incorporate a multiple variety of qualifications in the same sentence. This principle of inserting qualifications next to their antecedents is nowhere better illustrated than in the positioning of qualifications which specify legal means. 25 out of a total of 33 means-specifying qualifications in the corpus have been inserted at post-operator position within the verb group in the main provisionary clause.

-
1. A co-ordinate preposition is considered here as a category of binomial expression, which is very common in legislative writing (See Gustaffsson : 1975b). Other co-ordinate prepositions frequently used are 'under and in accordance with', 'at or within' etc.

(101)

'The Secretary of State may by order enable
the right to buy to be exercised in relation
to dwelling-houses held by local authorities
.....'

[Section 2(5)]

Apart from the obvious concern of the draftsman to place means-specifying qualifications at the post-operator position in the verb group, the other factor which probably facilitates the insertion of such qualifications within the verb group is the fact that, of all the qualification-types in legislative provisions, these are the shortest ones (generally two words like 'by order', 'by regulations' etc.). By placing them at post-operator positions, the draftsman obviously creates syntactic discontinuities in the verb group, which may have serious implications for the reading and processing of these provisions (See Chapter Six). However, by inserting these short qualifications rather than other long ones at mid-verbal positions, the legal draftsman is able to lessen the adverse psycholinguistic effect of syntactic discontinuities so created on the processing of the sentences in which these occur. This probably gives added incentive to the draftsman to insert mean-specifying qualifications at post-operator position rather than some other long qualifications.

Moreover, in a number of cases it is possible to create an unnecessary ambiguity by placing a means-specifying qualification at a position other than the one close to the verb group it is meant to qualify. Example (102) below seems to be an obvious instance of this :

102)

'A tenant may require that value to be determined by a notice in writing served on the landlord not later than three months after the service on him of the notice under section 10;.... .'

[Section 11(2)]

In the example above the underlined qualification specifies legal means by which a tenant may require the value to be determined within a specified time limit. By relegating the qualification to a subsequent syntactic position after the verb 'to be determined' an unnecessary confusion has been created as to which action it qualifies, that of requiring or of determining. Inserting the underlined qualification immediately after the verb group it qualifies would make it more explicit as in (102a) below :

(102a)

'A tenant may require by a notice in writing served on the landlord that value to be determined not later than three months after the service on him of the notice under section 10;'

[a revised version of Section 11(2)]

And, indeed, to avoid any possibility of such a confusion means-specifying qualifications are mostly placed at post-operator positions (25 out of a total of 33 in the present corpus). Out of the remaining 8 instances, 4 are inserted immediately after the verb and only 4 are relegated to clause final positions. Let us consider one such instance of relegation to the final position and

see what purpose it is meant to serve.

(103)

'A protected shorthold tenancy may be brought to an end (by virtue of this section and notwithstanding anything in the terms of the tenancy) before the expiry of the term certain by notice in writing of the appropriate length given by the tenant to the landlord;'

[Section 53(1)]

Since the means-specifying qualification in (103) above is rather longer than the others used in the provision, the draftsman might have thought it better to relegate it to the clause-final position, though it is not always possible to do so in other legislative statements. The other syntactically possible arrangement could be the one in (103a) below :

(103a)

'By virtue of this section and notwithstanding anything in the terms of the tenancy, a protected shorthold tenancy may by notice in writing of the appropriate length given by the tenant to the landlord be brought to an end before the expiry of the term certain'

[a rewrite of Section 53(1)]

In the rewrite version above, a relatively less important qualification is assigned the initial position relegating the subject NP of the main provisional clause to a subsequent position. Being the principal case in Section 53, this first subsection in its original version (103) focussed prominently on the topic of the section i.e. protected

shorthand tenancies by topicalizing the NP. In the rewrite version the subject NP is postponed so far back in the provision that it loses its focussing effect. This technique of focussing on the topic of a particular section by placing the key nominals in the clause initial subject position is very commonly used in legislative provisions.

In short, therefore, one could safely conclude that means-specifying qualifications are placed at the post-operator position or sometimes at the post-verbal position. Occasionally, due to either stylistic considerations or the pressure from other qualifications, they are postponed to subsequent clause final positions. The two major factors which demand and also facilitate their placement at the post-operator position are their length (which is generally short as compared with other qualification-types) and the need to place them in close proximity to the verb they qualify.

4.2 Ascribing Legal Purpose

The second qualification-type in this group of operational qualifications is the one which ascribes legal purpose to an action in the main provisional clause. Like means specification, purpose-ascription is also more centrally associated with the legal action in a legislative provision. By ascribing a particular purpose to a legal action, it not only gives a specific direction to the action in the main provisional clause but also defines it more narrowly than it otherwise would.

(104)

'The Chief Land Registrar shall, for the purpose of the registration of the title, accept such a certificate as sufficient evidence of the facts stated in it;.... .'

[Section 20(4)]

The provision in (104) is made in the context of the compulsory registration of a dwelling-house of which a tenant wishes to acquire the freehold or be granted a long lease. The preceding provision in section 20 obliges the landlord to give a certificate to the tenant stating that he is entitled to convey the freehold or make the grant. (104) above provides for the acceptance of such a certificate as a valid instrument of law. However, the underlined qualification which ascribes a specific purpose to the act of acceptance, limits the significance of such a validity i.e. the acceptance becomes valid only in the context of a registration of a dwelling-house and in no other case. This qualification-type which ascribes a legal purpose to an action in the main provisionary clause is a very common device in legislative provisions as it is used to give a specific direction to a particular legal action.

4.2.1 Criteria for Identification and Typical Examples

To identify the typical instances of qualifications which ascribe legal purpose in legislative provisions, the following criteria provide a set of necessary and sufficient condition:

- (i) It occurs within the same sentence in which the legislative provision occurs.
- (ii) It refers to the legal action in the main provisionary clause.

- (iii) It ascribes a specific purpose to the legal action in the main provisional clause.
- (iv) It explicitly names the legal purpose which it ascribes to the action.

In the light of the above criteria, let us consider which of the following examples can be taken as the typical instances of qualifications which ascribe legal purpose in legislative provisions.

(105)

'The Lord Chancellor may make such rules and give such directions as he thinks fit for the purpose of giving effect to this Part of this Act.'

[Section 86(4)]

(106)

'A landlord may,, accept any statutory declaration made for the purposes of this Chapter as sufficient evidence of the matters declared in it.'

[Section 25]

(107)

'The Secretary of State may lay down accounting requirements for registered housing associations with a view to ensuring that the accounts of every registered housing association are prepared in the requisite form '

[Section 124(1)]

(108)

'If, the Secretary of State is satisfied that any land to which the grant relates has ceased to be used for the purpose for which it was intended that it should be used the Secretary of State may reduce the amount of the grant'

(Schedule 18, Para.6(3)]

Example (105) provides the Lord Chancellor with powers to make such rules and to give such directions as he considers necessary to accomplish a specific purpose which is indicated by the underlined qualification. This qualification meets all the four criteria listed above. It occurs in the same sentence by which the provision is made; it refers to the legal action in the main provisional clause i.e. of making rules and giving directions; it not only ascribes a purpose to this action but also names the purpose i.e. giving effect to the relevant part of the Act.

Example (106) gives powers to a landlord to accept the validity of a statutory declaration within the restricted universe of 'this Chapter'. The underlined qualification satisfies criteria (i) and (ii), but it does not ascribe a purpose to the legal action. It simply defines the scope of the legal action, although it uses a similar linguistic device to the one used in (105). (We shall have more to say on this in the next section and in Chapter Five). And if it does not ascribe a legal purpose, it cannot name it either. So the qualification in (106) fails on criteria (iii) and (iv).

The qualification in (107) presents an interesting problem.

It satisfies criteria (i) and (ii) but criterion (iii) poses a unique problem. It could be taken as an expression of either purpose, hope or intention. In everyday English use, it is not always crucial to make a distinction between the varying interpretations of such a qualification. However, in legal contexts it becomes sufficiently crucial to give one and only one interpretation of the provision in question. In the present example, if the qualification is taken as an expression of legal purpose, the accounting requirements the Secretary of State is empowered to lay down will have to be treated as having a legally binding force. On the other hand, if the qualification is taken as an expression of a mere intention or hope, which indeed seems to be the case here, the nature of the accounting requirements will be anything but legally binding. This interpretation is reinforced by the reading of the next subsection where the draftsman uses 'must' instead of a legally binding 'shall' in laying down the obligation of housing associations to comply with the accounting requirements.

(109)

'The accounts of every registered housing association must comply with those requirements;'

[Section 124(2)]

Thus the qualification in (107) does not meet criteria (iii) and (iv).

The qualification in (108) satisfies criterion (i).

It occurs in the same sentence which contains the legislative provision, it ascribes a purpose to the act of the use of the grant which is not the legal action in the main provisional clause. In essence the qualification in (108) does not ascribe purpose to the legal action in the main provisional clause but simply refers to an action in the initial preparatory qualification. Thus it fails to meet any of the criteria except (i).

Therefore, of all the examples above, only (105) can be considered a typical instance of purpose-ascription and the remaining three fail to meet at least one of the criteria listed above and hence will be considered as non-central instances of this qualification-type.

4.2.2 Textual Patterns

Expressions of legal purpose in the corpus are realized in terms of two syntactic patterns with remarkable consistency. In a majority of cases (18 out of a total of 22) the complex preposition 'for the purpose of' is followed by a gerund which names the purpose. A typical instance is 'for the purpose of showing how the price has been arrived at' as in the following example :

(110) 'The notice shall, for the purpose of showing how the price has been arrived at, state -

(a) the value at the relevant time;

(b)'

[Section 10(2)]

In the remaining 4 instances, the complex-preposition 'for the purpose of' is followed by a nominalized phrase like 'the registration' as in the following example:

(111)

'The Chief Land Registrar shall register the tenant as proprietor of the title concerned, and for the purpose of the registration the Chief Land Registrar shall accept any such certificate as sufficient evidence of the facts stated in it.'

[Section 24(4)]

In all the four examples of this second pattern, the nominalized phrase is the second or third mention of the action which forms the basis of the purpose named in the qualification. The earlier mention generally occurs in its verbal form either in the same provision as in (111) or in some earlier provision. Since the act is already mentioned once, it takes the nominalized form on its second mention. In this sense pattern two seems to be a variant of pattern one.

There are at least two interesting aspects of the structuring of qualifications ascribing legal purpose. The first is the consistency with which the complex-preposition 'for the purpose of' is used throughout the corpus to ascribe legal purpose. Even a close variant of this e.g. 'for the purposes of' (see Quirk and Mulholland : 1964) is not used even once to ascribe legal purpose, probably because 'for the purposes of' is used to define legal scope - a function we shall consider in Chapter Five. However, it is interesting to note that the two

similar surface forms are used to textualize very different aspects of legislative provisions.¹ This was also confirmed by the specialist informant in our discussion :

R. : "One of the interesting things that I find is that the use of 'for the purpose of' and 'for the purposes of' looks very similar in form but they are used for very different purposes."

S.I. : "Yes, when you are using 'for the purposes of this Act' what you're saying is this particular Act or Section is designed to achieve a certain result and for the purposes of achieving those results on the other hand, if you were saying 'a person uses a fishing net for the purpose of catching fish' that will be a completely different use of the language Its a very different use a very different sense I think you've got to look for the different shades of meaning that single words have and when you come across a word which is used in a totally different sense to its use in another passage, you've got to label it as a different word."

(Caldwell : 1982)

Secondly, unlike qualifications specifying legal means where a simple preposition 'by' was considered more appropriate than a more specific complex-preposition like 'by means of' (see section 4.1.3. above), the qualifications ascribing legal purpose tend to rely on the use of a more specific complex-preposition 'for the purpose of' rather than a simple preposition 'for', both of which may specify 'purpose'. The explanation for

1. An important implication of this would be for legal dictionaries where 'for the purpose of' and 'for the purposes of', though related in form, would be treated as two different entries.

these opposing tendencies may lie in the fact that in means-specification it is necessary to refer not only to the instrument but also to its specified content and to achieve this a simple and general preposition 'by' is more appropriate than any specific complex-preposition like 'by means of' (see section 4.1.3 for examples). On the other hand, in ascribing legal purpose it may be ambiguous to use a simple preposition 'for' as it may be taken as an expression of either 'for the purpose of' or 'for the purposes of', and the choice of a singular or a plural NP is significant (see Section 5.4.2). So, in the case of means-specification, specificity is considered sacrificable in order to achieve greater generality and all-inclusiveness by using a potentially ambiguous simple preposition 'by', whereas in ascribing legal purpose, the aim seems to be to achieve specificity by using a complex-preposition 'for the purpose of' rather than an ambiguous simple preposition 'for' which may be taken to specify the onset either one of two very different qualifications.

4.2.3 Syntactic Positioning

Unlike qualifications which specify legal means, most of which appear at the post-operator position in the main provisional clause, qualifications ascribing legal purpose generally occur either at the pre-main-provisionary-clause position or the post-main-provisionary-clause position. Of the total number of 22 instances 15 occur at the post-main-provisionary-clause position and 5 at the pre-main-provisionary-clause position. However, there are 2 instances in which they occur at the post-operator position

in the main provisional clauses. The tendency to position purpose-ascribing qualifications either to pre- or post-main-provisionary-clause positions may be due to one or more or any combination of the following factors:

- (i) Purpose-ascribing qualifications use a more explicit and precise expression 'for the purpose of' than the one which specifies legal means and hence are less likely to be misinterpreted if relegated to syntactic positions away from the verb group which they qualify.
- (ii) Purpose-ascribing qualifications are generally longer than those which specify legal means and hence will create long syntactic discontinuities in the legislative provisions if placed at phrase-medial position, such as the post-operator position.
- (iii) Purpose-ascribing qualifications, perhaps, focus more generally on the provision as a whole whereas means-specifying qualification can be considered more central to the verb and hence need to be placed close to the verb.
- (iv) In addition to the above factors, the one which is likely to outweigh any other is the pressure which various qualification-types may exert at a particular point, competing for relatively fewer syntactic positions.

- (v) And, last but not the least, one must not overlook certain individual stylistic considerations that a particular draftsman might have in placing a particular qualification at a specific syntactic position.

In the presence of so many factors, it is often difficult to assign a particular explanation to the placement of a given qualification at a particular syntactic position. Consider the following examples:

(112)

'For the purpose of securing that a part of the house is not used for human habitation the Local Authority may, if after consultation with any owner or mortgagee it thinks fit to do so, accept an undertaking from him that that part will not be used for human habitation without the permission of the Local Authority.'

[Schedule 24 Para.2(5)]

(113)

'The Chief Land Registrar shall, for the purpose of the registration of title, accept such a certificate as sufficient evidence of the facts stated in it, '

[Section 20(4)]

In keeping with the overall trend in purpose-ascribing qualifications, the underlined qualification in (112) is placed initially. This necessitates the insertion of the preparatory qualification 'if after consultation it thinks fit to do so' at the post-operator position, which renders the verb-group

discontinuous. On the other hand, the purpose-ascribing qualification in (113) has been inserted after the operator 'shall' in spite of an initial position being available for its placement, which would have made it possible for the draftsman to avoid discontinuity in the verb-group. As a result of such an idiosyncratic behaviour, it becomes increasingly difficult to explain the syntactic positioning of individual qualificational instances. However, the trend seems to be in favour of the clause-initial position. If it is not available, the second choice is for the clause-initial position. If that is also unavailable, the draftsman has to look for other syntactic positions.

4.3. Specifying Temporal Instructions and Other Relations

The third and largest set of operational qualifications most commonly used in the corpus are those which specify temporal instructions and relations. Temporal specifications are very common in ordinary everyday English usage also, but what makes them more important in legislative provisions is not only their length and the frequency with which they occur but also the minute details in which the temporal instructions may be specified.

(114)

'A local authority shall for such period not exceeding six months and beginning at the commencement of subsection (1) above as it may determine and for every subsequent period of six months declare on a date falling within the month immediately preceding that period a rate applicable to the advances and transfers'

[Section 110(6)]

The provision above is about the declaration of an interest rate applicable to advances and transfers. Temporal specifications in statements like the one above in ordinary English are also very common indeed. However, they differ from the one in (114) in at least three respects. They are rarely so long as the one in (114); they rarely, if ever, specify temporal instructions with the degree of detail as in (114); and, they are very rarely inserted at post-operative positions.

4.3.1 Criteria for Identification and Typical Examples

We propose the following criteria to identify instances of qualifications which specify temporal instructions and other temporal relations. The term temporal instructions is used to indicate those temporal specifications which refer to the legal action in the main provisional clause and direct the legal subject as to when and for how long, if necessary, the legal action is required to take place. Temporal relations, on the other hand, refer to any action, other than the one in the main provisional clause and specify its temporal aspect.

- (i) Qualifications specifying temporal instructions and temporal relations occur in the same sentence in which the provision occurs.
- (ii) Temporal instructions refer to the action in the main provisional clause.
- (iii) Qualifications specifying temporal relations refer to any action in any of the qualifying clauses and specify the temporal aspects of the action in it.

In fact, the above criteria give us two sets, one, consisting of (i) and (ii) to identify temporal instructions; and, two, consisting of (i) and (iii) to identify temporal relations. Let us consider the following examples and try to identify some typical instances of the two sub-categories.

(115)

'As soon as practicable after the service on it of a notice the landlord shall serve on the tenant a notice in writing stating -

- (a) the amount which the tenant is entitled to leave outstanding '

[Section 12(4)]

(116)

'Every bodywhichlets dwelling-houses under secure tenancies shall, within two years of the commencement of this Chapter and thereafter from time to time, publish information about its secure tenancies'

[Section 41(1)]

(117)

' the conveyance, grant or assignment shall contain a covenant binding on the purchaser to pay to the local authority the amount specified in subsection (3) below if, within a period of five years, there is a disposal falling within subsection (4) below'

[Section 92/104B(2)]

(118)

'An order shall not authorise the giving of any option notice or of a notice cancelling an option notice later than twelve months after the end of the year in which the order is made.

[Section 114(6)]

Example (115) meets criteria (i) and (ii), in that it occurs in the same sentence in which the provision for the landlord to serve a notice on the tenant is made and it not only refers to the legal action of 'serving a notice on the tenant' but also specifies the temporal instruction that it shall be served 'as soon as practicable after the service on it of a notice'. Similarly, (116) contains an instance of a temporal instruction specification, as it meets criteria (i) and (ii). The underlined qualification refers to the legal action of 'publishing information about secure tenancies' and specifies temporal instructions for its performance. So, both the qualifications in (115) and (116) are typical instances of temporal instructions. The underlined qualification in (117), although it satisfies criterion (i) in that it occurs in the same sentence in which the legal action of providing a covenant in the conveyance, grant or assignment is made, fails to meet criterion (ii). Instead, it meets criterion (iii) because it refers to an action in the preparatory qualification 'if there is a disposal' and thus simply specifies a temporal relation between the action in the condition and the period of its occurrence. The underlined temporal qualification in (117) therefore, is a typical instance of a temporal-relation specification.

The qualification in (118) may seem to satisfy criteria (i) and (ii). It certainly refers to the action of authorising the giving or the cancelling of an option notice and it also seems to specify a temporal instruction in that regard. However, it does not contain the provision, as the provision appears in the form of subsection (5) which precedes it and is reproduced below

as (119),

(119)

'If it appears to the Secretary of State
appropriate to do so he may
authorise the giving or cancellation of
option notices'

[Section 114(5)]

So, although the underlined qualification in (118) satisfies
criterion (ii), it fails to meet criterion either (i) or (ii).
And, hence, it cannot be considered a typical instance of temporal
specification.

4.3.2 Formal Realization

There seem to be four most frequent syntactic patterns
in terms of which temporal specifications are realized (see Table 4.1
on the following page).

Pattern 1: The most frequent syntactic pattern used to
realise specifications of both the temporal
instructions and the temporal relations in the
corpus is the prepositional phrase of time
consisting essentially of a preposition like
'at', 'within', 'until', 'throughout', 'on',
'from' etc., followed by a noun-phrase of
time. And, as already mentioned in section
4.3. it is mostly further modified by either
a (sequence of) prepositional phrase(s) or a

TEMPORAL SPECIFICATIONS (FORMAL REALIZATION)

PATTERN 1 (COMPLEX) PREPOSITION + TIME EXPRESSION + (M₁) + (M₂) + (M₃)

1	at	any time	before the service	on him	of a no
2	as from	the date	from which the registration takes effect	-	-

PATTERN 2 TEMPORAL CONJUNCTION + (NON) FINITE CLAUSE + (M₁) + (M₂)

1	after	giving the landlord notice	in writing	of his intention to do so
2	before	making any decision	on a matter	of housing management

PATTERN 3 TEMPORAL PREPOSITION + NOMINALIZED EXPRESSION + (M₁) + (M₂)

1	before	service of the notice	claiming to exercise the right	to buy
2	after	the registration	of the land	-

PATTERN 4 TEMPORAL SPECIFICATION (PATTERN 1, 2, or 3) + OR/AND + (M) + TEMPORAL SPECIFICATION (PATTERN 1, 2, or 3)

1	Within four weeks	or	in a case falling within subsection (2) below	eight weeks
2	Within the period of three months beginning with the service on him of that form	or	-	Within that period as extended under subsection (3) below

TABLE 4.1

reduced clause. A typical example of such a pattern is the following.

