

**LAW COMMISSION
SCOTTISH LAW COMMISSION**

**STATUTE LAW REVISION: SIXTEENTH REPORT
DRAFT STATUTE LAW (REPEALS) BILL**

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THE LAW COMMISSION AND THE SCOTTISH LAW COMMISSION

STATUTE LAW REVISION: SIXTEENTH REPORT

Draft Statute Law (Repeals) Bill

To the Right Honourable the Lord Irvine of Lairg, Lord High Chancellor of Great Britain, and the Right Honourable the Lord Hardie, QC, Her Majesty's Advocate

1. In pursuance of section 3(1)(d) of the Law Commissions Act 1965, we have prepared the draft Bill which is Appendix 1 and recommend that effect be given to the proposals contained in it. An explanatory note on the contents of the draft Bill forms Appendix 2.
2. The report recommends the repeal of enactments which have been identified, after detailed research and consultation, as being spent, obsolete, unnecessary or otherwise not now of practical utility.¹ The proposals have been widely canvassed with the government departments and other bodies concerned. Appendix 3 lists the local authorities, statutory undertakers and other persons consulted in connection with a project to rationalise the local legislation of Hereford and Worcester (Part V of Schedule 1 to the draft Bill).
3. The report is submitted in pursuance of the Law Commissions' programmes on statute law. The broad objective of these programmes is to modernise and simplify the statute book.

(Signed) MARY ARDEN, *Chairman, Law Commission*

ANDREW BURROWS
DIANA FABER
CHARLES HARPUM
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E M CLIVE
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J G S MACLEAN, *Secretary*

1 April 1998

¹ The enactments proposed for repeal are specified in Schedule 1 to the draft Bill. The Schedule is divided into Parts, some of which are subdivided into Groups. The Parts are, in accordance with the drafting practice adopted in Statute Law (Repeals) Acts since 1975, presented according to their alphabetical order of title with a Part at the end dealing with miscellaneous repeals.

APPENDIX 1

Statute Law (Repeals) Bill

ARRANGEMENT OF CLAUSES

Clause

1. Repeals and associated provisions.
2. Extent.
3. Short title.

SCHEDULES:

Schedule 1— Repeals.

Part I— Administration of Justice.

Part II— Ecclesiastical Law.

Part III— Education.

Part IV— Finance.

Part V— Hereford and Worcester.

Part VI— Inclosure Acts.

Part VII— Scottish Local Acts.

Part VIII— Slave Trade Acts.

Part IX— Statutes.

Part X— Miscellaneous.

Schedule 2 — Consequential and Connected Provisions.

DRAFT
OF A
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INTITULED

An Act to promote the reform of the statute law by the repeal, in accordance with recommendations of the Law Commission and the Scottish Law Commission, of certain enactments which (except in so far as their effect is preserved) are no longer of practical utility, and to make other provision in connection with the repeal of those enactments. A.D. 1998.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 **1.**—(1) The enactments mentioned in Schedule 1 to this Act are repealed, and the instruments mentioned there are revoked, to the extent specified in the third column of that Schedule. Repeals and associated provisions.

(2) Schedule 2 to this Act shall have effect.

2.—(1) This Act extends to Northern Ireland. Extent.

10 (2) This Act also extends to the Isle of Man.

(3) The repeal by this Act of—

(a) the Public Notaries Act 1843 as it applies to the Isle of Man, and

(b) the words 'the Isle of Man,' in section 3(3) of the Statute Law (Repeals) Act 1993,

15 shall come into force on such day as Her Majesty may appoint by Order in Council.

(4) Her Majesty may by Order in Council provide—

(a) that the repeal by this Act of any enactment specified in the Order shall on a date so specified extend to any of the Channel Islands or any colony, and

20

(b) that any provision of Schedule 2 specified in the Order shall on a date so specified extend to any of the Channel Islands or any colony subject to any modification so specified.

(5) Except as provided by any order under subsection (4), this Act does not repeal or amend any enactment so far as the enactment forms part of the law of a country outside the United Kingdom and the Isle of Man.

(6) Subsections (4) and (5) apply to revocation of the whole or part of an instrument as they apply to repeal of an enactment.

5

Short title.

3. This Act may be cited as the Statute Law (Repeals) Act 1998.

SCHEDULES

SCHEDULE 1

REPEALS

PART I

5

ADMINISTRATION OF JUSTICE

Chapter or Number	Short title or title	Extent of repeal or revocation
<i>Group 1 - Sheriffs</i>		
10 50 & 51 Vict. c.55.	Sheriffs Act 1887.	<p>In section 6(1), the words “the Lord High Treasurer, or if there is no Lord High Treasurer,”.</p> <p>Section 11. Section 16(2). Section 20(1). In section 20(3), the words “or is given to an officer of the sheriff by the sheriff,”.</p> <p>Section 20(4). Section 21. Section 22. Section 23(2). In section 27(1) the words “let, or take to ferm”.</p> <p>Section 28. In section 29(1) the words, “(c) lets go at large a prisoner who is notailable; or”.</p> <p>In section 29(2) the words, “(a) withholds a prisonerailable after he has offered sufficient security; or”.</p> <p>Section 30(2). Section 31. In section 33(4) the words “and save as regards the maintenance of men servants and the duration of office,”.</p> <p>Section 39 except paragraph (formerly proviso) (1)(c) and (d). Section 40(2).</p>
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SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 2 - General Repeals</i>			
37 Geo.3 c.70.	Incitement to Mutiny Act 1797.	The whole Act.	5
37 Geo.3 c.40 (Ir.).	Incitement to Disaffection Act (Ireland) 1797.	The whole Act.	
7 Geo.4 c.64.	Criminal Law Act 1826.	In section 28, the proviso. In section 29, the words “, upon being paid for the same the sum of 25p and no more”.	10
2 & 3 Vict. c.47.	Metropolitan Police Act 1839.	In section 76, the words from “on” onwards.	15
3 & 4 Vict. c.84.	Metropolitan Police Courts Act 1840.	Section 6.	
10 & 11 Eliz.2 c.30.	Northern Ireland Act 1962.	Section 25. Schedule 2.	
1967 c.18 (N.I.).	Criminal Law Act (Northern Ireland) 1967.	In Schedule 1, paragraph 4.	20
1984 c.27.	Road Traffic Regulation Act 1984.	Schedule 12.	
1992 c.53.	Tribunals and Inquiries Act 1992.	In Schedule 2, paragraph 5.	25

PART II

ECCLESIASTICAL LAW

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 1 - Ecclesiastical Leases</i>			
13 Eliz.1 c.10.	Ecclesiastical Leases Act 1571.	The whole Act.	30
14 Eliz.1 c.11	Ecclesiastical Leases Act 1572.	The whole Act.	35
18 Eliz.1 c.11.	Ecclesiastical Leases Act 1575.	The whole Act.	
39 & 40 Geo.3 c.41.	Ecclesiastical Leases Act 1800.	The whole Act.	
1964 c.51.	Universities and College Estates Act 1964.	In section 1(1), from the beginning to “and”.	40

Chapter or Number	Short title or title	Extent of repeal or revocation
<i>Group 2 - Tithes</i>		
5	6 & 7 Will.4 c.71.	Tithe Act 1836.
	1 & 2 Vict. c.64.	Tithe Act 1838.
	2 & 3 Vict. c.62.	Tithe Act 1839.
10	3 & 4 Vict. c.15.	Tithe Act 1840.
	5 & 6 Vict. c.54.	Tithe Act 1842.
	9 & 10 Vict. c.73.	Tithe Act 1846.
	10 & 11 Vict. c.104.	Tithe Act 1847.
15	23 & 24 Vict. c.93.	Tithe Act 1860.
	41 & 42 Vict. c.42.	Tithe Act 1878.
20	48 & 49 Vict. c.32.	Tithe Rentcharge Redemption Act 1885.
	8 & 9 Geo.5 c.54.	Tithe Act 1918.
	15 & 16 Geo.5 c.18.	Settled Land Act 1925.
25	15 & 16 Geo.5 c.24.	Universities and College Estates Act 1925.
	15 & 16 Geo.5 c.87.	Tithe Act 1925.
	18 & 19 Geo.5 No.2.	Tithe (Administration of Trusts) Measure 1928.
30	26 Geo.5 & 1 Edw.8 c.43.	Tithe Act 1936.
	1963 c.14.	Corn Rents Act 1963.

SCH. 1

PART III
EDUCATION

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 1 - Public Schools</i>			5
31 & 32 Vict. c.118.	Public Schools Act 1868.	In section 5, the words “shall be a body corporate, with perpetual succession and a common seal, and”.	10
32 & 33 Vict. c.58.	Public Schools Act 1869.	The whole Act.	
34 & 35 Vict. c.60.	Public Schools Act 1871.	The whole Act.	15
36 & 37 Vict. c.41.	Public Schools (Shrewsbury and Harrow Schools Property) Act 1873.	The whole Act.	
<i>Group 2 - Universities</i>			20
24 & 25 Vict. c.82.	Durham University Act 1861.	The whole Act.	
40 & 41 Vict. c.48.	Universities of Oxford and Cambridge Act 1877.	Sections 52 to 55.	
51 & 52 Vict. c.45.	Victoria University Act 1888.	The whole Act.	25
2 Edw.7 c.14.	University of Wales Act 1902.	The whole Act.	
4 Edw.7 c.11.	University of Liverpool Act 1904.	The whole Act.	30
4 Edw.7 c.12.	Leeds University Act 1904.	The whole Act.	
9 Edw.7 c.xlii.	University of Bristol Act 1909.	Section 9.	
4 & 5 Geo.5 c.4.	Sheffield University Act 1914.	The whole Act.	35
13 & 14 Geo.5 c.33.	Universities of Oxford and Cambridge Act 1923.	In section 7(1), the words “After the cesser of the powers of the Commissioners,”.	40
		In section 7(2), the words “After the cesser of the powers of the Commissioners,”.	45
		In section 7(3), the words “other than the section numbered thirty-five therein”.	50
		In section 8(2), the words “, whether by the Commissioners or”.	50

Chapter or Number	Short title or title	Extent of repeal or revocation
5	16 & 17 Geo.5 c.lxxxiv.	University of Reading Act 1926.
	12 & 13 Geo.6 c.xi.	University of Nottingham Act 1949.
10	1 & 2 Eliz.2 c.iv.	University of Southampton Act 1953.
		In the Schedule, paragraphs 6 to 11, 33, 35 and 56. Section 7.
		Section 7.
		Section 7.

PART IV
FINANCE

Chapter or Number	Short title or title	Extent of repeal or revocation
15	<i>Group 1 - Colonial Stock</i>	
	40 & 41 Vict. c.59.	Colonial Stock Act 1877.
	54 & 55 Vict. c.43.	Forged Transfers Act 1891.
20	55 & 56 Vict. c.35.	Colonial Stock Act 1892.
	20 & 21 Geo.5 c.5.	Colonial Development Act 1929.
25	2 & 3 Geo.6 c.100.	Government and other Stocks (Emergency Provisions) Act 1939.
30		In section 1(1), the words "in a register kept in Great Britain under the Colonial Stock Act 1877,".
		In section 1(2), the words "the registrar under the Colonial Stock Act 1877,".
35		In section 1(4), the words "the registrar under the Colonial Stock Act 1877,".
	12, 13 & 14 Geo.6 c.1.	Colonial Stock Act 1948.
40	S.I. 1953 No.1199.	Federation of Rhodesia and Nyasaland (Constitution) Order in Council 1953.
	8 & 9 Eliz.2 c.41.	Ghana (Consequential Provision) Act 1960.
		The whole Act.
		Section 5.
		The whole Act.
		The whole Act.
		Section 13(2)(f).
		Section 1(3).

SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
S.I. 1960 No.969.	Ghana (Consequential Provision) (Colonial Stock Acts) Order in Council 1960.	The whole Order.	5
8 & 9 Eliz.2 c.52.	Cyprus Act 1960.	In the Schedule, paragraph 9.	
S.I. 1963 No.2085.	Federation of Rhodesia and Nyasaland (Dissolution) Order in Council 1963.	Section 16(8).	10
1973 c.27.	Bahamas Independence Act 1973.	In Schedule 2, paragraph 9.	
1978 c.15.	Solomon Islands Act 1978.	In the Schedule, paragraph 7.	15
1978 c.20.	Tuvalu Act 1978.	In Schedule 2, paragraph 7.	
1979 c.27.	Kiribati Act 1979.	In the Schedule, paragraph 8.	
1980 c.2.	Papua New Guinea, Western Samoa and Nauru (Miscellaneous Provisions) Act 1980.	In the Schedule, paragraph 2.	20
S.I. 1980 No.701.	Zimbabwe (Independence and Membership of the Commonwealth) (Consequential Provisions) Order 1980.	Article 5.	25
1981 c.52.	Belize Act 1981.	In Schedule 2, paragraph 7.	
1982 c.41.	Stock Transfer Act 1982.	In Schedule 2, paragraph 6.	
1983 c.20.	Mental Health Act 1983.	In Schedule 3, the reference to the Colonial Stock Act 1877.	30
<i>Group 2 - Land Commission</i>			
21 & 22 Geo.5 c.28.	Finance Act 1931.	Section 28(6).	35
1967 c.1.	Land Commission Act 1967.	The whole Act.	
1967 c.86.	Countryside (Scotland) Act 1967.	Section 72.	
1967 c.88.	Leasehold Reform Act 1967.	Section 24(2).	40
1968 c.13.	National Loans Act 1968.	In Schedule 1, the entry relating to the Land Commission Act 1967.	45
1968 c.44.	Finance Act 1968.	Section 40.	
1969 c.32.	Finance Act 1969.	Sections 43 to 49.	
1969 c.48.	Post Office Act 1969.	In Schedule 4, in Part II, paragraphs 84, 93(1)(xxvi), 93(3) and 93(4)(f).	50
		In Schedule 9, paragraph 27(10).	

Chapter or Number	Short title or title	Extent of repeal or revocation
1971 c.18.	Land Commission (Dissolution) Act 1971.	The whole Act.
5 1988 c.50.	Housing Act 1988.	In Schedule 17, in Part II, paragraph 91.
1990 c.11.	Planning (Consequential Provisions) Act 1990.	In Schedule 2, paragraph 1.
10 1994 c.21.	Coal Industry Act 1994.	Section 68(2)(d)(iii). In Schedule 9, paragraph 11.
1994 c.36.	Law of Property (Miscellaneous Provisions) Act 1994.	In Schedule 1, paragraph 4.
15 1995 c.25.	Environment Act 1995.	In Schedule 10, paragraph 1.
1997 c.11.	Planning (Consequential Provisions) (Scotland) Act 1997.	In Schedule 2, paragraphs 1 and 12.
20	<i>Group 3 - Development of Tourism</i>	
1969 c.51.	Development of Tourism Act 1969.	Part II. In section 19(2), the words “and to the provisions of Part II” and the words “or that Part” wherever they occur. Schedules 3 and 4.
25		
1973 c.65.	Local Government (Scotland) Act 1973.	In Part II of Schedule 27, paragraph 194.
30 1982 c.52.	Industrial Development Act 1982.	In Part II of Schedule 2, paragraph 5.
1985 c.9.	Companies Consolidation (Consequential Provisions) Act 1985.	In Schedule 2, the entry relating to the Development of Tourism Act 1969.
35 S.I. 1990 No.776.	Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990.	In Part I of Schedule 3, paragraph 13.
40		
1992 c.14.	Local Government Finance Act 1992.	In Schedule 13, paragraph 29.

SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 4 - Loan Societies</i>			
3 & 4 Vict. c.110.	Loan Societies Act 1840.	The whole Act.	5
1965 c.32.	Administration of Estates (Small Payments) Act 1965.	In Part I of Schedule 1, the entry relating to the Loan Societies Act 1840.	10
1985 c.51.	Local Government Act 1985.	In Schedule 3, the entry relating to the Loan Societies Act 1840. In Schedule 8, the entry relating to the Loan Societies Act 1840.	15
<i>Group 5 - General Repeals</i>			
42 & 43 Vict. c.58.	Public Offices Fees Act 1879.	Section 8(2).	20
1965 c.74.	Superannuation Act 1965.	In section 38(2)(a) and (b), the words “or of the Isle of Man”.	
1977 c.3.	Aircraft and Shipbuilding Industries Act 1977.	Section 3(5).	25
1995 c.4.	Finance Act 1995.	Section 160.	
1997 c.16.	Finance Act 1997.	Section 111.	

PART V
HEREFORD AND WORCESTER

SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
5	14 Cha.2 c.34 (1662).	An Act for the repairing of Bengeworth bridge in the county of Worcester.	The whole Act.
10	11 Geo.2 c.5 (1737).	An Act for taking down and rebuilding the church of the parish of All Saints in the city of Worcester.	The whole Act.
15	12 Geo.2 c.4. (1738).	An Act to enable the inhabitants of the parish of Saint Nicholas in the city of Worcester to raise money for discharging the debts they have contracted in rebuilding their parish church.	The whole Act.
20	9 Geo.3 c.84 (1769).	An Act for building a bridge at Worcester over the river Severn, and for opening convenient avenues to the said bridge.	The whole Act.
25	19 Geo.3 c.42 (1779).	An Act to enable the trustees for putting in execution an Act [9 Geo.3 c.84] to finish and complete the said bridge, and to carry the purposes of the said Act into execution.	The whole Act except section 9. Section 9 from “shall hereafter wilfully or negligently deface” to “The Bargeman’s Arch), or”; and from “or shall wilfully or negligently drive” to “leading to the same;”.
30	22 Geo.3 c.112 (1782).	An Act for repairing and widening the roads from a place called The Hardwicke, in the parish of Clifford, to Windmill Hill, and from Vowchurch to Pontrilas, in the county of Hereford.	The whole Act.
35	25 Geo.3 c.94 (1785).	An Act for repairing, new pewing, seating, and erecting galleries, and making other alterations and additions in and to the parish church of Kidderminster, in the county of Worcester.	The whole Act.
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SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
35 Geo.3 c.78 (1795).	An Act for building a bridge over the river Severn, at Bewdley, in the County of Worcester, and for opening convenient avenues thereto.	The whole Act except section 27. Section 27 from “shall negligently deface,” to “arches of the said bridge, or”; and from “or shall drive” to “avenues leading thereto,”.	5
35 Geo.3 c.133 (1795).	An Act to amend and render effectual so much of an Act of the twenty-eighth year of His present Majesty, as relates to improving the entrance into the city of Worcester, from the London and Upton roads.	The whole Act.	10
48 Geo.3 c.cxlviii (1808).	An Act for inclosing lands in the borough of Leominster, in the county of Hereford, and in the township of Luston, in the parish of Eye, in the said county; and for paving and otherwise improving the streets and other public places within the town of Leominster, in the said county.	The whole Act.	20
54 Geo.3 c.ccxviii (1814).	An Act for taking down the old church, tower and steeple of the parish of Ombersley, in the county of Worcester, and erecting a new church, and enlarging the church yard; and also, for building a workhouse for the poor of the said parish.	The whole Act except section 32. Section 32 from “and that until” to “the said old church;”.	25
55 Geo.3 c.ix (1815).	An Act for erecting a shire hall, courts of justice, and other buildings, for public purposes, and for providing suitable accommodations for His Majesty’s justices of assize, in and for the county of Hereford.	The whole Act.	30
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Chapter or Number	Short title or title	Extent of repeal or revocation
4 5 10 5 Geo.4 c.lxxvii.	An Act for altering and enlarging the powers of two Acts [9 Geo.3 c.84 and 19 Geo.3 c.42], for building and completing a bridge at Worcester over the river Severn, and for opening convenient avenues thereto. Evesham Improvement Act 1824.	The whole Act except sections 35, 39 and 40. The whole Act except sections 66, 95 and 96 and Schedules A, B and C.
15 20 7 Geo.4 c.lix (1826).	An Act for building a bridge over the river Wye, at a place called The Kerne, in the county of Hereford, and for making convenient roads, avenues and approaches thereto. An Act for building a bridge over the river Severn, at or near Holt Fleet, in the parishes of Holt and Ombersley in the county of Worcester; and for making approaches to such bridge.	The whole Act except sections 2 and 3. The whole Act except sections 48, 49 and 107. Section 107 from “if any person shall ride upon any footpath” to “rails, or fences thereof; or”; and from “or shall haul or draw” to “setting down of any passenger.”.
30 10 Geo.4 c.cii (1829).	An Act for lighting, watching, paving, cleansing, and improving the streets, highways, and places within the town and borough of Kington in the county of Hereford.	The whole Act.
35 40 45 5 & 6 Will.4 c.i (1835).	An Act for erecting a county hall and courts of justice, and also for providing accommodation for His Majesty’s justices of assize, in and for the county of Worcester. An Act for the improvement of the high street in the borough of Ledbury in the county of Hereford.	The whole Act. The whole Act.
50 7 Will.4 & 1 Vict. c.iii (1837).	An Act to amend and enlarge the powers of an Act [1 & 2 Will.4 c.xlviii].	The whole Act.

SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
1 & 2 Vict. c.xiv (1838).	An Act to amend an Act [48 Geo.3 c.cxlviii].	The whole Act.	
3 & 4 Vict. c.cxxv (1840).	An Act to amend and render more effectual, so far as relates to the Lord Scudamore's charity monies, the provisions of an Act passed in the fourteenth year of the reign of His Majesty King George the Third, for improving the city of Hereford, and for other purposes connected with the said city.	Section 29.	5
4 & 5 Vict. c.lxxii (1841).	An Act for better assessing and collecting the poor rates in the borough of Kidderminster in the county of Worcester.	The whole Act.	10
9 & 10 Vict. c.cxxiv (1846).	An Act for paving, cleansing, draining and improving the town of Bromsgrove, for opening a new street therein and in the parish of Stoke Prior, both in the county of Worcester, and for the better assessing and collecting the poor, church and highway rates within the parish of Bromsgrove.	The whole Act.	15
12 & 13 Vict. c.xii.	Kidderminster Union Small Tenements Rating Act 1849.	The whole Act.	20
14 & 15 Vict. c.xcvi.	Malvern Improvement Act 1851.	The whole Act except sections 2, 14, 36, 50 and 62 and the Schedule.	25
16 & 17 Vict. c.xvi.	Evesham Bridge Act 1853.	The whole Act.	30
16 & 17 Vict. c.lxxvii.	Leominster Markets and Fairs Act 1853.	The whole Act except sections 1 to 3, 5, 24 to 26, 28, 35, 36, 43, 44, 46, 49, 50 and 51.	35
17 & 18 Vict. c.xxxi.	Hereford Improvement Act 1854.	The whole Act except sections 1, 3 to 5, 7, 12, 20, 21, 28 to 31, 43, 47, 48, 51, 52, 66, 67 and 103 and Schedule A.	40
18 & 19 Vict. c.v.	Hoarwithy Bridge Act 1855.	The whole Act except sections 2 and 25 to 28.	45
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Chapter or Number	Short title or title	Extent of repeal or revocation
18 & 19 Vict. c.clxxix.	Hereford Improvement Act 1854 (Correction of Oversight) Act 1855.	The whole Act.
5 20 & 21 Vict. c.xlviii.	Fownhope and Holme Lacy Bridge Act 1857.	The whole Act except sections 1 and 34.
21 & 22 Vict. c.xxxi.	Malvern Improvement Amendment Act 1858.	The whole Act except sections 1 and 9 to 13.
10 24 & 25 Vict. c.39.	Local Government Supplemental Act 1861.	Section 4. In the Schedule, the order relating to Bromsgrove.
26 & 27 Vict. c.32.	Local Government Supplemental Act 1863.	In the Schedule, the order relating to Bromsgrove.
15 28 & 29 Vict. c.25.	Local Government Supplemental Act 1865 (No.2).	In the Schedule, the order relating to Bromsgrove.
28 & 29 Vict. c.cviii.	Ross Improvement Act 1865.	The whole Act except— (a) sections 1, 3 to 5, 23 and 26; (b) section 28 from “the Commissioners shall” to “as they think fit.”; (c) section 29 from “The Commissioners may” to “held within the Town,”; (d) sections 30 and 31; (e) section 32 from “The Commissioners may” to “as herein provided for;”.
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30		
29 & 30 Vict. c.107.	Local Government Supplemental Act 1866 (No.4).	In the Schedule, the order relating to Leominster.
35		
29 & 30 Vict. c.xix.	Bromsgrove and Droitwich Waterworks Act 1866.	The whole Act.
30 & 31 Vict. c.83.	Local Government Supplemental Act 1867 (No.5).	Section 1 from “except as” to the end. In the Schedule, the order relating to Malvern.
40		
30 & 31 Vict. c.xxiii.	Worcester Prison Act 1867.	The whole Act.
31 & 32 Vict. c.lxxxvi.	Local Government Supplemental Act 1868 (No.5).	In the Schedule, the order relating to Malvern.
45		
32 & 33 Vict. c.lxxix.	Ross Improvement Act (Amendment Act) 1869.	The whole Act.
33 & 34 Vict. c.cxiv.	Local Government Supplemental Act 1870.	Section 4. In the Schedule, the order relating to Kidderminster.
50		
34 & 35 Vict. c.i.	Local Government Supplemental Act 1871.	In the Schedule, the first order relating to Kidderminster.
55		

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Chapter or Number	Short title or title	Extent of repeal or revocation	
34 & 35 Vict. c.li.	Bromsgrove Waterworks Act 1871.	The whole Act.	
34 & 35 Vict. c.clxxxvii.	Local Government Supplemental Act 1871 (No.4).	In the Schedule, the order relating to Malvern.	5
35 & 36 Vict. c.cxix.	Hereford Improvement Act 1872.	The whole Act except sections 1, 2, 5, 10, 24 and 33.	10
38 & 39 Vict. c.clxviii.	Local Government Board's Poor Law Provisional Orders Confirmation (Oxford, &c.) Act 1875.	In the Schedule, the order relating to the parishes of Sutton Saint Michael and Sutton Saint Nicholas.	15
38 & 39 Vict. c.cxciii.	Local Government Board's Provisional Orders Confirmation (Leyton, &c.) Act 1875.	In the Schedule, the order relating to Redditch.	
39 & 40 Vict. c.clxi.	Local Government Board's Provisional Orders Confirmation (Carnarvon, &c.) Act 1876.	Section 2. In the Schedule, the order relating to Tenbury Wells.	20
40 & 41 Vict. c.ccxlii.	Local Government Board's Provisional Orders Confirmation (Atherton, &c.) Act 1877.	In the Schedule, the Evesham Order 1877.	25
41 & 42 Vict. c.lvii.	Local Government Board's (Gas) Provisional Orders Confirmation (Droitwich, &c.) Act 1878.	In the Schedule, the Droitwich Gas Order 1878.	30
42 & 43 Vict. c.lxxvii.	Local Government Board's (Highways) Provisional Orders Confirmation (Buckingham, &c.) Act 1879.	In the Schedule, the order relating to the county of Worcester.	35
42 & 43 Vict. c.lxxxiv.	Local Government Board's (Highways) Provisional Orders Confirmation (Gloucester and Hereford) Act 1879.	In the Schedule, the order relating to the county of Hereford.	40
43 & 44 Vict. c.lviii.	Local Government Board's Provisional Orders Confirmation (Abergavenny, &c.) Act 1880.	In the Schedule, the order relating to Bromsgrove.	45
44 & 45 Vict. c.lxii.	Local Government Board's Provisional Orders Confirmation (Poor Law, No.2) Act 1881.	In the Schedule, the orders relating to the Bromsgrove Union and the Droitwich Union.	50
44 & 45 Vict. c.clxiv.	Tramways Orders Confirmation (No.3) Act 1881.	In the Schedule, the Worcester Tramways Order 1881 except Articles 1, 3, 4 and 9.	

Chapter or Number	Short title or title	Extent of repeal or revocation
45 & 46 Vict. c.ccxxxi.	Ross District Water Act 1882.	The whole Act.
5 46 & 47 Vict. c.lxxx.	Local Government Board's Provisional Orders Confirmation (Poor Law) Act 1883.	In the Schedule, the two orders relating to the Ross Union.
10 46 & 47 Vict. c.lxxxix.	Local Government Board's Provisional Orders Confirmation (No.3) Act 1883.	In the Schedule, the order relating to the Evesham Joint Hospital District and the order relating to the Improvement District of Kington.
15 46 & 47 Vict. c.cxxxviii.	Local Government Board's Provisional Orders Confirmation (Poor Law) (No.2) Act 1883.	In the Schedule, the order relating to the Ross and Westbury- upon-Severn Unions.
20 47 & 48 Vict. c.xlviii.	Local Government Board's Provisional Orders Confirmation (Poor Law) (No.7) Act 1884.	The whole Act.
25 47 & 48 Vict. c.clviii.	Local Government Board's Provisional Orders Confirmation (No.2) Act 1884.	In the Schedule, the order relating to Malvern.
30 48 & 49 Vict. c.lxii.	Local Government Board's Provisional Orders Confirmation (No.5) Act 1885.	In the Schedule, the order relating to Bromsgrove.
48 & 49 Vict. c.lxvi.	Tramways Orders Confirmation (No.1) Act 1885.	In the Schedule, the Worcester Tramways Order 1881 Amendment Order 1885.
35 48 & 49 Vict. c.cvii.	Local Government Board's Provisional Orders Confirmation (No.7) Act 1885.	In the Schedule, the order relating to the borough of Evesham.
40 50 Vict. c.v.	Local Government Board's Provisional Orders Confirmation (Gas) Act 1886.	In the Schedule, the Droitwich Gas Order 1886.
45 50 & 51 Vict. c.lxxxiv.	Local Government Board's Provisional Orders Confirmation (No.2) Act 1887.	In the Schedule, the order relating to the borough of Evesham.
50 & 51 Vict. c.cxxiii.	Tramways Orders Confirmation (No.2) Act 1887.	In the Schedule, the Worcester Tramways Order 1887.
50 53 & 54 Vict. c.clxxx.	Tramways Orders Confirmation (No.1) Act 1890.	In the Schedule, the Worcester Tramways (Abandonment and Release of Deposit) Order 1890.

