



**Law
Commission**
Reforming the law

Statute Law Repeals: Consultation Paper Civil and Criminal Justice

SLR 03/10: Closing date for responses – 29 October 2010

BACKGROUND NOTES ON STATUTE LAW REPEALS (SLR)

What is it?

1. Our SLR work involves 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. Our SLR work 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’ SLR proposals is by means of special Statute Law (Repeals) Bills. 18 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 Welsh Assembly Government 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 SLR work 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 2008 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. Changes in agriculture during the second half of the 20th century had greatly reduced the numbers of persons seeking employment in farming. An Act of 1792 that criminalised the giving of false character references to servants seeking domestic employment had become superseded by changes in the civil law. And a Victorian Act requiring noisy street musicians to leave the area on pain of a forty shilling fine had long become obsolete.

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.

CIVIL AND CRIMINAL JUSTICE

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Civil and Criminal Justice

Introduction

1. This consultation paper comprises an amalgam of separate notes - loosely grouped under the heading Civil and Criminal Justice - recommending the repeal of statutes spanning over 700 years, from the very old (1267) to the relatively modern (1988).
2. The statutes fall within eight categories:
 - Binding over
 - Criminal process (in Scotland)
 - Distress
 - Extradition
 - Forgery
 - Fraud
 - Police (principally in Northern Ireland)
 - Sale of public offices
3. The oldest of the statutes deals with the power of justices to bind over defendants in criminal proceedings (1361) and the regulation of the levying of distress by sheriffs and bailiffs (1267 and probably 1322), which latter provisions were to be enforced through civil proceedings. Although these statutes have historic value their inclusion within the live statute book is no longer warranted. Their function has been overtaken by the enactment of 20th and 21st century legislation in each of these fields.
4. Four of the repeal notes have a more limited territorial application. The notes on criminal process, forgery and fraud focus on provisions which are alive today in Scotland, but which have some marginal impact elsewhere in the United Kingdom. The purpose is (in one case) to tie the proposed repeals in with repeals presently being enacted in Scotland. The note on police (which is founded on legislation which facilitated reciprocal policing arrangements between the then Royal Ulster Constabulary and mainland forces) focusses on the province of

Northern Ireland only. The repeal recommended - of the remaining portion of the Police Act 1969 - simply remedies what appears to have been a repeal oversight.

5. Political reforms over the past 140 years (underpinned by modern legislation culminating in the recent Bribery Act 2010) have rendered the 16th century statute on sale of offices (and its extending Act of 1809) unnecessary and devoid of practical purpose.
6. Finally, it is worth noting that Statute Law (Repeal) Bills ordinarily apply to the United Kingdom and to the Isle of Man, but do not automatically extend to the Channel Islands.¹ The repeal note on Extradition, which recommends essentially just a minor tidying-up measure, affects the Isle of Man as well as the UK.

¹ Provision is made in such Bills for extension to the Channel Islands and British overseas territories by specific Order in Council where such extension would be appropriate.

GROUP 1 - BINDING OVER

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Justices of the Peace Act 1361 (34 Edw.3 c.1)	The whole Act.
Magistrates' Courts (Appeals from Binding Over Orders) Act 1956 (4 & 5 Eliz. 2 c.44)	In section 1(1), the words “, under the Justices of the Peace Act 1361, or otherwise,”.

Background

1. Justices of the peace (the lay magistracy) came into existence as specific office-holders during the reign of Edward 3. They started life as custodians or conservators of the peace² within each county in the 13th century, and by the early 14th century (1327) they were given powers to punish offenders.³ From 1359 onwards justices' commissions (their authority and official duties) were consolidated.⁴ They seem to have acquired the title 'justices' [of the peace] by 1362.⁵

2. The justices' judicial powers were conferred - or at any rate reinforced - in 1361 by the statute 34 Edw.3 c.1 ("the 1361 Act"). This step marked the office-holders' transition from peace keepers to peace adjudicators with powers of legal determination in criminal matters.⁶ The long title to the 1361 Act was:

“What Sort of Persons shall be Justices of Peace; and what Authority they shall have”.⁷

3. Today the appointment of, and qualifications for, justices within any commission area in England and Wales are governed by Part 2 of the Courts Act 2003 (c.39), and their judicial powers are set out in the Magistrates' Courts Act 1980 (c.43).

² This title was assigned by the statute 1 Edw.3 St.2 c.16 (1327) (later entitled the Justices of the Peace Act 1327).

³ See 2 Edw.3 c.6 (1328), cited in Sir William Holdsworth *A History of English Law*, ed. A.L. Goodhart and H.G. Hanbury (7th edn, 1956, London), vol 1 at p 287 and n8.

⁴ See Holdsworth, cited above, at p 288.

⁵ See 36 Edw.3 St.1 c.12 (1362), cited in Holdsworth, vol. 1 at p288 and n7. *Halsbury's Statutes* (2006 reissue) vol 11(2) at p 23 indicates that the 1361 Act was the source of the title 'justices of the peace', supplementing reference in the earlier 5 Edw.3 c.11 (1331) (now repealed).

⁶ See Esther Moir *British Institutions: The Justice of the Peace* (1969, Penguin Books, Harmondsworth), chap 1 at p18. Moir makes the point that the statute of 1361 represented a great step forward in the status and role of justices, although it had also “erroneously been taken as marking the origin of the office”. From about 1390 onwards justices retained their power to determine the indictments they initiated, and their jurisdiction gradually extended into administrative, local governance and financial matters.

⁷ The short title to the Act was assigned by the Statute Law Revision Act 1948, s 5 and Sch 2: see generally *Halsbury's Laws of England* vol 29(2) (4th edn Reissue, 2002, Butterworths) at p 342 para 501.

Justices of the Peace Act 1361

4. The 1361 Act required the assigning “in every county of England” of “one lord, and with him three or four of the most worthy in the county, with some learned in the law” to keep the peace. These appointees were to have various powers and obligations so as to ensure that the King’s people were neither “troubled [n]or endamaged” by rioters or rebels, that the peace should not be “blemished”, and that merchants and others could go safely about their business on the highways. The powers were in four categories:⁸

- (a) to restrain offenders, rioters and “all other barators”,⁹ and to pursue, arrest and “chastise” them “according [to] their trespass or offence”;
- (b) to imprison such persons and ensure they were “duly punished according to the law and customs of the realm” (exercising in that regard “good advisement”);
- (c) to take, arrest and imprison all persons who had been indicted for, or suspected of, crime; and
- (d) to take “sufficient surety and mainprise” from persons “[not] of good fame” both to ensure “good behaviour towards the King and his people” and to punish the individuals concerned.¹⁰

5. The provisions of the 1361 Act have been pruned out on two occasions:

- (i) the Act originally included reference to the questioning by justices of persons who had been “pillors and robbers in the parts beyond the sea” and who had now returned to the realm. This provision was omitted by the Statute Law Revision Act 1948;¹¹
- (ii) the Act included power for justices, at the King’s suit, to hear and determine “all manner of felonies and trespasses done” within the justices’ county (and for fines imposed to be proportionate, “reasonable and just”). This provision was repealed by the Criminal Law Act 1967.¹²

6. In 1956 the 1361 Act was supplemented by the Magistrates Courts (Appeals from Binding Over Orders) Act,¹³ which provided a right of appeal to quarter sessions (now the Crown Court) from magistrates’ binding over orders. Although the body of the 1956 Act does not speak of binding over in terms, nonetheless the combination of the short title and section

⁸ The 1361 Act was not divided into sections as such. The provisions summarised below appeared in a single section, sub-divided into clauses, each differentiated by a semi-colon.

⁹ Barators (or barrators) were persons who deliberately sought to cause discord within the community or who were vexatious litigants. The common law offence of barratry was abolished in 1967 as obsolete.

¹⁰ This was the commencement of the power, vested in justices, to order the binding over of individuals to keep the peace.

¹¹ 1948 (c.62).

¹² 1967 (c.58), s 10(2), Sch 3 Pt 2.

¹³ 1956 (c.44) (“the 1956 Act”), s 1. The 1956 Act applies only in England and Wales: see section 2(2).

1(1) means that the powers in the 1361 Act to order a person “to enter into a recognisance¹⁴ with or without sureties to keep the peace or to be a good behaviour”, and to bind over an individual, are one and the same.¹⁵

7. The power to bind over is also included within two more modern statutes: the Justices of the Peace Act 1968¹⁶ and the Magistrates’ Courts Act 1980.¹⁷

8. Section 1(7) of the Justices of the Peace Act 1968 is one of the few remaining provisions alive within that Act. It makes a specific declaration that - “any court of record having a criminal jurisdiction has, as ancillary to that jurisdiction, the power to bind over to keep the peace, and power to bind over to be of good behaviour, a person who or whose case is before the court, by requiring him to enter into his own recognisances or to find sureties or both, and committing him to prison if he does not comply”.¹⁸

9. Likewise, the Magistrates’ Courts Act 1980, s 115 provides a power to a magistrates’ court to bind over an individual to keep the peace or to be of good behaviour, but only on specific complaint by another individual. In this sense the 1361 Act powers (and the 1968 Act powers) are wider because the court there can act of its own volition.

10. Whereas an order under the 1980 Act may only be made after the case has been completed, an order under the 1361 Act can be made at any time during the proceedings (subject to affording the parties concerned adequate opportunity to make representations, and to there being a likely risk of future breach of the peace).¹⁹ There is no upper limit on either the bind-over period or the recognisance forfeitable.²⁰ That said, there appears to be no restriction on the exercise by a criminal court of the powers within the 1968 Act, so long as the order is made against “a person who or whose case is before the court”.²¹

¹⁴ A recognisance is a form of monetary bond, which binds the maker to a certain course of conduct.

¹⁵ See the 1956 Act, long title and s 1(1). Section 1(1) refers to such an order being made “under the Justices of the Peace Act 1361, or otherwise”, which suggests that there may also be some common law power in this regard.

¹⁶ 1968 (c.69) (“the 1968 Act”).

¹⁷ 1980 (c.43) (“the 1980 Act”).

¹⁸ Words originally at the end of the subsection were repealed by the Administration of Justice Act 1973 (c.15), ss 19(1), 20(6), Sch 5 Pt 1. Section 1(7) is still operative in England and Wales, although it does not now apply in Scotland (where it was repealed by the District Courts (Scotland) Act 1975 (c.20), s 24(2), Sch 2). In Scotland today binding over is governed by **[SLC: please insert current statutory provision]**. The 1361 Act (as a pre-1707 English statute) never applied in Scotland.

¹⁹ See *Halsbury’s Laws of England* vol 29(2) (4th edn Reissue, 2002) at p606 para 782 n 6, citing *R v Aubrey-Fletcher, ex p Thompson* [1969] 1 WLR 872, DC.

²⁰ See Law Commission report *Binding Over* (Law Com No.222, February 1994) at para 1.4.