(120)

'A tenant may, at any time before the service on him of a notice under subsection (2) above, serve a further notice under subsection (1) of section (12)'

[Section 16(8).]

As many as 97 out of a total of 143 temporal specifications (which include both the temporal instructions as well as the temporal relations) are realised in terms of this pattern and only six of these appear without any further modifications. This gives a good indication of the extent of specification that is aimed at in legislative provisions. Modification of the temporal prepositional phrase is also frequently achieved by the use of reduced or non-finite clauses or even by a full clause.

(121)

'Where a valid notice of increase has been served on a tenant the registration shall not invalidate the notice, but the notice shall, as from the date from which the registration takes effect, have affect as if it specified such part only of the increase as has not become irrecoverable.'

[Section 61(1)/72-6]

Pattern 2: The second syntactic pattern used for temporal specifications is that of a finite or a non-finite clause introduced by temporal conjunctions like 'immediately before', 'until',

'when' and 'so long as' etc. The following
is one of the examples out of a total of 23
in the corpus.

(122)

'It shall be the duty of a landlord authority,
before making any decision on a matter of
housing management to consider any represen-
tation made to it in accordance with arrange-
ments made by the authority under this
section.'

[Section 43(2)]

Sometimes such temporal specifications are embedded in
the preparatory qualifications introduced by 'if' as in (123)
below.

(123)

'The surviving spouse of the original
tenant shall after the death be the
statutory tenant if and so long as he or she
occupies the dwelling-house as his or her
residence.'

[Section 76(1)]

In this syntactic pattern one must not ignore the fact,
that in legislative provisions 'when' is not always used as a
temporal conjunction, though it often is in ordinary writing.
In (124) below, it is an expression of temporal specification.

(124)

'If the controlled tenancy is one to which
Part II of the Landlord and Tenant Act 1954
would apply it shall, when it ceases to
be a controlled tenancy, be treated as a
tenancy continuing after the expiry of a
term of years certain.'

[Section 64(2)]

In (124) above, when is used in a temporal sense and hence marks the onset of a temporal specification. However, the use of when in (125) below does not indicate a temporal meaning but is used to introduce an entirely different kind of qualification.

(125)

'A rent assessment committee shall, when constituted to make any such determination, be known as a leasehold valuation tribunal'.

[Section 142(2)]

In this case 'when' marks the onset of a preparatory qualification describing a case to which the provision applies and not the onset of a temporal specification as was the case in (124).

The use of 'when' in a temporal sense is very common in everyday English and also in legislative writing. However, it is not difficult to find instances of its use in legislative statements to onset a case-description, especially where a single or rare occurrence of the case is contemplated (Thornton : 1979: 25). In such a use 'when' has a hypothetical implication rather than a temporal one, as in (125) above.

Pattern 3: Apart from these two patterns, there are 18 instances in which temporal prepositional phrases contain nominalized expressions which are further modified by reduced relative clauses.

(126)

'The period to be taken into account
is the aggregate of the periods during
which, before the service of the notice
claiming to exercise the right to buy, -

(a) the secure tenant was a
secure tenant ; or

(b)'

[Section 7(5)]

Pattern 4: In addition, there are at least 5 instances
in which binomial temporal expressions are
used to specify either temporal instructions
or temporal relations.

(127)

'.... the landlord shall serve on the
tenant, within four weeks, or in a case
falling within subsection (2) below, eight
weeks, either -

(a) a written notice admitting the tenant's
right; or

(b)'

[Section 5(1)]

Not unexpectedly, within these four broad syntactic patterns
there is a fair amount of variation in the degree of subsequent
modification of initial temporal phrases depending upon the depth
of temporal specification required in individual provisions.

4.3.3 Textual Patterns

As already pointed out in section 4.3.1., we can find two kinds of temporal specification in the corpus: specification of temporal instructions and specification of temporal relations. Although there may not be any significant difference in their linguistic realizations, the two kinds of specification textualize very different aspects of legislative provisions. Those qualifications which specify temporal instructions form a part of the main provisionary clause and qualify the legal action in it, whereas the ones specifying temporal relations form a part of any of the accompanying qualifications which are subordinated to the main provisionary clause. In spite of a similarity in linguistic form the two subcategories textualize two different aspects of the same legislative provision.

Qualifications specifying temporal instructions attempt to answer questions which might be raised about the time of legal action. Depending upon the question, the answer may specify either a point in time or a period of time as generally happens in ordinary everyday English use. However, in ordinary English use the universe of discourse described is the concrete and real world of day-to-day happenings, whereas in legislative provisions the universe of discourse described is the abstract, model world of rights and obligations, permissions and prohibitions. Consequently, the actions with reference to which temporal specifications are made and defined in ordinary English are definite and real, whereas those in Legislative English are abstract and all-inclusive. The distinction will now be clarified by considering the following examples:

(128)

'A tenant may, at anytime before the service on him of a notice under subsection (2) above, serve a further notice under subsection (1) of section (12)'

[Section 16(8)]

(129)

'Everybody which lets dwelling-houses under secure tenancies shall, within two years of the commencement of this Chapter and thereafter from time to time, publish information about its secure tenancies'

[Section 41(1)]

Both the actions in (128), i.e. of serving a notice by the tenant or on the tenant, are not real and they refer to abstract legal concepts of 'serving a notice'. In (129) the actions being referred to, i.e. of publishing information and the commencement of this chapter, are not real and definite as one would find in ordinary world of daily activities. They are defined in the imaginary universe of the 'Housing Act 1980' and in order to account for all the contingencies that may arise in such a world, there is a need to use temporal expressions which are indefinite enough to include many of those conceivable contingencies. To achieve this the draftsman uses expressions like 'at no time', 'at any time', 'in relation to any time', 'for any period', 'for any such period' etc. Having done that, he needs to be precise and specific in his temporal expression and he achieves this by subsequent modifying phrases which are attached to the initial temporal expressions, so that one gets temporal specifications like 'at any time within three months of the final

determination', 'for any period before a rent is registered for the dwelling-house' etc. So the tendency in temporal specifications is to make the expression general and all-inclusive without any lack of specificity, and this is achieved by the use of a string of modifying phrases in clauses, each subsequent modifying phrase adding a layer of specificity to the temporal expression. The outermost element modifying the string of temporal expressions generally has a reference to an act which takes place within the universe of the Act, i.e. 'the service of a notice' in (128), 'commencement of this Chapter' in (129) and 'the making of a determination' in (130) below:

(130)

'As soon as practicable after a determination has been made the landlord shall serve on the tenant a notice stating the effect of the determination'

[Section 11(5)]

Specifications of temporal relations share these characteristics with temporal instructions as is evident from the following :

(131)

'A tenant is entitled to defer completion if -
....

(c) he has, within the period of three months beginning with the service on him of the notice served a notice on the landlord.'

[Section 16(4)]

An interesting aspect of qualifications specifying temporal relations is that a great majority of them (77 out of a total of 82) are embedded within the preparatory qualifications, especially the case-descriptions (72 instances), while the remaining 5 occur within the structure of these qualifications which assign volitional control. However, the remaining 5 (out of a total of 82) occur as embedded within the structure of other general qualifications like the relative clauses, as in (132) below:

(132)

'A tenancy of a dwelling-house which was granted to a person who was not immediately before the grant resident in the district is not a secure tenancy

[Schedule 3 Para.6]

4.3.4 Syntactic Positioning

Of the two subcategories of temporal specifications the ones which specify temporal relations always occur within the syntactic framework of any of the other qualifications which qualify the main provisional clause. And, since in most cases, the preparatory qualifications which either describe cases to which the provision applies or assign volitional control to the legal subject, contain specifications of temporal relations, their position in the provision is largely dictated by the position which preparatory qualifications occupy. However, the syntactic positioning of qualifications which specify temporal instructions

present interesting data.

Like specification of legal means, specification of temporal instructions is also directly relevant to the legal action in the main provisional clause. Both share equal affinity to the legal action and consequently both compete for the same syntactic position in the provisional clause. Like means-specifications, temporal instruction-specifications also prominently occur at the post operator position (25 out of 57). Some occur after the verb (7 in all), and 13 are placed at the clause-final position. There are a few which occur at the clause-initial positions. And wherever they do, they seem to provide a link with the immediately preceding provisions.

(133)

'As soon as practicable after a determination or re-determination has been made the landlord shall serve on the tenant a notice stating effect of the determination or re-determination '

[Section 11(5)]

The preposed temporal qualification above seems to provide a link with the preceding provision in the section by referring to the act of determination or redetermination of the value of the dwelling-house. All the preceding subsections in this Section aim to establish the right of a tenant to have the value of the dwelling-house determined or redetermined by a district valuer. Apart from this and three other similar instances, no other temporal specification is placed in the clause-initial position. As already mentioned, means specifications and specifications of

temporal instruction are two of the most likely qualifications competing for a place within or in the immediate neighbourhood of the verb in the main provisional clause. It would therefore, be interesting to see which of them wins the position after the operator. Unfortunately there are only two sentences in the corpus which contain both these qualifications. One of them is the following :

(134)

' the tribunal may by notice in writing served on the tenant or landlord or on a superior landlord require him to give to the tribunal, within such period but not less than 14 days from the service of the notice as may be specified in the notice such information as the tribunal may reasonably require.'

[Schedule 22 Para.7(1)]

In this case the two underlined qualifications refer to two different actions in the main provisional clause. Means specification refers to the act of requiring the landlord or the tenant to give to the tribunal a certain piece of information, whereas the temporal instruction specification refers to the act of giving that certain piece of information to the tribunal. The two qualifications are kept apart and inserted at suitable positions in the provision. The other example is the one we have already discussed in section 4.1.4 numbered (102) which is reproduced below :

(135)

'A tenant may require that value to be determined by a notice in writing served on the landlord not later than three months after the service on him of the notice under section 10;'

[Section 11(2)]

Here the two underlined qualifications are not kept apart. Since they appear one after the other, it indicates that they refer to the same action. But the action can either be that of requiring or of determining that value. Syntactically both are possible but if one considers the meaning of the provision, means specification i.e. the first underlined qualification goes with the act of requiring as one does not determine that value by notice. Temporal specification can go with either and one cannot decide on the action it refers to unless one gets more context from what follows the provision. However, the tendency of both the examples above is clearly to insert means-specifying qualifications first at post operator positions and relegate temporal instruction to the next suitable syntactic opening.

4.4 Summary

In this Chapter we identified three types of operational qualifications, which are more centrally associated with the legal action in the main provisionary clause, in that all three of them throw more light on the various aspects of the legal action. All the three qualification-types not only have different surface forms but also very different textual patterns and, of course, different communicative purposes. Since all the three tend to qualify the

legal action in the main provisional clause, they have a tendency to cluster around the verb in the main provisional clause." And, as such, they compete for the few syntactic positions that are available in a particular provisional clause when all of them are co-present. This is particularly true of means-specifications and temporal instruction-specifications, both of which have a tendency to occur at the post-operator position. The little evidence we had from the corpus indicated that means-specifications generally took precedence and temporal instructions were relegated to subsequent positions.

CHAPTER FIVE REFERENTIAL QUALIFICATIONS

5.0 In Chapter Three we looked at a set of preparatory qualification-types which provide an account of the circumstances to which a given legislative provision applies and the conditions which trigger off the legal action stated in it. In Chapter Four we considered a set of operational qualification-types which provide additional information on certain aspects of the main provisionary clause, particularly the manner in which the legal action is required to take place. We shall now turn to a set of referential qualification-types which provide necessary discursal links and indicate certain specific legal relationships between various aspects of the provision in which they occur and those of others either in the same Act or in some other Act which has some legal bearing on it. As the specialist informant put it,

'.... very rarely is a new legislative provision entirely freestanding it is part of a jigsaw puzzle in passing a new provision you are merely bringing one more piece and so you have to acknowledge that what you are about to do may affect some other bit of the massive statute book'

[Caldwell : 1981]

Since a legal draftsman has to acknowledge the links, wherever necessary, between what he is writing (i.e. a new provision) and what is already available in the form of existing statutes, he can do this by incorporating all the relevant information from earlier provisions into the new one, thus making it entirely self-contained. However, this is not always possible in practice in most provisions. Alternatively, and this seems to be the common practice in the present corpus, he can avoid discussion on complicating legal content already incorporated in earlier provisions or to be incorporated in the subsequent provisions of the same

Act by making a reference to it and indicating the kind of legal bearing it has on the new provision. The following example will illustrate the point.

(136)

'Where, after the commencement of this subsection,
a local authority -

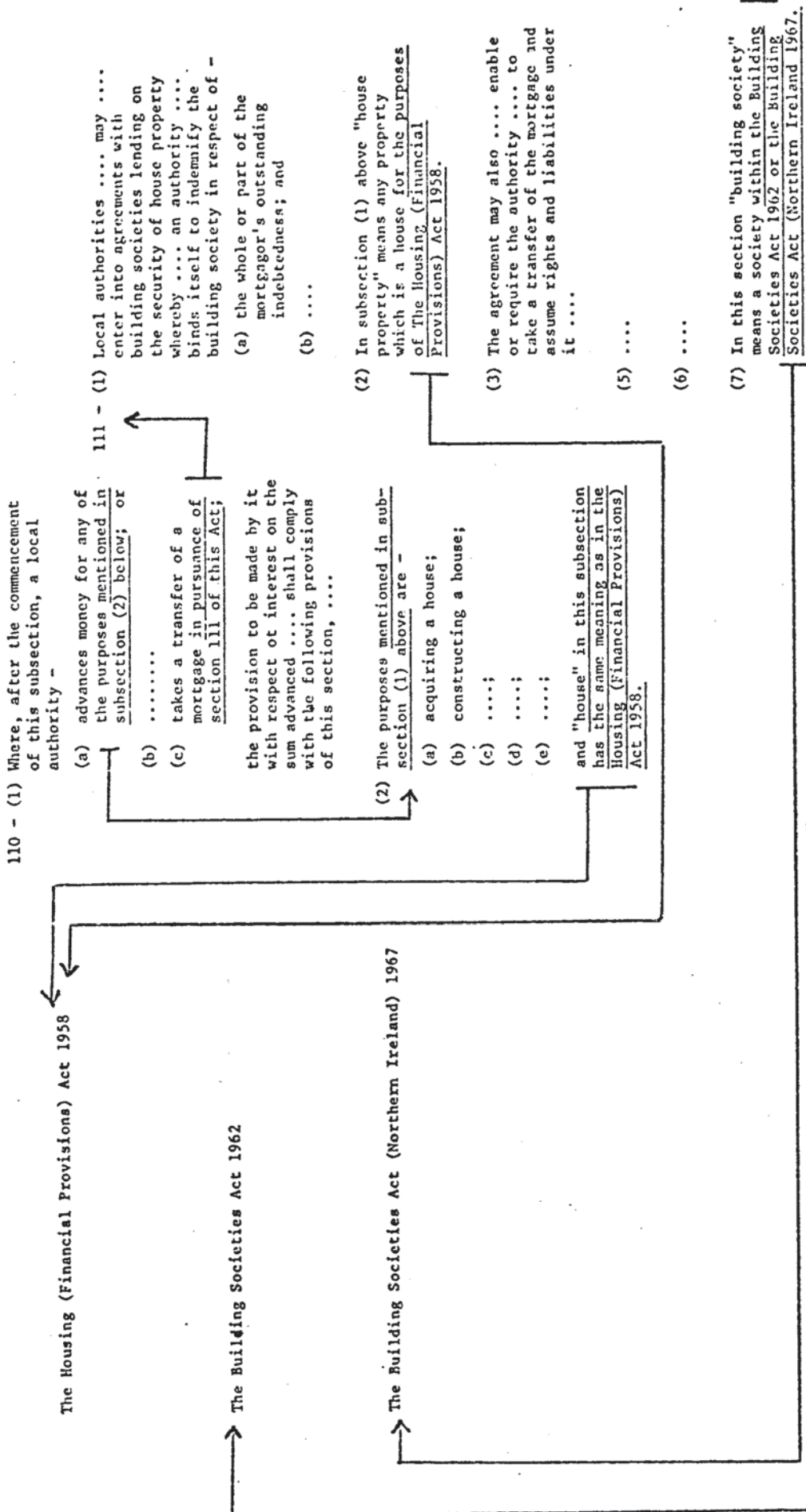
- (a) advances money for any of the purposes
mentioned in subsection (2) below; or
- (b)
- (c) takes a transfer of a mortgage in pursuance
of section 111 of this Act;

the provision to be made by it with respect to
interest on the sum advanced shall comply
with the following provisions of this section,'

[Section 110(1)]

In the example above, the provision is applicable to a case where a local authority takes a transfer of a mortgage, and the conditions under which a local authority is empowered to take such a transfer are not discussed in this example. Instead there is a reference to section 111 which provides for taking such a transfer of a mortgage. The qualification, 'in pursuance of section 111 of this Act' not only helps the draftsman to postpone any further discussion on this topic but also indicates that section 111 incorporates the textual authority for taking a transfer of a mortgage, thus establishing a specific relationship between the two sections. Another version of section 110(1) displaying all of its referential antecedents (see the following page) illustrates the linking process.

Example (136a) also displays another referential qualification 'mentioned in subsection (2) below', the purpose of which seems to be to



postpone discussion on 'the purposes' for which a local authority advances money. This seems to establish a purely text-cohering relationship between subsection (1) and (2) of section 110. This helps the writer to reduce information load in subsection (1) and also to indicate to the reader that further information on 'the purposes' could be found in subsection (2). When the reader comes to subsection (2) he finds another qualification 'mentioned in subsection (1)(a) above' as a reminder, as it were, of the contextual implications of section 110(1)(a).

The diagrammatic display (136a) also illustrates how various provisions are overtly or covertly embedded in the matrix of preceding and preceded legislation and the discoursal as well as legal relationships between them are indicated by a variety of referential qualifications. Depending upon the kind of legal and discoursal relationships they indicate, referential qualifications can be broadly grouped under four major categories:

(A)	Those which provide textual authority	637 instances
(B)	Those which refer to terminological explanations	93 instances
(C)	Those which provide textual mapping	200 instances
(D)	Those which define legal scope	177 instances
TOTAL:		<u>1107 instances</u>

We shall now look at each of these qualification-types in greater detail.

5.1 Providing Textual Authority

This largest group of referential qualifications consists of those qualification-types which refer to the textual location of the legal

authority for various legal actions mentioned in the provisions in which they are used. Text-ascription is an important aspect of a legislative provision where every action taken by any of the parties involved in a dispute (including the one responsible for enforcing the law) must flow from some legislative provision located either in the same Act or in an already existing one. The following example typifies such a use:

(137)
'Where a secure tenancy is a periodic tenancy and, on the death of the tenant, there is a person qualified to succeed him, the tenancy vests by virtue of this section in that person or, if there is more than one such person, in the one who is to be preferred in accordance with subsection (3) below'

[Section 30(1)]

The provision in (137) forms part of Section 30 which provides for succession in the event of the death of a secure tenant, and this is clearly and most explicitly indicated by the first underlined qualification 'by virtue of this section'. In a case where there is more than one person qualified to succeed the tenant, the successor is to be selected on a certain basis, which is not specified in the same subsection but is postponed to subsection (3). This is indicated by the second underlined qualification i.e. 'in accordance with subsection (3) below', which outlines the textual authority on the basis of which the successor is to be chosen.

5.1.1 Criteria for Identification and Typical Examples

To identify qualifications which indicate textual authority, the following criteria serve as necessary and sufficient conditions:

- (i) The qualification occurs in the same sentence in which the provision is encoded.
- (ii) It explicitly refers to the provision, which is either in the same Act or in some other Act
- (iii) The nature of reference in (ii) is textual.
- (iv) The provision it refers to provides legal authority for the action it qualifies in the provision in which it occurs.

In the light of the above criteria, let us consider the following three potential candidates as instances of text-ascription:

(138)

'The notice ... shall be accompanied by a form for use by the tenant in claiming, in accordance with section 16(4)(c) below, to be entitled to defer completion.'

[Section 12(5)]

(139)

'This section applies where a discount has been given to the purchaser by the local authority in accordance with a consent given by the Minister'

[Section 92/104B(1)]

(140)

'.... every registered housing association shall have power by virtue of this section, but not otherwise, to dispose of any land held by it.'