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Chapter or Number	Short title or title	Extent of repeal or revocation	
53 & 54 Vict. c.clxxxvi.	Electric Lighting Orders Confirmation Act 1890.	In the Schedule, the Worcester Electric Lighting Order 1890.	5
53 & 54 Vict. c.clxxxviii.	Electric Lighting Orders Confirmation (No.3) Act 1890.	In the Schedule, the Malvern Electric Lighting Order 1890.	
54 & 55 Vict. c.lii.	Electric Lighting Orders Confirmation (No.4) Act 1891.	In the Schedule, the Kidderminster Electric Lighting Order 1891.	10
54 & 55 Vict. c.xcvi.	Malvern Water Act 1891.	Sections 18 to 20, 56 and 59 and the Schedule.	
55 & 56 Vict. c.xxiii.	Stourport Bridge Transfer Act 1892.	The whole Act.	15
55 & 56 Vict. c.ccxxvi.	Water Orders Confirmation Act 1892.	In the Schedule, Articles 15 and 16 of the Ross Water Order 1892.	
56 & 57 Vict. c.cx.	Local Government Board's Provisional Order Confirmation (No.3) Act 1893.	The whole Act.	20
56 & 57 Vict. c.cxxxii.	Local Government Board's Provisional Orders Confirmation (No.16) Act 1893.	In the Schedule, the order relating to the Counties of Hereford and Monmouth and the order relating to the Counties of Hereford and Worcester.	25
58 & 59 Vict. c.lxxxvi.	Local Government Board's Provisional Orders Confirmation (No.5) Act 1895.	In the Schedule, the County of Worcester (Dowles and Upper Arley) Order 1895.	30
59 Vict. (Sess.2) c.v.	Local Government Board's Provisional Orders Confirmation (No.3) Act 1895.	In the Schedule, the Upton-upon-Severn (Hanley Castle and Welland) Order 1895.	35
59 & 60 Vict. c.lxxii.	Malvern Link (Extension and Water) Act 1896.	The whole Act except sections 1, 3, 41 to 43, 45, 47, 49, 57, 58 and 60.	40
59 & 60 Vict. c.cii.	Local Government Board's Provisional Orders Confirmation (No.7) Act 1896.	In the Schedule, the Evesham Joint Hospital Order 1896.	45
59 & 60 Vict. c.ccxxvii.	Kidderminster and Stourport Electric Tramway Act 1896.	The whole Act.	
60 & 61 Vict. c.lxv.	Electric Lighting Orders Confirmation (No.5) Act 1897.	In the Schedule, the Redditch Electric Lighting Order 1897.	50

Chapter or Number	Short title or title	Extent of repeal or revocation
5	60 & 61 Vict. c.lxxv. Local Government Board's Provisional Orders Confirmation (No.10) Act 1897.	The whole Act.
10	60 & 61 Vict. c.lxxvi. Local Government Board's Provisional Order Confirmation (Gas) Act 1897.	The whole Act.
15	60 & 61 Vict. c.cxxxvi. 61 & 62 Vict. c.xxxi. Local Government Board's Provisional Orders Confirmation (No.1) Act 1898.	The whole Act except sections 1, 3 and 20. In the Schedule, the Tewkesbury Rural Order 1898.
20	61 & 62 Vict. c.xxxix. Electric Lighting Orders (No.3) Act 1898.	In the Schedule, the Hereford Electric Lighting Order 1898.
25	1 Edw.7 c.cli. Local Government Board's Provisional Orders Confirmation (No.10) Act 1901.	In the Schedule, the order relating to the Upton-upon-Severn and Pershore Joint Hospital District.
30	1 Edw.7 c.cxc. Worcester Tramways Act 1901.	The whole Act except sections 1, 3 and 13(A) and (D).
35	1902 Cd.1027. Worcester and District Light Railways Order 1901.	The whole Order except Articles 1, 2 and 31.
40	1902 Cd.1023. Worcester (Extension) Light Railways Order 1902.	The whole Order except Articles 1, 2, 9 and 12(e).
45	3 Edw.7 c.lix. Local Government Board's Provisional Orders Confirmation (No.2) Act 1903.	In the Schedule, the Yardley Rural Order 1903.
50	3 Edw.7 c.lx. Local Government Board's Provisional Orders Confirmation (No.3) Act 1903.	In the Schedule, the County of Worcester Order 1903.
	4 Edw.7 c.lxv. Local Government Board's Provisional Order Confirmation (Poor Law) Act 1904.	The whole Act.
	5 Edw.7 c.cxxxiii. Worcestershire County Council (Bridges) Act 1905.	The whole Act.
	5 Edw.7 c.clxxxiv. Malvern Water Act 1905.	Sections 2, 7, 8, 23 and 27 and Schedules 1 and 2.
	7 Edw.7 c.clxi. Local Government Board's Provisional Orders Confirmation (No.11) Act 1907.	In the Schedule, the Evesham Order 1907.

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Chapter or Number	Short title or title	Extent of repeal or revocation	
9 Edw.7 c.xci.	Stourbridge and District Water Board Act 1909.	Sections 51 and 54 and the Schedule.	
1 & 2 Geo.5 c.cxlix.	Local Government Board's Provisional Orders Confirmation (No.14) Act 1911.	In the Schedule, the Hereford Order 1911.	5
1 & 2 Geo.5 c.clii.	Local Government Board's Provisional Order Confirmation (Gas) (No.2) Act 1911.	The whole Act.	10
1 & 2 Geo.5 c.cliv.	Education Board Provisional Orders Confirmation (Durham, &c.) Act 1911.	In the Schedule, the order relating to Worcestershire County Council.	15
2 & 3 Geo.5 c.cxxix.	Local Government Board's Provisional Orders Confirmation (No.3) Act 1912.	In the Schedule, the Kington Order 1912.	20
2 & 3 Geo.5 c.cxxx.	Local Government Board's Provisional Order Confirmation (No.5) Act 1912.	The whole Act.	
13 & 14 Geo.5 c.xxxvi.	Ministry of Health Provisional Orders Confirmation (No.3) Act 1923.	In the Schedule, the Hereford Order 1923.	25
13 & 14 Geo.5 c.xli.	Ministry of Health Provisional Orders Confirmation (No.8) Act 1923.	In the Schedule, Article 8(3) of and the Schedule to the Stourbridge and District Water Board Order 1923.	30
16 & 17 Geo.5 c.lxxiii.	Kidderminster and Stourport Electric Tramway Act 1926.	The whole Act.	35
17 & 18 Geo.5 c.xxxviii.	Ministry of Health Provisional Order Confirmation (No.9) Act 1927.	In the Schedule, the Hereford Order 1927.	40
20 & 21 Geo.5 c.xxx.	Ministry of Health Provisional Orders Confirmation (No.11) Act 1929.	In the Schedule, the Upton-upon-Severn Order 1929.	
20 & 21 Geo.5 c.xxxiii.	Ministry of Health Provisional Orders Confirmation (Bristol and Ross Water) Act 1929.	In the Schedule, Articles 46 and 51 of the Ross Water Order 1929.	45
20 & 21 Geo.5 c.cv.	Ministry of Health Provisional Orders Confirmation (Kidderminster and Llanelly) Act 1930.	The whole Act.	50

Chapter or Number	Short title or title	Extent of repeal or revocation
5	S.R.& O. 1931 No.269. Herefordshire (Ross Urban, Ross Rural and Whitchchurch Rural) Order 1931.	The whole Order.
10	S.R.&O. 1931 No.939. 23 & 24 Geo.5 c.xvii. Evesham Joint Hospital Order 1931. Ministry of Health Provisional Orders Confirmation (Hereford and West Kent Main Sewerage District) Act 1933.	The whole Order. In the Schedule, the Hereford Order 1933.
15	S.R.&O. 1933 No.1243. County of Worcester Review Order 1933.	The whole Order except Articles 1, 2 and 57(1) so far as it applies to Severn Trent Water Limited.
20	26 Geo.5 & 1 Edw.8 c.cxiii. Hereford Corporation Act 1936.	The whole Act except— (a) sections 1, 4, 11, 12 and 66 to 72; (b) section 76 from “The Corporation” to “their control”, and from “and may” to “use thereof.”; (c) sections 165, 167, 169 and 171.
25		
30	1 Edw.8 & 1 Geo.6 c.iv. Ministry of Health Provisional Order Confirmation (Evesham and Pershore Joint Hospital District) Act 1937.	The whole Act.
35	S.I. 1958 No.1760. Kington Rural District Water Order 1958.	Article 4(3).
40	S.I. 1958 No.1822. Weobley Rural District Water Order 1958. S.I. 1959 No.1375. Herefordshire Water Board Order 1959.	Article 4(2). The whole Order except Articles 1, 2, 19, 23, 24 and 25(1) and Schedule 4.
45	S.I. 1959 No.1486. Malvern Water (Revocation) Order 1959. S.I. 1961 No.2482. Stourbridge and District Water Board Order 1961. S.I. 1962 No.717. Herefordshire Water Board Order 1962.	The whole Order. Article 11. Schedule 2. The whole Order.
50	S.I. 1962 No.1561. North West Worcestershire Water Board Order 1962.	The whole Order except Articles 1, 3, 26, 28, 30(1)(a) and (2), 31 and Schedule 7. Schedule 7 so far as it applies—
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Chapter or Number	Short title or title	Extent of repeal or revocation	
		(a) sections 39, 51 and 54 of the Stourbridge and District Water Board Act 1909;	5
		(b) Article 8(3) of the Stourbridge and District Water Board Order 1923;	10
		(c) Article 11 of the Stourbridge and District Water Board Order 1961.	
S.I. 1963 No.262.	Herefordshire Water Board Order 1963.	The whole Order.	15
S.I. 1963 No.1136.	Herefordshire Water Board (No.2) Order 1963.	Article 3.	
S.I. 1964 No.905.	Herefordshire Water Board (Baron's Cross Water Tower and Pipeline) Order 1964.	Articles 4 and 5.	20
S.I. 1964 No.1049.	Worcester Water Order 1964.	Article 5. Schedule 1 except so far as it refers to paragraph 10 of Schedule 3 to the Water Act 1945.	25
S.I. 1965 No.4.	Herefordshire Water Board (Withington) Order 1965.	Article 5. Schedule 2.	30
S.I. 1965 No.155.	Herefordshire Water Board Order 1965.	The whole Order.	
S.I. 1965 No.1847.	Herefordshire Water Board (No.2) Order 1965.	The whole Order.	35
S.I. 1967 No.296.	North West Worcestershire Water Board Order 1967.	Articles 3, 4 and 6. Schedule 1.	
S.I. 1968 No.395.	North West Worcestershire Water Board (Chaddesley Corbett) Order 1968.	Articles 3 and 5. Schedule 1.	40
S.I. 1968 No.1405.	South West Worcestershire Water Board Order 1968.	The whole Order except Articles 1, 2, 19(2),(5) and (6), 22, 23, 24(1), (2) and (3) and Schedule 4. Schedule 4 so far as it saves— (a) section 48 of the Malvern Link (Extension and Water) Act 1896; (b) sections 23 and 27 and Schedules 1 and 2 of the Malvern Water Act 1905.	45 50
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Chapter or Number	Short title or title	Extent of repeal or revocation
5	S.I. 1968 No.1790. North West Worcestershire Water Board (Waresley Boreholes) Order 1968.	The whole Order except— (a) Articles 1 and 2; (b) Schedule 1, paragraph 2.
10	1969 c.xliv. Kidderminster Corporation Act 1969.	The whole Act except sections 1 to 3, 99 to 106, 132, 134, 136, 137, 139 to 141, 142(1), 143 and 144 and Schedules 1 and 3 Part I.
15	1969 c.lvi. S.I. 1969 No.601. Worcestershire County Council Act 1969. Herefordshire Water Board (Credenhill Camp Pipeline) Order 1969.	The whole Act except sections 1, 3, 18 and 85. Articles 4 and 5.
20	S.I. 1969 No.1012. S.I. 1970 No.333. North West Worcestershire Water Board Order 1969. South West Worcestershire Water Board (Charges) Order 1970.	The whole Order. The whole Order.
25	S.I. 1970 No.1642. S.I. 1972 No.251. South West Worcestershire Water Board (Warndon) Order 1970. South West Worcestershire Water Board Order 1972.	The whole Order. The whole Order.
30	S.I. 1973 No.1133. S.I. 1973 No.1691. North West Worcestershire Water Board (Charges) Order 1973. North West Worcestershire Water Board (Timber Lane, Stourport) Order 1973.	The whole Order. Articles 3 and 5. Schedule 1.
35	S.I. 1973 No.1692. North West Worcestershire Water Board (Barrow Hill) Order 1973.	Articles 3 and 5. Schedule 1.
40	S.I. 1974 No.700. South West Worcestershire Water Board (River Teme) Order 1974.	Articles 3 to 5, 8, 9 and 11 and the Schedule.

PART VI
INCLOSURE ACTS

Chapter or Number	Short title or title	Extent of repeal or revocation
45	8 & 9 Vict. c.118. Inclosure Act 1845.	In section 9, the words from “and the commissioners may” to

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Chapter or Number	Short title or title	Extent of repeal or revocation
		<p>“such matter”.</p> <p>In section 12, the first proviso. 5</p> <p>Sections 28 to 48.</p> <p>In section 49, the words “the valuer, or” in both places where they occur, and the words “such valuer, or”.</p> <p>Sections 50 to 55.</p> <p>Section 57.</p> <p>Sections 59 and 60. 15</p> <p>In section 61, the words from the beginning to “but”, and the proviso.</p> <p>Sections 62 to 66.</p> <p>In section 68, the words from the beginning to “borne by, and”. 20</p> <p>Sections 69 to 71.</p> <p>In section 72, the words from the beginning to “think fit, and”. 25</p> <p>In section 73, the words from the beginning to “as the valuer may direct;” and the words from “and the valuer shall in like manner set out” to “poor for the time being of the parish in which such allotments shall be situate;”.</p> <p>Sections 76 and 77.</p> <p>Sections 79 to 82.</p> <p>In section 83, the words from the beginning to “direct; and” in the first place where it occurs, and from “and if” to the end. 40</p> <p>Sections 84 to 92. 45</p> <p>Sections 95 and 97.</p> <p>Sections 99 to 104.</p> <p>In section 107 the words from the beginning to “valuer; and”, and from “and all” to the end. 50</p> <p>Section 113.</p> <p>In section 114, the words from “examination” to “award, and”. 55</p>

Chapter or Number	Short title or title	Extent of repeal or revocation
5		In section 115, the words from the beginning to "Act; and".
10		In section 123, the words "or valuer" in both places where they occur. Sections 124 to 129. Sections 133 to 138. Sections 140 to 144. Sections 152 to 154. Sections 156 and 157.
15		In section 162, the words "or valuer" in both places where they occur. In the Schedule, the Form of Conveyance by Commissioners.
20	9 & 10 Vict. c.70. 10 & 11 Vict. c.111.	Inclosure Act 1846. Inclosure Act 1847.
25	11 & 12 Vict. c.99.	Inclosure Act 1848. Sections 1 to 5.
30		Sections 3, 5 and 6. In section 7 the words from "and" to the end. Sections 1 to 3. In section 4, the words from the beginning to "direct; and". Section 5. Sections 8 and 9. Section 11. Sections 13 and 14.
35	12 & 13 Vict. c.83.	Inclosure Act 1849. Sections 1 to 6. In section 7, the words "and partition", the words "and also to the partition of the same respectively", and the words "or partitioned".
40	14 & 15 Vict. c.53. 15 & 16 Vict. c.79.	Inclosure Commissioners Act 1851. Inclosure Act 1852. Sections 8, 9 and 10. The whole Act.
45		In section 1, the words from "as in the Inclosure Act 1845" to the end. Sections 3 to 13. Sections 15 and 16. Section 20. Sections 23 to 27. Sections 30 to 32.
50	17 & 18 Vict. c.97.	Inclosure Act 1854. Sections 1 and 2. Sections 6 and 7.
55	20 & 21 Vict. c.31.	Inclosure Act 1857. In section 3, the words from "or any" to

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Chapter or Number	Short title or title	Extent of repeal or revocation	
22 & 23 Vict. c.43.	Inclosure Act 1859.	“inclosure” and the words “or valuer respectively”. Section 13. Sections 1 and 2. In section 7, the words from the beginning to “award; and”.	5 10
31 & 32 Vict. c.89. 39 & 40 Vict. c.56.	Inclosure, etc., Expenses Act 1868. Commons Act 1876.	Sections 8 to 11. Sections 13 and 14. Sections 4 and 5. Sections 2 to 6. Section 9. Sections 12 to 14. Section 18. Sections 21 to 23. Section 32.	15
41 & 42 Vict. c.56.	Commons (Expenses) Act 1878.	Section 3.	20

PART VII
SCOTTISH LOCAL ACTS

Chapter or Number	Short title or title	Extent of repeal or revocation	25
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Group 1 - Aid to the Poor, Charities and Private Pensions

41 Geo.3 c.iii.	Edinburgh Poor Relief Act 1800.	The whole Act.	30
43 Geo.3 c.cvii.	Writers to the Signet Widows' Fund Act 1803.	The whole Act.	
45 Geo.3 c.xxxi.	Excise Incorporation in Scotland Act 1805.	The whole Act.	
58 Geo.3 c.lxxiv.	Writers to the Signet Widows' Fund Act 1818.	The whole Act.	35
3 & 4 Will.4 c.lxiv.	Faculty of Procurators of Glasgow Widows Fund Act 1833.	The whole Act.	
3 & 4 Vict. c.xciii.	Glasgow Poor Act 1840.	The whole Act.	40
7 & 8 Vict. c.vi.	Edinburgh Charity Workhouse Act 1844.	The whole Act.	

Chapter or Number	Short title or title	Extent of repeal or revocation
23 & 24 Vict. c.clxxvi.	Royal College of Surgeons of Edinburgh (Widows Fund) Act 1860.	The whole Act.
5 38 & 39 Vict. c.vi.	Glasgow Faculty of Procurators Widows Fund Act 1875.	The whole Act.
43 & 44 Vict. c.xxxii.	Faculty of Physicians and Surgeons of Glasgow Widows Fund Act 1880.	The whole Act.
10 58 & 59 Vict. c.xxx.	Ayr Faculty of Solicitors Widows' Fund Society Act 1895.	The whole Act.
15 1 & 2 Geo.5 c.xxxiii.	St Andrew's Ambulance Association Order Confirmation Act 1911.	The whole Act.
1989 c.xviii.	Scottish Episcopal Clergy Widows' and Orphans' Fund Order Confirmation Act 1989.	The whole Act.
20 1990 c.xxix.	Zetland Masonic Sick and Widows and Orphans Fund Order Confirmation Act 1990.	The whole Act.
25		
<i>Group 2 - Dog Wardens</i>		
1976 c.v.	City of Aberdeen District Council Order Confirmation Act 1976.	The whole Act.
30 1978 c.xviii.	Cunninghame District Council Order Confirmation Act 1978.	The whole Act.
1978 c.xx.	District Council of Renfrew Order Confirmation Act 1978.	The whole Act.
35 1979 c.ii.	Inverclyde District Council Order Confirmation Act 1979.	The whole Act.
40 1979 c.xviii.	Dumbarton District Council Order Confirmation Act 1979.	The whole Act.
1981 c.i.	Bearsden and Milngavie District Council Order Confirmation Act 1981.	The whole Act.
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Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 3 - Education</i>			
47 & 48 Vict. c.ccl.	Scotch Education Department Provisional Order Confirmation (Ardchattan and Muckairn) Act 1884.	The whole Act.	5
4 Edw.7 c.cxlviii.	Scotch Education Department Provisional Order Confirmation (Edinburgh) Act 1904.	The whole Act.	10
8 Edw.7 c.i.	Transfer of Training Colleges (Scotland) Order Confirmation Act 1908.	The whole Act.	15
16 & 17 Geo.5 c.xxxvii.	Glasgow Education Authority (Juvenile Delinquency) Order Confirmation Act 1926.	The whole Act.	20
<i>Group 4 - Insurance Companies</i>			
4 & 5 Vict. c.xcvi.	Scottish Marine Insurance Company Act 1841.	The whole Act.	
6 & 7 Vict. c.cvii.	Glasgow Marine Insurance Company Act 1843.	The whole Act.	25
10 & 11 Vict. c.xxxiv.	Scottish Union Insurance Company Act 1847.	The whole Act.	
22 & 23 Vict. c.xlix.	Scottish National Insurance Company's Incorporation Act 1859.	The whole Act.	30
24 & 25 Vict. c.cxlv.	City of Glasgow Life Assurance Company's Act 1861.	The whole Act.	
47 & 48 Vict. c.xxiii.	Scottish Imperial Insurance Company's Act 1884.	The whole Act.	35
55 & 56 Vict. c.iii.	City of Glasgow Life Assurance Company Act 1892.	The whole Act.	
6 Edw.7 c.xxx.	Norwich Union Life Insurance Society (Scottish Imperial Fusion) Act 1906.	The whole Act.	40

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 5 - Local Authority Finance</i>			
5	3 & 4 Eliz.2 c.i.	Dunoon Burgh (Pavilion Expenditure) Order Confirmation Act 1954.	The whole Act.
	1970 c.xxxvi.	Midlothian County Council Order Confirmation Act 1970.	The whole Act.
10	1970 c.xxxvii.	West Lothian County Council Order Confirmation Act 1970.	The whole Act.
	1970 c.lvi.	Aberdeen Corporation Order Confirmation Act 1970.	The whole Act.
15	1970 c.lix.	Dundee Corporation Order Confirmation Act 1970.	The whole Act.
	1971 c.xxxviii.	Lanarkshire County Council Order Confirmation Act 1971.	The whole Act.
20	1974 c.iv.	Renfrew County Council Order Confirmation Act 1974.	The whole Act.
<i>Group 6 - Order Confirmation Acts</i>			
25	3 Edw.7 c.cxliv.	Scottish Episcopal Clergy Widows' and Orphans' Fund Order Confirmation Act 1903.	The whole Act.
30	7 Edw.7 c.cl.	Dumbarton Burgh Order Confirmation Act 1907.	The whole Act.
	9 Edw.7 c.i.	Zetland Masonic Sick and Widows and Orphans Fund Order Confirmation Act 1909.	The whole Act.
35	1 & 2 Geo.5 c.cxxix.	Partick Burgh Order Confirmation Act 1911.	The whole Act.
	1 & 2 Geo.5 c.clix.	Pier and Harbour Order Confirmation (No 3) Act 1911.	The whole Act.
40	3 & 4 Geo.5 c.cxlvi.	Pier and Harbour Orders Confirmation (No 2) Act 1913.	The whole Act.
	4 & 5 Geo.5 c.lxviii.	Lanarkshire Gas Order Confirmation Act 1914.	The whole Act.
45	9 & 10 Geo.5 c.lxxi.	Pier and Harbour Orders Confirmation Act 1919.	The whole Act.
	9 & 10 Geo.5 c.cx.	Scottish Amicable Life Assurance Society's Order Confirmation Act 1919.	The whole Act.
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Chapter or Number	Short title or title	Extent of repeal or revocation	
11 & 12 Geo.5 c.xii.	Dundee Gas Order Confirmation Act 1921.	The whole Act.	
14 & 15 Geo.5 c.iv.	Leith Harbour and Docks Order Confirmation Act 1924.	The whole Act.	5
20 & 21 Geo.5 c.xi.	Leith Harbour and Docks Order Confirmation Act 1929.	The whole Act.	10
22 & 23 Geo.5 c.xxii.	St Andrews Links Order Confirmation Act 1932.	The whole Act.	
1 & 2 Eliz.2 c.xix.	Clyde Navigation Order Confirmation Act 1953.	The whole Act.	
4 & 5 Eliz.2 c.ii.	Writers to the Signet Widows' Fund Order Confirmation Act 1955.	The whole Act.	15
1965 c.xii.	Writers to the Signet Widows' Fund Order Confirmation Act 1965.	The whole Act.	20
1973 c.vi.	Mallaig Harbour Order Confirmation Act 1973.	The whole Act.	
1975 c.xiii.	Fraserburgh Harbour Order Confirmation Act 1975.	The whole Act.	
	<i>Group 7 - Oyster and Mussel Fisheries</i>		25
32 & 33 Vict. c.lxx.	Oyster and Mussel Fisheries Order Confirmation Act 1869.	The whole Act.	
33 & 34 Vict. c.xxvii.	Oyster and Mussel Fisheries Orders Confirmation Act 1870 No.2.	The whole Act.	30
34 & 35 Vict. c.ii.	Oyster and Mussel Fisheries Order Confirmation Act 1871.	The whole Act.	35
35 & 36 Vict. c.i.	Oyster and Mussel Fisheries Orders Confirmation Act 1872.	Greshernish Fishery Order 1872.	
51 & 52 Vict. c.clxvi.	Oyster and Mussel Fisheries (West Loch Tarbert) Order Confirmation Act 1888.	The whole Act.	40
54 & 55 Vict. c.xxvii.	Oyster and Mussel Fishery (Loch Sween) Order Confirmation Act 1891.	The whole Act.	45
56 & 57 Vict. c.cv.	Oyster and Mussel Fishery (Loch Creran) Order Confirmation Act 1893.	The whole Act.	
57 & 58 Vict. c.li.	Mussel Fishery (Cockenzie) Order Confirmation Act 1894.	The whole Act.	50

Chapter or Number	Short title or title	Extent of repeal or revocation
10 Edw.7 and 1 Geo.5 c.cxxxii. 5	Oyster and Mussel Fishery (Bay of Firth) Order Confirmation Act 1910.	The whole Act.
<i>Group 8 - Other Repeals</i>		
46 & 47 Vict. c.xxxvii. 10 1 & 2 Geo.6 c.iv.	Faculty of Procurators in Paisley Act 1883. Empire Exhibition (Scotland) Order Confirmation Act 1937.	The whole Act. The whole Act.
11 & 12 Geo.6 c.ix. 15	Church of Scotland Trust (Amendment) Order Confirmation Act 1948.	The whole Act.
14 Geo.6 c.xxvi. 20	Merchants House of Glasgow (Crematorium) Order Confirmation Act 1950.	The whole Act.
1968 c.i. 25	Airdrie Court House Commissioners (Dissolution) Order Confirmation Act 1968. Greenock Corporation Order Confirmation Act 1974.	The whole Act. The whole Act.
1974 c.vii. 1977 c.xxi. 30	Aberdeen Shoemakers Incorporation Order Confirmation Act 1977. Solicitors in the Supreme Courts of Scotland (Amendment) Order Confirmation Act 1979.	The whole Act. The whole Act.
1979 c.iii. 35	Scots Episcopal Fund Order Confirmation Act 1979. Church of Scotland Trust (Amendment) Order Confirmation Act 1985.	The whole Act.

PART VIII
SLAVE TRADE ACTS

Chapter or Number	Short title or title	Extent of repeal or revocation
40 5 Geo.4 c.113. 45	Slave Trade Act 1824.	Sections 3 to 9. Section 12. Sections 39 and 40. Section 47.

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Chapter or Number	Short title or title	Extent of repeal or revocation
3 & 4 Will.4 c.73.	Slavery Abolition Act 1833.	The whole Act.
6 & 7 Vict. c.98.	Slave Trade Act 1843.	In section 1, the words “and of this present Act” and “or by this present Act.”. Section 4. 5
27 & 28 Vict. c.24.	Naval Agency and Distribution Act 1864.	In section 12, the words “In case of any seizure or capture under any Act relating to the abolition of the slave trade:”. 10
36 & 37 Vict. c.88.	Slave Trade Act 1873.	In section 2— (a) the definitions of “British possession” and “foreign state”; 15 (b) from the definition of “Vice-Admiralty Court” onwards. 20 In section 3— (a) the words in brackets commencing “subject in the case”; 25 (b) in paragraph (a), the words from “and for any commander” to the end; (c) in paragraph (b), the words from “and for any commander” to the end; 30 (d) the words from “for adjudication” to the end. 35 Sections 4 to 16. Section 17 from “in like manner” onwards. Sections 18 to 23. 40 In section 24, the words from “and any enactments” to “by this Act;”. Section 25. 45 In section 26, the words from “, either in Her Majesty’s dominions” to “has jurisdiction”; and the last paragraph. 50 Sections 28 and 29. Schedule 1.
53 & 54 Vict. c.27.	Colonial Courts of Admiralty Act 1890.	In paragraph (b) of the proviso to section 2, the words “and under the 55

Chapter or Number	Short title or title	Extent of repeal or revocation
5		Slave Trade Act 1873," and "or the slave trade". In paragraph (a) of the proviso to section 9(2), the words "to the slave trade,".
10	15 & 16 Geo.5 c.86. 1967 c.18.	Criminal Justice Act 1925. Section 13. Section 11(3).
15	1971 c.23. 1978 c.23.	Criminal Law Act (Northern Ireland) 1967. Courts Act 1971. Judicature (Northern Ireland) Act 1978.
	1995 c.21.	Merchant Shipping Act 1995. In Schedule 1, paragraph 7(a). In Schedule 8, paragraph 8. In Part II of Schedule 5, the entry relating to the Slave Trade Act 1843. In Schedule 13, paragraph 4.