²¹ See, for example, *R v Kingston-upon-Thames Crown Court, ex p Guarino* [1986] Crim LR 325, DC, where a binding over order made against a potential (but not actual) witness under the 1968 Act was quashed as beyond the court’s jurisdiction (following *R v Swindon Crown Court, ex p Singh* [1984] 1 All ER 941, DC).

11. Because the other provisions within the 1361 Act have been superseded by more modern arrangements, and are now obsolete (for example, the provision specifying the number of justices to sit in each county, and that relating to the restraining of rioters and barators), it is appropriate now to repeal the whole of the 1361 Act, including the binding-over provisions. In practical terms the 1968 Act and the 1980 Act provide adequate power to justices to exercise a bind-over function. And, by leaving in place the bulk of the (very short) 1956 Act, adequate provision remains for appeal to the Crown Court.

12. Repeal of the 1361 Act would have consequences for the 1956 Act.²² At present the 1956 Act speaks of a person being ordered by a magistrates' court to enter into a recognisance to keep the peace or to be of good behaviour "under the Justices of the Peace Act 1361, or otherwise".²³ If these words are deleted the 1956 Act will still apply to binding over orders made under the 1968 and 1980 Acts, and at common law.

13. It should be noted that as recently as 1998 the Divisional Court treated the 1361 Act provisions as still being operative.²⁴ But the court had no reason on that occasion to consider (and did not consider) whether the binding over order could better have been imposed under another power.

14. The power under the 1361 Act is neither obsolete nor spent: but it is unnecessary (and of no practical utility) because it has been duplicated by more modern powers.

²² The Law Commission in its 1994 report (Law Com No.222) did recommend the abolition of the power to bind over in the 1361 Act, but only on the basis that all binding over powers should, as a matter of public policy, be abolished without replacement. This repeal would have included the whole of the 1956 Act.

²³ The 1956 Act, s 1(1).

²⁴ See *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex p Hooper* [1998] 1 WLR 800, DC. Where there had been disruptive behaviour in the face of the court, the magistrate had imposed a binding over order under the 1361 Act rather than under the Magistrates' Courts Act 1980, s 115(1). The order itself was valid, but the procedure adopted by the magistrate for taking the defendant's own recognisance, and for providing of a separate surety, was (on the particular facts) flawed.

Extent

15. The 1361 Act extended across England and Wales, although it purported to apply only to the counties in England. The 1956 Act (which built upon the 1361 Act powers, and supplemented the law relating to binding over) applies only in England and Wales.

Consultation

16. HM Treasury, the Ministry of Justice, the Home Office, the Magistrates' Association, and the relevant authorities in Scotland and Wales have been consulted about these repeal proposals.

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GROUP 2 - CRIMINAL PROCESS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Criminal Law (Scotland) Act 1830 11 Geo.4 & 1 Will.4 c.37)	Section 2. Section 6.

Criminal Law (Scotland) Act 1830 (11 Geo.4 & 1 Will.4 c.37)

Purpose

1. By 1830 it had become “expedient” (in order to disarm various persons in the Scottish Highlands more effectively, and to secure “the peace and quiet” of that part of the realm)²⁵ to adjust the provisions in an Act of 1724²⁶ which provided that capital punishments (following a finding of guilt by a court) should not be carried out within fixed periods.²⁷ Under the Criminal Law (Scotland) Act 1830 (“the 1830 Act”) those periods would be abridged.²⁸

2. The 1830 Act also made provision for various criminal procedural issues: provision of additional circuit courts, service of proceedings, summoning of witnesses, administering banishment as a punishment, preparation of lists of jurors, and making of gaol committal returns.²⁹

3. Today only sections 2, 6, 7 and 13 of the 1830 Act remain unrepealed. They provide as follows -

- (a) section 2 abridged the periods for the execution of capital sentences (mentioned above);
- (b) section 6 dealt with the transmission of prisoners under warrant to gaol or to court, and authorised an “officer of the law” to effect conveyance through any adjoining county;

²⁵ See preamble to 11 Geo.4 & 1 Will.4 c.37 (1830) (Criminal Law (Scotland) Act) (“the 1830 Act”), being “An Act to amend an Act of the Ninth Year of His late Majesty King George the Fourth, to facilitate Criminal Trials in Scotland, and to abridge the Period now required between the pronouncing of Sentence and Execution thereof, in Cases importing a Capital Punishment”. The Act to be amended was 9 Geo.4 c.29 (1828), discussed below.

²⁶ 11 Geo. 1 c.26 (1724) (Bail in Criminal Cases (Scotland) Act), which Act was repealed in 1892.

²⁷ The fixed periods were: 30 days for capital sentences pronounced in Edinburgh or to the south of the Firth of Forth, and 40 days for such sentences pronounced to the north.

²⁸ The periods were to be revised down to 15 to 21 days for sentences pronounced in Edinburgh or southwards, and 20 to 27 days for sentences pronounced northwards: see the 1830 Act, s 2. Section 1 repealed the periods previously prescribed in the 1724 Act.

²⁹ See the 1830 Act, ss 3 to 15 and Sch.

- (c) section 7 dealt with the “citation” (the summoning) of jurors and witnesses for trials; and
- (d) section 13 extended the civil immunity of “all inferior judges and magistrates” (contained in the statute 9 Geo. 4 c.29 (1828))³⁰ when “apprehending any party, or [when acting] in regard to any criminal cause or proceeding, or to any prosecution for a criminal penalty”.

4. Two of these four sections are now obsolete and may be repealed.

5. So far as *section 2* is concerned, with the abolition of the death penalty for murder in 1965,³¹ and reinforcement of that position through the Human Rights Act 1998 which (as amended) abolished the death penalty in its entirety in the United Kingdom,³² the section is now superseded and can be repealed.

6. There is no need today for *section 6* of the 1830 Act because the courts service and the prison service operate on a national rather than a county basis. The section can be repealed.

7. *Section 7* continues to have value. The section was part-repealed in 1891,³³ and was amended by the Criminal Procedure (Scotland) Act 1975.³⁴ The amendment refocused the provision so that “an officer of the law” could, without requiring a separate witness, give a “citation” (a summons) for a juror or witness in only a “civil cause or proceeding” rather than in both civil and criminal proceedings. Section 72 of the 1975 Act made alternative provision for citation of jurors and witnesses in criminal matters.

8. Section 7 is still required for civil proceedings in Scotland, and should therefore **not** be repealed.³⁵

³⁰ 9 Geo.4 c.29 (1828) (Circuit Courts (Scotland) Act) (“the 1828 Act”) was passed to permit the holding of additional “circuit courts of judiciary” to handle criminal trials in Scotland, given (as the Act’s preamble put it) “the great increase of criminal offences” North of the Border. Only section 26 of the 1828 Act remains unrepealed. That section (as amended) provides that in Scotland the provisions of 43 Geo.3 c.141 (1803) (“the 1803 Act”), which gave justices protection from damages awards in cases of wrongful conviction, would extend to “all inferior judges and magistrates” in sentencing as well as in procedural matters.

³¹ See the Murder (Abolition of Death Penalty) Act 1965 (c.71), which Act extended to Scotland.

³² 1998 (c.42), s 1(2),(3) and Sch 1 Pt 3 (13th Protocol, art 1).

³³ See Statute Law Revision Act 1891 (c.67), s 1 and Sch, which omitted the opening words “It is hereby provided that” in section 7.

³⁴ 1975 (c.21) (“the 1975 Act”), s 461 and Sch 9 para 5. Although the 1975 Act was later repealed in whole by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40) s 6 and Sch 5 - consequential upon a major criminal law and procedure consolidation exercise for Scotland - the 1975 amendment was saved by virtue of the Interpretation Act 1978 (c.30), s 16(1).

³⁵ We are grateful to the Deputy Legal Secretary to the Lord President in Scotland (David Smith) for indicating to us that, although the Sheriff Court Rules (1993, 2002) are consistent with the terms of section 7 of the 1830 Act, the Court of Session Rules (1994) appear out of step in that they still provide for citation of a witness by a

9. *Section 13*, likewise, should **not** be repealed: it is required for Scotland whilst the 1803 and 1828 Acts remain alive.

Extent

10. Although the 1830 Act appears from its short title to apply to Scotland only, it probably extends also to England, Wales and Northern Ireland.

Consultation

11. HM Treasury, the Ministry of Justice, the Home Office, HM Courts Service, HM Prison Service, and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about these repeal proposals.

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messenger-at-arms to be witnessed. On that basis - pending an amendment to the 1994 Rules - section 7 should remain in force.

GROUP 3 - DISTRESS

<i>Reference</i>	<i>Extent of repeal or revocation</i>
52 Hen.3 (1267) (Statute of Marlborough)	Chapter 4. Chapter 15. Chapter 23.
Statutes of the Exchequer (statutes of uncertain date)	The whole Act.

Note: The repeals in this part of the consultation paper will only go forward into the draft SL(R) Bill when it is confirmed that Part 3 of the Tribunals, Courts and Enforcement Act 2007 (c.15) has been brought into force by Commencement Order, and the relevant Regulations have been made.

Statute of Marlborough 1267

Purpose

1. In 1267 King Henry 3, “for the more speedy ministrations of justice” in his realm (which was then beset “with manifold troubles and dissensions”), enacted a statute which was designed “to devise convenient remedy” for these ills and to regulate the way in which persons of all estates in life could seek redress for grievances suffered.³⁶

2. As originally enacted the *Statute of Marlborough* encompassed a preamble and some 29 chapters,³⁷ covering the taking of distress without lawful authority, through issues such as confirmation of Magna Carta (the Great Charter)³⁸ and the Charter of the Forests,³⁹ appearance at sheriffs’ “turns”, remedies for dispossessed heirs, wardship and guardianship of under-age heirs, prohibition on freeholders being required to “answer for their freeholds” without the King’s authority, the defining of murder, exemption from liability for certain sureties to bail, and down to remedies for “abbots, or other prelates” for wrongs suffered (extending also to their successors after death).

³⁶ See 52 Hen.3 c.1 (1267) (“the 1267 Act”), preamble. The short title to the Act - The Distress Act 1267 - was given by the Statute Law Revision Act 1948 (c.62).

³⁷ These chapters were, in effect, separate sections of the same statute

³⁸ Later re-enacted as 25 Edw.1 cc. 1-37 (1297).

³⁹ Enacted in 1225 (9 Hen.3).

3. Of the 29 chapters only four today remain unrepealed. They are chapters 1, 4, 15 and 23 -

Chapter 1 (Distress)

Chapter 1 provided that all persons “as well of high as of low estate” were to receive justice in the King’s court. No individual was to be entitled to seek “revenge or distress of his own authority” against his neighbour for any damage or injury suffered without first obtaining an award from the court. Distress in this context was (and still is) a summary remedy designed to secure performance of an obligation or settlement of an outstanding debt.

