



**Law
Commission**
Reforming the law

Statute Law Repeals: Consultation Paper Lotteries

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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.

LOTTERIES: REPEAL PROPOSALS

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LOTTERIES

<i>Reference</i>	<i>Extent of repeal or revocation</i>
10 Ann. c.27 (1711) (Million Lottery tickets Act)	The whole Act.
38 Geo.3 c.iii (1798) (Macklin's Lottery Act)	The whole Act.
39 & 40 Geo.3 c.cii (1800) (Pigot and Fisher Diamond Lottery Act)	The whole Act.
44 Geo.3 c.vi (1804) (Boydell's Lottery Act)	The whole Act.
45 Geo.3 c.xxiv (1805) (Bowyer's Lottery Act)	The whole Act.
47 Geo.3 Sess.1 c.i (1807) (Bowyer's Lottery Act)	The whole Act.
Pool Competitions Act 1971 (c.57)	The whole Act.

Background

1. This note does two things. First, it proposes the repeal of 5 local Acts and one private Act, each of which authorised the holding of private lotteries. All of these Acts are now spent as the relevant lotteries were held in the early 1800s.

2. Secondly, it proposes the repeal of the Pool Competitions Act 1971 which remained in force until 1987 with a limited remit, and escaped the repeal net of the Gambling Act 2005.

Private lotteries

3. State-run and private lotteries began in England in 1567,¹ and were recognised as useful mechanisms for raising revenue. Concern, however, over the conduct of private lotteries² led to the passing in 1698 of an Act prohibiting all lotteries except those authorised by Parliament.³ Following the initial restriction, further measures to

¹ http://www.nationalarchives.gov.uk/museum/item.asp?item_id=30. There seems to be some doubt as to whether this was actually 1567 or 1569.

² Earl Ferrers giving a brief history of lotteries during the second reading of the National Lottery Bill 1993 *Hansard* (HL), 27 May 1993, vol 546, col 401.

³ 10 Will. 3 c.23 (1698), being an Act for the suppression of lotteries (repealed by 1934 Betting and Lotteries Act).

regulate state lotteries, and to improve enforcement of the prohibition on private lotteries, were enacted.⁴

4. Several Acts granting Parliamentary authority to hold private lotteries were passed in the early nineteenth century. The lotteries authorised were granted by way of exception to the prohibition on private lotteries - either because the item being sold was too expensive to attract purchasers in the normal way, or as recompense for the failure of a commercial scheme which carried with it a public benefit (such as the promotion of the arts or schemes for urban improvement). According to L'Estrange a notable feature of the circumstances in which an exemption to the general restrictions on lotteries would be granted was the indulgence shown to art merchants.⁵ This note deals with three such lotteries (those of Macklin, Boydell and Bowyer) where art dealers were enabled to "realise their otherwise unsaleable stock, by means of lotteries granted by Act of Parliament".⁶

Million Lottery tickets

10 Ann. c.27 (1711) (Million Lottery tickets Act)

5. In 1694 an Act authorised the holding of the so-called Million Lottery, a scheme which involved the issue of up to 100,000 tickets. Of these 100,000 tickets, some 2,500 each year were eligible for prizes of between £10 and £1,000.⁷ This lottery was followed by some 126 lotteries held over the next 130 years.⁸

6. In 1711 Manuel Henriquez⁹ of the city of Amsterdam was entitled to a share in the Million Lottery by virtue of holding 32 tickets, each of which was to yield a half-yearly payment of £250. Of these 32 tickets, 14 had been delivered to Peter and Peire Henriquez (to hold on behalf of Manuel Henriquez) who, in turn, had allegedly handed them on to another person or persons for Manuel. Manuel never received the tickets. The court of chancery had declared (in April 1706) that the 14 lottery tickets

⁴ 9 Ann. c.6 (1710) Lotteries Act (repealed by 1934 Betting and Lotteries Act); 8 Geo.1 c.2 (1721) Lotteries Act (repealed by 1934 Betting and Lotteries Act); and 13 Geo.2 c.19 (1739) Gaming Act (repealed by 1960 Betting and Gaming Act).

