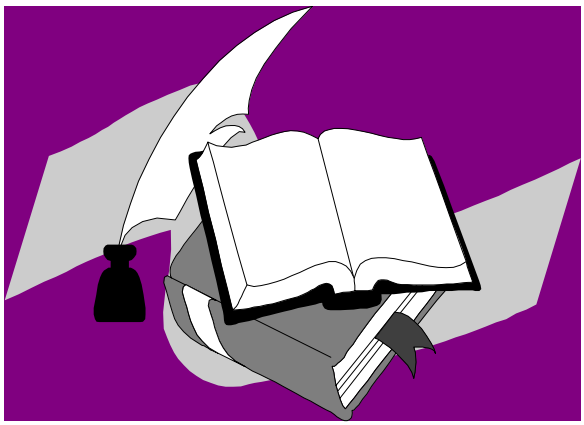
LAW COMMISSION



STATUTE LAW REVISION
Criminal Law
Repeal Proposals

January 2005

BACKGROUND NOTES ON STATUTE LAW REVISION

What is it?

1. Statute law revision is the process of repealing statutes that are no longer of practical utility. The purpose is to modernise and simplify the statute book, thereby reducing its size and thus saving the time of lawyers and others who use it. This in turn helps to avoid unnecessary costs. It also stops people being misled by obsolete laws that masquerade as live law. If an Act features still in the statute book and is referred to in text-books, people reasonably enough assume that it must mean something.

Who does it?

2. The work of statute law revision is carried out by the Law Commission and the Scottish Law Commission pursuant to section 3(1) of the Law Commissions Act 1965. Section 3(1) imposes a duty on both Commissions to keep the law under review "with a view to its systematic development and reform, including in particular ... the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and modernisation of the law".

Statute Law (Repeals) Bill

3. Implementation of the Commissions' statute law revision proposals is by means of special Statute Law (Repeals) Bills. 17 such Bills have been enacted since 1965 repealing more than 2000 whole Acts and achieving partial repeals in thousands of others. Broadly speaking the remit of a Statute Law (Repeals) Bill extends to any enactment passed at Westminster. Accordingly it is capable of repealing obsolete statutory text throughout the United Kingdom (i.e. England, Wales, Scotland and Northern Ireland) as well as extending where appropriate to the Isle of Man.

Consultation

4. The Law Commission consults widely before finalising its repeal proposals. The purpose of consulting is to secure as wide a range of views on the proposals as is practicable from all categories of persons who may be affected by the proposals. So the consultation may be with central or local government, organisations, trade bodies, individuals or anyone else who appears to have an interest in a proposal.

5. So far as consulting central government is concerned, any Department or agency with an interest in the subject matter of the repeal proposal will be invited to comment. Because obsolete legislation often extends throughout the United Kingdom it may be necessary to invite comments from several different Departments. So the following will routinely be consulted-

- The English Department or Departments with policy responsibility for the subject matter of the proposed repeal (this responsibility will extend to Scotland in appropriate cases)
- The Counsel General to the National Assembly for Wales and the Wales Office (unless the proposed repeal relates only to England)
- SLR colleagues at the Scottish Law Commission (if the proposed repeal extends to Scotland)
- Northern Ireland officials (if the proposed repeal extends to Northern Ireland).

Selection of repeal candidates

6. Candidates for repeal are selected on the basis that they are no longer of practical utility. Usually this is because they no longer have any legal effect on technical grounds - because they are spent, unnecessary or obsolete. But sometimes they are selected because, although they strictly speaking do continue to have legal effect, the purposes for

which they were enacted either no longer exist or are nowadays being met by some other means.

7. Provisions commonly repealed by Statute Law (Repeals) Acts include the following-

(a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;

(b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);

(c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;

(d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;

(e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";

(f) commencement provisions once the whole of an Act is in force;

(g) transitional or savings provisions that are spent;

(h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;

(i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

General savings

8. Much statute law revision is possible because of the general savings provisions of section 16(1) of the Interpretation Act 1978. This provides that where an Act repeals an enactment, the repeal does not (unless the contrary intention appears) -

"(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the enactment repealed or anything duly done or suffered under that enactment;

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that enactment;

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing Act had not been passed**"**.

Gradual obsolescence

9. The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete. The Statute Law (Repeals) Act 2004 contained several examples of legislation being overtaken by social and economic changes. A scheme to provide farming work for ex-servicemen after the First World War had long fallen into disuse. The policy of maximising cheap food production after the Second World War had been overtaken by new farming methods and the influence of the Common Agricultural Policy. Victorian powers for the Metropolitan Police to license shoeblacks and commissionaires had become as irrelevant as the offence of fraudulently impersonating a shoeblack or commissionaire. And an 1840s Act to sanction lotteries to help struggling artists sell their work had become superseded by the modern law on lotteries.

10. Even within individual statutes, the obsolescence tends to be gradual. Some provisions fade away more quickly than others. These include commencement and transitory provisions and 'pump-priming' provisions (e.g. initial funding and initial appointments to a Committee) to implement the new legislation. Next to go may be order-making powers that are no longer needed. Then the Committee established by the Act no longer meets and can be abolished. However, other provisions may be unrepealable for generations, particularly if they confer pensions rights or confer security of tenure or employment rights. Other provisions may be virtually unrepealable ever. Much of English property law relies on medieval statutes such as *Quia Emptores* (1290) which is regarded as one of the pillars of the law of real property. This last example usefully shows that just because a statute is ancient it is not necessarily obsolete.

Help from consultees

11. Sometimes it is impossible to tell whether a provision is repealable without factual information that is not readily ascertainable without 'inside' knowledge of a Department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these the repeal notes drafted by the Law Commissions often invite the organisation being consulted to supply the necessary information. Any help that can be given to fill in the gaps is much appreciated.

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CRIMINAL LAW REPEAL PROPOSALS

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CRIMINAL LAW REPEAL PROPOSALS

Reference	*Extent of repeal or revocation*
(1351) 25 Edw.3 Stat.5 c.4	The whole Act.
(1354) 28 Edw.3 c.3	The whole Act.
(1368) 42 Edw.3 c.3	The whole Act.

Introduction

1. The three Acts proposed for repeal in this note were passed in the mid-14th century to safeguard an individual's personal and property rights from procedural abuses. This was achieved by limiting the judicial powers of the King's Council in determining criminal proceedings. These Acts have long ceased to have any practical utility. Moreover, the rights and freedoms guaranteed under the European Convention on Human Rights and now incorporated into UK domestic law by the Human Rights Act 1998 mean that these Acts are new entirely unnecessary.

Background

2. The King's Council (as successor to the *Curia Regis*) from earliest times took part in the administration of justice of England[1]. Viewed with great suspicion by Parliament and by the common law courts, the jurisdiction of the Council was considerable. When sitting in its judicial capacity, the Council had its sittings in the 'Starred Chamber', an apartment of the King's palace that was easily accessible to suitors. This eventually became known as the Court of Star Chamber and was a well- established institution by the reign of Henry 7, before being abolished in 1640[2].

3. No opposition to the Council's judicial jurisdiction in criminal matters appears to have been raised before 1350, the Council before then being regarded as a Court

[1] A Committee of the Privy Council, which is the direct descendant of the old *Curia Regis*, remains the organ by which the ancient prerogative of the Crown as the fountain of justice is exercised in relation to, inter alia, appeals from certain overseas territories.
[2] 16 Cha.1 c.10.

of Peers within the terms of Magna Carta. However this jurisdiction was unpopular with the common lawyers (who feared a competing jurisdiction), with many laymen (who regarded the Council as an instrument of government available to enforce tyranny) and with the judges (who insisted that the Council had no authority to set aside their judgments on the ground of error).

4. Moreover the procedure of the Council was open to abuse. In criminal cases the Council proceeded by 'criminal information' which, though the accuser had to give security, by-passed the usual court procedure of the grand jury[3]. Grand juries were regarded as a safeguard for the citizen and by-passing them in this way could be hazardous for any defendant who was out of political favour or who simply had powerful enemies. In consequence several petitions were made in Parliament opposing the jurisdiction of the Council in criminal cases. These petitions were largely based on the ground that it was an infringement of Magna Carta which provided against the imprisonment or dispossession of a freeman except by the judgment of his peers or the law of the land. The Council did not give a 'lawful judgment of peers' because it tried cases without juries.

5. The Parliamentary petitions against the Council's jurisdiction in criminal cases resulted in three Acts being passed to limit the powers of the Council. These Acts did not extinguish the Council's jurisdiction in such cases but rather abolished the procedure whereby a person could be summoned to appear before the Council to answer charges without the safeguards that the court system would have provided.

25 Edw.3 Stat.5 c.4 (the 1351 Act)

6. Although the term 'statute' is today taken to refer to an individual Act of Parliament, 'statute' in the Middle Ages referred to the whole body of legislation passed during a single session of Parliament, each chapter of such statute corresponding approximately to what would today be called an Act. Sometimes there would be several such statutes in a single session of Parliament with each successive statute being numbered 'second', 'third', 'fourth' and so on.

[3] A grand jury was an inquisition by a body of between 12 and 23 freeholders of a county who were appointed by the sheriff to consider indictments (i.e. charges) against a defendant. The grand jury would sit and hear evidence from the prosecution and only if the grand jury were satisfied of the truth of the accusation would it approve the indictment and the defendant be sent for trial. The grand jury process approximated to the modern equivalent of a judicial inquiry.

7. The fifth statute passed at Westminster in 1351 in the 25th year of the reign of Edward 3 contained 23 chapters, most of which have long since been repealed. Chapter 4 bears the sidenote "*None shall be taken upon Suggestion*[4] *without lawful Presentment*". The text of Chapter 4 reads as follows:

> "*Whereas it is contained in the Great Charter of the Franchises of England, that none shall be imprisoned nor put out of his Freehold, nor of his Franchises nor free Custom, unless it be by the law of the Land; It is accorded, assented, and stablished, That from henceforth none shall be taken by Petition or Suggestion made to our Lord the King, or to his Council, unless it be by Indictment or Presentment*[5] *of good and lawful People of the same neighbourhood where such Deeds be done, in due Manner, or by Process made by Writ original at the Common Law; nor that none be out of his Franchises, nor of his Freeholds, unless he be duly brought into answer, and forejudged of the same by the Course of the Law; and if any thing be done against the same, it shall be redresseed and holden for none.*".

28 Edw.3 c.3 (the 1354 Act)

8. The statute passed at Westminster in 1354 in the 28th year of the reign of Edward 3 contained 15 chapters all of which have long been repealed except chapter 3. Chapter 3 bears the sidenote "*None shall be condemned without due Process of Law*". The text of chapter 3 reads as follows:

> "*That no Man of what Estate or Condition that he be, shall be put out of Land or Tenement, nor taken, nor imprisoned, nor disinherited, nor put to Death, without being brought in Answer by due Process of the Law*.".

42 Edw.2 c.3 (the 1368 Act)

9. The statute passed at Westminster on 1 May 1368 in the 42nd year of the reign of Edward 3 contained 11 chapters. The only chapter in this statute that has survived to the present day is Chapter 3 which bears the sidenote "*None shall be put to answer without due Process of Law*." The text reads as follows:

> "*At the Request of the Commons by their Petitions put forth in this Parliament, to eschew the Mischiefs and Damages done to divers of his Commons by false accusers, which oftentimes have made their Accusations more for Revenge and singular Benefit, than for the Profit of the King, or of his People, which accused Persons, some have been taken, and [sometime*[6]*] caused to come before the King's Council by Writ, and otherwise upon grievous Pain against the Law: It is assented and accorded, for the good Governance of the*

[4] A suggestion was an allegation or representation lacking formal evidence or proof of the matter being alleged or represented.
[5] A presentment was a report or accusation made by a grand jury or other body of men (for example, neighbours of the accused).
[6] I.e. others.

Commons, that no Man be put to answer without Presentment before Justices, or Matter of Record, or by due Process and Writ original, according to the old Law of the Land: And if any Thing from henceforth be done to the contrary, it shall be void in the Law, and holden for Error."

10. The nub of these three Acts is that no-one should be deprived of his life, liberty or property except in accordance with due legal process involving the laying of formal charges which had to be tested in a judicial or quasi-judicial setting.

11. The protection given by these Acts has long ceased to be necessary with the development of the institutions and practices that comprise the modern legal process throughout the United Kingdom. In particular an elaborate structure of criminal courts now exists to hear and determine accusations of criminal activity. Upon a finding of guilt, the criminal courts have power to inflict punishment, commonly in the form of a fine or imprisonment. There is no modern equivalent of the mediaeval King's Council to usurp the judicial function of the criminal courts in determining whether a person is guilty or what the penalty should be.

12. The subject matter of the three Acts firmly engages key provisions in the European Convention on Human Rights, now incorporated into UK domestic law by the Human Rights Act 1998. These provisions so far as material are set out in full in the *Annex* to this note. They are as follows-

- **Article 2** (right to life). This supersedes the protection given by the 1354 Act against a person being put to death without due process of law

- **Article 5** (right to liberty and security). This supersedes the protection given by the 1354 Act against a person being imprisoned without due process of law

- **Article 6** (right to a fair trial). This supersedes the protection given by the 1351, 1354 and 1368 Acts against a person being judged or having his rights and liberties determined without due process of law or without his having the right to answer the allegations made against him

- **First Protocol, Article 1** (protection of property). This supersedes the protection given by the 1351 and 1354 Acts against a person being deprived of his property rights without due process of law.

13. Because the 1351, 1354 and 1368 Acts have been superseded in this way, they are of no continuing utility and their repeal is proposed accordingly.

Extent

14. The three Acts extend throughout England, Wales and Northern Ireland.

Consultation

15. The Department for Constitutional Affairs, the Home Office, the Crown Prosecution Service, the Privy Council Office and the relevant authorities in Wales and Northern Ireland have been consulted about these repeal proposals.

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ANNEX

- **Article 2** (right to life)

  Everyone's right to life shall be protected by law. No-one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law[7].

- **Article 5** (right to liberty and security)

  Everyone has the right to liberty and security of person. No-one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

  (a) the lawful detention of a person after his conviction by a competent court;

  (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

  (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

  (d) - (f) [not relevant in the present context.]

- **Article 6** (right to a fair trial)

  1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair trial and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or

[7] In fact the death penalty can no longer be issued by a court within the UK. The death penalty was abolished on 9 November 1998 when section 21(5) of the Human Rights Act 1998 came into force (section 21(5) abolished the death penalty for

the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proven guilty according to the law.

3. Everyone charged with a criminal offence has the following minimum rights:
   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

   (b) to have adequate time and facilities for the preparation of his defence;

   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

- **The First Protocol**

  Article 1 (protection of property)

  Everyone natural or legal person is entitled to the peaceful enjoyment of his possessions. No-one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law[8].

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offences under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957). Moreover Article 1 of the Sixth Protocol to the European Convention on Human Rights requires the abolition of the death penalty.

[8] Article 1 does however reserve the right of a State to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Reference	*Extent of repeal or revocation*
Sale of Offices Act 1551 (5 & 6 Edw.6 c.16)	The whole Act.
Sale of Offices Act 1809 (49 Geo.3 c.126)	The whole Act.
Government of Ireland (Adaptation of Enactments) (No.3) Order 1922 (S.R. and O 1922 No.183)	Article 41(a).
Common Informers Act 1951 (14 & 15 Geo.6 c.39)	In the Schedule, the entry relating to section 6 of the Sale of Offices Act 1809.

Introduction

1. The Sale of Offices Act 1551 ("the 1551 Act") forbade the sale of certain public offices connected with the administration of justice, on pain of specified disabilities upon those offering or accepting reward. Section 1 of the Sale of Offices Act 1809 ("the 1809 Act") extended the 1551 Act to all offices in the gift of the Crown, and extended its territorial extent to cover Scotland and (Northern) Ireland. The 1809 Act also made it an offence[9]:

- to sell, purchase or bargain for any office, commission, place or employment in the gift of the Crown (section 3);

- to receive or pay money for soliciting or obtaining any such office or make any negotiation or pretended negotiation relating thereto (section 4);

- to open or advertise houses for transacting business relating to the sales of offices in any public department (sections 5 and 6).

[9] Sections 3-5 were misdemeanours in the laws of England and Wales and Ireland, but the distinction between a felony and a misdemeanour was abolished (as to England and Wales) by the Criminal Law Act 1967, s.1 and (as to Northern Ireland) by the Criminal Law Act (Northern Ireland) 1967, s.1. The maximum period of imprisonment for such an offence for which no other term of imprisonment is specified is two years: Powers of Criminal Courts (Sentencing) Act 2000, s.77; Criminal Law Act (Northern Ireland) 1967, s.7(1).

2. The 1809 Act was passed as a consequence of a scandal involving the Duke of York, the commander-in-chief of the army, and his mistress, Mrs Clark, an actress, who took money from those who wished to buy promotion or favours in the War Office. Although not guilty of personal corruption, the Duke was forced to resign and the Government introduced and carried the 1809 Act making it an offence to solicit offices for sale. There have been no reported cases under the 1551 Act since 1829 nor under the 1809 Act since 1862. That is in part a measure of the reforms in the method of appointments to and grounds of dismissal from public office during the last 150 years, which have virtually eliminated the matters dealt with by the two Acts as practical problems. Furthermore, the introduction of other statutory provisions and the use of offences at common law have since made the 1551 and 1809 Acts unnecessary. In particular the Prevention of Corruption Acts 1889 to 1916[10] now penalise a wide range of offences of bribery by and of local and central government employees and members of public bodies. In England and Wales the common law penalises anyone who bribes a judicial or public officer or a judicial or public officer who accepts a bribe as an inducement to act contrary to his duty, including a bribe to procure or to receive a reward for procuring an appointment to an office[11]. In Scotland there are distinct common law offences of bribery concerning a judicial official and breach of duty by a public official. In short the 1551 and 1809 Acts now serve no useful purpose and may be repealed as being unnecessary and of no practical utility.