In the event that an individual took “revenges” on his own authority without first obtaining a court order he would be liable to be convicted of an offence and fined “according to the trespass”. Similarly, if a person took “distress” against his neighbour without a court award, “whereby he hath damage”, then he would be liable to the same punishment (in accordance with “the quantity of the trespass”) and would have to make “sufficient and full amends” to anyone who had sustained loss through his actions.

Chapter 4 (Distress)

Chapter 4 applied where distress had been (or was to be) taken. The chapter prohibited any distress levied on a neighbour being “driven out of the county” without a court judgment. In the event of breach of the provision the distrainor would be liable to a fine in the same way as if he had committed a breach of the peace. If the distress and removal were carried out by a landlord against his tenant the landlord would be liable to “be grievously punished by americiament”. Amerciament or amercement (which has since been abolished) meant that, on conviction, the defendant was declared in the mercy of the King or the sheriff or the lord, and would be required to forfeit a sum - a form of fine - fixed by two or more neighbours in order to purge himself.⁴⁰

The chapter also provided that distresses in general were to be “reasonable, and not too great”. If undue and unreasonable distress were taken the distrainor would be liable to “be grievously amerced for the excess” taken.

Chapter 15 (Distress)

Chapter 15 made it unlawful (although did not specify a penalty as such) for anyone, for any reason, to “take distresses out of his fee, nor in the King’s highway, nor in the common street”. Only the King himself or his officers had the authority to do this.

Chapter 23 (Waste)

Chapter 23⁴¹ made it illegal for “fermors” (farmers), without special written licence, to “make waste, sale, [n]or exile” of any house, woods, men or any other thing “belonging to the tenements that they have to ferm”. In the event that a farmer was convicted of breaching the prohibition, he would be liable to “yield full damage” (*ie* to make recompense) and to be punished by “americiament grievously”.⁴²

⁴⁰ See generally on amercement Pollock and Maitland *The History of English Law* (ed. S.F.C. Milsom) (1968, Cambridge UP), vol 2 at pp513-515. The sums were fixed by reference to the offender’s wealth and the gravity of the offence.

⁴¹ The opening words of chapter 23 were repealed by the Statute Law Revision and Civil Procedure Act 1881 (c.59), s 3.

⁴² The text of the Statute of Marlborough 1267, as appears on the UK Statute Law Database (published by OPSI) has been translated from the original version which was written in Latin.

Status

4. The question arises as to what extent (if any) have these various chapters become obsolete, either in whole or in part. Each chapter is discussed separately below.

5. Chapter 1 was widely cast. First, it was the bedrock of the notion that all citizens, irrespective of rank, were entitled to seek civil justice through the King's court or courts.⁴³ Secondly, it laid down a prohibition on individuals taking the law into their own hands and seeking remedies (revenge or distress) without the court's sanction. That prohibition was reinforced with criminal penalties.

Today two pieces of legislation provide a measure of control in this field: the Human Rights Act 1998⁴⁴ (as to the right to a fair trial) and the Tribunals, Courts and Enforcement Act 2007⁴⁵ (as to the remedy of distress). But their coverage has limitations. They do not spell out the underlying principles involved in such a broad manner as in the 1267 Act.

The Human Rights Act incorporates into domestic UK law a series of fundamental rights to be enjoyed by the citizens of the state. Those rights include a right to a fair trial (Article 6), which right not only encompasses a hearing before an independent tribunal but also presupposes that a state-sponsored system will be in place to deliver civil justice by this means. The provision ensures, *vis-a-vis* the state, that the citizen is afforded a means of seeking justice and of having any dispute tried impartially. But the 1998 legislation does not tackle the second limb of chapter 1, namely provide a direct prohibition on private individuals seeking redress for grievances (sometimes by force) without court sanction.⁴⁶

Because of the *Statute of Marlborough* the levying of distress by an individual upon their neighbour without a court order (*ie* seizing another's goods and holding them until an owed sum is paid) remains unlawful.⁴⁷

The 2007 Act provides a new code for debt recovery in place of the right of an individual to distrain on a debtor's goods. The common law rules are abolished and replaced.⁴⁸ In their

⁴³ This civil justice protection should be contrasted to that in the statute 25 Edw. 1 c.29 (1297) (Magna Carta) which provided that no man should be denied "either justice or right" or be required to pay for such protection. The Magna Carta protection (which was a reissue of the original version from 1215) was cast in the context of criminal justice, and appears to supplement that in the 1267 Act.

⁴⁴ 1998 (c.42) ("the 1998 Act"). By section 1 and Schedule 1 the bulk of the European Convention on Human Rights (1950 and supplemental Protocols) was incorporated into UK law.

⁴⁵ 2007 (c.15) ("the 2007 Act"). As at June 2010 the relevant provisions of this Act (Part 3) had **not** been brought into force by commencement order. [***The Ministry of Justice is consulting on implementation during 2010 with a view to formal commencement of Part 3 of the 2007 Act in April 2012.***] Part 3 does not extend beyond England and Wales: see section 147(2).

⁴⁶ This aspect may be covered in part by Article 8 of the European Convention (right to respect for private and family life).

⁴⁷ If the state seeks to deprive an individual of his possessions, without acknowledging the constraints of Article 1 of the First Protocol in Schedule 1 to the Human Rights Act 1998, it commits an actionable civil wrong.

stead a statutory enforcement procedure is laid down⁴⁹ which limits the taking control of a debtor's goods to persons acting as authorised "enforcement agents". Acting as an enforcement agent without authorisation is an offence,⁵⁰ and only an authorised person is empowered to take control of goods and sell them.⁵¹ If the enforcement agent breaches the statutory code or acts under a defective power, although he or she is not to be liable in trespass, the debtor can proceed against the agent by civil action for return of the goods seized and damages for wrongful seizure.⁵²

To the extent of the prohibition, the provisions in chapter 1 of the 1267 Act are rendered unnecessary by the 2007 Act. But the 2007 Act (which criminalises the actor) does not impose criminal sanction for the behaviour (the taking of distress).⁵³ Only chapter 1 criminalises the behaviour of taking revenge or distress without court order. It should **not** therefore be repealed.

Chapter 4 is probably now defunct. Today, distress in England and Wales is governed by the 2007 Act (discussed above), and the need not to take distrained goods or belongings out of the debtor's home county is rendered obsolete by the fact that civil justice is administered on a national rather than a county-wide basis. The civil remedy provided by the 2007 Act will suffice. Chapter 4 can be repealed.

Chapter 15 is also obsolete, principally as a result of the 2007 Act. The statutory prohibition on distraining on the public highway is now superseded by provisions in the 2007 Act. An authorised enforcement agent may secure goods found on a highway and (with reasonable force sanctioned by court warrant) take control of a debtor's goods on a highway.⁵⁴ Failure to comply with the Act's provisions leads to civil rather than to criminal sanctions. This provides an adequate remedy. Chapter 15 can now be repealed.

Chapter 23 made it an offence for a tenant farmer to make waste of, or to sell, his land-holding (including any house or woods belonging to it) without written permission, or to exile

⁴⁸ Thus, for example, the common law rules relating to *replevin* and the right to distrain for arrears of rent are abolished: see the 2007 Act, ss 65, 71. In their place there is introduced a new enforcement procedure involving the taking control of goods: see 2007 Act, s 62 and Sch 12. See also the 2007 Act, s 71 which abolishes the common law right to distrain for rent arrears. In its place a new procedure for the recovery of commercial rent arrears (but not domestic arrears) is established by sections 72 to 90.

⁴⁹ The procedure runs in parallel with existing statutory procedures for the recovery of unpaid council tax and business rate and other central government taxation.

⁵⁰ See the 2007 Act, s 63(2), (6), (7).

⁵¹ See the 2007 Act, s 62(1), Sch 12 para 2.

⁵² The 2007 Act, s 62(1), Sch 12 para 66.

⁵³ The removal of, or interference with, another's goods could amount to theft or criminal damage, but criminal liability will depend on the specific facts before the court.

⁵⁴ See the 2007 Act, s 62(1), Sch 12 paras 13, 31-33.

any of his workers. Again, the provision has long since been overtaken by events down the intervening seven-and-a-half centuries. Today, there is no social requirement that a tenant who allows his land-holding to fall into disrepair or neglect should be answerable in the criminal courts. Instead, as a matter of landlord and tenant law, and of contract law (assuming there is a written tenancy or licence), a negligent or recalcitrant tenant would be required - enforceable through the civil courts - to put right any disrepair or pay damages in default. Likewise, farm workers who are treated by their employer inappropriately or are dismissed unfairly may have civil redress through the employment tribunal.

On this basis the statutory prohibition in chapter 23 is today no longer required. Chapter 23 may be repealed for England, Wales and Northern Ireland.⁵⁵

Extent

6. The *Statute of Marlborough 1267* was enacted so as to cover the realm of England. Subsequently its effect extended to Wales and to Ireland.⁵⁶ The Act was never extended to Scotland.⁵⁷

7. Chapters 1, 4 and 15 (all relating to distress) today are unrepealed in England and Wales, and are still operative. In Northern Ireland the three chapters were repealed in 1969.⁵⁸

8. Chapter 23 (relating to waste) is also partially unrepealed in England, Wales and Northern Ireland. In England and Wales paragraph 1 of the chapter (which provided for bailiffs making account to their lords) was repealed in 1881.⁵⁹ In Northern Ireland, paragraph 1 was also repealed, as from 1969.⁶⁰

⁵⁵ The Northern Ireland Law Commission has confirmed that chapter 23 is still in force within the Province, but that there seems to be no reason for retaining it on the statute book.

⁵⁶ In Ireland the 1267 Act applied under the statute Poynings' Law 1495 (10 Hen. 7 c.22) (Ire), and union under the Union with Ireland Act 1800 (39 & 40 Geo.3 c.67), s 1 art 8 reinforced the arrangements. The application continued in Northern Ireland after formation of the UK province.

⁵⁷ The Scottish Law Commission have advised that neither the Union with Scotland Act 1706 (6 Ann. c.11) (enacted for England and Wales) nor the Union with England Act 1707 (Ann. Parl.1 Sess.4) (enacted for Scotland) had the effect of applying the provisions of the 1267 Act to Scotland. Article 18 of the Treaty of Union 1706 was designed to operate prospectively. The 1267 Act was not extended to Scotland by a later Act. Moreover, the remedy of distress (as practised in England and Wales) has never applied in Scotland.

⁵⁸ See the Judgments (Enforcement) Act (Northern Ireland) 1969 (c.30) (NI), s 132, Sch 6 (both of which provisions were themselves repealed in 1981). Section 143(1) of the consolidating Judgments Enforcement (Northern Ireland) Order 1981 stated that no person was to distrain on property to enforce any recognisance, bond, rent arrears or tithes. The whole of the 1267 Act was repealed in Ireland (the Republic) in 1983 by the Statute Law Revision Act 1983 (No 11/1983) (Ire), s 1 and Sch Pt II.