⁵ L'Estrange *Lotteries and Sweepstakes* (1932) p.299.

⁶ L'Estrange *Lotteries and Sweepstakes* (1932) p.299.

⁷ See 5 Will. & Mar. c.7 (1694), ss 34 to 49, discussed below. The purpose behind the 1694 Act was to raise taxation and to secure "certain recompences and advantages . . . to such Persons as shall voluntarily advance the Sum of Ten hundred thousand Pounds [today £1 million], towards carrying on the War against France" (from the long title).

⁸ See article by James Raven *A wheel of fickle fortune* in *The Independent*, 18 February 1994 (available at <http://www.independent.co.uk>, last accessed 25.8.09).

⁹ The exact spelling of the surname is difficult to decipher from the manuscript statute (see below).

were the property of Manuel, and Peter and Peire were ordered to deliver the tickets to him.¹⁰

7. By letter of attorney Manuel authorised Sir William Hodge, Bt. to receive on his behalf the moneys due on the tickets. However, the paymaster of the lottery tickets and related annuities refused to pay the moneys due (or the arrears) on the 14 tickets without statutory authority¹¹ to enable him to act. Consequently, Sir William petitioned the Queen in parliament by private Bill for the following authorisation (which authorisation was granted by the 1711 Act):

- (a) that “the present paymaster of the Million Lottery tickets or the paymaster of the said Million Lottery tickets for the time being” be authorised to pay to Sir William Hodges (for the use of Manuel Henriquez) the half-yearly payments of £250 due on the 14 tickets - and for which Sir William could give proper discharge - as if the originals had been produced;¹²
- (b) that on payment to him of the relevant moneys, Sir William was to give security “by his own recognizance” to the Queen to pay over the moneys to such person as could show good title within six months from the end of the then present session of parliament;¹³ and
- (c) that, after receipt of the moneys, Sir William (and his heir or personal representative as appropriate) was to make the necessary payments to persons who were able “to make out their title thereto”, subject to the right of any person or persons with entitlement being able to claim “as if this Act had never been had or made”.¹⁴

Status

8. State lotteries were first established by parliament in 1693-94¹⁵ as a financial experiment designed to raise moneys for government, by underwriting state loans, reducing the national debt, funding public projects and raising revenue generally.¹⁶ They acted as long-term loans to government.

¹⁰ Preamble to 10 Ann. c.27 (1711) (“the 1711 Act”), being a private Act “To empower the paymaster of the Million Lottery tickets to pay to Sir William Hodges the money due on fourteen tickets”. The Act is still in force. The Act does not contain section numbers: this note assigns informal section numbers for ease of reference.

¹¹ Specifically “without the authority of parliament”: the 1711 Act, preamble.

¹² The 1711 Act, preamble and s 1.

¹³ The 1711 Act, s 2.

¹⁴ The 1711 Act, s 3.

¹⁵ See 5 Will. & Mar. c.7 (1694) by which moneys were to be raised by taxation and loan in order to underwrite the costs of “the present war against the French king”. The 1694 Act was repealed in 1867. The first state lottery was authorised in 1569: see *Culture, Media and Sport Committee - First Report* HC March 2001, at para 7.

¹⁶ See J. Raven article (Feb. 1994, above).

9. Prior to 1769 no ticket-holder could lose out: he or she was assured of an annuity return as well as a chance of winning a prize in government bonds. In this sense the loans were a superior form of investment to today's premium bonds or other form of lottery.

10. Given that the authorisation within the 1711 Act was time-limited on its face, that Act is now entirely obsolete and can be repealed.