20

PART IX
STATUTES

Chapter or Number	Short title or title	Extent of repeal or revocation
<i>Group 1 - Statute Law Revision Acts</i>		
25	24 & 25 Vict. c.101.	Statute Law Revision Act 1861.
	35 & 36 Vict. c.97.	Statute Law Revision (No.2) Act 1872.
30	37 & 38 Vict. c.96.	Statute Law Revision (No.2) Act 1874.
	41 & 42 Vict. c.79.	Statute Law Revision Act 1878.
	55 & 56 Vict. c.19.	Statute Law Revision Act 1892.
35	56 & 57 Vict. c.14.	Statute Law Revision Act 1893.
	56 & 57 Vict. c.54.	Statute Law Revision (No.2) Act 1893.
40	61 & 62 Vict. c.22.	Statute Law Revision Act 1898.
	8 Edw.7 c.49.	Statute Law Revision Act 1908.

Chapter or Number	Short title or title	Extent of repeal or revocation
5 1977 c.18.	Statute Law (Repeals) Act 1977.	from “or the Isle of Man” to the end. Schedule 1. Section 1(1). Section 4(2). In section 4(3), the words from “or the Isle of Man” to the end. Schedule 1.
10		
15		
20 1978 c.45.	Statute Law (Repeals) Act 1978.	In Schedule 2, the entries relating to the Highways Act 1959 and the Criminal Justice (Scotland) Act 1963. Section 1(1). In section 3(2), the words “or the Isle of Man”. Schedule 1.

25
PART X
MISCELLANEOUS

Chapter or Number	Short title or title	Extent of repeal or revocation
<i>Group 1 - Stannaries</i>		
30 32 & 33 Vict. c.19.	Stannaries Act 1869.	The whole Act.
50 & 51 Vict. c.43.	Stannaries Act 1887.	The whole Act.
35 53 & 54 Vict. c.39.	Partnership Act 1890.	In section 1(2), the words “; or (c) A company engaged in working mines within and subject to the jurisdiction of the Stannaries”. Section 23(4).
40		

SCH. 1

Chapter or Number	Short title or title	Extent of repeal or revocation	
<i>Group 2 - Sea Fish</i>			
46 & 47 Vict. c.22.	Sea Fisheries Act 1883.	The whole Act.	5
SR&O, 8 February 1890.	Order in Council applying the Sea Fisheries Act 1883 to the International Convention of 1 February 1889.	The whole Order.	10
SR&O 1903 No.214.	Order in Council applying the Sea Fisheries Act 1883 to the United Kingdom - Denmark Convention of 24 June 1901.	The whole Order.	15
1968 c.77. 1976 c.86. 1987 c.18.	Sea Fisheries Act 1968. Fishery Limits Act 1976. Debtors (Scotland) Act 1987.	Section 22(6). In Schedule 2, paragraph 5. In Schedule 6, paragraph 9.	20
<i>Group 3 - Sewers Support</i>			
46 & 47 Vict. c.37.	Public Health Act 1875 (Support of Sewers) Amendment Act 1883.	The whole Act.	25
1989 c.15.	Water Act 1989.	In Schedule 25, paragraph 3. In Schedule 26, paragraph 46.	
1991 c.56.	Water Industry Act 1991.	Section 97(6).	30
<i>Group 4 - Agricultural Research</i>			
4 & 5 Eliz.2 c.28.	Agricultural Research Act 1956.	The whole Act.	
9 & 10 Eliz.2 c.9.	Agricultural Research etc. (Pensions) Act 1961.	In section 1(1)— (a) the words from “The Agricultural Research Council” to “schemes, and”; (b) paragraph (a).	35 40
1965 c.4.	Science and Technology Act 1965.	Section 1(3). In section 2(1), from “and may be cited” to the end. In section 1(1)(a), the words “the Agricultural Research Council and”. In section 2(4), the words “and the Agricultural Research Council” and the words from “and the Agricultural Research Fund” to “maintained”.	45 50

Chapter or Number	Short title or title	Extent of repeal or revocation
5		In section 2(5), the words “the Agricultural Research Council and”.
<i>Group 5 - General Repeals</i>		
10	25 Hen.8 c.34. (1533)	An Acte concernyng the attaynder of John Wolff his wyffe and others.
	9 Geo.1 c.17. (1722)	An Act to inflict Pains and Penalties on Francis Lord Bishop of Rochester.
15	7 Ann. c.27.	Morrison’s Haven and Fort, East Lothian Act 1708.
	29 Geo.3 c.42.	Cockburnspath Bridge, Berwick Act 1789.
	6 & 7 Vict. c.90.	Public Notaries Act 1843.
20	7 & 8 Geo.5 c.21. 19 & 20 Geo.5 c.29.	Venereal Disease Act 1917. Government Annuities Act 1929.
25	26 Geo.5 & 1 Edw.8 c.2.	Government of India Act 1935.
	9 & 10 Geo.6 c.18.	Statutory Orders (Special Procedure) Act 1945.
	10 & 11 Geo.6 c.30.	Indian Independence Act 1947.
30	1964 c.16. 1969 c.48. 1985 c.68.	Industrial Training Act 1964. Post Office Act 1969. Housing Act 1985.
35	1993 c.11.	Clean Air Act 1993.
	1993 c.50.	Statute Law (Repeals) Act 1993.
40	1994 c.19.	Local Government (Wales) Act 1994.
45		In section 30(4), the words “and (3)”.
		In section 3(3), the words “the Isle of Man,”.
		In Schedule 9, paragraph 17(1), the words “in paragraph (b) at the beginning insert “in England” and”.
		In Schedule 16, paragraphs 11, 40(2)(b), 57(6), 67, 70 and 93.

SCHEDULE 2

CONSEQUENTIAL AND CONNECTED PROVISIONS

Slave Trade Act 1824 (c.113)

1. In section 10 of the Slave Trade Act 1824 (persons dealing in slaves) except as it applies to Northern Ireland, for the words from “and are hereby declared” to the end substitute “guilty of an offence and shall be liable to imprisonment for a term not exceeding fourteen years”. 5

2. In section 11 of the Slave Trade Act 1824 (seamen etc, guilty of misdemeanour) for the words “and they are hereby declared to be guilty of a misdemeanour only” substitute “guilty of an offence”. 10

Metropolitan Police Act 1839 (c.47)

3. For section 75 of the Metropolitan Police Act 1839 (meaning of “magistrate” in that Act) there shall be substituted—

“Meaning of “magistrate” in this Act.	75. In this Act “magistrate” means—	15
	(a) a metropolitan stipendiary magistrate, or	
	(b) any two justices of the peace having jurisdiction within the metropolitan police district, sitting together publicly in a magistrates’ court within their commission area.”	

Public Schools Act 1868 (c.118)

4. Before section 5 of the Public Schools Act 1868 there shall be inserted the following section— 20

“Governing bodies.	4A.—(1) Every governing body established for a school to which this Act applies shall be a body corporate.	
	(2) The governing body of Harrow School shall be deemed to be incorporated by the name of “The Keepers and Governors of the Possessions, Revenues, and Goods of the Free Grammar School of John Lyon, within the town of Harrow-on-the-Hill” and shall be entitled to use as their common seal the seal of the former corporate body bearing the same name.”	25

5. Section 27 of the Public Schools Act 1868 (saving for rights of dean and chapter of Westminster) shall continue to have effect with the substitution of “a part of” for “apart from” (an amendment made by section 3 of the Public Schools Act 1869). 30

Slave Trade Act 1873 (c.88)

6. In section 3 of the Slave Trade Act 1873, for the words “British possession” substitute “colony”. 35

Colonial Stock Acts 1877 (c.59) and 1892 (c.35)

7. The repeal by this Act of the Colonial Stock Act 1877 and the Colonial Stock Act 1892 shall not affect the continued operation of those Acts in relation to any unredeemed stock which immediately before the commencement of this Act was recorded by the Commissioners of Inland Revenue in accordance with section 1 of the Colonial Stock Act 1877 (registration of colonial stock with Commissioners of Inland Revenue). 40

Sea Fisheries Act 1883 (c.22)

SCH. 2

8. The repeal by this Act of the Sea Fisheries Act 1883 shall not affect the operation—

- (a) of any Order in Council under section 23 of that Act which is in force immediately before the coming into force of the repeal; or
- (b) of any provision of that Act which is applied by any such Order or by any provision of the Fisheries Act 1891 or the North Sea Fisheries Act 1893.

Fisheries Act 1891 (c.37)

9. In section 6 of the Fisheries Act 1891 (construction, title and commencement of Part I of that Act), for subsection (3) substitute—

“(3) The Sea Fisheries (Scotland) Amendment Act 1885 and this Part of this Act may be cited collectively as the Sea Fisheries Acts 1885 to 1891.”.

Finance Act 1931 (c.28)

10. In the Finance Act 1931, for Schedule 2 there shall be substituted the following Schedule (which reproduces the effect which that Schedule and section 28(6) had immediately before the coming into force of this Act)—

“SCHEDULE 2

REQUIREMENTS IN CONNECTION WITH PRODUCTION OF INSTRUMENTS OF TRANSFER.

1. Any person required by section 28 of this Act to produce any instrument to the Commissioners shall furnish to the Commissioners with the instrument a document (signed by the transferee or lessee or by some person on his behalf and showing his address) giving particulars—

- (a) of the description of the instrument;
- (b) of the date of the instrument;
- (c) of the names and addresses of the transferor and transferee or lessor and lessee;
- (d) of the situation of the land to which the transaction relates, including any dimensions stated in the instrument and, if necessary for the identification of the land, a description of the boundaries of the land, or a plan;
- (e) of the estate or interest transferred, including, where the transaction is the assignment or grant of a lease or the transfer of a fee simple subject to a lease, the term of the lease, the date of the commencement of the term and the rent reserved;
- (f) of the consideration, if any, other than the rent shown under subparagraph (e), showing separately any capital payment, any debt released, any debt covenanted to be paid or to which the transaction is made subject, any periodical payment (including any charge) covenanted to be paid, any terms surrendered, any land exchanged and any other thing representing money or money’s worth comprised in the consideration for the transaction;
- (g) of any minerals, mineral rights, sporting rights, timber or easements reserved, and of any restrictions, covenants or conditions affecting the value of the estate or interest transferred or granted; and
- (h) of the information given to the transferee or lessee by any relevant authority when requested, in connection with the transaction, to state what entries (if any) relating to the land to which the transaction relates were shown in any relevant register.

SCH. 2

2. In paragraph 1(h)—

(a) in relation to land in England or Wales—

“relevant authority” means a local planning authority within the meaning of the Town and Country Planning Act 1990, and

“relevant register” means a register kept by the authority under section 69(1) of that Act; 5

(b) in relation to land in Scotland—

“relevant authority” means a local authority within the meaning of the Town and Country Planning (Scotland) Act 1997, and 10

“relevant register” means a register kept by the authority under section 36(1) of that Act.”

Science and Technology Act 1965 (c.4)

11. In section 2(4) of the Science and Technology Act 1965 (expenses, accounts etc, of Research Councils)— 15

(a) for the words “either Council” substitute “the Council”; and

(b) for the words “either of those Councils” substitute “the Council”.

Road Traffic Regulation Act 1984 (c.27)

12.—(1) In paragraph 20 of Schedule 4 to the Road Traffic Regulation Act 1984 (compensation where licence for parking place refused or limited) in sub-paragraph (a)(iii) for “specified operations within the meaning of section 64(3) of the Land Commission Act 1967” substitute “material operations within section 56(4) of the Town and Country Planning Act 1990”. 20

(2) Sub-paragraph (1) does not affect the operation of paragraph 20 of Schedule 4 to the 1984 Act in a case where the notice referred to in that paragraph was published under paragraph 1 of that Schedule before the commencement of this Act. 25

Clean Air Act 1993 (c.11)

13. In section 30(4) of the Clean Air Act 1993, for the word “subsections” substitute “subsection”, and for the words “they apply” substitute “it applies”.

APPENDIX 2

Explanatory Note on the Draft Bill

1 CLAUSES 1 – 3

1. *Clause 1* repeals the enactments mentioned in Schedule 1 and introduces the consequential and connected provisions in Schedule 2.

Clause 2

2. Subsection (1) has the effect of extending the Bill throughout the United Kingdom (i.e. England and Wales, Scotland and Northern Ireland).
3. Subsection (2) has the effect of extending the Bill to the Isle of Man. This has been agreed to by the authorities in the Isle of Man. The repeals in Schedule 1 which affect the Isle of Man include those relating to the following Acts:

Superannuation Act 1965 (Part IV)

Slave Trade Acts 1824 and 1873 (Part VIII)

Public Notaries Act 1843 (Part X)

Act of Attainder 1533 (Part X)

Pains and Penalties Act 1722 (Part X)

4. Subsection (3) has the effect of providing that two of the repeals listed in Schedule 1 will come into force only once an Order in Council has been made to that effect. (All the other repeals in Schedule 1 come into force automatically upon Royal Assent). This arrangement is at the request of the Isle of Man authorities.
5. Subsection (4) provides power by Order in Council to extend the Bill's effect to the Channel Islands and any colony.
6. Subsection (5) makes it clear that, subject as already provided in clause 2, the Bill once enacted has no effect outside the United Kingdom and the Isle of Man.
7. Subsection (6) ensures that the provisions in subsections (4) and (5) have effect in relation to statutory instruments as well as enactments.
8. *Clause 3* provides the short title. Subject to subsection (3) of clause 2, the Bill will come into force upon Royal Assent.

SCHEDULE 1

Repeals

PART I

ADMINISTRATION OF JUSTICE

2 *Group 1 - Sheriffs*

3 *Sheriffs Act 1887*

1.1 The office of sheriff is one of great antiquity, originally exercising a wide range of functions both executive and judicial. Today the office, although quite onerous for the incumbent, is mostly ceremonial. Many of his duties have long since been transferred to the under-sheriff and bailiffs and are governed by modern legislation. The sheriff today tends to be a distinguished retired serviceman or a prominent businessman rather than a lawyer. The under-sheriff is usually a solicitor.

1.2 The bulk of the statute law relating to sheriffs is contained in the Sheriffs Act 1887 (the 1887 Act) which consolidated ancient enactments relating to the powers and duties of sheriffs. The 1887 Act was one of the three consolidation Acts enacted in that year. At that time there was a strict rule that the law, however obsolete it might be, was not to be changed by consolidation Bills, and it so happened that the Government was clearly reminded of it on 16 August 1887 when another of these Bills was to be read a second time in the House of Commons. Consequently the Sheriffs Act was very conservatively drawn and some of its provisions were already archaic in 1887. The present repeal proposals are of provisions which were either obsolete then or which have since become obsolete. Some of the provisions proposed for repeal had become statutory in the 13th or 14th centuries, in the reigns of Edward I and III, which means that the elements are probably much older. Furthermore, in some cases there is remarkable coincidence between the words of the original (repealed) enactments and the provision consolidating them in the 1887 Act, which no doubt reflects the then current view of Parliament that a change of words implied a change of meaning. Among the provisions proposed for repeal are the following:

- references in section 6 to the Lord High Treasurer, an office not occupied since 1713;
- section 16(2), as to the escape of prisoners; sheriffs have not been liable for such escapes or for other functions as to prisoners since 1877;
- section 21 requiring sheriffs to submit accounts to the Lord Chancellor within two months of expiry of office, which is no longer the practice;
- section 28 requiring the outgoing sheriff to hand over his prisoners etc. to the incoming sheriff - they are not now responsible for such functions;

- in section 29, references to wrongfully letting go or holding prisoners ;
- in section 40(2), savings for specified officers who are either governed by more recent legislation (coroners) or whose office is obsolete (escheators).

1.3 The Lord Chancellor's Department, the Shrievalty Association, the Under Sheriffs Association and the Corporation of London have been consulted as to the proposed repeals and have no objection to the proposals.

4 *Group 2 - General Repeals*

5 *Incitement to Mutiny Act 1797*

1.1 The Incitement to Mutiny Act 1797 was the first, and only survivor, of three emergency Acts¹ passed as a result of the mutinies in the fleet at Spithead and the Nore between April and June 1797 at a time when Britain was “everywhere on the defensive” against France and shortly after an attempted French invasion of Ireland in 1796.² The two mutinies were very different in character. That at Spithead was mainly concerned with improving conditions of service. The sailors were well organised and their leaders were both firm and restrained. After a week the Cabinet acquiesced in their demands. By contrast, the mutiny at the Nore was overtly political. It was sternly suppressed and its ringleader hanged.³ Of the Act's provisions which remain,⁴ section 1 punishes with a maximum sentence of life imprisonment offences of seducing members of the armed forces from their duty and of incitement to mutiny, while section 3 makes provision for trials. Although originally only a temporary measure, the 1797 Act was subsequently made permanent. It has, however, not been invoked for over sixty years, having been superseded by later legislation, in particular the Incitement to Disaffection Act 1934⁵ and various offences contained in armed forces legislation. It is consequently proposed for repeal as being no longer of practical utility. The parallel legislation in force in Northern Ireland, the Incitement to Disaffection Act (Ireland) 1797, together with a consequential repeal in the Criminal Law Act (Northern Ireland) 1967, is proposed for repeal for the same reasons.

1.2 The Home Office, the Ministry of Defence, the Crown Prosecution Service, the Crown Office, the Scottish Office Home Department and the authorities in

¹ The other two were the Act for the more effectual suppression of Mutiny and Rebellion 1797 (37 Geo.3 c.71), repealed by the Statute Law Revision Act 1861 (34 & 35 Vict, c.116, s 1, Sch) and the Unlawful Oaths Act 1797 (37 Geo.3 c.123), repealed by the Statute Law (Repeals) Act 1981 (1981 c.19, Sch 1, Pt I).

² See Holdsworth, *A History of English Law*, (1952) vol XIII pp 167-8.

³ See J Stephen Watson, *The Reign of George III (1760-1815)* (Oxford History of England, 1960), pp 372-3.

⁴ Section 2 (prosecution of offences) was repealed by the Criminal Law Act 1967 c.58, s.10, Sch 3, and s.4 (duration) by the Statute Law Revision Act 1871, s.1, Sch.

⁵ The maximum penalty for offences under this Act is two years' imprisonment, which exceeds the penalties imposed in any case under the 1797 Act between 1900-1930 (when the last recorded case occurred).

Northern Ireland (with whose agreement the repeal of the provisions applying there is proposed) have been consulted and have no objection to the repeals.

6 Criminal Law Act 1826, sections 28 and 29

- 1.1 The few remaining provisions of the Criminal Law Act 1826 enable the Crown Court to order sums of money to be paid to persons active in the apprehension of criminals. While the substantive provisions are to be untouched, the proposed repeals in sections 28 and 29 would eliminate spent and unnecessary provisions, including one requiring the person to be compensated to pay 25 pence to the Court officer when receiving the order for payment. This fee is always now waived. The Lord Chancellor's Department, which has itself consulted widely on the proposal, has no objection to it.

7 Metropolitan Police Act 1839, section 75

- 1.1 The Metropolitan Police Act 1839 and the Metropolitan Police Courts Act 1840 (and other legislation of the same period) were a code of law and procedure for the metropolitan police district in early Victorian times, which is still in existence although very much depleted by repeals. Within it, section 75 of the Act of 1839 defined the word "magistrate", but that definition was soon found to be unsatisfactory and was amended by the Act of 1840. The resulting two definitions are far from satisfactory and it is proposed that both sections should be repealed. So far as some of the words are still necessary their effect would be preserved by Schedule 2 to the draft Bill substituting into the 1839 Act a new section 75 comprehensively defining "magistrate" for the purposes of the code referred to. The words proposed for repeal in section 76 of the 1839 Act are an antiquated and unnecessary procedural provision which has been superseded by the general law. The Lord Chancellor's Department, the Home Office and, so far as they are concerned with the proposals, the Corporation of London have been consulted and have no objection to the repeals.

8 Northern Ireland Act 1962, section 25

- 1.1 Section 25 of the Northern Ireland Act 1962 provided for certain fines and forfeitures imposed by the courts in Northern Ireland to cease to be paid into the United Kingdom Exchequer and to be paid instead into the Northern Ireland Exchequer. The provisions have been superseded since all such fines and forfeitures are, by virtue of the Northern Ireland Constitution Act 1973, and subordinate legislation made under the powers provided by that Act, paid into the Consolidated Fund of the United Kingdom. They are therefore proposed for repeal as having no practical utility. The Treasury and the authorities in Northern Ireland have been consulted and have no objection to the repeals.

9 Road Traffic Regulation Act 1984, Schedule 12

- 1.1 Schedule 12 to the Road Traffic Regulation Act 1984 contains temporary provisions relating to fixed penalties for specified road traffic offences. It is proposed for repeal as spent.⁶ The Department of Transport and the Scottish

⁶ The current provisions for fixed penalties are in the Road Traffic Offenders Act 1988 (c.53), Pt.III and Schs 3, 4 and 5 as amended by orders under s.51(3) of that Act.

Office Development Department have been consulted and have no objection to the proposed repeal.

10 *Tribunals and Inquiries Act 1992, Schedule 2*

- 1.1 Schedule 2, paragraph 5 of the Tribunals and Inquiries Act 1992 relates to the position of chairmen and members of certain tribunals appointed before the Tribunals and Inquiries Act 1958 came into force (1 January 1959).⁷ There are now no chairmen or members to which the provision can apply and the paragraph is therefore spent. The Department of Social Security, the Department of Employment (as it then was), the President of the Independent Tribunal Service and the Council on Tribunals have been consulted on the proposed repeal and have no objection.

⁷ The tribunals concerned are: child support appeal tribunals; reinstatement committees under the Reserve Forces (Safeguard of Employment) Act 1985, Sch 2, para 1; social security appeal tribunals; disability appeal tribunals; medical appeal tribunals; tribunals constituted under regulations made under the Social Security Administration Act 1992, s 58; and vaccine damage tribunals.

PART II

ECCLESIASTICAL LAW

11 Group 1 - Ecclesiastical Leases

- 2.1 The Acts in this Group are the Ecclesiastical Leases Acts of 1571, 1572, 1575 and 1800. The 1571 Act is the principal Act, the other three being ancillary, and the mischief at which it was aimed was the dilapidation of ecclesiastical property which had resulted during the Reformation from the practice, on the part of some of the clergy, of granting away the ecclesiastical property on long leases at a premium and at low rents. Whereas the grantor had the benefit of the premium, the next incumbent had less on which to live, and probably nothing with which to keep the property in repair. Thus the 1571 Act specifically condemned the “long and unreasonable leases” as being “the cheefest causes of the dilapidations and the decaye of all spyrituall lyvynges and hospitallytie and the utter impoverishing of all successors incumbentes in the same”.¹
- 2.2 The background to this state of affairs lies in the religious turmoil prevailing in England in the 16th century. Following the death of Henry VIII in 1546 there were bewildering changes of Christian allegiance because of two short successions by his children. The young Edward VI, a Protestant, was followed by his Roman Catholic half-sister Mary before the long Protestant reign of Elizabeth I started in 1558. According to the legal historian John Reeves:

“The clergy in Queen Mary’s time, particularly the bishops, foreseeing a Protestant succession would soon take place, were resolved to make the most of their present possession, and exercised the full extent of that power over their ecclesiastical property which was allowed them by the law, in letting long leases, and otherwise incumbering it, little solicitous how much they dilapidated the revenues of their successors. Bishop Gardiner made no scruple of boasting of this practice, and used to say in allusion to the length of his leases, that he should be a bishop a hundred years after he was dead.”²

This old practice continued during Queen Elizabeth’s reign (1558 to 1603) and an Act of 1558³ served to prevent the bishops from alienating their property in this way, except to the Crown. Whatever may have been the motives of the Queen and her Court in the making of that Act, in some degree self-interested perhaps,⁴ twelve more years passed before the Act of 1571 extended similar restraint to the other clergy, below the rank of bishop, and to the ecclesiastical colleges.

- 2.3 The main surviving provision of the three Elizabethan Ecclesiastical Leases Acts is section 2 of the 1571 Act. This provides that an ecclesiastical lease exceeding

¹ Section 2. Section 1 sought to restrict alienation of ecclesiastical goods and chattels.

² *History of the English Law* 2nd ed (1787-1814).

³ 1 Eliz. 1 c.19. This Act was repealed by the Statute Law Revision Act 1948.

⁴ The story is told in some detail in Strype’s *Annals of the Reformation*, new edn. (1824); this voluminous work was first published in 1725.

in length 21 years or 'three lives'⁵ is void. The 1572 Act qualified this by making an exception in the case of a house and grounds (other than the main habitation of the lessor) situated in a city or town. Even here, however, the lease could not exceed 40 years and must reserve 'the accustomed yeerely rent'. The 1575 Act prohibited the granting of any lease before an earlier lease had expired. The 1800 Act left the Elizabethan Acts in place but clarified an issue arising from the Elizabethan Acts in cases where the ecclesiastical lease was of part only of the estate.⁶

2.4 Although the four Acts remain on the statute book they have long ceased to have any practical utility. Originally they applied not only to leases granted by the clergy but also to leases granted by others such as colleges and deans and chapters of cathedrals. However, subsequent legislation has served to disapply the Acts. Colleges at Oxford, Cambridge and Durham were given extensive powers of sale, exchange and leasing by the Universities and College Estates Acts 1858 to 1898.⁷ The Universities and College Estates Act 1964 disapplied the Acts in respect of colleges in any university. Deans and chapters of cathedrals were released from the Acts by the Cathedrals Measure 1963.⁸ Finally the Endowments and Glebe Measure 1976 disapplied most of the legislation from parsons.⁹ In short the four Acts have been superseded by more modern legislation as well as being hopelessly obsolete for historical reasons.

2.5 Those consulted on these repeal proposals include the General Synod of the Church of England, the Representative Body of the Church in Wales, the Church Commissioners and the Ministry of Agriculture, Fisheries and Food.¹⁰ There have been no objections to the proposals.

⁵ It is not entirely clear what period three lives was intended to cover. Now, by virtue of section 149(6) of the Law of Property Act 1925, a lease for lives usually takes effect as a lease for 90 years determinable after the death of the original lessee.

⁶ The 1800 Act clarified the same issue in relation to other 16th century enactments (now repealed).

⁷ Now consolidated in sections 1 to 3 of the Universities and College Estates Act 1925. The 1925 Act also applied to two ancient schools, Eton and Winchester, which are of similar foundation to certain Oxford and Cambridge colleges, and both have accepted the repeal proposals. The powers under the 1925 Act, which are general and not really connected with the Elizabethan legislation, are exercised with the consent of the Minister of Agriculture, Fisheries and Food.

⁸ Section 53 and Schedule 1.

⁹ Section 47(3) and Schedule 7. In fact the disapplication extends to all the Acts except section 2 of the 1571 Act. Whatever the reason for this exception, section 2 has effectively been superseded by provisions in the Pluralities Act 1838 and the Endowments and Glebe Measure 1976 requiring consents before parsonages are let.

¹⁰ The Ministry's interest arises because its consent is needed to sales under the Universities and College Estates Act 1925: see footnote 7 above. The repeal of the three Elizabethan Acts will permit a small consequential repeal to words referring to those Acts in section 1(1) of the Universities and College Estates Act 1964.

12 *Group 2 - Tithe Acts*

13 *Background*

- 2.1 The enactments recommended for repeal under this heading are those concerned with the enforcement, commutation, redemption and general administration of tithes, tithe rent charge and corn rents. These enactments have long been obsolete. Indeed most of them were scheduled for repeal by the Corn Rents Act 1963.¹¹ However the scheme required to trigger the repeals in the 1963 Act has never been made with the result that the enactments remain unrepealed.¹² The proposed repeals would not extinguish any subsisting liability for payments due under tithe law, but rather the obsolete provisions for the administration of that law and the recovery of sums due.
- 2.2 Tithe has been defined as “the tenth part of the increase yearly arising from the profits of lands, stock upon lands, and the industry of the parishioners, payable for the maintenance of the parish priest, by everyone who has things titheable, if he cannot show a special exemption”.¹³ It was a Church tax, and very early in the history of the Church in every European country a tenth part of the produce of the land was claimed. The Church based its right to do so on references in the Old Testament but it is probable that the tithe was a vestige of the old Roman tribute of one tenth.
- 2.3 Tithes were of three classes. Predial, or praedial, tithes were such as were produced immediately from the soil, as corn, hay, wood, fruit and herbs. Mixed tithes were such as did not proceed immediately from the soil. They included calves, lambs, wool, milk and eggs. Personal tithes were derived wholly from human labour.
- 2.4 Tithes were found to be a most unsatisfactory and unreliable source of income. The practice gradually arose of commuting them into money payments. By around the middle of the eighteenth century, at a time when large areas of common land were being enclosed, tithes were regularly commuted either for allotments of land or for yearly money payments, or for both. Such money payments were known as corn rents.¹⁴ The system of tithes was effectively brought to an end by the Tithe Act 1836 (and subsequent amending Acts) which commuted all tithes then remaining into tithe rentcharges. Tithe rentcharges were themselves extinguished, with no material exceptions, by the Tithe Act 1936 with effect from 2nd October 1936. Government Stock, redeemable no later than 1996, was paid by way of compensation to persons with an interest in the extinguished tithe rentcharge. At the same time the owners of land now freed

¹¹ Section 3(4) and Schedule.

¹² The purpose of the scheme, if made by the Commissioners of Inland Revenue, would be to provide for the apportionment and redemption of corn rents and certain other payments: section 1(1) of the 1963 Act.

¹³ See P.W. Millard, *The Law Relating to Tithes*, 3rd ed. (1938), p1.