⁵⁹ See the Statute Law Revision and Civil Procedure Act 1881 (c.59), s 3 and Sch. By section 2 the 1881 Act was not to extend to Scotland or Ireland.

⁶⁰ See the Judgments (Enforcement) Act (Northern Ireland) 1969, Sch 6 as cited above.

9. The remaining portion of chapter 23 (paragraph 2, relating to farmers not making waste) is still operative across England, Wales and Northern Ireland.⁶¹

Statutes of the Exchequer (circa 1322)

Purpose

10. By the time of enactment of the *Statutes of the Exchequer* the “commonalty of the realm [had] sustained great damage by wrongful taking of distresses” by the sheriffs and the King’s bailiffs.⁶² As a consequence the 1322 Statutes were enacted to ensure the following -

- (a) that if a sheriff or any other man were to take “beasts” (animals) from their owner, and impound them, the owner should be free to feed his livestock “without disturbance” and without having to make any payment “for their keeping”,⁶³
- (b) that neither the beasts nor any other form of distress should be sold by the distrainor “within fifteen days after the taking”,⁶⁴
- (c) that, so long as other distress can be found, no individual (“no man of religion, nor other”) should have “his beasts that gain his land” (“ploughing cattle”), or his sheep, distrained upon for any reason, including debt, by the King’s or other bailiffs;⁶⁵ and
- (d) that any distress taken should be reasonable (having regard to the “value of the debt or demand”) and “not outrageous”.⁶⁶

11. These restrictions on taking of distress were not to sound in criminal process. No penalty was laid down in the 1322 Statutes: they were to be enforced through civil proceedings in the courts.

Status

12. Part of the 1322 Statutes has already been repealed.

⁶¹ As indicated above, although this is the position in the Province of Northern Ireland it is not the position today in Ireland (the Republic) where the whole of the 1267 Act has been repealed.

⁶² See preamble to 15 Edw.2 c.0 (1322) (“the 1322 Statutes”). The editorial information attached to the UK Statute Law Database version explains that the date of enactment of this Act is uncertain. It may have been enacted as 51 Hen.3 stat. 4 (1266) (which is the citation given to it by Ruffhead’s *The Statutes at Large* [1786 edition], entitled “The Statute *De Distractione Scaccarii*) but it appears more likely to have been enacted later, either under Edw.1 (probably 1275 to 1307) or under Edw.2 (before 1327). The Statute Law Database has opted for the year 1322. That date is adopted in this repeal note. The *Chronological Table of Statutes 1235-2008* refers to the statute as “of uncertain date” and cites it as being “between cc 13 & 14” in the years 1325 to 1326, towards the end of the reign of Edward 2. The Ruffhead edition of the statute gives it the long title “What Distress shall be taken for the King’s Debts, and how it shall be used”.

⁶³ See the 1322 Statutes, s 1. The 1322 Statutes do not carry chapter or section numbers. The section numbers used in this note have been assigned informally for ease of reference.

⁶⁴ The 1322 Statutes, s 1.

⁶⁵ The 1322 Statutes, s 2. However, this restriction was not to apply where a man found beasts “in his ground damage-feasant” (*ie* doing damage on his land). In accordance with “the use and custom of the realm” he would be entitled to impound those animals.

⁶⁶ The 1322 Statutes, s 2. The reasonableness of the distress was to be based on “the estimation of neighbours, and not by strangers”.

13. For England and Wales, partial repeal was effected by the Statute Law Revision Act 1863.⁶⁷ The 1863 repeal was very substantial and left in place only chapter 12 and certain provisions which had been inserted between chapters 13 and 14. In the Schedule to the 1863 Act the repeal provisions in question were set out under the heading “Statutes of Uncertain Date”, and followed on directly from the statutes for Edward 2 and immediately before those for Edward 3.

14. The 1863 repeal left in place the middle portion of the statute between chapters 13 and 14, the effect of which is described above. Chapter 12 (dealing with the exchequer court) was later repealed in England and Wales by the Statute Law Revision and Civil Procedure Act 1881.⁶⁸

15. For Ireland (and more particularly Northern Ireland), partial repeal of the 1322 Statutes was effected by the Statute Law (Ireland) Revision Act 1872.⁶⁹ Again, this repeal left in place chapter 12 and a portion of the provisions inserted between chapters 13 and 14 (under the heading *Districciones de Scaccario*).⁷⁰ Subsequently, partial repeal of chapter 12 and repeal of the intermediate portion (between chapters 13 and 14) was effected in the province by the Judgments (Enforcement) Act (Northern Ireland) 1969.⁷¹

16. The 1322 Statutes were never applied in Scotland.⁷²

17. The remaining part of the 1322 Statutes is today obsolete for the following reasons, and may be repealed.

18. First, in England and Wales the taking of animals by way of distress was made unlawful by the Animals Act 1971.⁷³ Section 7(1) provides that “The right to seize and detain any animal by way of distress damage feasant is hereby abolished”. Likewise, the detention of livestock straying on to land is now governed by section 7(2)-(7), which permits the sale of

⁶⁷ 26 & 27 Vict. c.125 (1863), s 1 and Sch. By section 2 the 1863 Act was to extend to England only, but by the Wales and Berwick Act 1746 (20 Geo.2 c.42) - now superseded - reference to England was deemed to extend to “the dominion of Wales”.

⁶⁸ 44 & 45 Vict. c.59 (1881), s 3 and Sch. By section 2 the Act did not extend to Scotland or Ireland. The repeal referred to “Statutes of uncertain date” after the year 12 Edw.2, and repealed specific words within The Statutes of the Exchequer.

⁶⁹ 35 & 36 Vict. c.98 (1872), s 1 and Sch. By section 2 the Act extended only to Ireland.

⁷⁰ Likewise in Ireland (the Republic) the portion between chapters 13 and 14 has still been retained on the Irish statute book: see Statute Law Revision Act 2007 (Ire), s 2 and Sch 1 Pt 2 (statutes retained, including the Statute of the Exchequer (Distress)).

⁷¹ 1969 (c.30) (NI), s 132 and Sch 6. This provision was repealed and superseded in 1981.

⁷² For the reasons explained above in connection with the 1267 Act.

⁷³ 1971 (c.22). This Act did not extend to Scotland or Northern Ireland: see section 13(4).

unclaimed animals by market or auction after 14 days. The detainer is required to ensure that the livestock is adequately fed and watered.

19. Secondly, the provision that “no other distress taken for the King’s debt”, nor for any other cause” (which goes wider than distraining on beasts) should be sold within 15 days has been superseded by the provisions of the Tribunals, Courts and Enforcement Act 2007 (see above). The 2007 Act lays down a statutory enforcement procedure. Regulations made under the Act are required to specify the minimum period before sale may take place.⁷⁴

20. Thirdly, the provision in the 1322 Statutes which required any distress taken to be reasonable and not excessive (in other words, proportionate to the debt in question) has also been overtaken by the 2007 Act.

21. Fourthly, in Northern Ireland part of chapter 12 (the only surviving portion of the 1322 Statutes, dealing with the exchequer court) is now considered to be obsolete. ***[NI Depts: is this correct please?]***

Extent

22. The *Statutes of the Exchequer c.1322* extended initially to England. But by virtue of the Wales and Berwick Act 1746⁷⁵ they later extended to Wales.

23. The Statutes were also extended to Ireland (now only Northern Ireland) by the statute known as Poyning’s Law 1495.⁷⁶

24. The repeal recommended in this note will affect (in different ways) England, Wales and Northern Ireland. The 1322 Statutes never extended to Scotland.

⁷⁴ See the 2007 Act, s 62(1), Sch 12 para 39 and s 90. Regulations under this provision have **not** yet been made as at June 2010.

⁷⁵ 20 Geo.2 c.42 (1746), s 3. The 1746 Act was repealed but replaced by the Interpretation Act 1978 (c.30), s 22(1), Sch 2 Pt I para 5(a), and s 25, Sch 3.

⁷⁶ 10 Hen.7 c.22 (Ire). Union with Ireland under the Union with Ireland Act 1800 (39 & 40 Geo.3 c.67), s 1 art 8 reinforced the position.

Consultation

25. HM Treasury, the Home Office, the Ministry of Justice and the relevant authorities for Northern Ireland, Scotland and Wales have been consulted about these repeal proposals.

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GROUP 4 - EXTRADITION

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Extradition Act 1873 (36 & 37 Vict. c.60)	The whole Act.

Background

1. The Extradition Act 1873⁷⁷ was passed in order to effect amendment to the Extradition Act 1870.⁷⁸ The 1870 Act created a code for the extradition of persons accused or convicted of crime within the United Kingdom and, when specifically extended by Order in Council to cover them, in certain Commonwealth countries (then termed “British possessions”).⁷⁹
2. The 1873 Act was one of a series of Acts which, amongst other things, extended the list of crimes (which were first scheduled within the 1870 Act) giving rise to extradition. The principal amending Acts spanned the period 1873 to 1932, and then the 1870 Act was subject to further amendment by the Suppression of Terrorism Act 1978.⁸⁰
3. For reasons explained below, the only parts of the 1873 Act which are still operative are the long title and a portion of section 1 (assigning the Act’s short title). The remainder has already been repealed.

Purpose

4. In its original form the 1873 Act contained a long title, eight sections and a Schedule. The purpose of the Act was:
 - (a) to clarify the application of section 6 of the 1870 Act, which provided for the apprehension and surrendering of any “fugitive criminal” within “Her Majesty’s dominions”, by declaring that the provision was to apply to a crime committed prior to the passing of the 1870 Act;⁸¹

⁷⁷ 36 & 37 Vict. c.60 (1873) (“the 1873 Act”), being “An Act to amend the Extradition Act 1870”. By section 1 of the 1873 Act that Act and the 1870 Act were to “be construed as one”, and were to be cited together as the Extradition Acts 1870 and 1873.

⁷⁸ 33 & 34 Vict. c.52 (1870) (“the 1870 Act”), being “An Act for amending the Law relating to the Extradition of Criminals”. As explained below, the Extradition Act 1870 was repealed (with savings) by the Extradition Act 1989 (c.33).

⁷⁹ Extradition Act 1870, ss 17, 18.

⁸⁰ 1978 c.26, ss 2, 3 (and repeals by virtue of section 9(2) and Schedule 2).

⁸¹ The 1873 Act, s 2.