Macklin's Lottery

38 Geo.3 c.iii (1798) (Macklin's Lottery Act)

11. Thomas Macklin was a print seller and picture dealer (based in Fleet Street in London) who undertook to publish an illustrated folio Bible. Having sold subscriptions to this publication he had to sell his existing collection of paintings (the "poet's gallery") by lottery in order to fund production of the Bible.¹⁷ Macklin was known for giving "great encouragement to the artists in painting and engraving" and for raising "the celebrity of the English school" in this field.¹⁸

12. In 1797 an Act was passed which authorised Thomas Macklin to dispose of his existing collection of modern paintings by the sale of 2,400 lottery tickets at 5 guineas each. The 1797 Act, which scheduled some 96 works of art (to be sold as 76 prizes), placed a financial limit on the sum to be raised by the tickets (£12,600).¹⁹

13. According to its long title, the purpose of *Macklin's Lottery Act 1798* - passed the following year - was:

"for extending the Time limited for determining a Lottery, established under the Authority of an Act, passed in the Thirty-seventh Year of His present Majesty's Reign,²⁰ intituled, *An Act for enabling Thomas Macklin to dispose of his Collection of Modern Paintings, as now exhibited at his Gallery in Fleet Street, by way of Chance*".²¹

¹⁷Bentley "Thomas Macklin" *Oxford Dictionary of National Biography* (2004): <http://www.oxforddnb.com/index/101040489>.

¹⁸ See preamble to 37 Geo.3 c.133 (1797) (Thomas Macklin's paintings Act) ("the 1797 Act"), which Act was repealed by the Statute Law Revision Act 1948.

¹⁹ The 1797 Act, ss 1-4. The draw was to be undertaken through the state lottery. Notice of the intended draw had to be given in the *London Gazette*. Pending the draw the identified "modern paintings" were to be vested in named trustees, who would subsequently effect transfer to the various prizewinners (sections 5, 7).

²⁰ *Ie* the 1797 Act, above.

²¹ 38 Geo.3 c.iii (1798) ("the 1798 Act"). Although the 1797 Act was numbered as a public Act, from that year onwards public Acts were divided into two series. Thus the 1798 Act fell within the new category of public local and personal Acts, cited by a roman rather than an arabic chapter number.

14. Thomas Macklin had given notice of the lottery in the *London Gazette* in July 1797.²² However, at the time of passing the 1798 Act (February 1798), “he hath not been able to sell more than one sixth part of the number of tickets limited by the [1797] Act”.²³ The purpose of the 1798 Act was therefore to extend the time granted for carrying into execution the powers of the 1797 Act.

15. The 1798 Act provided as follows:

- (a) the 76 prizes of modern paintings were to be determined by the first state lottery after 1798 (*Section 1*);
- (b) any tickets already issued were to be considered part of the 2,400 ticket limit, and were to be in full force until the drawing of the state lottery and the distribution of prizes (*Section 2*);
- (c) the holders of tickets already issued could relinquish their chance of winning by surrendering their ticket in return for a full refund from Thomas Macklin (*Section 3*)²⁴; and
- (d) for the status of this Act (*Section 4*).

16. The 1797 Act containing the powers extended by this Act has been repealed.²⁵ Macklin’s Lottery was held in 1799.²⁶

17. Accordingly the 1798 Act is obsolete and may now be repealed on that basis.

Pigot and Fisher Diamond Lottery

39 & 40 Geo.3 c.cii (1800) (Pigot and Fisher Diamond Lottery Act)

18. The Pigot Diamond (which was “of very considerable value”²⁷) was bequeathed by George Lord Pigot to his brothers Sir Robert and Vice-Admiral Hugh, and to his widowed sister, Margaret Fisher. According to Lord Pigot’s will of April 1775 the diamond was to be shared in equal proportions between the three siblings. Following the death of Sir Robert Pigot his son, Sir George, acquired a one-third interest in the diamond. Hugh Pigot died intestate in 1793, leaving a widow, Frances Pigot, who then inherited his one-third interest in the diamond.

²² *London Gazette*, 25 July 1797, p. 706, ahead of the 1 August 1797 deadline. This can be accessed via the *London Gazette* website at <http://www.london-gazette.co.uk>.

²³ The 1798 Act, preamble.

²⁴ This was time-limited to 1 April 1798.

²⁵ Statute Law Revision Act 1948 (c.62).

²⁶ L’Estrange *Lotteries and Sweepstakes* (1932) p.281.

