

"The amending (regulations) (statutory instruments) are not relevant to the subject matter of this Order, regulation ..."

OR

"There is no amendment which relates expressly to the subject matter of this regulation."

To give an illustration in an hypothetical case, if it were proposed to amend section 3 of the Swine Fever Control Regulations, the amending regulation might read, in part:

"... the Swine Fever Control Regulations <sup>1</sup>, as amended <sup>2</sup>..."

(1) C 1955, 1216.

(2) The relevant amending regulations are SOR/67-237, SOR/72-417 and SOR/75-616

66. Again the Committee believes that the subject should not be forced to juggle with indices and with numerous amendments, in some instances running literally into hundreds. The knowledge of the relevant amendment(s) must exist, otherwise departments would not know what they were amending and how the projected amendment would alter the law. This knowledge may not now be shared with the Registrar or the Privy Council Office, but the Committee can not see why departments and other regulation-making authorities should not be required to divulge it to the Registrar who could then insert the requisite footnotes at the added expense of a little more type-setting. The Committee is anxious to enlist the co-operation of the Privy Council Office and realizes that the information it wishes to be given does not lie within the power of that Office, but of departments and authorities which should provide it when the draft Orders are forwarded for transmission to Council or when other statutory instruments are transmitted for registration. The Committee appreciates the fact that the present Registrar and Assistant Clerk of the Council are anxious to co-operate with the Committee and are reviewing their Office's position.

67. The Committee has also pressed upon the Privy Council Office its view that statutory instruments, and especially amending instruments, should be accompanied by Explanatory Notes. Such a Note is particularly desirable when, although the instrument may appear to be self-explanatory, the Note might help to avoid the necessity for reference to other instruments as, for example, when another instrument is being amended, and the effect of the previous instrument or the effect of the amendment, or both, are not apparent from the text. In such a case the Explanatory Note should describe the subject matter dealt with by the provisions amended in such a way as to indicate the point of the amendment. The Committee realizes that Explanatory Notes could not be argumentative, and could never seek to explain or to justify policy or, above all, purport to construe the law. But they could be used with great effect to describe simply what is to be done in a purely informative way. The object should be to help the reader who, the Committee again emphasizes, may not be an experienced civil servant or lawyer, to appreciate the object of the new subordinate legislation without unnecessary difficulty or research. The full effect of a legislative instrument often cannot be grasped without careful study. It is not always easy

to see from the instrument itself whether it is of sufficient importance or interest to make such a study desirable. The Explanatory Note would guide the reader on that point. The test to be applied should be the point of view of a reader who is not familiar with the existing law on the subject, rather than that of the official administering the law. The Explanatory Note could also be used to indicate if an instrument is to have retroactive effect and the authority in the enabling statute for such retroactive operation. Without such authority, the validity of the provision will be in doubt and that point at least could be removed from the areas an interested reader must research.

68. Explanatory Notes of the type desired are published in the United Kingdom. They are made available to the Senate Committee on Regulations and Ordinances of the Commonwealth of Australia, but are not published. The Committee is aware that at least the rudiments of the material necessary for the drafting of Explanatory Notes are already required to be submitted in recommendations to the Governor in Council for statutory instruments made by that authority. The explanatory material now contained in recommendations to the Governor in Council has been withheld from the Committee on the grounds that it lies within the confidence of the Privy Council. The Committee can not see why the information should not be made public and the requirements extended to all statutory instruments, whether made by the Governor in Council or not. Again, the information lies peculiarly within the power of departments and authorities who propose statutory instruments to the Governor in Council and the Privy Council Office could not itself prepare the desired Explanatory Notes. However, it could be made a requirement that every recommendation to the Governor in Council should be accompanied by just such an Explanatory Note as the Committee desires. The requirement of the provision of an Explanatory Note should also be extended to all statutory instruments registered by the Privy Council Office.

69. The Committee understands that in the near future, perhaps even in 1977, a new Consolidation of the Regulations of Canada will appear, the first for over twenty years. The Committee believes that, even if its recommendations can not be implemented immediately because of administrative difficulty in dealing with so many existing amendments to statutory instruments, the issuing of the Consolidation provides a golden opportunity to introduce new ideas in dealing with the form and style of the new and amending instruments made after the date of the Consolidation. The Committee would regard the neglecting of that opportunity as a cause for grave concern. Yet a reasonable delay in implementing the Committee's suggestions will allow the Privy Council Office the time and the opportunity to undertake what will be a formidable task in explaining the new requirements to officers in departments and authorities who are, quite naturally, used to the present arrangements.

#### G.—THE WITHHOLDING OF INFORMATION FROM THE COMMITTEE

70. The Committee, having considered a particular statutory instrument and concluded that it is questionable as apparently