¹⁴ The amount payable under corn rents was either fixed or else variable according to the price of wheat or other cereals.

from the tithe rentcharge had to pay a redemption annuity, payable to the Crown for 60 years from 1935.¹⁵

- 2.5 However, although the Tithe Act 1936 effectively rendered obsolete most of the provisions in the Tithe Act 1836 (and in later Tithe Acts) relating to the rentcharge, it did nothing to extinguish corn rents. Corn rents, being a form of tithe that had already been commuted into money payments before 1836, were left untouched by the provisions of the 1836 Act that commuted remaining tithes into tithe rentcharges. Accordingly corn rents did not become tithe rentcharges and so fell outside the extinguishing provisions of the 1936 Act. Instead the 1936 Act¹⁶ provided that all the provisions in the Tithe Acts 1836 to 1925 relating to the redemption and apportionment of tithe rentcharge should apply equally to corn rents.¹⁷ In other words the 1936 Act made available for corn rents the very provisions that had now become impracticable and obsolete for tithe rentcharge. An opportunity to repeal all these provisions was provided by the Corn Rents Act 1963 which empowered the Commissioners of Inland Revenue to draw up a scheme for the redemption and apportionment of corn rents (and other payments).¹⁸ This would have automatically repealed substantially the whole of the nineteenth century redemption and apportionment provisions.¹⁹ In the event, perhaps reflecting the obsolescent nature of corn rents, no such scheme was drawn up.

14 *Recommended repeals*

- 2.1 The following paragraphs indicate briefly the subject matter of the repeals to the Tithe Acts that are recommended.
- 2.2 *Redemption and apportionment of tithe rentcharge.* The statutory provisions in the Tithe Act 1836 (and in later Tithe Acts) concerning the redemption and apportionment of tithe rentcharge were rendered virtually obsolete by the Tithe Act 1936 which extinguished tithe rentcharge. As stated in paragraph 2.10 above these provisions remain unrepealed in relation to corn rents. However, the obsolescent nature of corn rents coupled with the practical difficulties and expense of invoking the nineteenth century tithe laws have resulted in these provisions having no continuing practical utility even for corn rents. Their repeal is long overdue and is now recommended.²⁰ In the unlikely event of new statutory rules being needed to provide for the redemption and apportionment of corn rents in the future, the Commissioners of Inland Revenue will retain their powers under the Corn Rents Act 1963 to make an appropriate scheme. The need for these retained powers should be kept under review.

¹⁵ In the event, all such annuities were extinguished on 21 October 1977 by section 56 of the Finance Act 1977.

¹⁶ Section 30. Subsection (2) contained a power for Ministers to draft proposals, for approval by Parliament, for the extinguishment of corn rents. This power was never exercised.

¹⁷ And to certain other payments.

¹⁸ Section 1(1).

¹⁹ Section 3(4) and Schedule.

²⁰ The repeals involved would include Tithe Act 1860 (section 17); Tithe Rentcharge Redemption Act 1885; Tithe Act 1925 (section 18(3)); Tithe Act 1936 (section 30 and Schedule 6); Corn Rents Act 1963 (section 2).

- 2.3 *Commutation of tithes and enforcement of tithe rentcharge.* The commutation of tithes into tithe rentcharge under the Tithe Act 1836 and its successors was completed by 1900. In 1891 the process was described by one commentator as 'practically... a matter of history'.²¹ By then most of the statutory machinery had been abolished by a series of Statute Law Revision Acts.²² However some provisions were saved for occasional use in altering tithe rentcharge apportionments. So far as the enforcement of tithe rentcharge is concerned, arrears were sometimes recovered by distraint upon the lands liable for the rentcharge.²³ These provisions are now obsolete and may be repealed.
- 2.4 *Merger of tithes and tithe rentcharge in the land.* Various provisions in the Tithe Acts of 1838 to 1846 permitted the merger and extinguishment of tithes or tithe rentcharge in certain cases where the same person owned both the land and the tithe or tithe rentcharge arising from the land. Claims for tithe and tithe rentcharge having ceased, these provisions are obsolete and may be repealed.²⁴
- 2.5 *Redemption of tithe rentcharge and related matters.* There still remain in the Tithe Acts of 1836 to 1925 a number of enactments which enabled a landowner wishing to discharge his land of tithe rentcharge to do so by paying a lump sum in final settlement, or by means of an annuity. Prior to the Tithe Act 1918 landowners could enforce redemption only in cases of rentcharges not exceeding £1. Redemption of larger sums required the rentcharge owner's consent. These and other restrictions were modified by the Tithe Act 1918 and later legislation. These provisions are now obsolete.²⁵
- 2.6 *Queen Anne's Bounty.* Queen Anne's Bounty is the abbreviated name given to a corporation established by Queen Anne in 1704 for the purpose of applying some of Her revenues to the support of the poorer clergy. The corporation was dissolved in 1948 and its property and functions were transferred to the Church Commissioners. Nevertheless some of the Tithe Acts contain provisions directing the Bounty as to such matters as the disposal of tithe rentcharge redemption money and the powers of management in relation to tithe rentcharge. These provisions are now obsolete.²⁶

²¹ G.P. Leach, *The Tithe Acts* (1891) p1.

²² Especially the Statute Law Revision (No 2) Act 1888.

²³ The repeals arising under this paragraph would be as follows: Tithe Act 1836 (except sections 12, 64 and 96); Tithe Act 1839 (sections 15, 18, 23, 25 and 34); Tithe Act 1840 (section 22); Tithe Act 1842 (sections 12, 14, 16, 17, 19 and 20); Tithe Act 1846 (sections 13 and 14); Tithe Act 1847; Tithe Act 1860 (sections 10 to 16, 29, 30, 34 and 40); Tithe Act 1925 (section 18(1) and (2)).

²⁴ Tithe Act 1838; Tithe Act 1839 (sections 2 and 4 to 6); Tithe Act 1846 (sections 18 to 20).

²⁵ Tithe Act 1846 (sections 5 to 12); Tithe Act 1860 (sections 31, 32 and 34 to 40); Tithe Act 1878 (except section 7); Tithe Rentcharge Redemption Act 1885 (sections 3 to 5); Tithe Act 1918; Tithe Act 1925 (sections 19 to 22).

²⁶ Tithe Act 1846 (section 8); Tithe Act 1918 (sections 4 and 9).

- 2.7 *Exchange of glebe lands.* The Tithe Acts 1842 to 1878 still contain scattered provisions for the exchanging of the glebe lands²⁷ of a benefice for other more convenient lands within the parish. The Church Commissioners have confirmed that these provisions are no longer necessary because of the general powers now given to Diocesan Boards of Finance by section 20 of the Endowments and Glebe Measure 1976. These provisions accordingly no longer serve any practical utility and may be repealed.²⁸
- 2.8 *Miscellaneous.* Section 24 of the Tithe Act 1860 provides for the collection of arrears of tithe rentcharge in cases where a fixed sum per head of cattle is charged. The section enables the arrears to be recovered by distraining upon and impounding any cattle belonging to the defaulter wherever they may be found. This provision is obsolete. Section 36(2) of the Tithe Act 1936 put all the official copies of tithe rentcharge apportionments under the charge and superintendence of the Master of the Rolls, empowering him to direct that copies should be transferred to the Public Record Office or to public libraries or museums, and empowering him to make rules to give effect to his functions. The current rules²⁹ provide for copies to be sent to all such bodies. These arrangements have superseded Tithe Act provisions for the safekeeping of, and access to, copies of such apportionments. These earlier provisions³⁰ may therefore be repealed. The Tithe Acts also contain other provisions relating to apportionments and re-apportionments which are either obsolete or else have been superseded by modern statutory provision. For example, the requirement in section 15 of the Tithe Act 1842 for depositing counterparts of instruments of altered apportionments has been superseded by orders made under section 11 of the Tithe Act 1951.³¹ The earlier provisions may therefore be repealed.³²

15 Conclusion

- 2.1 The recommendations for repealing the Tithe Acts outlined above follow extensive consultations with the Church Commissioners, the General Synod of the Church of England, the Representative Body of the Church in Wales, the Treasury and the Inland Revenue. No objections to the repeal proposals have been received.

²⁷ The glebe land of a benefice at that time included all land of any kind, houses or other buildings forming part of its endowments (but not the parsonage house and ground occupied with it).

²⁸ Tithe Act 1842 (sections 5 and 20); Tithe Act 1846 (section 22); Tithe Act 1860 (section 41); Tithe Act 1878 (section 7).

²⁹ Tithe (Copies of Instruments of Apportionment) Rules 1960, SI 1960 No 2440.

³⁰ Tithe Act 1842 (section 13); Tithe Act 1846 (section 17).

³¹ Tithe Apportionments (Transfer of Custody) Order 1966, SI 1966 No 1600; Tithe Records (Transfer of Custody) Order 1981, SI 1981 No 232.

³² Tithe Act 1842 (section 15); Tithe Act 1860 (sections 26 and 27).

PART III

EDUCATION

16 Group 1 - Public Schools

17 Public Schools Acts 1868 to 1873

- 3.1 The purpose of the Public Schools Act 1868 was to re-organise the administration of seven public schools.¹ The Public Schools Acts 1868 and 1871 and the Public Schools (Shrewsbury and Harrow Schools Property) Act 1873 amended the 1868 Act. Together the Acts gave new powers to the governing bodies of each school to make statutes and regulations concerning the general running of the schools. There are no present proposals to repeal the 1868 Act. However the three amending Acts contain provisions that are either obsolete or else overlap with provisions in the 1868 Act.² All three amending Acts are recommended for repeal. The provisions in Schedule 2 to the draft Bill amending the 1868 Act are consequential upon these repeals. All seven schools have been consulted about the proposals as has the Department for Education and Employment. No objections have been made.

18 Group 2 - Universities

19 Universities of Oxford and Cambridge Acts 1877 and 1923

- 3.1 The Universities of Oxford and Cambridge Act 1877 results from a Royal Commission of inquiry into the financial affairs of the Universities of Oxford and Cambridge which was appointed in 1872 and reported in 1874. Under the Act two executive commissions were appointed, one each for Oxford and Cambridge, to put the financial affairs of the two Universities in order. By section 7 the powers of the Commissioners were to expire no later than the end of 1881. The main purposes of the Act were given effect to a century ago and much of it has already been repealed as being spent. The repeals proposed now, sections 52 to 55, relate to University statutes which are obsolete by virtue of having been superseded by more modern provisions.³
- 3.2 The Universities of Oxford and Cambridge Act 1923 also results from a Royal Commission of inquiry into the financial affairs of the two Universities.⁴ Commissioners were appointed to examine the financial affairs of the Universities. In particular their appointment was directed to the question of whether State Funding of the Universities would be appropriate. The powers of the Commissioners were set out in the 1923 Act. These powers have long since

¹ Eton, Winchester, Westminster, Charterhouse, Harrow, Rugby and Shrewsbury.

² For example, the Public Schools Act 1869 provides for each of the schools to be a body corporate, a provision already covered in the case of Westminster in the 1868 Act (section 5).

³ For example, the power in section 52 for the Chancellor of Cambridge University to settle doubts as to the meaning of University Statutes has been superseded by the current Cambridge Statutes (Statute K.2.)

⁴ Report of Royal Commission on Oxford and Cambridge Universities (Cmd 1588). The Report was published in 1922.

expired⁵ and the repeals proposed would delete references to them from the face of the statute book.

- 3.3 The two Universities and their colleges have been consulted over these proposals as has the Privy Council and the Department for Education and Employment. No objections have been made.

20 *Durham University Act 1861*

- 3.1 According to its long title, the purpose of the Durham University Act 1861 was to make provision for the good government and extension of the University of Durham. In common with the Universities of Oxford and Cambridge Acts referred to above, the 1861 Act provided for the appointment of Commissioners to achieve that result. They were given wide powers to examine accounts and other documents and to make Ordinances for maintaining and imposing the discipline, studies and good government of the Universities and Colleges. The Act provided for their powers to expire no later than 1st July 1863. Moreover the University is now governed exclusively in accordance with modern university statutes.⁶ The Act is accordingly spent and may be repealed. The University and colleges, the Privy Council and the Department for Education and Employment have been consulted on this repeal proposal. There have been no objections.

21 *Victoria University Act 1888, University of Wales Act 1902, University of Liverpool Act 1904, Leeds University Act 1904, University of Bristol Act 1909, Sheffield University Act 1914, University of Reading Act 1926, University of Nottingham Act 1949, University of Southampton Act 1953*

- 3.1 These Acts contain broadly similar provisions to ensure that all job opportunities, privileges and exemptions that might be available to graduates from the Universities of Oxford, Cambridge or London should be equally available to graduates from the newer Universities. Indeed, with the exception of the University of Bristol Act 1909 and the post-1914 Acts, this was the sole purpose of the Acts. They reflect a striving on the part of new Universities for equality of status with the older Universities on the basis that a degree that would provide job eligibility or exemption from further qualification if granted by Oxford, Cambridge or London should carry the same weight if granted by one of the new Universities. The first of these Acts, the Victoria University Act 1888, provided the model for the subsequent Acts.⁷
- 3.2 These provisions are now obsolete and are recommended for repeal. The degrees awarded by the newer Universities no longer need statutory equivalence with Oxford, Cambridge or London. Whilst the newer Universities are less venerable than the long-established institutions, the statutory provisions concerning the status of their degrees no longer serve any practical utility and are now unnecessary. All the Universities affected by the proposal to repeal

⁵ The powers of the Oxford Commissioners expired on 31 December 1926. Those of the Cambridge Commissioners expired on 31 December 1927.

⁶ Under the provisions of the Universities of Durham and Newcastle-upon-Tyne Act 1963.

⁷ The Victoria University is still the proper style of Manchester University. Originally the University comprised the Universities of Manchester, Liverpool and Leeds.

these provisions have been consulted as has the Department for Education and Employment. None have objected to the proposals.

PART IV

FINANCE

22 Group 1 - Colonial Stock

23 The Colonial Stock Acts

- 4.1 The Colonial Stock Acts 1877 to 1948¹ provided for the registration in the United Kingdom of stock forming part of the public debt of a colony. This procedure, available only where permitted by the laws of the colony, had the effect of admitting colonial government securities into the category of trustee investments and provided a means whereby they could borrow on the London money market. The main provisions are set out in the Colonial Stock Act 1877 whilst later Acts developed and extended those provisions. The Colonial Stock Act 1892 provided for stock issued under the 1877 Act to be transferable by deed in prescribed form. The Colonial Development Act 1929 enabled the 1877 Act to be extended by Order in Council to stock issued by other territories including protectorates. The Colonial Stock Act 1948 made further provision for amending the procedures of the 1877 Act and extending its application.
- 4.2 Governments of colonies and former colonies to which the Colonial Stock Acts apply no longer need to use the Acts for the purpose of raising loans. Indeed, nearly all the dated stock registered under the Acts has now been redeemed. Accordingly the Acts may be considered obsolete and ripe for repeal. The only exception to this relates to certain undated stock issued by the Government of South Australia before 1900. Schedule 2 to the draft Bill contains the necessary saving provision to preserve the position of this stock. Since there are references to these Acts in a number of later Acts, particularly in Acts establishing former colonies as independent states, a number of consequential repeals will be necessary at the same time.²
- 4.3 The Inland Revenue, the Treasury, the Bank of England (in their capacity as former registrars of stock) and the Foreign and Commonwealth Office have been consulted on these repeal proposals and have no objection to them.

24 Group 2 - Land Commission

25 Land Commission Act 1967

- 4.1 The Land Commission Act 1967 introduced *betterment levy* the purpose of which was to recover for the community part of the profit that might accrue to an owner of land by reason of its development potential. Having acquired the land, the owner might see its value soar once he had successfully applied for planning permission to develop it. Equally the value might rise sharply in the mere

¹ The Acts so cited include the Acts of 1877, 1892 and 1948. They formerly included the Acts of 1900 (repealed by the Statute Law (Repeals) Act 1977) and 1934 (repealed by the Trustee Investments Act 1961).

² For example, the Cyprus Act 1960, the Bahamas Independence Act 1973, the Solomon Islands Act 1978, the Tuvalu Act 1978, the Kiribati Act 1979 and the Belize Act 1981 all refer to the 1877 Act. Similarly, the Forged Transfers Act 1891, the Government and other Stocks (Emergency Provisions) Act 1939, the Stock Transfer Act 1982 and the Mental Health Act 1983 all contain specific references to the 1877 Act.

expectation that planning permission might one day be granted. The main objectives of the 1967 Act were to ensure that-

“the right land is available at the right time for the implementation of national, regional and local plans; and ... to secure that a substantial part of the development value created by the community returns to the community, and that the burden of the cost of land for essential purposes is reduced.”³

A body known as the Land Commission was established to provide the administrative machinery to operate the levy.

- 4.2 In the event betterment levy did not succeed in its objectives and was abolished by the Land Commission (Dissolution) Act 1971.⁴ That Act repealed a number of the provisions established to support the levy, including the Land Commission itself which was dissolved on 1 May 1971. However, much of the operational machinery was left unrepealed to deal with outstanding cases. These provisions are now obsolete and may be repealed. Their repeal will involve a number of consequential repeals of enactments, including the 1971 Act itself. There are also a number of consequential amendments which are set out in Schedule 2 to the Bill. The Treasury, the Department of the Environment, the Scottish Office and the Welsh Office have been consulted and have no objection to the repeals.

26 *Group 3 - Development of Tourism*

27 *Development of Tourism Act 1969, Part II*

- 4.1 Part II of the Development of Tourism Act 1969 set up a scheme for financial assistance for hotel development by Tourist Boards within Great Britain. Applications for grants or loans had to be made before April 1973 whilst loan repayments had to be made within a maximum of 20 years. The last grants were made many years ago and no more will be made. There are no outstanding loans. Part II of the 1969 Act together with Schedules 3 and 4 to the Act and certain provisions in section 19 are therefore spent or unnecessary or otherwise of no practical utility and may safely be repealed. These repeals would permit the consequential repeal of a number of other provisions which have previously amended Part II. The Department of National Heritage, the Scottish Office Education and Industry Department and the Welsh Office, as sponsoring departments of the three Tourist Boards, have been consulted and have no objection to the proposed repeals.

28 *Group 4 - Loan Societies*

- 4.1 Loan Societies were institutions for establishing funds for making small loans at interest to the industrious classes, the loans to be repaid by instalments.⁵ The

³ Parl. Deb. (Hansard) HL Vol 277 col 1072, 14 November 1966, Lord Chancellor (Gardiner) moving second reading of the Bill.

⁴ Later attempts at taxing development gains in land also proved short-lived. A tax on development gains was established by Part III of the Finance Act 1974. That was superseded by development land tax under the Development Land Tax Act 1976 which itself was abolished by the Finance Act 1985.

⁵ Loan Societies Act 1840, s.3.

provisions of the Loan Societies Act 1840 (which extends to England and Wales only) regulate their activities. In some respects analogous to Friendly Societies, the main object of Loan Societies was to afford assistance to members. As well as providing for the protection of the funds, and preventing Loan Societies from being unlawful associations under the Companies Acts, authorisation as a Loan Society gave protection against the usury laws, the rates of interest usually charged by the Societies being relatively high. The 1840 Act prevented a Society from lending anyone more than £15 at a time.⁶

- 4.2 Though once vigorous and numerous, these Societies gradually declined to the point where the last one was removed from the Register maintained under the 1840 Act on 3rd April 1996. The 1840 Act is therefore spent and may safely be repealed. There would be consequential repeals to the Administration of Estates (Small Payments) Act 1965 and to the Local Government Act 1985. The Registrar of Friendly Societies and the Treasury have no objection to the proposed repeals.

29 *Group 5 - General Repeals*

30 *The Public Offices Fees Act 1879, section 8(2)*

- 4.1 The Public Offices Fees Act 1879 provides for the collection of fees payable in public offices, the expenses of which are paid wholly or partly out of the Consolidated Fund or from moneys provided by Parliament. Such fees include court fees throughout the United Kingdom. Section 8 of the 1879 Act repealed the Public Offices Fees Act 1866 and other Acts relating to the collection of fees to which the 1879 Act applies. However, section 8(2) of the 1879 Act had the effect of maintaining in force orders made under the repealed Acts until such time as the orders were superseded by orders made under the 1879 Act or otherwise. A comprehensive identification of all orders and instruments directing payment of fees under the repealed Acts has demonstrated that they have long been superseded. Section 8(2) of the 1879 Act is therefore spent and may be repealed accordingly. The Lord Chancellor's Department, the Treasury, the Scottish Courts Administration and the authorities in Northern Ireland have been consulted and have no objection to the proposed repeal.

31 *Superannuation Act 1965, section 38(2)*

- 4.1 Section 38(1) of the Superannuation Act 1965 empowers the Treasury to make rules with respect to the superannuation benefits payable to or in respect of persons who have been employed in more than one public office.⁷ Subsection (2) provides that such rules may modify any enactments forming part of the law of the United Kingdom *or of the Isle of Man* and may apply the provisions of the civil service scheme in substitution for any enactments forming part of the law of the United Kingdom *or of the Isle of Man*. The superannuation of public servants in the Isle of Man is now provided by its own legislation under which schemes

⁶ Loan Societies Act 1840, s.13.

⁷ The 1965 Act consolidated the Acts relating to the superannuation of civil servants and was, for the greater part, repealed by the Superannuation Act 1972 and replaced by the Principal Civil Service Pension Scheme made under section 1 of the 1972 Act. Sections 38 and 39, however, remain in force.

and rules made by the Isle of Man Government make equivalent provision to the rules made under section 38. Accordingly, section 38 is obsolete and redundant so far as it extends to the Isle of Man and the words in italics may be repealed. The repeal, which does not affect the law of the United Kingdom, has been agreed by the Treasury, the Home Office and the authorities in the Isle of Man.

32 *Aircraft and Shipbuilding Act 1977, section 3(5)*

- 4.1 Section 3(5) of the Aircraft and Shipbuilding Act 1977 originally empowered British Aerospace and British Shipbuilders to complete the purchase of shares in other companies in takeovers, when nine-tenths in value of the shares had been acquired. It did so by applying to these two Corporations the appropriate provisions of the general law relating to company takeovers. One of these provisions related to the law of Great Britain whilst the other related to the law of Northern Ireland. Subsequent changes in the law⁸ meant that it was no longer necessary for the 1977 Act to refer to these provisions specifically. Accordingly these provisions, as amended, were repealed and the textual references to the provisions in the opening words of the subsection were omitted. However, these textual amendments were given effect to separately for Great Britain and for Northern Ireland.⁹ As a result of this piecemeal amending, the remains of the subsection, though superseded and without effect, continue to litter the statute book. The present repeal will clear away these remains. The Department of Trade and Industry and the Northern Ireland authorities have been consulted and have no objection to the proposed repeal.

33 *Finance Act 1995, section 160*

- 4.1 Section 160 of the Finance Act 1995 required the Inland Revenue to prepare and present to Treasury Ministers a report on tax simplification, to be laid before Parliament and published before 31 December 1995. The report was duly laid and published before that date. Section 160 is therefore spent and may be repealed. The Treasury and the Inland Revenue have been consulted and have no objection to this repeal.

34 *Finance Act 1997, section 111*

- 4.1 Section 111 of the Finance Act 1997 required the Treasury to report to Parliament by 19 March 1998 on the consequences to the Exchequer of reducing

⁸ Notably Schedule 12 to the Financial Services Act 1986 which established new arrangements for company takeover offers.

⁹ Financial Services Act 1986, s.212(2) and Sch 16, paragraph 13 made the necessary amendment in respect of Great Britain. The amendment for Northern Ireland was made by the Companies (Northern Ireland) Order 1989 (NI 18), articles 25(3), 37 and Part II of Sch 5.

VAT on energy saving materials. The report was duly submitted before that date. Section 111 is therefore spent and may be repealed. The Treasury and H.M. Customs and Excise have been consulted and have no objection to this repeal.

PART V

HEREFORD AND WORCESTER

- 5.1 The proposals in this Part would implement a project to rationalise the accumulated body of local authority legislation in Hereford and Worcester. Similar projects to rationalise local authority legislation in South Yorkshire and in Bedfordshire, the City of Nottingham, Nottinghamshire and Warwickshire, including proposals affecting the legislation of the Derwent Valley Water Board, were implemented by the Statute Law (Repeals) Acts 1989¹ and 1995² respectively. The proposals relating to Hereford and Worcester, like the earlier proposals, are based on a detailed review of the legislation carried out for the Law Commission by Mr J S Phipps (Chief Executive of Leicester City Council 1973-1982).
- 5.2 The proposed repeals have been agreed to, so far as they are concerned, by Hereford and Worcester County Council, the district councils in the county, certain other local authorities, statutory undertakers and other consultees listed in Appendix 3. During the preparation of the proposals Hereford and Worcester County Council and the district councils in the county were the duly constituted local authorities concerned, but the county of Hereford and Worcester was abolished on 1 April 1998. It has been succeeded by a new non-metropolitan district of Herefordshire and a new non-metropolitan county of Worcestershire³ whose councils have both been informed of the proposals and have no objections to them.
- 5.3 The bulk, uncertain operation and inaccessibility of local legislation are problems of long standing. Local legislation (public local Acts as distinct from public general Acts) was historically one of the principal means by which Parliament, from the time of the industrial revolution onwards, developed the institutions of modern society. The structure of legislation has progressively altered, as Parliament has moved to a system of legislation in general terms, but a very substantial volume of local statute law continues to regulate the activities of numerous public and other authorities. It is not normally included in revised editions of the statute law, it is only recently that it has been adequately indexed and, until 1974, no official record was kept of repeals and amendments affecting it. Successive reorganisations of public authorities have exacerbated the

¹ Statute Law (Repeals) Act 1989, Sch 1, Pt IX (South Yorkshire). For the background to that project, see Statute Law Revision: Thirteenth Report (1989) Law Com No 179, Scot Law Com No 117, Cm 671, pp 111-114.

² Statute Law (Repeals) Act 1995, Sch 1, Pt I (Bedfordshire, Nottingham, Nottinghamshire, Warwickshire and Derwent Valley Water Board). For the background to that project, see Statute Law Revision: Fifteenth Report (1995) Law Com No 233, Scot Law Com No 150, Cm 2784, pp 50-61.

³ Hereford and Worcester (Structural, Boundary and Electoral Changes) Order 1996 (SI 1996 No 1867), Articles 3-5 and 20(a). The new district of Herefordshire comprises the areas of the former city of Hereford, the former district of South Herefordshire and part of the areas of the former districts of Leominster and Malvern Hills which were all abolished on 1 April. The new county of Worcester comprises the city of Worcester, the borough of Redditch, the districts of Bromsgrove, Wychavon and Wyre Forest and a new district of Malvern Hills for those parts of the former district and of the former district of Leominster which are not in Herefordshire.

problems,⁴ since new authorities normally inherit the legislation promoted for the benefit of their predecessors but subject to complicated modifications in general terms.

- 5.4 Against this background section 262(9) of the Local Government Act 1972 made a fresh start by triggering the operation of a scheme⁵ to reform local authority legislation in England and Wales outside Greater London. The underlying purpose of that scheme was to create-

“a corpus of local legislation which is relevant to present needs, greatly reduced in bulk, accessible to those who need to use it and capable of being indexed so that it can be modified, as necessary, in later years when further general or local Acts are passed”.

The mechanism provided by section 262(9) was a cesser in general terms of particular categories of local statutory provisions, but the detailed effects of the mechanism are complex and require to be implemented by later legislation. If this is not done, the effect of the mechanism may simply be to substitute one form of uncertainty for another. Accordingly, during the lengthy interim period which was allowed before the cesser finally took effect on 31 December 1987,⁶ the new counties and other authorities created by the Local Government Act 1972 were required to review the accumulated mass of local Acts and orders which they had inherited and thereafter to promote fresh legislation to re-enact those powers which were still needed and to translate the effect of the general cesser into specific repeals of identified local statutory provisions. At the same time local authorities were encouraged to review the substantial body of local statutory provisions exempted from the cesser⁷ with a view to repealing them so far as they were no longer needed. The main categories of exempted provisions are those which relate to *statutory undertakings*, or which are *protective provisions* for the benefit of particular bodies or persons.

⁴ Recent privatisations have caused further problems. For the proposed repeal of protective provisions benefiting railway companies it was necessary to consult one body - the British Railways Board - for the South Yorkshire proposals implemented by the Statute Law (Repeals) Act 1989, but for the Hereford and Worcester proposals it has been necessary to consult six: the British Railways Board, Railtrack PLC, Central Trains Limited, Great Western Holdings, Thames Trains and Wales and West Passenger Trains Limited. For electricity generation the former Central Electricity Generating Board has been succeeded by five separate companies: Magnox Electric plc, National Grid Company plc, National Power plc, Nuclear Electric plc and PowerGen plc, all of which have been consulted for the Hereford and Worcester proposals.

⁵ The scheme for England and Wales is set out in Department of the Environment Circular 14/74 and a circular letter dated 10 May 1974. See also Foulkes, “The Enactment of the County of South Glamorgan Act 1976”, [1977] PL 272. South Glamorgan was the first county to implement the scheme.

⁶ Metropolitan Counties (Local Statutory Provisions) Order 1979 (SI 1979 No 969); Greater Manchester (Local Statutory Provisions) Order 1980 (SI 1980 No 1845); Non-Metropolitan and Welsh Counties (Local Statutory Provisions) Order 1983 (SI 1983 No 619); Non-Metropolitan and Welsh Counties (Local Statutory Provisions) Order 1986 (SI 1986 No 2106).

⁷ Local Government Act 1972, s 262(12)(i) to (v) and (13).