Background

3. In the Middle Ages, the conception of tenure was applied to public offices. An office was granted to a person as if it were property. The office gave the official certain rights and imposed on him certain duties. In many cases the salary paid to the office-holder was small, but the office carried with it the right to extract large fees from the public.

4. The 1551 and 1809 Acts represented efforts to eliminate the purchase and sale of public offices, the first being in the context of judicial administration. As Holdsworth

[10] The Public Bodies Corrupt Practices Act 1889 (c.69), the Prevention of Corruption Act 1906 (c.34) and the Prevention of Corruption Act 1916 (c.64).
[11] *Halsbury's Laws of England* vol.11(1) (4th ed., 1990) paras.281-3.

pointed out[12], although the 1551 Act was apparently comprehensive in scope in forbidding the purchase and sale of judicial offices it-

> "contained two fatal flaws. Both offices which could be held for estates of inheritance, and offices which were in the gift of the chief justices of the King's Bench and Common Pleas[13], were excluded…. Attempts in 1690 and 1692-1693 to legislate against the buying and selling of offices failed; and, as the judges and their staffs were some of the chief offenders, it is not strange that such legislation as was passed to check the abuses of the system was practically a dead letter.... The path of the reformer was always blocked by a phalanx of vested interests." (Footnotes omitted)

5. The 1809 Act must be seen in the context both of a series of Acts in relation to the executive government commencing in the 18th century which were directed to the abolition of practices generally recognised to be abusive or anomalous, and of the House of Commons' largely frustrated efforts to reform sinecures, which coincided with the events giving rise to the 1809 Act[14]. Those events have been described as follows:[15]

> In January 1809 the radical member of parliament Wardle brought before the house the squalid tale of the duke of York and Mrs Clarke. Mrs Clarke, an extravagant actress, was the duke's mistress. It was proved that she had taken money from those who wished to buy promotion or favours in the war organization. It was alleged that the duke of York knew of her sales of office, and even that he took a share of the proceeds. For two months the house examined witnesses from the underworld of London society. In the end it was carried, by 278 to 196, that the duke of York was not guilty of personal corruption or of connivance at corruption. But as he had clearly been guilty of allowing his mistress to know too much of official business he was obliged, in spite of his services to the Army, to resign his official appointments[16]. ... Perceval, for the government, was certainly shocked by the revelation of public belief that places were for sale. Striking at once, therefore, he carried an act making it penal to solicit money for procuring offices.

6. The 1809 Act was, therefore, a response to an immediate crisis. But the movement towards abolition of sinecures gathered momentum as the century progressed; so, too, did the creation of the great departments of state and of a body of permanent civil servants to run them, paid not by fees charged to the public for services

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[12] W Holdsworth *A History of English Law* vol.I (1956) pp.250-1.
[13] Certain offices in the King's Bench and Common Pleas were saleable by the Chief Justices of those courts until 1825, when the custom was abolished by 6 Geo.4 cc.82 and 83.
[14] See Holdsworth, *A History of English Law* vol.XIII (1952) pp.189-90.
[15] J S Watson *The Reign of George III (1760-1815)* (The Oxford History of England, vol.XII) (1960) pp.447-8.
[16] The Duke was reappointed commander in chief in 1811; *ibid*, p.448.

rendered (as was usual at the time when the 1809 Act was passed)[17] but by a salary voted by Parliament. Recruitment by influence, from which stemmed the evil which the 1809 Act was designed to combat, was replaced by the system of recruitment by competition advocated by Charles Trevelyan and Stafford Northcote in 1853, commencing tentatively in 1855 and completed in 1870 with the making of an Order in Council providing for full open competition[18]. Significantly, the 1809 Act apparently fell into total disuse after about 1860[19].

The 1551 Act

7. The 1551 Act forbade the sale of certain public offices connected with the administration of justice, on pain of specified disabilities upon those seeking them or accepting reward (section 1). All such sales or agreements for sale were declared void (section 2) and anyone making a contract for an office in violation of the Act was disabled for life from holding the office[20]. The Act was not comprehensive. It applied to clerkships in the courts of record and to certain offices of trust[21], and there were exceptions under provisos since repealed. The restrictions of the Act gave rise to substantial case law as to the offices within its scope and the types of contravention of its provisions; but there appear to have been no cases since 1829[22].

The 1809 Act

8. *Section 1* recited section 1 of the 1551 Act, confirmed it, and extended its provisions to Scotland, (Northern) Ireland and to all offices in the gift of the Crown or of any office appointed by the Crown, and all commissions civil, naval, or military, and all places and employments under HM governments in the United Kingdom or elsewhere. *Section 2* provided that all interests forfeited as a result of the two Acts were to vest in the Crown.

9. *Sections 3-6* created a series of offences. Section 3 made it an offence to sell, purchase or bargain for any office or employment in the gift of the Crown, directly or

[17] Hence the exception to the ambit of the Act made by ss.10 and 11 - see para.10 below. And see generally Holdsworth, *A History of English Law*, vol.XIV (1964) pp.132-4.
[18] Holdsworth, *ibid*, pp.135-7.
[19] The last reported case was in 1862.
[20] Section 1; and see *Russell on Crime* (12th ed. 1964) p. 376.
[21] According to J Burke (ed) *Jowitt's Dictionary of English Law* vol.2 p.1278 (2nd ed. 1977) public offices are either "offices of trust" which cannot be performed by a deputy, or ministerial offices (which can).
[22] See *Russell on Crime* (12th ed, 1964), pp. 374-6.

indirectly. It appears to be unnecessary to allege or prove that the defendant acted corruptly or dishonestly. *Section 4* made it an offence to receive or pay money for or solicit or obtain any such office or make any negotiation or pretended negotiation relating thereto. It is aimed at the power (real or pretended) to influence the person who has the authority to dispose of the office or employment. *Sections 5 and 6* were aimed at the brokerage houses, and were a particular concern of the Government in moving the legislation[23]. The preamble to section 5 explained that it was feared that illegal transactions would continue, carried on under colour of conducting legitimate business in the few offices and employments outside the ambit of the Acts. It therefore banned all such places of business, making it an offence to open or keep any premises for negotiating any business relating to offices, commissions, places or employments in or under any public department. By *section 6,* anyone advertising such a house, or the name of any such broker, agent or solicitor, or printing any advertisements, was liable to a forfeiture of £50 (now level 3 on the standard scale), to be sued for in the superior courts, the penalty going to the person who sued[24].

10. *Section 9* provided that the 1809 Act was not to extend to offices excepted by the 1551 Act; *section 10* provided that it was not to extend to "deputations" where it was lawful to appoint deputies, or to agreements as to payment of a principal or deputy out of the fees; *section 11* provided that it was not to extend to annual payments out of the fees of any office to any former holder.

11. Since the concept of a misdemeanour is unknown to Scots law, *section 13* provided for misdemeanours to be treated for Scottish purposes as offences liable to be punished by a fine or imprisonment or both. *Section 14* provided for the prosecution in England of offences committed by colonial governors and other chief officers serving in government abroad.

12. Other provisions of the Act have been repealed, notably sections 7-8 and 12 by the Statute Law Revision Act 1872 (No.2). Sections 7-8 permitted the brokerage of commissions in the Army at regulated prices, notwithstanding the general prohibition

[23] *Hansard*, HC 27 March 1809, vol.13, col.821.
[24] By virtue of the Common Informers Act 1951, s.1(1) and (3) and Sch., in any proceedings under s.6 a person is now liable to a fine not exceeding level 3 on the standard scale, and no proceedings for forfeiture may be instituted in Great Britain. As to Northern Ireland, see Common Informers Act (Northern Ireland) 1954, s.1.

against trafficking in military commissions under section 1 of the Act. The regulations were cancelled by royal warrant after Parliament resolved in 1871 that the system should not continue. Section 12 dealt with certain offices in Ireland.

13. There were a few reported cases on the ambit of the 1809 Act, in particular the scope of the offices and agreements caught by it[25], but the last such was in 1862[26]. Of these cases, only one concerned a criminal prosecution under the Act[27].

The common law

14. In England and Wales it is an offence at common law for anyone to offer or give a judge, magistrate or other judicial officer, or for any of them to take, a gift or reward to influence their behaviour; or for anyone to bribe a public officer or for a public officer to accept a bribe as an inducement to act contrary to his duty (which includes a bribe to procure or to receive a reward for procuring an appointment to an office)[28]. This is analogous to the offence of misconduct in a public office[29], for which charges have been brought in modern times[30]. A contract for the sale of a public office is contrary to public policy and cannot be enforced, while the sale of a recommendation to a public office, or an agreement by a person for pecuniary reward to use his influence in order to obtain such an office for another, is unenforceable on the same ground[31].

15. In Scotland it is a common law offence for a public official (that is, a person entrusted with an official situation of trust) to act in breach or wilful neglect of his duty[32].

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[25] See *Russell on Crime* (12th ed. 1964) pp.377-9.
[26] *Eyre v Forbes* (1862) 12 CB (NS) 191; 142 ER 1116.
[27] *R v Charretie* (1849) 13 QB 447 (116 ER 1333), in which the sole matter at issue was whether an "office, commission, place or employment" referred to in s.3 was capable of applying to the sale of an East India company director's nomination to a cadetship; it was held (Denman CJ) that it did. The last prosecution under the Act appears to have been an unreported case, *R v Armstrong*, in 1859, an army case, in which the prosecution rested mainly on the receipt of money for a commission. The sole reference to the case is in evidence by the solicitor to the War Department in 1870 to the Commissioners Appointed to Inquire into Over-Regulation Payments on Promotion in the Army: 1870 (C.201), Minutes of Evidence p.60. Sale of commissions on exchange under the Regimental Exchange Act 1875 constituted an exception to the general abolition of purchase of commissions and these were by that Act specifically excepted from the prohibitions under the 1809 Act. The regulations governing such exchanges are no longer in force and the 1875 Act was repealed by the Statute Law (Repeals) Act 1995, s.1(1) Sch.1, Pt.6.
[28] *Halsbury's Laws of England* [(4th ed., 1990) Vol.11(1), paras.281, 282, 285 n]; *Russell on Crime* (12th ed., 1964) p.374 defines the offence as "the buying and selling of offices of a public nature". Authorities cited include *R v Whitaker* [1914] 3 KB 1283, a case of bribery at common law to secure favours for placing a contract, in which Lawrence J cited *R v Vaughan* (1769) 4 Burr. 2494, 98 ER 308 (Lord Mansfield CJ), a case of bribery to secure an interest in a public office.
[29] See *Russell on Crime* (12th ed., 1964) p.361; Stephen's *Digest of the Criminal Law* (9th ed., 1950) pp.114-5, Art.145.
[30] See *R v Llewellyn-Jones* [1968] 1 QB 429; *R v Bowden* [1996] 1 WLR 98; *Re Attorney-General's Reference (No.3) of 2003)* [2004] 2 Cr. App. R.23.
[31] *Halsbury's Laws of England* (4th ed., 1998) vol.9(1), para.845.
[32] GH Gordon *The Criminal Law of Scotland* (3rd ed., 2000) vol.II, para.44.03; *Logue* v *HM Advocate* 1932 JC 1.

Most allegations of breach of duty in recent times have, however, arisen in the context of the common law offence of the taking of a bribe by a judicial official. Bribery of, or the taking of a bribe by, a judicial official is a separate Scots common law offence[33], but bribery of, or the taking of a bribe by, any public servant to act contrary to his duty may also be criminal. In practice, however, as in England and Wales, most prosecutions for bribery are brought under the Prevention of Corruption Acts.

The Prevention of Corruption Acts 1889 to 1916

16. There are three Acts cited by this collective title: the Public Bodies Corrupt Practices Act 1889 (c.69), the Prevention of Corruption Act 1906 (c.34) and the Prevention of Corruption Act 1916 (c.64). Section 1 of the 1889 Act makes it an offence to corruptly solicit or receive or to corruptly *give, promise or offer* any reward as an inducement to any member of a public body (that is, in effect, any local government or other local or public body[34] to do or not do anything connected with any matter or transaction of that body. The maximum penalty is seven years' imprisonment and a fine, with on a first conviction a discretion to disqualify from office for five years and, on a second, for life. The 1906 Act made similar provision in relation to agents or employees, including a person serving under the Crown or a local government employee. The 1916 Act provided for a presumption of corruption where it was proved that any consideration had been given to or received by a person employed by such a Department or body from anyone holding or seeking to obtain a contract from it (section 2).

17. It will be evident that these Acts penalise financial inducements or bribes offered to or solicited by officers in both local and central government, and in any other public body (which it is clear from recent case-law is to be widely construed). Such an inducement is penalised if it is in connection with any "matter or transaction" of local or central government or such a public body; this is sufficiently general to encompass any matter relating to appointments within government or the body concerned. The

[33] Ibid.

[34] Prevention of Corruption Act 1916, section 4(2)). "Public body" has a wide meaning: *R* v *Joy and Emmony* (1974) 60 Cr. App. R. 133. In *DPP* v *Holly* [1978] AC 43 the term was in the context of these Acts held to mean any body in public ownership which had public or statutory duties to perform and which performed those duties and carried out its transactions for the benefit of the public and not for private profit.

offences are committed both by an office holder accepting the inducement and by the person offering it. The Acts therefore penalise directly the activities penalised by sections 3-4 of the 1809 Act. Moreover the maximum penalty for any offence under the Acts (7 years imprisonment) is greater than it would be under sections 3-4 of the 1809 Act. Further in the case of an offence under the 1889 Act, a person convicted may be disqualified from office, as under the 1551 and 1809 Acts.

Conclusions

18. The 1551 and 1809 Acts address a matter which, for the reasons outlined above, is not now a practical problem, a conclusion which is supported by the absence of reported criminal, or indeed any, cases brought under the Acts for over 140 years. Modern arrangements for recruitment and remuneration of persons holding public office are very different from early nineteenth century procedures. Today public appointments are personal in nature and confer no estate or other property right that can be sold. Public officials are no longer paid by fees charged to the public for services rendered. Both Acts may therefore be described as being no longer of any practical utility.

19. Should, however, the social evil which the 1551 and 1809 Acts addressed arise again, the Prevention of Corruption Acts are fully adequate to deal with any foreseeable instance. As is evident from the description of these Acts above, by their terms they encompass directly the offences penalised by sections 3-4 of the 1809 Act. Sections 5 and 6 of that Act address matters which are now remote from current concerns[35]. The other provisions of the 1809 Act are ancillary to those mentioned.

20. If there exist any situations in which the Prevention of Corruption Acts are inapplicable, the common law offence broadly described as misconduct in a public office, which is still occasionally used, is appropriate to deal in England and Wales with any case of bribery to procure or reward for procuring an appointment to a public office. The common law also deals effectively with contracts contrary to public policy involving corruption, to which the 1551 Act was directed. In Scotland, there is a broad common law offence of a public official acting in breach or wilful neglect of his duty. Given the

[35] But such matters would in any event be dealt with today by the modern law of aiding and abetting (in Scotland art and part), or attempt, incitement or conspiracy to commit substantive offences.

comprehensive character of the Prevention of Corruption Acts 1889 to 1916 and the extent of the common law in both England and Wales and Scotland, the 1551 and 1809 Acts are today unnecessary and may be repealed accordingly.

21. The repeal of the 1809 Act would permit the consequential repeal of two other statutory provisions. First, article 41(a) of the Government of Ireland (Adaptation of Enactment) (No.3) Order 1922 amended section 6 of the 1809 Act so as to substitute 'Belfast' for 'Dublin' as the place in Ireland where court actions arising under section 6 may be brought. Second, the Schedule to the Common Informers Act 1951 (which abolished the common informer procedure) identifies section 6 of the 1809 Act as a provision permitting proceedings for a penalty or forfeiture to be sued for by a common informer. Both provisions may be repealed along with section 6 of the 1809 Act.

Extent

22. The 1551 and 1809 Acts extend throughout the United Kingdom.

Consultation

23. The Home Office, the Department for Constitutional Affairs, the Crown Prosecution Service and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

32-195-449
09 June 2005

Reference	*Extent of repeal or revocation*
Disorderly Houses Act 1751 (25 Geo.2 c.36)	The whole Act.
London County Council (General Powers) Act 1959 (c.lii)	In section 3(1), the definition "the Act of 1751".
Magistrates' Courts Act 1980 (c.43)	In Schedule 1, paragraph 2.
Licensing Act 2003 (c.17)	In Schedule 6, paragraph 2.

Disorderly Houses Act 1751

1. According to its long title, the purpose of the Disorderly Houses Act 1751 ("the 1751 Act") was "for the better preventing Thefts and Robberies, and for regulating Places of publick Entertainment, and punishing Persons keeping disorderly Houses".

2. The 1751 Act represented an attempt by Government to regulate places of public entertainment. These were perceived to be a major cause of theft and robbery because they encouraged people to fritter away their earnings to the point that they had to resort to theft in order to survive. Accordingly section 2 of the 1751 Act required that any premises in or within 20 miles of London kept for the purposes of public dancing, music or other similar public entertainment must be licensed by the magistrates. Any such premises that operated without a licence were deemed to be a 'disorderly house'.