²⁷ See preamble to 39 & 40 Geo.3 c.cii (1800) (“the 1800 Act”), being “An Act to enable Sir George Pigot Baronet, Margaret Fisher, and Frances Pigot, to dispose of a certain Diamond therein mentiond (*sic*) by a Lottery”.

19. The preamble to the *Pigot and Fisher Diamond Lottery Act* of 1800 records that a diamond “esteemed by skilful lapidists²⁸ to be but little inferior in weight, and equal in water and brilliancy, to any known diamond in Europe; and the value thereof is now estimated at a sum little short of thirty thousand pounds” could not be disposed of by means other than a lottery. No purchasers had been forthcoming at previous sales due to its great value. In order to promote a lottery parliamentary authority was required.

20. The 1800 Act provided as follows:

- (a) that it be lawful for the current owners of the diamond to dispose of the diamond by means of “lottery or chance” without being subject or liable to any statutory penalty, and that such sale “shall be good, valid, and effectual” (*Section 1*);
- (b) that the money to be raised by the lottery sale was not to exceed £23,998 16s,²⁹ and that the number of tickets sold (at 2 guineas each) was not to exceed 11,428 (*Section 2*);
- (c) that the owners of the diamond were to give prior notice of the lottery in the *London Gazette* (*Section 3*);
- (d) that the diamond was to constitute the only prize in the lottery and that the lottery was to be determined by the drawing of the first state lottery after the passing of the Act in July 1800 (*Section 4*);
- (e) that the diamond was to be deposited in the Bank of England in the name of specific trustees pending the successful outcome of the sale (*Section 5*);³⁰ and
- (f) that the costs of obtaining the Act, and of implementing the lottery, were to be paid from the moneys raised by the ticket sales (*Section 8*).³¹

21. The joint owners published notice of the lottery in the *London Gazette* on 8 July 1800.³² The lottery was drawn on 2 January 1801³³ and was won by a syndicate that had bought a large number of tickets.³⁴

²⁸ Skilled workers who cut and engrave precious stones.

²⁹ In today’s money equivalent to £772,041.40 (<http://www.nationalarchives.gov.uk/currency/default.asp>).

³⁰ Provision was made for the appointment of replacement trustees (with the approval of the court of chancery), and for the Bank to be indemnified for the actions of its officers and servants in the keeping of the diamond: the 1800 Act, ss 6, 7. The diamond was deposited in the Bank on 11 July 1800.

³¹ Section 9 provided for the status of the 1800 Act.

³² *London Gazette* 8 July 1800, p.793.

³³ L’Estrange *Lotteries and Sweepstakes* (1932), p 287; Ashton *A History of English Lotteries* (London 1893) p 129.

22. Accordingly the 1800 Act is now spent, and may be repealed on that basis.

Boydell's Lottery

44 Geo.3 c.vi (1804) (Boydell's Lottery Act)

23. John and Josiah Boydell were print sellers who had published the plays of Shakespeare ornamented with the engravings of English artists, and had exhibited these works in The Shakespeare Gallery (which they built) in Pall Mall in London. When the collection became too large and expensive to maintain (because the French Revolution, and then the Anglo-French war of 1793, impacted on their trading market) they sought to dispose of it by lottery. Although the collection had been designed to pass into public ownership for the nation, events (and funding) at the time precluded that ambition.

24. According to its long title, the purpose of *Boydell's Lottery Act* of 1804³⁵ was:

“to enable John Boydell Esquire, One of the Aldermen of the City of London, and Josiah Boydell, his Nephew and Partner, to dispose of their Collection of Paintings, Drawings, and Engravings, together with their Leasehold Premises in Pall Mall, called The Shakspeare Gallery, by way of Chance”.

25. The preamble to the 1804 Act recorded that the Boydells should be allowed the exemption from the restrictions on lotteries as “the said collection cannot easily be disposed of by the common mode of sale, but at very great loss”. It seems from the preamble that the Boydells were granted this exemption as a recognition that they had “given great encouragement to the artists [in the arts of painting and engraving]” and had thus “materially contributed to the securing to this country a pre-eminence in those arts over all other nations”.