- 5.5 A considerable number of counties in England and Wales promoted Bills⁸ containing comprehensive repeal schedules which implemented fully the scheme underlying section 262(9) of the Local Government Act 1972. Other counties, however, promoted Bills⁹ which only repealed the provisions which they re-enacted, leaving much of their local legislation to lapse without being identified. In some counties¹⁰ no rationalising Bills were promoted at all; in others (as mentioned below) certain district councils promoted Bills but not the county itself. The overall effect of the initiative is therefore patchy and there is a need for it to be supplemented by further repealing legislation.
- 5.6 In Hereford and Worcester only Hereford City Council and Worcester City Council promoted rationalising Bills: the Hereford City Council Act 1985 (c.xlii) and the Worcester City Council Act 1985 (c.xliii) respectively. These Acts had no effect outside the areas of the councils concerned and did not repeal many of the obsolete statutory undertaking provisions applying within their respective areas. The proposals affecting Hereford and Worcester take account of the repeals already effected by the Hereford City Council Act 1985 and the Worcester City Council Act 1985.
- 5.7 The review of local legislation within the scope of this project has been carried out in accordance with the same principles as were adopted for the review of local authority legislation in South Yorkshire, in Bedfordshire, the City of Nottingham, Nottinghamshire and Warwickshire, including the legislation of the Derwent Valley Water Board, and, before that, for other major local authority rationalisation Bills.¹¹ The review covers local Acts, provisional orders made on the application of a local authority or which were subject to special parliamentary procedure and other major orders forming an integral part of the legislation of local authorities. It has two main objectives. The first is to identify the local statutory provisions on which the cesser mechanism operated but which have not been expressly repealed. Such repeals are needed for the purpose of resolving uncertainties in an area of enacted law which is notorious for its uncertain operation. A sophisticated system has been developed since 1974¹² to record the extent to which local legislation remains in force but the detailed effects of the cesser, as such, are in practice incapable of being recorded. The second main objective is to repeal local statutory provisions which were exempted from the

⁸ See eg County of Merseyside Act 1980 (c.x); Cheshire County Council Act 1980 (c.xiii); West Yorkshire Act 1980 (c.xiv); County of Lancashire Act 1984 (c.xxi).

⁹ See eg South Yorkshire Act 1980 (c.xxxvii); Greater Manchester Act 1981 (c.ix); County of Avon Act 1982 (c.iv).

¹⁰ eg Buckinghamshire, Hertfordshire, West Sussex, Gloucestershire, Shropshire.

¹¹ The West Yorkshire Act 1980 incorporated the results of a review of some 800 local Acts and orders. For a discussion of the practical problems of promoting legislation of this type, see K F W Gumbley, *Notes on Section 262 Bills* (West Yorkshire Metropolitan County Council, 1978).

¹² The effect of local legislation passed between 1974 and the end of 1992 was recorded in the *Chronological Table of the Statutes* (HMSO), Section 4. The information formerly contained in Section 4 of that table has been included in the *Chronological Table of Local Legislation 1797-1994* prepared by the Law Commission and the Scottish Law Commission (HMSO 1996) which records the effect of all local legislation passed since 1797.

cesser but which are no longer needed. The proposals affecting exempted provisions are outlined below under the headings “Statutory Undertaking Provisions”, “Protective Provisions”, “Bridges” and “Miscellaneous Provisions”. Finally, the opportunity has been taken to include for repeal other enactments which have been identified in the course of consultation as being spent, obsolete or unnecessary.

35 *Statutory Undertaking Provisions*

- 5.1 The Local Government Act 1972 exempted from cesser all local statutory provisions relating to a statutory undertaking, namely, any railway, light railway, tramway, road transport, water transport, canal, inland navigation, ferry, dock, harbour, pier or lighthouse undertaking, any telephone undertaking, any market undertaking or any undertaking for the supply of electricity, gas, hydraulic power, water¹³ or district heating. However, local authorities have been directly involved in many of these activities and their inherited legislation reflects the functions for which they were formerly responsible, either directly or as the successor to private companies. A detailed examination of this legislation shows that much of it is now redundant both as respects the local authorities to whom it originally related and as respects the successor undertakers.
- 5.2 Local authorities lost their functions relating to electricity, gas and water following the nationalisation of the electricity and gas industries in 1948-49 and the establishment of statutory water authorities in 1973. Accordingly, the local statutory provisions relating to the following matters are proposed for repeal:
- (a) specific powers for operating former local authority undertakings which were superseded by the general powers contained in the Electricity Act 1947,¹⁴ the Gas Act 1948¹⁵ or, in the case of water undertakings, were unnecessary for the achievement of the purposes for which the statutory water authorities were created in 1973 and have been superseded by the powers given to water and sewerage undertakers by the Water Act 1989;¹⁶
 - (b) provisions to regulate the management of the former local authority undertakings, and to regulate relations between local authorities as electricity, gas or water undertakers which became unnecessary following the nationalisation of the electricity and gas industries or the creation of water authorities under the Water Act 1973;
 - (c) supply code provisions (ie provisions dealing with the relationship between the undertakers and their customers and with the

¹³ The statutory reference to “water” was repealed by the Water Act 1973, but the relevant local statutory provisions were continued in operation in a modified form by the Water Act 1973, s 34(2) and Sch 6 Pt II which remain in force although they have been prospectively repealed by the Water Act 1989, ss 190(3), 194(3) and (4) and Sch 27, Pt II.

¹⁴ See now Electricity Act 1989.

¹⁵ See now Gas Act 1986 as amended by Gas Act 1995.

¹⁶ See now Water Industry Act 1991.

distribution network of electricity, gas or water mains) which have been superseded by other codes regulating the supply of electricity,¹⁷ gas,¹⁸ or water,¹⁹ or are no longer required;

- (d) obsolete provisions defining the areas of supply of the former local authority undertakers;
- (e) provisions authorising the use of specific land for generating electricity or manufacturing gas, the construction and maintenance of works (including mains outside streets) which are obsolete in consequence of the abandonment of works or have lapsed.

5.3 In Hereford and Worcester there were at one time two company operated tramway systems: the Kidderminster and Stourport tramways undertaking and the Worcester tramways undertaking. The Kidderminster and Stourport undertaking was closed in 1929²⁰ and the company was recorded as being in liquidation in 1931.²¹ The Worcester undertaking was purchased by Worcester Corporation in 1928. In the same year the corporation was empowered to abandon the undertaking by the Worcester Corporation (Tramways and Light Railways Abandonment) Order 1928.²² Shortly afterwards the tramways were closed and were replaced by buses of the Birmingham and Midland Omnibus Company (later Midland Red)²³ and the Worcester Electric Traction Company was wound up in 1934.²⁴ The legislation relating to both abandoned tramway undertakings is spent and is proposed for repeal except for a number of protective provisions in the Worcester undertaking's legislation which have a continuing operation.

5.4 Section 18 of the Worcestershire County Council Act 1969²⁵ enacted new provisions for the payment of charges by riparian landowners for the use of the

¹⁷ Schedule 6 to the Electricity Act 1989. These provisions have replaced the previous code in the Schedule to the Electric Lighting (Clauses) Act 1899, as adapted and applied by the Electricity Act 1947, s 57 and Pt III of Sch 4.

¹⁸ Schedule 2B to the Gas Act 1986 which has superseded the original Schedule 5 to that Act in accordance with the Gas Act 1995, ss 9(1)-(3), 17(5) and Schs 2 and 6, and the Gas Act 1995 (Appointed Day and Commencement) Order 1996 (SI 1996 No 218).

¹⁹ Water Industry Act 1991, ss 37-93, 142-150, 155-222 and Schs 6, 9, 11, 12, 13 and 14, consolidating the equivalent provisions in the Water Act 1989. The 1989 provisions in general replaced the former code contained in Schedule 3 to the Water Act 1945.

²⁰ K Turner, *The Directory of British Tramways* (1st ed 1996), pp 75-76.

²¹ *The Register of Defunct and Other Companies* (The Stock Exchange, 1960), p 254.

²² S.R. & O. 1928 No 828.

²³ Turner, op. cit., p164; W H Bett and J G Gillam, *Great British Tramway Networks* (2nd ed 1944), pp 48-49.

²⁴ Public Record Office, BT 31/31868/74698 (Worcester Electric Traction Co Ltd). The undertaking had been owned by three previous companies: the Tramways Trust Co Ltd which went into liquidation in 1889, the City of Worcester Tramways Co Ltd which went into liquidation in 1893 and Worcester Tramways Ltd which was wound up in 1906 (Public Record Office, BT 31/5659/39499; Turner, op. cit., p 163).

²⁵ 1969 (c.lvi).

Lower Avon Navigation. It is not proposed for repeal. Similar provisions which have been enacted for the Upper Avon Navigation²⁶ also remain in force.

5.5 Section 19 of the Worcestershire County Council Act 1969 is proposed for repeal as spent. In accordance with its provisions the council discontinued their ferry over the river Severn at Upper Arley having replaced it with a suitable footbridge.

5.6 The local authorities for the former boroughs of Hereford,²⁷ Kidderminster²⁸ and Leominster²⁹ and the former urban district of Ross-on-Wye³⁰ all operate market undertakings under local statutory provisions. None of those relating to Kidderminster are proposed for repeal. Apart from those which are obsolete,³¹ spent or unnecessary, or which are covered by the general criminal law³², the repeals relating to the markets of the other three authorities are as follows:

- (a) provisions relating to charges³³ which have been overtaken by the general law;³⁴
- (b) provisions empowering the authorities concerned to borrow money on mortgage or otherwise³⁵ which have been repealed in general terms;³⁶

²⁶ Upper Avon Navigation Act 1972 (c.xxiv), s 6.

²⁷ Succeeded in accordance with the Local Government Act 1972 by Hereford City Council between 1974 and 1998, and from 1 April 1998 included in the new non-metropolitan district of Herefordshire: see para 5.2 above.

²⁸ Succeeded by Wyre Forest District Council in accordance with the Local Government Act 1972: see n 3 above.

²⁹ Succeeded in accordance with the Local Government Act 1972 by Leominster District Council between 1974 and 1998, and from 1 April 1998 included in the non-metropolitan district of Herefordshire: see para 5.2 above.

³⁰ Succeeded in accordance with the Local Government Act 1972 by South Herefordshire District Council between 1974 and 1998, and from 1 April 1998 included in the new non-metropolitan district of Herefordshire: see para 5.2 above.

³¹ Including the Leominster Markets and Fairs Act 1853, s 48 relating to the borough's ancient court of record which was abolished by the Local Government Act 1972, s 221, Sch 28, and the Ross Improvement Act 1865, ss 28 and 32 so far as they relate to the Ross Corn Exchange and Public Buildings Company (Limited) which was wound up in 1873 (Public Record Office, BT 31/526/2111).

³² Leominster Markets and Fairs Act 1853, s 38 (fine for destroying or damaging tables of tolls, stallages or rents); Hereford Improvement Act 1854, s 37 (fine for damaging the market place or any of its buildings, stalls etc., or for causing any obstruction or damage there).

³³ Leominster Markets and Fairs Act 1853, ss 29, 30, 32 to 34, Schs B, C, E and F; Ross Improvement Act 1865, ss 29 and 32 (both in part) and Hereford Corporation Act 1936, s 65.

³⁴ Local Government (Miscellaneous Provisions) Act 1976, s 36. See also Local Government Act 1972, s 199(4) (cesser of local Act provisions for the determination by the Secretary of State of stallages, tolls and other charges for the purposes of markets).

³⁵ Leominster Markets and Fairs Act 1853, s 15; Hereford Order 1911, art 1 (confirmed by Local Government Board's Provisional Orders Confirmation (No 14) Act 1911); Hereford Order 1923, art 2(1) (confirmed by Ministry of Health Provisional Orders Confirmation (No 3) Act 1923).

³⁶ Local Government and Housing Act 1989, s 43(7).

- (c) provisions to ensure that animals and poultry brought to the market concerned are fit for food³⁷ which have been overtaken by the general law;³⁸
- (d) a provision extending the powers of veterinary inspectors³⁹ which has also been overtaken by the general law.⁴⁰

5.7 In Hereford and Worcester local statutory provisions relating to sewerage and sewage disposal remain unrepealed for Bredon,⁴¹ Hereford, Kidderminster, Malvern, Upton-upon-Severn and Yardley. These provisions, so far as proposed for repeal, are duplicated by the general law contained in the Water Industry Act 1991 and the Water Resources Act 1991 or they relate to spent compulsory purchase powers or they are otherwise spent or obsolete.

36 *Protective Provisions*

5.1 Protective provisions (which safeguard the rights, property and works of particular organisations and individuals against the exercise of powers conferred by local Acts or orders) are exempted from the cesser under section 262(9) of the Local Government Act 1972, but a considerable number have either been superseded by protective provisions in later general legislation or become obsolete or spent. Those proposed for repeal fall within the following main categories:

- (a) provisions for the protection of highway authorities and electricity, gas or water undertakers' works in streets and on bridges which were replaced by the street works code enacted by the Public Utilities Street Works Act 1950;⁴²
- (b) provisions giving protection against the exercise of electricity undertakers' powers so far as protection is given to British Telecom (as successor to the Postmaster General) by paragraph 5 of Schedule 4 to the Electricity Act 1989, and to railway and canal undertakers by paragraphs 1,⁴³ 6 and 7 of Schedule 4 to that Act;

³⁷ Hereford Corporation Act 1936, ss 73 and 74.

³⁸ Animal Health Act 1981, especially ss 25, 28, 35, 50-52, 58-60, 63, 64, 66, 75, 87 and 91; Animal Health and Welfare Act 1984.

³⁹ Hereford Corporation Act 1936, s 75.

⁴⁰ Local Government Act 1972, Sch 29 para 4(1).

⁴¹ In respect of property acquired by the former Rural District Council of Tewkesbury (Gloucestershire).

⁴² Provisions in earlier public general and local enactments relating to such works ceased to have effect by virtue of the Public Utilities Street Works Act 1950, ss 15(3), 17(2) and 24(2). The street works code in the 1950 Act has been largely replaced by that contained in the New Roads and Street Works Act 1991. Under section 101 of the 1991 Act provisions in special enactments, including local or private legislation, which are inconsistent with the new code have ceased to have effect: New Roads and Street Works Act 1991 (Commencement No 5 and Transitional Provisions and Savings) Order 1992 (SI 1992 No 2984).

⁴³ As amended by paragraph 123 of Schedule 8 to the New Roads and Street Works Act 1991.

- (c) provisions giving protection against the exercise of gas undertakers' powers so far as protection is given to railway and canal undertakers by paragraph 4 of Schedule 4 to the Gas Act 1986⁴⁴;
- (d) provisions giving protection against the exercise of water undertakers' powers so far as protection is given to electricity, gas, water, telecommunications, railway and canal undertakers, and the Environment Agency, by Schedule 13 to the Water Industry Act 1991;⁴⁵
- (e) provisions giving protection to electricity and gas undertakers against competition which became redundant in consequence of nationalisation in 1948-49;
- (f) provisions giving protection against the exercise of powers which have been repealed or which are proposed for repeal;
- (g) provisions which have become obsolete through abandonment of the undertakings or works against which the protection was given;
- (h) provisions protecting one local authority against the exercise of powers by another local authority which became spent when the two authorities were amalgamated;
- (i) restrictions on the exercise of compulsory purchase powers which are obsolete;
- (j) a number of protective provisions in enactments relating to bridges which are considered below.⁴⁶

37 *Bridges*

5.1 The proposed repeals include thirteen local enactments relating to ten bridges - the Evesham (formerly Bengeworth) bridge over the river Avon,⁴⁷ the Worcester,⁴⁸ Bewdley,⁴⁹ Holt Fleet⁵⁰ and Stourport⁵¹ bridges over the river Severn, the Kerne,⁵² Hoarwithy⁵³ and Fownhope and Holme Lacy⁵⁴ bridges over the river Wye, and the Ham and Stanford bridges⁵⁵ over the river Teme.

⁴⁴ As amended by paragraph 119 of Schedule 8 to the New Roads and Street Works Act 1991.

⁴⁵ Consolidating the Water Act 1989, s 160 and Sch 19, para 3, and as amended by the Environment Act 1995, s 120(1), Sch 22 para 127: Environment Act 1995 (Commencement No 5) Order 1996 (SI 1996 No 186), Article 3.

⁴⁶ Paras 5.17 and 5.23.

⁴⁷ 1662 (c 34); 1824 (c.lxvii), s 67; 1853 (c.xvi).

⁴⁸ 1769 (c 84); 1779 (c 42); 1823 (c.xxxii).

⁴⁹ 1795 (c 78).

⁵⁰ 1826 (c.lix).

⁵¹ 1892 (c.xxiii).

⁵² 1825 (c.lx).

⁵³ 1855 (c.v).

- 5.2 Three of the bridge Acts - the Evesham Bridge Act 1853, the Stourport Bridge Transfer Act 1892 and the Worcestershire County Council (Bridges) Act 1905 - have ceased to have effect in accordance with section 262(9) of the Local Government Act 1972, except for two protective provisions in the 1892 Act which are both obsolete.⁵⁶
- 5.3 The other bridge Acts appear to have been exempted from the cesser mechanism in section 262(9) because the Bills for them were not promoted by a local authority as defined in section 262(13).
- 5.4 The Bengeworth bridge Act 1662 is a reminder of the damage and disruption caused by the English Civil War. The Act was passed to restore the bridge which

“in the time of the late wars within this kingdom ... being then built with stone and in good reparation, was through the necessities and extremities of the said wars pulled down by the soldiers then in garrison at Evesham ... in the service of his late Majesty King Charles the first, of our glorious memory, and other soldiers passing that way, and is since made up with wood for a present passage over the said river in such manner as cannot long continue, and is now very unsafe and dangerous for carriages and travellers’ passage over the same ...”

- 5.5 Because there were no lands, tenements, rents or other moneys appointed for the repair of the bridge, and the inhabitants of Bengeworth and Evesham were very poor and unable to repair the bridge in stone, the Act provided that the bridge should be repaired at the common charge of the county of Worcester and it empowered the justices of the peace for the county to repair the bridge with stone and, at the next quarter sessions after 24 June 1662, to tax the county’s inhabitants up to a maximum of £600 to pay for the work. The Act is obsolete and spent. The bridge was repaired in accordance with section 67 of the Evesham Improvement Act 1824 which is spent, and it was replaced by the bridge built in accordance with the Evesham Bridge Act 1853.
- 5.6 The remaining bridge Acts either empowered named trustees (Worcester bridge building Act 1769), or named commissioners (Bewdley bridge building Act 1795) or a specially formed company (Kerne bridge building Act 1825, Holt Fleet bridge building Act 1826, Hoarwithy Bridge Act 1855 and Fownhope and Holme Lacy Bridge Act 1857) to build the bridge concerned and to finance it through tolls. The Acts, so far as proposed for repeal, are in general spent and obsolete since

⁵⁴ 1857 (c.xlviii).

⁵⁵ 1905 (c.cxxxiii).

⁵⁶ Section 6 makes provision for an annual payment to be made to the Staffordshire and Worcestershire Canal Company and to the rector of Areley Kings. Both payments were terminated by lump sum payments in 1959. Section 11 requires Worcestershire County Council to provide a navigation light on the bridge at night subject to a fine for each failure to do so, now recoverable by the British Waterways Board as the successors to the River Severn Navigation Commissioners. A light has not been provided for many years and the Board say that one is no longer needed in view of the decline of commercial traffic on the river. The bridge is floodlit until midnight and modern street lights on it are in operation throughout the hours of darkness.

the bridges concerned are now toll-free bridges maintained by modern highway authorities⁵⁷ in accordance with the general law.⁵⁸

5.7 Of the four bridge companies concerned only the Holt Fleet company was later incorporated - in 1899 - under the Companies Acts. The company was wound up in 1900 prior to the sale of the bridge to Worcestershire County Council.⁵⁹ The remaining three companies evidently ceased to exist when their bridges were bought by Herefordshire County Council. The Hoarwithy bridge was acquired by the county council and freed from tolls in 1935,⁶⁰ the Fownhope and Holme Lacy bridge likewise in 1936⁶¹ and the Kerne bridge likewise in 1948.⁶² As a result the provisions in the Acts concerned relating to the companies, their management and their capital are obsolete.

5.8 Other provisions in the bridge Acts which are proposed for repeal include:

- (a) provisions for protecting bridges and their attendant buildings and works against damage which have been superseded by the Criminal Damage Act 1971 and the general criminal law;
- (b) provisions making boat owners liable to bridge authorities for damage caused through the mismanagement or negligence of those in charge of boats, and enabling them to recover the amount of such damage from their servants, and which are covered by the general law;
- (c) obsolete provisions requiring boat owners to have their names, addresses and official numbers on their boats;
- (d) obsolete restrictions on towing boats under bridges;
- (e) protective provisions for the counties of Herefordshire and Worcestershire which became obsolete when they became the authorities for the bridges concerned;

⁵⁷ In accordance with the Local Government Act 1972 Hereford and Worcester County Council was the highway authority for all the bridges concerned between 1974 and 1998. From 1 April 1998 Worcestershire County Council has been the authority for the Evesham, Worcester, Bewdley, Holt Fleet, Stourport and the Ham and Stanford bridges, and Herefordshire District Council for the Kerne, Hoarwithy and Fownhope and Holme Lacy bridges.

⁵⁸ Highways Act 1835, ss 72, 78; Town Police Clauses Act 1847, s 28 as incorporated by Public Health Act 1875, s 171 as extended generally throughout England and Wales by the Local Government Act 1972, s 180, Sch 14 para 23; Highways Act 1980; Highways (Amendment) Act 1986, s 1; Road Traffic Regulation Act 1984, ss 14 and 15 as substituted by Road Traffic (Temporary Restrictions) Act 1991, s 1(1), Sch 1.

⁵⁹ Public Record Office, BT 31/8813/64649 (Holt Fleet Bridge Company).

⁶⁰ Herefordshire Record Office, Minutes Book of the Roads and Bridges Committee of Hereford County Council (20 January 1934 - 27 July 1936), pp 71, 72, 112, 118 and 136. The sale evidently included the company's shares at a nominal price, the redemption of its mortgage bonds and the payment of arrears of interest.

⁶¹ Ibid, pp 72, 112, 118 and 284.

⁶² Herefordshire Record Office, Minutes Book of the Roads and Bridges Committee of Hereford County Council (7 July 1945 - 16 October 1954), pp 78, 79 and 98.

- (f) provisions giving protection to the Bishop of Worcester and the Corporation of Worcester against the exercise of powers which are proposed for repeal;
- (g) obsolete and spent provisions relating to ferries which were replaced by bridges or whose value was likely to be reduced by them;
- (h) obsolete and spent provisions relating to the provision and maintenance of approach roads to bridges.

38 *Miscellaneous Provisions*

- 5.1 The proposed repeals include a number of local statutory provisions of a miscellaneous nature which have either ceased to have effect in accordance with section 262(9) of the Local Government Act 1972 or which have been identified in the course of consultation as being expired, obsolete, spent or unnecessary.
- 5.2 The church rebuilding and repairing Acts for All Saints, Worcester 1737 (c 5), Saint Nicholas, Worcester 1738 (c 4), Kidderminster 1785 (c 94) and Ombersley 1814 (c.ccxviii) all empowered trustees to carry out the necessary work and to levy rates to pay for it. As a result the Acts have ceased to have effect in accordance with section 262(9)⁶³ of the Local Government Act 1972, except for a number of obsolete protective provisions and a protective provision in the Act of 1814 which has a continuing operation.
- 5.3 The Act of 1782 (c 112) set up a turnpike trust for certain roads in the former county of Herefordshire. It was passed for the usual term of 21 years which was not extended, and it has therefore expired. The Worcester roads Act of 1795 (c 133) is spent and obsolete. It authorised the completion of a new entrance road into Worcester subject to the payment of tolls, and it increased the tolls payable under an Act of 1788 (c 88) which was repealed by the Worcester roads Act 1816 (c.xlvi).⁶⁴ Section 29 of the Act relating to Lord Scudamore's charity 1840 (c.cxxv) is spent. It repealed certain provisions in the Hereford improvement Act 1774 (c 38) which has been wholly repealed.
- 5.4 The Local Government Board's Provisional Order Confirmation (No.3) Act 1893 is spent. It confirmed one order which repealed 15 orders relating to 12 local authorities for seven of which it has been repealed.⁶⁵ The Act is proposed for

⁶³ Such provisions include the provision of a local Act the Bill for which was promoted by a "local authority" which is defined by section 262(13) as including trustees invested by any local Act with powers of town government or rating.

⁶⁴ Some of the increased tolls apparently remained payable after 1816 but they had ceased to be so by the time the 1816 Act was repealed by the Worcester Turnpike Roads Act 1835 (c.lxiii).

⁶⁵ Aberystwyth - Dyfed Act 1987 (c.xxiv), s 78(2), Sch 3 Pt II(B); Bognor - Ministry of Health Provisional Order Confirmation (No 8) Act 1924 (c.lxxiv), art 4(3), Sch 1 of Bognor Order; Bridlington - Humberside Act 1982 (c.iii), s 102(2), Sch 8 Pt II; Cocker mouth - Cumbria Act 1982 (c.xv), s 69(2), Sch 4 Pt II; Llanelly - Dyfed Act 1987 (c.xxiv), s 78(2), Sch 3 Pt II (B); Ormskirk - County of Lancashire Act 1984 (c.xxi), s 146(2)(b), Sch 8 Pt I; Sheerness - County of Kent Act 1981 (c.xviii), s 133(2), Sch 7 Pt II.

repeal so far as it relates to the former borough of Kidderminster (Worcestershire) and to the four other local authorities.⁶⁶

⁶⁶ Former borough of Clifton Dartmouth Hardness, now part of South Hams District; former Skipton Local Board of Health, now divided between Bradford City, Pendle Borough and Craven District; former Stroud Local Board of Health, now part of Stroud District and the former Ware Local Board of Health, now part of East Hertfordshire District. The successor councils have been consulted about the proposed repeal and have no objections to it.

PART VI

INCLOSURE ACTS

39 *Inclosure under the Inclosure Act 1845*

- 6.1 The enactments proposed for repeal under this heading are mostly the remains of the obsolete machinery for inclosure of commons, i.e. for extinction of rights of common and termination of certain other old rights, in the public general Inclosure Act of 1845 and the amending Acts of 1846 to 1868. Public tolerance of this process began to wane in the 1860s, Parliament started on a different course, and the last application for inclosure under this heading was in 1914.¹
- 6.2 There is no definition of *inclosure* under these Acts. However the main purpose was agricultural improvement, by the extinction of inconvenient rights of common and similar rights, as may be understood from the first words of the preamble of the Act of 1845:

“Whereas it is expedient to facilitate the inclosure and improvement of commons and other lands now subject to rights of property which obstruct cultivation and the productive employment of labour...”

Of course it was not recognised here that inclosure often inflicted hardship on the poor, while enriching some of the better-off.

- 6.3 There is no statutory definition of *rights of common* either but section 11 of the 1845 Act defines “land subject to be inclosed” under the Act. This includes *all lands subject to any rights of common whatsoever*. Rights of common were of various kinds, including the gathering of brushwood or peats for the hearth, turfs for the roof or the fire, perhaps some fishing, and very often the right to pasture livestock on the land. Unfortunately the word “common” may mean the right or it may mean the land of another person on which the right is exercised.² Common land, so called, was often the waste land of a manor, i.e. the land which had not been brought into cultivation. The usual characteristic of a common right was that the commoner, i.e. the owner of the right, was not the owner of the soil.³ That usually belonged to the lord of the manor. However section 11 also comprehends various other interests in land including, at the opposite extreme, *all gated and stinted pastures*. These have been said to be different, at least in some cases, in that the herbage of these pastures, not in the waste, was owned by certain persons having limited freeholds or copyholds.⁴ A stint is a limit, so

¹ *Report of the Royal Commission on Common Land 1955-1958* (Cmnd 462) App III para 463. The inclosures, surging into full force in the 1790s, transformed rural life in the affected counties until the “movement” began to abate in the 1860s. Mainly provided for in legislation by numerous private Acts until 1845, it culminated in the general Act of 1845 as amended. Under the provisions of that Act some 650,000 acres were inclosed of which about half was manorial waste: G D Gadsden, *The Law of Commons* (1988) 5.

² ECK Gonner, *Common Land and Inclosure* (1912) 7. Professor Gonner reported this old definition: common is a right which one or more persons have to take or use some portion of that which another’s soil produces.

³ Common rights to take or dig sand, gravel, stones or clay were said by Professor Gonner to be exceptional: *op. cit.* 16.

⁴ *Op. cit.* 13.

that each of these persons pastured a limited number of cattle. The *gate* was the gait or going of the cattle. For the sake of simplicity and because the Act provides for the extinction of all these rights we shall say no more about rights other than rights of common. Suffice it to say for the present that common land, so called, is private land, and that inclosure means the extinction of common rights.

- 6.4 Also relevant in the present context is the procedure for inclosure under the enactments proposed for repeal. As had generally been the practice under the numerous private Acts of inclosure which had preceded the public general Act of 1845, the carrying out of inclosure under the public general Acts of 1845 to 1868 was entrusted to inclosure commissioners.⁵ The method, long disused, may be summarised as follows. An application on a particular form was made to the commissioners and signed by the owners of one third in value of the interests in the land. Unless the project was manifestly objectionable an assistant commissioner was then sent down to inspect the land, to inquire into the accuracy of the statements and to hold a meeting to hear any objections to the proposals. On his report a provisional order for inclosure would be issued setting out certain conditions as to allotments of land for exercise or recreation and for the labouring poor, specifying the proportion due to the lord of the manor and the means to be taken for the protection of public rights, and determining the ownership of minerals. By the 1845 Act active steps could then be taken in certain cases (some however requiring Parliamentary sanction) but by the 1852 Act the need for such sanction was applied to all cases. The provisional act or order was then deposited in the parish and an assistant commissioner sent down to hold a meeting for obtaining assents and dissents. On the assent of two thirds a special Act was obtained. A valuer was then elected, who had to value, to determine claims, and to lay out allotments, and to make a report, his decisions being subject to the commissioners, and in the case of claims, to the courts by way of appeal. After this a meeting was held by the assistant commissioner to hear objections to the report, and these being disposed of, the report was embodied in an award signed by the valuer, which on confirmation by the commissioners, became final.⁶

40 *Rectification of failed and defective inclosures under previous Acts*

- 6.1 The Inclosure Act 1845 also had a number of secondary purposes other than inclosure under that Act. Proposed for repeal, as impracticable now, are the provisions in sections 152 to 157 of the Act which were to provide, in the words of the Act's title and preamble:

“... remedies for defective or incomplete execution and for the non-execution of powers created by general and local Acts of Inclosure and to authorise the revival of such powers in certain cases.”