3. The whole of the 1751 Act, including section 2, has now been repealed with the exception of section 8[36]. Section 8 provides as follows-

> "And whereas, by reason of the many subtle and crafty contrivances of persons keeping bawdy-houses, or other disorderly houses[37], it is difficult to prove who is the real owner or keeper thereof, by which means many notorious offenders have escaped punishment: Be it enacted by the authority aforesaid, that any person who shall at any time hereafter appear, act or behave him or herself as master or mistress, or as the person having the

[36] Sections 1, 9, 11, 12 and 15 were repealed by the Statute Law Revision Act 1867; sections 2 to 4 by the London Government Act 1963, s.93(1), Sch.18, Pt.2; sections 5 to 7 by the Administration of Justice Act 1965, s.34(1), Sch.2; section 10 by the Courts Act 1971, s.56(4), Sch.11, Pt.4; sections 13 and 14 by the Statute Law Revision Act 1966.
[37] As originally enacted, section 8 referred to "bawdy-houses, gaming-houses, or other disorderly houses". The reference to gaming houses was repealed by the Betting and Gaming Act 1960, s.15, Sch.6, Pt.1.

> care, government, or management of any bawdy-house, or other disorderly house, shall be deemed and taken to be the keeper thereof, and shall be liable to be prosecuted and punished as such, notwithstanding he or she shall not in fact be the real owner or keeper thereof.".

4. In other words anyone who appears to be in charge of-

(a) any bawdy house; or

(b) any disorderly house,

is deemed to be its keeper and is liable to be punished as such.

5. A "bawdy house" is a brothel and there is no material distinction to be made between these two terms[38]. The modern law prohibits the keeping of brothels: see paragraph 9 below.

6. A "disorderly house" is more difficult to define. Keeping a disorderly house is an indictable common law offence, punishable by a fine and/or imprisonment at the discretion of the court[39]. The nature of a disorderly house was considered in *Moores* v *Director of Public Prosecutions*[40] in 1991:

> "[I]t appears to me that the mischief at which the common law offence is aimed is the mischief of keeping a house to which members of the public resort for purposes of the disorderly recreation, if one can so describe it, which is available there, whether it takes the form of indecency or illicit pugilism or cock fighting or whatever. The essence of the mischief is the continuity which exists where the use of premises for a given unlawful purpose becomes notorious"[41].

7. This note does <u>not</u> propose abolishing the common law offence of keeping a disorderly house. Rather the proposal is the repeal of section 8 of the 1751 Act whereby anyone in charge of a disorderly house (or a bawdy house) is deemed to be its keeper.

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[38] *Singleton* v *Ellison* [1895] 1 QB 607.
[39] Indictable offences at common law not subject to any special punishment are punishable by fine and imprisonment at the court's discretion: *R* v *Castro* (1880) 5 QBD 490 at 509.
[40] [1991] 4 All ER 521.
[41] Ibid at p.525, per Bingham LJ.

8. The reason for repealing section 8 is that it is now unnecessary to deem anyone who is apparently in charge of a bawdy house/disorderly house to be the keeper of that house. This is because the modern criminal law creates offences wide enough to catch the persons running or managing the premises in which the offending activity takes place.

Bawdy houses/brothels

9. The Sexual Offences Act 1956 makes it an offence-

- for a person to keep, manage or act/assist in the management of a brothel (section 33);
- for a person to keep, manage, or act/assist in the management of a brothel to which people resort for practices involving prostitution (section 33A)[42];
- for the landlord of any premises knowingly to let the premises for use as a brothel (section 34);
- for the tenant or occupier or person in charge of any premises knowingly to permit their use as a brothel (section 35(1));
- for the tenant or occupier of any premises knowingly to permit their use for the purposes of habitual prostitution (section 36).

10. These offences (other than section 33A) attract maximum penalties ranging from 3 months' imprisonment and/or a fine not exceeding level 3 on the standard scale (£1000) for a first offence to six months' imprisonment and/or a fine not exceeding level 4 on the standard scale (£2500) for subsequent offences[43]. In the case of an offence under section 33A, the maximum penalty is 6 months' imprisonment and/or the statutory maximum fine (£5000)[44] upon summary conviction, and 7 years' imprisonment upon conviction on indictment[45]. The maximum penalty upon summary conviction under section 8 of the 1751 Act is

[42] Section 33A was inserted by Sexual Offences Act 2003, s.55(2).
[43] The 1956 Act, s.37, Sch.2.
[44] By virtue of Schedule 1 to the Interpretation Act 1978, 'statutory maximum', with reference to a fine or penalty on summary conviction for an offence in England and Wales, means the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980. Section 32(9) of the 1980 Act defines the prescribed sum as £5000 or such sum as is for the time being substituted by an order in force under section 143(1) of the 1980 Act.
[45] The 1956 Act, s.37, Sch.2.

identical to the maximum penalty under section 33A[46]. The penalty upon conviction on indictment under section 8 is a fine and imprisonment at the discretion of the court[47].

11. Accordingly section 8 is unnecessary so far as it applies to bawdy houses or brothels. Anyone conducting themselves as being in charge of such premises is liable to prosecution under the appropriate provision of the Sexual Offences Act 1956 as set out above. The prosecuting authorities have no need to rely on section 8 so as to deem the offender to be a keeper of the premises. Indeed there are no reported cases indicating that section 8 has ever been used for this purpose.

Disorderly houses

12. The same is true of disorderly houses. Although there are a small number of reported cases of persons being charged with keeping a disorderly house[48], none have invoked section 8 of the 1751 Act for the purpose of deeming anyone to be a keeper of the relevant premises.

13. Moreover the development of the criminal law since the mid-eighteenth century has provided prosecuting authorities with a considerable armoury of specific statutory offences directed at the sort of disorderly recreation that the 1751 Act was keen to prohibit. In other words, not only is section 8 of the 1751 Act now unnecessary as a means of invoking the common law offence of keeping a disorderly house, that offence is likely to be wholly superfluous in relation to controlling a wide range of illicit activities. For example-

- *unlawful gaming:* An offence under Part 1 of the Gaming Act 1968 (which includes gaming on unlicensed premises) is committed by every person concerned in the organisation or management of the unlawful gaming and by anyone who allows premises to be used for such gaming[49];

[46] By virtue of Magistrates' Courts Act 1980, s.32(1), Sch.1.
[47] Section 8 imposes the same punishment as if the defendant were being punished for the common law offence of being the real keeper of a bawdy house or disorderly house. An indictable offence at common law not subject to any special punishment is punishable by fine and imprisonment at the discretion of the court: *R* v *Castro* (1880) 5 QBD 490 at 509.
[48] *Moores* v *DPP* [1991] 4 All ER 521; *R* v *Tan* [1983] QB 1053; *R* v *Quinn* [1962] 2 QB 245.
[49] Gaming Act 1968, s.8(1) and (3). The penalty on summary conviction is a fine not exceeding the prescribed sum (currently £5000). For conviction on indictment the penalty is a fine and/or imprisonment for a term not exceeding 2 years: Gaming Act 1968, s.8(4).

- *unlicensed drinking and entertainment*: A person commits an offence under the Licensing Act 2003 ("the 2003 Act") if he either carries on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or else knowingly allows a licensable activity to be so carried on[50]. Licensable activities include the sale of alcohol and the provision of audience entertainment such as indoor sporting events, boxing, wrestling and the performance of live music and dance[51]. Where premises are licensed under the 2003 Act[52] a person who works at the premises in a capacity which authorises him to prevent disorderly conduct commits an offence if he knowingly allows such conduct to take place on the premises[53];

- *indecent displays*: A person commits an offence under the Indecent Displays (Control) Act 1981[54] if he makes, causes or permits a display of any indecent matter[55];

- *cock-fighting etc:* An offence under section 47 of the Metropolitan Police Act 1839 is committed by every person who, within the metropolitan police district[56], keeps or uses or acts in the management of any house, room, pit or other place for the purpose of fighting or baiting lions, bears, badgers, cocks, dogs or other animals[57].

[50] Licensing Act 2003, s.136(1). The maximum penalty upon summary conviction is a term of imprisonment not exceeding 6 months and/or a fine not exceeding £20,000: the 2003 Act, s.136(4).
[51] The 2003 Act, s.1(1), Sch.1.
[52] The 1751 Act does not apply to 'relevant premises' within the meaning of section 159 of the 2003 Act: the 2003 Act, s.198(1), Sch.6, para.2.
[53] The 2003 Act, s.140. The maximum penalty is a fine not exceeding level 3 on the standard scale (current £1000).
[54] The 1981 Act, section 1(1).
[55] In England and Wales, the penalty on summary conviction is a fine not exceeding the statutory maximum (currently £5000). For conviction on indictment the penalty is a fine and/or imprisonment for a term not exceeding 2 years: the 1981 Act, s.4(1).
[56] The Town Police Clauses Act 1847, s.36 contains an analogous prohibition for extension throughout England and Northern Ireland.
[57] The maximum penalty is a fine not exceeding level 4 on the standard scale (£2500) or a term of one month's imprisonment.

Conclusion

14. Since section 8 is no longer necessary to deem anyone to be a keeper of a bawdy house or a disorderly house, the whole provision has become unnecessary and may be repealed. Consequential repeals are-

- the definition of the 1751 Act in section 3(1) of the London County Council (General Powers) Act 1959;

- paragraph 2 of Schedule 1 to the Magistrates' Courts Act 1980 (which lists offences under section 8 as being offences that are triable either way)

- paragraph 2 of Schedule 6 to the Licensing Act 2003 (which disapplies the 1751 Act from the definition of 'relevant premises' within the meaning of section 159 of the 2003 Act).

There being no other surviving provisions, the 1751 Act may now be repealed as a whole.

Extent

15. The 1751 Act extends only to England and Wales.

Consultation

16. The Home Office, the Crown Prosecution Service and the relevant authorities in Wales have been consulted about this repeal proposal.

32-195-449
09 June 2005

Reference	*Extent of repeal or revocation*
Servants' Characters Act 1792 (32 Geo.3 c.56)	The whole Act.
Statute Law (Repeals) Act 1993 (c.50)	In Schedule 2, in Part 1, paragraph 1.

Servants' Characters Act 1792

1. The purposes of the Servants' Characters Act 1792 ("the 1792 Act") were set out in the preamble to the Act as follows-

> "Whereas many false and counterfeit Characters of Servants have either been given personally or in Writing, by evil-disposed Persons being, or pretending to be, the Master, Mistress, Retainer, or Superintendent of such Servants, or by Persons who have actually retained such Servants in their respective Service, contrary to Truth and Justice, and to the Peace and Security of his Majesty's Subjects: And whereas the Evil herein complained of is not only difficult to be guarded against, but is also of great Magnitude, and continually increasing, and no sufficient Remedy has hitherto been applied:…"[58]

2. The 1792 Act sought to address the perceived evils of false character references. At a time when many households engaged servants to perform domestic duties, the oral or written character reference that assured the prospective employing master or mistress of the reliability, competence and trustworthiness of the prospective domestic servant would be an integral part of the engagement process.

3. The origins of the 1792 Act lay in a petition to Parliament by several householders in the Cities of London and Westminster who had taken servants into their households on the strength of false references. One of the petitioners, Dr Richard Brocklesby, complained that his house had been robbed, apparently as a result of knowledge acquired by one such servant whom he had employed on the strength of a false reference. The petition was referred to a Commons' Committee

[58] The preamble was repealed by the Statute Law Revision Act 1948, s.3.

and the report of that Committee led to the passing of the 1792 Act. An extract from the Committee's report is in the *Annex* to this note.

4. Sections 1 to 5 of the 1792 Act created the following offences[59]-

- falsely impersonating any master or mistress and giving a false character reference to a person offering themself as a servant (*section 1*);

- pretending or falsely asserting in writing that any servant has been hired or retained by them for any period of time or in any capacity other than that for which the servant was hired by them (*section 2*);

- pretending or falsely asserting in writing either that a servant had left their service on a particular date or else had never been employed in any previous service (*section 3*);

- a prospective servant either falsely asserting or pretending to have served in a particular service or else offering a false certificate of their character (*section 4*);

- falsely pretending not to have been hired or retained previously as a servant (*section 5*).

5. Thus sections 1 to 3 penalised the conduct of employers (and of persons impersonating employers) whilst sections 4 and 5 penalised the conduct of the servants themselves.

6. The only other provision in the 1792 Act that remains in force[60] is section 8 which absolves servants from any liability under the Act if they inform on their collaborators with the result that the collaborators are convicted.

[59] The penalty in each case on summary conviction is a fine not exceeding level 2 on the standard scale (currently £500).
[60] Section 6 was repealed by the Statute Law (Repeals) Act 1993, s.1(1), Sch.1, Pt.1; section 7 was repealed by the Statute Law Revision Act 1871; section 9 was repealed by the Summary Jurisdiction Act 1884, s.4, Sch; and section 10 was repealed by the Courts Act 1971, s.56(4), Sch.11, Pt.4.

7. It seems clear that the 1792 Act no longer serves any useful purpose. In the two centuries during which it has been in force there has been only one reported case on it[61]. Nor have any prosecutions been brought under it in modern times [**Home Office/CPS please confirm**].

8. The reasons for the 1792 Act falling into disuse are partly social (with the concept of domestic service having largely disappeared) and partly because of changes in the law over the past 200 years. The modern law governing the provision of employee character references tends to involve the civil law rather than criminal law, with damages being payable by way of compensation for inaccurate or misleading references.[62] However the general criminal law is sufficient to penalise anyone who provides or makes use of false references to obtain employment[63]. Moreover, where a reference is given fraudulently an employer giving such a reference may be liable to the recipient for the tort of deceit[64].

9. Accordingly it is proposed that the remains of the 1792 Act should be repealed on the basis that they are no longer of practical utility. This will permit a consequential repeal of text in the Statute Law (Repeals) Act 1993 (which amended the 1792 Act).

Extent

10. The 1792 Act extends only to England and Wales[65].

[61] *R* v *Costello and Bishop* [1910] 1 KB 28 (which concerned the liability of an employer for giving a false reference).
[62] In the leading case of *Hedley Byrne v. Heller & Partners Ltd* [1964] AC 465 (a case where the plaintiff was suing for losses sustained having relied on a misleading reference given by a bank) it was held that the law implies a duty of care when a party seeking information of another party trusts him to exercise due care and that other party knew or should have known that reliance was being placed on him.
[63] Section 16(1) of the Theft Act 1968 provides that anyone who by any deception dishonestly obtains for himself or for another any pecuniary advantage shall on conviction on indictment be liable to imprisonment for a term not exceeding 5 years. A person obtains a pecuniary advantage if he is given the opportunity to earn remuneration or greater remuneration in an office or employment: the 1968 Act, s.16(2)(c).
[64] *Foster* v *Charles* (1830) 6 Bing 396; 7 Bing 105; *Wilkin* v *Reed* (1854) 15 CB 192.
[65] The 1792 Act was repealed as to Scotland by the Statute Law (Repeals) Act 1993, s.1(1), Sch.1, Pt 1.

Consultation

11. The Home Office, the Crown Prosecution Service, the Department of Trade and Industry, the Department for Work and Pensions, the CBI, Unison and the relevant authorities in Wales have been consulted about these repeal proposals.

32-195-449
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ANNEX

Extract from the report of a Commons Committee concerning a petition of several householders within the Cities of London and Westminster

"*Sir Adam Ferguson* reported from the Committee, to whom the Petition of several Householders within the Cities of *London* and *Westminster*, for themselves and others, was referred; That the Committee had examined the Matter of the said Petition, and had directed him to report the same, as it appeared to them, to the House; and he read the Report in his Place; and afterwards delivered it in at the Clerk's Table: Where the same read; and is as followeth; *viz.*

To prove the Allegations of the said Petition, Doctor *Richard Brocklesby* gave the Committee the following Information: That within these Three Years, being in Want of a Servant, he advertised; upon which a proper Servant, seemingly, offered, and referred him to the Master of a House in *Chappel Street, May Fair,* where there was every Appearance of Credit and Character: The pretended Master gave the Man an excellent Character, and the Witness hired him: That having served him a little more than a Month, he told the Doctor that his Service would not suit him; whereupon he was discharged the same Night—he had also persuaded Three other Servants to quit the Service of the Doctor at the same Time—That, within a few Days after the Servants left him, his House was robbed, and Plate, which cost nearly £200, was taken from a Chest where it was usually kept, and which was in a Room on the Ground Floor, behind his Study—the Robbers did not appear to have gone to any other Part of the House. Early in the Morning, it was perceived that One of the Windows in the Drawing Room, where there are Pictures (and which Room is not commonly used) was open, and supposed to have been left so before the Servants left the House; for by this Window the Robbers appeared to have entered, from a Foot Mark found on the Lamp Iron, and on the Ledge of the Window, the Shutter of which is usually secured by an Iron Bar across it, but on which no Mark of Force appeared.

The Witness further said, That he procured a Warrant, and had all the Servants before a Magistrate, but nothing could be made out against them, although their Lodgings were searched—That, on the Examination of the Man Servant above mentioned, he owned before the Magistrate that he had paid a Guinea to the Keeper of the House in *May Fair* for a Character, and was to give him in Proportion to the Time of his Stay in the Doctor's Service—That the Magistrate sent to the House in *May Fair*, and it was found that the pretended Housekeeper had decamped a Fortnight before; and on Investigation of his Character, he appeared to have been on the Suspicious Books at *Bow Street*.