[Section 122(1)]

Example (138) above requires the landlord to send a form to the tenant along with a notice which the tenant may use to claim entitlement to defer completion. This claim must be made on the basis of some legal authority, which is not specified in the

provision, but is only referred to by the underlined qualification. This underlined referential qualification in (138) satisfies criteria (i) to (iv) listed above. It occurs in the same sentence in which the provision for sending the form is made; it refers explicitly to section 16(4)(c); the reference made is textual; and it refers to section 16(4)(c), which indicates the textual authority on the basis of which the tenant can claim to be entitled to defer completion. So (138) can be taken as a typical example of this qualification-type.

In the case of example (139) the underlined qualification satisfies criterion (i) in that it occurs in the same sentence in which the provision occurs. It refers to a textual authority on the basis of which a local authority can give discount i.e. a consent by the Minister. So it satisfies criteria (ii) and (iv). However, the reference to the authority is not textual and hence it fails on criterion (iii). And so, it cannot be considered as a typical instance of this category.

Although the underlined qualification in (140) does not refer to a provision other than the one in which it occurs, it very explicitly and exclusively provides a textual authority to confer powers on every registered housing association to dispose of any land held by it. It meets criteria (i) to (iv) and hence can be taken as a typical instance of text-ascription.

5.1.2 Formal Realization

Qualifications providing textual authority utilize a variety of both the simple and complex-prepositional phrases. Of the total

number of 637 instances as many as 611 are realized in terms of (complex) prepositional phrases (See Table 5.2 on the following page). A typical surface realization of the qualification in this category displays the following pattern :

<u>(Complex) Prepositional</u>	+	<u>Layers of Textual</u>	<u>Units</u>	
<u>Phrase</u>		(1)	(2)	(3)
(under (in accordance with (in pursuance of (in virtue of	) ) ) )	(the provisions of)	(Section ... (Subsection ... (Paragraph ... (Chapter ... (etc.	(of the ... Act) ((to the Schedule ((etc.

The following are two of the many typical instances of text-ascription in the corpus.

(141)

'Any sum received by the Secretary of State under section 112 or 113 shall be paid into the Consolidated Fund.'

[Section 154(2)]

(142)

'A vesting order shall have the like effect as a conveyance or grant duly executed in pursuance of this Chapter '

[Section 24(2)]

It is interesting to note that, of a variety of complex prepositions used in legislative writing, only these three (i.e. in accordance with, in pursuance of, and by virtue of) are used to provide textual authority. Between them, they account for as many

TABLE 5.2 : FORMAL REALIZATION OF QUALIFICATION PROVIDING TEXTUAL AUTHORITY

S.NO.	SURFACE REALIZATION PATTERN	NO. OF INSTANCES
1.(i)	.... under section 25(3) of this Act	442
(ii)	.... in accordance with subsection (3) of section	47
(iii)	.... in pursuance of subsection (2) of section	46
(iv)	.... by virtue of the provisions of section 4 of the.... Act	76
2.	.... otherwise than under section 4(2) of) Act } otherwise than in accordance with } section } otherwise than by virtue of section } }	8
3.	.... under or by virtue of section	6
4.	.... but for this section	12
	TOTAL	637

as 169 instances of this type.

In the corpus, there are also a few instances of two very interesting variations on the use of these prepositional phrases. An instance of one type of variation is in the following example :

(143)

'The Secretary of State may enable the right to buy to be exercised in relation to dwelling-houses held by local authorities otherwise than under Part V of the 1957 Act'

[Section 2(5)]

On the one hand we find the variation of the type in (143) which refers to textual authority by way of exception, on the other hand, we find instances of a co-ordination of prepositional phrases which refer to legal authority by including more than one option. The following is a typical instance of this second type of variation.

(144)

'... no rebate or allowance shall be paid by an authority under or by virtue of Part II of the 1972 Act to any person if

(a) he is receiving supplementary benefit; or

(b)'

[Section 129(1)]

In addition to the above, in about 12 instances 'but for' (a complex-preposition, though of a different form, See Quirk et al : 1972 : 301) is used to refer to legal authority in negative hypothetical conditions. The following is a typical instance of this:

(145)

'If, in a case where a registered housing association disposes of any land, Section 39 of the Settled Land Act 1925 would apply but for this subsection, that section shall not apply in relation to the disposal; '

[Section 122(2)]

5.1.3 Textual Patterns

We have seen in the preceding section that four major types of (complex) prepositional phrases are used in legislative provisions to perform the rhetorical function of referring to textual authority, which are ' under section', '.... in accordance with section', 'in pursuance of subsection' and 'by virtue of this section '. Since all these phrases occur in similar syntactic environments in legislative provisions, syntactic clues do not seem to help in specifying the choice of one or the other in a particular case (see also Swales and Bhatia : 1980). If the choice of one or the other of these four (complex) prepositional phrases to provide textual authority is not syntactic, one may think that they collocate with specific textual units i.e. under might collocate with sections, by virtue of with provisions etc. Examples from the corpus do not indicate any such tendency. If it is not a matter of collocation, one is led to believe that the choice might be either stylistic or it might be an indication of the fact that the four (complex) prepositional phrases provide legally significant shades of meaning when they provide textual authority. In other words the nature of textual authority indicated by these four (complex) prepositional phrases is not always the same. To pursue this hypothesis further, let us look at the following examples and see what

aspects of textual authority the underlined qualifications
textualize:

(146)

'The Housing Corporation shall send to the landlord
a copy of any notice served by it on the tenant
under subsection (4) above.'

[Section 12(6)]

In example (146) above, the referential qualification
'under subsection (4) above' indicates the textual authority which
requires the Housing Corporation to serve a notice on the tenant.
Subsection (4) referred to here, says:

(147)

'.... the landlord or Housing Corporation shall
serve on the tenant a notice in writing stating -

(a) the amount the tenant is entitled to
leave outstanding on the security of
the dwelling-house

(b)

(c) '

[Section 12(4)]

As is obvious from the provision above, subsection (4)
requires the Housing Corporation to serve a particular kind of
notice and the qualification underlined in (146) serves a direct
link to the authority stated in (147). Now let us look at the
following example in (148) and study the nature of textual reference.

(148)

'The court may revoke or from time to time vary
any conditions imposed by virtue of this section.'

[Section 88(3)]

In this example, the underlined qualification 'by virtue of this section' refers to the textual authority which permits the imposition of certain conditions. If we look at the relevant part of the section referred to in (148), we find the following :

(149)

'On any such adjournment, stay, suspension or postponement, the court may impose such condition with regard to payments by the person in possession in respect of his continued occupation of the dwelling-house ... as the court thinks fit.'

[Section 88 (2)]

It seems as though section 88 does not directly impose any conditions which have been referred to in example (148). It merely gives powers to the court to impose such conditions. As such, the qualification in (148), i.e., 'by virtue of this section' does not provide a direct link between the textual authority which imposes certain conditions, as certainly was the case in example (146) where the referential qualification 'under subsection (4) above' provided a direct link. It seems reasonable to conclude from above that since the nature of the textual authorities referred to in (146) and (148) is not the same, the legal draftsman is justified in using two different surface forms for them. In fact, qualifications of the type 'under section (4) above' etc. are used

to refer to that textual authority which provides a direct link between the act qualified by the referential qualification and the textual authority itself. On the other hand, qualifications of the type 'by virtue of this section' as in (148) refer to a textual authority which generally provides an indirect link for the act which the referential qualification qualifies.

However, this principle does not seem to be strictly followed by all draftsmen on all occasions, especially in the case of those referential qualifications which use '.... by virtue of section ...' to refer to a textual authority which has a direct link with the act being qualified by the referential qualification, as in the following example :

(150)

'A dwelling-house is a house if, and only if, it (or so much of it as does not consist of land included by virtue of section 50(2) of this Act) is a structure reasonably so called; so that -'

[Section 3(2)]

In this case, although section 50(2) of this Act clearly and explicitly provides that 'land let together with a dwelling-house shall be treated as part of the dwelling-house', the draftsman has used 'by virtue of', which is generally used to indicate an indirect link. When such an instance was put to the Parliamentary Counsel for his specialist reaction, he said,

"... by virtue of may be good enough to describe a direct link, it certainly is better than under when you are describing an indirect link ..."

[Caldwell : 1980]

In a few other cases where 'by virtue of ...' is used to describe a direct link, it appears that it has been dictated by an earlier use of this phrase in the provision the qualification refers to. The following example from Schedule 4 to the 'Housing Act 1980' will illustrate the point :

(151)

'The accommodation afforded by the dwelling-house is more extensive than is reasonably required by the tenant and -

- (a) the tenancy vested in the tenant, by virtue of section 30 of this Act, on the death of the previous tenant;
- (b)
- (c) notice of proceedings for possession was served under section 33 of this Act'

[Schedule 4, Ground 13]

The two referential qualifications in (a) and (c) above refer to sections 30 and 33 of the Act respectively. The nature of both the textual authorities in sections 30 and 33 is such that they provide a direct link for the acts being qualified above. Section 30 directly provides for the vesting of tenancy on the death of a tenant. Similarly, section 33 directly provides for the service of a notice for the possession of a dwelling-house. However, section 30 also states :

(152)

'...., the tenancy vests by virtue of this section in that person or, in the one who is to be preferred ... '

[Section 30(1)]

Since 'by virtue of this section' had already been used in section 30, the later reference to it in the schedule inevitably uses the same form. On the other hand, since section 33 uses no such qualifying phrase, the draftsman uses 'under section 33 of this Act' in (151) above to refer to a direct link.

Just as qualifications beginning with 'under' and 'by virtue of' textualize different aspects of textual authority, similarly, referential qualifications introduced by 'in accordance with' and 'in pursuance of' indicate very different underlying legal requirements that one may find in the provisions they refer to. We have already discussed this aspect of textualization in section 2.4. when we considered an example from a subordinate legislation. Let us take another example, this time from the present corpus, and see which aspects of legislative provision these two qualifications textualize.

- (153) 'The applicable local average rate is whichever of the two rates for the time being declared by the local authority in accordance with subsection (6) below is applicable.'

[Section 110(5)]

- (154) 'The preceding provisions of this section do not confer any right on a person required in pursuance of section 4(2) to share the right to buy'

[Section 13(4)]

The two qualifications in (156) and (157) above refer to textual authorities as stated in sections 110(6) and 4(2) respectively. The former lays down a provision which enables a local authority to declare mortgage interest rates whereas the latter provides for a person other than the secure tenant to share the right to buy a dwelling-house. At first sight, the two qualifications do not seem to reveal any further significant differences in the nature of textual authorities they refer to. We therefore, need to examine not so much the immediate contexts of these instances of 'in pursuance of' and 'in accordance with' but rather consider the characteristics of the sections to which they make reference.

Section 110(6)	Section 4(2)
<p>A local authority shall for such period not exceeding six months and beginning at the commencement of subsection (1) above as it may determine and for every subsequent period of six months declare, on a date falling within the month immediately preceding that period, a rate applicable to the advances and transfers ... and a rate applicable to the sums left outstanding ...; and</p> <p>(a) the rate applicable ... shall be a rate exceeding by $\frac{1}{4}$ per cent that ... it has to charge ...</p> <p>(b) the rate applicable to the sums left outstanding shall be a rate exceeding by $\frac{1}{4}$ per cent the average ... of the rates</p>	<p>A secure tenant may ... require that not more than three members of his family ... should have the right to buy with him</p>

It now becomes immediately clear from a comparison of these two sections that the requirements in section 110(6) are much more stringent than those in 4(2). Section 110(6) lays down a procedure

to declare rates and a local authority cannot declare it unless it complies with all the procedural steps laid out in the section, that it should be for a specific period, beginning at a particular time, exceeding by $\frac{1}{4}$ per cent that which it has to charge under certain conditions etc. Unless all these requirements are fulfilled, the rates cannot be taken to have been validly declared. On the other hand, section 4(2) simply gives an authority to a secure tenant to share his right to buy a dwelling-house with not more than three members of his family. The stringent nature of requirements in section 110(6) is further indicated by the use of a mandatory 'shall' in the section, whereas 4(2) uses a less forceful 'may' which leaves the question of legal obligation quite open. If the nature of textual authorities in sections 110(6) and 4(2) is any guide to the use of 'in accordance with' and 'in pursuance of' in examples (153) and (154) respectively, one can safely conclude that 'in accordance with' is used to refer to a textual authority which lays down definite procedural steps for the fulfilment of the legal action it indicates. 'In pursuance of' on the other hand, is used to refer to a textual authority which simply requires or allows a particular legal action to be completed without, in any way, specifying the manner in which it must be achieved. A great majority of examples of the use of these two forms to refer to textual authority in the corpus support this interpretation. This also bears out the hypothesis stated in section 2 regarding the use of these two complex-prepositional phrases in other legal texts. A specialist reaction from the Parliamentary Counsel also supports such a conclusion; when referring to the two surface forms; he says,

'.... strictly speaking the difference here is that one requires the meeting of certain procedural requirements whereas the other is just giving the authority under which something is done.'

[Caldwell : 1980]

A legal draftsman learns from experience how to use such expressions appropriately to convey specific shades of legal meanings and he also knows what kinds of textual authority are indicated in earlier provisions which have any bearing on the one he is writing. For a non-specialist, however, it becomes essential to study the relevant provisions in order to recognize this kind of advance signalling.

5.1.4 Syntactic Positioning

A great majority of text-ascriptions occur within the structure of the main provisional clause. However, it is surprising that in spite of the syntactic mobility of (complex) prepositional phrases they rarely occur at post-operator position. Instead they tend to occur at post-subject position or post-verbal position in the main provisional clause as in the following example:

- (155) 'Any sum payable under subsection (9) above may be recovered from the landlord by withholding of any sum due from the Secretary of State'

[Section 23(10)]

In (155) the referential qualification qualifies the subject of the main provisional clause i.e. 'Any sum'. Interestingly enough, this position after the subject in the main

provisionary clause is the most favoured one for the attachment of text-ascriptions in the form of reduced relative clauses. In a number of provisions the relative clauses could be further reduced as in (156) below:

(156)

'Notice under subsection (4) above shall be given in writing to each tenant concerned within the period of 21 days '

[Section 49 (5)]

The other most common position within the main provisional clause is after the verb as in (157) below:

(157)

'Unless otherwise agreed between the landlord and the tenant, there shall be implied, by virtue of this Schedule, a covenant by the tenant to keep the interior of the dwelling-house in good repair '

[Schedule 2, para.14]

In a number of such instances in which text-ascriptions occur within the main provisional clause, the textual authority referred to is located in the same provision in which the text-ascription occurs.

(158)

'Any question arising under this chapter as to the value of a dwelling-house at the relevant time shall be determined by the district-valuer in accordance with this section.'

[Section 11(1)]

Instances of this type invariably contain the demonstrative 'this' in the final NP of the complex prepositional phrase where 'this' precedes a member of the class of 'textual unit' such as 'section', 'Act', 'Schedule' etc.

Apart from this a great many text-ascriptions occur within the structure of preparatory qualifications where they provide textual authority for an action other than the one in the main provisionary clause. The following is a typical illustration of this :

- (159) 'Where the landlord requires a re-determination to be made in pursuance of subsection (2)(b) above, it shall serve on the tenant a notice stating that requirement is being or has been made.'

[Section 11(3)]

5.1.5 Problematic and Complex Text-Ascriptions

In addition to the 637 instances of text-ascription identified and considered above, the corpus contains about 45 other instances which present specific problems in their classification. These fall into two groups. The first one contains 20 instances of qualifications which provide an authority for the actions they qualify but the authority is not textual. A typical instance of this kind is the one in the following example :

- (160) 'It shall be the duty of every authority to maintain a scheme for granting rebates from rent calculated in accordance with the provisions of the scheme by reference to their needs and resources.'

[Schedule 15, para.2]

The problem with the underlined qualification in (160) is that although it provides an authority to calculate rebates, the authority is not located in any of the preceding or preceded legislation. Besides, the number of instances of this kind is not large enough to posit a new category.

The second group of problematic text-ascriptions consists of 25 instances of what may be termed as complex text-ascriptions. A typical instance of this kind is in (161) below :

- (161) 'The amount mentioned in subsection (1) above is subject to the limit that it does not exceed the amount to be taken into account, in accordance with regulations under this section, as the tenant's available annual income multiplied by such factor as, under the regulations, is appropriate to it.'

[Section 9(2)]

In this example one finds two instances of text-ascriptions, in accordance with regulations qualified by a further text-ascription under this section. The first one, if taken on its own is again a non-textual reference to legal authority as in example (160) whereas the second one is an instance of textual authority. However, the two together are difficult to classify either as an instance of 'in accordance with' or 'under' qualification.

These situations should not be confused with those that contain a specification of the textual unit in terms of 'provisions' as in the following example :

(162)

'The terms of a secure tenancy may be varied
in accordance with the provisions of this
section but not otherwise.'

[Section 40(1)]

Here the use of 'the provisions of' adds another layer of specificity to the textual unit 'this section'. The choice of this additional specificity is stylistic only and does not signify a different shade of meaning. This was confirmed by the specialist informant during an unrecorded telephone conversation on November 5th, 1982. Hence instances like the one in (162) have been classified as text-ascription and considered in the preceding sections.

5.2 Referring to Terminological Explanation

Specialist terminology is a problem in most specialist disciplines where new terms need to be defined or explained when used in a piece of writing. Definitions, various kinds of glosses etc. are some of the techniques used for 'lexical familiarisation' (Williams; 1981). However, in legislative writing terminology operates in a slightly different way. Whereas in other disciplines the new terms are defined or explained either explicitly or implicitly, in legislative writing terminology is always defined in a specific form. The concept of self-contained legislative provision increases the problematic nature of legal terminology as it requires it to be defined every time it is used in a provision. The following example from the corpus illustrates the point:

(163)

'The right to buy does not arise if the landlord is a housing trust which is a charity within the meaning of the Charities Act, 1960'.

[Section 2(1)]

The provision in (163) above simply provides for an exception to the right to buy a dwelling-house, if the landlord is a housing-trust which is a charity. Now 'charity' in law has a precise definition; it must have a particular kind of organization; it must serve a specific purpose etc. If the draftsman were to incorporate such terminological explanation in every provision relating to a charity, the provisions would increase in length, and so would the Act itself. To avoid such terminological explanation in every provision the draftsman uses referential qualifications of the type underlined in (163) which direct the reader to the appropriate textual section in the statute book where necessary terminological explanation is located. This helps him to reduce a certain degree of prolixity in his provision.

5.2.1 Criteria for Identification and Typical Examples

The following criteria are proposed for the identification of qualifications which refer to terminological explanations in legislative provisions.

- (i) The qualification occurs in the same sentence in which the provision is encoded.
- (ii) It explicitly refers to some other provision which is either in the same Act or in some other Act.

(iii) The nature of reference in (ii) is textual.

(iv) The provision or Act it refers to provides either explicitly or by implication a terminological explanation to the term it qualifies in the provision in which it occurs.

In the light of these criteria let us consider the following instances from the corpus and see which of these qualify as typical examples of references to terminological explanations.

(164)

'A tenancy shall not be a protected tenancy at any time when it is an assured tenancy within the meaning of section 56 of the Housing Act 1980'

[Section 56(5)]

(165)

' the consideration shall be reduced by such amount as would fall to be paid on demand on a disposal made at the time the offer was made and falling within subsection (3) of section 8 of this Act; '

[Section 19(7)]

(166)

'A registered housing association which is a registered charity shall be subject to Part I of Schedule 16 to this Act....; but this does not affect any obligation falling on the charity in consequence of section 8 of the Charities Act 1960 ... '

[Section 124(5)]

The underlined qualification in (164) meets criteria (i), (ii), (iii) and (iv). It occurs in the same sentence which provides for the exclusion of an assured tenancy from being a protected tenancy. It refers to section 56 of the Housing Act 1980 and the reference is textual. And finally, section 56 of the Housing Act 1980, defines what an assured tenancy is. Similarly, the qualification in (165) satisfies all the four criteria. The only difference between the two qualifications is that whereas section 8(3) explicitly and directly defines the term 'disposal' qualified in (165), section (56) defines an assured tenancy by implication and in stages. The underlined qualification in (166), on the other hand, does not meet criterion (iv), although it does satisfy criteria (i) to (iii). As a result, it cannot be considered a typical instance of terminological explanation.

5.2.2 Formal Realization

Since all terminology needing any kind of explanation appears invariably in a nominal form, the qualifications which refer to them are in the form of a following relative clause as in the following example:

(167) 'For the purposes of this section, a tenancy is a 'co-ownership tenancy' if -

- (a) it was granted by a housing association which falls within section 15(3)(d) of this Act ...

[Schedule 10, para.4]

In this example the term 'housing association' is explained in terms of 'section 15(3)(d) of this Act'. However, to refer to such terminological explanation, the use of a full relative clause is not very common. More common forms in the corpus are the reduced versions of relative clause as in (168) below :

(168)

'A landlord authority which is a housing association falling within section 15(3)(a) of the 1977 Act ... shall send a copy of any document published under that subsection -

(a) to the Housing Corporation; and '

[Section 43(4)]

In a great majority of instances such a reduced relative clause is further reduced to a complex-prepositional phrase like the one in example (169) below :

(169)

'.... the tenant shall not be obliged to pay more than the registered rent under the extended tenancy until the next rental period (within the meaning of the 1977 Act) ...'