⁵ The functions of the inclosure commissioners are now vested regarding England in the Secretary of State for the Environment, Transport and the Regions (the Secretary of State for Wales in the case of Wales).

⁶ *Op. cit.* 91.

Inclosure under other Acts practically ceased after 1845.⁷ Now, more than a century later, it would not be realistic to contemplate the rectification of a defective, incomplete or unexecuted inclosure or the revival of the long-dead commissioners' powers. Accordingly as well as the machinery for inclosure under the Acts of 1845 to 1868, and all the supplementary and ancillary provisions which are not required for other purposes, these provisions for the rectification or pursuance of the failed and defective inclosure ambitions of the even more distant past are also proposed for repeal.

41 *Maintenance "for ever" of fences and other works*

6.1 Sections 61, 68, 72, 73 and 83 of the Inclosure Act 1845, and section 4 of the Act of 1848, contain provisions which purport to lay upon certain persons and public bodies ever-continuing duties of repairing, cleansing and maintaining ponds, ditches and other works, and of maintaining private roads and fences, which were constructed in accordance with the inclosure orders. To that extent they cannot presently be proved to be entirely obsolete although in most cases if not all they probably are. Similar provisions in local or private Acts have attracted the attention of conservationists and the Press. At present they are not proposed for repeal. The sections are however cluttered with obsolete provisions about the inclosure process and the question of how to clear these away has had to be considered carefully. The course proposed, which is the usual one and consistent with the other proposals, is to excise all the "dead wood", leaving behind the provisions which arguably are still viable. Although this approach has the disadvantage in some cases of losing the context in which the remaining provisions were originally set, it does appear to be less unsatisfactory than other available options which could involve the drafting of complex savings provisions in the legislation. Moreover, it has the merit of consistency with earlier repeals of the legislation.

42 *Extent of the proposed repeals in the Inclosure Acts 1845 to 1868*

6.1 It may be wondered why the repeals proposed do not sweep away the Inclosure Acts in their entirety. Perhaps the most important reason for this is that in some cases, such as the continuous maintenance of works provisions mentioned above, it cannot readily be ascertained whether it would be safe to repeal these provisions completely. Another example are the provisions relating to field reeves⁸ of existing regulated pastures in sections 117 to 120 of the 1845 Act.⁹ At first sight it seemed unlikely that the provisions were still practicable. However

⁷ The public general Act of 1836, 6 & 7 Will.4 c.115, was repealed by the Commons Act 1899, 62 & 63 Vict c.30. The expression "local Act of inclosure" is widely defined by section 167 of the 1845 Act (interpretation) but there does not seem to have been one of those, ordinarily so called, since the Gedney Inclosure Act 1873, c.ccxiii, for the parish of Gedney in Lincolnshire. There were perhaps only seven ordinary local Acts of inclosure after 1845.

⁸ It appears that field reeves were persons elected under section 117 of the 1845 Act by the assembled owners of the stints or rights of pasture at their yearly meetings. Apparently they usually held their offices for a year. They were remunerated from rates raised by the owners under section 120.

⁹ Sections 113 to 115 of this Act contain superseded provisions for the new-regulation of pastures, a subject which will be more conveniently explained in connection with the Commons Act 1876 below. So far as these sections are obsolete they are proposed for repeal by this Bill.

the Department of the Environment, Transport and the Regions have expressed doubts as to whether the provisions are obsolete. They are therefore not proposed for repeal.¹⁰ Yet another example are the provisions for the management of poor's allotments (that is, allotments for the labouring poor) in sections 108 to 112 of the same Act, providing as they do for such matters as the election of allotment wardens and the yearly letting of the allotments, divided into small gardens, to the poor parishioners. Because it is not certain that these provisions are obsolete, they are not proposed for repeal in the present Bill. Another reason for not being able to repeal more extensively is that the Department of the Environment, Transport and the Regions, who have assisted greatly with this project, have asked for the repeals not to extend to section 147 of the 1845 Act. That section serves one of the ancillary or additional purposes of the Act, providing for exchanges of lands when the exchange would be beneficial to the owners, and is occasionally used by the Department for the purpose, it is understood, of supplementing modern planning decisions. The section appears to relate to sections 11 to 23 of the same Act, and to other provisions. So these as well as section 147 are not proposed for repeal at present.

43 *Inclosure under the Commons Act 1876*

- 6.1 As mentioned above, common land is private land and inclosure means the extinction of common rights. Notwithstanding its disarming name and special provisions, the Commons Act 1876 was really another inclosure Act, with some new procedure and refinement. There have been no applications under the Act since 1919¹¹ and much of it is now long overdue for repeal.
- 6.2 This Act empowered the inclosure commissioners to entertain an application for inclosure of a common or parts of a common or for new regulation of a common¹² if application were made by persons representing at least one third in value of the "interests in the common as are proposed to be affected by the provisional order".¹³ Under this Act the procedure which led to a provisional order confirmed by Parliament was the same for regulation as for inclosure¹⁴ but in regulation cases the main aim was not inclosure of the land in severalty (i.e. for the purpose of allotments) but rather the common land was to remain a

¹⁰ No repeals are proposed of any provision which might be useful for the continuing management of existing regulated pastures by field reeves, to maintain the fences, control the numbers of livestock and so on, as described in section 118, however incongruous with modern reality the idea may seem at first to be.

¹¹ Sir Ivor Jennings, App III (para 43) to the *Royal Commission on Common Land 1955 to 1958* (Cmnd 462). Professor Sir Ivor Jennings KCB, QC was the Chairman of the Commission.

¹² The word "regulation" is ambiguous. It may refer to the imposition of a new scheme (as intended here) or it may mean the implementation of an old one.

¹³ Section 2.

¹⁴ *Loc. cit.* para 52. Note that section 13 of the 1876 Act empowered the commissioners to insert in any provisional order for the regulation of a common any necessary provisions for carrying it out but that, when the confirming Act of Parliament had been passed, the subsequent proceedings for carrying into effect the regulation of the common were to be the same, so far as practicable, as they would have been in the case of an inclosure, and the provisions of the Inclosure Acts 1845 to 1868 were to apply.

common so far as possible, and the commissioners had to consider, as well as the private rights, the question whether the application would be for the benefit of the neighbourhood. The Act does not define inclosure, nor regulation, but there were two main purposes of regulation, the “adjustment” of the common rights and the “improvement” of the common. The main thought behind regulation was that the unrestrained common rights of pasturing stock, digging turfs and so on were an obstruction to “improvement” and these had to be modified or abolished if necessary. The Act did however explain “improvement” as including draining and other agricultural preparations, planting of trees and other beautification of the common, making byelaws and regulations to prevent nuisances or for keeping order, general management, and the appointment of conservators. The general aim was to moderate or eliminate the common rights which were injurious to the general body of the commoners or the proper cultivation of the common.

- 6.3 It has been regretted that there were only thirty-six applications for regulation under this Act (the last being in 1919) the writer¹⁵ suggesting that one reason for the Act’s ultimate failure was the condition, in section 7, that the commissioners must consider whether the application will be for the benefit of the neighbourhood, an objective which is emphasised in the preamble. However the main problem was, he thought, the obtaining of the consents of persons representing one third of the value of the interests in the common as required by section 2 and section 12 (rule 5). Although many people may share the regret that the Act proved to be impracticable, there is little point in the continuance of old legislation which has no practical utility. It may be noted that there is other legislation mentioned by the same writer¹⁶ which provides for the regulation of commons, although it seems that this too is little used. It is proposed that the 1876 Act should be repealed so far as it provides for regulation or inclosure of commons. However, so far as it provides for the management of regulated pastures and for purposes other than inclosure, no repeals are proposed. These proposals are supported by the conclusion of the Royal Commission on Common Land 1955-1958 that “lacking local vitality the whole system which legislation over the last century aimed at preserving has tended to ossify instead”¹⁷, although they did say in the next paragraph that there were at that time some well-managed commons. It seems that they may have felt that commons differed too much to be collectively governed by general legislation of the 19th century type.¹⁸

44 *Extent of the proposed repeals in the Commons Act 1876*

- 6.1 There are technical reasons for the limited extent of the proposed repeals of the Commons Act 1876. As often happens in statute law revision work, problems have arisen over the legislative draftsman’s practice of applying in new legislation

¹⁵ Sir Ivor Jennings, *loc. cit.* para 52.

¹⁶ *Loc. cit.* paras 51, 53. These include the Metropolitan Commons Acts 1866 to 1878, the Commons Act 1899 and the Commons Act 1908. They are not within the present proposals.

¹⁷ Cmnd 462, para 163.

¹⁸ There is also an observation in 6 *Halsbury’s Statutes* (1992 Re-issue) 987 recording that the procedure in sections 9 to 12 of the 1876 Act is “thought to be obsolete”.

the procedural provisions of earlier legislation. This is a legislative short cut which, though convenient at the time, can obstruct the statute law reform process at a later date. For example, it has not been practicable to propose the repeal of section 10 (rules as to application to the Inclosure Commissioners) or section 11 (rules applying at a local inquiry held by the Commissioners) because later enactments¹⁹ (not within the present repeal proposals) require that the Board of Agriculture or “the Ministry” (now in either case the Secretary of State) is to have regard to the same considerations²⁰ and if necessary hold the same inquiries as are directed by the Commons Act 1876. There are ways of dealing with such problems other than leaving the earlier provisions in place but they tend to involve technical and sometimes lengthy amendments to the statutory provisions affected.

45 *Conclusion*

- 6.1 The Department of the Environment, Transport and the Regions, the Welsh Office, and the Ministry of Agriculture, Fisheries and Food have been consulted and have accepted the proposals. The latter commented that, although the main purpose of the legislation was agricultural improvement, clearly the legislation was unlikely to achieve this purpose in the present day and age. The proposals outlined above reflect that view. The legislation, by providing elaborate procedures for extinguishing ancient private rights over private land, were essentially a nineteenth and early twentieth century attempt to resolve problems whose roots lay in the economic and social conditions of mediaeval England. The legislation itself has no continuing practical utility (none of it has been invoked for at least 75 years) and, being obsolete, is now long overdue for repeal.

¹⁹ Section 3 of the Law of Commons Amendment Act 1893, section 22(2) of the Commons Act 1899, and section 194(1) of the Law of Property Act 1925. Other provisions of similar effect are section 23 of the National Trust Act 1971, section 15 of the New Parishes Measure 1943 (No 1), and section 28 of the Land Settlement (Facilities) Act 1919.

²⁰ Including the benefit of the neighbourhood as well as private interests: section 10 (rules 3, 4 and 6).

PART VII

SCOTTISH LOCAL ACTS

- 46 *Group 1 - Aid to the Poor, Charities and Private Pensions*
- 47 *Group 2 - Dog Wardens*
- 48 *Group 3 - Education*
- 49 *Group 4 - Insurance Companies*
- 50 *Group 5 - Local Authority Finance*
- 51 *Group 6 - Order Confirmation Acts*
- 52 *Group 7 - Oyster and Mussel Fisheries*
- 53 *Group 8 - Other Repeals*

54 *Introduction*

- 7.1 In July 1996, after more than 20 years of work, the Law Commission and the Scottish Law Commission published the “Chronological Table of Local Legislation” (1797-1994) (“the Local Table”). At the same time the Commissions also published a Joint “Report on the Chronological Table of Local Legislation”¹. The Local Table records the current state of every Local Act of Parliament passed in that period, and thus reveals the volume of unrepealed local legislation still technically in existence although probably superseded, spent or already repealed, but only in general terms.
- 7.2 The Scottish Law Commission, having already begun an exercise to tackle the explicit repeal of Local Acts applicable to the City of Glasgow (see Statute Law (Repeals) Act 1995²), decided to trawl the Local Table to identify categories of Scottish Local Act which it might target for future explicit repeal. Apart from Scottish Local Acts under subject headings such as Railways, Canals and Water Supplies (the express repeal of which the Commission hoped would in time be tackled by the Private Companies or Public Utilities concerned), topics such as Insurance Companies, Private Pension Schemes and Oyster Fishing presented themselves as likely projects, given the number of possibly redundant Acts in these areas, and were therefore investigated.
- 7.3 All Local Acts in the category “Aid to the Poor, Charities and Private Pensions” were investigated and the Commission was surprised to find how many were still actively in use. Some private associations, however, had no funds with which to effect repeal, or felt that funds available to them could be put to better use than repeal of their redundant legislation. The Commission considered that its efforts over the repeal of such Acts as these was an appropriate use of its resources.
- 7.4 The categories of Dog Wardens and Local Authority Finance comprise Acts first considered for repeal by the previous Statute Law (Repeals) Bill³. In the case of the Acts now listed, the necessary consent from all interested parties was not received in time for these repeals to be included in that Bill.

¹ Law Com No 241, Scot Law Com No 155.

² 1995 c.44 Schedule 1, Part III, Group 1.

³ See Fifteenth Report on Statute Law Revision - March 1995 - Law Com No 233, Scot Law Com No 150.

- 7.5 The trawl mentioned above graphically demonstrated in print the fact that many Provisional Orders within Confirmation Acts had been repealed, while the shells of those Confirmation Acts had themselves been left intact. These shells were of no practical use and hence an additional category of Order Confirmation Acts was identified and examined.

All the listed Acts in the Oyster and Mussel Fisheries category had explicit expiry dates and therefore were obvious candidates for explicit repeal.

- 7.6 A further category comprised a miscellaneous assortment of redundant Local Scottish Acts which came to the Commission's attention simply because, for library purposes, a member of staff was checking the scope of all Scottish Local Acts enacted between 1930 and 1990, and incidentally identified possible candidates for repeal.

55 *Group 1 - Aid to the Poor, Charities and Private Pensions*

56 *Edinburgh Poor Relief Act 1800*

57 *Writers to the Signet Widows' Fund Act 1803*

58 *Excise Incorporation in Scotland Act 1805*

59 *Writers to the Signet Widows' Fund Act 1818*

60 *Faculty of Procurators of Glasgow Widows Fund Act 1833*

61 *Glasgow Poor Act 1840*

62 *Edinburgh Charity Workhouse Act 1844*

63 *Royal College of Surgeons of Edinburgh (Widows Fund) Act 1860*

64 *Glasgow Faculty of Procurators Widows Fund Act 1875*

65 *Faculty of Physicians and Surgeons of Glasgow Widows Fund Act 1880*

66 *Ayr Faculty of Solicitors Widows' Fund Society Act 1895*

67 *St Andrew's Ambulance Association Order Confirmation Act 1911*

68 *Scottish Episcopal Clergy Widows' and Orphans' Fund Order Confirmation Act 1989*

69 *Zella and Masonic Sick and Widows and Orphans Fund Order Confirmation Act 1990*

70

- 7.1 The Acts in this group fall into three categories, the largest relating to Private Pension Funds. In most cases these named Funds for various reasons became impractical to administer and arrangements were made by statute to transfer outstanding contingent liabilities to Insurance Companies or to transfer the assets to another Fund for future administration, and then to dissolve the earlier Fund. In a few cases the Private Pension Acts being recommended for repeal were enacted to make changes in the administration of or terms of benefit awarded from the appropriate Pension Fund and are now spent.

There are also three Acts relating to Municipal Aid to the Poor in Glasgow and Edinburgh. One Act had an explicit expiry date and the other two have long since been superseded by Public General legislation.

- 7.2 There is also one Act relating to a Charity - or rather the dealings between two Charities, namely the St Andrew's Ambulance Association and the Scottish Branch of the British Red Cross. The Act in question regulates the transfer of funds from the first named to the other. The St Andrew's Ambulance Association acted as agent for the British Red Cross in Scotland before its Scottish Branch

was formally established. The Act regularises the transfer of funds which the Association had held on behalf of the British Red Cross to the Scottish Branch when it was in a position to receive them.

All interested parties were consulted about the repeals and had no objection.

71 *Group 2 - Dog Wardens*

72 *City of Aberdeen District Council Order Confirmation Act 1976*

73 *Cunninghame District Council Order Confirmation Act 1978*

74 *District Council of Renfrew Order Confirmation Act 1978*

75 *Inverclyde District Council Order Confirmation Act 1979*

76 *Dumbarton District Council Order Confirmation Act 1979*

77 *Bearsden and Milngavie District Council Order Confirmation Act 1981*

78

7.1 These six Acts are proposed for repeal because their substantive provisions were superseded by Public General statutory provisions enacted in 1982 to regulate the appointment and powers of Local Authority dog wardens. These Local Acts were indeed repealed at the time of enactment of the Public General statutory provisions mentioned, but only in general terms. There were originally nineteen Scottish Local Acts enacted between 1976 and 1981 which dealt with the appointment and powers of dog wardens. Thirteen of those Acts were repealed by the Statute Law (Repeals) Act 1995⁴. This Report recommends the repeal of the remaining six which were mentioned in paragraph 3.15 of the Fifteenth Report on Statute Law Revision⁵ as future candidates for repeal.

7.2 Section 3 of the Dogs Act 1906⁶ ("the 1906 Act") empowers a policeman to seize a stray dog in a public place and to arrange for its possible destruction if it is not claimed within eight days of seizure. Scottish District Councils were anxious to employ dog wardens with similar powers, but as there was no Public General legislation forthcoming to confer these powers, various District Councils from time to time made Provisional Orders expressly to extend the scope of section 3 of the 1906 Act - but only for application within the area of the particular Council. These Provisional Orders were duly confirmed by Acts of Parliament.

7.3 Subsequently section 128 of the Civic Government (Scotland) Act 1982⁷ amended section 3 of the 1906 Act and applied its terms on a Scotland-wide basis, to the same effect as had been achieved by the Provisional Orders mentioned, and repealed, in general terms, those local provisions which had extended section 3 (or conferred upon a District Council powers equivalent to those in section 3) of the 1906 Act. Section 128 was brought into force on 1 April 1983.

⁴ 1995 c.44 Schedule 1, Part III, Group 2.

⁵ Law Com No 233, Scot Law Com No 150.

⁶ 6 Edw. 7 c.32.

⁷ 1982 c.45.

In each of these six cases, the particular District Council to which the Local Act relates and the Scottish Office Development Department were consulted about repeal and had no objection.

79 *Group 3 - Education*

80 *Scotch Education Department Provisional Order Confirmation (Ardchattan and Muckairn) Act 1884*

81 *Scotch Education Department Provisional Order Confirmation (Edinburgh) Act 1904*

82 *Transfer of Training Colleges (Scotland) Order Confirmation Act 1908*

83 *Glasgow Education Authority (Juvenile Delinquency) Order Confirmation Act 1926*

84

7.1 These four Acts appeared to be redundant. In the case of the first two, the specific powers of compulsory purchase they conferred had been exercised long ago and the Acts were therefore spent. In the case of the third Act, events had overtaken it insofar as teacher training throughout Scotland had subsequently been re-organised in accordance with Public General legislation. Likewise the fourth Act had been overtaken by Public General legislation concerning the treatment of young offenders.

In all cases the interested parties, namely the Local Education Authorities and the Scottish Office Education Department, were consulted about repeal and had no objection.

85 *Group 4 - Insurance Companies*

86 *Scottish Marine Insurance Company Act 1841*

87 *Glasgow Marine Insurance Company Act 1843*

88 *Scottish Union Insurance Company Act 1847*

89 *Scottish National Insurance Company's Incorporation Act 1859*

90 *City of Glasgow Life Assurance Company's Act 1861*

91 *Scottish Imperial Insurance Company's Act 1884*

92 *City of Glasgow Life Assurance Company Act 1892*

93 *Norwich Union Life Insurance Society (Scottish Imperial Fusion) Act 1906*

94

7.1 Numerous Scottish Insurance Companies were identified by title in the trawl of the Local Table. Those Companies not recognisable as currently operating were traced with the assistance of the Association of British Insurers, which identified currently operating Insurance Companies having specific interests in the old Acts. As it transpired, Norwich Union Insurance Company Limited had the relevant interest in most of them. In the case of the first two named Acts, however, research was required in the Archive Records of the Association of Underwriters and Insurance Brokers in Glasgow and in the Companies Office, Edinburgh. In the case of Scottish Marine Insurance, the Company was found to have been wound up only three years after the relevant Act was passed, while in the case of Glasgow Marine Insurance, the Company had been dissolved after its name had been removed from the Companies Register in 1976, since it had not traded for many years, if ever.

As mentioned earlier, all the other Insurance Companies named in the list of Acts had, in some form or another, been assimilated with Norwich Union Insurance Company Limited which was consulted about the proposed repeals and had no objection.

- 95 *Group 5 - Local Authority Finance*
- 96 *Dunoon Burgh (Pavilion Expenditure) Order Confirmation Act 1954*
- 97 *Midlothian County Council Order Confirmation Act 1970*
- 98 *West Lothian County Council Order Confirmation Act 1970*
- 99 *Aberdeen Corporation Order Confirmation Act 1970*
- 100 *Dundee Corporation Order Confirmation Act 1970*
- 101 *Lanarkshire County Council Order Confirmation Act 1971*
- 102 *Renfrew County Council Order Confirmation Act 1974*
- 103

7.1 The repeals proposed are of Local Acts which have already been subject to the operation of the general repeal (or general cesser) explained in the following two paragraphs.

7.2 Section 225 of the Local Government (Scotland) Act 1973⁸ (“the 1973 Act”) provided that any local statutory provision in force immediately before 16 May 1975 (date of commencement of local government re-organisation in Scotland) was to continue to have effect despite reorganisation, but only in the area to which it had applied before that date. However, every such local statutory provision *which had been promoted or applied for by a Local Authority* (as defined in section 225 of the 1973 Act) was repealed - but only in general terms - and with effect on a specified future date. This particular enactment is known as “the general cesser”. That date was originally 31 December 1979, then 31 December 1982 and ultimately 31 December 1984. This extended interim period was provided in order to allow each new District or Regional Council to review, after 16 May 1975, the accumulation of Local Authority-promoted local legislation affecting any part of its area and to promote fresh legislation to re-enact those powers which it would in future require. The intention was that, throughout Scotland, Local Authority-promoted local legislation would thus be both modernised and rationalised. The Secretary of State for Scotland was empowered to postpone the date of general cesser beyond December 1984 in respect of particular named local authorities - since it was recognised that for some new local authorities the task of examining and then rationalising inherited local legislation would be a formidable one. In fact, no fewer than seven Postponement of Repeal Orders⁹ were made, the final one postponing the repeal date for the last two named local authorities until 31 December 1991.

7.3 No District or Regional Council did implement in full the intention behind the enactment of section 225. Many, but by no means all, promoted fresh legislation to re-enact particular powers still required, but they did *not* usually expressly repeal those other local statutory provisions which had ceased to be of use or which were affected by the terms of the general cesser. This omission would not in itself have caused confusion and uncertainty if every Local Authority-promoted local statutory provision had indeed ceased to have effect on 31 December 1984 (or on the date fixed in the subsequent Postponement of Repeal Order), but the general cesser in section 225(6) of the 1973 Act expressly did **not** apply to

⁸ 1973 c.65.

⁹ See S.I. 1984 No 1926; 1985 No 1629; 1986 No 2034; 1987 No 2090; 1988 No 2106; 1989 No 2223 and 1990 No 2370.

“provisions relating to a statutory undertaking or a protected provision for the benefit of any person”. Thus the whole of every Local Authority-promoted Act did not necessarily cease to have effect on the coming into operation of the general cesser. As a result of those exceptions, parts of many Local Acts continued to have effect and, since there were very few explicit repeals of pre-May 1975 local legislation effected, most Local Authority-promoted local legislation remained technically on the Statute Book, whether redundant or not.

- 7.4 With the benefit of information gathered in the course of the preparation of the Local Table, the Scottish Law Commission decided to undertake the first stage of rationalising, through statute law revision measures, the accumulated Local Authority-promoted local legislation in Scotland. The first results of this project were included in the Fifteenth Report on Statute Law Revision and subsequently given effect to in the Statute Law (Repeals) Act 1995. The topics dealt with there related to Glasgow or to specific borrowing powers of local authorities. *Group 5* of Part VII of this Report continues that work on Local Acts which deal with specific borrowing powers of particular local authorities.
- 7.5 In six of the seven Acts mentioned, the substantive provisions have been superseded by the wider provisions of Public General Statute. In five of those six cases, all the former District Councils and Regional Councils were consulted prior to 1 April 1996, about the relevant proposed repeals, while in the sixth case the successor to the former county council was consulted after this date, (local authorities having again been reorganised in Scotland with effect from 1 April 1996). Insofar as the seventh Act - relating to Dunoon Burgh - is concerned, the powers conferred on the local authority to raise revenue for the particular purpose described have long since been exercised and that Act is therefore spent. Again the successor local authority was consulted about repeal and had no objection. In that particular case however a party which had a private interest (excepted from the operation of the general cesser) specified in the Local Act was also consulted and had no objection to repeal.

- 104 *Group 6 - Order Confirmation Acts*
- 105 *Scottish Episcopal Clergy Widows' and Orphans' Fund Order Confirmation Act 1903*
- 106 *Dumbarton Burgh Order Confirmation Act 1907*
- 107 *Zetland Masonic Sick and Widows and Orphans Fund Order Confirmation Act 1909*
- 108 *Partick Burgh Order Confirmation Act 1911*
- 109 *Pier and Harbour Order Confirmation (No 3) Act 1911*
- 110 *Pier and Harbour Orders Confirmation (No 2) Act 1913*
- 111 *Lanarkshire Gas Order Confirmation Act 1914*
- 112 *Pier and Harbour Orders Confirmation Act 1919*
- 113 *Scottish Amicable Life Assurance Society's Order Confirmation Act 1919*
- 114 *Dundee Gas Order Confirmation Act 1921*
- 115 *Leith Harbour and Docks Order Confirmation Act 1924*
- 116 *Leith Harbour and Docks Order Confirmation Act 1929*
- 117 *St Andrews Links Order Confirmation Act 1932*
- 118 *Clyde Navigation Order Confirmation Act 1953*
- 119 *Writers to the Signet Widows' Fund Order Confirmation Act 1955*
- 120 *Writers to the Signet Widows' Fund Order Confirmation Act 1965*
- 121 *Mallaig Harbour Order Confirmation Act 1973*
- 122 *Fraserburgh Harbour Order Confirmation Act 1975*

123

7.1 All the Acts in this Group are the shells of Order Confirmation Acts, the Provisional Order or Orders which they originally confirmed having earlier been repealed.

7.2 In Scotland, when a local authority or other body wishes to obtain statutory powers, it can, rather than promoting a Private Bill in Parliament, present a petition to the Secretary of State for Scotland requesting the issue of a Provisional Order (in accordance with the terms of a draft Order it submits to the Secretary of State). The procedure is currently laid down in the Private Legislation Procedure (Scotland) Act 1936¹⁰. One feature of the procedure is that any opposed Order is referred for inquiry to a Parliamentary Commission which sits in Scotland. Subject to the recommendations of that Commission and after examination of the terms of the draft Order, the Secretary of State for Scotland makes the Order, modified as he thinks fit, and it is then presented to Parliament for confirmation in accordance with the 1936 Act mentioned.

7.3 The substantive content of the Confirmation Act is its Schedule which comprises the Provisional Order, as modified if need be. When a subsequent Provisional Order is presented by petition, the promoting party usually requests the express repeal of the preceding *Order*. This has meant, however, that there has accumulated on the Statute Book a selection of Confirmation Acts minus the Provisional Orders for the sole purpose of which they were originally enacted. A Confirmation Act usually comprise two sections, the first confirming the Provisional Order (the text of which is narrated in the Schedule to the Act) and

¹⁰ 26 Geo. 5 and 1 Edw. 8 c.52. Procedure previously regulated by Private Legislation Procedure (Scotland) Act 62 and 63 Vict. (1899) c.47.

the second specifying the short title to the Act itself. These two sections serve no useful purpose once the Schedule containing the Provisional Order has been repealed.

The parties interested in each of these Confirmation Acts were consulted about repeal and had no objection.

124 *Group 7 - Oyster and Mussel Fisheries*

125 *Oyster and Mussel Fisheries Order Confirmation Act 1869*

126 *Oyster and Mussel Fisheries Orders Confirmation Act 1870 No 2 (sic)*

127 *Oyster and Mussel Fisheries Order Confirmation Act 1871*

128 *Oyster and Mussel Fisheries Orders Confirmation Act 1872*

129 *Oyster and Mussel Fisheries (West Loch Tarbert) Order Confirmation Act 1888*

130 *Oyster and Mussel Fishery (Loch Sween) Order Confirmation Act 1891*

131 *Oyster and Mussel Fishery (Loch Creran) Order Confirmation Act 1893*

132 *Mussel Fishery (Cockenzie) Order Confirmation Act 1894*

133 *Oyster and Mussel Fishery (Bay of Firth) Order Confirmation Act 1910*

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7.1 These Acts are proposed for repeal because they have all expired. Each contains a specific expiry date ranging from 1929 to 1950. None of these Acts was extended by a successor Act and indeed there was no power conferred in any of the original Acts to obtain any such extension.

The Scottish Office Agriculture Environment and Fisheries Department and the Crown Estates Commissioners were consulted about these repeals and had no objections.