- (b) to confirm that any person who was an accessory to a crime, or who aided and abetted a crime, was as liable as the principal offender to be apprehended and surrendered;⁸²
- (c) to declare that the provisions in the 1870 Act relating to the taking of depositions or statements on oath abroad were to apply equally to the taking of affirmations;⁸³
- (d) to empower any secretary of state to require a magistrate to take depositions of evidence relating to any criminal matter (but not “a criminal matter of a political character”) for which court proceedings were pending “in any foreign state”;⁸⁴
- (e) to clarify the extent of the jurisdiction of “the police magistrate” under section 16 of the 1870 Act (for crimes committed at sea and, later, in the air);⁸⁵
- (f) to explain that the expression “diplomatic representative of a foreign state” (as used in the 1870 Act) was to encompass a recognised consul-general and, in the context of a British possession, a “consul or vice-consul” was to include a recognised consular officer;⁸⁶ and
- (g) to expand the list of extraditable crimes (both statutory and common law) set out in the 1870 Act, Sch 1.⁸⁷

5. Since enactment of the 1873 Act a series of statutes has amended or updated extradition law, culminating in the current Extradition Act 2003.⁸⁸ A chronology of the main Acts is set out in the table appended to this note.⁸⁹ The bulk of the 1870 Act (less a saving for orders made under section 2) and of the 1873 Act was repealed by the Extradition Act 1989,⁹⁰ and that 1989 Act was itself repealed in whole (with a saving) by the Extradition Act 2003.

6. Section 2 of the 1870 Act enabled the sovereign, by Order in Council, to apply the 1870 Act to an arrangement made with “any foreign state” for surrender of fugitive criminals within

⁸² The 1873 Act, s 3.

⁸³ The 1873 Act, s 4. This declaration in the 1873 Act (described in the marginal note as an “explanation”) related to the 1870 Act, s 14.

⁸⁴ The 1873 Act, s 5. Witnesses were to be compellable, and the giving of false evidence was to be treated as perjury.

⁸⁵ The 1873 Act, s 6. The section 16 jurisdiction was deemed to extend to the police magistrate (who sat at Bow Street court in London: see the 1870 Act, s 26) in the same way as it applied to a stipendiary magistrate or a sheriff in Scotland.

⁸⁶ The 1873 Act, s 7.

⁸⁷ The 1873 Act, s 8 and Sch. Additions to the original list included the indictable offences of: kidnapping, perjury, larceny (theft), malicious damage to property, forgery and counterfeiting, and serious assault.

⁸⁸ 2003 c.41.

⁸⁹ The Extradition Act 1895 (now repealed) specifically amended both the 1870 and the 1873 Acts insofar as they related to the place for hearing of extradition proceedings and for committal.

⁹⁰ 1989 c.33.

“Her Majesty’s dominions”. The effect of the saving was that existing Orders in Council would be preserved until separately revoked.⁹¹

7. The 1873 Act made no amendment to section 2 of the 1870 Act and, consequently, repeal now of the remainder of the 1873 Act will not impact on the remnants of the 1870 Act or orders made under it.

Status

8. The 1873 Act has already been repealed in significant part by the following Acts:

- parts of section 1, together with sections 3, 4, 6, 7 and 8 and the Schedule, were repealed by the Extradition Act 1989⁹²
- section 2 was repealed by the Statute Law Revision Act 1950⁹³
- section 5 was repealed by the Criminal Justice (International Co-operation) Act 1990.⁹⁴

9. As a consequence of these several repeals all that now remains of the 1873 Act are:

- the short title - “The Extradition Act 1873”
- the long title - “An Act to amend the Extradition Act 1870”
- section 1 (in part only) - “This Act may be cited as ‘The Extradition Act 1873’”.

10. The indications are that non-repeal of the remainder of the 1873 Act was an oversight, both in 1989 and in 2003. Today the provisions are no longer required and they may now be repealed.

Extent

11. The Extradition Act 1870 (and, by implication, the Extradition Act 1873) extended across the United Kingdom and to the Channel Islands and the Isle of Man.⁹⁵

⁹¹ See Extradition Act 1989, s 37(3) which provided that “The repeal by this Act of the Extradition Act 1870 does not affect an Order in Council made under section 2 of that Act or the power to revoke or alter such an Order”. By section 1(3) of, and Schedule 1 to, the 1989 Act, where an order in council was in force in relation to a foreign state, a revised rubric governing surrender (set out in that schedule) was to operate.

⁹² See Extradition Act 1989, s 37(1) and Sch 2. All that remains of section 1 of the 1873 Act are the words “This Act may be cited as ‘The Extradition Act 1873’”.

⁹³ 1950 c.6, s 1 and Sch 1.

⁹⁴ 1990 c.5, s 31(3) and Sch 5.

⁹⁵ The 1870 Act, s 22. As enacted the legislation covered the whole of Ireland but, today, it is limited - within that island - to the province of Northern Ireland.

Consultation

12. The Ministry of Justice, the Foreign and Commonwealth Office, the Home Office, the Crown Prosecution Service, the Metropolitan Police, H.M. Revenue and Customs, the relevant authorities in Scotland, Northern Ireland and Wales, and in the Isle of Man, have been consulted about this repeal proposal.

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Chronology of the main statutes relating to Extradition

Extradition Act 1870 (c.52)

- Act amended the law relating to the extradition of criminals
- comprised 27 sections and 3 schedules
- authorised making of Order in Council to cover extradition treaties with foreign states
- listed (in Sch 1) the extradition crimes
- Act itself repealed (amongst others) the Extradition Act 1866
- Act repealed in whole by Extradition Act 1989 (c.33), with **saving** for section 2 [and section 2 later extended in 1990-2000] and Sch 1

Extradition Act 1873 (c.60)

- Act to amend the 1870 Act
- to be construed as the Extradition Acts 1870 and 1873
- extended extradition to accessories to any “extradition crime”
- extended the list of extradition crimes in the 1870 Act [ie in Sch 1]
- Act substantially repealed by Extradition Act 1989 and Criminal Justice (International Co-operation) Act 1990, but section 1 only repealed **in part**; and Act previously applied by SI 1985/751 and extended by SI 1986/2020

Extradition Act 1895 (c.33)

- Act to amend the 1870 and 1873 Acts
- to be construed as the Extradition Acts 1870 to 1895
- widened jurisdiction for hearing to metropolitan and stipendiary magistrates (beyond Bow Street)
- Act now repealed in whole by Extradition Act 1989 and SL(R) Act 2004

Extradition Act 1906 (c.15)

- Act to include bribery in Sch 1 list of extradition crimes
- Acts to be cited as Extradition Acts 1870 to 1906
- Act now repealed in whole by Extradition Act 1989

Extradition Act 1932 (c.39)

- Act to include dangerous drugs in Sch 1 list of extradition crimes
- Acts to be cited as Extradition Acts 1870 to 1932
- Act now repealed in whole by Extradition Act 1989

Suppression of Terrorism Act 1978 (c.26)

- Act, amongst other things, amended law relating to extradition
- prevented extradition for alleged offences involving individual's race, religion, nationality or political opinions
- Act to include explosives and firearms in Sch 1 list of extradition crimes
- Act made -
 - minor repeals within Sch 1 to the Extradition Act 1870
 - minor repeal within the Sch to the *Extradition Act 1873*
 - repeal within section 1 of the Extradition Act 1932
- Act **partially** repealed by Extradition Acts 1989 and 2003 (and other parts also amended, substituted or extended)

Extradition Act 1989 (c.33)

- Act essentially a consolidating Act (including Extradition Acts 1870 to 1932)⁹⁶
- Act, by Schedule 2, repealed -
 - Extradition Act 1870 (in whole, but with **saving** for section 2 orders: see s 37(3))
 - *Extradition Act 1873* (in part - leaving essentially sections 1 and 5),⁹⁷
 - Extradition Act 1895 (in whole, because "of no practical utility": s 37(2))
 - Extradition Act 1906 (in whole)
 - Extradition Act 1932 (in whole), and
 - Suppression of Terrorism Act 1978 (in part)
- Act repealed in whole by Extradition Act 2003, Sch 4, but with **saving** for section 10 (and prospectively amended by Constitutional Reform Act 2005, Sch 9). See SIs 2003 Nos. 3103, 3258

Criminal Justice (International Co-operation) Act 1990 (c.5)

- Act provided for international mutual co-operation in criminal matters, including drug trafficking
- Act repealed section 5 of the *Extradition Act 1873*: s 31 and Sch 5
- Act repealed small parts of the Suppression of Terrorism Act 1978

⁹⁶ Consolidation under the 1989 Act followed the *Report on the Consolidation of Legislation relating to Extradition*, Law Com. No. 182, Law Commission & Scottish Law Commission (HMSO, June 1989, Cm 712).

⁹⁷ The Extradition Act 1989 repealed the following provisions within the *Extradition Act 1873*: section 1 (part only), ss 3, 4, 6, 7, 8 and Sch. Section 2 of the 1873 Act had already been repealed by the Statute Law Revision Act 1950, s 1 and Sch 1. Section 5 of the 1873 Act was subsequently repealed by Criminal Justice (International Co-operation) Act 1990. As a consequence, only the short title, the long title and part of section 1 of the *Extradition Act 1873* remain in force.

- Act itself was repealed and replaced **in part** by the Crime (International Co-operation) Act 2003

Extradition Act 2003 (c.41)

- Act implements European arrest warrant and surrender procedures
- Act repealed the Backing of Warrants (Republic of Ireland) Act 1965 (c.45) and the Extradition Act 1989 (c.33) in whole (amongst other Acts). No Act before 1965 repealed. See ss 218, 220 and Sch 4. Also repealed Suppression of Terrorism Act 1978 (**in part**)
- although Act came into force on 1.1.04 (subject to savings), it does not apply to any extradition requests received, or extraditions made, prior to that date
- repeal of the 1989 Act did not apply to British Overseas Territories (except Gibraltar) or the British Islands, pending further legislation
- see Extradition Act 2003 (Commencement and Savings) Order 2003, SI 2003 No.3103 (as amended) and Extradition Act 2003 (Repeals) Order 2004, SI 2004 No.1897
- Act amended since by Police and Justice Act 2006

GROUP 5 - FORGERY

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Forgery of Foreign Bills Act 1803 (43 Geo.3 c.139)	The whole Act.

Forgery of Foreign Bills Act 1803

Purpose

1. The *Forgery of Foreign Bills Act 1803*⁹⁸ was passed to prevent the forging and counterfeiting of foreign bills of exchange, foreign promissory notes and money payment orders (and originally also to prevent the counterfeiting of foreign copper money). According to the 1803 Act's preamble the practice of forging and counterfeiting foreign bills of exchange and similar forms of instrument "hath of late greatly increased", and the incidence of such forgery had been aided by the ability to engrave the requisite printing plates within the United Kingdom.

2. The 1803 Act sought to make "effectual provision" to prevent the practice. Originally the Act comprised nine sections, but the *Forgery Act 1830*⁹⁹ repealed sections 1 and 2 of the 1803 Act insofar as they applied to England (and Wales).¹⁰⁰ The 1830 Act did not apply to offences committed in Scotland or Ireland.¹⁰¹

⁹⁸ 43 Geo.3 c.139 (1803) ("the 1803 Act"), being "An Act for preventing the forging and counterfeiting of Foreign Bills of Exchange, and of Foreign Promissory Notes and Orders for the Payment of Money; and for preventing the counterfeiting of Foreign Copper Money". A promissory note is (and was) a document containing a written promise to pay a stated sum of money on a specified date or on demand. The 1803 Act applied to England, Wales, Scotland and (at that time) the whole of Ireland.