[Schedule 21, para.4]

The following table gives the frequency of occurrences of the various surface forms in the corpus.

TABLE 5.3: TERMINOLOGICAL EXPLANATIONS (SURFACE FORMS)

S.NO.	Syntactic Form	No. of occurrences
1	... Within (the meaning of) Section	53
2	... falling within (the meaning of) Section	27
3	... which falls within section	9
4	Others	4
TOTAL		93

Thus the formal realization of terminological explanations can be summed up by the following pattern, where NP represents the term needing explanation :

NP	{ (which falls) falling }	within	{ (the meaning of the definition of the meaning given to)	{ (Section Subsection paragraph etc...)
----	-------------------------------	--------	--	--

5.2.3 Textual Patterns

Like qualifications referring to textual authority (see section 5.1.3. above), qualifications referring to terminological explanations also display distinct textualisation patterns, so that the choice to use either the full relative clause ' which falls within section ' or the reduced relative clause '.... falling within section ' or the phrasal form ' within the meaning of ' is neither wholly syntactic nor stylistic. It is, in fact,

dictated by the nature of explanation to which it refers. The tendency in the corpus seems to be to use a full or reduced relative clause (i.e. which falls/falling within section) to refer to those explanations which explicitly and directly provide either a definition or a description of the term. Consider the following example :

(170)

'A conveyance of the freehold shall contain a covenant binding on the secure tenant to pay to the landlord the amount specified in subsection (2) below if there is a disposal falling within subsection (3) below '

[Section 8(1)]

In this example, the term disposal needs further defining and, as is obvious from the underlined qualification, the reader is referred to 'subsection (3) below' which defines explicitly the term disposal. The subsection reads as follows:

(171)

'A disposal falls within this subsection if it is -

(a) a further conveyance of the freehold

(b) '

[Section 8(3)]

A great majority of examples from the corpus which use such relative clauses to refer to terminological explanations display the same characteristics. On the other hand, complex-prepositional phrases like 'within the meaning of section '

are generally used to refer to those terminological explanations which do not define or describe the term directly or explicitly, but only by implication or interpretation. And, in most cases such an interpretation is derivable from the reading of the section or the Act as a whole and not from a particular subsection. Consider the following instance :

(172)

'This section has effect, whether or not the former tenant and the new tenant are also the former tenant and the new tenant within the meaning of section 13 above.'

[Section 15(4)]

In the above provision, there are two classes of 'the former tenant' and 'the new tenant' referred to. The first kind of the former/new tenant have been defined in the preceding subsection i.e. 15(3), and hence needs no further explanation. The second kind has been defined in section 13 to which the underlined qualification refers. If we go back to section 13, we find that it provides for a change of secure tenant under certain conditions and the former/new tenant takes its meaning from that provision by implication. The provision does not define the two terms as such but their meanings are inferred from the reading of the section. A great majority of instances of the use of this kind of complex-prepositional phrase to refer to terminological explanation support this finding. This once again indicates that the choice of the clausal form [e.g. falling within subsection (5) of section 8 of this Act] or the phrasal form [.... within the meaning of

section 56 of this Act] to refer to terminological explanation is neither syntactic nor stylistic but rather depends on the degree of specificity of the textual reference wherein the definition or explanation will be found.

A closer look at the specific terms which are explained or defined in the corpus provides interesting insights. It appears that a legal draftsman does not define/explain all the legal terms he uses in a particular Act, but largely those which occur within the semantic field of the subject of the Act. In the present 'Housing Act', for example, the kinds of terms which are frequently defined are various kinds of tenancy [a tenancy, a secure tenancy, an assured tenancy, a protected tenancy, a converted tenancy etc., see Table 5.4. on the following page for a complete list], a housing authority, a building society, the new tenant, a housing trust, etc. Wherever these terms occur more than once, they are defined/explained separately. Although, generally, a particular term is used in the same way, if used more than once, one might find a case where the same term is defined with reference to two different Acts. 'A secure tenancy' for example, is defined in two different ways in the corpus; once, within the meaning of the Tenants' Rights, Etc. (Scotland) Act 1980, and on another occasion within the meaning of section 28 of the Housing Act 1980. Terminological explanations using 'falling within the meaning of section' display a greater tendency to give varying explanations to the same expression. This impression is further confirmed by studying the NPs that they explain. Terms like a case, a disposal, a lease, a period etc. are such that they can and often do have varying interpretations depending on the

TABLE 5.4: TERMINOLOGICAL EXPLANATIONS (TERMS EXPLAINED)

Surface realization of Terminological Explanation	Terms defined/explained (NP)	No.of occurrences
1.		
NP. within the meaning of section ... of this Act ... etc.	a charity	7
	a tenancy	1
	a secure tenancy	4
	a statutory tenancy	3
[53 instances]	a housing association tenancy	3
	an assured tenancy	3
	a protected tenancy	2
	a converted tenancy	1
	a statutory protected tenancy	1
	a successor	3
Other single instances of terms defined/explained include <u>a building society</u> , <u>the new tenant</u> , <u>a member of another's family</u> , <u>a housing authority</u> , <u>an agricultural holding</u> , <u>a housing trust</u> .		
2.(a)		
NP. falling within the meaning of section	a case	5
	a/no disposal	14
	a housing association	4
[27 instances]		
Other single instances include <u>leases</u> , <u>structural defects</u> , <u>a period</u> , <u>a tenancy</u> , etc.		
2.(b)		
NP which falls within the meaning of	a housing association	5
	a tenancy	3
	hostels	1
[13 instances]	an application	1
	a period	3

context in which they occur. 'A case falling within section 2' and 'a case falling within section 24' are quite obviously different cases. On the other hand, NPs which are explained by using a phrasal form (i.e. within the meaning of) display a lesser degree of variation in their explanation and this is also indicated by many of the terms they tend to explain. Terms like a charity, a building-society, a housing authority, an assured tenancy are less likely to have various interpretations in different contexts.

5.3 Providing Textual Mapping

We have already pointed out in Section 5.0 that most referential qualifications serve a dual purpose. In addition to their text-cohering function, most of them serve further legal purposes. The qualifications in section 5.1. textualized various kinds of textual authority for various legal actions in the provisions in which these occurred. The qualifications in section 5.2. provided terminological explanation and hence served a kind of text-claritive function. In both of these qualification-types the legal function tends to be more prominent than its text-cohering function. Unlike these two qualification-types, the qualifications providing textual mapping seem to fulfil primarily a text-cohering function rather than any other legal function. The following example will illustrate the point:

(173)

'At the commencement of this section, every controlled tenancy shall cease to be a controlled tenancy and become a regulated tenancy, except in the case mentioned in subsection (2) below.

[Section 64(1)]

The underlined qualification in the above example refers to subsection (2) of section 64, which simply lists an exception to the provision in 64(1). It is used as a device to allow reduction in legal content at a particular point in the provision thus helping the draftsman to reduce prolixity in section 64(1). Instead of introducing the exception within the same provision, he is able to postpone it to the next subsection and indicate the fact by using a qualification of the type we have identified as "textual mapping".

5.3.1 Criteria for Identification and Typical Examples

The similarity between the qualifications which provide terminological explanation and those which provide textual mapping is also reflected in the criteria which can be used to identify typical instances in the two categories. The first three criteria in section 5.2.1 used to identify terminological references are also used to identify instances of textual mapping. They differ only in respect of the fourth criterion.

- (i) The qualification occurs in the same sentence in which the provision is encoded.
- (ii) It refers to some other provision either in the same Act or in some other in the statute book.
- (iii) The reference in (ii) is textual.
- (iv) It provides a simple cross-referencing system between the provision in which it occurs and the one it refers to. It either delays a part of the legal content in order to maintain a reasonable length of the sentence and/or advises the

reader that the legal content has already
been discussed previously or is being
postponed to a subsequently occurring
subsection.

In terms of these four criteria the following three
examples seem to include typical instances of such a qualification-type.

(174)

'The value of a dwelling-house shall be taken
to be the price which it would realise if sold
on the open market and disregarding any improve-
ments made by any of the persons specified in sub-
section 5 below '

[Section 6(2)]

(175)

'The persons mentioned in subsection (2) above are -

(a) the secure tenant,

(b)

(c) '

[Section 6(5)]

(176)

'The Secretary of State may by order make provision -

(a) reducing or increasing the period for the time
being mentioned in section 67(3) and (4) of the
1977 Act; '

[Section 60(5)]

The qualification in (174) provides the necessary link
with section 6(5) which is produced as (175) above. The linking

qualification in (174) tends to reduce information load by postponing the details of 'the persons' to subsection (5). And the qualification in (185) seems to confirm that link by reminding the reader so that he may not read the subsection out of context. In (176) also, the link between section 60(6) of the 'Housing Act 1980' and section 67(3) and (4) of the 1977 Act is indicated by the qualification underlined.

5.3.2 Formal Realization

Like most of the qualifications referring to terminological explanations, the qualifications providing textual mapping are also realised in terms of reduced relative clauses. However, there is no instance of the use of either a full relative clause or a (complex) prepositional phrase to introduce textual mapping in the present corpus. Also, unlike terminological explanations in which the verb 'fall' was used in all cases, (except in complex-prepositional phrases), a typical surface realization of textual mapping conforms to the following major pattern.

NP	{	mentioned	}	in	{	section ...	}	{	above	}
		referred to				subsection ...				
		set out				paragraph ...				
		specified				Schedule ...				
		stated				Act ...				
		etc.				etc.			below	

However, there are a few instances in which we came across a slight variation on this formal pattern, as in the following example :

(177)

'The agreements to which this schedule applies are agreements with a local authority made for the exercise by the co-operative, in connection with any such land as is referred to in paragraph (a) above, of any of the local authority's powers'

Schedule 20, Para.3

5.3.3 Textual Patterns

In section 5.3 we briefly mentioned two types of link which qualifications providing textual mapping tend to establish. One, when the legal draftsman tends to reduce legal content at a particular point in his provision and, two, when he wishes to remind the reader of the wider textual context in which a particular subsection is to be read. Legal content is reduced either by postponing certain aspects of the provision to subsequent subsections or by referring to already existing sections or provisions of the same or some earlier Acts. The following is a typical example of postponing legal content in legislative provisions:

(178):

'A protected shorthold tenancy of a dwelling-house and any protected tenancy of the same dwelling-house granted during the continuous period specified in subsection (3) below shall not be capable of being assigned'

Section 54(2)

In the example above the draftsman typically reduces legal content in the provision by postponing any further specification of the 'continuous period' to the following subsection. This is

indicated by the underlined qualification. If we look at subsection (3) to which a reference has been made in the qualification above, we find another qualification providing a reminder, as it were, to the reader so that he may not misread section 54(3) out of context.

(179)

'The continuous period mentioned in subsection
(2) above is the period beginning with the grant
of the protected shorthold tenancy and continuing
until either -

- (a) no person is in possession of the dwelling-
house as a protected or statutory tenant;
or'

[Section 54(3)]

One of the interesting aspects of this kind of textual mapping seems to be the consistent use of the two adverbials below, as in (178) to signal postponement of legal content, and above, as in (179) to serve as a reminder to the reader in order to avoid any possibility of reading out of context. Obviously, the references in such textual-mappings are essentially intra-textual and in the case of postponement of legal content they are generally cataphoric whereas in the case of avoiding reading out of context they are invariably anaphoric.

This practice of incorporating a pair of qualifications, one indicating the postponement of legal content and the other serving as a reminder in order to avoid any possible reading out of context in intra-textual mappings seems to be fairly common in the corpus. However, in the case of inter-textual mappings (i.e.

where the reference is to a section in an Act other than the one in which the referring qualification occurs) it is not possible either to postpone the specification of complicating matters in the provision or to incorporate a reminder to the reader in order to avoid reading out of context. In such cases the legal draftsman avoids legal content by referring to an earlier specification either in the same text or some already existing one. The reference in such cases is essentially anaphoric in avoiding legal content. The following is a good example of this phenomenon:

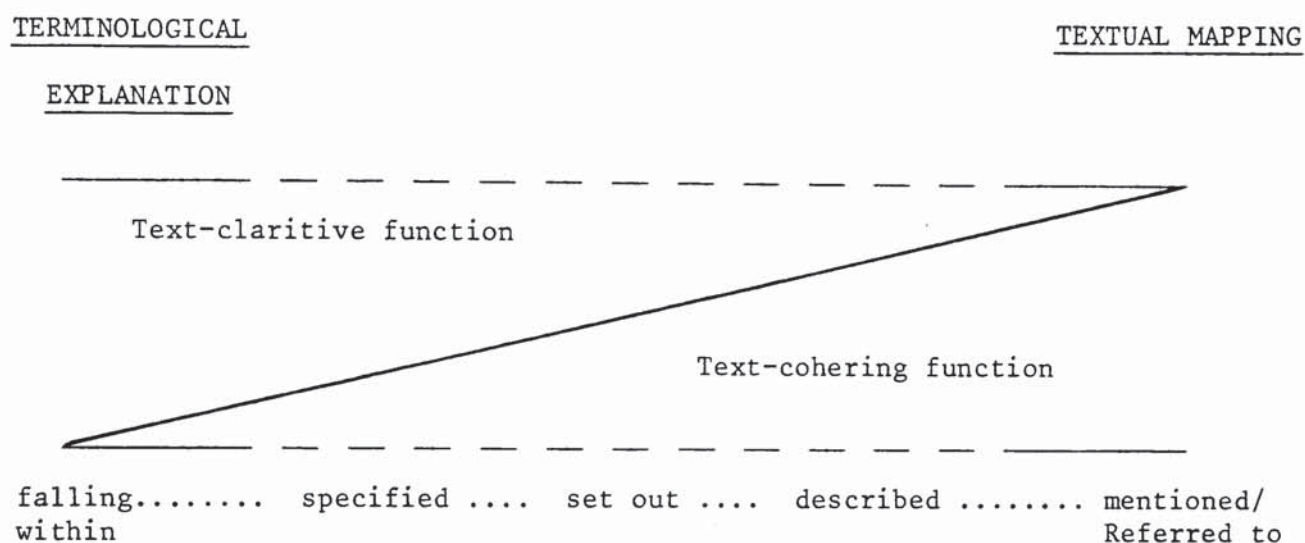
(180)

'The conveyance shall be expressed to be made by the landlord as beneficial owner (thereby implying the covenant set out in Part I of Schedule 2 to the Law of Property Act 1925).

[Schedule 2 Part II, Para.10]

Here the reference is anaphoric and inter-textual. It is primarily text-cohering used to avoid legal content by not specifying the term 'covenant' here but by simply referring to its location in the Law of Property Act 1925. There might seem to be a certain amount of overlap between those qualifications which provide terminological explanation (see section 5.2) and the ones which provide textual mapping. In a sense the two qualification-types could be seen as the two ends of a continuum (see Diagram 5.5. below):

DIAGRAM 5.5 : OVERLAP BETWEEN TERMINOLOGICAL EXPLANATIONS AND TEXTUAL MAPPINGS



As already mentioned, in terminological explanations the text-claritive function is predominant and the text-cohering function becomes rather weak. On the other hand, in textual mappings, the text-cohering function is strong and the text-claritive function becomes somewhat suppressed. This tendency to make the text-cohering function more and more prominent in textual mapping seems to be reflected in the choice of the verb used in such qualifications. The choice of a neutral and weak verb like 'mention' or 'refer to' tends to emphasize the text-cohering function whereas a more marked and stronger verb like 'describe', 'set out', 'specify' etc. tend to emphasize the text-claritive function and thus weaken the text-cohering function.

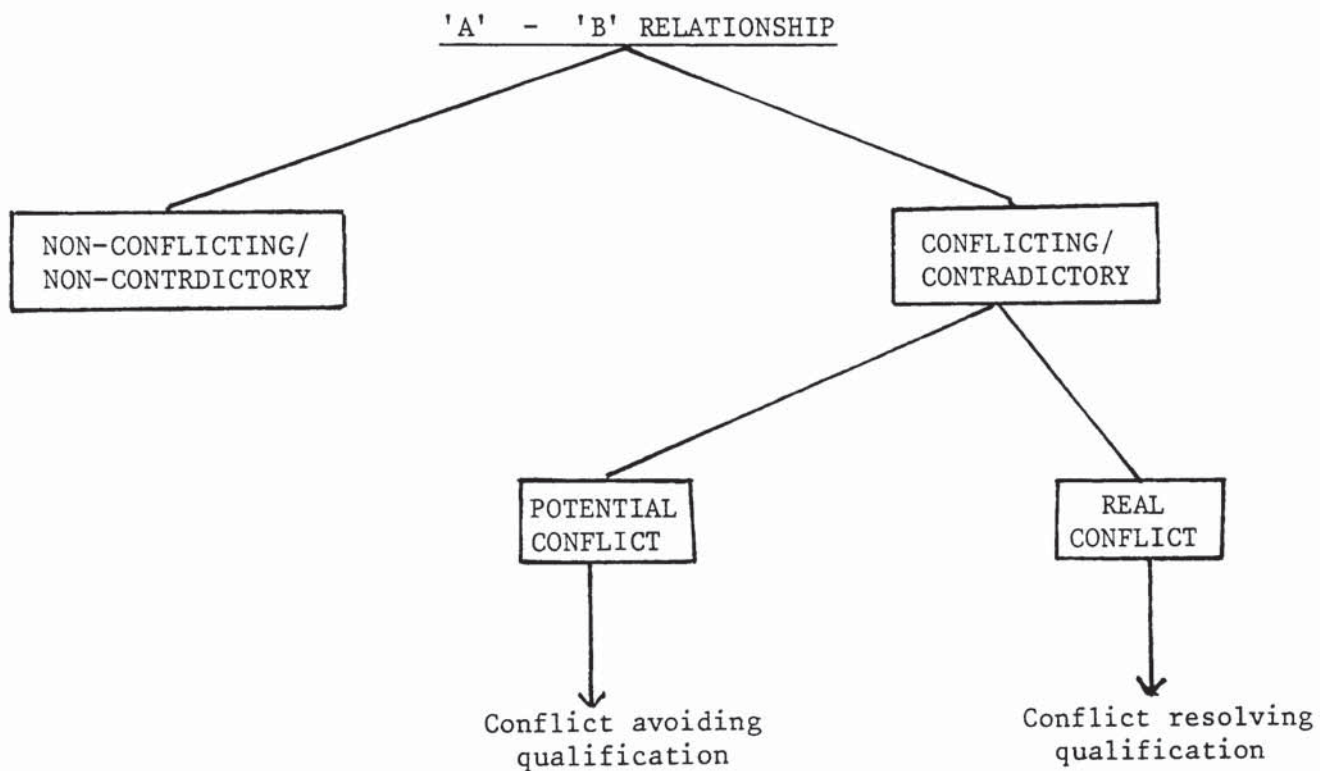
5.4 Defining Legal Scope

In the preceding sections of this chapter we have looked at three types of referential qualification. We shall now turn to the fourth type of referential qualification which, in addition to referring to some other provisions/section, defines the scope of the provision in which it occurs in relation to the one it refers to.

A legal provision takes effect in the context of a number of other provisions or subprovisions of the same act or even some other already existing acts dealing with the same or related subject matter. The 'Housing Act 1980', for example, is only a part of the body of law known as the 'Housing Act'. There are a number of other acts that have been passed by the Parliament from time to time on the subject and whenever a new provision or a new act is passed, it operates in the context of all the earlier acts. Therefore, it is quite likely that a new provision, say 'A', may have some kind of legal bearing on some other already existing provision, say 'B', or on some aspect of it. This 'A' - 'B' relationship, which is essentially functional in character, may not necessarily be one of 'peaceful co-existence', although it generally is so. Sometimes the relationship between the two is that of a potential conflict or even that of a contradiction, in the sense that provision 'A' might be in conflict with provision 'B' or might even contradict 'B' or some aspect of 'B' (see Diagram 5.6 on the following page).

When such a conflict arises between a new provision and an already existing one, the legal draftsman has to indicate and resolve such a conflict in order to make the new provision operative. To achieve such

DIAGRAM 5.5 : DEFINING THE SCOPE OF LEGAL ACTION 'A' IN RELATION TO 'B'



a resolution or to avoid such a possibility of a conflict, he generally uses a set of referential qualifications which define the scope of the new provision in the context of an already existing one. The following example will illustrate the point :

(181)

'A change taking effect by virtue of subsection (4) above shall, notwithstanding subsection (5) of section 59 of the Land Registration Act 1925, be a land change for the purposes of that section'

[Section 8(6)]

The provision in (181) rules that a change created by legal mortgage be regarded as a land change, which contradicts an earlier provision in section 59(5) of the Land Registration Act 1925, which provides that :

(182)

'The foregoing provision of this section shall apply only to writs and orders, deeds of arrangement, pending actions and land charges if the land were unregistered or registered after the commencement of this Act, and a land change does not include a puisne mortgage or an Inland Revenue Charge'.