John Free, Esquire, being next examined, informed your Committee, That about Two Months since, being in Want of a Coachman, he was much pleased with the Appearance of a Man who offered himself to him in that Capacity, particularly so when he told him he had lived in his last Place Three Years and a Half; that he had left it about a Month, and that his Reason for so doing, was on Account of his Master's having put down his Carriage on some Family Misfortunes—He told him his Master's Name was *Pointer*, that he lived in *Suffolk*, but came to *London* about this

Time of the Year for Three or Four Months, and was then at his usual Place of Residence when in Town, at Doctor *Palin's*, No.48, *Great Russell Street, Bloomsbury*—The next Morning, on being told by the Coachman that his Master would be in the Way, the Witness called on Mr *Pointer,* who confirmed all the Coachman had said, and gave him so good a Character, that the Witness almost suspected the Truth of what he said; however, the Appearance of the House, and a Servant in Livery, soon did away his Suspicions, and he hired the Coachman—That, about a Week afterwards, having some Company, a Friend of his directly knew him, from his having lived with his Father about a Twelvemonth past—this rather alarmed him, and, from some Words that dropped from his Friend, he began to fear he had received a false Character of his Servant—That the witness interrogated the Servant, and on his not giving a satisfactory Account of himself, ordered him to take off his Livery, and quit his House—That, after paying him his Wages, he again interrogated him, and brought him to confess, that *Pointer* was a Man notoriously in the Habit of giving false Characters to Servants out of Place, and that for what he had said of him he had paid him One Guinea—He said, a Fellow-servant who had been successful in getting into a Family by this Man's Means, had advised him to adopt this Method—That the Witness called at Doctor *Palin's* this Morning, and found the Impostor was gone; but from his Landlord's Account, be understood that he had hired his Lodgings for a few Weeks, passing himself off for a Man of Property in *Gloucestershire*, but that he had been discovered by some Person in the Neighbourhood, and had left his House—The Witness was also informed that he went by the Names of *Punter, Pointer,* and *Prichard;* by the latter Name he has endeavoured to find him out, particularly at a Place that he often frequents, the *Orange Tree*, in *Orange Street, Bloomsbury*, a Rendezvous for Servants out of Place.

The Witness further said, That this Man has carried on the Trade a long Time, hiring Lodgings at different Times in reputable Situations, and passing himself for a Country Gentleman, come to Town for a short Time—And he added, That a Friend of his had made Application to *Sir Sampson Wright,* who informed him that the Person above mentioned was well known at the Public Office, but advised him to let the Matter drop, as nothing could be done towards punishing him".[66]

[66] House of Commons Journal 1791, Vol.46, pages 471-472 (10 May 1791).

Reference	*Extent of repeal or revocation*
Unlawful Drilling Act 1819 (60 Geo.3 & 1 Geo.4 c.1)	The whole Act [(except as it extends to Northern Ireland).]
Statute Law (Repeals) Act 1995 (c.44)	In Schedule 2, paragraph 1(a) and the words "Great Britain and" in paragraph 1(c).

Unlawful Drilling Act 1819

Summary

1. The Unlawful Drilling Act 1819 ("the 1819 Act") was put onto the statute book as a swift reaction to the Peterloo Massacre in Manchester that year. The 1819 Act has long ceased to serve any useful purpose – indeed there appear to have been no successful prosecutions brought under its powers – and it has been rendered obsolete by subsequent legislation concerning public order and firearms. Its wholesale repeal is now recommended.

Historical background

2. In 1819 the Manchester Patriotic Society was constituted to press for Parliamentary reform. Its membership comprised leading radicals of the area. The Society invited Henry Hunt and Richard Carlisle to speak at a public open-air meeting at St Peter's Field, Manchester on 16 August 1819.

3. On the day of the meeting the local magistrates were concerned that a substantial gathering of reformers might end in a riot. The organisers had drilled large numbers of men who marched to St Peter's Field. Some 50,000 to 60,000 people assembled, carrying banners with revolutionary inscriptions. Although the assembly was peaceful the magistrates, who had brought in special constables and detachments of the Lancashire and Cheshire Yeomanry, lost their nerve and ordered the arrest of Henry Hunt and the other leaders of the demonstration. The soldiers who tried to reach Hunt were pressed by the mob and drew their sabres. A troop of hussars came to their rescue and caused a general panic, in which 11 people were killed and about 400 wounded.

4. These events in Manchester were the last straw for a Government beset by fears of conspiracy and civil unrest following the end of the Napoleonic Wars. Although 1815 marked the changeover from war to peace, England was experiencing a period of social and economic unrest. The cessation in demand for munitions at home and abroad, the decline in foreign trade occasioned partly by the poverty of countries ruined by war and partly by hostile tariffs, widespread unemployment aggravated by the discharge of soldiers and sailors, and a lowering of wages to starvation levels all contributed to this unrest. Epidemics of rioting were breaking out across the country. In 1815 there were riots in Nottingham and Newcastle-on-Tyne. In 1815-16 there were agricultural riots in the eastern counties. Machine-breaking societies were establishing themselves in Leicester and Nottingham. At the same time came a revival of radical agitation demanding, in particular, Parliamentary reform. In London, two large demonstrations were organised in Spa Fields in 1816, the second of which resulted in rioting and in looting of gunshops.

5. Against this background the Government was convinced that the events in Manchester provided further evidence that there was an organised and widespread conspiracy to subvert the law and the existing institutions of the country. The Cabinet decided that the law about public meetings must be cleared up and that legislation must be introduced to prevent any revolutionary outbreak. Six Bills were introduced into Parliament including the Bill (then known as the Training Prevention Bill) that resulted in the 1819 Act[67].

6. The purpose of the 1819 Act was to fill what the Government regarded as a loophole in the criminal law. As the law stood before 1819, meetings or assemblies at which drilling or military training took place were not illegal unless a criminal intent could be proved or a breach of the peace occurred.

[67] The other five Bills had the following purposes-

(1) to increase the powers of magistrates to issue warrants for the search of arms: 60 Geo.3 & 1 Geo.4 c.2 (repealed by Statute Law Revision Act 1873);
(2) to prevent procedural delays in prosecutions for misdemeanours: 60 Geo.3 & 1 Geo.4 c.4 (repealed by Administration of Justice (Miscellaneous Provisions) Act 1938; Judicature (Northern Ireland) Act 1978);
(3) to strengthen the law against seditious assemblies: 60 Geo.3 & 1 Geo.4 c.6 (repealed by Statute Law Revision Act 1873);
(4) to permit the seizure of literature containing blasphemous or libellous material: 60 Geo.3 & 1 Geo.4 c.8 and
(5) to extend stamp duties to all papers and periodical pamphlets of a certain size: 60 Geo.3 & 1 Geo.4 c.9 (repealed by Newspapers, Printers and Reading Rooms Repeal Act 1869).

7. Section 1 is the principal provision in the 1819 Act. It is set out in full in the *Annex* to this note, but may be summarised as follows-

(a) all unauthorised meetings and assemblies of persons for the purpose of training or drilling in the use of arms or for practising military exercises are prohibited.

(b) Anyone present at any such meeting for the purpose of training or drilling other persons in the use of arms or the practice of military exercises is liable upon conviction to a maximum of 7 years imprisonment.

(c) Anyone (whether or not present at such meeting) who trains other persons in the use of arms or the practice of military exercises or who aids or assists therein is similarly liable upon conviction to a maximum of 7 years imprisonment.

(d) Anyone present at any such meeting for the purpose of being so trained or drilled faces a maximum of two years imprisonment.

8. Despite the urgency with which the 1819 Act was brought onto the statute book (11 December 1819) after the Peterloo Massacre (16 August 1819), little use seems to have been made of it. The two cases usually cited in connection with it provide no assistance. The case of *R* v *Hunt* in 1820[68] arose out of Peterloo and indeed involved one of the main speakers at the event. However the indictments were common law offences (notably unlawful assembly) and were not brought under the 1819 Act. Similarly the case of *Redford* v *Birley* in 1822[69], which also arose out of Peterloo, made no mention of the 1819 Act. This case concerned proceedings for assault allegedly committed by the yeomanary in quelling the disturbance. The proceedings were dismissed. The 1848 case of *R* v *Hunt*[70] concerned procedural objections to indictments brought under the 1819 Act following an assembly in the county of York. The outcome of the case is not known. Finally in the 1849 Irish case

[68] 3 B & Ald.566.
[69] 3 Stark 76 (171 ER 773).
[70] (1848) 3 Cox CC 215.

of *Gogarty* v *R*[71] the defendant was indicted and convicted of illegal training and drilling in Dublin contrary to the 1819 Act. However, Counsel for the defendant argued successfully that the indictments were flawed in that they failed to mention all the material ingredients of the offence as constituted by the 1819 Act and deviated from the precise language of the statute. The conviction was accordingly quashed. There are no other reported cases in which any proceedings have been taken under the 1819 Act.

Modern public order law

9. Changes in public order law over the past 70 years have effectively rendered the 1819 Act unnecessary. This is partly because the substantive criminal law has evolved to deal with a wide variety of public order issues, including crowd control and the management of demonstrations. But in addition changes in the way that the criminal law is enforced means that it is now the police rather than magistrates that are responsible for maintaining public order.

Public Order Act 1936

10. The Public Order Act 1936 ("the 1936 Act") was prompted by increasingly severe public disturbances both in London and in a number of provincial towns. These disturbances had resulted partly from a series of 'Marches of the Unemployed' in the early 1930s but particularly from clashes between the Uniformed British Union of Fascists (led by Oswald Mosley and organised on quasi-military lines) and a number of less well-organised Communist groups. Moreover anti-Semitic attacks were occurring not only in London but also in cities like Leeds and Manchester.

11. In a Cabinet paper entitled 'Preservation of Public Order' in July 1934, the Home Secretary defined the 'main mischief' requiring legislation as being 'the organisation of bodies of men who are drilled or trained to act in concert under the orders of officers, and to enforce their purposes by methods of violence or intimidation'. A subsequent Cabinet Committee concluded that new legislation was needed to deal with the following issues-

[71] (1849) 3 Cox CC 306 (Ir.).

- the wearing of uniforms signifying association with any political organisation or with the furthering of any political object

- associations where the members were either trained in exercises of a military character or organised on military lines for furthering a political object or usurping the function of the armed forces or the police

- the power of the police to regulate processions and impose restrictions on public meetings.

12. It is clear from the Cabinet discussions leading up to the 1936 Act that the 1819 Act was not thought to address any of these issues. The relevant Cabinet Committee minutes record as follows:

> "The Solicitor-General referred to the Unlawful Drilling Act of 1819 and pointed out that recourse to the provisions of this act had only been made on a few occasions and then only within two or three years of its passing into law".
>
> "The Home Secretary saw great objection to the proceedings being taken under this Act and thought that it must be assumed that new legislation would have to be passed"[72].

13. The 1936 Act contains two specific prohibitions. The first is in section 1 and prohibits the wearing in any public place or meeting of uniform signifying a person's association with any political organisation or with the promotion of any political object[73].

14. The second prohibition in the 1936 Act is in section 2. This provides that if the members or adherents of any association of persons (whether or not incorporated) are-

[72] Minutes of the First Meeting of the Cabinet Committee on the Preservation of Public Order, 16 October 1936, p.5.
[73] A proviso to section 1 permits the wearing of such uniform in limited circumstances.

(a) organised, trained or equipped for the purpose of enabling them to be employed in usurping the functions of the police or of the armed forces; or

(b) organised and trained or organised and equipped either-

(i) for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object; or

(ii) in such manner as to arouse reasonable apprehension that they are organised and either trained or equipped for that purpose,

then anyone who takes part in the control or management of the association (or in so organising or training as aforesaid any such members or adherents) commits an offence. The penalty on summary conviction is a term of imprisonment not exceeding six months or the prescribed sum (£5000) or both, and on indictment a term not exceeding two years or an unlimited fine or both.

15. Section 2 therefore is targeting the organisers of demonstrations and meetings rather than those people who attend them (as is the approach of the 1819 Act).

16. Prosecutions under sections 1 and 2 require the consent of the Attorney General.

Public Order Act 1986

17. The Public Order Act 1986 ("the 1986 Act") established a new code for controlling processions and assemblies. It also abolished the common law offences of riot, rout, unlawful assembly and affray.

18. Part 2 of the 1986 Act concerns processions and assemblies. Section 12 empowers the police to impose conditions on public processions and section 13 empowers the police to take steps to prohibit them altogether in certain circumstances.

19. Especially relevant in the context of the 1819 Act is section 14 of the 1986 Act, which empowers the police to impose conditions on public assemblies[74]. The power arises if a senior police officer, having regard to the time or place at which and the circumstances in which any public assembly is being held or is intended to be held, reasonably believes that-

(a) it may result in serious public disorder, serious damage to property or serious disruption to the life of the community, or

(b) the purpose of the persons organising it is the intimidation of others with a view to compelling them not to do an act they have a right to do, or to do an act which they have a right not to do.

20. In these circumstances section 14 empowers the senior police officer to give directions imposing on the persons organising or taking part in the assembly such conditions as to the place at which the assembly may be (or continue to be) held, its maximum duration, or the maximum number of persons who may constitute it, as appear to him necessary to prevent such disorder, damage, disruption or intimidation.

21. Any person who organises or takes part in a public assembly and knowingly fails to comply with a condition imposed under section 14 is guilty of an offence punishable (in the case of any organiser) by a term of imprisonment not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both, and (in the case of the person taking part in the assembly) by a fine not exceeding level 3 on the standard scale[75].

Criminal Justice and Public Order Act 1994

22. Additional public order powers are given to the police in Part 4 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). Under section 60(1) of the 1994

[74] A public assembly is an assembly of 20 or more persons in a public place which is wholly or partly open to the air: the 1986 Act, s.16.
[75] The 1986 Act, s.14(4), (5), (8) and (9).

Act the stop and search powers (in subsection (4)) arise if a police officer of or above the rank of inspector reasonably believes-

(a) that incidents involving serious violence may take place and that it is expedient to authorise these stop and search powers to prevent their occurrence; or

(b) that persons are carrying dangerous instruments or offensive weapons without good reason.

Section 60(4) empowers a police constable in uniform to stop any pedestrian and search him or anything carried by him for offensive weapons or dangerous instruments. The police constable may also stop and search any vehicle, its driver and any passenger for such weapons or instruments. Any such weapon or instrument is liable to be seized[76].

Firearms Act 1968

23. A further provision relevant in the context of the 1819 Act is section 19 of the Firearms Act 1968 which provides that a person commits an offence if, without lawful authority or reasonable excuse (the proof whereof lies on him), he has with him in a public place a loaded shot gun or loaded air weapon or any other firearm (whether loaded or not) together with ammunition suitable for use in that firearm. Moreover under section 47(1) a constable may require any person whom he has reasonable cause to suspect of having a firearm, with or without ammunition, with him in a public place to hand over the firearm or any ammunition for examination by the constable[77].

Common law remedies

24. In addition to these statutory provisions, the common law continues to give the police substantial power to take steps to prevent a breach of the peace. Thus in *R* v *Howell*[78] it was held that a constable had a power of arrest without warrant

[76] The 1994 Act, s.60(6).
[77] It is an offence to fail to comply with this requirement: section 47(2).
[78] [1982] QB 416. This case was cited with approval in *R (on the application of Laporte)* v *Chief Constable of Gloucestershire Constabulary* [2004] 2 ALL ER 874 at 880.

where there was a reasonable apprehension of an imminent breach of the peace even though the person arrested had not yet committed any breach. And in *Piddington* v *Bates*[79] it was held that the power of arrest by a constable for a breach of the peace extended to a power to stop and turn people back who are proceeding to a place where they are proposing to assemble.

Human Rights Act 1998: peaceful assembly

25. Although the modern law does not give the police a general power to prevent a meeting or assembly taking place, such a power would in any event be liable to challenge under the Human Rights Act 1998. Article 11 of the European Convention on Human Rights, which appears in Schedule 1 to the 1998 Act, provides that everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests[80]. Article 11 goes on to provide that no restrictions are to be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of, inter alia, national security, public safety and the prevention of disorder or crime[81].

Overview of 1819 Act in light of modern law

26. The modern law on public order does not in any sense replicate the 1819 Act. That Act was narrowly focussed so as to criminalise anyone who attends or assists in a meeting or assembly for the purpose of arms training, drilling or practising military exercises. Nor does the modern law seek to prohibit public meetings or assemblies. Instead the modern law, especially the 1986 Act, gives the police a range of powers to take steps to prevent a public meeting, assembly or procession giving rise to disorder, damage, disruption or intimidation. None of these powers were available to the magistrates in 1819.

27. The modern law contains a wide range of powers and procedures to prevent public disorder of the sort that prompted Parliament to pass the 1819 Act. These include-

[79] [1960] 3 ALL ER 660.
[80] Art.11(1).
[81] Art.11(2).

- controlling/prohibiting public processions (1986 Act, ss.12 and 13)
- imposing conditions on the maximum numbers of persons who may take part in an assembly or on where it may take place (1986 Act, s.14)
- stopping and searching persons in anticipation of violence (1994 Act, s.60)
- seizure of firearms carried unlawfully in public (Firearms Act 1968, ss.19, 47(1))
- banning the wearing of uniforms for political purposes (1936 Act, s.1)
- banning the organising, training or equipping of persons for the use of physical force to promote any political object (1936 Act, s.2)
- common law powers to prevent breaches of the peace.

28. The conclusion is that the 1819 Act has long ceased to serve any useful purpose and has been rendered obsolete by subsequent public order legislation. Its repeal is therefore recommended.

29. The repeal of section 1 of the 1819 Act will permit the remainder of the Act to be repealed consequentially. These remaining provisions are-

- section 2 (which empowers magistrates and constables to disperse any meeting or assembly rendered unlawful by section 1, and to arrest and detain any persons present at or aiding any such meeting or assembly)[82]

- section 3 (which applies only in Scotland and which gives sheriffs principal and other persons the powers in Scotland given to magistrates and constables elsewhere in the United Kingdom)

- section 7[83] (all prosecutions to be commenced within 6 months).