26. The 1804 Act provided as follows:

- (a) that it was to be lawful for the Boydells to dispose of the collection and gallery by means of a lottery without being subject or liable to any penalty imposed by Act of Parliament (*Section 1*);
- (b) the money to be raised by the lottery was not to exceed £69,300, and the number of tickets to be sold (at a minimum of 3 guineas each) was not to exceed 22,000 (*Section 2*);
- (c) the Boydells were to give notice of the lottery in the *London Gazette* and two London daily newspapers (*Section 3*);

³⁴ http://www.langantiques.com/university/index.php/Pigot_diamond.

- (d) named persons were to be appointed as trustees of the property, pending the draw, and provision was made for replacement trustees should the need arise (*Sections 4 - 5*);
- (e) a prohibition on any person who won a painting or engraving from copying it for sale without prior consent (*Section 6*);³⁶
- (f) the collection to be divided into 62 prizes to be allocated according to the scheme in the schedule to the Act, and the lottery to be drawn either by state lottery or by separate lottery to be drawn at the City of London guildhall (*Sections 7 - 8*);³⁷ and
- (g) the Boydells were entitled to continue to receive moneys from exhibition of the collection until the draw was complete (*Section 9*).

27. Notice of Boydell's lottery was published in the *London Gazette* in November 1804.³⁸ The lottery was held via the state lottery on 28 January 1805.³⁹

28. Accordingly the 1804 Act is now spent, and may be repealed on that basis.

Bowyer's Lottery

45 Geo.3 c.xxiv (1805) (Bowyer's Lottery Act)

29. In 1783 Robert Bowyer (who was a British miniature painter and print publisher) embarked on a project to promote the arts of painting and engraving in England by publishing an ornamented folio of *Hume's History of England* (which work he exhibited in his Historic Gallery at 87 Pall Mall in London).

30. Unfortunately, whilst Bowyer succeeded in encouraging the arts, the *History* project followed a similar trajectory to Boydell's Bible scheme (see above). High

³⁵ 44 Geo.3 c.vi (1804) ("the 1804 Act").

³⁶ John and Josiah Boydell had expended some £300,000 or more on creating "their stock of copper plates" and they were to retain copyright in the various art works.

³⁷ Where the draw was by state lottery it was to take place between August 1804 and June 1805. Prize-winning tickets were to be allocated prizes in accordance with the allocation set out in the Schedule to the Act. Where the lottery was to be conducted privately (subject to the consent of the Treasury commissioners) the draw had to take place before September 1805. By section 7 and the Schedule, the unsuccessful lottery participants (holding 21,938 tickets) were nonetheless each to be awarded a print at value of one guinea.

³⁸ *London Gazette*, 6 November 1804, p1368.

³⁹ L'Estrange *Lotteries and Sweepstakes* (1932), p291. Sadly, John Boydell died in December 1804, before the draw, although 22,000 tickets had by then been sold. The business was continued by Josiah Boydell at 90 Cheapside until it was wound up in 1818 (*London Gazette*, 1 December 1818).

costs and the failure of certain “sources of assistance” drove Bowyer, by 1805, to seek to dispose of his collection by lottery.⁴⁰

31. According to its long title the purpose of *Bowyer’s Lottery Act 1805* was:
“to enable Robert Bowyer of Pall Mall, in the City of Westminster, Esquire, to dispose of his Collection of Paintings, Drawings, and Engravings, together with several Copies of certain Books therein mentioned, by way of Chance”.

32. The preamble to the 1805 Act records that Bowyer’s collection “cannot be disposed of by the common mode of sale but at a very great loss, and unless some encouragement under the sanction of parliament be given ... to enable him to dispose of the same to the best advantage, his endeavours to promote the arts of painting and engraving will prove highly injurious and detrimental to himself”.