135 *Group 8 - Other Repeals*

136 *Faculty of Procurators in Paisley Act 1883*

137 *Empire Exhibition (Scotland) Order Confirmation Act 1937*

138 *Church of Scotland Trust (Amendment) Order Confirmation Act 1948*

139 *Merchants House of Glasgow (Crematorium) Order Confirmation Act 1950*

140 *Airdrie Court House Commissioners (Dissolution) Order Confirmation Act 1968*

141 *Greenock Corporation Order Confirmation Act 1974*

142 *Aberdeen Shoemakers Incorporation Order Confirmation Act 1977*

143 *Solicitors in the Supreme Courts of Scotland (Amendment) Order Confirmation Act 1979*

144 *Scots Episcopal Fund Order Confirmation Act 1979*

145 *Church of Scotland Trust (Amendment) Order Confirmation Act 1985*

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7.1 The Acts assembled under this heading are recommended for repeal for one or other of several reasons: they are spent since the purpose for which they were enacted has been fulfilled, (for example the Acts making temporary provision for liquor licensing during the Empire Exhibition in Glasgow in 1938, the dissolution of Airdrie Court House Commissioners or the winding-up of the Scottish Episcopal Church's Fund); they have been superseded by the provisions of Public General legislation, (for example the Act dissolving the Faculty of Procurators of Paisley as a result of the enactment of the Law Agents (Scotland) Act 1873 or the Greenock Corporation Act being overtaken by the licensing

provisions in the Civic Government (Scotland) Act 1982); their sole purpose was to effect textual amendments to earlier statutes and thus they are now spent, (for example the Acts relating to the Church of Scotland Trust, Aberdeen Shoemakers Incorporation and the Society of the Solicitors in the Supreme Courts of Scotland); or they are redundant because circumstances have changed, (as in the case of the Merchants House (Crematorium) Act which empowered the Merchants House to erect and operate a crematorium on specified ground that in fact it no longer owns).

Interested parties were in all cases consulted about repeal and had no objection.

PART VIII

SLAVE TRADE ACTS

147 *Summary*

- 8.1 The United Kingdom is party to several international Conventions forbidding slavery and the slave trade. Offences at common law, such as kidnapping and false imprisonment, help give effect to these Conventions in the criminal law, but statute law also plays a part. These statutes, the Slave Trade Acts of 1824, 1843 and 1873, and the Slavery Abolition Act 1833, contain many obsolete provisions. The purpose of the proposed repeals is to eliminate what is obsolete while leaving in place those provisions of the statutes which remain essential for the fulfilment of the United Kingdom's international obligations.

148 *Historical background*

- 8.1 The Slave Trade Act 1824 was the first Act to consolidate the considerable number of Acts relating to the slave trade passed after 1806, which had prohibited British subjects from dealing and trading in slaves or transporting them, imposed fines for slaves sold or transported, forfeited British slave trade ships to the Crown, made provision for bounties payable to naval officers and seamen who recovered slaves and, in 1811, made slave trading a felony.¹ The novel feature incorporated in the 1824 Act was to deem certain offences relating to the slave trade a species of piracy, subject at that time to the death penalty,² which was intended to facilitate international co-operation in policing the slave trade by the naval fleets of state parties to treaties outlawing the trade. The 1824 Act did not outlaw the status of slavery in British possessions; this had to await the triumph of anti-slavery sentiment in the country under the leadership of Wilberforce, which resulted in the Slavery Abolition Act 1833.

- 8.2 As the major maritime power, the United Kingdom took the lead throughout the nineteenth century in suppressing the slave trade by means of the power of search on the open seas. A succession of bilateral treaties was concluded with foreign states to enable this power to be exercised in relation to vessels of those states;³ these treaties provided for mutual rights of visit, search and detention of suspected vessels, and for adjudication variously by the courts of the respective countries or by "mixed courts"⁴ established in, or in the possessions of, each state. A separate Act of Parliament was passed in almost every case to give effect to each Treaty and by 1836⁵ the Acts had achieved an almost uniform character. These Acts were later consolidated by the Slave Trade Act 1873. Section 29 of the 1873 Act provided a mechanism which eliminated the need for

¹ See 46 Geo.3 c.52 (1806), 47 Geo.3 Sess.1 c.36 (1807) and 51 Geo.3 c.23 (1811), all repealed by the Statute Law Revision Act 1861.

² See further para 8.10 and n.19.

³ See H H Wilson, *Some Principal Aspects of British Efforts to Crush the African Slave Trade, 1807-1929* 44 AJIL (1950), p 505.

⁴ A mixed court consisted of an equal number of judges from the contracting parties and was established specifically for the purpose of adjudicating on captured slave vessels and its slaves and goods.

⁵ 6 & 7 Will. c.6, Treaty with Spain.

individual Acts giving effect to treaties concluded after that date. Treaties concluded both before and after 1873 were referred to in that Act as, or were deemed to be, “existing slave trade treaties”.

- 8.3 In the 1920s the Foreign Office recognised that most of, if not all, the existing slave trade treaties were obsolete; in the Foreign Office’s phrase “ancient history” which had “obviously lost all practical utility”.⁶ Many of them were therefore denounced by the British Government by agreement with the foreign governments concerned: treaties with South and Central American countries in 1921 and a substantial further number in 1922. Although regarded as obsolete, a number were left untouched, some because they consisted of isolated articles in commercial treaties which were still needed, a few for political reasons and the balance probably because they were overlooked at the time.
- 8.4 The bilateral treaties had become obsolete for two reasons: first, because the conditions giving rise to them had radically changed - the slave trade was no longer the major problem which it had been in the nineteenth century; and, secondly, because of the increasing number of multilateral treaties concluded by the major powers which undertook to carry out their own measures for suppressing the trade.⁷ These culminated in the *International Convention with the object of securing the Abolition of Slavery and the Slave Trade*⁸ (the Slavery Convention) drawn up under the auspices of the League of Nations in 1926. The protocol of 1953 adapted its terminology &c to the United Nations and its organs. The *Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Supplementary to the International Convention signed at Geneva on September 25, 1926* (the Supplementary Convention) was concluded in 1956.⁹ A further development was the provisions for suppression of slave trading contained in the United Nations *Convention on the Law of the Sea* (Law of the Sea Convention) dated 1982.¹⁰

149 *Obligations under international Conventions*

- 8.1 Under the Slavery Convention parties undertake to prevent and suppress the slave trade and to bring about the complete abolition of slavery; and to adopt measures to prevent and suppress the embarkation, disembarkation and transport of slaves in their territorial waters and on all vessels flying their respective flags. Under the Supplementary Convention the act of conveying or

⁶ Memoranda of 21 March, 23 March and 13 April 1921. The relevant files at the Public Record Office on which the history in this paragraph is based are FO372/1331-2, 1567 (1920), 372/1568 (1921), 372/1819 and 372/1888 (1922).

⁷ See the Berlin Convention of 1885 (fifteen signatories including European nations and the United States); the Brussels Convention of 1890 (seventeen signatories) (this was an “existing slave trade treaty “ under the Slave Trade Act 1873 and was the last to be given effect to in accordance with that Act: see SR&O dated 9 May 1892, Rev. 1948, XXI, p.31); the Convention of St Germain of 1919 (seven signatories including the United Kingdom, which abrogated inter se the provisions of the two earlier Conventions).

⁸ See Cmd 9797.

⁹ See Cmd 9870. Over 85 states, including the UK, are parties to the Slavery Convention, and over 102 to the Supplementary Convention: see *Hansard* (HC) 12 July 1989, vol 156 col 550.

¹⁰ See Cmnd 8941.

attempting to convey slaves from one country to another by whatever means, or being accessory thereto, “shall be a criminal offence” in the laws of state parties, on conviction “liable to very severe penalties”. Secondly, state parties are required “to punish” persons who use their ships and aircraft for conveying slaves. Thirdly, under the Convention the act of enslaving another or inducing another to give himself or a dependant into slavery, or of attempting these acts, or being accessory thereto, or being a party to a conspiracy to accomplish any such acts, “shall be a criminal offence” under the laws of state parties, on conviction liable to punishment. Under the Law of the Sea Convention every state must take effective measures to prevent and “punish” the transport of slaves in ships authorised to fly its flag, and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, is to be free. Further provisions authorise warships of state parties to board any foreign ship on the high seas where there is reasonable ground for suspecting that it is engaged in the slave trade.

150 *Slave Trade Act 1824*

8.1 Of the surviving sections of the Slave Trade Act 1824,¹¹ section 2 declares a comprehensive list of activities relating to slavery and the slave trade to be unlawful; sections 3 to 8 impose various types of monetary penalties and forfeitures on every person “offending” against most of the activities referred to in section 2; section 9 declares certain activities defined by section 2, if carried out in specified locations, to be piracy; sections 10 and 11 impose criminal penalties on those guilty of activities declared by section 2 to be unlawful; and various miscellaneous provisions have functions ancillary to the foregoing.

8.2 Sections 2, 10 and 11, which are interconnected in subject-matter, remain part of the armoury of the criminal law for the purpose of imposing penalties upon those who undertake activities involving or connected with the slave trade and, together with such offences at common law as kidnapping and false imprisonment (or, in Scotland, abduction or plagium),¹² are therefore essential as a means for the fulfilment of the United Kingdom’s international obligations referred to in paragraph 8.6. Thus it is not proposed here that any part of these sections should be repealed other than:

- (a) in *section 10*, repeal of the obsolete reference declaring that an offence under the section is a felony subject to transportation for fourteen years. The distinction between felony and misdemeanour was abolished in 1967.¹³ Transportation was

¹¹ The greater part of this lengthy Act was repealed by the Slave Trade Act 1873, which loosely derives certain of its provisions from the repealed sections of the 1824 Act. The 1824 Act was not consolidated in 1873 because its idiosyncratic structure and the detailed character of ss 2-11 would have been difficult to assimilate into the consolidating Act.

¹² Where age is relevant, the modern statutory offence of child abduction under the Child Abduction Act 1984 may also be committed in the course of slave trading activities.

¹³ Criminal Law Act 1967, s 1 (England and Wales), Criminal Law Act (Northern Ireland) 1967, s 1 (Northern Ireland). This Northern Ireland Act also amended s.10 of the 1824 Act to omit reference to transportation and substitute imprisonment (s.13 and Sch 1); the changes proposed here are therefore limited to Great Britain. The distinction between felony and misdemeanour was never recognised in Scotland.

abolished in 1857 and hard labour substituted; penal servitude and hard labour were later abolished and imprisonment substituted.¹⁴ Thus the maximum penalty under section 10 is now fourteen years' imprisonment. These changes in the law also make unnecessary the lesser, alternative penalty under section 10 of three to five years' imprisonment, the reference to which is also proposed for repeal. These amendments are given effect by the connected provisions set out in Schedule 2 to the draft Bill;

- (b) in *section 11*, repeal of the obsolete reference declaring an offence under the section to be a misdemeanour, also effected by a connected provision in Schedule 2 to the draft Bill.

8.3 Sections 3 to 8 impose various monetary penalties and forfeitures on those offending against section 2. Thus *section 3* imposes penalties of £100 per slave and forfeiture of property rights in slaves on those dealing in, selling, importing or carrying away slaves, one part of the monetary penalty going to the Crown, the other part to the informer or prosecutor. *Section 4* imposes the penalty of forfeiture of the ship on those fitting out a ship for the slave trade. *Section 5* penalises those who provide capital for the slave trade by imposing a penalty of forfeiture of double the value of the money, goods or effects involved. *Section 6* imposes similar penalties on those guaranteeing "slave adventures" and *section 7* imposes like penalties on those shipping goods to be employed in the slave trade. *Section 8* imposes a penalty of a £100 forfeit on every contract of insurance for slaves or slave adventures and treble the amount of the premium, the parts to be divided as under section 3. All the activities penalised under sections 3 to 8 are also criminal offences by virtue of sections 10 and 11; and in the event of prosecution for any such offence or for an offence at common law, the full range of penalties on conviction would be available, including deprivation of property in prescribed circumstances¹⁵ and confiscation of property where it is shown that the person convicted has benefited from the offence.¹⁶ Sections 3 to 8 are therefore unnecessary as part of the armoury of the criminal law. They are in any event obsolete, in both the kind and the quantum of the monetary

¹⁴ See Penal Servitude Act 1857, s 2; Criminal Justice Act 1948, s 1(1) (England and Wales); Criminal Justice (Scotland) Act 1948, s.16 (Scotland); Criminal Justice Act (Northern Ireland) 1953, s 1 (Northern Ireland).

¹⁵ See Powers of Criminal Courts Act 1973, ss 43-43A. (In Scotland, see Criminal Procedure (Scotland) Act 1975, ss 223 and 436 - now Proceeds of Crime (Scotland) Act 1995, Part II. In Northern Ireland, see Criminal Justice (Northern Ireland) Order 1994, arts 11 and 12). By s 43 the property concerned must have been used, or intended to be used, to commit or facilitate the commission of any offence. It may, for example, include a vehicle used to transport stolen property by persons convicted of handling: *Archbold*, para 5-520. Thus the power could be used, for example, to order forfeiture of a ship engaged in the slave trade.

¹⁶ See Criminal Justice Act 1988, ss 77 et seq as amended by the Proceeds of Crime Act 1995. For Scotland, see Proceeds of Crime (Scotland) Act 1995, Part II. For Northern Ireland, see the Criminal Justice (Confiscation) (Northern Ireland) Orders 1990 and 1993.

penalties for which they provide¹⁷ and also in their provisions for rewarding common informers; such provisions were abolished in other contexts in 1951.¹⁸

- 8.4 *Section 9* deems British subjects or persons in Her Majesty's dominions who deal in slaves on the high seas and in other specified locations guilty of piracy, felony and robbery. As enacted, this imposed the death penalty but this was commuted in 1837 to transportation for life, later reduced to a minimum of seven years.¹⁹ Since 1857, when penal servitude was substituted for transportation, this section has added little or nothing to section 10. Other statutory offences of piracy²⁰ were repealed by the Statute Law (Repeals) Act 1993 and this section is obsolete and unnecessary.
- 8.5 Most remaining sections of the 1824 Act which survive are ancillary to those sections proposed for repeal. *Section 12*, providing that the penalties and forfeitures imposed under sections 3 to 8 are to be unaffected by the piracy provision in section 9, may be repealed consequentially. *Section 39* provides for mortgages made in pursuance of objects or contracts declared unlawful by section 2 to be void with certain exceptions. Developments in the common law relating to illegal contracts²¹ make this section unnecessary. *Section 40* makes provision for certain offenders giving information against owners of vessels involved in slave trading to be exempted from penalties. The current approach to, and the range of statutory powers available relating to, sentencing make this section unnecessary; the courts take into account the fact and degree of an offender's cooperation in assessment of penalty and may suspend a sentence or order an absolute or conditional discharge. In Scotland, there is the option of admonishment. There are no modern statutory counterparts to section 40, which serves no useful purpose now. *Section 47* places a time-limit of five years from the date of the offence on all actions, suits and indictments for "penalties and forfeitures" under sections 3 to 8. These sections are proposed for repeal and the section is in any event unnecessary today.

151 *Slavery Abolition Act 1833*

- 8.1 The Slavery Abolition Act 1833 implemented a ministerial plan, presented by the Colonial Secretary,²² for the emancipation of slaves in the West Indian

¹⁷ Sections 3 to 8 also provide for the proceeds of the penalties and forfeitures to be applied in accordance with provisions of the 1824 Act which were repealed, and not replaced, by the Slave Trade Act 1873.

¹⁸ See Common Informers Act 1951, s 1(1) and Sch. For Northern Ireland, see the Common Informers Act (Northern Ireland) 1954.

¹⁹ See 7 Will.4 & 1 Vict. c.91 (Punishment of Offences), s 1 and 9 & 10 Vict. c.24 (1846), s 1; the provision for the death penalty was repealed by the Statute Law Revision (No 2) Act 1888. In Northern Ireland the Criminal Law Act (Northern Ireland) 1967, s.13 and Sch 1, substituted life imprisonment for the reference to piracy, felony and robbery; this is proposed for repeal.

²⁰ Slave trading has never constituted piracy *iure gentium* despite efforts in the 19th century by the government of the United Kingdom to secure recognition of it as such by means of bilateral treaties: see *Halsbury's Laws of England* (4th ed) para 1709.

²¹ See *Halsbury's Laws of England* (4th ed) paras 389 et seq and para 427. For Scotland, see Vol 15 *The Laws of Scotland: Stair Memorial Encyclopaedia* para 764 (pactum illicitum).

²² *Hansard* (HC), 14 May 1833, vol 17, cols 1230-31 (Mr Secretary Stanley).

plantations and in other territories then under British jurisdiction.²³ Registered slaves were declared free and the legal status of slavery was ended on 1 August 1834. A system of compulsory apprenticeship regulated by law was instituted to replace it but by 1838 had been abolished by the colonial legislatures concerned. A compensation fund, finally fixed at £20 million, was also established for the benefit of slave owners in specified colonies.²⁴ The detailed provisions of the Act setting out the original scheme, together with later Acts which altered it, were repealed in the 19th century.²⁵ All that remains of the Act is part of section 12. This relates to the formal abolition of the status of slavery in the territories to which the Act applied, most of which are now independent states, and it is long since spent in its operation.

152 *Slave Trade Act 1843*

- 8.1 Only sections 1 and 4 of this Act survive. Section 1 extended the Slave Trade Act 1824 to British subjects “wheresoever residing or being, and whether within the dominions of the British crown or any foreign country”. Section 4 provided machinery for the taking of evidence abroad in British colonies and other dependencies for use in criminal proceedings for slavery offences in the Court of Queen’s Bench. The procedure under section 4 was by way of mandamus requiring the chief justice in the colony to hold a court for the examination of witnesses and transmit the evidence to the court in England. The rationale for the procedure was that it would enable British subjects committing slavery offences abroad to be tried in England, the underlying assumption being that it was impossible to trust to the justice of the local courts. The procedure has long fallen into disuse and its rationale has disappeared. Most of the colonies concerned are now independent states to whose chief justices it would be inappropriate to issue an order of mandamus. So far as concerns surviving British dependencies, process of this nature as respects developed dependencies (such as Gibraltar and Bermuda) would similarly now be inappropriate and as respects undeveloped areas (such as the British Indian Ocean Territory) would be unnecessary. Section 4 is therefore obsolete and of no practical utility. The repeals proposed in section 1 of the 1843 Act and in the *Courts Act 1971* and the *Judicature (Northern Ireland) Act 1978* are consequential.

153 *Slave Trade Act 1873*

- 8.1 The Slave Trade Act 1873 consolidated with amendments the Acts giving effect to the bilateral slave trade treaties concluded by the United Kingdom with foreign powers in the nineteenth century: see paragraph 8.3. As is noted at paragraph

²³ As originally enacted, the Act did not extend (s 64) to any territories of the East India Company, Ceylon or St Helena. The ending of slavery in India and in British protectorates in Africa came later. In Sierra Leone the legal status of slavery was only finally and effectively ended in 1928.

²⁴ The Bermudas, Honduras, Jamaica and other West Indian islands, British Guiana, the Cape of Good Hope and Mauritius.

²⁵ Sections 24-60, and later Acts relating to slave compensation funds, were repealed by the Court of Chancery (Funds) Act 1872. The other detailed provisions enacted in 1833 were repealed by Statute Law Revision Acts passed between 1874 and 1890.

8.4, these “existing slave trade treaties” are all now obsolete. The Act’s provisions are outlined in the following paragraphs in that light.

- 8.2 Sections 3-4 deal with seizure of slave ships. *Section 3* provides for the visitation and seizure of suspected slave ships by commanders of British naval vessels and by commanders of foreign vessels in pursuance of existing slave trade treaties. It provides also for the seizure and detention of vessels subject to forfeiture under sections 3 and 4 of the Slave Trade Act 1824, which are proposed for repeal (paragraph 8.9). Retention of parts of section 3, and of section 17, is necessary as the statutory authority for, and also protection of, British warships boarding suspected foreign slave trade ships, as provided by the Law of the Sea Convention referred to in paragraph 8.6, and to bring offenders to justice, as required by the other Conventions referred to in that paragraph. The repeal proposals make provision accordingly in relation to these sections. *Section 4* provides for vessels found with the equipment specified in *Schedule 1* on board to be deemed to be engaged in the slave trade unless the contrary is proved. The list of equipment reflects the provisions of existing slave trade treaties and includes such items as shackles, bolts, handcuffs, cooking vessels of unusual size and large quantities of various foodstuffs. Section 4 and Schedule 1 are obsolete both because existing slave trade treaties are obsolete and because the deemed characteristics of slave vessels in the Victorian era set out in Schedule 1 now appear anachronistic and unlikely to be encountered today either singly or in combination.
- 8.3 Sections 5 to 8 deal with the courts and their jurisdiction to adjudicate on and condemn slave vessels and their contents. *Section 5* gives jurisdiction to the High Court and every Colonial Court of Admiralty²⁶ to try and condemn slave vessels, slaves and goods seized under section 3, and to order their forfeiture or restoration. The whole apparatus established by section 5 is obsolete and unnecessary; it has apparently not been used for at least one hundred years and the very concept of adjudicating in the property in slaves is a measure of its obsolescent character. In the event of any proceedings being taken today in respect of slave vessels and goods, those proceedings would, in pursuance of the United Kingdom’s international obligations, be purely criminal in character and in that event, as has been noted above (paragraph 8.9), the courts here would have all the powers of criminal courts to order deprivation or confiscation of the property in question in the appropriate cases.
- 8.4 *Section 6* provides for proceedings to be taken in the name of the Crown where vessels or slaves are brought in by the commander of a foreign ship for adjudication by a British slave court.²⁷ By virtue of section 3, such commanders were empowered so to act only in pursuance of existing slave trade treaties; since these are all now obsolete, so also is section 6. *Sections 7 and 8* provided for appointment etc of judges to mixed courts, the functions of which are referred to in paragraph 8.3, and for treaty regulations as to the courts’ powers to have effect. The treaties in question are obsolete and, in any event, of those which

²⁶ See para 8. 23 and n.34 below.

²⁷ By s 2 a “slave court” means every British slave court, mixed commission or court of a foreign state with jurisdiction in slave trade matters; a “British slave court” means the High Court and all Colonial Courts of Admiralty; see para 8.23.

survived denunciation, none made provision for adjudication by mixed courts. Sections 7 and 8 are therefore obsolete.

- 8.5 Sections 9 and 10 deal with the disposal of condemned vessels and slaves. *Section 9* provides for vessels condemned under the Act by a slave court to be taken into Crown service or to be broken up. This reflected provisions of existing slave trade treaties and is now an unnecessary anachronism. In any event, its repeal would be consequential upon the proposed repeal of the provision for jurisdiction to condemn contained in section 5. *Section 10* provides that slaves seized under the Act are, for the purpose of seizure and condemnation, to be deemed the property of and condemned for the sole use of the Crown and, subject to Treasury regulations, to be handed over as the court may direct. There are no such Treasury regulations extant and the whole section is obsolete: there have been no reported cases of proceedings for the condemnation and forfeiture of slaves in the courts of the United Kingdom for over 160 years.²⁸
- 8.6 Sections 11 to 16 relate to the payment of bounties for slaves and vessels captured. *Section 11* makes detailed provision for payments to commanders and crew of British naval vessels responsible for seizure of condemned slaves, goods and vessels, including a £5 bounty for each slave condemned or a bounty of £4 per ton of the tonnage of the condemned vessel. *Section 12* makes similarly detailed provision where the seizures were otherwise than by a commander of a British or foreign vessel. *Section 13* makes provision for bounties to be awarded, in accordance with existing slave trade treaties, to commanders of foreign vessels for slaves and ships condemned by any British slave court. *Section 14* is an evidential provision ancillary to sections 11 to 13. These sections are obsolete: the very concept of payment of such bounties, at a rate set in 1830,²⁹ is now an absurd anachronism, as are the tonnage bounties, and no such payments have been made in recent times.³⁰ *Section 15* relates to the payment by the Treasury of costs and damages awarded against a person seizing, detaining or prosecuting a ship in purported pursuance of the Act; it is essentially ancillary to section 5 which is proposed for repeal. *Section 16* provides for bounties and other sums payable under the Act to be paid out of moneys provided by Parliament, and for the Naval Agency and Distribution Act 1864³¹ to apply to payments to commanders of vessels. Its repeal would be consequential on the repeal of sections 11 to 15.
- 8.7 Sections 17 to 23 deal with certain miscellaneous issues. *Section 17* gives the protection of those authorised to make seizures under any customs Act to those

²⁸ See *Two Slaves* (1828) 2 Hag Adm 273; 166 ER 244; *Three Slaves* (1832) 2 Hag Adm 412; 166 ER 294.

²⁹ The payment of bounties for condemned slaves was introduced by the Act 47 Geo.3 Sess.1 c.36 (1807), s 11: £13 per man, £10 per woman, £3 per child. The Slave Trade Act 1824, s 68, set the bounty at £10 payable for all and the Act 11 Geo.4 & 1 Will.4 c.55 (1830) reduced the bounty to the £5 payable now under s 11 of the 1873 Act.

³⁰ See the Explanatory Note to the Distribution of Prize Money (Amendment of Regulations) Order 1973, SI 1973 No 232, which states that payments under the Naval Agency and Distribution Act 1864, regulating the payment of prize, slave and other bounties, "are now confined to salvage awards"; see further, s 16 of the 1873 Act, *infra*.

³¹ See n 30.

authorised to make seizures under the 1873 Act. The words proposed for repeal in this section are otiose and unnecessary but, as mentioned in paragraph 8.15, the rest of section 17 needs to be retained to provide effectively for the discharge of the United Kingdom's international obligations. *Sections 18 to 23* are all ancillary to the exercise of the jurisdiction of slave courts to adjudicate on and condemn slaves, goods and vessels as provided by section 5, which is proposed for repeal. The sections are obsolete and unnecessary.

- 8.8 *Sections 24 to 26* apply to the Slave Trade Act 1824. *Section 24* provides for the 1873 Act to be construed as one with that Act but contains some obsolete words which are proposed for repeal. *Section 25* (recovery of forfeitures under sections 3 to 8 of the 1824 Act) is proposed for repeal consequentially on the proposal to repeal the sections in question. *Section 26* is a venue provision for the indictment and trial of offences against the 1824 Act. While most of this section is of continuing utility, its last paragraph, providing for the removal of a prisoner from a colony to the United Kingdom for the trial of a slave trading offence, is unnecessary and has apparently never been used. The repeal proposed in the *Merchant Shipping Act 1995* is consequential.
- 8.9 *Section 28*³² applied the Act to cases tried before the Act was passed and is spent. *Section 29* enabled the Act to be extended to future treaties by Order. The power has not been exercised since 1892³³ and all the treaties are obsolete. *Section 29* is therefore unnecessary and of no practical utility.
- 8.10 The definitions in section 2 of "foreign state", "Vice-Admiralty Court",³⁴ "British slave court", "slave court"³⁵ and "existing slave trade treaty" are unnecessary as a result of the repeals proposed in the rest of the Act or are obsolete.

154 *Other Acts*

- 8.1 The repeals proposed in sections 2, 9 and 13 of the *Colonial Courts of Admiralty Act 1890* are consequential on the proposal to repeal section 5 of the Slave Trade Act 1873. Section 11(3) of the *Criminal Justice Act 1925* concerns the venue for the trial of the offence of forgery or uttering where that offence "relates to documents made for the purpose of any Act relating to the suppression of the slave trade". As enacted, section 11(3) referred to offences under the Forgery Act 1913, section 2(2)(j) of which made it an offence to forge various documents in Slave Trade Act proceedings, and section 6 of which made it an offence to utter a forged document. The reference to the Forgery Act 1913 in section 11(3) was repealed by the Forgery and Counterfeiting Act 1981 and there are no other extant offences falling within the description in section 11(3). The subsection is therefore redundant and obsolete.

³² Section 27 was repealed by the Extradition Act 1989, s 37 and Sch 2.

³³ See n 7.

³⁴ By virtue of the Colonial Courts of Admiralty Act 1890, s 2(3), this is to be read as "Colonial Court of Admiralty", ie a court of law in a British possession declared to be a Court of Admiralty or having therein unlimited civil jurisdiction (s 2(1)).

³⁵ See n.27.

155 *Conclusion*

- 8.1 The specified provisions of these Acts are accordingly proposed for repeal on the grounds summarised above. Amongst those consulted on the proposals have been the Foreign and Commonwealth Office, the Home Office, the Lord Chancellor's Department, the Treasury, the Department of Trade and Industry, the Department of Transport, the Ministry of Defence, the Admiralty Registrar, the Crown Prosecution Service, the Crown Office, the Scottish Office Home Department and the authorities in Northern Ireland. No objections have been made.