30. A further consequential repeal will also be possible to text in the Statute Law (Repeals) Act 1995. Paragraph 1 of Schedule 2 to that Act amended section 1 of the

[82] This power of arrest given to constables has now ceased to have effect by virtue of section 26 of the Police and Criminal Evidence Act 1984 (repeal of statutory powers of arrest without warrant or order).

1819 Act and this amendment will become unnecessary once the 1819 Act is repealed[84].

Extent

31. The 1819 Act extends throughout the United Kingdom, albeit with minor variations in relation to Northern Ireland. However since the modern public order legislation identified above does not extend to Northern Ireland it is proposed that the repeal of the 1819 Act should not extend to Northern Ireland: **Northern Ireland to advise on this please.**

Consultation

32. The Home Office, the Crown Prosecution Service, the Metropolitan Police, the Office of the Deputy Prime Minister, the Department for Constitutional Affairs, the Legal Secretariat to the Law Officers, Liberty and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

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[83] Sections 4 to 6 and 8 have already been repealed; section 4 by Statute Law (Repeals) Act 1989, s.1(1), Sch.1, Pt.1; sections 5 and 6 by Public Authorities Protection Act 1893, s.2, Sch.; section 8 by Statute Law Revision Act 1873.
[84] Part of paragraph 1 of Schedule 2 to the 1995 Act will need to be retained if the repeal of the 1819 Act does not extend to Northern Ireland.

ANNEX

Unlawful Drilling Act 1819

[1] Unauthorised meetings of persons for the purpose of being trained, or of practising military exercise prohibited

All meetings and assemblies of persons for the purpose of training or drilling themselves, or of being trained or drilled to the use of arms, or for the purpose of practising military exercise, movements, or evolutions, without any lawful authority from his Majesty, or [a Secretary of State, or any officer deputed by him for the purpose], …, by commission or otherwise, for so doing, shall be and the same are hereby prohibited as dangerous to the peace and security of his Majesty's liege subjects and of his government; and every person who shall be present at or attend any such meeting or assembly for the purpose of training and drilling any other person or persons to the use of arms or the practice of military exercise, movements, or evolutions or who shall train or drill any other person or persons to the use of arms, or the practice of military exercise, movements, or evolutions or who shall aid or assist therein, being legally convicted thereof, shall be liable to [imprisonment] for any term not exceeding seven years, . . . ; and every person who shall attend or be present at any such meeting or assembly as aforesaid, for the purpose of being, or who shall at any such meeting or assembly be trained or drilled to the use of arms, or the practice of military exercise, movements, or evolutions, being legally convicted thereof, shall be liable to be punished by fine and imprisonment not exceeding two years, at the discretion of the court in which such conviction shall be had.

Reference	*Extent of repeal or revocation*
Piracy Act 1837 (7 Will.4 & 1 Vict. c.88)	The whole Act.
Crime and Disorder Act 1998 (c.37)	Section 36(5).
Criminal Justice Act 2003 (c.44)	In Schedule 32, in Part 1, paragraph 1.

Piracy Act 1837

Background

1. The main purpose of the Piracy Act 1837 ("the 1837 Act") was to amend provisions in earlier statutes concerning penalties for acts of piracy. As a result of a series of repeals over the years[85], the 1837 Act now comprises only three sections (sections 2 to 4) which themselves now serve no useful purpose.

2. Piracy in international law (*piracy jure gentium*) is defined by the United Nations Convention on the Law of the Sea[86] ("the Convention") and this definition forms part of our domestic law[87]. Domestic courts have jurisdiction to try all cases of *piracy jure gentium* in whatever part of the high seas it may be committed[88].

3. The penalty for piracy is not prescribed by the Convention. The courts of any state which seizes a pirate ship pursuant to the Convention may decide upon the

[85] Section 1 was repealed by the Statute Law Revision Act 1874, s.1, Sch; section 3 was repealed by the Criminal Justice Act 2003, ss.304, 332, Sch.32, Pt.1, para.1, Sch.37, Pt.7 **[this repeal not yet in force]**; section 5 was repealed by the Statute Law Revision (No.2) Act 1893, s.1, Sch.; section 6 was repealed by the Statute Law Revision (No.2) Act 1890, s.1, Sch; and section 7 was repealed by the Statute Law Revision Act 1874 (No.2), s.2, Sch.

[86] Jamaica, 10 December 1982, (1983) Misc. 11 Cmnd 8941, arts. 101-103. According to art.101 of the Convention, piracy consists of-

(1) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed (a) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; or (b) against a ship, aircraft, persons or property in a place outside the jurisdiction of any state;

(2) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

(3) any act of inciting or intentionally facilitating an act described in head (1) or head (2) above.

[87] For the purposes of any proceedings before a court in the United Kingdom in respect of piracy, the United Nations Convention on the Law of the Sea, arts.101-103, which are set out in Schedule 5 to the Merchant Shipping and Maritime Security Act 1997, are to be treated as part of the law of nations: the 1997 Act, s.26(1).

[88] Thus the Crown Court has jurisdiction in England and Wales: Supreme Court Act 1981, s.46(2).

penalties to be imposed and may also determine the action to be taken in relation to the ship[89].

4. So far as the law in the United Kingdom is concerned, the penalty for piracy and for related acts used to be death. The effect of section 3 of the 1837 Act was to substitute a sentence of life imprisonment[90] for a range of offences that were treated as piracy under several pre-1837 enactments. However section 3 became obsolete following the final repeal of those pre-1837 enactments in 1993[91] and has since been [prospectively] repealed by the Criminal Justice Act 2003[92].

The modern law

5. The modern law prohibits acts of piracy against ships principally through section 9 of the Aviation and Maritime Security Act 1990 ("the 1990 Act"). Section 9 forms part of a group of provisions[93] regarding offences against the safety of ships and fixed platforms. The 1990 Act gives effect to (1) the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ("the Rome Convention") which was signed at Rome on 10 March 1988 and (2) the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf ("the Fixed Platforms Protocol"), which supplements the Rome Convention and which was also signed at Rome on the same date. Both the Rome Convention and the Fixed Platforms Protocol entered into force on 1 March 1992.

6. Section 9(1) provides that anyone who unlawfully, by the use of force or by threats of any kind, seizes a ship or exercises control of it, commits the offence of hijacking a ship, whatever his nationality and whether the ship is in the United Kingdom or elsewhere. A person guilty of the offence of hijacking a ship is liable on conviction on indictment to imprisonment for life[94].

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[89] The Convention, art.105.

[90] As originally enacted, section 3 imposed a penalty of transportation for life in some cases. By virtue of the Penal Servitude Act 1857, s.2 and the Criminal Justice Act 1948, s.1(1), the penalty became one of imprisonment for life.

[91] Statute Law (Repeals) Act 1993, s.1(1), Sch.1, Pt.1 (which repealed the Piracy Acts of 1698,1721 and 1744).

[92] The 2003 Act, ss.304, 332, Sch.32, Pt.1, Sch.37, Pt.7. Section 3 had already been repealed as it applied to Northern Ireland: Criminal Law (Northern Ireland) Act 1967, s.15(2), Sch.2, Pt.2.

[93] The 1990 Act, Part 2 (sections 9 to 17).

[94] The 1990 Act, s.9(3). The offence of hijacking under section 9(1) does not apply in relation to a warship or any other ship used as a naval auxiliary or in customs or police service unless (a) the person seizing or exercising control of the ship is a UK national; (b) his act is committed in the UK or (c) the ship is used in the naval or customs service of the UK or in the service of any police force in the UK: section 9(2).

7. Section 10 creates an offence of unlawfully, by the use of force or by threats of any kind, seizing a fixed platform or exercising control of it[95]. Section 11 creates an offence of unlawfully and intentionally destroying a ship or fixed platform or endangering their safety. Section 12 creates an offence of unlawfully and intentionally acting so as to endanger the safe navigation of any ship. A person guilty of an offence under sections 10 to 12 is liable on conviction on indictment to imprisonment for life.

8. Section 14(1) penalises certain acts done by a person (of whatever nationality) outside the United Kingdom if the act-

(a) would be an offence if done in the United Kingdom; and
(b) is done in connection with an offence under sections 9 to 12.

9. The acts covered are set out in section 14(2) and comprise-

(a) the offences of murder, attempted murder, manslaughter, culpable homicide and assault;
(b) offences under the following sections of the Offences Against the Person Act 1861-

- 18 (wounding or causing grievous bodily harm)
- 20 (inflicting bodily injury, with or without weapon)
- 21 (attempting to choke, suffocate or strangle)
- 22 (administering overpowering drug to assist in committing indictable offence)
- 23 (administering poison)
- 28 and 29 (both explosives offences); and

(c) offences under section 2 of the Explosive Substances Act 1883 (causing explosion likely to endanger life or property).

[95] A fixed platform is defined in section 17(1) of the 1990 Act. It includes offshore installations.

Unrepealed provisions in the 1837 Act

10. As stated earlier, the only three unrepealed provisions in the 1837 Act are sections 2, 3 and 4.

Section 2

11. Section 2 provides as follows-

> "**2. Punishment of piracy when murder is attempted**
> Whosoever, with intent to commit or at the time of or immediately before or immediately after committing the crime of piracy in respect of any ship or vessel, shall assault, with intent to murder, any person being on board of or belonging to such ship or vessel, or shall stab, cut, or wound any such person, or unlawfully do any act by which the life of such person may be endangered, shall be guilty of felony, and being convicted thereof shall be liable to imprisonment for life".[96]

12. Thus the purpose of section 2 was not to penalise acts of piracy but rather to penalise acts of violence perpetrated in connection with piracy.

13. It is clear that the acts of violence penalised by section 2 fall within the categories of violent offences covered by section 14(2) of the 1990 Act. Accordingly anyone planning or carrying out an act of piracy on any ship or vessel who commits any kind of assault on somebody belonging to that ship or vessel commits an offence. If the assault occurs within the United Kingdom, the offence is punishable under United Kingdom domestic criminal law in the usual way. If the assault occurs outside the United Kingdom, the offence is punishable in accordance with section 14(1) and (2) of the 1990 Act[97]. It follows that section 2 has been superseded and may now be repealed as being unnecessary. A consequential repeal is section 36(5) of the Crime and Disorder Act 1998 (which amended section 2).

Section 4

14. Section 4 provides as follows-

> **"4. Punishment of accessories**
> In the case of every felony punishable under this Act every principal in the second degree and every accessory before the fact shall be punishable in the

[96] As originally enacted the death penalty was imposed by section 2. The text substituting imprisonment for life was inserted by the Crime and Disorder Act 1998, s.36(5).

[97] Moreover the offence may be punishable pursuant to the Offences At Sea Act 1799 which provides that all offences committed on the high seas are punishable as if they were committed 'upon the shore': the 1799 Act, s.1. That Act does not however extend to Northern Ireland.

same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this Act shall, on conviction, be liable to be imprisoned for any term not exceeding two years."

15. The proposal above to repeal section 2 means that **[following the bringing into force of the repeal of section 3**] section 4 will now become unnecessary because there are no other remaining provisions in the 1837 Act upon which section 4 can operate. Section 4 has already been repealed in England and Wales[98] and in Northern Ireland[99].

Conclusion

16. The repeal of sections 2 and 4 is recommended on the basis that both are now unnecessary. Since they were the last surviving provisions left in the 1837 Act, it follows that the 1837 Act may be formally repealed in its entirety. A repeal consequential upon the repeal of the 1837 Act as a whole is the Criminal Justice Act 2003, Sch.32, Pt.1, para.1 (which repealed section 3 of the 1837 Act). **[This consequential provision will become repealable once the repeal of section 3 has been brought into force.]**

Extent

17. Section 2 of the 1837 Act extends throughout the United Kingdom whilst section 4 (as it currently stands) extends only to Scotland.

Consultation

18. The Home Office, the Foreign and Commonwealth Office, the Ministry of Defence, the Department for Transport, the Crown Prosecution Service, the International Maritime Bureau, the Chamber of Shipping, NUMAST (the National Union of Marine Aviation and Shipping Transport Officers) and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

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[98] Criminal Law Act 1967, s.10(2), Sch.3. Pt.3.
[99] Criminal Law (Northern Ireland) Act 1967, s.15(2), Sch.2, Pt.2.

Reference	*Extent of repeal or revocation*
Punishment of Offences Act 1837 (7 Will.4 & 1 Vict. c.91)	The whole Act.

Punishment of Offences Act 1837

1. The purpose of the Punishment of Offences Act 1837 ("the 1837 Act") was to substitute a sentence of transportation for a death sentence in respect of the statutory offences listed in the preamble to the 1837 Act.

2. The 1837 Act is now spent because all the provisions listed in the Act have now been repealed. These provisions are as follow-

- Riot Act 1714, ss.1, 5 (repealed by Statute Law (Repeals) Act 1973)
- Murder Act 1751, s.9 (repealed by Statute Law (Repeals) Act 1973)
- Prisoners (Rescue) Act 1791 (repealed by Statute Law Revision (Ireland) Act 1879, Statute Law Revision (Northern Ireland) Act 1953 and Prison (Northern Ireland) Act 1953, s.48)
- Incitement to Mutiny Act 1797, s.1 (repealed by Statute Law (Repeals) Act 1998)
- Incitement to Disaffection (Ireland) Act 1797, s.1 (repealed by Statute Law (Repeals) Act 1998)
- Unlawful Oaths Act 1812, ss.1, 4 (repealed by Statute Law (Repeals) Act 1981)
- Millbank Penitentiary Act 1819, s.17 (repealed by Millbank Prison Act 1843)
- Slave Trade Act 1824, s.9 (repealed by Statute Law (Repeals) Act 1998)
- Smuggling Act 1833, s.58 (repealed by Customs Act 1845).

3. Since the obsolete provision in section 1 substituting the transportation sentence for the death sentence is the only surviving provision of the 1837 Act, it follows that the 1837 Act as a whole is obsolete and may be repealed.

Extent

4. The 1837 Act extends throughout Great Britain.

Consultation

5. The Home Office, the Department for Constitutional Affairs and the relevant authorities in Wales and Scotland have been consulted about this repeal proposal

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Reference	*Extent of repeal or revocation*
Offences against the Person Act 1861 (24 & 25 Vict. c.100)	Section 17. Section 27 [except as it extends to Northern Ireland].

Offences against the Person Act 1861

Introduction

1. The Offences against the Person Act 1861 ("the 1861 Act") was one of a number of consolidating Acts of 1861. Its purpose, according to its long title, was to consolidate and amend the statute law of England and Ireland relating to offences against the person.

2. Although much of the 1861 Act still remains in force, certain provisions have become unnecessary in the 140 years since its enactment, mainly through being superseded by subsequent legislation. This note identifies these provisions and recommends their repeal.

Section 17 (impeding a person endeavouring to save himself or another from shipwreck)

3. Section 17 provides as follows-

> "Whosoever shall unlawfully and maliciously prevent or impede any person, being on board of or having quitted any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, in his endeavour to save his life, or shall unlawfully and maliciously prevent or impede any person in his endeavour to save the life of any such person as in this section first aforesaid, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for life"[100].

4. The origins of section 17 lie in an Act of 1753 entitled "An Act for enforcing the laws against persons who shall steal or detain shipwrecked goods; and for the relief

[100] By virtue of the Criminal Justice Act 1948, s.1(1), references in enactments to penal servitude are to be construed as references to a term of imprisonment not exceeding the maximum term of penal servitude which would otherwise have been passed.

of persons suffering losses thereby".[101] Section 1 made it an offence to plunder or steal any goods from a ship in distress or one which is "wrecked, lost, stranded or cast on shore." Section 1 also made it an offence to "beat or wound with intent to kill or destroy, or … otherwise wilfully obstruct the escape of any person endeavouring to save his or her life from such ship … or the wreck thereof". Finally section 1 made it an offence to "put out any false light or lights, with intention to bring any ship or vessel into danger".

5. In earlier times, shipwrecks around the coasts of England often attracted the attentions of local people who would flock to the scene intent mainly on plundering the cargo. This was particularly common around the Cornish coasts where people known as 'Wreckers' considered a stranded vessel as their property. Indeed vessels were sometimes lured onto the rocks by the Wreckers' false lights. As one account puts it-

> "Often, when the vessel strikes the ground, these wretches [i.e. the Wreckers] not only refrain from giving what assistance is in their power, but they go on board, and take such measures as inevitably to hasten the destruction of the ship. Nor have they always abstained from blood-guiltiness. Like the highway robber they sometimes find it necessary for their own safety, to add murder to theft."[102]

6. Section 17 is a relic of a by-gone age when ships in distress were, in some areas at least, more likely to be plundered than rescued. Indeed, the first attempts to design a proper lifeboat for saving persons from shipwreck were made only at the end of the eighteenth century[103] and it was not until the 1860s that lifeboats were produced in sufficient numbers to provide adequate coverage for England's coastline. The policy behind section 17, in its original 1753 form, was to provide at least some minimal protection for shipwrecked mariners in their attempts to save themselves and their fellows. Whatever the value of this protection back in 1753 when the forerunner of section 17 was enacted, it is clear that it serves no useful purpose now. There are no reported cases of prosecutions under section 17 and it

[101] 26 Geo.2 c.19, s.1. This provision was repealed in 1827 (7 & 8 Geo.4 c.27) and replaced by an 1827 consolidating and amendment Act (7 & 8 Geo.4 c.30). The replacement provision in the 1827 Act (s.11) was amended by an Act of 1837 (7 Will.4 & 1 Vict. c.89, s.7).

[102] *The Shipwreck: Shewing What Sometimes Happens on Our Sea Coasts* (published in London around 1825).