33. The 1805 Act provided as follows:
 - (a) that it be lawful for Robert Bowyer to dispose of his collection (including unsold copies of Hume’s *History*) by means of a lottery without being subject or liable to any penalty imposed by Act of Parliament (*Section 1*);
 - (b) that the money raised by the lottery should not exceed £69,300, and the number of tickets sold was not to exceed 22,000 (at the price of 3 guineas minimum per ticket) (*Section 2*);
 - (c) that notice was to be given of the sale by lottery in the *London Gazette* and two London daily newspapers (*Section 3*);
 - (d) that three named persons were appointed as trustees of the property pending its distribution⁴¹ (*Section 4*);
 - (e) that, in respect of those works of art which were as yet incomplete, the ticket money was to be vested in the trustees until the various works were complete and delivered (with provision made for appointment of named persons - and substitutes in their event of death - to certify satisfactory completion of the works), and the trustees were enabled to proceed once the certificates were available⁴² (*Sections 5 - 8*);

⁴⁰ See preamble to 45 Geo.3 c.xxiv (1805) (“the 1805 Act”).

⁴¹ By section 12 of the 1805 Act provision was made for the replacement of trustees in the event of their death.

⁴² The various art works were set out and described in the Schedule to the 1805 Act. By section 6, once the art works were complete “with as much art and skill” as was displayed in the earlier works, the certificate of completion was to be published in the *London Gazette*.

- (f) that the copper plates of Hume's *History* be destroyed by the trustees one month after the lottery was drawn,⁴³ and any person winning a painting or engraving was prohibited from copying it for sale⁴⁴ (*Sections 9 - 10*); and
- (g) that the collection was to comprise 1,451 prizes to be allocated according to the Schedule to the 1805 Act, and the draw of 22,000 tickets (or more) was to be undertaken through the state lottery between 1 August 1805 and 1 December 1806⁴⁵ (*Section 11*).

47 Geo.3 Sess.1 c.i (1807) (Bowyer's Lottery Act)

34. According to its long title the purpose of *Bowyer's Lottery Act 1807*⁴⁶ was:
 "for extending the Term, and altering the Powers, of an Act made in the Forty-fifth Year of His present Majesty, intituled, *An Act to enable Robert Bowyer of Pall Mall, in the City of Westminster, Esquire, to dispose of his Collection of Paintings, Drawings, and Engravings, together with several Copies of certain Books therein mentioned, by way of Chance*".
35. The preamble to the 1807 Act records that although Bowyer intended to have the lottery prizes determined by the last of the state lotteries to be held in the period August 1805 and December 1806 (which began drawing on 13 October 1806) "it become impossible for him so to do, as such state lottery consisted only of twenty thousand tickets". Accordingly, more time was required to carry out the draw, and this required further statutory authorisation.
36. The 1807 Act provided as follows:
- (a) that the powers of the 1805 Act were to continue as if re-enacted in this second Act (*Section 1*);
 - (b) that the tickets already sold were deemed to be part of the 22,000 allocation (*Section 2*); and
 - (c) that the 1,451 prizes were to be determined by the first state lottery drawn in London, and consisting of 22,000 tickets, after the date of the passing of this Act (February 1807); and, in the event that the first state lottery failed to consist of 22,000 tickets, Bowyer was authorised to hold a separate lottery before July 1807 in the same manner as a state lottery (at

⁴³ This had the effect of enhancing the limited number of prints won as prizes in the draw.

⁴⁴ Copyright remained with Robert Bowyer.

⁴⁵ Unsuccessful ticket holders were each to receive an engraving or engravings to the value of 3 guineas: the 1805 Act, s 11 and Sch.

⁴⁶ 47 Geo.3 Sess.1 c.i (1807) ("the 1807 Act").

least 20 days' notice of which was to be published in the *London Gazette*) (Sections 3 - 5).

Status

37. Robert Bowyer published notice of his intention to dispose of his collection by lottery in the *London Gazette* in May 1805,⁴⁷ and the unfinished works were certified complete in April 1806.⁴⁸ However, Bowyer was unable to have the prizes determined by state lottery in 1806 because, for the first time in 97 years and “to his great mortification”, there were fewer than 22,000 tickets in that lottery.⁴⁹ In February 1807 notice was published of Bowyer’s intention to have the prizes determined by the state lottery held on 14 April 1807.⁵⁰

38. Accordingly the 1805 and 1807 Acts are spent, and both may now be repealed on that basis.

Extent

39. Each of the six Acts (1711 to 1807) described in this note were passed to enable specific lotteries to be undertaken so as to realise the value of art works or gem stones. All the lotteries appear to have been held in London, but the enabling Acts seem to apply throughout the United Kingdom.