[Section 59(5) of Land
Registration Act, 1925]

The referential qualification underlined in (181) not only signals the contradictory relationship that exists between (181) and (182), but it also resolves the conflict by defining the scope of the new provision in spite of the contradictory provision in the earlier act.

5.4.1 Criteria for Identification and Typical Examples

Defining the scope of a particular provision, thus, means indicating its legal bearing on some other legal provision which either already exists or is anticipated. To identify the qualification which defines legal scope in a legal provision, we propose the following criteria as a necessary and sufficient condition for it.

- (i) The qualification occurs in the same sentence in which the provision occurs.
- (ii) It refers explicitly to the other provision in the light of which it defines scope.
- (iii) The reference in (ii) is textual.
- (iv) The two provisions have a relationship which is essentially that of a conflict, either real or potential.
- (v) If the conflict between the two provisions is real, the qualification also indicates the resolution of such a conflict.

In the light of this criteria let us consider how many and which of the following examples contain qualifications which define legal scope :

- (183) 'This section does not apply to loans made by local authorities to housing associations under section 119 of the 1957 Act.'

[Section 110(14)]

(184)

'A consent required by virtue of section 81 may be validly given notwithstanding that it follows instead of preceding the action requiring it ... '

[Section 82(2)]

(185)

'Any failure by a secure tenant to satisfy any reasonable condition imposed by his landlord in giving consent to an improvement which the tenant proposes to make, shall be treated for the purposes of Chapter II of Part I of this Act ... as a breach of an obligation of his tenancy... '

[Section 83]

(186)

'... the landlord shall be bound to make to the tenant -

(a) ...

(b) ... a grant of a lease of the dwelling-house for a term of not less than 125 years (subject to paragraph 11(2) of Schedule 2 to this Act); ... '

[Section 16(1)]

Section 110(14) in example (183) defines the scope of section 110, which is about mortgage interest rates but which of the criteria does it satisfy? It refers to section 119 of the 1957 Act which is in conflict with section 110, or at least with some aspect of it. The conflict is real and section 110(14) resolves the conflict by defining the scope of section 110. But it does not satisfy criterion (i), as it does not occur in the same sentence in which the provision occurs. Instead it is written as a separate subsection. Hence, (183) is not a typical

instance of a qualification in this category.

The underlined qualification in (184) satisfies criteria (i) and (v), in that it occurs in the same sentence in which the provision occurs, and resolves the conflict which is created by the provision and the state of affairs to which it refers. But it fails on criteria (ii), (iii) and (iv), as it does not refer to any other provision, and the reference in (184) is to a state of affairs in outside world and not to any other section of the text. Hence, the qualification in (184) also is not a typical instance of the type of qualification under consideration in the section.

However, the qualifications in (185) and (186) seem to satisfy all the criteria listed above. They occur in the same sentences in which their respective main provisionary clauses occur. They contain a reference to other sections of the same Act and the references are textual in both the cases. Furthermore, the two provisions in (185) and (186) create relationships with the provisions they refer to, which are of a potential conflict, although the possibility of such a conflict is avoided by restricting the scope of the provision in them. Therefore, the two qualifications in (185) and (186) are taken to be typical instances of qualifications which define legal scope in legislative provisions.

5.4.2 Formal Realization

Like most other referential qualifications in this Chapter, scope-defining qualifications are also realized mainly in terms of complex-prepositional phrases. Almost all of the 177 instances of

this type in the corpus are realized in terms of one of the following complex-prepositional phrases. (See Table 5.7 on the following page).

{ subject to	}		{ section	}
{ notwithstanding	}	the provisions of	{ paragraph	}
{ without prejudice to	}		{ Act	}
{ for the purposes of	}		{ etc..	}
{ in place of	}			}
{ instead of	}			}

As we have already mentioned in section 4.2.2, when we looked at qualification ascribing legal purpose, that the complex preposition 'for the purpose of' with a singular form of NP in between the prepositions 'for' and 'of' is frequently used to ascribe legal purpose. . Here, in this category, the complex-preposition 'for the purposes of' with the plural NP is consistently used to define legal scope, as in example (187) below :

- (187) 'If the landlord under an assured tenancy ceases to be an approved body by reason only of a variation in the bodies the landlord shall be treated, for the purposes of the condition in section 56(3)(a) above, as if it had remained an approved body.'

[Section 57(1)]

Here, the draftsman anticipates the conflict that might be created because of the condition in section 56(3)(a) which requires the interest of the landlord to belong to an approved body, and avoids such a conflict by defining the scope of the provision in (187).

TABLE 5.7: DEFINING SCOPE (FORMAL REALIZATION)

		Act	Schedule	Total
1.	.... subject to section	32	18	50
2.	.... notwithstanding section	7	7	14
3.	.... without prejudice to the provisions of section	6	2	8
4.	.... instead of	2	-	2
5.	.... in place of	1	-	1
6.	.... for the purposes of section	41	61	102
				177

Another interesting example in this category is the one onset by the complex-prepositional phrase 'instead of'.

(188)

'A landlord authority which is a housing association shall, instead of complying with paragraph (a) of subsection (3) above, send a copy of any document published under that subsection -

(a) to the Housing Corporation; and

(b) '

[Section 43(4)]

The qualification in (188) above defines the scope of the provision in it and resolves the conflict existing between this provision and the one in paragraph (a) of subsection 43(3).

Unlike qualifications providing textual explanation or textual mapping, which qualified legal terminology or other NPs, the qualifications in this category generally qualify the legal action in the main provisionary clause.

5.4.3 Textual Patterns

It has already been pointed out in the preceding sections that the notion of conflict between the provision 'A', which is the new provision and incorporates the scope-defining qualification, and the provision 'B', which either already exists or is anticipated is central to the discussion of qualifications which define legal scope. The conflict may be either real or potential i.e. it may be created by writing a new provision in relation to an already

existing one or it may be anticipated. In either case, it is crucial for the legal draftsman to signal the presence or possibility of such a conflict and resolve or avoid it wherever possible. Depending on the nature of the conflict, i.e. whether it is real or potential, he uses either the conflict-resolving or conflict-avoiding qualifications to define the scope of the new provision that he is creating. The diagram on the following page attempts to list some of the ways in which the draftsman either avoids the possibility of a potential conflict or resolves the one which already exists. Potential conflict could be avoided by specifying additional conditions or circumstances in which the new provision applies. It can also be avoided by clarifying or redefining the conflicting areas of law, or by limiting or restricting the scope of its application. On the other hand, a real conflict is resolved by indicating whether the new provision operates in spite of/in addition to/instead of the one it conflicts with. Let us take a few examples from the corpus and illustrate the two positions further :

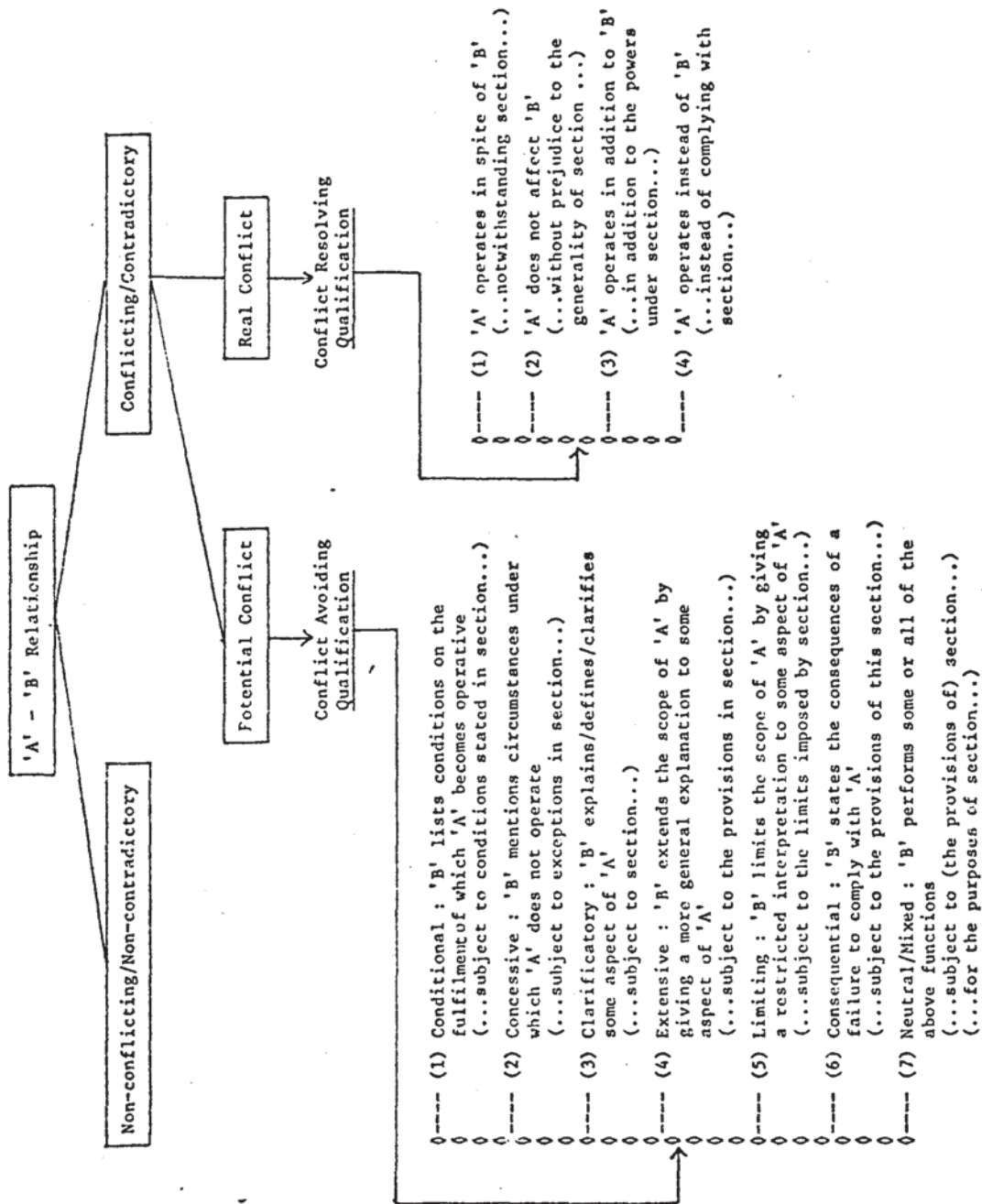
(189)

'Paragraph 3 and 4 of Schedule 17 to the 1977 Act continue to have effect, notwithstanding paragraph 59 of this Schedule, in relation to a notice of increase served under paragraph 4 before the commencement of paragraph 59.'

[Schedule 25, para.78]

The above paragraph, which provides for paragraphs 3 and 4 of Schedule 17 to the 1977 Act to have continued effect in certain circumstances is in contradiction with paragraph 59 which repeals paragraphs 3 and 4.

TABLE 5.8: DEFINING THE SCOPE OF LEGAL PROVISION 'A' IN RELATION TO 'B' (USE OF QUALIFICATIONS)



The conflict is signalled and resolved by the underlined qualification which seems to provide that in spite of that repeal, they will have effect in certain cases. As the conflict between paragraphs 78 and 59 is real, the resolution of it is also explicitly stated. Sometimes the relationship between the two provisions is not exactly that of contradiction but that of a simple conflict, as in the following example :

(190)

'Without prejudice to the provision of Chapter I of Part I of this Act, every registered housing association shall have power to dispose in such manner as it thinks fit of any land held by it.'

[Section 122(1)]

Chapter I of Part I of this Act i.e. the 'Housing Act 1980' gives rights to secure tenants to buy dwelling-houses from registered housing associations. Although the provision in (190) above does not exactly contradict what has been provided for in Chapter I, it certainly creates a kind of conflict which needs to be signalled and resolved, if section 122(1) were to be legally operative. The underlying qualification achieves this by implying that section 122(1) does not adversely effect the operation of Chapter I of Part I of the 'Housing Act 1980'. The conflict is still real, though not as strong as that of a contradiction as in (189), and hence the need for a resolution.

As against this, the other position can be illustrated by the following examples :

(191)

'A person exercising the right to buy is entitled to a discount equal, subject to the following provisions of this section, to the following percentage of the price before discount '

[Section 7(1)]

The provision in (191) specifies criteria for calculating the amount of discount that a tenant is entitled to when buying a house. The qualifying section gives an indication that there are certain restrictions imposed on this provision by the subsequent subsections which have been referred to in the qualifying section. But the exact nature of their relationship is not revealed in the qualifying section, as was definitely the case in examples (189) and (190). Here in (191) the relationship between this provision and the subsections which follow it can only be understood by reading the relevant subsections. The relationship between 7(1) and 7(2) is that of limiting, i.e. 7(2) limits the scope of the provision in 7(1) by stating that "... the discount shall not reduce the price below the amount which is to be taken as representing the costs incurred in respect of the dwelling-house." On the other hand, the relationship between 7(1) and 7(5) is that of clarification in the sense that the subprovision in 7(5) clarifies by further defining the term 'period', which is an important aspect of the provision. So, 7(2) defines the scope of the provision by limiting the maximum amount of discount that a tenant is entitled to whereas 7(5) does so by further clarifying the key term in it. The nature of the two relationships, i.e. between 7(1) and 7(2), and that between 7(1) and 7(5) is not that of a real conflict or contradiction as was

in the case of (189) and (190); rather it is that of a general restriction, the purpose of which is to avoid the possibility of any conflict. The exact nature of this potential conflict or restriction is rarely signalled by the qualificatory insertion, except in a few cases of which the following is a typical one:

(192)

'A tenancy under which a dwelling-house is let as a separate dwelling is a secure tenancy but subject to the exceptions in Schedule 3 to this Act ...'

[Section 28(1)]

Here the qualificatory clause makes the concessive nature of the relationship between section 28(1) and Schedule 3 quite explicit and the reader can immediately understand what sort of restriction he should expect under the provision which is referred to in the qualification defining scope.

Another set of qualifications which do not specify the exact nature of potential conflict but rather avoid it, is the set realized in terms of the complex-prepositional phrase 'for the purposes of section'.

(193)

'For the purposes of subsection (1)(c) above, a person has a personal interest in a business if he either is one of the principal proprietors of the business or is directly concerned with its management.'

[Schedule 16 para.27(3)]

The qualification in (193) restricts the scope of the provision in order to avoid any conflict it may otherwise create, if given unrestricted interpretation.

An interesting aspect of the two sets of scope-defining qualifications, i.e. those which resolve the conflict and those which avoid the conflict, is that conflict-resolving qualifications generally refer to other provisions anaphorically whereas conflict-avoiding qualifications refer to other sections/provisions cataphorically. Moreover, conflict-resolving qualifications have more explicit realizations whereas conflict-avoiding qualifications are less explicit and hence more problematic for the reader to understand, especially for non-specialists. Discussions with the Parliamentary Counsel suggest that specialists can often guess from the immediate context with its qualificatory signal ('... notwithstanding section', or 'subject to section') what sort of restriction or conflict will be found in the text referred to; applied linguists and other non-specialists are not so fortunate and have to work through the overlapping texts to reach the required interpretation.

5.4.4 Syntactic Positioning

Since scope-defining qualifications are realized in terms of complex-prepositional phrases rather than full or reduced clauses, they enjoy relatively greater freedom of moveability. Moreover, they mostly qualify legal action in the main provisionary clause and as such they have more syntactic positions available than

in the case of terminological explanations or textual mappings. Although scope-defining qualifications in the corpus utilize most of the syntactic positions available, a great majority of them (117 out of a total of 177) appear either in clause-initial or clause-final positions. (See Table 5.9. on the following page). 15 of the remaining 60 appear at the post-operator position, 23 after the verb and the rest in various other clause medial positions.

5.5 Summary

In this chapter we looked at a set of four qualification-types, all of which, in addition to performing the rhetorical function of referring to other provisions, served a range of specific legal purposes. They all differed not only in their surface realizations but also in the syntactic positions they occupied in the structure of the clause in which they occurred. Qualifications which referred to legal authority and those which defined legal scope showed very distinct formal and functional characteristics whereas those referring to terminological explanations and the one providing textual mappings indicated a greater degree of overlap, in spite of their very different surface realizations.

TABLE 5.9 : SYNTACTIC POSITIONING OF QUALIFICATIONS DEFINING LEGAL SCOPE

S.No.	Syntactic position within/around the main provisional clause	No. of instances
1	Initial	62
2	Pre-verbal	6
3	Post-operator	15
4	Post-verbal	23
5	Within object/complement	6
6	Post-object/complement	10
7	Final	55
TOTAL		177

6.0 In the present study so far, we have attempted to investigate in some detail the role of qualifications in the structuring of legislative statements. We identified ten types of qualifications (according to functional criteria) which textualized various aspects of legislative provisions in the corpus. We have also made an attempt to study which of the available syntactic positions within and around the main provisionary clause are generally preferred for various qualification types. Now we shall attempt to look at these qualifications from the viewpoint of the processor or reader of legislative documents and to estimate the effect that arrays of qualificatory insertions have on the comprehension of legislative language.

6.1 Syntactic Discontinuity in Legislative Writing

As we have already seen, legislative writing displays not only an enormous variety of linguistic devices used to express qualifications and specifications but also a wide range of clause-medial syntactic positions in which such qualifications are inserted in an attempt to achieve the specification of scope required. As already discussed in section 4.1.4, the legal draftsman makes an incessant effort to place qualifications right after the word or the phrase that these qualifications are meant to qualify. One of the consequences of such an effort is that in a majority of cases long qualificatory insertions are put at those syntactic positions in the structure of the sentence where they interrupt the normal sequence of elements of a particular syntactic constituent, thereby creating a kind of syntactic discontinuity in the

legislative sentence which is rarely found in other varieties of English. Example (194) below is a good illustration of such a process. The discontinuous constituents are underlined for ease of reference.

(194)

'A tenant who is entitled to defer completion may at any time before the service on him of a notice under subsection (2) above, serve a further notice under subsection (1) of section 12 and, if he does so, subsection (4) and (where applicable) subsection (6) of that section shall then apply accordingly.'

Section 16(8)

Although verb groups are the most frequent constituents which are rendered discontinuous by embedded qualificational insertions in legislative writing, binomial sequences and nominal groups are also rendered discontinuous by intervening qualifications. The following examples will illustrate the point.

(195)

'Where a secure tenant serves on the landlord a written notice claiming to exercise the right to buy, the landlord shall (unless the notice is withdrawn) serve on the tenant, within four weeks, or in a case falling within subsection (2) below, eight weeks, either

- (a) a written notice admitting the tenant's right; or
- (b) a written notice denying the tenant's right and stating the reasons why, in the opinion of the landlord, the tenant does not have the right to buy.

Section 5(1)

(196)

'A secure tenant has the right -

- (a) if the dwelling-house is a house, to acquire the freehold of the dwelling-house ;
- (b) if the dwelling-house is a flat, to be granted a long lease of the dwelling-house;

Section 1(1)

In (195) the binomial sequence 'four weeks or eight weeks' has been rendered discontinuous by the insertion of 'in a case falling within subsection (2) below', whereas in (196) long conditionals like 'if the dwelling-house is a house' have been embedded within the noun groups like 'right to acquire the freehold of the dwelling-house', thus rendering them discontinuous.

6.2 Syntactic Discontinuity and the Processing of Legislative Statements

These discontinuous constituents with fairly long qualificational insertions embedded within them add considerably to an already complex syntactic character of legislative writing. Also, it seems very likely that such discontinuities in syntax may cause serious psycholinguistic problems in processing such sentences, especially in the case of non-specialists and those learners of law whose first language is other than English. Even if they may not cause other than momentary and transient problems to specialists and others who have frequent recourse to this kind of reading matter, it would appear that the difficulty brought about by discontinuity is at least partly explicable in terms of short-

term memory load in so far as the discontinuity requires the reader to hold in memory the still unresolved portion of one constituent while he is processing the intervening qualifying segment. Further it can be argued that syntactic processing becomes an important aspect of the reading process in such cases, especially when one has to process long, self-contained legislative sentences with the degree of qualificational complexity rarely found in other varieties of English.

The psychological effects of syntactic complexity have been the subject of intensive investigation since the 1960s. Miller (1962) probably was the first investigator to conduct experiments based on the hypothesis that the linguistic structures and processes described by the transformational linguists had psychological reality. He found that left and centre branching constructions were more difficult to process than right branching constructions, and he explained this difficulty in terms of greater strain the former impose on the short-term memory. Kimball (1973), following up suggestions by Bever (1970) and Watt (1970) proposed that listeners are subject to special constraints on their short-term memory, when they are confronted with syntactically complex sentences, especially those containing self-embedded relative clauses, deletions, or discontinuous constituents. Initially, Schlesinger (1968) also adopted the hypothesis that syntactic complexity caused reading difficulties but abandoned it later on in favour of a semantic hypothesis, for he found that the semantic factors outweighed the syntactic ones. In subsequent experiments with native speakers directed at discovering factors causing difficulties in written texts, the interest shifted from syntactic to semantic, pragmatic and rhetorical features of texts (Slobin : 1966,

Olson : 1972, and Urquhart : 1976).