[103] One of these was the *Original* built by a ship's carpenter, Henry Greathead. The *Original* was launched on 30 January 1790. The National Institution for the Preservation of Life from Shipwreck was founded in 1824, changing its name in 1854 to the Royal National Lifeboat Institution.

is wholly improbable that this criminal sanction will ever be needed. The general law would provide a basic sanction should it ever prove necessary[104]. Moreover regulations may be made under the Merchant Shipping Act 1995 prescribing the steps to be taken to save the lives of persons in a shipwreck and punishing any contravention of those regulations[105].

Section 27 (exposing child, whereby life is endangered, or health permanently injured)

7. Section 27 provides as follows-

> "Whosoever shall unlawfully abandon or expose any child, being under the age of two years, whereby the life of such child shall be endangered, or the health of such child shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude"[106].

8. Section 27 has been superseded by section 1 of the Children and Young Persons Act 1933 ("the 1933 Act"). Section 1 provides that a person of 16 or over commits an offence if he or she has responsibility for any child or young person under that age and wilfully assaults, ill-treats, neglects, abandons or exposes that child or young person[107] in a manner likely to cause him unnecessary suffering or injury to health[108]. The penalty on summary conviction is a fine not exceeding the prescribed sum (currently £5000[109]) and/or imprisonment for a term not exceeding 6 months. The penalty on conviction on indictment is an unspecified fine and/or imprisonment for a term not exceeding 10 years.

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[104] In particular any assault occasioning actual bodily harm renders the offender liable, upon conviction on indictment, to penal servitude: 1861 Act s.47. By virtue of the Criminal Justice Act 1948, s.1(1) references in enactments to penal servitude are to be construed as references to a term of imprisonment not exceeding the maximum term of penal servitude which would otherwise have been passed. The punishment for this offence is now imprisonment for not more than 5 years: Penal Servitude Act 1891, s.1(1).

[105] The modern law concerning safety and health on ships is contained in Part 4 of the Merchant Shipping Act 1995. Section 85(1)(a) gives the Secretary of State a regulation-making power to secure the safety of United Kingdom ships and persons on them and for protecting the health of persons on United Kingdom ships. Such regulations extend to the steps to be taken, in a case where a ship is in distress or stranded or wrecked, for the purpose of saving the ship and its machinery, equipment and cargo and the lives of persons on or from the ship, including the steps to be taken by other persons for giving assistance in such a case: the 1995 Act, s.85(3)(l). Moreover such regulations may provide that a contravention of the regulations is an offence punishable on summary conviction by a fine not exceeding the statutory maximum and on conviction on indictment by imprisonment for a term not exceeding 2 years and a fine: the 1995 Act, s.85(7)(b).

[106] By virtue of the Criminal Justice Act 1948, s.1(1), references in enactments to penal servitude are to be construed as references to a term of imprisonment not exceeding the maximum term of penal servitude which would otherwise have been passed. The punishment for this offence is now imprisonment for not more than 5 years: Penal Servitude Act 1891, s.1.

[107] Or causes or procures the child or young person to be assaulted, ill-treated, neglected, abandoned or exposed.

[108] Including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement.

[109] Magistrates' Courts Act 1980, s.32(9).

9. Accordingly section 1 of the 1933 Act both covers and extends section 27. It covers the acts of abandoning and exposing a child and, in addition, extends to assault, ill-treatment and neglect. It also protects children up to the age of 12, whereas section 27 is limited to children under 2. It follows that section 27 has been superseded by the 1933 Act and its repeal is proposed on that basis.

10. However since section 1 of the 1933 Act does not extend to Northern Ireland, it may be necessary to limit the repeal so that section 27 continues in force in Northern Ireland. **Northern Ireland to advise on the need for this please.**

Extent

11. The 1861 Act extends to England, Wales and Northern Ireland.

Consultation

12. The Home Office, the Crown Prosecution Service, the Department for Transport, the International Maritime Bureau, the Chamber of Shipping, NUMAST (the National Union of Marine Aviation and Shipping Transport Officers) and the relevant authorities in Wales and Northern Ireland have been consulted about these repeal proposals.

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Reference	*Extent of repeal or revocation*
Criminal Law Amendment Act 1867 (30 & 31 Vict. c.35)	The whole Act.
Bail Act 1976 (c.63)	In Schedule 2, paragraph 3.

Criminal Law Amendment Act 1867

1. The purpose of the Criminal Law Amendment Act 1867 ("the 1867 Act") was, according to its long title, to remove some defects in the administration of the criminal law.

2. Repeals to the 1867 Act over the years have been such that only three sections remain in force: sections 6, 7 and 10. Sections 6 and 7 have now ceased to serve any useful purpose. Section 10 concerns bail and may conveniently be inserted in the Bail Act 1976. On that basis the whole of the 1867 Act can be formally repealed. The following paragraphs explain this proposal.

Sections 6 and 7

3. Section 6 of the 1867 Act relates to section 105 of the Magistrates' Courts Act 1980 ("the 1980 Act") which authorised a magistrate to take a sworn deposition of information relating to an indictable offence (or to a person accused of an indictable offence) from a person who is dangerously ill. Section 6 provides for the safekeeping of such a deposition and for its production in evidence at a subsequent trial. Section 7 provides for a prisoner with an interest in the taking of such a deposition to be present at its taking.

4. Both sections 6 and 7 (and section 105 of the 1980 Act) have been repealed by the Criminal Procedure and Investigations Act 1996[110], in relation to any alleged offence in relation to which Part 1 of that Act applies[111]. In other words sections 6 and 7 have been repealed in relation to any alleged offence into which no criminal investigation was begun before the day appointed for the purposes of Part 1. That

[110] The 1996 Act, ss.47, 80; Sch.1, Pt.2, para.14; Sch.5(10).
[111] Criminal Procedure and Investigations Act 1996 (Commencement) (Section 65 and Schedules 1 and 2) Order 1997, SI 1997/683.

day was 1 April 1997[112]. Since any criminal investigations that were proceeding immediately before 1 April 1997 will by now have been long concluded, sections 6 and 7 of the 1867 Act are now unnecessary and may be unconditionally repealed on that basis.

Section 10

5. Section 10 provides as follows-

> "*Where a person who has been granted bail in criminal proceedings is, while awaiting trial for the offence before the Crown Court, in prison*, under warrant of commitment, or under sentence for some other offence, it shall be lawful for the court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without writ of habeas corpus, and the said governor shall thereupon obey such order.".

6. The words in italics above were substituted by the Bail Act 1976[113].

7. Section 10 provides a means whereby a person who has been granted bail in criminal proceedings and is then confined in prison in relation to a separate criminal matter may be brought to court to enter a plea in relation to the first criminal proceedings without the need for a writ of habeas corpus.

8. Accordingly section 10 concerns the issue of bail. It sits in isolation from the main statutory provisions concerning bail that are found in the Bail Act 1976 ("the 1976 Act"). A more logical place for section 10 would be in the 1976 Act. It is therefore proposed that section 10 be inserted into that Act immediately after section 9. The necessary draft amendment appears in the attached *Schedule of consequential and connected provisions*.

9. The repeal of sections 6 and 7 and the re-siting of section 10 will mean that the 1867 Act will be left with no substantive provisions surviving. It follows that the 1867 Act may be repealed in its entirety. A consequential repeal will be paragraph 3 of Schedule 2 to the 1976 Act (which amended section 10 of the 1867 Act).

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[112] The Criminal Procedure and Investigations Act 1996 (Appointed Day No.3) Order 1997, SI 1997/682 appointed 1 April 1997 for the purposes of Part 1 of the 1996 Act in relation to England and Wales.
[113] The 1976 Act, s.12, Sch.2, para.3.

Extent

10. The 1867 Act extends only to England and Wales.

Consultation

11. The Home Office, the Crown Prosecution Service and the relevant authorities in Wales have been consulted about this repeal proposal.

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CONSEQUENTIAL AND CONNECTED PROVISIONS

Bail Act 1976 (c.63)

. After section 9 of the Bail Act 1976 insert the following section-

"**9A Production from prison without habeas corpus where bail has been granted.**
Where a person who has been granted bail in criminal proceedings is, while awaiting trial for the offence before the Crown Court, in prison, under warrant of commitment, or under sentence for some other offence, it shall be lawful for the court, by order in writing, to direct the governor of the said prison to bring up the body of such person in order that he may be arraigned upon such indictment without writ of habeas corpus, and the said governor shall thereupon obey such order.".

Reference	*Extent of repeal or revocation*
Foreign Enlistment Act 1870 (33 & 34 Vict. c.90)	Section 3.

Foreign Enlistment Act 1870

1. The purpose of the Foreign Enlistment Act 1870 ("the 1870 Act") was, according to its long title, 'to regulate the conduct of Her Majesty's Subjects during the existence of hostilities between foreign states with which Her Majesty is at peace".

2. The principal penal provisions of the 1870 Act made it an offence for anyone to enlist for military service in a foreign state at war with another foreign state at peace with this country or to induce another to do so without licence of the Queen (section 4), and for anyone to leave Great Britain or one of its dominions with the intention of enlisting for a foreign state (section 5).

3. Section 3 is the commencement provision. It provided that the 1870 Act should be proclaimed in every British possession by the governor thereof as soon as may be after receiving notice of the Act and should come into operation in that possession on that date. Section 3 ended by providing that the time at which the Act came into operation in any place was, as respects that place, referred to in the Act as the commencement of the Act.

4. Section 3 has long ceased to serve any useful purpose. As originally drafted, it provided also for the 1870 Act to come into force in the United Kingdom at Royal Assent. The provision delaying the commencement in a British possession, until a proclamation been made in that possession, would have allowed for the inevitable delay in notice of the Act reaching far distant overseas territories. However the provision is clearly long since obsolete. And the provision about references in the

Act to the commencement of Act is equally obsolete since the only provision in the Act containing such a reference was section 31 which was repealed in 1883[114].

Extent

5. The 1870 Act extends throughout the United Kingdom.

Consultation

6. The Foreign and Commonwealth Office, the Ministry of Defence, the Home Office and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about this repeal proposal.

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[114] Statute Law Revision Act 1883.

Reference	*Extent of repeal or revocation*
Conspiracy, and Protection of Property Act 1875 (38 & 39 Vict. c.86)	The whole Act [(except as it extends to Scotland).]

Conspiracy and Protection of Property Act 1875

Introduction

1. According to its long title, the purpose of the Conspiracy, and Protection of Property Act 1875 ("the 1875 Act") was "for amending the law relating to conspiracy, and to the protection of property, and for other purposes".

2. Most of the 1875 Act has already been repealed by subsequent legislation. Indeed the whole of the Act has been repealed as it applied to Northern Ireland[115]. The surviving provisions are unnecessary for reasons outlined in this note.

Provisions already repealed

3. The following provisions have already been repealed-

- section 2 (commencement of Act)[116]
- section 3 (amendment of law as to conspiracy in trade disputes)[117]
- section 4 (breach of contract by persons employed in supply of gas or water)[118]
- section 5 (breach of contract involving injury to persons or property)[119]
- section 7 (penalty for intimidation or annoyance by violence or otherwise)[120]
- section 8 (reduction of penalties)[121]

[115] Trade Union and Labour Relations (Northern Ireland) Order 1995, SI 1995/1980 (NI 12), art.150(4) Sch.4.
[116] Statute Law Revision (No.2) Act 1893 [section 1, Sch.1]
[117] Trade Union and Labour Relations (Consolidation) Act 1992, s.300(1), Sch.1 (which repealed this provision in England, Wales and Scotland).
[118] Industrial Relations Act 1971, ss.133, 169(2), Sch.9.
[119] Trade Union and Labour Relations (Consolidation) Act 1992, s.300(1), Sch.1 (which repealed this provision in England, Wales and Scotland).
[120] Trade Union and Labour Relations (Consolidation) Act 1992, s.300(1), Sch.1 (which repealed this provision in England, Wales and Scotland).
[121] Statute Law (Repeals) Act 1993, s.1(1), Sch.1, Pt.1

- section 9 (power for offender to be tried on indictment)[122]
- section 10 (proceedings before court of summary jurisdiction)[123]
- section 11 (regulations as to evidence)[124]
- section 12 (English or Irish appeals to quarter sessions)[125]
- section 13 (general definitions)[126]
- section 14 (definitions of 'municipal authority' and 'public company')[127]
- section 15 (construction of 'maliciously')[128]
- section 16 (saving as to sea services)[129]
- section 17 (repeals)[130]
- section 19 (recovery of penalties etc in Scotland)[131]
- section 20 (appeals in Scotland)[132].

Unrepealed provisions

4. The only unrepealed provision of substance in the 1875 Act is section 6 (penalty for neglect by master to provide food, clothing etc for servant or apprentice). This provides as follows-

> "Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding level 2 on the standard scale, or to be imprisoned for a term not exceeding six months, with or without hard labour."

5. Section 6 is cast in broadly similar terms to section 26 of the Offences against the Person Act 1861 ("the 1861 Act") which provides as follows-

> "Whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, shall wilfully and without lawful excuse refuse or neglect to provide the same, or shall

[122] Criminal Law Act 1977, ss.15(3)(b), 65(5), Sch.13.
[123] Statute Law (Repeals) Act 1989, s.1(1), Sch.1, Pt.1.
[124] Ibid.
[125] Courts Act 1971, s.56(4), Sch.11, Pt.4.
[126] Statute Law (Repeals) Act 1989, s.1(1), Sch.1, Pt.1.
[127] Industrial Relations Act 1971, s.169(2), Sch.9.
[128] Trade Union and Labour Relations (Consolidation) Act 1992, s.300(1), Sch.1 (which repealed this provision in England, Wales and Scotland).
[129] Ibid.
[130] Statute Law Revision Act 1883, s.1, Sch.; Industrial Relations (Northern Ireland) Order 1992: SI 1992/807 (NI 5), art.108(3), Sch.6.
[131] Statute Law (Repeals) Act 1989, s.1(1), Sch.1, Pt.1.
[132] Ibid.

unlawfully and maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant shall be endangered, or the health of such apprentice or servant shall have been or shall be likely to be permanently injured, shall be guilty of a misdemeanour, and being convicted thereof shall be liable to be kept in penal servitude"[133].

6. The reason for section 6 being enacted when section 26 was already in force may well have been due to the fact that the 1861 Act did not, in general, extend to Scotland[134] whereas the 1875 Act extended throughout the United Kingdom. It is clear, however, that section 6, at least so far as England and Wales is concerned, is unnecessary given the protection afforded by section 26[135]. On that basis section 6 may safely be repealed for England and Wales in reliance on section 26. **However, since section 26 does not extend to Scotland, the Scottish authorities are asked to consider whether section 6 continues to be necessary in Scotland or whether it has been superseded by more modern legislation**.

7. The only other unrepealed provisions in the 1875 Act are sections 1 (short title), 18 (application to Scotland) and 21 (application to Ireland).

8. If section 6 is not still required in Scotland, section 18 will become unnecessary because section 6 is the only remaining substantive provision extending to Scotland. That will permit an outright repeal of the 1875 Act because-

(a) section 21 is unnecessary, the 1875 Act no longer extending to Northern Ireland[136]; and

(b) the short title in section 1 will fall consequentially.

9. If section 6 is still required for Scotland, the repeal of the 1875 Act as a whole will still be possible for England and Wales.

[133] Penal servitude was abolished by the Criminal Justice Act 1948, s.1(1). By virtue of that provision and section 1(1) of the Penal Servitude Act 1891, an offence under section 26 of the 1861 Act is punishable by a period of imprisonment not less than 3 years and not exceeding a maximum of 5 years. A fine may be imposed in addition to, or as an alternative to, imprisonment: Powers of Criminal Courts (Sentencing) Act 2000, s.127.

[134] The 1861 Act, s.78.

[135] The only aspect of section 6 that is not mirrored by section 26 is in relation to any legal liability to provide a servant or apprentice with medical aid. However, the assumption of such a liability reflects a time before ready access to primary and secondary healthcare provided by the State free of charge.

[136] By virtue of the Trade Union and Labour Relations (Northern Ireland) Order 1995, SI 1995/1980 (NI 12), art.150(4), Sch.4.

Extent

10. The 1875 Act extends throughout Great Britain.

Consultation

11. The Home Office, the Department of Health, the Department for Work and Pensions, the Crown Prosecution Service, the CBI, the TUC and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about this repeal proposal.

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Reference	*Extent of repeal or revocation*
Indictments Act 1915 (5 & 6 Geo.5 c.90)	Section 1.

Indictments Act 1915

1. The purposes of the Indictments Act 1915 ("the 1915 Act") included the prescribing of rules as to indictments.

2. Section 1 introduced the indictments rules contained in Schedule 1 to the 1915 Act. Section 1 provides as follows-

> "The rules contained in the First Schedule to this Act with respect to indictments shall have effect as if enacted in this Act, but those rules may be added to, varied, or annulled by further rules made under this Act.".

3. As originally enacted, section 1 also provided that these rules might be added to, varied or annulled by further rules made by the rule committee under the Act. This rule committee was established under section 2(1).

4. This rule committee, however, no longer exists. Section 2(1) establishing it, and the reference to it in section 1, have been repealed[137]. Rules as to indictments are now made by the Criminal Procedure Rule Committee[138] and section 2(2) of the 1915 Act empowers the Committee-

> " from time to time, to make rules varying or annulling the rules contained in the First Schedule to this Act and to make further rules with respect to the matters dealt with in those rules, and those rules shall have effect subject to any modifications or additions so made"[139].

5. Although section 2(2) continues to refer to the rules contained in the First Schedule to the 1915 Act, these rules no longer exist, having been repealed by the Indictment Rules 1971 ("the 1971 Rules") which superseded them[140].