⁹⁹ 11 Geo.4 & 1 Will.4 c.66 (1830) ("the 1830 Act"), being "An Act for reducing into One Act all such Forgeries as shall henceforth be punished with Death, and for otherwise amending the Laws relative to Forgery". The 1830 Act has been repealed in whole (albeit piecemeal between 1861 and 1978).

¹⁰⁰ The 1830 Act, s 31 repealed a part of the 1803 Act in the following terms: "and so much of an Act passed in the Forty-third Year of the same Reign [of King George the Third, 43 Geo.3 c.139], intituled *An Act for preventing the forging and counterfeiting of Foreign Bills of Exchange, and of Foreign Promissory Notes and Orders for the Payment of Money; and for preventing the counterfeiting of Foreign Copper Money*, as in anywise relates to any Foreign Bill of Exchange, or Foreign Promissory Note, Undertaking, or Order for the Payment of Money; . . . shall continue in force until and throughout the Twentieth Day of July in the present Year [1830], and shall from and after that Day, as to that Part of the United Kingdom called England, be repealed" (subject to certain exceptions, which are not relevant here). This repeal of part of the 1803 Act appeared to extend only to sections 1 and 2 (as indicated by the marginal note in the King's Printers version). Sections 3 to 7 of the 1803 Act related to coinage.

¹⁰¹ See the 1830 Act, s 29.

3. Sections 3 to 9 of the 1803 Act (and seemingly the preamble) were later repealed across the whole of the United Kingdom by the *Criminal Statutes Repeal Act 1861*,¹⁰² and sections 1 and 2 were repealed specifically for Ireland (which included what today is Northern Ireland). This left sections 1 and 2 operative only in Scotland. The remainder of the 1803 Act has gone.

4. The 1803 Act's principal provisions (as they exist today in Scotland) encompass:

- (a) a prohibition on the forging and counterfeiting, or the causing of or assisting in such forging and counterfeiting, of any bill of exchange or promissory note or money payment order belonging to "any foreign prince, state, or country whatsoever" with intent to deceive "his Majesty, his heirs and successors" or any such prince or state or country, or any person or body resident or operating either in the United Kingdom or abroad;¹⁰³
- (b) a prohibition on the tendering in payment or in exchange "or otherwise utter[ing] or publish[ing]" any "false, forged, or counterfeited" bill or note as if it were genuine, and with intent to deceive or defraud the King or his successors, or any foreign prince, state or country or other body;¹⁰⁴
- (c) a prohibition on engraving plates for foreign bills of exchange, promissory notes (or undertakings) and money payment orders without written authority from the relevant foreign prince or state or other body politic;¹⁰⁵ and
- (d) a prohibition on making or printing (by a false plate or otherwise) any form of foreign bill of exchange, promissory note or money payment order, or possessing "without lawful excuse" any such plate, device or impression.¹⁰⁶

¹⁰² 24 & 25 Vict. c.95 (1861), s 1 and Sch, which said "and the rest of the Act [bar sections one and two] as to the whole United Kingdom". This 1861 Act, which was passed to facilitate the consolidation through re-enactment in that year of various criminal statutes, just pre-dated enactment of the Forgery Act 1861 (c.98).

¹⁰³ The 1803 Act, s 1. Reference to any foreign prince or state or country includes reference to "any minister or officer entrusted by or employed in the service of" such prince, state or country. The prohibition extended to bills of exchange, promissory notes and other orders "in the English language, or in any foreign language or languages, or partly in one and partly in the other".

¹⁰⁴ The 1803 Act, s 1. The penalty for transgressing either of the section 1 prohibitions was conviction for felony and transportation for up to 14 years. Section 1 of the 1803 Act has since been repealed for England and Wales by the Forgery Act 1830 (c.66), and for Northern Ireland (then Ireland as a whole) by the Criminal Statutes Repeal Act 1861 (c.95).

¹⁰⁵ The 1803 Act, s 2. The prohibition on engraving was stated also to include "cutting, etching, scraping" or making "by any other means or devise". The prohibition extended to the activity of any person "within any part of the United Kingdom of Great Britain and Ireland". Section 2 of the 1803 Act has been repealed for England and Wales by the Forgery Act 1830 (c.66) and, for Northern Ireland (then all Ireland), by the Criminal Statutes Repeal Act 1861 (c.95). Section 2 remains in force in Scotland, and the section was amended in 1948 (through the omission of certain words relating to penalty) by the Criminal Justice Act 1948 (c.58), s 2.

¹⁰⁶ The 1803 Act, s 2. Commission of a section 2 offence was deemed to be a misdemeanour and breach of the peace, the penalty for which was imprisonment for up to 6 months or a fine or both (for a first offence) or transportation to the overseas colonies or plantations for 14 years. Where, in a case of possession, the defence was lawfulness of possession, the onus of proof was specifically to lie with the accused.

5. Apart from the two sections of the 1803 Act applying only in Scotland (sections 1 and 2), forgery and counterfeiting is now governed by the *Forgery and Counterfeiting Act 1981*,¹⁰⁷ although that Act covers the UK only in part.¹⁰⁸

6. In Scotland the remaining 1803 Act provisions have been superseded, and the Act would now no longer be used.¹⁰⁹ In its place offences of forgery, counterfeiting and uttering would be charged either under the 1981 Act, ss 14, 15 and 17 or under section 46A(1) of the Criminal Law (Consolidation) (Scotland) Act 1995¹¹⁰ (which deals with false monetary instruments).

7. For this reason the 1803 Act provisions can safely be regarded as obsolete and repealed.

8. The *Forgery Act 1861*¹¹¹ still exists in part, but that 1861 Act does not affect the position stated above for two reasons:

(a) because it applied only to England (and Wales) and Ireland, and not in any significant measure to Scotland;¹¹² and

(b) because the remaining operational provisions of the Act (the bulk having been repealed) relate only to the offences of falsely acknowledging recognisances or bail,¹¹³ destroying or falsifying births, marriages, deaths and related registers,¹¹⁴ and making false entries in such registers,¹¹⁵ and not to forgery *per se*.

9. The *Forgery Act 1913*¹¹⁶ extended only to England, Wales and Ireland (and not to Scotland).¹¹⁷ It was repealed in whole in England, Wales and Northern Ireland by the 1981 Act.¹¹⁸

¹⁰⁷ 1981 (c.45) (“the 1981 Act”).

¹⁰⁸ By section 31 of the 1981 Act, Part 1 of the Act and the Sch Pt I (general repeals consequential on Part 1) do *not* extend to Scotland. Part 1 deals with forgery by the producing of false instruments (eg. money orders, share certificates, passports and credit cards). Part 2 (on counterfeiting of currency notes and coins) does extend to Scotland.

¹⁰⁹ We are grateful to the Criminal Justice and Disclosure Team in the Crown Office of Scotland for this information.

¹¹⁰ 1995 (c.39), as amended by the Crime (International Co-operation) Act 2003 (c.32), s 89. The list of “specified monetary instrument[s]” is set out in the False Monetary Instruments (Scotland) Order 2005 (SSI 2005 No 321).

¹¹¹ 24 & 25 Vict. c.98 (1861) (“the 1861 Act”), being “An Act to consolidate and amend the Statute Law of England and Ireland relating to indictable Offences by Forgery”. By section 55 of the 1861 Act nothing within it was to extend to Scotland except as otherwise expressly provided.

¹¹² The 1861 Act, s 55.

¹¹³ The 1861 Act, s 34.

¹¹⁴ The 1861 Act, s 36.

¹¹⁵ The 1861 Act, s 37. See also section 50 (repealed in part).

¹¹⁶ 3 & 4 Geo.5 c.27 (1913) (“the 1913 Act”).

¹¹⁷ The 1913 Act, s 21.

¹¹⁸ See the 1981 Act, s 30 and Sch Pt I (consequential repeals), and section 31 excluding this repeal from Scotland.

Extent

10. Originally the Forgery of Foreign Bills Act 1803 extended to the whole of the United Kingdom (which then included what is now the Republic of Ireland).¹¹⁹ Today the portion of the 1803 Act still in force (sections 1 and 2) applies only in Scotland.

Consultation

11. HM Treasury, the Ministry of Justice, the Home Office, the Serious Fraud Office, and the relevant authorities in Northern Ireland, Scotland and Wales have been consulted about these repeal proposals.

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¹¹⁹ In Ireland the Forgery of Foreign Bills Act 1803 (c.139) has now been wholly repealed: see the Statute Law Revision Act 2007 (No 28 of 2007) (Ire), ss 2, 3 and Sch 2 Pt 4 (statutes specifically repealed).

GROUP 6 - FRAUD

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Criminal Justice (Scotland) Act 1987 (c. 41)	Sections 51 to 53. ¹²⁰
Criminal Justice Act 1988 (c.33)	In Schedule 15, paragraph 111.

Note: The repeals in this part of the consultation paper will only go forward into the draft SL(R) Bill when it is confirmed that the Criminal Justice and Licensing (Scotland) Bill [2010] has been enacted by the Scottish Parliament, and the relevant parts brought into force.

Criminal Justice (Scotland) Act 1987 (c.41)

1. The Criminal Justice (Scotland) Act 1987 (“the 1987 Scottish Act”) had two main purposes:

- (a) to make provision for the confiscation of the proceeds of drug trafficking (sections 1 to 47), and
- (b) to make provision for a range of miscellaneous matters relating to the administration of criminal justice (sections 48 to 68).

Sections 51 to 55 deal with investigation of serious or complex fraud. As regards Scotland (but not other parts of the United Kingdom) sections 51 to 54 [have already been repealed].¹²¹

2. The anti-fraud provisions authorised the Lord Advocate in Scotland to issue a direction which would empower an investigating officer to require a person suspected of serious or complex fraud to attend for questioning and to produce relevant documentation. Failure to comply with an officer’s requirement to produce documents could lead to the issue of a warrant to enter and search premises, and amount to a summary offence. The destruction or

¹²⁰ This proposed repeal extends only to England and Wales, and to Northern Ireland. Repeal for Scotland has already been effected through the Criminal Justice and Licensing (Scotland) Act [2010] (asp) (“the [2010] Scottish Act”): discussed below. ***The [2010] Scottish Act’s reference will need inserting once the Bill is enacted***

¹²¹ See the [2010] Scottish Act, s 145 and Sch 5 para 9. ***This reference needs checking once Scottish Bill is enacted***

other disposal of documentation relevant to an investigation under section 52 could amount to a more serious offence (triable on indictment or summarily).¹²²

3. Provision was also made for the lawful disclosure by the Lord Advocate (for prosecution purposes) of information which ordinarily would be “subject to an obligation of secrecy under the Taxes Management Act 1970” (c.9).¹²³

4. Sections 51 to 54 of the 1987 Scottish Act were consolidated within the Criminal Law (Consolidation) (Scotland) Act 1995¹²⁴ but were not repealed separately, for reasons which are now unclear, by the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995¹²⁵ or any later legislation. As regards Scotland they are now repealed by the [2010 Scottish Act]. The sections have become redundant as regards the remainder of the United Kingdom.¹²⁶

Extent

5. Sections 51 to 53 of the 1987 Scottish Act extended to England and Wales, and to Northern Ireland (as well as to Scotland).¹²⁷ Section 54 extended, however, to Scotland only.¹²⁸

6. Sections 51 to 54 of the 1987 Scottish Act have now been repealed for Scotland by the Criminal Justice and Licensing (Scotland) Act [2010].¹²⁹

¹²² The 1987 Scottish Act, ss 51-53.