This overtaking of the syntactic hypothesis by a more powerful semantic hypothesis in the field of reading experimentation has been further nurtured by a strong concern with the teaching of language as communication as against the teaching of linguistic form in the field of English language teaching methodology. However, just as the case for communicative language teaching may have been overstated in so far as it has, in some manifestations at least, resulted in a tendency to neglect the teaching of linguistic form, similarly, in psycholinguistic experiments, the case of semantic hypothesis has been overstated at the cost of syntactic processing. This has become evident in recent years from a renewed interest in syntactic processing. Ruth Berman (1981) studying the nature and role of syntactic problems encountered by advanced-level students in reading second language texts concluded that 'efficient SL readers must rely in part on syntactic devices to get at text meaning'.

In the course of the present investigation we conducted two experiments in order to study the adverse effects of syntactic discontinuity on the processing of legislative sentences, particularly in the case of second language learners.

6.2.1 Experimental Hypothesis

The experiments were conducted to test the validity of the hypothesis that for second language learners it will be more difficult to process and understand sentences containing discontinuous constituents of the type generally encountered in

legislative writing than those in which such discontinuities have been removed by some kind of syntactic re-organisation.

6.2.2 Subjects

The subjects were two groups of 15 and 55 respectively, of fairly advanced second language learners of English from various countries, studying English at the Language Studies Unit, University of Aston in Birmingham, before joining their specialist subject areas at the post-graduate level. They came from a variety of disciplines ranging from humanities, social sciences and physical sciences. However, none of the subjects had any background in law. The group of 15 was subjected to the pilot version of the test, and later on, the other group of 55 was subjected to a revised version of the test.

6.2.3 Materials

Experimental materials for the two experiments, the pilot version and the revised version, consisted of sixteen specially written self-contained sentences containing fairly long qualificational insertions (see appendix 1). In eight of these sentences, the qualificational insertions were embedded within the constituents of verb groups, nominal groups or binomial sequences, thus rendering them discontinuous. In the remaining eight sentences these qualifications were placed either initially or finally so that there were no syntactic discontinuities of any kind. Special care was taken to keep the content of all the sixteen sentences as general as

possible in order to avoid any processing difficulties which might be attributed to a lack of understanding of the subject matter. Most of the sentences contained statements about topics like student fees, rent increase, travel cards, admission dates, refund on tuition fees, library facilities, etc., which were considered well within the range of these participants. Care was also taken to balance the two sets of sentences (one containing discontinuous constituents i.e., 'test A', and the other without any discontinuous constituents, i.e. 'test B') in respect of their syntactic complexity (except that arising out of syntactic discontinuity), sentence length, and their position in the test instrument.

So the test instrument consisted of sixteen items, eight from each test, placed alternatively so that the odd numbered items contained discontinuous constituents and the even numbered items contained no such discontinuities. The average length of the sentence in 'test A' was 38 words whereas in 'test B' it was only marginally higher i.e., 40. No sentence in the two tests contained more than one qualification either embedded within a constituent or placed initially or finally.

6.2.4 Testing Procedure

In order to test comprehension of the experimental material, a number of alternatives were considered. Translation and paraphrases were considered unsuitable because they involved the use of productive skills in addition to that of reading comprehension.

Moreover, the subjects were from such a wide range of first language backgrounds that it would have been almost impossible to evaluate their responses. Multiple-choice type questions were also considered because, in addition to being reliable and objective in nature, they give multiple indicators of comprehension. However, they were also found unsuitable because of the unusual nature of the test material, which consisted of isolated, individual sentences. Also, there would always have been difficulties arising out of the comprehension of questions themselves.

A modified cloze procedure seemed to be the most suitable and satisfactory test procedure because (i) it is generally considered to be a fairly reliable test of overall comprehension; (ii) it is objective in nature; (iii) it gives multiple indicators of comprehension in the case of each test item; and (iv) it involved none of the problems encountered in the case of other test procedures. For a test item based on each sentence, four content words were deleted, leaving sufficient contextual clues before the first gap and at various intermediate positions.

6.2.5 Experimental Procedure

Immediately after having been exposed to a test sentence for thirty seconds by projecting it on a screen with an overhead projector, the subjects were asked to respond to the cloze test item based on that same sentence. They had already been instructed not to read the cloze test item until they had been exposed to the sentence on the screen. They were given one minute to complete the test item consisting of four gaps on each sentence. The same

procedure was repeated for each test item. Their performance on the two tests i.e., 'test A' and 'test B', was measured by giving credit for each correct response as it appeared in the original sentence. However, in a few cases, very close synonyms were also given credit as in the case of 'allow' for 'permit'.

6.2.6 Results

After the experiment, each subject's performance on the two tests was measured. The average score on 'test A' was 19, whereas on 'test B' it rose to 26.86. In order to measure the level of significance the t-test for repeated measures correlated samples was applied. The value of 't' thus obtained was 7.33 with 14 degrees of freedom (see appendix 2), which indicated that the results were unlikely to have occurred by chance.

This was a pilot study with a relatively small sample and as such it may not permit significantly valid generalizations. So, the experiment was repeated with a bigger sample of 55 subjects. The experiment was repeated under similar conditions to those in which the pilot study was conducted, except that the content of the two tests i.e. 'test A' and 'test B' was interchanged, in that those sentences which contained discontinuous constituents were reorganized by placing the qualifications either initially or finally and those which did not contain any syntactic discontinuities in the pilot version were also reorganized by placing the qualifications within the appropriate constituents thus rendering them discontinuous. (see appendix 3). The overall effect of this reorganization was

that 'test A' of the pilot version (containing non-discontinuous constituents) became 'test B' (containing discontinuous constituents) of the revised version and vice-versa. This interchanging of the content was done to make sure that the content of the two tests had no significant effect on the results of the two experiments. This also ensured that the order of presentation had no adverse effect on the scores on the two tests, because the order of presentation was also interchanged.

In the revised experiment the average score on the 'test A' (containing non-discontinuous constituents) was 20.4 whereas on 'test B' (containing discontinuous constituents) it was only 18.4. The value of 't' in the revised experiment was also significant i.e. $t = 5.412$ at 54 degrees of freedom (see appendix 4).

The results thus appear to confirm our hypothesis that for the two groups of second language learners it was more difficult to process and understand the sentences which contained discontinuous constituents than those in which such discontinuities had been removed by syntactic reorganization.

6.3 Discussion

The claims made on the basis of the experimental results were further substantiated by a qualitative analysis of responses to cloze items, particularly those occurring in the second part of the discontinuous constituents. This also provided interesting insights into the strategies which seemed to have been employed, especially the 'defective' strategies which misled a number of subjects to wrong conclusions. One

of these 'defective' strategies might be regarded as a consequence of incorrect and short-range chunking of the text, which probably encouraged the subjects not to look beyond the immediate environment of a gap. This is particularly unsuitable for processing constituents which have been rendered discontinuous by the insertion of long qualificational sequences. Instead of employing a bi-directional strategy by which a gap is filled in the context of not only what precedes the gap but also in the context of what follows it, a number of participants employed what might be termed as unidirectional strategies, either anaphoric or cataphoric, seeking guidance solely from the constraints imposed by either what immediately preceded or followed the gap. Of the many examples of such strategies, we shall consider only two here. Student responses are underlined.

(197)

'The Vice-Chancellor may, by means of a public notice through prominent daily newspapers, extend or further extend the limit date of submitting applications for admission to any of the courses.'

(198)

'A landlord may, by notice in writing served on the tenant, shall increase the rent not more than once a year but any such increase shall not be more than 20 per cent of the rent on which the proposed increase is made.'

The original words in the above examples were 'last' and 'increase' respectively. The participant in item (197) seems to have been guided purely by the environment immediately preceding the gap, which gives him a perfectly reasonable expression '.... extend or further extend the limit'. He obviously ignores the constraints imposed by what follows

the gap. In contrast to this anaphoric strategy, there were a number of participants who seemed to have been guided mainly by what followed the gap, thus employing what might be called cataphoric strategies. In (198) we have an example of this where the participant, by the time he reached the gap, forgot the fact that the modal 'may' had already appeared as part of the discontinuous verb group and was guided entirely by what followed the gap. Both the strategies of seeking guidance either from what precedes or follows a gap might be due to the extra memory load imposed by the processing of discontinuous constituents because the reader is required to store that part of the constituent which he has already identified while he is decoding the intervening qualification. The longer the qualification which intervenes the constituent, the greater will be the stress on short-term memory.

6.4 Conclusions

The experimental findings provide psycholinguistic evidence not only for the truth of Candlin's assertion that "access to understanding varies across discourse types" (Candlin : 1978: 1) but also for the fact that the discourse-structure such as the one we have discovered in legislative statements requires for its successful understanding the use of certain specific processing strategies.

How far the analytical findings and the psycholinguistic evidence are utilizable in EALP reading programmes and what methodological procedures are derivable from them in order to make legislative writing more accessible to those learners of law whose first language is other than English, we shall investigate in the following chapter.

CHAPTER SEVEN. CONCLUSIONS AND APPLICATIONS

7.0 In the beginning of the present investigation we set ourselves a number of questions about the role of qualifications in legislative statements. We have gone some way towards answering some of those questions. We have identified three sets of qualifications which together contain ten qualification-types identified on functional criteria. Diagram 3.1 on page 62 gives a functional classification of legislative qualifications. We have also made an attempt to study in some detail the syntactic and textual patterns each qualification-type displays in the structuring of legislative provisions, and, further to investigate the syntactic position each is generally assigned to within and around the main provisionary clause. Finally, in the previous chapter we attempted to assess the implications such syntactic positioning has for the processing and understanding of such provisions.

In this chapter we shall attempt to summarize some of the main conclusions that can be drawn from these investigations. We shall then make some pedagogical generalizations and indicate some of the areas of potential pedagogical development for EALP.

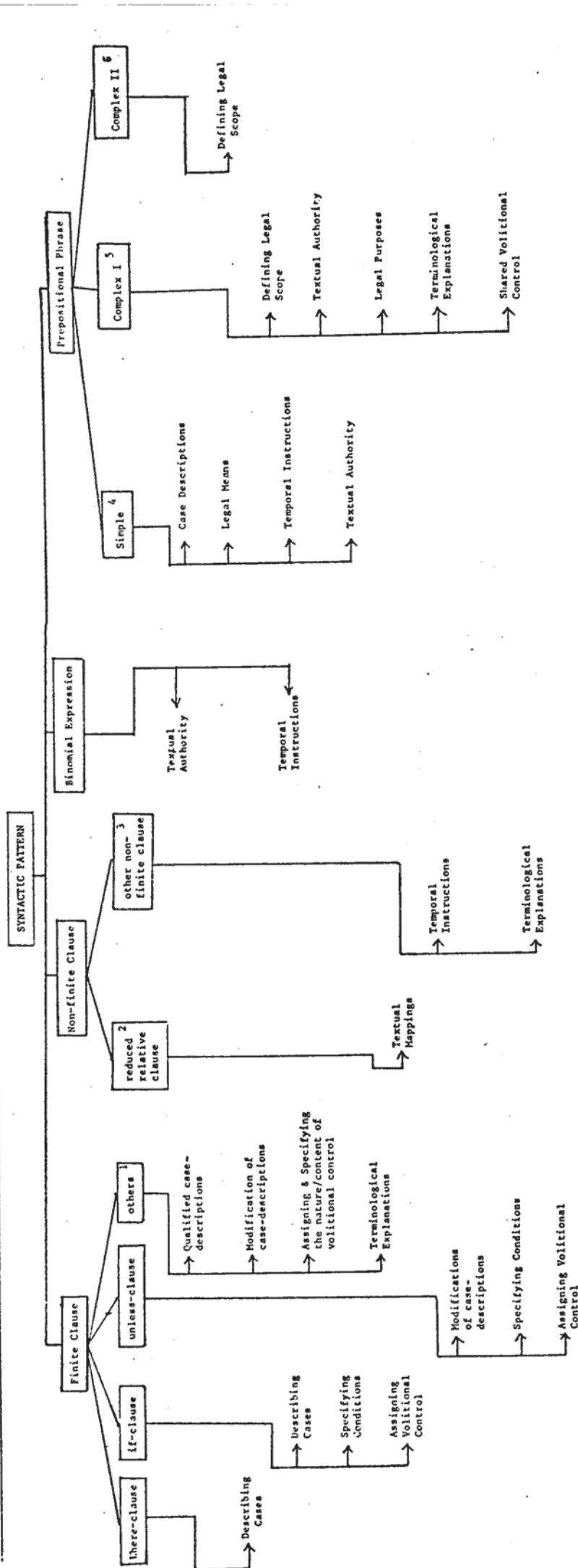
7.1 Syntactic Patterns of Qualifications

Qualifications in the present corpus seem to have been principally realized through one of the following syntactic categories :

- (i) finite clauses
- (ii) non-finite and reduced clauses
- (iii) prepositional phrases
- (iv) binomial expressions

[see Diagram 7.1 on the following page]

DIAGRAM 7.1 : Syntactic Patterns of Qualifications



1. Other finite clauses include those beginning with - while, so far as, except where, provided that, such as, and relative clauses like 'which falls within section ...'

2. Examples include specified/mentioned/stated/referred to in section ... of this Act ... etc.

3. Examples of other non-finite clause include (i) after giving the notice to buy (ii) ... falling within section 6

4. Examples are : (i) ...in a case where ... (ii) by regulation (iii) at any time before the service of the notice ... (iv) under section

(5) Examples are:

- (i) ...for the purposes of section ...
- (ii) ...in accordance with section ...
- (iii) ...for the purpose of executing a vesting order
- (iv) within the meaning of section ...
- (v) with the consent of the Treasury ...

(6) Examples of this category include: (i) ...notwithstanding section 3 (6) of ... (ii) ...subject to the provisions of subsection (5) below ...

Within these broad syntactic categories, there seems to be a strong tendency for preparatory qualification-types to occur in the form of finite clauses, whereas operational and referential qualification-types tend to occur generally in phrasal forms. In fact, none of the operational and referential qualification-types occur in the form of a finite clause, except for a very few instances of 'terminological explanation' where a full relative clause 'which falls within section ...' is used. On the other hand, with the exception of 'in a case where ...' to describe cases and '... with the consent/approval of ...' to assign shared volitional control, no other instance of preparatory qualification-type occurs either in a non-finite clause or a (complex) prepositional phrase.

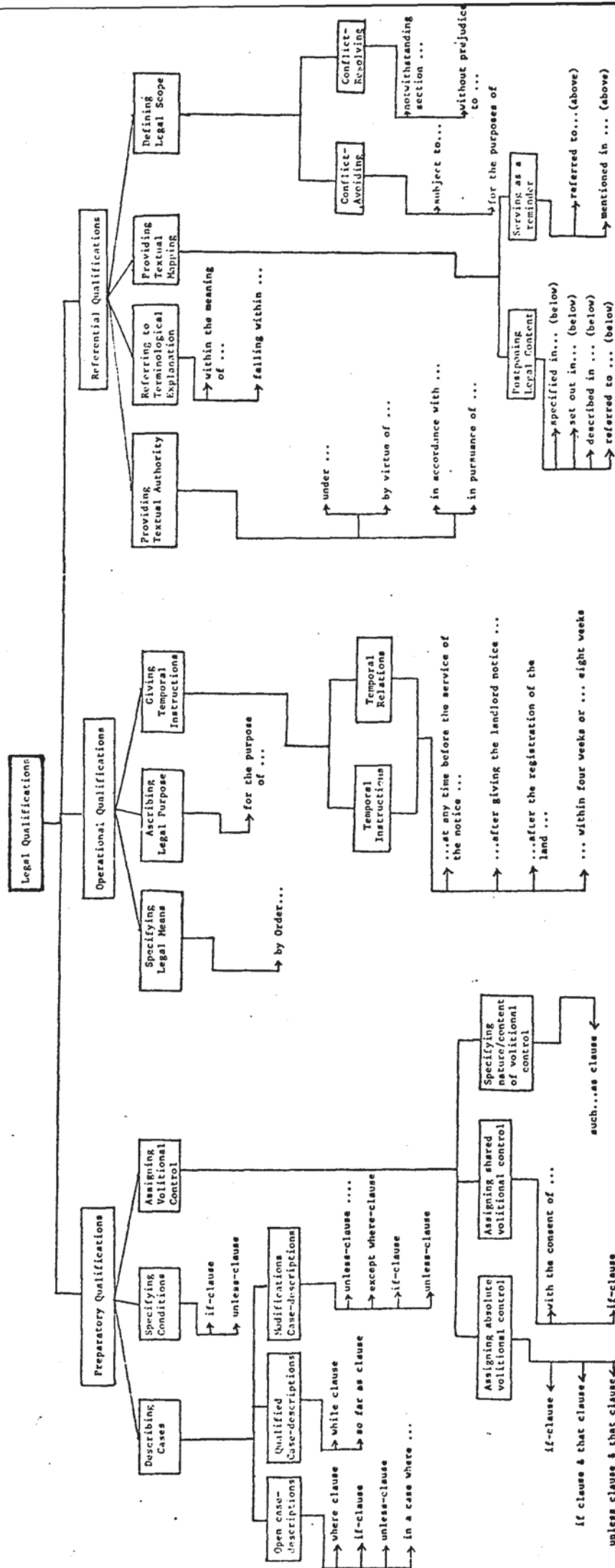
Within these grammatical categories most of these ten qualification-types have specific surface realizations. 'Where-clauses' are almost exclusively used for case-descriptions, 'while-clauses' and 'so far as-clauses' for qualified case descriptions, 'such ... as-clauses' for specifying the nature/content of volitional control, 'for the purpose of ...' for ascribing legal purpose, (complex) prepositions like 'under', 'by virtue of' 'in accordance with' and 'in pursuance of' to provide textual mapping, and 'for the purposes of', 'subject to ...', 'notwithstanding ...', 'without prejudice to ...' to define legal scope. However, 'if-clauses' seem to be more problematic in the sense that they are polyvalent in the corpus, being used to realize a range of qualification-types including case-description, condition-specification, assigning volitional control etc.

7.2 Textual Patterns of Qualifications

Although the corpus contains ten major qualification types there are clearly various shades of meaning conveyed by the variety of linguistic forms within each qualification-type. These sub-types of major qualification-types textualize rather different aspects of legislative provision. Diagram 7.2 on the following page attempts to develop diagram 3.1 by further building into it some of the main textual elements that we have been able to associate with individual sub-types of major qualification-types. It thus attempts to indicate which linguistic forms in various legislative qualifications textualize different aspects of legislative statements thereby refining the major qualificational categories. The diagram also indicates some of the main oppositions that are set up not only across the main qualification-types but also, to a lesser degree, within some of them. In most instances, differences in meaning are also distinctly maintained in the use of linguistic resources. The oppositions set up to indicate the difference between a direct link and an indirect link in the provision of textual authority, between avoiding conflict and resolving conflict (subject to ... and notwithstanding ...), between ascribing purpose and defining scope (for the purpose of, and for the purposes of) are only some of the interesting examples.

On the other hand in some cases the potentially obvious differences seem to have become blurred as a result of a less-differentiating use of a particular surface form. The use of 'if-clauses' both to describe cases and to specify conditions is an obvious example.