[137] Criminal Justice Administration Act 1956, s.19(4)(b).
[138] The Criminal Procedure Rule Committee was established by the Courts Act 2003, ss.69 and 70 with effect from 1 September 2004: Courts Act 2003 (Commencement No.6 and Savings) Order 2004, SI 2004/2066, arts.2(b)(i), 3.
[139] Immediately before the establishment of the Criminal Procedure Rule Committee, the rule-making functions under the 1915 Act were vested in the Crown Court Rule Committee which was established by the Supreme Court Act 1981, s.86.
[140] SI 1971/1253, r.2(1), Sch.2.

6. The revocation of the rules contained in the First Schedule to the 1915 Act means that sections 1 and 2(1) of the 1915 Act have become misleading. Indeed section 1 is now obsolete in that it makes provision for amendment of these revoked rules. And section 2(2), which empowers the making of rules as to indictments, does so by reference to these revoked rules instead of the 1971 Rules.

7. Accordingly it is proposed that section 1 be repealed outright as being obsolete and section 2 be amended by substituting a reference to the 1971 Rules for the revoked rules. The necessary draft amendment appears in the attached *Schedule of consequential and connected provisions.*

Extent

8. The 1915 Act extends only to England and Wales.

Consultation

9. The Home Office, the Department for Constitutional Affairs, the Crown Prosecution Service, the Criminal Procedure Rule Committee and the relevant authorities in Wales have been consulted about this repeal proposal.

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Indictments Act 1915 (c.90)

. In section 2(2) of the Indictments Act 1915 (powers of rule committee), for "First Schedule to this Act" substitute "Indictment Rules 1971".

Reference	*Extent of repeal or revocation*
Criminal Justice Act 1948 (11 & 12 Geo.6 c.58)	Section 69. Section 78. Schedule 8.

Criminal Justice Act 1948

1. The purposes of the Criminal Justice Act 1948 ("the 1948 Act") included providing new methods for dealing with offenders and persons liable to imprisonment. For example, penal servitude and hard labour were abolished as forms of punishment[141]. Several provisions in the 1948 Act are now obsolete.

2. Section 69 provided that where a Royal Pardon has been given to a person who has been sentenced to death and that Pardon is on condition that he serves a term of imprisonment, he is deemed to have been sentenced to that term by the court before which he was convicted. Section 69 dates back to the time when courts had power to pass a death sentence. It is now obsolete because the death penalty can no longer be issued by a court within the United Kingdom.[142]

3. Section 78 (transitory provisions) introduced the transitory provisions contained in Schedule 8 in respect of persons who, immediately before the commencement of the 1948 Act on 18 April 1949[143] had been sentenced by a criminal court to penal servitude, imprisonment with hard labour, preventive detention, detention in a Borstal institution, police supervision or to a probation order.

4. Most of Schedule 8 has already been repealed[144]. The only provisions left unrepealed are paragraphs 1 and 2. *Paragraph 1(1)* provides that anyone who, before 18 April 1949 was undergoing or liable to undergo a term of penal servitude should, if in custody in England on that date, be treated as if his sentence were for

[141] The 1948 Act, s.1.
[142] The last remaining offences carrying the death penalty were offences under the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957. The death penalty for these offences was abolished by the Human Rights Act 1998, s.21(5).
[143] Section 78 and all relevant paragraphs of Schedule 8 were brought into force by the Criminal Justice Act 1948 (Date of Commencement) Order 1949, SI 1949/139, art.2, Sch.2.
[144] Powers of Criminal Courts Act 1973, s.56(2), Sch.6.

imprisonment and not penal servitude. *Paragraph 1(2)* provides that anyone who, having been sentenced to (or undergone) penal servitude for life, was on 18 April 1949 out on licence granted under the Penal Servitude Acts 1853 to 1891, should (unless the licence was granted to him when in Scotland) be deemed to be out on licence under section 57 of the 1948 Act. *Paragraph 1(3)*[145] provides that anyone who, having been sentenced to penal servitude for a term less than life, was on 18 April 1949 out on licence granted under the Penal Servitude Acts 1853 to 1891, should (unless the licence was granted to him when in Scotland) be treated if his sentence had expired. *Paragraph 2* provides that anyone who had been sentenced to imprisonment with hard labour for a term that had not expired on 18 April 1949 should, for the rest of the term, be treated as though he had been sentenced to imprisonment without hard labour.

5. Clearly the transitory provisions in paragraphs 1 and 2 can today operate only in relation to persons who-

(a) were imprisoned, or out on licence, on 18 April 1949; and

(b) remain imprisoned, or out on licence, today.

6. **The Home Office/HM Prison Service are asked to indicate whether they are aware of any persons falling within paragraph 5 above**. In any event, the operation of section 16(1) of the Interpretation Act 1978 will preserve the effect of paragraphs 1 and 2 even after their repeal, so far as the rights and liabilities of prisoners and persons out on licence are concerned[146].

Extent

7. The 1948 Act extends to England and Wales only.

[145] Paragraph 1(2A) of Schedule 8, inserted by Criminal Justice (Scotland) Act 1949, s.77, Sch.11 ceased to have effect when the 1949 Act was repealed by the Criminal Procedure (Consequential Provisions) (Scotland)) Act 1995, s.6, Sch.5.
[146] In particular section 16(1)(c) provides that the repeal of an enactment does not, unless the contrary intention appears, affect any right, privilege, obligation or liability acquired, accrued or incurred under that enactment.

Consultation

8. + The Home Office, HM Prison Service and the relevant authorities in Wales have been consulted about these repeal proposals.

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Reference	*Extent of repeal or revocation*
Common Informers Act 1951 (14 & 15 Geo.6 c.39)	In the Schedule, the entry relating to the White Herring Fisheries Act 1771.

Common Informers Act 1951

1. The purpose of the Common Informers Act 1951 ("the 1951 Act") was to abolish the common informer procedure – that is, the procedure whereby a penalty or forfeiture could be recovered under many enactments by a common informer[147]. The 1951 Act substituted punishment by way of fine on summary conviction in those cases where no criminal procedure was available as an alternative to the common informer procedure.

2. Section 1 of the 1951 Act gave effect to the abolition of the common informer procedure by providing that no proceedings for a penalty or forfeiture under any enactment listed in the Schedule to the 1951 Act (or under any local or private Act) should be instituted in Great Britain[148].

3. Many of the enactments listed in the Schedule have been repealed since 1951. The corresponding entries in the Schedule have themselves been repealed as well.

4. One entry in the Schedule is the White Herring Fisheries Act 1771 ("the 1771 Act"). This appears in the Schedule because section 11 of the 1771 Act contains a provision whereby a person infringing the rights given by that section is liable to forfeit a sum of money by way of penalty[149].

[147] A common informer was a person who took proceedings for infringements of certain statutes solely for the purpose of being awarded the penalty which, by the relevant statute, was due to anyone who gave information of the infringement.
[148] Section 1 does, however, contain a proviso to the effect that proceedings are not prohibited in cases where no part of the penalty or forfeiture is payable to a common informer.
[149] Section 11 gives persons employed in the white herring fisheries industry certain rights including the right to fish and use ports and harbours etc free of charge. The section imposes a penalty on anyone who obstructs these rights or demands or receives money (or other consideration) in return for their exercise.

5. The relevant provision in section 11, as originally enacted, read as follows-

> "And if any person or persons shall presume to demand or receive any dues, sums of money, or other consideration whatsoever, for the use of any such ports, harbours, shores, or forelands, within the limits aforesaid, or shall obstruct the fishermen, or other persons employed in the taking or curing of fish, or drying their nets, in the use of the same, every person so offending shall, for every such offence, forfeit the sum of one hundred pounds, to be recovered and levied in manner herein- after directed.".

6. The reference in section 11 to 'to be recovered and levied in manner herein-after directed' refers to the provision in section 13 whereby the penalty in section 11 could be sued for in the courts by anyone who was prepared to bring the necessary action. Section 13 provided that one half of the penalty should be paid to the person bringing the action, the other half going to the Crown. This procedure, however, no longer exists because section 13 has been repealed[150].

7. By virtue of the Criminal Justice Act 1982[151], the penalty provided by section 11 is now level 3 on the standard scale. Accordingly the relevant provision in section 11 now reads-

> "… every person so offending shall … forfeit the sum of level 3 on the standard scale, to be recovered and levied in manner herein-after directed.".

8. The repeal of section 13 in 1993 effectively abolished the common informer provision in the 1771 Act. As a result it is no longer necessary for the Schedule to the 1951 Act to include a reference to the 1771 Act. That reference may therefore be safely repealed.

9. Section 11 will, however, still read oddly because it still refers to 'forfeit' and to a non-existent system for recovering that forfeit. It is therefore proposed that the relevant wording of section 11 be amended so as to remove these obsolete references. The necessary draft amendment appears in the attached *Schedule of consequential and connected provision*.

[150] Statute Law (Repeals) Act 1993, s.1(1), Sch.1, Pt.2.
[151] The 1982 Act, ss.37, 38, 46.

Extent

10. The 1951 Act extends throughout Great Britain as does the 1771 Act.

Consultation

11. The Home Office, the Crown Prosecution Service, the Department for Environment, Food and Rural Affairs, the Sea Fish Industry Authority and the relevant authorities in Wales and Scotland have been consulted about these repeal proposals.

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SCHEDULE

OF

CONSEQUENTIAL AND CONNECTED PROVISIONS

White Herring Fisheries Act 1771 (c.31)

. In section 11 of the White Herring Fisheries Act 1771, for “forfeit the sum” to the end substitute “be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”.

Reference	*Extent of repeal or revocation*
Sexual Offences Act 1956 (4 & 5 Eliz.2 c.69)	In section 35(2), the words from "(whether" to "1885)". In section 35(3), the words from "or was so convicted" to "commencement of this Act," and from "or under subsection (1)" to the end. In section 52(1), the proviso.

Sexual Offences Act 1956

1. The Sexual Offences Act 1956 ("the 1956 Act") was passed to consolidate the existing law relating to sexual crimes and related matters. The passage of time has rendered a number of provisions in the 1956 Act obsolete.

2. Section 35(1) makes it an offence for the tenant or occupier (or person in charge) of any premises knowingly to permit the whole or part of the premises to be used as a brothel.

3. Section 35(2) provides for the enlargement of the rights of a landlord in a case where the tenant or occupier of any premises is convicted, whether under section 35(1) or (for an offence committed before the commencement of the 1956 Act) under section 13 of the Criminal Law Amendment Act 1885[152], of knowingly permitting the premises to be used as a brothel. This transitional reference to convictions before the commencement of the 1956 Act (1 January 1957[153]) is long spent and may now be repealed on that basis.

4. Similarly spent are two transitional provisions in section 35(3). These are a further reference to section 13 of the Criminal Law Amendment Act 1885, and a reference to a landlord's rights under section 5(1) of the Criminal Law Amendment Act 1912[154].

[152] The Criminal Law Amendment Act 1885 was repealed by the 1956 Act: s.51, Sch.4.
[153] The 1956 Act, s.56.
[154] The Criminal Law Amendment Act 1912 was repealed by the 1956 Act: s.51, Sch.4. The landlord's rights given by section 5 of the 1912 Act were replaced by the rights given by Schedule 1 to the 1956 Act. Similarly spent is the proviso to section 52(1) which disapplied these landlords' rights under the 1912 Act once they had been replaced by the rights given by Schedule 1 to the 1956 Act.

Extent

5. The provisions identified for repeal in this note extend only to England and Wales.

Consultation

6. The Home Office, the Crown Prosecution Service, the Office of the Deputy Prime Minister and the relevant authorities in Wales have been consulted about these repeal proposals.

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Reference	*Extent of repeal or revocation*
Criminal Justice Act 1972 (c.71)	Section 31. Section 59. In section 66(6), the proviso. In section 66(7)(a), the words "section 31" to "1950,".

Criminal Justice Act 1972

1. The purposes of the Criminal Justice Act 1972 ("the 1972 Act") included increasing the penalties for certain offences of Sunday trading, abolishing the duty to re-convey certain prisons to local authorities and amending the penalties for offences under the Firearms Act 1968.

2. Section 31 increased the penalties payable under sections 59(1), 64 and 67(5) of the Shops Act 1950 (penalties for offences of trading or carrying on business on Sunday). Since, however, the whole of the Shops Act 1950 has been repealed, section 31 is now unnecessary[155]. A consequential repeal is a reference to section 31 in section 66(7)(a) (extension of section 31 to Scotland).

3. Section Section 59 provided that section 38 of the Prison Act 1952 (which entitled local authorities to buy back prisons that were taken over under the Prison Act 1877 and subsequently closed) was not to apply in the case of any prison closed after the coming into force of section 59 (1 January 1973)[156] unless the Secretary of State had before 10 November 1971 informed the appropriate authority of his intention to close it after that date[157]. The passage of time since 1973 has rendered this provision obsolete.

[155] Sections 59 and 64 of the Shops Act 1950 were repealed by the Sunday Trading Act 1994, s.9(2), Sch.5; the remainder of the 1950 Act (including section 67) was repealed by the Deregulation and Contracting Out Act 1994, ss.23, 24(b), 81(1), Sch.17.
[156] Criminal Justice Act 1972 (Commencement No.1) Order 1972, SI 1972/1763, art.2.
[157] Prison Act 1952, s.38 (except as provided in s.59 of the 1972 Act) was repealed by the 1972 Act, s.64(2), Sch.6, Pt.2.

4. 66(6) provides for the 1972 Act to come into force by order. The proviso to section 66(6) reads-

> "Provided that-
>
> (a) sections 28, 30, 31 and 32 shall not affect the punishment for an offence completed before those sections come into force; and
>
> (b) neither section 36 …[158] shall come into force until provision has been made by rules of court with a view to preventing or restricting the disclosure of the identity of the acquitted person in references under that section."

5. This proviso to section 66(6) has long ceased to serve any useful purpose. So far as *paragraph (a)* is concerned, the effect of the four provisions specified was to amend certain criminal sanctions contained in earlier enactments. Of the four, only sections 28 and 31 remain in force, (sections 30 and 32 having already been repealed[159]). Section 31 is proposed for repeal above. As for section 28, its purpose was to amend provisions in Part 1 of Schedule 6 to the Firearms Act 1968 prescribing penalties for offences under that Act. Paragraph (a) was a savings provision to ensure that anyone charged with an offence completed before 1 January 1973[160] would not be subject to the amended penalty. Clearly no-one now will face charges in respect of firearms offences committed more than thirty years ago. *Paragraph (b)* became spent when section 36 of the 1972 Act came into force on 1 October 1973[161].

Extent

6. The provisions proposed for repeal in this note (other than section 59) extend throughout Great Britain. Section 59 extends only to England and Wales.

[158] The words "nor the corresponding section referred to in section 63(3)" were included in section 66(6)(b) when it was originally enacted. However, these words were repealed by the Criminal Appeal (Northern Ireland) Act 1980, s.51(2), Sch.5.
[159] Section 30 was repealed by the Protection from Eviction Act 1977, s.12(3), Sch.3; section 32 was repealed by the Housing (Consequential Provisions) Act 1985, s.3, Sch.1, Pt.1.
[160] Section 28 was brought into force on 1 January 1973: Criminal Justice Act 1972 (Commencement No.1) Order 1972, SI 1972/1763.
[161] Criminal Justice Act 1972 (Commencement No.3) Order 1973, SI 1973/1472.

Consultation

7. The Home Office, the Crown Prosecution Service and the relevant authorities in Wales and Scotland have been consulted about these repeal proposals, as have the Local Government Association and the Welsh Local Government Association in relation to the proposal to repeal section 59.

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Reference	*Extent of repeal or revocation*
Criminal Justice Act 1982 (c.48)	Section 28. Sections 30 and 31. Section 68(1). Section 72(3). Schedule 12.

Criminal Justice Act 1982

1. The purposes of the Criminal Justice Act 1982 ("the 1982 Act") included making further provision as to the sentencing and treatment of offenders. Several provisions in the 1982 Act have now ceased to serve any useful purpose.

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2. Section 28 increased the limit on the amount of a recognisance that can be taken from parents and guardians by amending the sum specified in section 2(13) of the Children and Young Persons Act 1969[162]. Section 2 of the 1969 Act was, however, repealed by the Children Act 1989[163] whereupon section 28 became spent.

3. Sections 30 and 31 are also amending provisions that are now spent. Section 30 amended section 47 of the Criminal Law Act 1977. Section 47 was, however, repealed by the Criminal Justice Act 1991[164] whereupon section 30 became spent. Section 31 repealed text in section 23(1) of the Powers of Criminal Courts Act 1973 and became spent when section 31 came into force on 31 January 1983[165].

4. Section 72(1) abolished the right of an accused person to make an unsworn statement in criminal proceedings. Section 72(3), however, disapplied this abolition in relation to a trial (or to proceedings before a magistrates' court acting as examining justices) which began before section 72 came into force on 24 May 1983[166]. Clearly the need for section 72(3) has long since passed.

[162] Section 28 increased the limit from £200 to £500.
[163] The 1989 Act, s.108(7), Sch.15.
[164] The 1991 Act, ss.5(2)(b), 101(2), Sch.13.
[165] Criminal Justice Act 1982 (Commencement No.1) Order 1982, SI 1982/1857.
[166] Criminal Justice Act 1982 (Commencement No.2) Order 1983, SI 1983/182.

5. Schedule 12 relates to the powers of courts in England and Wales in relation to community service orders and to arrangements for persons in England and Wales to perform work under such orders. Schedule 12 operates by amending sections 14 and 17 of the Powers of Criminal Courts Act 1973. Since, however, the 1973 Act has been repealed by the Powers of Criminal Courts (Sentencing) Act 2000[167], Schedule 12 is now spent. Similarly spent is section 68(1) which introduces Schedule 12.