Pool betting

Pool Competitions Act 1971 (c.57)

40. The purpose behind the Pool Competitions Act 1971 (“the 1971 Act”) was to make lawful the continuing promotion as “pool betting” of competitions for prizes run by charitable and other societies, such as sports clubs. In November 1970 the judicial committee of the House of Lords had held⁵¹ that where such competitions failed to involve the use of forecasting skill they amounted to an unlawful lottery in breach of the Betting, Gaming and Lotteries Act 1963 (“the 1963 Act”).⁵²

⁴⁷ *London Gazette* 7 May 1805, p 621.

⁴⁸ *London Gazette* 5 April 1806, p 441.

⁴⁹ *London Gazette* 5 August 1806, p 1019.

⁵⁰ *London Gazette* 21 February 1807, p 233.

⁵¹ *Singette Ltd v Martin* [1971] AC 407, HL.

⁵² The 1963 Act, s 4(3) and Sch 2, para 13(a). Where the majority of participants paid weekly stakes, but took no active step to select winning teams or to alter their numbers (although they had the opportunity to do so), that amounted to absence of “making forecasts as to sporting or other events” and thus contravened the 1963 Act’s requirements.

41. The 1971 Act (granted royal assent in July 1971) was enacted to permit registered pool promoters, who were able to satisfy the Act's criteria, to obtain a certificate (with or without conditions attached) from the then Gaming Board authorising them to continue such competitions, notwithstanding the 1963 Act provisions. Competitors under the new legislation would be "deemed to make forecasts", whether or not they actually did so.⁵³

42. The 1971 Act was enacted as a holding measure to ensure that various pool competitions, which over the years had contributed to charitable and sporting fund-raising, would not founder over-night. Lobbying pressure had been brought to bear on government to authorise the continuing existence of the competitions pending a review of the law.

43. The life of the 1971 Act was time-limited. The whole of the Act has now expired, and it is proposed that it be repealed. The temporary and restricted nature of the 1971 legislation was highlighted originally in two ways.

44. First, licences to hold competitions for prizes would be granted only to those persons or bodies with the status of "registered pool promoter"⁵⁴ who held a certificate under the Act. In the main, a certificate would be granted only if the particular promoter could demonstrate that in the 12 months ending on 24 November 1970 (the day preceding the House of Lords' judgment in *Singette*) they had held at least nine competitions for the financial benefit of a society conducted "wholly or mainly"⁵⁵ for charitable or sporting or cultural or allied non-commercial purposes. Although there was provision for grant of certificates to genuine "successor" promoters,⁵⁶ the scope for expansion of this class of eligible promoter was constrained from the outset.

45. In practice a small number of societies (charitable and sporting), and commercial firms operating on their behalf, had used the simple pool competition vehicle in preference to small public lotteries⁵⁷ because there was no limit either on turnover or on the size of prizes that could be offered (even though they attracted

⁵³ The 1971 Act, s 2(5).

⁵⁴ Defined in the 1971 Act, s 7(1) by reference to the 1963 Act, s 4(2).

⁵⁵ The 1971 Act, s 1(1)(b), (2)(a).

⁵⁶ The 1971 Act, s 1(3).

⁵⁷ Made lawful by the Small Lotteries and Gaming Act 1956 (c.45).

liability to pay an element of pool betting duty).⁵⁸ By 1978, seven years after the 1971 Act had taken effect, only seven organisations were using this procedure.⁵⁹

46. Secondly, the life of the 1971 Act itself was specifically time-limited on its face. Section 8 provided that, initially, the Act would have a life of just five years. By section 8(2) the Secretary of State (the Home Secretary) was authorised by statutory instrument to extend the date by which the Act would cease to have effect. Although the number of extensions was not limited, approval for each extension had to be sought from each House of Parliament before the expiration of the previous limit. Extension would only operate for 12 months maximum on each renewal.