PART IX

STATUTES

156 *Group 1- Statute Law Revision Acts*

- 9.1 Statute Law Revision Acts were the predecessors of the modern Statute Law (Repeals) Acts. Their purpose was to repeal enactments which, upon specified grounds, were considered no longer to be effectively in force. The grounds in question were that the enactments were obsolete, expired, superseded, spent, virtually repealed or repealed in general terms, or were unnecessary.¹ Thirty-five Statute Law Revision Acts were passed between 1861 and 1908. One further was enacted in 1927 and from 1948 to 1966 another series was enacted. Thereafter they were effectively replaced by Statute Law (Repeals) Acts proposed by the Law Commissions under powers provided by the Law Commissions Act 1965. Statute Law Revision Acts continued to be promoted in respect of Northern Ireland until 1980.²
- 9.2 The drafting of Statute Law Revision Acts adopted a standard format. Each Act would contain a Schedule listing the enactments being repealed, together with one or more sections to give effect to the repeals. Each Act would also include a saving provision to which the enactments specified in the Schedule were subject. This saving provision became known as the *Westbury saving*.³ The most simple form of the saving can be found in the 1861 Act, but it became increasingly more elaborate with every subsequent Statute Law Revision Act until it reached its final form in the Statute Law Revision (No.2) Act 1888.⁴ It is to be found in every such Act up until and including 1953.⁵ Thereafter, responsibility for drafting these Acts was passed to the Office of the Parliamentary Counsel, whose draftsman decided that the Westbury saving was no longer required because reliance could be placed on the general savings provisions of section 38 of the Interpretation Act 1889.⁶ Accordingly the Westbury saving was omitted from the Statute Law Revision Act 1958⁷ and from all subsequent Statute Law Revision and Statute Law (Repeals) Acts.
- 9.3 The repeals schedules of the Statute Law Revision Acts have now mostly been repealed themselves, many of them by the Statute Law (Repeals) Act 1974. However, it has in the past proved difficult to repeal the Westbury saving in each Act, mainly because of the difficulty of ascertaining which of the repealed

¹ These grounds, and their technical meanings, were set out in a memorandum appended to the Bill for each Act.

² SLR (Northern Ireland) Acts 1973, 1976, 1980.

³ Named after Lord Westbury who was responsible for its development.

⁴ 51 & 52 Vict c.57 (repealed by the SL(R) Act 1989).

⁵ 2 & 3 Eliz.2 c.5.

⁶ See further the minutes of evidence published with the Seventh Report of the Joint Committee on Consolidation and Statute Law Revision Bills for the session 1957-1958 (HL Papers (1957-1958) Nos 5-VI, 108-I; HC Paper (1957-1958) No 209-I). The Interpretation Act 1889 has been repealed and the relevant provisions are now contained in s.16 of the Interpretation Act 1978.

⁷ 6 & 7 Eliz.2 c.46.

enactments the saving related to. Fortunately it has been discovered in recent years that the Bill for each Statute Law Revision Act up to 1953 actually identified the grounds of repeal of each enactment and the cases in which the Westbury savings were relevant. This has enabled the history of each such enactment to be traced subsequent to the repeal and an assessment made of the present need for the saving in respect of that particular enactment. Using this technique the savings in the two Statute Law Revision Acts of 1888 have been identified as being no longer required and the Acts were wholly repealed by the Statute Law (Repeals) Act 1989. Similarly this technique enabled the Statute Law Revision Acts 1894 and 1927, and section 1 of the Statute Law Revision Act 1948, to be repealed by the Statute Law (Repeals) Act 1993. Further use of this technique has shown that the Westbury saving in many more Acts are no longer required thereby permitting the repeal of these Acts, mostly in whole. Eleven such Acts are now proposed for repeal on the basis that they are spent.

157 *Provisions relating to Northern Ireland*

- 9.1 Three Statute Law Revision Acts were promoted in respect of legislation in force in Northern Ireland after the Parliament of Northern Ireland ceased to have responsibility for such matters. None of these contained any sort of Westbury saving. The Statute Law Revision (Northern Ireland) Act 1973 was an Act “to revise the statute law of Northern Ireland by repealing obsolete, spent, unnecessary or superseded enactments” (long title) which was effected by section 1 and the Schedule. These provisions are spent and may be repealed.⁸ The Statute Law Revision (Northern Ireland) Acts 1976 and 1980 are on lines precisely similar to those of the 1973 Act. Both are spent and are therefore proposed for repeal in their entirety.
- 9.2 The Lord Chancellor’s Department, the Lord Advocate’s Department and the authorities in Northern Ireland have been consulted and have no objection to the repeals.

158 *Group 2 - Statute Law (Repeals) Acts*

- 9.1 Statute Law (Repeals) Acts enacted as from 1969 have been based upon the recommendations made in reports on Statute Law Revision by the Law Commission and the Scottish Law Commission in pursuance of the duty laid upon those Commissions to keep the law with which they are concerned under review with a view to, inter alia, “the repeal of obsolete and unnecessary enactments”.⁹ Statute Law Revision Acts enacted up to 1966 were, as their long titles made clear, concerned almost exclusively “to revise the statute law by repealing obsolete, spent, unnecessary or superseded enactments”.¹⁰ The Acts promoted by the Law Commissions, however, have had as their objective “the reform of the statute law by the repeal ... of certain enactments which (except in

⁸ Section 2, not proposed for repeal, corrected a mistake in a repeal effected by an earlier Northern Ireland Act.

⁹ Law Commissions Act 1965, section 3(1).

¹⁰ The last in the series was the Statute Law Revision Act 1966 which, together with eight other such Acts passed between 1953 and 1965, were wholly or partly repealed by the Statute Law (Repeals) Act 1974 (c.22), s.1 and the Sch. Pt XI.

so far as their effect is preserved) are no longer of practical utility, and to make other provision in connection with the repeal of those enactments.”¹¹ The concept of “practical utility” referred to in the long title of Statute Law (Repeals) Acts reflects the objective of the Law Commission set out in its First Programme on Consolidation and Statute Law Revision “to work systematically through the existing statutes with a view to recommending the repeal not only of matter which can be treated as inoperative, but also of matter that no longer serves a substantial purpose.”¹² Typically Statute Law (Repeals) Acts contain not only a Schedule of repeals of enactments but also a Schedule containing amendments to enactments made necessary by certain of those repeals (consequential amendments) together with, in some instances, more general provisions made necessary by the repeals. All Statute Law (Repeals) Bills have, since the First Report of the Law Commissions on Statute Law Revision, been referred to the Joint Select Committee on Consolidation Bills for consideration and report.¹³

- 9.2 The earliest of the Statute Law (Repeals) Acts is now nearly thirty years old and eight of the Acts, passed between 1969 and 1978, have been on the statute book for at least twenty years. It is therefore timely to assess the extent to which these early Acts are any longer of practical utility. Strictly speaking, a Statute Law (Repeals) Act becomes largely spent once it comes into force at the moment of Royal Assent. This is because the great majority of the repeals listed in the Schedule to each Act take effect at that moment. In practice, however, most of the Acts contain other provisions that cannot be repealed immediately. For example, there may be savings and transitional provisions which serve to modify the effect of individual repeals. It may also be necessary for the Act to make consequential amendments to other enactments. Provisions of this sort justify keeping the Act in force until the need for the savings, transitional or consequential provision has ceased. Nevertheless the bulk of these early Acts, comprising repeals that are spent, have long ceased to have any practical utility and are of historical interest only.
- 9.3 Another consideration is the amount of space that Statute Law (Repeals) Acts take up in the statute book. They currently occupy over 300 pages of text in the relevant volume of Halsbury’s Statutes.¹⁴ Much of this text is taken up by the Acts passed between 1969 and 1978. The Acts also have to be included in databases of the statute book. All this creates additional cost for legal publishers and data suppliers and for those who buy their products.
- 9.4 It is proposed that the eight earliest Acts, those passed between 1969 and 1978, should be repealed on the basis that they are spent and are of no continuing practical utility. In one case - the 1971 Act - the whole Act can be repealed outright. The other Acts contain savings and other provisions which remain ‘live’ and so which cannot yet be recommended for repeal. Nevertheless, those

¹¹ The long title of the Statute Law (Repeals) Act 1976 (c.16), which has been followed, with necessary variants, in subsequent Statute Law (Repeals) Acts.

¹² Law Com No 2, paragraph 14 (published November 1965).

¹³ Motion moved in the House of Lords, *Hansard* (HL), vol 302, col 311, 20 May 1969, agreed to by the House of Commons, *Hansard* (HC), vol 784, col 615, 21 May 1969.

¹⁴ (4th edition) vol 41 (1995 Reissue).

provisions aside, the remainder of each Act may be repealed immediately including nearly all the Schedules to each Act. These repeals would remove approximately 170 pages of text from Halsbury's Statutes. The Lord Chancellor's Department, the Lord Advocate's Department, the Home Office, the Foreign and Commonwealth Office and, so far as the repeals relate to the Isle of Man, the Isle of Man authorities have been consulted about these proposals and have no objections to them.

PART X

MISCELLANEOUS

159 *Group 1 - Stannaries*

160 *Stannaries Acts 1869 and 1887*

10.1 The Stannaries Acts 1869 and 1887 dealt principally with the regulation of aspects of the constitution and operation of cost book companies operating in the stannaries in Cornwall and Devon. Cost book companies were a species of company peculiar for the most part to that part of the country. They were characterised by unlimited liability for members and by an extremely restricted power to borrow. They were originally simple partnerships between small groups of working miners, the term 'company' in practice referring to persons working together as an unincorporated association. The Stannaries Act 1869 was passed to regulate the operation of cost book companies in the stannaries of Cornwall and Devon. It covered matters such as the convening of company meetings and the transfer and forfeiture of company shares. The Stannaries Act 1887 was concerned more with protecting the rights of the miners working in the stannaries. It covered matters such as disputes over the payment of wages and the keeping of proper records. These provisions have been superseded by more modern legislation.

10.2 The disadvantages of cost book companies, particularly the unlimited liability of members, caused all such companies to be converted over a period to limited liability companies, the last such conversion taking place in 1920. Thereafter the cost book company was extinct and the legislation dealing with it contained in the two Stannaries Acts became obsolete. Accordingly both Acts may be repealed in their entirety.¹ These repeals would permit two consequential repeals to the Partnership Act 1890. None of the repeals would affect the ancient Cornish custom of tin-bounding, nor would they affect the jurisdiction in relation to this formerly vested in the stannaries court and now exercised by the county courts in Cornwall. Most importantly these repeals would not affect continuing tin-mining operations in the stannaries. The provisions proposed for repeal do not govern rights to mine: rather they concern obsolete provisions relating to the constitution and procedures of companies engaged in mining operations in the stannaries. Amongst those consulted over these proposals have been the Duchy of Cornwall, the Department of Trade and Industry, the Cornwall Law Society and the Cornish Chamber of Mines. No objections have been made.

161 *Group 2 - Sea Fish*

162 *Sea Fisheries Act 1883*

10.1 The main object of the Sea Fisheries Act (the 1883 Act) was to give effect to an 1882 international Convention (the 1882 Convention) which provided a

¹ The 1887 Act also in terms made provision with respect to incorporated companies mining in the stannaries; to the extent that it did so, that Act has either been superseded or is no longer of practical utility.

framework for the policing of fishing vessels in the North Sea.² It was in substance replaced by an updated version of the 1882 Convention in 1967 (the Policing Convention)³, which was given legal effect by the Sea Fisheries Act 1968 (the 1968 Act). The sections of the 1883 Act remaining in force were prospectively repealed as obsolete by the 1968 Act. A date has never been appointed for the repeal. Although the Policing Convention was signed and agreed, it has not come into force because it has not been ratified by the requisite ten countries. Nevertheless, the 1883 Act is no longer required because, by virtue of section 5 of the 1968 Act, as substituted by the Fishery Limits Act 1976, Ministers have the power to make orders regulating fishing operations within a 200 mile fishery limit without relying on this or any other Convention. Indeed the 1882 Convention was terminated as to the United Kingdom in 1963. The 1883 Act is therefore proposed for final repeal as obsolete and no longer of practical utility.⁴ The savings for the 1883 Act contained in section 22(6) of the 1968 Act, which is proposed for repeal, are continued in force by the connected provision contained in Schedule 2 to the draft Bill. That Schedule also makes a consequential amendment to the Fisheries Act 1891. The Ministry of Agriculture, Fisheries and Food, the Scottish Office Agriculture, Environment and Fisheries Department and the authorities in Northern Ireland have been consulted on the proposals and have no objections to them.

163 *Group 3 - Sewers Support*

164 *Public Health Act 1875 (Support of Sewers) Amendment Act 1883*

10.1 The Public Health Act 1875 (Support of Sewers) Amendment Act 1883 (the 1883 Act) was enacted following the decision of the Court of Appeal in *Re Dudley Corporation*.⁵ In that case it was held that, although the Public Health Act 1875 gave no express right of support for a sewer constructed on private land under statutory authority, the right was implied; and that there was a corresponding right of the landowner to compensation for being deprived of the power to work subjacent mines. The 1883 Act, which incorporated the mining code in sections 18-27 of the Waterworks Clauses Act 1847 (the 1847 Act), provided a complicated alternative system of protection under which the question of compensation was postponed until the mine owner was about to work within a prescribed distance of the sewer. The incorporation by the 1883 Act of the mining code in the 1847 Act was originally applicable to local authority sanitary works,

² Convention for Regulating the Police of the North Sea Fisheries (The Hague, 6 May 1882; 73 BFSP 39). The object of the 1882 Convention was to police the North Sea at a time when sailing ships were the norm and general lawlessness and such practices as the deliberate cutting of nets were prevalent. It provided a "fisheries highway code" and set a three mile British fishery limit within which the conduct of fishing vessels could be policed. The 1882 Convention was incorporated into UK law by section 2 of the 1883 Act.

³ Convention on the Conduct of Fishing Operations in the North Atlantic (London 1 June - 30 November 1967); Misc 11 (1968); Cmnd 3645.

⁴ Repeal of the 1883 Act will permit a number of consequential repeals. These repeals are of two Orders in Council that served to apply the 1883 Act to later international Fishery Conventions, and of provisions contained in the Fishery Limits Act 1976 and the Debtors (Scotland) Act 1987.

⁵ (1881) 8 QBD 86.

which included sewerage, water supply and lighting. These functions have since largely been transferred to other authorities and, so far as concerns sewerage and water supply, the 1883 Act has been superseded by the modern law set out in Schedule 14 to the Water Industry Act 1991 and Schedule 23 to the Water Resources Act 1991. Nor do local authority lighting functions now require the statutory protection afforded by the 1883 Act. The Act, which applies only to England and Wales, may therefore be repealed as being unnecessary and spent. Repeal of the 1883 Act would permit minor consequential repeals to the Water Act 1989 and the Water Industry Act 1991. The Department of the Environment, the Department of Trade and Industry, British Gas, the Electricity Association (as representing electricity suppliers), the Association of Metropolitan Authorities, the Association of District Councils and the City of London have all been consulted on the proposed repeals. No objections have been raised.

165 *Group 4 - Agricultural Research*

166 *Agricultural Research Act 1956*

- 10.1 The Agricultural Research Act 1956 charged the Agricultural Research Council, a body incorporated by Royal Charter in 1931, with the functions of the organisation and development of agricultural research. The Council had power to establish and develop institutions for investigation and research relating to the advancement of agriculture. The Council was renamed as 'The Agricultural and Food Research Council' by Royal Charter in 1983 but it was dissolved, and its charter surrendered, in 1994. The 1956 Act is accordingly spent and may be repealed together with a number of textual references to the Council in the Agricultural Research etc (Pensions) Act 1961 and in the Science and Technology Act 1965. A consequential amendment to the Science and Technology Act 1965 appears in Schedule 2 to the draft Bill. The Ministry of Agriculture, Fisheries and Food, the Scottish Office Agricultural, Environment and Fisheries Department and the Treasury Solicitor have been consulted and have no objection to the proposed repeals.

167 *Group 5 - General Repeals*

168 *1533 Act of Attainder*

- 10.1 Attainder was the extinction of civil and political rights which formerly took place following a judgment of death or outlawry for treason or felony. The offender's land would be forfeited and his heirs disinherited. Such Acts were used frequently during the Wars of the Roses and in suppressing Jacobite rebellions in 1715 and 1745. The practice of passing these Acts ended in the eighteenth century. As an alternative to an Act of Attainder, an Act for the infliction of Pains and Penalties - which was less severe and did not involve the punishment of death - was sometimes resorted to. This procedure was last used, unsuccessfully, in 1820 when Queen Caroline was accused of adultery. Many Acts of Attainder and Acts for the infliction of Pains and Penalties were repealed by the Statute Law (Repeals) Act 1977. Two of the enactments repealed by that Act were a 1533 Act of Attainder relating to John Wolff and a 1722 Pains and Penalties Act relating to the Bishop of Rochester. Since, however, both enactments extended to the Isle of Man and the 1977 Act did not extend directly to the Isle of Man, the enactments remain in force there. Accordingly these

obsolete enactments are, with the agreement of the authorities there, now recommended for repeal in the Isle of Man as well.

169 *Morrison's Haven and Fort, East Lothian Act 1708*

- 10.1 This Act conferred on the proprietor of the East Lothian Harbour known as "Morrison's Haven", William Morrison, the right to levy duties on ships using that harbour and on goods passing through it in order to finance its extensive repair and future maintenance. Such right was conferred for a period of 31 years. The provisions of the Act had expired by 1740. No continuation of the Act or renewal of the right was granted. The harbour has long since disappeared, as has the adjacent Fort. There are no longer traces of either construction visible. East Lothian Council *qua* Local Harbour Authority, Forth Ports plc and the Scottish Office were consulted about the proposal to repeal this Act and had no objection to it.

170 *Cockburnspath Bridge, Berwick Act 1789*

- 10.1 This Act authorised the payment in 1789 of £1000 out of the Surplus Funds of the Forfeited Estates in North Britain, for the completion of the building of Cockburnspath Bridge. Such payment was made and the bridge duly completed. The Act is therefore spent. The bridge is still standing although it is now known as Dunglass New Bridge. It is a grade B listed structure and was extensively restored in 1991-92. Although now part of an unclassified road, it was originally built to carry the main road between Edinburgh and London via Berwick-upon-Tweed. East Lothian Council, Scottish Borders Council and the Scottish Office for their respective interests in road bridge maintenance were consulted about the proposal to repeal this Act and had no objection to it.

171 *Public Notaries Act 1843*

- 10.1 The proposal to repeal the Public Notaries Act 1843 as it applies to the Isle of Man arises because of the Advocates Act 1995, an Isle of Man enactment which in effect supersedes the 1843 Act in the Isle of Man. However since the 1995 Act has not yet come into force, the repeal of the 1843 Act will take effect only once an Order in Council has been made. There are consequential repeals of provisions in the Statute Law (Repeals) Act 1993. The 1843 Act continues in force in England and Wales. The Home Office and the authorities in the Isle of Man have been consulted about these proposals and have no objections to them.

172 *Venereal Disease Act 1917*

- 10.1 The Venereal Disease Act 1917 (the 1917 Act) prohibits the giving of advice about, and treatment of, venereal disease⁶ save by a qualified medical practitioner. It also prohibits with limited exceptions advertisements for advice, treatment or remedies for the disease. There is a maximum penalty of two years imprisonment for contravening the prohibitions. The 1917 Act was passed during wartime in response to pressure from the press to legislate because of concern both about the prevalence of the disease and about the frequency of resort to

⁶ "Syphilis, gonorrhoea, or soft chancre": section 4.

unqualified practitioners, occasioned by the absence of free treatment and the social stigma attaching to the disease which tended to keep hidden any infection. While the Act applies throughout the United Kingdom, the prohibition on advice and treatment has never applied to substantial areas of the United Kingdom. Moreover, as a consequence of fundamental changes in the social climate and in the provision of medical services since 1917, the Act has lost any useful purpose. Free treatment of the disease is now available throughout the country by qualified medical practitioners through the National Health Service and there is widespread knowledge of the existence of clinics providing such treatment. By contrast, advice and treatment by unqualified practitioners for many other and equally dangerous diseases and conditions (such as HIV) have never been subject to regulation. Thus today the prohibition on advice by unqualified practitioners in this field alone in order to combat concealment of the disease is unnecessary. So far as advertising advice and treatment is concerned, advertisements likely to lead to the use of any substance for the treatment of venereal disease except under the instruction of a doctor are now prohibited by regulations⁷, and these regulations provide sufficient control over advertising of treatment and remedies. The 1917 Act is therefore proposed for repeal as unnecessary and as having no practical utility. The Department of Health, the Welsh Office, the Scottish Office Home and Health Department, the Crown Office and the authorities in Northern Ireland have been consulted and have no objection to the proposed repeals.

173 *Government Annuities Act 1929*

- 10.1 The textual amendments to the Government Annuities Act 1929 (so far as explicit references to “Scotland” are concerned) are consequential repeals arising from the earlier repeal “in so far as they apply to Scotland” of provisions in the 1929 Act, by section 8 of the False Oaths (Scotland) Act 1933. Section 8 of the 1933 Act did not explicitly remove the word “Scotland” from the subsections of the 1929 Act (which were repealed only for Scotland). Since those subsections are still in force in parts of the United Kingdom other than Scotland, the actual references to “Scotland” are being removed since they are redundant. The Crown Office and the Scottish Office were consulted about the proposed repeal and had no objection to it.

174 *Government of India Act 1935*

- 10.1 The Government of India Act 1935 was the constitutional foundation for British rule in India from 1935 until the passing of the Indian Independence Act 1947. Most of the 1935 Act was repealed in the laws of the United Kingdom⁸ by the Statute Law (Repeals) Act 1976. There are only two substantive provisions remaining both of which are spent or obsolete. The first of these provided for the adaptation, by Order in Council, of Acts of Parliament containing references to India. This power was exercised on two occasions.⁹ All the adaptations made under these Orders have either been repealed or are obsolete. The other provision is an obsolete amendment to the Interpretation Act 1889. Both

⁷ The Medicines (Labelling and Advertising to the Public) Regulations 1978, SI 1978 No 41 (as amended).

⁸ The 1935 Act was repealed in the laws of India by Article 395 of the Constitution of India.

⁹ SR &O 1937 No 230 and SR&O 1946 No 2237.

provisions may be repealed. A consequential repeal would be section 18(2) of the Indian Independence Act 1947 which continued in force the Orders made under the 1935 Act. The Foreign and Commonwealth Office has been consulted and has no objection to the proposed repeals.

175 *Statutory Orders (Special Procedure) Act 1945, section 8(2)*

10.1 The Statutory Orders (Special Procedure) Act 1945 regulates the procedure to be followed in connection with statutory orders that are required by statute to be subject to special Parliamentary procedure. Section 2 of the 1945 Act provides that no such statutory order is to be laid before Parliament until the requirements of the enactment containing the order-making power are complied with in relation to matters such as the publication or service of notices, the consideration of objections and the holding of inquiries. Section 8(2) of the 1945 Act, as originally enacted, declared for the avoidance of doubt that specified procedural requirements relating to ministerial orders under sections 35(2) or 36(1)(d) of the Town and Country Planning Act 1944 or under sections 12(2) or 26(6) of the Water Act 1945 were to be deemed to be covered by section 2 of the 1945 Act. In other words, no order under these Acts could be laid before Parliament until the specified procedural requirements had been complied with.

10.2 Whilst the 1945 Act extends to Great Britain as a whole, the two statutes covered by section 8(2) applied to England and Wales only and did not extend to Scotland. Following the repeal of both statutes, section 8(2) became spent and was indeed repealed. However, the enactments repealing section 8(2)¹⁰ did so only as to England and Wales. In the result, whilst the content of section 8(2) referred to statutory provisions extending only to England and Wales and was therefore never effective in Scotland, the subsection remains in force there. It is proposed that it should be repealed as to Scotland on the basis that it is unnecessary. The appropriate Parliamentary authorities and the Scottish Office Home Department have been consulted and have no objection to the repeal.

176 *Industrial Training Act 1964, section 16*

10.1 Section 16 of the Industrial Training Act 1964 provides that the facilities for further education that may be provided by a local education authority under section 41 of the Education Act 1944 or by an education authority in Scotland under section 1 of the Education (Scotland) Act 1962 shall be deemed to include (and always to have included) facilities for vocational and industrial training. The rest of the 1964 Act has now been repealed¹¹ leaving section 16 as the sole surviving provision. However even section 16 no longer has any effect. It was repealed as to Scotland by the Education (Scotland) Act 1980¹², and repeals contained in the Education Reform Act 1988¹³ have removed its effect, without actually repealing it, for England and Wales. The section may therefore be

¹⁰ Town and Country Planning Act 1947, section 113(2) and Schedule 9, Part II; Water Act 1989, section 190(3) and Schedule 27.

¹¹ Agricultural Training Board Act 1982, section 11(1), Schedule 2; Industrial Training Act 1982, section 20(3), Schedule 4.

¹² Section 136(3), Schedule 5.

¹³ Section 237(2), Schedule 13, Part II.

repealed on the basis that it has already been virtually repealed. The Department for Education and Employment has been consulted and has no objection to the proposed repeal.

177 *Post Office Act 1969, section 113*

- 10.1 Section 113 of the Post Office Act 1969 provided that the Post Office Corporation (established by the Act) should, for the purpose of assessing its commencing capital debt, be given certain credits by way of compensation for capital expenditure previously incurred by the Postmaster General in the provision of land, buildings or works. The amount of the credit was to be the net book value of the land, buildings and works in each case. The total sum due by way of compensation was to be certified as soon as possible after the appointed day by the Minister, and the sum so certified was to be deducted from the Corporation's commencing capital debt with effect from the appointed day.¹⁴ The section was accordingly spent when the amount of compensation was duly certified. The Department of Trade and Industry and the Post Office have been consulted and have no objection to the repeal.

178 *Housing Act 1985, sections 173 and 174(b)*

- 10.1 Part V of the Housing Act 1985 gave rights to buy to tenants of public sector landlords. Tenants with a right to buy were also given a right to be granted a 'shared ownership lease' if they were unable to buy the lease outright. Section 173 and section 174(b) of the 1985 Act made special provisions as to the circumstances in which a tenant with a shared ownership lease could acquire the freehold or an extended lease under Part I of the Leasehold Reform Act 1967. However, the Housing and Planning Act 1986 excluded from the operation of the Leasehold Reform Act 1967 all shared ownership leases granted under Part V of the Housing Act 1985. Accordingly sections 173 and 174(b) have been superseded and may be repealed as having no practical utility. The Department of the Environment has been consulted and has no objection to the proposed repeals.

179 *Clean Air Act 1993, section 30(4)*

- 10.1 Section 30 of the Clean Air Act 1993 empowers the Secretary of State to make regulations for the purpose of limiting or reducing air pollution caused by motor fuel. Subsection (4) provides that it shall be the duty of every local weights and measures authority to enforce such regulations, and that the provisions of section 26(2) and (3) of the Trade Descriptions Act 1968 shall apply for the purposes of this function as they apply to functions under the 1968 Act. In fact the reference to section 26(3) of the 1968 Act is otiose since section 26(3) was repealed by the Local Government, Planning and Land Act 1980.¹⁵ Accordingly section 30(4) of the 1993 Act may be amended to reflect this repeal, and it is proposed that references in the subsection to section 26(3) of the 1968 Act be repealed as spent. The further provision in Schedule 2 to the draft Bill is consequential on this repeal. The Department of the Environment and the

¹⁴ The appointed day was 1 October 1969: Post Office Act 1969 (Appointed Day) Order 1969, SI 1969 No 1066.

¹⁵ Section 1(4), Schedule 4, paragraph 10(a); section 194, Schedule 34 Part IV.

Scottish Office Agriculture, Environment and Fisheries Department have been consulted and have no objection to the proposals.

180 *Local Government (Wales) Act 1994*

10.1 Several provisions of the Local Government (Wales) Act 1994 that have not been brought into force are proposed for repeal since they have been rendered unnecessary by subsequent changes in the law.

10.2 In Schedule 9, paragraph 17(1) would have amended the definition of 'local authority' contained in section 4(11) of the Environmental Protection Act 1990. This amendment, which would have inserted a reference to 'England', was not brought into force because it was superseded by a later amendment to section 4(11). This later amendment, to insert a reference to 'England and Wales', was made by the Environment Act 1995¹⁶ and came into force on 1 April 1996.¹⁷ The earlier proposed amendment is therefore unnecessary and is proposed for repeal on that basis.

10.3 The following provisions are all contained in Schedule 16 to the 1994 Act.

Paragraph 11 would have amended section 73 of the Shops Act 1950. It has not been brought into force because that Act has been repealed.¹⁸ Paragraph 11 is therefore now unnecessary.

Paragraph 40(2)(b) would have amended the definition of 'the appropriate highway authority' in section 19(1) of the Land Compensation Act 1973. This amendment was found to be unsatisfactory and was not brought into force. A subsequent amendment to section 19(1) was made by order under powers provided by the 1994 Act.¹⁹ This has rendered paragraph 40(2)(b) unnecessary.

Paragraph 57(6) would have amended section 100 of the Local Government, Planning and Land Act 1980. This amendment has not been brought into force and, since an identical amendment has been made by order under powers provided by the 1994 Act²⁰, paragraph 57(6) is now unnecessary.

Paragraph 67 would have amended section 30 of the Aviation Security Act 1982. However, since that provision has been repealed²¹, the paragraph has not been brought into force and is therefore now unnecessary.

Paragraph 70 would have amended section 20 of the Value Added Tax Act 1983 but was not brought into force because that Act has since been repealed and replaced by the Value Added Tax Act 1994. Paragraph 70 is therefore now unnecessary.

¹⁶ Schedule 22, paragraph 46(11).

¹⁷ Environment Act 1995 (Commencement No 5 Order), SI 1996/186.

¹⁸ Deregulation and Contracting Out Act 1994, sections 23-24, 81 and Schedule 17.

¹⁹ The Local Government Reorganisation (Wales) (Consequential Amendments) Order 1996, SI 1996/525, Article 3 and the Schedule.

²⁰ The Local Government Reorganisation (Wales) (Consequential Amendments No 2) Order 1996, SI 1996/1008.

²¹ Police and Magistrates' Courts Act 1994, section 93 and Schedule 9.

Paragraph 93 would have amended section 58(4)(a) of the Social Security Contributions and Benefits Act 1992 but was not brought into force since that provision has been repealed by the Social Security (Incapacity for Work) Act 1994. Paragraph 93 is therefore unnecessary.

10.4 The Welsh Office has been consulted about all the proposed repeals and has no objection to them.