Extent

6. The provisions proposed for repeal in this note extend to England and Wales only.

Consultation

7. The Home Office, the Crown Prosecution Service and the relevant authorities in Wales and Scotland have been consulted about these repeal proposals.

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[167] The 2000 Act, s.165(4), Sch.12, Pt.1.

Reference	*Extent of repeal or revocation*
Nuclear Material (Offences) Act 1983 (c.18)	Section 4(1)(a). Section 5A.

Nuclear Material (Offences) Act 1983

1. The principal purpose of the Nuclear Material (Offences) Act 1983 ("the 1983 Act") was to implement the Convention on the Physical Protection of Nuclear Material[168]. The 1983 Act contains two provisions that are now unnecessary.

2. Section 4(1)(a) amends sections 2(1) and 2(2) of the Internationally Protected Persons Act 1978 as those provisions were originally enacted. However, these amendments to sections 2(1) and 2(2) were replaced by text substituted by the United Nations Personnel Act 1997[169]. Section 4(1)(a) thereupon became spent.

3. Section 5A of the 1983 Act was prospectively inserted by the Criminal Justice Act 1988[170] but ceased to have effect when the provision inserting it was repealed by the Extradition Act 1989[171].

Extent

4. The 1983 Act extends throughout the United Kingdom.

Consultation

5. The Home Office and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

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[168] This Convention was opened for signature at Vienna and New York on 3 March 1980.
[169] The 1997 Act, s.7, Sch, para.2. Further amendments were made to the text of sections 2(1) and 2(2) by the Crime (International Co-operation) Act 2003, s.91(1), Sch.5, paras.1, 2.
[170] The 1988 Act, s.170(1), Sch.15, para.95.
[171] The 1989 Act, s.37(1), Sch.2.

Reference	*Extent of repeal or revocation*
Prosecution of Offences Act 1985 (c.23)	Sections 12 and 13. Section 15(7). Section 28. Section 31(4).

Prosecution of Offences Act 1985

1. The principal purpose of the Prosecution of Offences Act 1985 ("the 1985 Act") was to establish a Crown Prosecution Service ('CPS') for England and Wales. Several provisions in this Act have now become unnecessary.

2. Section 12 imposed an obligation on the Attorney General, not later than 3 months after the passing of the 1985 Act, to establish a staff commission to –

(a) consider the general effect of Part 1 of the 1985 Act (establishment of the CPS) on staff employed by any authority in connection with the discharge of prosecution functions; and

(b) advise the Attorney General and the Director of Public Prosecutions ('DPP') on the arrangements necessary to safeguard the interests of such staff.

3. The purpose of this transitory provision was to assess the effect of the new prosecuting regime established by the 1985 Act on the staff then employed (whether by central or local government or otherwise) around England and Wales on prosecution work. The staff commission's functions were accordingly limited to the period immediately following the passing of the 1985 Act on 23 May 1985 and have now long ceased to be exercisable.

4. Section 13 was another temporary provision to ensure the smooth running of the CPS in its early days. In particular it ensured that any premises and equipment being used for the discharge of prosecution functions by staff immediately before

being transferred to the staff of the DPP were made available for use by the CPS. Any authority using any such premises or equipment was required to make them available to the CPS: subsections (2) and (3). The Secretary of State had to reimburse authorities accordingly: subsection (4). By virtue of subsection (6), however, authorities ceased to be bound by section 13 once 5 years (10 at the most) had elapsed from the time that the relevant prosecuting staff had been taken over by the DPP. Given that virtually the whole of the 1985 Act was in force by 1987[172], section 13 has now ceased to have any practical utility. Its repeal is therefore proposed on that basis.

5. Section 15(7) is a transitional provision whereby the person holding the office of DPP immediately before the commencement of section 2 (1 April 1986[173]) was thereafter to be treated as holding that office in pursuance of an appointment made by the Attorney General. Since there have been several holders of the office of DPP since 1986, section 15(7) is now unnecessary.

6. Section 28 repealed section 9 of the Perjury Act 1911 and became spent when that repeal took effect on 1 April 1986[174].

7. Section 31(4) is another transitional provision. It provides that certain paragraphs of section 3(2) are not to apply to proceedings instituted (or begun by a summons issued) before their commencement. The relevant paragraphs related to the duty of the DPP to take over the conduct of certain criminal proceedings. Given that these paragraphs had come into force, at the latest, by 1 October 1986[175], section 31(4) has long ceased to be necessary.

Extent

8. The 1985 Act extends to England and Wales only.

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[172] A series of commencement orders brought virtually the whole of the 1985 Act into force between May 1985 and April 1987, the final one being the Prosecution of Offences Act 1985 (Commencement No.3) Order 1986, SI 1986/1334.
[173] Prosecution of Offences Act 1985 (Commencement No.1) Order 1985, SI 1985/1849. This commencement related to certain geographical areas only. Elsewhere the commencement was 1 October 1986: Prosecution of Offences Act 1985 (Commencement No.2) Order 1986, SI 1986/1029.
[174] Prosecution of Offences Act 1985 (Commencement No.1) Order 1985, SI 1985/1849.
[175] The actual commencement date depends on the geographical area of the proceedings in question: see Prosecution of Offences Act 1985 (Commencement No.1) Order 1985, SI 1985/1849; Prosecution of Offences Act 1985 (Commencement No.2) Order 1986, SI 1986/1029.

Consultation

9. The Home Office, the Crown Prosecution Service and the relevant authorities in Wales have been consulted about these repeal proposals.

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Reference	*Extent of repeal or revocation*
Criminal Justice Act 1988 (1988 c.33)	Section 49. Section 64. Section 100. Section 103. Section 123(1) and (5). Section 125. Schedule 5. In Schedule 8, Part 2.
Criminal Justice Act 1991 (c.53).	Section 69. Section 72.
Criminal Procedure and Investigations Act 1996 (c.25)	Section 46. Section 65.
Public Order (Amendment) Act 1996 (c.59)	The whole Act.
Crime and Disorder Act 1998 (c.37)	Section 35. Section 36(3) and (6). Section 97(5). Sections 107 and 108. Section 116.
Anti-terrorism, Crime and Security Act 2001 (c.24)	Sections 37 and 38. Sections 122 and 123.

Introduction

1. This note identifies a number of provisions in recent criminal statutes that have become unnecessary since their enactment.

Criminal Justice Act 1988

2. The purpose of the Criminal Justice Act 1988 ("the 1988 Act") was to make changes to the existing criminal justice system.

3. Section 49 repealed section 134 of the Magistrates' Courts Act 1980 and became spent when section 49 came into force on 12 October 1988[176].

[176] Criminal Justice Act 1988 (Commencement No.2) Order 1988, SI 1988/1676.

4. Section 64 amended section 32 of the Game Act 1831 by increasing the maximum fine payable from level 1 to level 4. However that amendment has been superseded by a further amendment increasing the maximum fine to level 5[177] in relation to offences committed after 3 February 1995. Section 64 is accordingly now spent.

5. Section 100(7) (power to inspect Land Register etc) provided that section 100 should cease to have effect on the day appointed under section 3(2) of the Land Registration Act 1988 for the coming into force of that Act. The day appointed was 3 December 1990[178] whereupon section 100 ceased to have effect.

6. Section 103(2) amended the provisions of the Criminal Justice (Scotland) Act 1987 specified in Part 2 of Schedule 5 to the 1988 Act. However the provisions amended have since been repealed[179]. Consequently section 103(2) (and Part 2 of Schedule 5) is spent. Moreover since section 103(1) (which amended the provisions specified in Part 1 of Schedule 5) has already been repealed[180], section 103 (and Schedule 5) may now be repealed as a whole.

7. Section 123 relates to custodial sentences for young offenders. Subsection (1) introduces subsections (2) to (5). However, subsections (2) to (4) have already been repealed[181] and subsection (5), which substituted a new section 2(4) of the Criminal Justice Act 1982, became spent when section 2(4) was repealed[182]. Accordingly subsection (1) is now unnecessary and may be repealed along with subsection (5).

8. Section 125 repealed section 22(5) of the Children and Young Persons Act 1969. Section 125 became spent upon coming into force on 1 October 1988[183].

[177] This amendment was made by Criminal Justice and Public Order Act 1994, s.168(1), Sch.9, para.1(1), (3), (7).
[178] Land Registration Act 1988 (Commencement) Order 1990, SI 1990/1359.
[179] Criminal Procedure (Consequential Provisions) (Scotland) Act 1995, ss.4, 6, Sch.3, Pt.2, paras.15, 16; Sch.5.
[180] Drug Trafficking Act 1994, s.67, Sch.3.
[181] Subsections (2) and (3) were repealed by Criminal Justice Act 1991, s.101(2), Sch.13. Subsection (4) was repealed by Powers of Criminal Courts (Sentencing) Act 2000, ss.165(4), 168(1), Sch.12, Pt.1.
[182] Criminal Justice Act 1991, s.101(2), Sch.13.
[183] Criminal Justice Act 1988 (Commencement No.1) Order 1988, SI 1988/1408.

9. Schedule 8 amended the law relating to custodial sentences for young offenders. Part 2 of Schedule 8 contained transitional provisions in relation to young offenders who, before the commencement of section 1A of the Criminal Justice Act 1982 on 1 October 1988[184], had been committed for sentence to the Crown Court, had been sentenced to youth custody, had been detained in a detention centre or youth custody centre[185] or had been subject to release under licence or to supervision. The passage of time since 1988 has clearly rendered these transitional provisions relating to young offenders unnecessary. In consequence, Part 2 of Schedule 8 may now be repealed.

Extent

10. The provisions of the 1988 Act proposed for repeal extend to England and Wales only (except that section 103(2) and Part 2 of Schedule 5 extend to Scotland only).

Criminal Justice Act 1991

11. The purposes of the Criminal Justice Act 1991 ("the 1991 Act") included making new provision with respect to the treatment of children and young persons in the criminal justice system.

12. Section 69 inserted subsection (1A) into section 12 of the Magistrates' Courts Act 1980. However a new section 12 was later substituted by the Criminal Justice and Public Order Act 1994[186] whereupon section 69 became unnecessary.

13. Section 72 repealed certain provisions in the Children and Young Persons Act 1969 and in the Police and Criminal Evidence Act 1984. Section 72 became spent once it came into force on 1 October 1992[187].

[184] Section 1A of the Criminal Justice Act 1982 was inserted by sections 123(1), (4) of the 1988 Act. Section 123 came into force on 1 October 1988; Criminal Justice Act 1988 (Commencement No.1) Order, SI 1988/1408.
[185] By virtue of a custodial order under certain provisions in the legislation relating to the Armed Forces.
[186] The 1994 Act, s.45, Sch.5, para.1.
[187] Criminal Justice Act 1991 (Commencement No.3) Order 1992, SI 1992/333.

Extent

14. The provisions of the 1991 Act proposed for repeal extend to England and Wales only.

Criminal Procedure and Investigations Act 1996

15. The purpose of the Criminal Procedure and Investigations Act 1996 ("the 1996 Act") was to make provision about criminal procedure and criminal investigations.

16. Section 46(1) repealed provisions in the War Crimes Act 1991 and became spent when section 46(1) came into force at Royal Assent on 4 July 1996. Since the only other provision in section 46 (subsection (2)) has already been repealed[188], the whole of section 46 may now be repealed.

17. Section 65 repealed provisions in the Criminal Procedure (Attendance of Witnesses) Act 1965 and in the Magistrates' Courts Act 1980, all in relation to any alleged offence into which no criminal investigation had begun before 1 April 1997. Section 65 came into force at Royal Assent on 4 July 1996 whereupon it became spent.

Extent

18. Section 46 extends to England, Wales and Northern Ireland whilst section 65 extends to England and Wales alone.

Public Order (Amendment) Act 1996

19. The sole purpose of the Public Order (Amendment) Act 1996 ("the 1996 Act") was to substitute the word "a" for the word "the" in section 5(4)(a) of the Public Order Act 1986 ("the 1986 Act"). The effect of this amendment was to make it clear that the power of a constable in section 5(4) to arrest a person without warrant may be exercised if the person engages in offensive conduct which *any* constable warns him to stop and he engages in further offensive conduct immediately or shortly after the warning. A number of prosecutions had failed as a result of section 5(4)(a), as

[188] Access to Justice Act 1999, s.106, Sch.15, Pt.1.

originally drafted, requiring that the arresting officer be the same as the warning officer.

20. The effect of the 1996 Act may conveniently be preserved by the entry in the attached *Schedule of consequential and connected provisions*. This will in effect supersede the 1996 Act and enable it to be repealed.

Extent

21. The 1996 Act extends only to England and Wales.

Crime and Disorder Act 1998

22. The purposes of the Crime and Disorder Act 1998 ("the 1998 Act") included making provision for preventing crime and disorder.

23. The 1998 Act contains a number of repealing provisions, all of which became spent when they came into force. These provisions are-

- section 35 (which repealed provisions in the Criminal Justice and Public Order Act 1994, and which came into force on 30 September 1998[189])

- section 36(3) and (6) (which repealed provisions in the Treason Acts 1790 and 1795, the Sentence of Death (Expectant Mothers) Act 1931 and in the Criminal Justice Act (Northern Ireland) 1945, and which came into force on 30 September 1998[190])

- section 97(5) (which repealed section 20 of the Criminal Justice and Public Order Act 1994, and which came into force on 1 June 1999[191])

- section 107(2) (which repealed provisions in the Crime (Sentences) Act 1997, and which came into force on 30 September 1998[192])

[189] Crime and Disorder Act 1998 (Commencement No.2 and Transitional Provisions) Order 1998, SI 1998/2327.
[190] Crime and Disorder Act 1998 (Commencement No.2 and Transitional Provisions) Order 1998, SI 1998/2327.
[191] Crime and Disorder Act 1998 (Commencement No.4) Order 1999, SI 1999/1279.
[192] Crime and Disorder Act 1998 (Commencement No.2 and Transitional Provisions) Order 1998, SI 1998/2327. The repeal of section 107(3)-(5) by the Powers of Criminal Courts (Sentencing) Act 2000, s.165(4), Sch.12, Pt.1 means that, once section 107(2) has been repealed, section 107 will contain no substantive provision and may therefore be repealed in whole.

- section 108 (which repealed provisions in the Crime and Punishment (Scotland) Act 1997, and which came into force on 30 September 1998[193]).

24. Section 116 is a transitory provision relating to the period before section 73 was brought into force. In particular section 116(1) empowered the Secretary of State to make an order relating to the court's powers to make orders under sections 1 and 4(3)(a) before that date[194]. Section 73 was duly brought into force on 1 April 2000[195] whereupon section 116 became spent. It may be repealed on that basis.

Extent

25. The repeals to the 1998 Act proposed in this note extend to England and Wales only except that sections 36(3) and 108 extend to Scotland and section 36(6)(b) to Northern Ireland.

Anti-terrorism, Crime and Security Act 2001

26. The purposes of the Anti-terrorism, Crime and Security Act 2001 ("the 2001 Act") included making further provision about terrorism and security.

27. Sections 37 and 38 are repealing provisions. They repealed provisions in, respectively, the Public Order Act 1986 and the Public Order (Northern Ireland) Order 1987. Both sections became spent when they came into force at Royal Assent on 14 December 2001.

28. Section 122 required the Secretary of State to appoint a committee to conduct a review of the 2001 Act. By subsection (4), the committee had to complete the review and send a report not later than the end of 2 years beginning with the day on which the Act was passed (i.e. 2 years from 14 December 2001). By subsection (5) the Secretary of State had to lay a copy of the report before Parliament as soon as was reasonably practicable.

[193] Crime and Disorder Act 1998 (Commencement No.2 and Transitional Provisions) Order 1998, SI 1998/2327.
[194] Secure Training Order (Transitory Provisions) Order 1998, SI 1998/1928.
[195] Crime and Disorder Act 1998 (Commencement No.6) Order 1999, SI 1999/3426.

29. The report was duly produced by the Privy Counsellor Review Committee. It was laid before Parliament on 18 December 2003.[196] Section 122 thereupon became spent.

30. Section 123 provided for the report produced by the committee pursuant to section 122(4) to specify any provision of the 2001 Act as a provision which, pursuant to section 123(2), should cease to have effect 6 months after the report was laid before Parliament under section 122(5) (i.e. 18 June 2004). In the event the Committee specified the whole Act. However, section 123(3) provided that this section 123(2) cesser provision should not apply if, before the end of the 6 month period, a motion had been made in each House of Parliament considering the report. Since such a motion was duly passed in each House[197], section 123(3) did not result in any statutory provisions ceasing to have effect. Section 123 now having run its course, the whole of the section is now spent.

Extent

31. The provisions of the 2001 Act proposed for repeal extend throughout the United Kingdom.

Consultation

32. The Home Office, the Crown Prosecution Service, the Department for Constitutional Affairs and the relevant authorities in Wales, Scotland and Northern Ireland have been consulted about these repeal proposals.

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[196] Privy Counsellor Review Committee Report on the Anti-terrorism, Crime and Security Act 2001 (HC 100).
[197] 25 February 2004, Hansard (HC), col 384; 4 March 2004, Hansard (HL), col 833.

SCHEDULE

OF

CONSEQUENTIAL AND CONNECTED PROVISIONS

Public Order Act 1986 (c.64)

. Section 5(4)(a) of the Public Order Act 1986 (power of a constable to arrest without warrant) shall continue to have effect as amended by section 1 of the Public Order (Amendment) Act 1996, that is with the word “a” being substituted for the word “the”.