Status of the 1971 Act

47. The last continuance order was made in July 1986⁶⁰ and, on expiry of the final extension period, the 1971 Act lapsed irrevocably in July 1987.

48. The Royal Commission on Gambling had recommended in 1978 that the 1971 Act should not be extended beyond July 1979 and that it should “simply be allowed to lapse”.⁶¹ The Commission found there was “no case” for allowing continuation and that “the activities of the companies licensed to promote charity supporting pools should in any event not be allowed to continue in their present form for more than a limited period.”⁶² Neither the Gaming Board nor the licensed industry in their evidence to the Commission had sought continuation in perpetuity of the “privileged position”⁶³ which the existing licensees then possessed.

49. Although the 1971 Act was never repealed in whole, it was subject to minor partial repeal and amendment in 1976, when there were substituted references to the Lotteries and Amusements Act 1976 in place of references to lotteries in Part 3 of the Betting, Gaming and Lotteries Act 1963.⁶⁴

⁵⁸ See hereon *Gambling Review Report* (Cm 5206, 2001), chap 11 (Pool Competitions) at paras 11.5, 11.18.

⁵⁹ See *Final Report of the Royal Commission on Gambling (Chairman: Lord Rothschild)*, July 1978, Cmnd. 7200, vol 1 para 15.6. The report listed four pools supporting football and cricket, and a further three supporting medical charities (making just seven in all).

⁶⁰ The Pool Competitions Act 1971 (Continuance) Order 1986, SI 1986 No 1234, continued the 1971 Act in force until 26 July 1987 (see 1986 Order, art 2). By section 8(4) of the 1971 Act, when that Act ceased to have effect, “section 38(2) of the Interpretation Act 1889 (saving as to effect of repeals) shall apply as if this Act had then been repealed by another Act.”

⁶¹ See Cmnd. 7200, vol 1 (cited above), at para 15.17.

⁶² Cmnd. 7200, vol 1 para 15.17.

⁶³ Cmnd. 7200, vol 1 para 15.9.

⁶⁴ See former Lotteries and Amusements Act 1976 (c.32), s 25(2), Sch 4 para 7 and s 25(3), Sch 5. The 1963 Act (except certain horserace betting provisions) and the 1976 Act were

50. Moreover, the 1971 Act had ceased to be so important when new provisions relating to lotteries were enacted in 1976. Section 5 of the Lotteries and Amusements Act 1976 provided a scheme of control for “societies’ lotteries” (replacing a more modest scheme under section 45 of the 1963 Act) which enabled charitable, sporting and cultural bodies to promote lotteries in order to raise funds for their non-commercial purposes. The Lotteries and Amusements Act 1976 has since been repealed by the Gambling Act 2005 (“the 2005 Act”).⁶⁵

51. In its place, the Gambling Act 2005 established a regime for control of the pool betting industry, alongside other forms of gambling. Pool betting operating licences cover greyhound racing, football and other sports pools, and ‘fantasy football’-type competitions, for operations from 1 September 2007.⁶⁶ The 2005 Act makes no provision for resurrecting the 1971 Act.

52. The whole of the 1971 Act is now proposed for repeal on the grounds that it is both spent and superseded.

Extent

53. The 1971 Act extended throughout Great Britain.

Consultation

54. HM Treasury, the Home Office, the Department for Business, Innovation and Skills, the Department for Culture, Media and Sport, the National Gallery, the British Museum, the Gambling Commission, and the relevant authorities in Scotland, Wales and Northern Ireland have been consulted about these repeal proposals.

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repealed in whole, and replaced, by the Gambling Act 2005 (c.19), but no further amendment was made to the 1971 Act. Although inoperative, the 1971 Act was left on the statute book.

⁶⁵ See Gambling Act 2005, s 356(3)(i), (4) and Sch 17.

⁶⁶ See *Pool Betting: Do I need a licence?* (Gambling Commission information leaflet, March 2007), available at <http://www.gamblingcommission.gov.uk> website (last accessed 5.9.08). The issue of operating licences is governed by Part 5 of the 2005 Act: see particularly sections 65(2)(d) and 93 for “pool betting operating licences”.