DIAGRAM 7.2 : Textual Patterns of Qualification



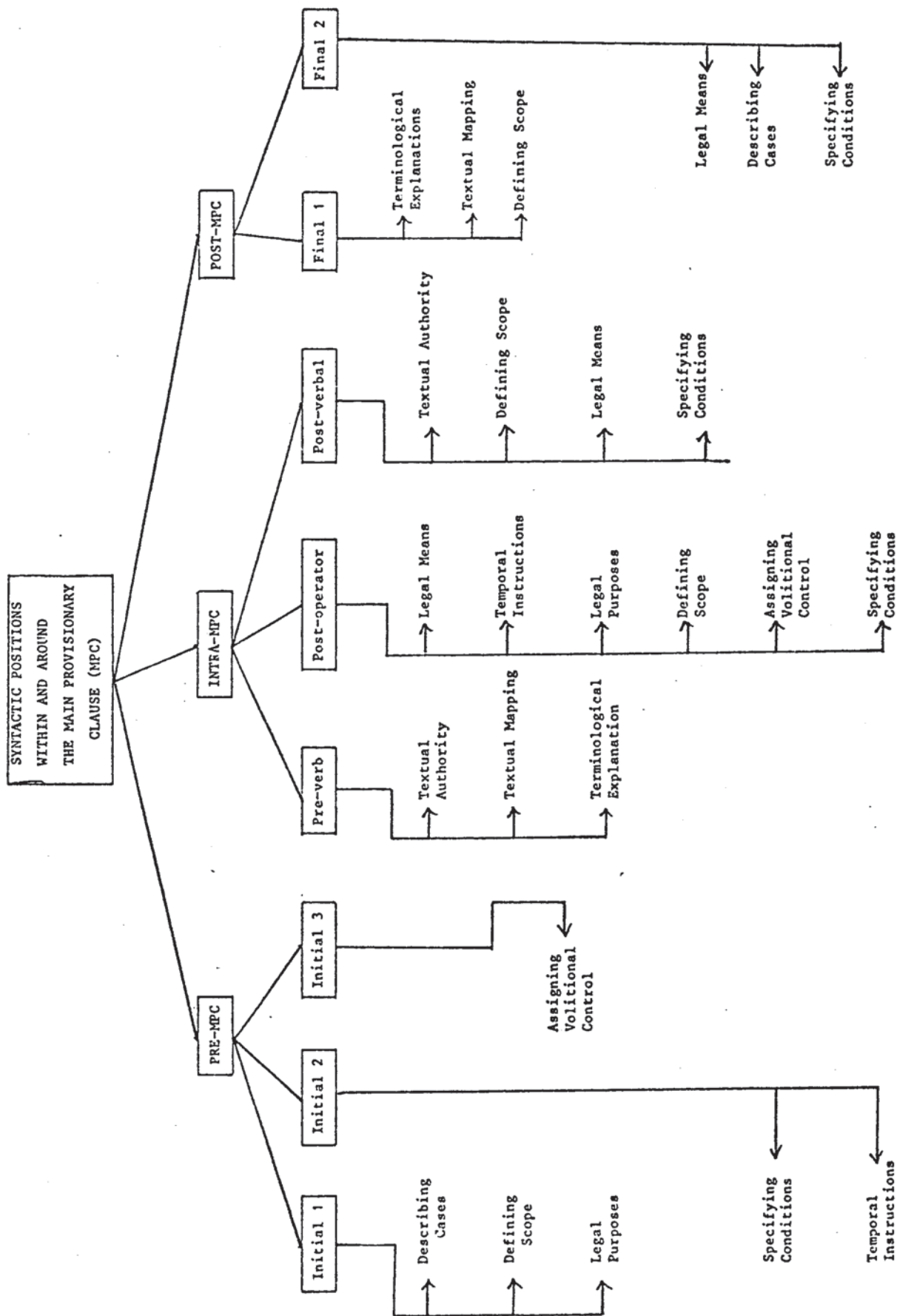
7.3 Syntactic Positioning of Qualifications

The corpus contains not only a wide variety of qualifications but it also displays a number of initial (pre-main provisional clause), medial (intra-main provisional clause) and final (post-main provisional clause) positions in which these qualifications are inserted to gain a maximum degree of specification. However, some syntactic positions are favoured more than the others for certain qualification-types. Diagram 7.3 on the following page provides an overview of the syntactic positioning of the qualifications in the corpus.

Preparatory qualifications generally occur at the initial positions. Case-descriptions occur first, which are followed by condition-specifications (if present), and then qualifications assigning volitional control take the third pre-main provisional clause position. Thus, in principle, it is possible to have three different preparatory qualifications occurring in a row before the legal subject in the main provisional clause. Modifications of case-description, however, tend to occur finally i.e. at the post-main provisional clause position. The findings also reveal that the most mobile of all the qualifications are the ones initiated by 'if', generally preparatory or temporal instructions, which tend to occupy most of the possible syntactic positions, i.e. initial, post-operator, post-verbal, and final.

The most striking feature of the syntactic positioning of legislative qualifications is that a great majority of them are inserted in medial positions, generally within and around the verb-phrase in the main provisional clause. These medial positions are very sparingly used in other specialist discourse. Commenting on such a medial placement of subordinated qualifications, which they call 'medial branching'

DIAGRAM 7.3 : SYNTACTIC POSITIONING OF QUALIFICATIONS



Quirk et al (1972 : 793) say :

"... of the three main types of inclusion relation between constituents, 'left-branching', 'nesting' ('medial branching'), and 'right branching', it is the second that tends to cause most difficulties of comprehension, especially if the nested element is long and complex."

In respect of this quotation, we have already seen that in the corpus most qualifications are not only long and complex, but a majority of them are placed precisely in the position considered by Quirk et al as placing most demand on the reader.

7.4 Evaluation of The Analytical Findings

The present analysis of legislative statements in terms of the main provisionary clause and its attendant qualifications is not entirely new. Bennion (1980) and Coode (1848) before him, have made attempts (see section 1.2 of this study) to explain the modificatory structure of the legislative sentence in terms of the legal action and a set of circumstances in which it is required to take place. However, in spite of their pioneering effort, qualifications in their analyses (i.e. 'case' and 'condition') were identified intuitively without relying on any specific linguistic criteria with the result that they "are not distinguishable in any meaningful way" (Thornton : 1979 : 24). Moreover, in both studies the authors identified only two of the ten major qualification-types that we have been able to distinguish in the present corpus (see Chart 7.4. on the following page). Bennion's third qualification-type (i.e. exceptions) is subsumed under case-description in our analysis as 'modification of case-description'.

CHART 7.4 : Qualification-types - a comparison with available works

S.No.	Coode (1848)	Bennion (1980)	Bhatia (1982)
1	Case	Case	Case- description <div> <pre> graph LR A[Case-description] --> B[open case-description] A --> C[qualified case-descriptions] A --> D[modification of case-descriptions] </pre> </div>
2	Condition	Condition	Condition- specification
3	-	Exception	<div> <pre> graph LR E[Exception] --> D[modification of case-descriptions] </pre> </div>
4	-	-	Assigning volitional control <div> <pre> graph LR F[Assigning volitional control] --> G[Absolute volitional control] F --> H[Shared volitional control] F --> I[Nature/Extent of volitional control] </pre> </div>
5	-	-	Specification of Legal Means
6	-	-	Ascribing Legal Purpose
7	-	-	Temporal Instructions
8	-	-	Text-Ascriptions
9	-	-	Providing Terminological Explanation
10	-	-	Providing Textual Mapping
11	-	-	Defining Legal Scope

The analytical findings reported in the present study not only demonstrate the true complexity of modificational structure in the legislative statement but also assist in making utilizable pedagogical statements about the nature and function of these qualification-types. By investigating the functional and formal characteristics of legislative qualifications we have been able to probe some of the "institution's secrets" that have hitherto been unavailable to the non-specialist. This is particularly evidenced in the way some linguistic features mark the onset of specific qualification-types. Although the findings have some obvious limitations since they are based on the analysis of a limited corpus, their pedagogical strength lies in the fact that they enable us to make potential pedagogical generalizations which can be used both as input to a part text-grammar of legislative writing and also as a well-founded base from which useful EALP activities may be developed. However, before suggesting some of these possible areas of pedagogical development, it will first be necessary to offer some indication of the pedagogical generalizations that may be derived from the present analytical findings.

7.5 Pedagogical Generalizations

Although we have identified ten major qualification-types in the corpus, we neither wish to claim that these ten-types will account for all the qualificational instances in legislative writing nor hope to find an equivalent proportion of these qualification-types in other instances of legislative writing. We anticipate that it may be necessary to add one or two additional qualification-types to the present list following on analysis of other kinds of legislative data, particularly from the Acts dealing with 'finances' where we presume that the specificatory

requirements are likely to be more exacting than in any other kind of legislation. However, it is possible to draw a number of safe generalizations of some pedagogical utility. Some of these generalizations are the following :

- (1) Although operational qualifications are more central to the legal action in the main provisionary clause, preparatory and referential qualifications are more frequent in the corpus. This indicates that it is not sufficient to specify the manner in which the legal action is required to take place it is more often necessary to establish a link not only with the outside world (i.e. the circumstances to which it applies), but also with the rest of the statute book.
- (2) The use of 'where' as a subordinator in legislative writing seems to have a restrictive use. In ordinary grammar of English it has an existential implication but in legislative statements it has a hypothetical implication, as a result of qualificatory conventions. However, it has no exclusive correlation with case-descriptions. 'If' is frequently used to initiate case-descriptions, although it has other uses as well.
- (3) Case-descriptions initiated by 'where' tend to occur initially whereas those initiated by 'if' occur in all three syntactic positions; initially, medially as well as finally.

(4) The corpus indicates a clear tendency to use specific linguistic features to mark the onset of various qualification-types. The following is a partial list of some of the qualificatory initiators :

- | | | |
|-------|--|---|
| (i) | <u>where</u> | - case-description |
| (ii) | <u>if</u> | - case-description, condition-specification, specification of volitional control, temporal specification etc. |
| (iii) | <u>by</u> | - means-specification |
| (iv) | <u>for the purpose of</u> | - purpose-ascription |
| (v) | in accordance with
in pursuance of
by virtue of
under | }
}
}
} - text-ascription |
| (vi) | subject to
for the purposes of
notwithstanding
without prejudice to | }
}
}
} - defining legal scope |
| (vii) | within the meaning of
falling within | } - terminological explanation |

Some of these qualificatory initiators can be of particular pedagogical significance, as they can be assigned restricted values to textualize different aspects of the same qualification-type. Some of these initiators are the following :

- (a) in pursuance of
- (b) in accordance with

Although both initiate a reference to textual authority, (a) refers to the one which simply gives a right to somebody to do something where (b) refers to the one which lays down specific procedural steps to accomplish that action.

(c) by virtue of

(d) under

This pair also initiates a reference to textual authority but (c) refers to that which provides an indirect link between the action and the authority whereas (d) refers to the one which provides a direct link between the action qualified and the textual authority referred to.

(e) where

(f) if

Here 'where' only initiates a case-description whereas 'if' can initiate a number of qualifications including a case-description.

(g) for the purpose of

(h) for the purposes of

These two initiate two very different qualifications-types. (g) initiates a qualification which ascribes a legal purpose, whereas (h) marks the onset of a scope-defining qualification.

(i) specified in ... below

(j) mentioned in ... above

In this case below in (i) indicates that further discussion on that particular point has been postponed to a later subsection, whereas above in (j) serves as a reminder to the reader of the wider context in which the subsection should be read.

- (5) Although the legal draftsman makes a full use of all the available syntactic positions to insert various qualification-types, there are clear indications of positional preferences for some of the qualification-types.

pre-main provisional clause positions

- (i) open case-descriptions
- (ii) condition specifications
- (iii) assigning volitional control

intra-main provisional clause positions

(a) pre-verbal position

- (i) Textual authority
- (ii) Textual mapping
- (iii) Terminological Explanation

(b) post-operator position

- (i) Legal means
- (ii) Legal purpose
- (iii) Temporal instructions
- (iv) Defining scope

(c) post-verbal position

- (i) Textual authority
- (ii) Defining scope
- (iii) Legal means

post-main provisional clause positions

- (i) Modifications of case-descriptions
- (ii) Specifying conditions

- (6) And, finally, since legislative statements display a unique cognitive structuring reflected in the interplay of qualifications and the main-provisionary clause, they require special processing strategies for their comprehension.

In the foregoing account we have given some indication of the kinds of utilizable linguistic generalization we can make on the basis of a corpus-based linguistic analysis such as the present one. It is not possible to demonstrate to what extent these generalizations could be directly translated into effective teaching materials for EALP because of the limited scope of the present study. However, we would like to point to a number of areas of potential pedagogical development.

7.6 Pedagogical Applications

Introducing a two-part special issue of English for Specific Purposes on Legal English, Swales rightly points out that the teaching of Legal English has been a relatively 'uncultivated corner of the ESP field'. However, there has been an increasing amount of interest in the last few years in almost all aspects of EALP. Of the three subvarieties of legal English isolated in Chapter One of this study, there has been some work on legal text-books. Swales (1982) points out in what way legal statements are made and supported by evidence from earlier case references. In another study (1981a) he shows how the special methodological and conceptual features of law require a different treatment of various commonly-used communicative devices in legal text-books. Recently, Wickrama (1982) has shown that even within a particular legal text-book one may come across significant variation in the rhetorical structuring of legal discussion depending upon whether

the point in law derives from precedents set in the case-descriptions or from some aspects of legislation enacted by the legislature.

In juridical writing also there has been some degree of interest shown by the teachers of EALP. Davie (1982) finds that legal cases are difficult to read and understand without training, whereas Calderbank (1982) considers them "simple and the opposite of obscure and therefore ... accessible to the language student of lower inter-mediate to higher inter-mediate level". As a matter of fact, some parts of legal cases do seem to be linguistically simple and almost like narratives, but they do require specialized skills in order to understand them in the way a law student is required to. A major concern of a law student in reading a legal case is to appreciate whether a particular fact in the case is 'material', whether an earlier decision is 'relevant', whether a particular case is 'distinguishable' from another etc. And the task of an EALP teacher is to ensure such an appreciation (see Bhatia 1979 also). White (1981) also seems to share our concern in this respect when she points out that a failure to perceive these specialized reading purposes might lead to confusion on the part of the student and will make his task more difficult.

There has been some interest shown in academic as well as juridical writing. However, in the case of legislative writing there is practically nothing available either in terms of linguistic analysis or in terms of teaching materials. Since legislative writing is considered the most difficult of all the legal subvarieties, it raises the question whether a non-specialist EALP teacher can adequately handle such a variety in his classes. Opinions also vary as to how such a variety could be taught. On the one hand we find Crocker's (1982) suggestion that EALP

materials ought to be more 'context-sensitive' rather than 'content-sensitive'. On the other hand we feel that some simplified form of the strategies for textual analysis adopted in the present study could be profitably passed on to law students. Such a raising of cognitive awareness should give them useful insights into the way legislative writing is structured and also, perhaps more importantly, into the reasons for that structuring. In pedagogical applications we would like to suggest two areas of pedagogical development: firstly, in the development of an appropriate reading strategy, leading, principally, to what we regard as 'easification' of legislative statements in order to overcome the difficulties that the teacher of legislative writing often has to face in grading and presenting these texts in EALP classes; and secondly, in the development of task-types as input to teach materials.

7.6.1 'Easification' of Legislative Statements

Legislative writing presents problems not only to the learners of law but also to the teachers of legal English, who find it so difficult to use it as input to their EALP courses that they tend to leave it out altogether, particularly in the initial stages. Unlike many other specialist disciplines where it is considered appropriate to simplify subject-specific texts, it is neither possible nor appropriate to tamper with legislative texts in order to bring them to the level of the linguistic competence of learners. However, as has been argued elsewhere (see Bhatia : 1978 and 1983), it is possible to make such texts more accessible to learners without simplifying either their content or form. This can be done by using what we regard

as 'easification' procedures which provide a kind of access-structure around the text the purpose of which is to help comprehension without sacrificing its originality, authenticity and linearity. In contrast to what has traditionally been regarded as 'simplification' in ELT methodology, where a message (text) is made more accessible to learners by bringing its form and/or content down to their level of linguistic competence, 'easification' tends to provide additional processing strategies to the reader to bring his underlying competence up to the level of the text without changing either its form or content. Both the procedures are meant to help the reader with his 'intake' (Corder : 1967), but one achieves it by controlling the 'input' whereas the other does so by developing appropriate strategies in the reader which are considered essential for dealing with a particular text-type.

There are two main considerations which must guide an EALP course designer in developing appropriate 'easification' procedures to make a particular text-type more accessible to a set of readers. Firstly, the nature of the text including the nature of problems that it is likely to pose to the learners: and, secondly, the purpose of reading the text, i.e., the kind of activities/tasks that the learners are likely to be required to perform on reading the text. Legislative statements as we have already seen, display a typical cognitive structuring which is reflected in a complex interplay between the main provisionary clause and its attendant qualificatory insertions at various syntactic positions, thereby creating syntactic discontinuities and resulting in textual

processing inefficiency. Textual processing is also hampered by the complicating effect of sentence initial long preparatory qualifications. Schlesinger (1968) referring to the adverse effect of such syntactic structures on the reading process claims that sentences beginning with semantically indeterminate words impair reading process because the reader has to store in memory information which becomes determinate only after the arrival of another stimulus. For efficient textual processing of such texts, the learner needs to detect, analyse and selectively eliminate structural redundancy in the text. 'Easification' procedures, when applied to such texts attempt to equip the learner with such strategies. In order to demonstrate how this could be achieved, let us take the following example and see how it lends itself to easification procedures.

(198)

'Where a conveyance, grant or assignment executed under section 104 of this Act (the "first disposal") is of a house situated in a National Park, or an area designated under section 87 of the National Parks and Access to the Countryside Act 1949 as an area of outstanding natural beauty, or an area designated by order of the Secretary of State as a rural area, the conveyance, grant or assignment may (unless it contains a condition of a kind mentioned in section 104(6)(b) or (c) above) contain a covenant limiting the freedom of the purchaser and his successors in title to dispose of the house in the manner specified in subsection (2) below'.

[Section 92(104c(1))]

In addition to a long preparatory qualification in the initial position, the provision in the above example contains a number of other clause-medial qualifications also, all of

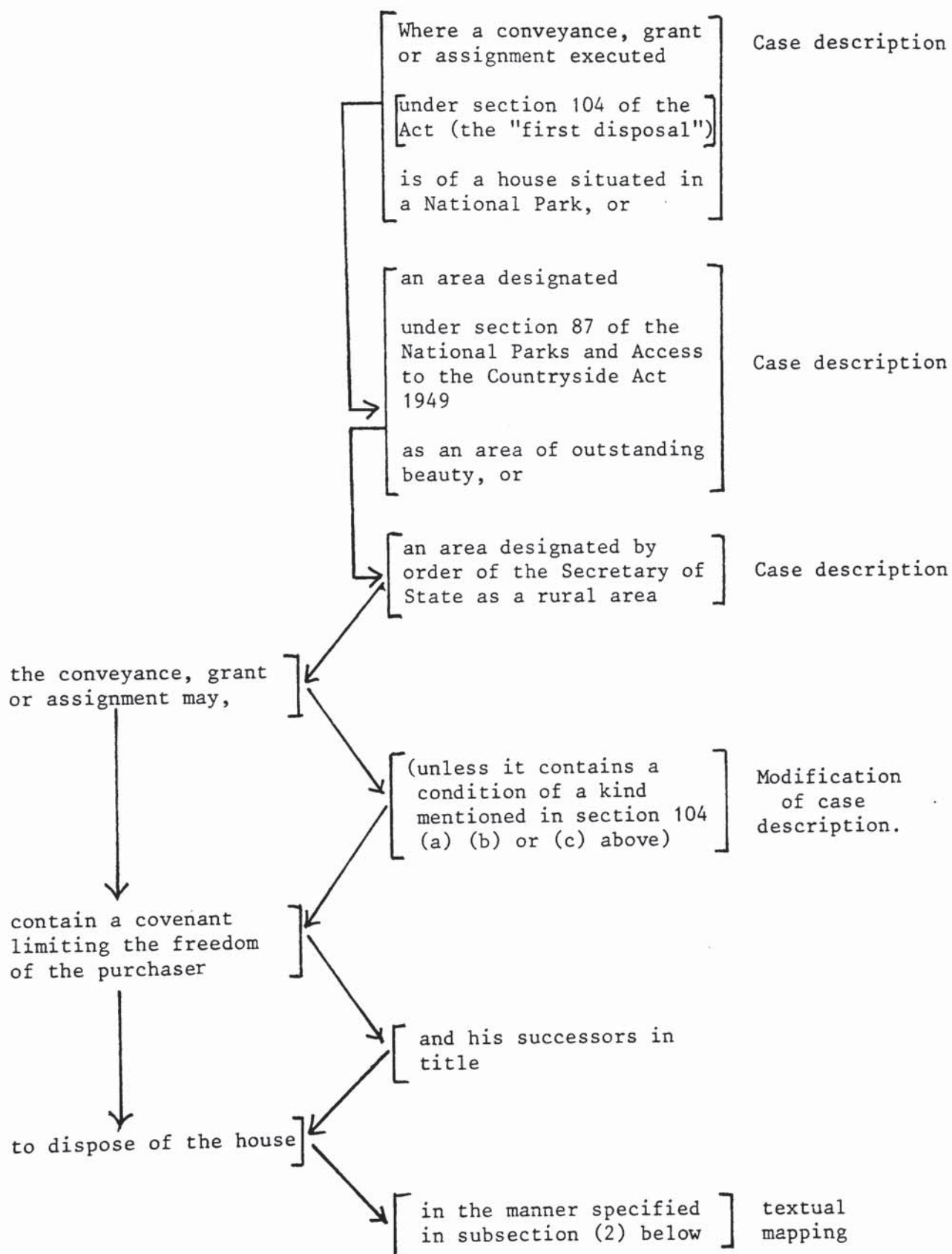
which obscure the main provisional clause. Another version of the same provision (see Diagram 7.5 on the following page) to which the 'easification' procedures have been applied, makes the underlying cognitive reality of the provision more explicit. It tends to reorganize the message without sacrificing its originality, authenticity and linearity on two planes simultaneously: the main provisional clause on the left on a vertical plane and the qualificational insertions on the right on a horizontal plane (see section 2.5.2). The arrows between the two are meant to restore the linearity of the text. In the extreme right hand column are listed the functions of various qualification-types which indicate the relationships between the main provisional clause and the various qualifications that are attached to it.