¹²³ The 1987 Scottish Act, s 54. Section 55 of the 1987 Scottish Act (which is linked to the anti-fraud provisions, but is not the subject of the present repeal proposal) relates to the power to petition for company winding-up on the basis of information obtained through the section 52 investigation procedure.

¹²⁴ 1995 c.39 (“the 1995 Consolidation Act”), ss 27 to 30. Sections 27 to 30 made similar provision for investigation of serious or complex fraud. As in the 1987 Scottish Act, sections 27 to 29 of the 1995 Consolidation Act **extend to England and Wales and Northern Ireland** as well as to Scotland (see the 1995 Consolidation Act, ss 28(12) and 53(4)). Section 30 applies to Scotland only (see section 53(3)). The 1995 Consolidation Act did not schedule repeals of any statutes.

¹²⁵ 1995 c.40. This Act was designed to make provision for repeals, consequential amendments and savings flowing from, amongst other Acts, the Criminal Law (Consolidation) (Scotland) Act 1995 (c.39) (the 1995 Consolidation Act). By section 6 and Schedule 5 partial repeal was made of the Criminal Justice (Scotland) Act 1987 (c.41), but not of sections 51 to 54.

¹²⁶ Section 54 of the 1987 Scottish Act was amended after the 1995 consolidation by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (SI 2001 No.3649) (“the 2001 Order”), art 228 (relating to competent authorities for receipt of information). Article 228 substituted two new paragraphs in section 54(5) of the 1987 Scottish Act - paras (e) and (f) - in place of paras (e) to (l) (and left in place paras (m) and (n)). These amendments were intended to extend to Scotland only (in line with the extent of the original section 54 of the 1987 Scottish Act).

Section 54, in its *original* form, was repeated in section 30 of the 1995 Consolidation Act (but with some very minor adjustment *eg* of s 54(5)(k)). Article 234 of the 2001 Order replicated the amendment to section 30(5) of the 1995 Consolidation Act which had been made to section 54(5) of the 1987 Scottish Act by article 228 of the 2001 Order. In other words, the 2001 Order amended both the 1987 Scottish Act and the 1995 Consolidation Act.

¹²⁷ The 1987 Scottish Act, s 52(9). References in the legislation to the sheriff and the procurator fiscal were to be construed as meaning the equivalent office holder in the other jurisdictions. That position was reinforced by section 72(4) of the Act which provides: “sections 51 to 53 . . . extend to England and Wales and to Northern Ireland as well as to Scotland”.

¹²⁸ See the 1987 Scottish Act, s 72(1).

7. In relation to England and Wales, and to Northern Ireland, sections 51 to 53 of the 1987 Scottish Act remain in force, in tandem with the provisions in the 1995 Consolidation Act which were designed to replace them. Repeal of sections 51 to 53 for England, Wales and Northern Ireland is now recommended.

Criminal Justice Act 1988 (c.33)

8. The Criminal Justice Act 1988 (“the 1988 Act”) had as its purpose the making of fresh provision for extradition (prior to the scheme set out in the Extradition Act 1989) and a variety of other criminal justice purposes (such as criminal evidence, sentencing reviews and confiscation orders).

9. Section 170(1) of, and Schedule 15 to, the 1988 Act made a range of minor and miscellaneous amendments to existing criminal justice legislation. Paragraph 111 of Schedule 15 amended the Criminal Justice Act 1987¹³⁰ and the Criminal Justice (Scotland) Act 1987,¹³¹ as described below.

Criminal Justice Act 1987

10. The *Criminal Justice Act 1987* established the Serious Fraud Office (the SFO) for England and Wales, and for Northern Ireland (but not for Scotland).¹³²

11. Section 3 of the 1987 Act dealt with (and continues to deal with, albeit in amended form) disclosure of information. Disclosure was authorised by the SFO to “any competent authority”, and sub-section (6) listed such authorities.

12. In the 1987 Act, as enacted, the competent authorities included (at paragraph (j) in section 3(6)) -

“an inspector appointed under section 38 of the Banking Act 1987;”.¹³³

¹²⁹ See the [2010] Scottish Act, s 145 and Sch 5 para 9. ***This reference needs checking when the Bill is enacted***

¹³⁰ 1987 c.38 (“the 1987 Act”).

¹³¹ 1987 c.41 (“the 1987 Scottish Act”), discussed above.

¹³² However, certain provisions in the 1987 Act did extend to Scotland (listed at section 17(2)), such as powers relating to investigation.

¹³³ 1987 c.22.

A new paragraph (j) was substituted by paragraph 111 of Schedule 15 to the 1988 Act to read -

“a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;”.

13. Further amendment has since been made by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001.¹³⁴ The 2001 Order substituted new paragraphs (e) and (f) in section 3(6) of the 1987 Act in place of original paragraphs (e) to (k) (thus omitting paragraph (j) in the process).¹³⁵

14. As a consequence, that part of paragraph 111 of Schedule 15 to the 1988 Act which refers specifically to the *Criminal Justice Act 1987* is now superseded and can be repealed.

Criminal Justice (Scotland) Act 1987

15. Section 54 of the 1987 Scottish Act dealt with disclosure of information in fraud prosecutions. Section 54(4) provided for disclosure to (amongst others) “any competent authority”. As enacted paragraph (k) of section 54(5) included in the list of such authorities -

“an inspector appointed under section 38 of the Banking Act 1987;”.

A new paragraph (k) was substituted by paragraph 111 of Schedule 15 to the 1988 Act to read -

“a person appointed by the Bank of England under section 41 of the Banking Act 1987 to carry out an investigation and make a report;”.

16. As with the 1987 Act (above), the 2001 Order made further amendment to section 54 of the 1987 Scottish Act. The Order deleted paragraphs (e) to (l) in section 54(5) and substituted new paragraphs (e) and (f) (thus losing paragraph (k) in the process).¹³⁶

17. Because section 54 applied only in Scotland, and has since been repealed by the Criminal Justice and Licensing (Scotland) Act [2010],¹³⁷ the provision in paragraph 111 of Schedule 15 to the 1988 Act which amended section 54 of the 1987 Scottish Act is now obsolete and can also be repealed.

Extent

18. The Criminal Justice Act 1988 applies principally in England and Wales, although a limited number of its provisions extend also to Scotland and to Northern Ireland.

¹³⁴ SI 2001 No.3649 (“the 2001 Order”, see above).

¹³⁵ The 2001 Order, art 308. The 2001 Order also repealed the Banking Act 1987: see the 2001 Order, art 3(1)(d).

¹³⁶ The 2001 Order, art 228.

¹³⁷ See the [2010] Scottish Act, s 145 and Sch 5 para 9. ***These references need checking once the Bill is enacted***

19. Section 170 of the 1988 Act (which gave effect to the amendments within Schedule 15 paragraph 111) applied across the United Kingdom,¹³⁸ and section 172 provided that the extent of any amendment of an enactment in Schedule 15 was to be the same as that of the enactment amended.¹³⁹ As a consequence, the amendment to section 54 of the 1987 Scottish Act made by Schedule 15 paragraph 111 applied to Scotland only. The amendment to section 3 of the 1987 Act made by Schedule 15 paragraph 111 applied to England, Wales and Northern Ireland.

20. Although the Criminal Justice and Licensing (Scotland) Act [2010] [has repealed] paragraphs 89¹⁴⁰ and 117¹⁴¹ of Schedule 15 to the 1988 Act as they applied to Scotland, it did not repeal paragraph 111 of Schedule 15.¹⁴² Repeal by the UK Parliament of Schedule 15 paragraph 111 will first require, so far as it relates to Scotland, a legislative consent motion of the Scottish Parliament.

Consultation

21. HM Treasury, the Ministry of Justice, the Home Office, the Serious Fraud Office, and the relevant authorities in Scotland, Wales and Northern Ireland have been consulted about these repeal proposals.

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¹³⁸ The 1988 Act, s 172(1)-(3).

¹³⁹ The 1988 Act, s 172(11). The only exception to this related to amendments of the Offences against the Person Act 1861 (which exception is not applicable here).

¹⁴⁰ Paragraph 89 related to the Civic Government (Scotland) Act 1982 (c.45), s 52 (children in need of care).

¹⁴¹ Paragraph 117 related to the Criminal Justice (Scotland) Act 1987 (c.41), s 52 (fraud investigation powers). Section 52 is already recommended in this note for separate repeal.

¹⁴² The [2010] Scottish Act did not seek to repeal paragraph 111 because repeal then could only have been a partial repeal. A partial repeal would have interfered with the provision's overall clarity.

GROUP 7 - POLICE

<i>Reference</i>	<i>Extent of repeal or revocation</i>
Police Act 1969 (c.63)	The whole Act.

Background

1. The purpose behind the Police Act 1969 (“the 1969 Act”) was principally to facilitate reciprocal arrangements between the Royal Ulster Constabulary (as the Northern Ireland police force was then known) and police forces on the mainland of Great Britain (referred to in the 1969 Act as “home police forces”). The Act applied across the United Kingdom.
2. Violent sectarian clashes, a hallmark of ‘the Troubles’ in Northern Ireland, started in 1966 and had become, by 1969, more severe. Issues of law and order, and the possible need for security reinforcements, were high on the political agenda.
3. By a series of incremental steps, all seven sections of the 1969 Act have now been repealed, leaving in place only the short title and the long title (which are also recommended for repeal).