Similar easification procedure can also be applied to a complete section where horizontal and vertical structuring will reflect the relationship between the various subsections of that particular section. The following example will illustrate the application of such a procedure.

(200)

Repayment of discount on early disposal of freehold or lease.	8 - (1) A conveyance of the freehold or grant of a lease in pursuance of this Chapter shall (unless there is no discount) contain a covenant binding on the secure tenant and his successors in title to pay to the landlord on demand the amount specified in subsection (2) below if, within a period of five years, there is a disposal falling within subsection (3) below; but if there is more than one such disposal, then only on the first of them.
--	--

DIAGRAM 7.5 : 'EASIFIED' VERSION OF 199



(2) The amount payable under the covenant is an amount equal to the discount to which the secure tenant was entitled, but reduced by 20 per cent. of that discount for each complete year which elapses after the conveyance or grant and before the disposal.

(3) A disposal falls within this subsection if it is -

- (a) a further conveyance of the freehold or an assignment of the lease; or
- (b) the grant of a lease or sub-lease for a term of more than twenty-one years otherwise than at a rack rent ;

whether the disposal is of the whole or part of the dwelling-house: but a disposal in pursuance of an order under section 24 of the Matrimonial Causes Act 1973 or under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 or a vesting in a person taking under a will or on an intestacy is not a disposal falling within this subsection.

(4) The liability that may arise under the covenant required by subsection (1) above shall be a charge on the dwelling-house -

- (a) taking effect as if it had been created by deed expressed to be by way of legal mortgage; and
- (b) having priority immediately after any legal charge securing any amount left outstanding by the tenant in exercising the right to buy or advanced to him by a body specified in subsection (5) below for the purpose of enabling him to exercise it or further advanced to him by that body.

(5) The bodies referred to in subsection (4)(b) above are -

- (a) the Housing Corporation;
- (b) any building society; and
- (c) any of the bodies specified in paragraph 6, 7, or 8 of the Schedule to the Home Purchase Assistance and Housing Corporation Guarantee Act 1978.

(6) A charge taking effect by virtue of subsection (4) above shall, notwithstanding subsection (5) of section 59 of the Land Registration Act 1925, be a land charge for the purposes of that section, and subsection (2) of that section shall apply accordingly with respect to its protection and realisation.

(7) The reference in subsection (3) above to a lease or sub-lease does not include a mortgage term.

(8) In this section "building society" means a building society within the meaning of the Building Societies Act 1962 or the Building Societies Act (Northern Ireland) 1967; and for the purposes of this section the grant of an option enabling a person to call for a disposal falling within subsection (3) above shall be treated as such a disposal.

Section 8 above contains a provision for the repayment of discount on an early disposal of a freehold or a lease. The provision is in three parts. Subsection 8(1) gives the principal provision and subsections 8(4) and 8(6) contain subprovisions. Subsection 8(2), 8(3), 8(5), 8(7) and 8(8) either elaborate on various aspects of the provision or provide simple terminological explanations. The relationships between the various subsections can be displayed on a horizontal as well as vertical plane as in Diagram 7.6 on the following page.

The 'easification' procedures illustrated in Diagrams 7.5 and 7.6 not only bring to the surface the underlying cognitive structuring in the legislative provisions but also make explicit the conditions and circumstances in which the provision becomes operative; Thus a learner can see if a particular provision applies to a particular set of conditions, this being the main task that the law student is required to perform while working on legislative texts. It further encourages a learner to

--- HORIZONTAL ELABORATION --->

Repayment of discount on early disposal of freehold or lease

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8 - (1) A conveyance of the freehold or grant of a lease in pursuance of this Chapter shall (unless there is no discount) contain a covenant binding on the secure tenant and his successors in title to pay to the landlord on demand the amount specified in subsection (2) below if, within a period of five years, there is a disposal falling within subsection (3) below; but if there is more than one such disposal, then only on the first of them.

(2) The amount payable under the covenant is an amount equal to the discount to which the secure tenant was entitled, but reduced by 20 per cent. of that discount for each complete year which elapses after the conveyance or grant and before the disposal.

(3) A disposal falls within this subsection if it is -

- (a) a further conveyance of the freehold or an assignment of the lease; or
- (b) the grant of a lease or sub-lease for a term of more than twenty-one years otherwise than at a rack rent;

whether the disposal is of the whole or part of the dwelling-house; but a disposal in pursuance of an order under section 24 of the Matrimonial Causes Act 1973 or under section 2 of the Inheritance (Provision for Family and Dependents) Act 1975 or a vesting in a person taking under a will or on an intestacy is not a disposal falling within this subsection.

(4) The liability that may arise under the covenant required by subsection (1) above shall be a charge on the dwelling-house -

- (a) taking effect as if it had been created by deed expressed to be by way of legal mortgage; and
- (b) having priority immediately after any legal charge securing any amount left outstanding by the tenant in exercising the right to buy or advanced to him by a body specified in subsection (5) below for the purpose of enabling him to exercise it or further advanced to him by that body.

(5) The bodies referred to in subsection (4)(b) above are -

- (a) the Housing Corporation;
- (b) any building society; and
- (c) any of the bodies specified in paragraph 6, 7 or 8 of the Schedule to the Home Purchase Assistance and Housing Corporation Guarantee Act 1978.

(6) A charge taking effect by virtue of subsection (4) above shall, notwithstanding subsection (5) of section 59 of the Land Registration Act 1925, be a land charge for the purposes of that section, and subsection (2) of that section shall apply accordingly with respect to its protection and realisation.

(7) The reference in subsection (3) above to a lease or sublease does not include a mortgage term.

(8) In this section "building society" means a building society within the meaning of the Building Societies Act 1962 or the Building Societies Act (Northern Ireland) 1967; and 1967 c.31 for the purposes of this section the grant of an option enabling a person to call for a disposal falling within subsection (3) above shall be treated as such a disposal.

internalize an efficient syntactic processing strategy which helps him to understand the legislative statement and also to identify and resolve any syntactic ambiguity that may be present in the provision. And, finally, it is not only a technique for text presentation alone, but also a learning strategy which can provide a basis for various activities in an EALP class.

7.6.2 Development of Teaching Materials for EALP

The efficacy of any pedagogical application based on an investigation such as the present one can be validly demonstrated only by developing a set of teaching materials and then by trying it out in real class-room situations. The materials can then be adequately revised on the basis of the feedback that one is likely to obtain from such trials. Even then a successful trialling of such materials with a particular set of learners may not necessarily ensure the success of a parallel application to another set of learners. Different sets of learners may require different kinds of material depending upon the level of achievement in English and Law and on a number of other factors. So we shall not attempt to put forward any specific set of sample materials. However, we would like to suggest a few of the potential areas of pedagogical development which we believe EALP teachers could take up and further develop depending upon their local needs and constraints, but in all cases directly consequent to the findings of this thesis.

- (1) Presenting "colour-coded texts ... both for developing reading via discourse appreciation and as a preparation for writing" (Swales : 1981b: 89) can be extremely helpful in reinforcing the use of appropriate processing strategies for understanding legislative provisions, particularly when the students have already been exposed to easification procedures mentioned in section 7.1. The colour-coding can be done as in the following example :

(201)

'Where the application is made jointly by the landlord and the tenant and it appears to the rent officer, after making such inquiry, if any, as he thinks fit and considering any information supplied to him in pursuance of paragraph 1 above, that the rent specified in the application is a fair rent, he may register that rent without further proceedings'.

[Schedule 6, para.2/2(1)]

- (2) As we have already pointed out, simplified forms of textual analyses can increase a learner's awareness of discourse structure in legislative statements. We believe that such an awareness could be reinforced by asking the learners to colour-code legislative texts to indicate the role of various qualifications. This could, in our view, form an excellent small group activity.

Alternatively, they can also be asked to identify the main provisionary clause first and then move on to various qualifications and their relationship with different aspects of the main provisionary clause.

This could also provide an excellent basis for pair work or small-group work leading on to discussion in the class as a whole.

- (3) After giving the background information in sections 2.5.2, 2.5.3 and 7.1, the learners could be asked to work on those easified versions from which arrows indicating the linear connections have been taken out, in an attempt to restore the linear connections between the qualifications and the elements of the main provisory clause. Gradually, the learners can also be asked to work on original texts and make easified versions of them.
- (4) Starting from brief legislative provisions with one or two qualifications, one could ask the students to re-organize such provisions offering alternative syntactic arrangements with a view to creating discussion of problems arising out of such an exercise. Gradually the students could be presented with more complex sentences to work on. This could again be taken as a preparation for writing, if draftsmanship were to figure as one of the course design components.
- (5) Students could be presented with samples of legislative texts and be asked to use alternative syntactic initiators of various qualifications, wherever possible providing a basis for further discussion in small groups on the implications of the use of such alternatives. The most obvious pairs of alternative expressions emerging from

the present investigation are the following :

in accordance with/in pursuance of

under/by virtue of

for the purpose of/for the purposes of

for the purpose of/with a view to

where/if/when

notwithstanding/subject to

notwithstanding/without prejudice to

etc.

The learners can also be asked to look for and bring to the class for discussion examples of provisions in which these qualificational initiators are used interchangeably. This could provide an opportunity for discussion in small groups or in the class as a whole. Further we would like to suggest that this type of class activity is likely to be one easily appreciated by legal colleagues and so of particular attraction for those in a position to involve their legal colleagues in the teaching of legal English.

- (6) Presentation of 'easified' versions of legislative provisions to students and discussing the implication of the placement of certain qualifications in specific syntactic positions. This exercise can also bring up for discussion any syntactic ambiguities that may arise as a result of some syntactic positionings.
- (7) Presentation of 'easified' versions of legislative provisions in the initial stages and the original versions in later stages, along with an inventory of probable real life

situations to which the provisions could be applicable and asking the learners to work in small groups and discuss the problems arising. This could also provide an opportunity to involve the legal colleagues, wherever possible, in the teaching of legislative English.

- (8) In writing classes, the students may be given a set of qualifications and a main provisional clause and be asked to draft legislative provisions using various available syntactic positions. This could again provide excellent opportunities for discussion of the problems arising from such an exercise.
- (9) We have in the foregoing eight suggestions wished to be merely indicative. There, of course, exist many other activities that have both been discussed in the EFL literature, and can be easily adapted to legislative language - one obvious example being the use of gap-filling exercises in which the qualificational-initiators have been omitted - but we have not considered it relevant to our present purpose to indicate these activities in any detail.

7.7 Other Applications

Apart from the pedagogical applications listed in section 7.1 and 7.2, we would like to suggest the potential utility of the present investigation to achieve some degree of simplicity and clarity in legislative provisions without any loss of legal specification. As we discussed in Chapter One, those who seek radical reforms in drafting procedures believe that legislative documents can be written in a

language which could be readily accessible to the averagely-educated citizen. The drafting community, on the other hand, see the primary purpose of legislative documents as avoiding unnecessary litigation rather than responding to the rights of the consumer. The two opposing camps reflect different perceptions of the communicative purpose of legislative documents.

Our investigation indicates that although, it is not always possible to rewrite a particular provision in a dramatically simpler form, it is sometimes possible to avoid certain linguistic forms and certain syntactic positions which create serious psycholinguistic problems in the processing and comprehension of such provisions. More particularly, evidence from our psycholinguistic experiments indicates that it is often possible to make a particular provision more readable by avoiding certain clause-medial syntactic positions for some types of qualifications, provided always, of course, that it does not make the provision imprecise or ambiguous. Further, from our elaborate typology of qualifications we have made some progress towards understanding in which contexts certain qualificational initiators, in accordance with, in pursuance of, by virtue of, under, for the purposes of, where, if, etc., unmistakably signal the onset of a particular type of qualification and in which contexts they do not. We feel that if the role of such expressions could be brought to the surface consciousness of both writers and readers of legislative language and, in due time, become more conventionalized and standardized, then some gain in readability could be achieved without any loss of legal precision. However, this will require more work on pragmatic lines leading to the preparation of a scale of difficulty on which various linguistic forms and syntactic

positions could be placed according to the level of difficulty they present in the processing and understanding of legislative statements.

7.8 Suggestions for Further Research

In the present investigation we have made an attempt to understand the rationale for legislative statements looking at them from the vantage point of the writer. We have been able to discover, although in a limited sense, how a legal draftsman makes his linguistic choices as he writes and what meanings he attaches to them. In doing this we have brought two of the three aspects of the communicative situation together, i.e. the writer and the text. It would be interesting to study to what extent the professional readers of legislative statements and practitioners of law also attach the same meanings to these linguistic features as the writer. Such a comparison will not only give greater strength to the findings of the present investigation but will also pave way for greater standardization of a simpler legislative linguistic variety.

And, finally, it will be useful to replicate the present investigation on another corpus both to add to the present list of ten major qualification-types and also to investigate how generally the findings are applicable to other instances of legislative discourse. This would also give us some indication of individual variation in legislative writing.

7.9 Envoi

The story this thesis has attempted to unfold has been essentially one of 'detection'. The researcher has taken on the role of detective and the specialist informant that of distinguished forensic scientist. The material has been exhaustively sifted for clues and this in turn has involved following up "leads" to previous material. I hope, but feel I have not fully succeeded, in communicating something of the excitement accompanying the unravelling of a complex and mysterious artifact and of the importance of "motive" as a clue to the nature of that artifact. At the close of events, if not of the "case-file", some epitaph may be in order and there is surely none better than the quotation from Erasmus cited in the first paragraph of this thesis, for if there is one thing that three years' study has iterated it is that "Cognito Verborum prior est, Cognito Rerum postior est".

APPENDIX '1'

EXPERIMENTAL MATERIAL WITH CLOZE ITEMS UNDERLINED (PILOT VERSION)

1. A person applying for a refund on his unused travel card is entitled to a refund equal, subject to fulfilment of the following conditions to a maximum of two-thirds of the original price of the card.
2. The Secretary of State may grant financial assistance to small industries to take on new employees if he thinks that unemployment in Great Britain is rising at a high level.
3. Any agreement reached in the conference shall, subject to the confirmation by the governments of the participating nations, come into force immediately after the receipt of such a confirmation.
4. Any person who has attained an overall 'A' grade in all his undergraduate courses may claim a refund of one tenth of the tuition fees paid by him during the course of his studies at any time within a period of two years from the date of completing his undergraduate studies.
5. A person who, without lawful authority or a reasonable excuse, carries a loaded shotgun in a public place may be arrested under this Act and brought before a first class magistrate for trial.
6. On behalf of the head of the family, any member of the family may claim a discount on the rent paid by a tenant during the period of one year immediately preceding the date of any such claim.
7. A person registered as handicapped shall be, notwithstanding anything contained in section (8) of the principal Act, entitled to have his name removed from the register by making an application in writing to the Minister of Labour and National Service.

8. The value of a house as determined by a landlord for purpose of selling it to a tenant shall not exceed the amount to be taken into account as the total cost of the house at that time in accordance with the following rules.
9. Any person may, subject to the condition that he complies with the provisions of the Registration of Business Names Act 1916 and the Companies Act 1948 and 1967, start and carry on the business of an auctioneer.
10. A person who has been a tenant for at least three years has the right ----
 - (i) to buy that house from the landlord, if he lives in a house; and
 - (ii) to be granted a long lease of the flat, if he lives in a flat.
11. A landlord may, by notice in writing served on the tenant increase the rent not more than once a year but any increase shall not be more than 20 per cent of the rent on which the proposed increase is made.
12. An auctioneer may sell a firearm by auction and for that purpose he may have in his possession a firearm without being registered as a firearm dealer if he has obtained a permit from the Chief Officer of Police for that area in which the auction is held.
13. The Vice-Chancellor may, by means of a public notice through prominent daily newspaper, extend or further extend the last date of submitting applications for admission to any of the courses.
14. Every student in the university has the right to borrow books from the university library and to use other facilities provided by it for students if he is a full-time student and is not under suspension at that time.
15. A student may, if he thinks that he is entitled to a refund on his tuition fees, apply to the University Finance Office even before he has left the university but such a claim shall only be considered when he has been officially declared successful in an overall grade 'A' in all his courses.

16. A person who has lived in this country for more than two years as a full-time student of a college, university or any other educational institution may be treated as a home student for any of the postgraduate courses for the purposes of tuition fees.

APPENDIX '2'

't' - value for the pilot study

1. $d = 118$

2. $d/n = 118/15 = 7.8666$

3. $d^2 = 1170$

4. $(\sum d)^2 = 13924$

5. $(\sum d)^2/n = 13924/15 = 928.2666$

6. $d^2 - (\sum d)^2/n = 1170 - 928.2666 = 241.7334$

7. $\frac{d^2 - (\sum d)^2/n}{n(n-1)} = 241.7334/15(15-1) = 1.15111$

8. $\frac{d^2 - (\sum d)^2/n}{n(n-1)} = 1.15111 = 1.0728985$

9. $'t' = \frac{d/n}{\frac{d^2 - (\sum d)^2/n}{n(n-1)}} = \frac{118/15}{1.0728985} = 7.332 \text{ at } 14 \text{ degrees of freedom.}$
[P < . 001]

$d = d_1 - d_2 = \text{difference in scores}$

$n = \text{number of subjects}$

APPENDIX '3'

EXPERIMENTAL MATERIAL WITH CLOZE ITEMS UNDERLINED (REVISED VERSION)

1. Subject to the fulfilment of the following conditions a person applying for a refund on his unused travel card is entitled to a refund equal to a maximum of two-thirds of the original price of the card.
2. The Secretary of State may, if he thinks that unemployment in Great Britain is rising at a high level grant financial assistance to small industries to take on new employees.
3. Subject to the confirmation by the governments of the participating nations any agreement reached in the conference shall come into force immediately after the receipt of such a confirmation.
4. Any person who has attained an overall 'A' grade in all his undergraduate courses may, at any time within a period of two years from the date of completing his undergraduate studies, claim a refund of one tenth of the tuition fees paid by him during the course of his studies.
5. A person who carries a loaded shotgun in a public place without lawful authority or reasonable excuse may be arrested under this Act and brought before a first class magistrate for trial.
6. Any member of the family may, on behalf of the head of the family claim a discount on the rent paid by a tenant during the period of one year immediately preceding the date of any such claim.
7. Notwithstanding anything contained in section (8) of the principal Act, any person registered as handicapped shall be entitled to have his name removed from the register by making an application in writing to the Minister of Labour and National Service.
8. The value of a house as determined by a landlord for the purpose of selling it to a tenant shall not exceed the amount to be taken into account, in accordance with the following rules, as the total cost of the house at that time.

9. Any person may start and carry on the business of an auctioneer subject to the condition that he complies with the provisions of the Registration of Business Names Act 1916 and the Companies Act 1948 and 1967.
10. A person who has been a tenant for at least three years has the right ---
 - (a) if he lives in a house, to buy that house from the landlord; and
 - (b) if he lives in a flat , to be granted a long lease of the flat.
11. A landlord may increase the rent not more than once a year by notice in writing served on the tenant but any such increase shall not be more than 20 per cent of the rent on which the proposed increase is made.
12. An auctioneer may sell a firearm by auction, and for that purpose he may, if he has obtained a permit from the Chief Officer of police for that area in which the auction is held, have in his possession a firearm without being registered as a firearm dealer.
13. The Vice-Chancellor may extend or further extend the last date of submitting applications for admission to any of the courses by means of a public notice through prominent daily newspapers.
14. Every student in the university has the right, if he is a full-time student and is not under suspension at that time, to borrow books from the university library and to use other facilities provided by it for students in the university.
15. A student may apply to the University Finance Office for a refund on his tuition fee even before he has left the university, if he thinks that he is entitled to it, but such a claim shall only be considered when he has been officially declared successful in an overall grade 'A' in all his courses.
16. A person may, if he has lived in this country for more than two years as a full-time student of a college, university or any other educational institution, be treated as a home student for any of the post-graduate courses for the purposes of tuition fees.

APPENDIX '4'

't' - value for the revised experiment

1. $d = 128$

2. $d/n = 128/55 = 2.3272$

3. $d^2 = 847$

4. $(\sum d)^2 = 16384$

5. $(\sum d)^2/n = 16384/55 = 297.8909$

6. $d^2 - (\sum d)^2/n = 847 - 297.8909 = 549.10$

7.
$$\frac{d^2 - (\sum d)^2/n}{n(n-1)} = \frac{549.10}{55(55-1)} = 0.1848$$

8.
$$\frac{d^2 - (\sum d)^2/n}{n(n-1)} = 0.4299791$$

9.
$$'t' = \frac{d/n}{\frac{d^2 - (\sum d)^2/n}{n(n-1)}} = 5.412 \text{ at } 54 \text{ degrees of freedom}$$

[$P < .001$]

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