Police Act 1969

4. The structure of the Act as originally enacted was as follows:
 - (a) by *section 1* a chief officer of a “home police force” was authorised to provide constables or other assistance to the Royal Ulster Constabulary (“the RUC”) whenever it needed “to meet a special demand on its resources”, and the Secretary of State could order such reinforcement where there was inadequate time to make special arrangements and it was “in the interests of public safety or order”,¹⁴³
 - (b) by *section 2* where a police officer from a home force was to serve in the RUC, for that period of service he or she was deemed to be a member of the RUC, and on

¹⁴³ The “home” police forces included the Metropolitan Police in London and the City of London Police. The provision of assistance was to be made on the application of the Inspector General of the RUC or other person designated by the Secretary of State. Where emergency steps had to be taken, the Secretary of State would act on the advice of the Minister of Home Affairs for Northern Ireland.

returning home he or she was able to revert to their previous rank or to any higher rank to which they had been promoted;¹⁴⁴

- (c) by *section 3* where a police officer from the RUC was provided to help a home force with “a special demand on its resources” (pursuant to powers enacted by the Parliament of Northern Ireland), that officer was to act as a member of the home force, and the costs of that secondment were to be borne by the home force;
- (d) by *section 4* a Police Council for the United Kingdom was established (to replace the existing Police Council for Great Britain). The remit of the new Police Council was to make recommendations to the Secretary of State (for home forces) and the Minister of Home Affairs for Northern Ireland on the issue of police conditions of service (encompassing such matters as working hours, leave, pay, allowances, pensions and the like);
- (e) by *section 5* power was provided to give retrospective effect to certain police pension regulations, both in Great Britain and in Northern Ireland; and
- (f) by *sections 6 and 7* power to make, vary or revoke an order was to be exercisable by statutory instrument, and the 1969 Act was to come into effect by commencement order.

5. In 1971 the Pensions (Increase) Act 1971 repealed *section 5* of the 1969 Act.¹⁴⁵

6. In 1980 the Police Negotiating Board Act 1980 (c.10) repealed *section 4* of the 1969 Act.¹⁴⁶

7. In 1995 the Criminal Justice and Public Order Act 1994 repealed the following sections of the 1969 Act:¹⁴⁷ *sections 1, 3, 6 and 7*.

8. In the same year (1995) the Police and Magistrates’ Courts Act 1994 repealed - subject to commencement order - the remaining section of the 1969 Act,¹⁴⁸ *section 2*, for England,

¹⁴⁴ The right of reversion provisions in the Police Acts (1964 and, for Scotland, 1967) were amended to take account of the 1969 provisions. If an officer were dismissed whilst with the RUC, they would be deemed to have been disciplined under the relevant Discipline Regulations by their home force.

¹⁴⁵ See Pensions (Increase) Act 1971 (c.56), s 18(5), Sch 8 Pt 1 (“Outright repeals”). This repeal provision extended to Great Britain and to Northern Ireland: see the 1971 Act, s 19(2).

¹⁴⁶ See Police Negotiating Board Act 1980 (c.10), s 3(3)(a). By section 3(4) the 1980 Act (and its repeals) extended specifically to Northern Ireland (and implicitly to Scotland as well as England and Wales).

¹⁴⁷ See Criminal Justice and Public Order Act 1994 (c.33), s 168(3), Sch 11. The repeals took effect from 3 February 1995: see the Criminal Justice and Public Order Act 1994 (Commencement No 5 and Transitional Provisions) Order 1995, SI 1995 No 127 (C.4), art 2(1), Sch 1 App C. By section 172(10) of the 1994 Act, section 168 was to extend to the whole of the United Kingdom, and by section 172(16) repeals of enactments set out in Schedule 11 were (in the main) to have the same extent as the enactments themselves.

Wales and Scotland. However, no formal repeal of *section 2* for Northern Ireland has been activated.¹⁴⁹

9. On this basis, by April 1995, *sections 1 to 7* had been repealed (with the exception of *section 2* in Northern Ireland), leaving in place only the short and long titles to the 1969 Act. Those titles now serve no useful purpose and can also be repealed (thus completing repeal of the whole Act).

10. The RUC was replaced by the Police Service of Northern Ireland (“the PSNI”) in 2001.

Extent

11. The Police Act 1969 as originally enacted applied across the United Kingdom.

12. Each of the repealing provisions enacted over the years 1971 to 1995 took effect across England, Wales, Scotland and Northern Ireland, with one apparent exception.

13. So far as *section 2* of the 1969 Act is concerned it appears that the provision has been repealed in England, Wales and Scotland, but not in Northern Ireland. This seems to have been an oversight.

Consultation

14. The Home Office, the Ministry of Justice, the Association of Police Authorities, the Chief Constable of Northern Ireland, the Police Federation for England and Wales, the Scottish Police Federation, the Police Federation for Northern Ireland, and the relevant authorities in Scotland, Wales and Northern Ireland, have been consulted about these repeal proposals.

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¹⁴⁸ See Police and Magistrates’ Courts Act 1994 (c.29), s 93, Sch 9 Pt 1. The repeals took effect from 1 April 1995: see the Police and Magistrates’ Courts Act 1994 (Commencement No 5 and Transitional Provisions) Order 1994, SI 1994 No 3262 (C.83), art 4(1), Sch (for England and Wales), and the Police and Magistrates’ Courts Act 1994 (Commencement No 7 and Transitional Provisions) (Scotland) Order 1995, SI 1995 No 492 (C.12) (S.34), art 2, Sch 1 (for Scotland only).

By section 96 of the Police and Magistrates’ Courts Act 1994, section 93 (within Part V) implicitly extended across England, Wales, Scotland and Northern Ireland, and by section 96(4) the repeal provisions set out in Schedule 9 “have the same extent as the enactments repealed”. However, the *Chronological Table of the Statutes for Northern Ireland* indicates that *section 2* of the 1969 Act was repealed only “prospectively” for Northern Ireland by the Police and Magistrates’ Courts Act 1994: there is no indication whether that repeal was actually activated. It appears not to have been.

¹⁴⁹ None of the following commencement orders - made under the Police and Magistrates’ Courts Act 1994 - appear to have covered Northern Ireland: SIs 1994 Nos 2025, 2151 [although it did repeal the Police Act (Northern Ireland) 1970 (c.9)], 2594, 3075, 3262 [although it did repeal the Police Act 1969 for England and Wales only]; 1995 Nos 246, 685, 3003; and 1996 No 1646.

GROUP 8 - SALE OF OFFICES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
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.
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.

Sale of Offices Acts 1551 and 1809

Introduction

1. This note proposes the repeal of two enactments which prohibited the sale or purchase of certain public offices. Changes in the law and practice over the years have made these enactments obsolete. In particular the fact that public offices give their holders only a personal interest (and not a property right) in them means that these enactments no longer serve any useful purpose.

Background

2. In the Middle Ages, the concept 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.

3. The *Sale of Offices Act 1551* ("the 1551 Act") and the *Sale of Offices Act 1809* ("the 1809 Act") represented efforts to eliminate the purchase and sale of public offices, the first being in the context of judicial administration. As Holdsworth pointed out,¹⁵⁰ however, 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,¹⁵¹ were excluded.... Attempts in 1690 and 1692-1693 to legislate against the

¹⁵⁰ W Holdsworth *A History of English Law* Vol I (1956) pp 250-1.

¹⁵¹ 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.

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)

4. The 1809 Act must be seen in the context (1) of a series of Acts relating 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 (2) of the House of Commons' largely frustrated efforts to reform sinecures,¹⁵² which coincided with the events giving rise to the 1809 Act.¹⁵³ Those events have been described as follows:¹⁵⁴

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 appointments¹⁵⁵. ... 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.

5. 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 rendered (as was usual at the time when the 1809 Act was passed)¹⁵⁶ 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.¹⁵⁷ Significantly, the 1809 Act apparently fell into total disuse after about 1860.¹⁵⁸

6. The two Acts are described briefly in the following paragraphs.

¹⁵² A sinecure was an office of profit or honour without duties attached.

¹⁵³ See Holdsworth, *A History of English Law* Vol XIII (1952) pp 189-90.

¹⁵⁴ J S Watson *The Reign of George III (1760-1815)* (The Oxford History of England, Vol XII) (1960) pp 447-8.

¹⁵⁵ The Duke was reappointed commander in chief in 1811; *ibid*, p 448.

¹⁵⁶ 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.

¹⁵⁷ Holdsworth, *ibid*, pp 135-7.

¹⁵⁸ The last reported case was in 1862.

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.¹⁵⁹ The Act was not comprehensive. It applied to clerkships in the courts of record and to certain offices of trust,¹⁶⁰ 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 1829.¹⁶¹

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 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.¹⁶² 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.¹⁶³ By *section 6*, anyone advertising such a house, or the name of any such broker,

¹⁵⁹ Section 1; and see *Russell on Crime* (12th ed. 1964) p 376.

¹⁶⁰ 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).

¹⁶¹ See *Russell on Crime* (12th ed, 1964), pp 374-6.

¹⁶² *Hansard*, HC 27 March 1809, Vol 13, cols 821 to 823.

¹⁶³ 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).

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.¹⁶⁴

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 1809 Act have been repealed, notably *sections 7, 8 and 12* by the Statute Law Revision Act 1872 (No.2). *Sections 7 and 8* permitted the brokerage of commissions in the Army at regulated prices, notwithstanding the general prohibition 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,¹⁶⁵ but the last such was in 1862.¹⁶⁶ Of these cases, only one concerned a criminal prosecution under the Act.¹⁶⁷

¹⁶⁴ 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.

¹⁶⁵ See *Russell on Crime* (12th ed. 1964) pp 377-9.

¹⁶⁶ *Eyre v Forbes* (1862) 12 CB (NS) 191; 142 ER 1116.

¹⁶⁷ *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.

Conclusion

14. The 1551 and 1809 Acts addressed matters which are no longer a practical problem. As stated above, there have been no reported cases under either Act for 150 years or more. This is in large part a measure of the reforms in the methods of appointment to public office over the past 140 years. Modern arrangements for recruitment and remuneration of persons holding public office are very different from early 19th century procedures. Nowadays there are Civil Service Commissioners to ensure that civil service appointments are based on merit. The Committee on Standards in Public Life (established in 1994) examines concerns about standards of conduct of all holders of public office. But, crucially, public appointments today 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. Consequently the 1551 and 1809 Acts have ceased to serve any modern practical purpose and may be repealed on that basis.

15. Moreover any attempt to procure a public office or appointment by way of an improper inducement would contravene the provisions of the Bribery Act 2010. For example, anyone who offers, promises or gives a financial or other advantage intending the advantage to induce a person to perform improperly a relevant function or activity commits an offence.¹⁶⁸ For this purpose a relevant function or activity includes any function of a public nature, the performer of which is expected to perform in good faith.¹⁶⁹ This would cover improper attempts to influence a person having authority to make a public appointment or to make a nomination for such an appointment.

16. The repeal of the 1809 Act would permit the consequential repeal of a further statutory provision. 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. This provision may be repealed along with section 6 of the 1809 Act.

Extent

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

¹⁶⁸ Bribery Act 2010, s 1(2). An individual guilty of this offence is liable on summary conviction to a fine not exceeding the statutory maximum, or upon conviction upon indictment to imprisonment for a term not exceeding 10 years or to a fine (or both): the 2010 Act, s 11(1).

¹⁶⁹ Bribery Act 2010, s 3.

Consultation

18. The Home Office, the Ministry of Justice, the Crown Prosecution Service, the Committee on Standards in Public Life and the relevant authorities in Scotland, Wales and Northern Ireland have been consulted about these repeal proposals.

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